

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.76137 of 2024

Arising Out of PS. Case No.-440 Year-2024 Thana- FORBESGANJ District- Araria

Suraj Kumar S/o- Ganesh Sah Resident of Village- Belahi Ward No- 13 PS-
Bathnaha District- Araria

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. N.K. Agarwal, Sr. Advocate
		Ms. Manisha Khushi, Advocate
		Mr. Raushan Raj, Advocate
		Mr. Kumar Rajdeep, Advocate
For the Opposite Party/s	:	Mr. Madhura Nand Jha, APP

CORAM: HONOURABLE MR. JUSTICE ASHOK KUMAR PANDEY
ORAL ORDER

6 17-03-2025 Heard Mr. N.K. Agarwal, learned counsel for the
petitioner and Mr. Madhura Nand Jha, learned APP for the State.

2. The petitioner has prayed for regular bail in a case registered for the offence punishable under Section 20(b)(ii)(c) of the N.D.P.S. Act.

3. The case of the prosecution is that the police got an information that *ganja* is being smuggled by car. On the information, they apprehended a white color car coming from the side of Bhadeshwar to N.H. 57. Two persons along with the vehicle were apprehended who disclosed their name as Suraj Kumar (the petitioner) and Deepak Kumar Jha. In search of the car, four sacs; two from the *dikki* and two from the back seat of the vehicle were recovered. On measuring, it was found 70 kg of



ganja. The 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. It is also submitted that the witnesses of the seizure list are not the independent witnesses which is in violation of Section 100 of the Cr.P.C. The seizure list does not bear the signature of the petitioner and as such the petitioner cannot be fastened with the liability of such seizure. The FIR does not state anything about the compliance of mandatory provisions of law as contained in Section 42 of the NDPS Act. No information with regard to the alleged search and seizure which was to be conducted in the night was given by the informant to the higher police officials either prior to the search and seizure or thereafter. No sampling was conducted. Petitioner is only the driver. It has also been submitted that the FSL report has not yet come.

5. The prayer of the petitioner is two fold: First is that the petitioner and the co-accused are the driver of the seized vehicle. From perusal of the FIR itself, it transpires that two persons who were apprehended from the vehicle have disclosed that the vehicle and ganja belong to one Arjun Sah. The petitioner is only the carrier. 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 stated 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. From perusal of the seizure list, it also transpires that it does not bear the signature of the petitioner. It is further submitted that the petitioner is languishing in judicial custody since 12.07.2024.

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 and submits that the petitioner is having criminal antecedent of one case.

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 Forbesganj P.S. Case No. 440 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, N.D.P.S. Act, Araria.

(Ashok Kumar Pandey, J)

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