

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.75678 of 2024

Arising Out of PS. Case No.-90 Year-2023 Thana- KALER District- Jehanabad

Jagjitan Kumar @ Jagjeevan Kumar, Son of Vijay Kumar Yadav @ Vijay
Yadav Village- Kat Brahampur, P.S.- Brahampur, Dist.- Buxar

... .. Petitioner/s

Versus

The State Of Bihar Patna

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Chandan Kumar Verma, Advocate

For the Opposite Party/s : Mr.Anil Prasad Singh, APP

CORAM: HONOURABLE MR. JUSTICE ASHOK KUMAR PANDEY
CAV ORDER

5 07-03-2025 Heard Mr.Chandan Kumar Verma, learned counsel for

the petitioner and Mr. Anil Prasad Singh, 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), 25, 29 of the N.D.P.S. Act.

3. The case of the prosecution is that on 11.07.2024 at
about 04:30 O'clock the informant got information that one pick
up bolero bearing Registration No. JH17W6891 loaded with
ganja was coming from Daudnagar thereafter, at about 08:30
O'clock he along with other police personnel proceeded from
police station by government vehicle taking with themselves
narcotics testing kits, weighing machine, seal and necessary
documents and reached Paharpur More at about 03:40 O'clock.



At about 07:20 O'clock the said truck was stopped with the help of the armed force. The person sitting on the driver seat and the person sitting beside him were unboarded from the vehicle and on query, the driver disclosed his name as Jagjitan Kumar and the other person was sitting beside him disclosed his name as Janu Rajak. During course of search of alleged Bolero, 143 kg of *ganja* along with mobile phone was recovered and accordingly seizure list was prepared.

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. He has got no criminal antecedent. It is also submitted that in this case, the seizure list was prepared on 11.07.2023 at about 08:10 am, thereafter, on 12.07.2023, an FIR was sent to the learned Sessions Judge, Jehanabad but seized *ganja* was presented before the learned Session Judge on 13.07.2023. The seized *ganja* was presented before the learned Session Judge on 13.07.2023 but it was sent to Sanyukta Rasayan Vidhi Vigyan Prayogshala, Kolkata on 22.07.2023 for sampling and testing and another sample was sent to Director Forensic Science Laboratory, Patna on 27.07.2023. It has also been submitted that the petitioner is the driver of the alleged vehicle who drives private vehicle on a



daily basis. A person named Ramesh from Arwal district contacted the petitioner to bring an empty vehicle from Daltonganj to Arwal, after which the petitioner reached Daltonganj to bring the vehicle. He did not know of what was hidden in the vehicle. While bringing the vehicle he was caught along with the said vehicle. The police has not examined any independent witness. From perusal of the case diary, it also transpires that charge-sheet has been filed without the *FSL* report. It is further submitted that the petitioner is languishing in judicial custody since 12.07.2023.

5. The prayer of the petitioner is two fold: First is that he is only the driver of the vehicle and he is having no knowledge. Second is that the charge-sheet was filed without *FSL* report. Though the seizure has been made from the vehicle which was being driven and petitioner is not the owner, which is also clear from the charge-sheet. Regarding second question, as far as the question of filing of charge-sheet without *FSL* report is concerned, this issue has been discussed by 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 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 present case, the Special Public Prosecutor has not filed any application for extension of the period of the charge-sheet and the charge-sheet as per the contention of the petitioners have 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 heard learned counsel for the parties and considering the facts and circumstances of the case, this court is inclined to enlarge the petitioner on bail. The above named petitioner is directed to be released on bail in connection with Kaler P.S. Case No. 90 of 2023 on furnishing bail bond of Rs.10,000/- (Ten Thousand) with two sureties of the like amount each to the satisfaction of learned District & Sessions Judge, Jehanabad.

9. Accordingly, the present bail applications stands allowed.

(Ashok Kumar Pandey, J)

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