

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.84760 of 2024

Arising Out of PS. Case No.-116 Year-2024 Thana- JOGBANI District- Araria

1. Dinesh Yadav Son of Tarachand Yadav R/O Deviganj Ward no. 9, P.S.- Narpatganj, Dist.- Araria.
2. Anmol Yadav Son of Late Awadh Lal Yadav R/O Deviganj Ward no. 9, P.S.- Narpatganj, Dist.- Araria.
3. Subhash Kumar Son of Bechan Yadav R/O Fatehpur Ward no. 13, P.S.- Narpatganj, Dist.- Araria.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Kumar Rajdeep, Advocate
		Mr. Arvind Kumar, Advocate
For the Opposite Party/s :		Mr. Tarun Prasad Mandal, APP

CORAM: HONOURABLE MR. JUSTICE ASHOK KUMAR PANDEY
ORAL ORDER

3 18-03-2025 Heard learned counsel for the petitioners and Mr. Tarun Prasad Mandal, learned APP for the State.

2. The petitioners have 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 from a Maruti Dzire having registration no. BR01DZ4161, altogether 39 kg of *ganja* was recovered. It is further stated in the FIR that the alleged contraband was tested with Narcotics Test Kit and it was found positive.

4. Learned counsel for the petitioners has submitted



that the contraband has not been recovered from the possession of these petitioners rather the same was recovered from the vehicle in which they were travelling.

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 petitioners is two fold: First is that it is not clear from the FIR as to how much contraband were being carried by the petitioners. In this regard, the learned counsel for the petitioners has submitted that FIR itself depicts that three persons were coming and were apprehended. Altogether, 39 kg of *ganja* was recovered, but it is not clear from the FIR as to how many packets were being carried by these petitioners. Second objection is that the charge-sheet has been filed without the *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, 39 kg of *ganja* was jointly recovered from under the back seat of the vehicle. 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 petitioners on bail. The above named petitioners are directed to be released on bail in connection with Jogbani P.S. Case No. 116 of 2024 on furnishing bail bond of Rs. 10,000/- (Ten Thousand) each of them with two sureties of the like amount each to the satisfaction of learned Sessions Judge-cum- Special Judge, NDPS Act, Araria.

10. Accordingly, the present bail application stands allowed.

(Ashok Kumar Pandey, J)

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