

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.72604 of 2024

Arising Out of PS. Case No.-115 Year-2024 Thana- NARPATGANJ District- Araria

1. Bindeshwar Ram @ Vindeshwar Ram, Son of Dukha Ram @ Dukhkha Ram, R/O Banaili Patti, Police Station- Birpur, District- Supaul, Bihar
2. Rambali Ram, Son of Devnarayan Ram, R/O Gidarmari, Banaili Patti, Police Station Birpur, District -Supaul, Bihar

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

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

For the Opposite Party/s : Mr. Awadhesh Kumar Singh, APP

CORAM: HONOURABLE MR. JUSTICE ASHOK KUMAR PANDEY
CAV ORDER

6 07-03-2025 Heard Mr. Kumar Ravish, learned counsel for the petitioners and Mr. Awadhesh Kumar Singh, learned APP for the State.

2. The petitioners have prayed for regular bail in a case registered for the offence punishable under Section 8/20(b) (ii)(c) of the NDPS Act.

3. The case of the prosecution is that on 24.02.2024 at about 02:00 O' Clock, he got information that in the night, huge quantity of *ganja* is about to be smuggled from Nepal to India from boundary pillar No. 198/5. On the information, a team was constructed, they kept the vigil at the place informed, concealing themselves behind the bushes. At about 04:45 O'



clock they saw two persons keeping *sack* on their head are coming from Nepal towards India. When both persons entered 50 metres inside, the team apprehended them who disclosed their name as Bindeshwar Ram and Rambali Ram. Total 52.300 kg of *ganja* was recovered from both the sacks, kept in 26 packets.

4. Learned counsel for the petitioners submits that the petitioners are innocent and have committed no offence. They have falsely been implicated in this case. They have got no criminal antecedent. It is also submitted that the witnesses of seizure list are not the independent witnesses and from perusal of the seizure list, it transpires that the place of seizure is premises of Basmatiya O.P., whereas from perusal of the FIR, it transpires that the persons were apprehended near pillar No. 195/5. It has been submitted that nothing has been recovered from the possession of the petitioners and the seizure has been made at Basmatiya O.P. It is next submitted that Section 42 of the NDPS Act has not been complied. Moreover, the petitioners are languishing in judicial custody since 25.02.2024.

5. Learned counsel for the petitioners next submits that in this case, charge-sheet was filed without the *FSL* report. From perusal of the case diary, it transpires that the charge-sheet



was filed on 07.09.2024 whereas, the report from *FSL* was received on 30.09.2024, it means the charge-sheet has been filed prior to the report of the *FSL*.

6. The prayer of the petitioners are two fold: First is that nothing has been recovered from his physical possession rather the recovery was made from the *sacks* which were allegedly thrown away. Second is that the charge-sheet was filed without *FSL* report. In answer to question No. 1, it is apparent from the FIR itself that the accused persons were coming from the side of Nepal who threw away the *sacks* which they were carrying on their head and in those *sacks* 52.300 kg of *ganja* was recovered; so it can safely be said that nothing was recovered from the physical possession of the petitioners. In answer to question No. 2, 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.

7. 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 right 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 the Indian Constitution.

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

9. Having regard learned counsel for the parties and



considering the facts and circumstances of the case, this court is inclined to enlarge the petitioners on bail. The above named petitioners are directed to be released on bail in connection with Narpatganj P.S. Case No. 115 of 2024 on furnishing bail bond of Rs. 10,000/- (Ten Thousand) **each** with two sureties of the like amount each to the satisfaction of learned Sessions-cum-Special Judge, NDPS Act, Araria.

(Ashok Kumar Pandey, J)

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Sudhanshu/-

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