

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.72891 of 2024

Arising Out of PS. Case No.-85 Year-2024 Thana- BAISI District- Purnia

Santosh Kumar S/O Bijendra Rai @ Vijendra Ray @ Vijendra Singh Resident
of Village Sundarpur Ward No 01, P.S. Salimpur District Patna

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Anish Kumar, Advocate
For the State : Mr. Navin Kumar Pandey, APP

CORAM: HONOURABLE MR. JUSTICE ASHOK KUMAR PANDEY
ORAL ORDER

7 20-03-2025 Heard Mr. Anish Kumar, learned counsel for the

petitioner and Mr. Navin Kumar Pandey, learned APP for the

State.

2. The petitioner has prayed for regular bail in a
case registered for the offence punishable under Section 414
of the Indian Penal Code and Sections 8/20(b)(ii)(c) of the
NDPS Act.

3. The case of the prosecution is that the informant
was checking the vehicles and in that course, one vehicle was
intercepted and the driver was apprehended, he disclosed his
name as Santosh Kumar (petitioner herein). It is further
alleged that brown colour object in a plastic bag was found in
the dickey of the vehicle and it was *prima facie* ganja. The



total amount of ganja recovered from the possession of the petitioner is 21.767 kilogram.

4. Learned counsel for the petitioner submits that the petitioner is innocent and has committed no offence. He has falsely been implicated in this case. Learned counsel for the petitioner has submitted that petitioner is only the driver and he has no concern with alleged recovery of the contraband. He further submits that charge sheet has been filed without FSL report. From perusal of the FSL report, it transpires that the FSL report was submitted on 29.07.2024 whereas the charge sheet was filed on 05.04.2024. A statement has been made in para-3 of this petition that the petitioner has got no criminal antecedent. Moreover, he is languishing in judicial custody since 06.04.2024.

5. The prayer of the petitioner is twofold: First is that he is not concerned with the seized contraband and second is that FSL report was not available at the time of filing of the charge sheet. Learned counsel for the petitioner has also submitted that this issue has been discussed by the Co-ordinate Bench of this Court in **Cr. Misc. No. 65898 of 2023**, wherein the Co-ordinate Bench has opined that from reading of Section 36(a) sub-clause 4 of the NDPS Act, it



appears that in the case of offence punishable under Section 19 or Section 24 or Section 27(a) or for offences involving commercial quantity, the charge-sheet can be submitted within 180 days and if the charge-sheet is not submitted within 180 days, the accused person is entitled for default bail. The proviso to Section 37(a) speaks that public prosecutor may take an extension of time for filing the charge-sheet and 180 days time can be extended for a period up to one year. After the public prosecutor files that progress report of the investigation and gives specific reasons for detention of the accused beyond the said period of 180 days. In the present case, the Special Public Prosecutor has not filed any application for extension of period of the charge-sheet and the charge-sheet as per the contention of the petitioners has been filed without FSL report.

6. In the case of **Rabi Prakash vs. the State of Odisha**, Hon'ble Supreme Court has held that the prolonged incarceration generally militate against the most precious fundamental rights guaranteed under Article 21 of the Constitution of India and in such situation, the conditional liberty must override the statutory embargo created under Section 37 sub Clause 1(b) of the NDPS Act. The charge-sheet



filed without *FSL* report does not *ipso facto* creates any embargo against the fundamental right of a citizen enshrined in Article 21 of Indian Constitution.

7. Learned APP appearing for the State has opposed the prayer of regular bail.

8. Having regard learned counsel for the parties and considering the facts and circumstances of the case as well as custody of the petitioner, this court is inclined to enlarge the petitioner on bail. The above named petitioner is directed to be released on bail in connection with Baisi P.S. Case No. 85 of 2024 on furnishing bail bond of Rs. 10,000/- (Ten Thousand) with two sureties of the like amount each to the satisfaction of learned Sessions Judge-cum-Special Judge, NDPS Act, Purnea.

(Ashok Kumar Pandey, J)

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