

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.75666 of 2024

Arising Out of PS. Case No.-110 Year-2024 Thana- JOGBANI District- Araria

Kamal Yadav @ Kamal Son of Gayanand Yadav Village- Parasi, P.S.-
Sonamani Godam, Dist- Araria

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Vijay Kishore Bharti, Advocate

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

CORAM: HONOURABLE MR. JUSTICE ASHOK KUMAR PANDEY
CAV ORDER

6 07-03-2025 Heard Mr. Vijay Kishore Bharti, learned counsel for
the petitioner and Mr. Yogendra Kumar, learned APP for the
State.

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

3. The case of the prosecution as per the written report of
the informant is that on 27.05.2024 at about 19:15 O'clock, he
got the secret information that in the night, a consignment of
Ganja is about to pass near Pillar No. 177. So, they kept special
vigilance. At about 22:30 O'clock some persons were seen
carrying a sac on their head entering from the side of Nepal
inside India and on seeing the team, they tried to escape, two
persons were apprehended and rest succeeded to escape. The



apprehended persons disclosed their names as Sagar Yadav and Kamal Yadav. In the search of the *sacks*, 129 kg of *ganja* was recovered.

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 nothing has been recovered from the conscious possession of the petitioner except a mobile set containing sim. The petitioner has no concerned with the seized contraband nor he was ever indulged in such illegal business of contraband. From perusal of the FIR as well as seizure list, it is evident that all five *sacks* were recovered in abandoned condition. From the FIR, it appears that the seized contraband belong to Shyam Yadav, Dinkar Yadav and Kishan Yadav. The petitioner is only carrier of them for which Rs. 4,000/- was to be paid to him.

5. Learned counsel for the petitioner next submits that the charge-sheet has been filed without *FSL* report. From perusal of the case diary, it transpires that the charge-sheet was filed on 23.08.2024, whereas the *FSL* report was received on 30.10.2024 it means much after the filing of charge-sheet. From perusal of the FIR, it is clear that it is alleged that the petitioner along with



others threw away the sac which he was carrying on his head and tried to flee away and was apprehended and from his physical possession, only a mobile was recovered. It is further submitted that the petitioner is languishing in judicial custody since 28.05.2024.

6. The prayer of the petitioner is two fold: First is that nothing has been recovered from his physical possession rather the recovery was made from the *sacs* which were allegedly thrown away, only mobile has been recovered and the charge-sheet was filed without FSL report. 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 sacs which they were carrying on their head and in those sacs 129 kg of *ganja* was recovered; so it can safely be said that nothing was recovered from the physical possession of the petitioner. 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 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 petitioner 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 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 Jogbani P.S. Case No. 110 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, N.D.P.S. Act, Araria.

10. Accordingly, the present bail application stands allowed.

(Ashok Kumar Pandey, J)

Sudhanshu/-

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