

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.84487 of 2024

Arising Out of PS. Case No.-86 Year-2024 Thana- BIRPUR District- Supaul

Raushan Kumar Paswan, S/o- Mahendra Paswan, Resident of Village- Maheshpatti
W.No-10, P.S.-Ghurnabazar Dist-Araria

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. N.K. Agrawal, Sr. Advocate Mr. Arvind Kumar, Advocate Mr. Kumar Rajdeep, Advocate Ms. Diksha Kumari, Advocate
For the Opposite Party/s	:	Mr. Tarun Prasad Mandal, APP

CORAM: HONOURABLE MR. JUSTICE ASHOK KUMAR PANDEY
CAV ORDER

4 07-03-2025 Heard Mr. N.K. Agrawal, learned senior counsel for

the petitioner and Mr. Tarun Kumar Mandal, 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) of the NDPS Act.

3. The case of the prosecution is that the informant
received an information and on the basis, he prepared a raiding
party at about 10:30 P.M., near Refugee Colony between pillar
No. 200 and 201. At about 03:00 A.M., three accused persons
having white color sacks in their hand were coming from Nepal
side when they were intercepted, two of them managed to
escape after throwing their plastic bags however one accused
namely, Raushan Kumar Paswan (the petitioner) was



apprehended by the raiding party. Thereafter, the apprehended accused person namely, Raushan Kumar Paswan was interrogated and a notice was served under Section 50 of the NDPS Act and from a plastic bag, total 93 kg of illicit *ganja* was recovered in several packets.

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 from perusal of the FIR, it is clear that three persons were carrying *sacks*, two persons managed to escaped throwing away their *sacks* and one persons was apprehended. From perusal of the FIR, it is not clear as to how much *sacks* this petitioner was having on his head and from perusal of the seizure list, it is clear that the witnesses of seizure list are not the independent witnesses. The seizure was made near village Benalli Patti, Ward No. 1. From perusal of the FIR itself, it is not clear as to how much of the contraband was being carried by this petitioner.

5. Learned counsel for the petitioner next submits that in this case, charge-sheet was filed without the *FSL* report. From perusal of the final form, it is clear that it has been mentioned by the I.O. that *FSL* report has not been received and despite that



charge-sheet has been filed. From perusal of the FIR, it also transpires that the contraband was examined by narcotic detection kit.

6. The prayer of the petitioner is two fold: First is that it is not clear from the FIR as to how many *sacks* were being carried by the petitioner. In this regard, the learned counsel for the petitioner has submitted that FIR itself depicts that three persons were coming, out of which, two persons managed to escape throwing away the *sacks* over their head and this person was apprehended. Admittedly, two other persons were also carrying the bags. Altogether, 16 packets were seized, but it is not clear from the FIR as to how many packets were being carried by this petitioner. Second objection is that the charge-sheet has been filed without the *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 *sacks* which they were carrying on their head and in those *sacks*, 93 kg of *ganja* was jointly recovered from 16 plastic bags. 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 petitioner on bail. The above named petitioner is directed to be released on bail in connection with Birpur P.S. Case No. 86 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, NDPS Act, Supaul.

(Ashok Kumar Pandey, J)

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