

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.68214 of 2025

Arising Out of PS. Case No.-53 Year-2024 Thana- BETTIAH CITY District- West
Champaran

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1. Shivji Mahto Kmkar S/o Dasarath Mahato R/o vill - Murali, P.s.- Pokhariya,
Distt.- Parsa, Nepal
 2. Sanjay Patel @ Sanjay Patle S/o Rajendra Patel R/o Langadi @ Lagadi P.s.-
Lagadi, Distt.- Parsa (Birganj), Nepal

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Dhananjay Kumar, Advocate

For the Opposite Party/s : Mr. Jharkhandi Upadhyay, APP

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

4 14-10-2025 Heard the learned counsel for the petitioners and the
learned APP for the State.

2. The petitioners prefer this application for default
bail under Section 187(2) of the BNSS, 2023 in connection with
Bettiah Town P.S. Case No. 53 of 2024 registered under
Sections 8, 20(b)(ii)(c), 23(c) and 29 of the NDPS Act.

3. The recovery is of 18.200 Kg of *Charas* from the
petitioners who are in custody since 28.01.2024.

4. Learned counsel for the petitioners submits that an
incomplete charge-sheet has been filed as the charge-sheet has
been filed without the FSL report and therefore, the petitioners
deserve bail in view of the order/judgment passed by this Court



in the case of ***Rampravesh Diswa v/s the State of Bihar*** {Cr. Misc. No. 65898 of 2023}. The learned counsel for the petitioners has also relied upon various orders of the Hon'ble Supreme Court including the order dated 01.05.2023 passed in the case of ***Divyas Bardewa V/s Narcotics Control Bureau*** {Special Leave to Appeal (Crl.) No(s). 11628/2022}.

5. Learned A.P.P. for the State has vehemently opposed the prayer for bail.

6. I have heard and considered the submissions of the parties.

7. The order dated 01.05.2023 passed in ***Divyas Bardewa V/s Narcotics Control Bureau (supra)*** reads as follows:

“Heard the learned counsel for the petitioner as also the learned ASG for the respondent and perused the petition papers.

The primary question sought to be urged in the instant petition is with regard to the petitioner having acquired a right to seek for statutory bail, since the charge-sheet filed is without the FSL report.

That aspect of the matter, at this juncture, need not be gone into, since the said issue is pending consideration in a batch of petitions which would take sometime for hearing and this petition is also to be considered along with those petitions.

For the present, we note, that even in the other pending cases before this Court, in SLP(Crl) Nos. 8164-8166/2021 and other



similar petitions, without reference to the statutory bail, taking note that the petitioners have been in custody for sometime and the trial would take some more time to conclude, we had directed grant of bail to the petitioners.

In that view, in the instant case also, we direct that the petitioner be released on bail subject to the petitioner diligently participating in the trial. All contentions are however, left open to be considered with regard to the issue relating to the default bail.

List the instant petition along with the other connected petitions in their usual course.”

8. This Court in the case of **Rampravesh Diswa** (*supra*) has held as follows:-

10. The Hon'ble Supreme Court in the case of Uday Mohanlal Acharya v. State of Maharashtra reported as (2001) 5 SCC 453, has held that the default bail is a right which cannot be denied to the petitioner. For grant of default bail, the petitioner is not required to file an application. It is for the Court to consider that the charge sheet has not been filed in time and therefore, the petitioner is given liberty to execute the bail bonds. The non filing of the charge sheet will include the filing of incomplete charge sheet without FSL report in NDPS cases to defeat the benefit of default bail to an accused and because of the act of the investigating agency of filing an incomplete charge sheet without FSL report in NDPS cases, the petitioner cannot be kept in judicial custody.

11. Considering the aforesaid, I am of the view that the petitioner should not have been kept in custody once incomplete charge sheet was filed without FSL report and it is held that filing of incomplete charge sheet without



FSL report in NDPS cases is no charge sheet in the eye of law.

9. Considering the aforesaid facts and circumstances of the case and also in view of the order of the Hon'ble Supreme Court, this application for regular bail is allowed.

10. Accordingly, let the petitioners, above named, be released on bail on furnishing bail bond of Rs. 1,00,000/- (Rs. One Lakh Only) each with two sureties of the like amount each to the satisfaction of the learned concerned Court below, West Champaran at Bettiah in connection with Bettiah Town P.S. Case No. 53 of 2024, subject to the conditions that:-

- (i) Both the bailors should be the local who shall provide official document to show his/her bona fide;*
- (ii) The petitioners shall desist from committing any criminal offence again, failing which the State shall be at liberty to take steps for cancellation of their bail bonds;*
- (iii). The petitioner shall cooperate in the trial and shall appear regularly in the Trial on the dates fixed personally or through his lawyer.*

(Sandeep Kumar, J)

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