

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.74418 of 2024

Arising Out of PS. Case No.-76 Year-2024 Thana- JALALPUR District- Saran

Harendra Kumar Bharti Son of Shri Bharat Bharti Resident of Village -
Sakkaddi Bharti Tola, P.S. - Jalalpur, District - Saran

... .. Petitioner/s

Versus

1. The State of Bihar
2. Radha Mohan Singh Sub- Inspector of Police Jalalpur P.S., District- Saran at Chapra

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Shailesh Kumar, Advocate
For the State : Mr. Jitendra Kumar, APP

CORAM: HONOURABLE MR. JUSTICE ASHOK KUMAR PANDEY
ORAL ORDER

5 20-03-2025 Heard Mr. Shailesh Kumar, learned counsel for

the petitioner and Mr. Jitendra Kumar, learned APP for the

State.

2. The petitioner has prayed for regular bail in a
case registered for the offence punishable under Sections
8/20(b)(ii)(c), 27(a) and 29 of the NDPS Act.

3. The case of the prosecution is that the police
received information that at the house of this petitioner ganja
can be seized. On this information, the house of the petitioner
was raided and searched. It has further been alleged that in
three polythene bags altogether 40.565 kg of ganja was
recovered and when he was asked regarding the seized



contraband, he could not give plausible answer.

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 in this case while making the seizure, the provision of 100 Cr.P.C. has not been followed. It has also been submitted that in this case charge-sheet has been filed without the FSL report. 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 19.03.2024.

5. The prayer of the petitioner is twofold: First is that while making search and seizure, Section 100 of the Cr.P.C. was not followed second is that without FSL report the charge-sheet has been filed. From perusal of the FIR it transpires that the raiding party was even not having the narcotics test kit and without any kind of preliminary test, they have jumped on to the conclusion that the seized article is ganja. From perusal of the records it transpires that the FSL report has been filed in this case much after the filing of 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 Jalalpur P.S. Case No. 76 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 Court of Sessions Judge-cum-Special Judge, Saran at Chapra.

(Ashok Kumar Pandey, J)

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