

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.88995 of 2024

Arising Out of PS. Case No.-289 Year-2024 Thana- KUCHAIKOTE District- Gopalganj

Harishankar Yadav S/o Late Baban Yadav Resident of Village- Rampur
Madho, PS- Kuchaikote, District- Gopalganj

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Kumar Harshvardhan, Advocate

For the Opposite Party/s : Mr. Jharkhandi Upadhyay, APP

CORAM: HONOURABLE MR. JUSTICE SOURENDRA PANDEY
ORAL ORDER

4 15-04-2025 Heard the learned counsel for the petitioner and learned
APP for the State.

2. The petitioner seeks regular bail in a case registered from offences under Sections 20(b)(ii)(c), 23, 25, 29 of the N.D.P.S. Act in connection with Kuchaikote P.S. Case No. 289 of 2024.

3. As per the prosecution case, the informant Shanu Kumar Jaiswal, the PSI of Kuchaikote P.S. received a secret information that three male persons and one female are carrying *charas* and are standing near NH-27 at village Madhav Math.

4. The informant has alleged that the police party approached and three persons were apprehended and one person managed to flee. On search 4.582 kg of *charas* was recovered from a bag which was being carried by the petitioner Harishankar Yadav. A mobile phone was also recovered from the



petitioner, the articles recovered was seized and seizure list was prepared.

5. The learned counsel for the petitioner submits that the petitioner is innocent and has not committed any offence as alleged and looking at the date of FIR as well as the seizure report it seems that the recovery was made otherwise and the petitioners are being falsely implicated in the present case. The learned counsel for the petitioner further submits that till date there is no FSL report confirming that the contraband which was seized was *charas*, the FSL report being not available the charge-sheet has been submitted by the police. The learned counsel has also submitted that the mandatory provision of the NDPS Act as enshrined under Section 42 and Section 52(a) of the NDPS Act has also not been followed. The learned counsel for the petitioner has produced an order dated 07.03.2025 passed by a Co-ordinate Bench of this Hon'ble Court passed in Cr. Misc. No. 88013 of 2024 wherein the two accomplice who were apprehended along with the petitioner namely, Ram Tapasya Gond and Chameli Devi have been granted bail.

6. The learned APP for the State has opposed the prayer for bail stating therein 4.582 kg of *charas* was recovered from the possession of the petitioner and the charge-sheet has already



been submitted and hence the petitioner should not be given the liberty of bail. The learned APP for the State has also submitted that for submitting a charge-sheet in the present case, the FSL report is not mandatory and is not required.

7. Considering the aforesaid facts and circumstances and taking note of the observations made in the order dated 07.03.2025 passed by the Co-ordinate Bench of this Court in Cr. Misc. No. 88013 of 2024 wherein the Court has taken note of the fact that filing of charge-sheet without the FSL report in a case involving commercial quantity, it was incumbent on the prosecution that the charge-sheet may be submitted within 180 days but if the charge-sheet is not submitted within 180 days the accused is entitled for default bail. However, the proviso of Section 21(a) speaks that public prosecutor may take an extension of time for a period upto one year. In the present case the Special Public Prosecutor has not filed any application for extension of the period of charge-sheet and the charge-sheet has been filed without the FSL report.

8. Taking the aforesaid fact into consideration and the fact that the petitioner is in custody since 03.07.2024 and the State has not been able to get the report which would suggest that the seized contraband was actually *charas* keeping the



petitioner in jail does not seem to be reasonable and in fact the fundamental right granted to the petitioner under Article 21 the Indian Constitution is being infringed.

9. Considering the aforesaid facts and circumstances, let the petitioner be released on bail furnishing bail bond of Rs. 10,000/- (Rupees Ten Thousand) with two sureties of the like amount each to the satisfaction of learned Sessions Judge, Gopalganj, Bihar in connection with Kuchaikote P.S. Case No. 289 of 2024.

(Sourendra Pandey, J)

Raj Ranjan/-

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