

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No. 88013 of 2024

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

1. Ram Tapsey Gond S/O Late Deo Nath Gond R/O Village- Inguri- Saray, P.S- Bankata, Distt.- Deoria (U.P).
2. Chameli Devi W/O Ram Tapsey Gond R/O Village- Inguri- Saray, P.S- Bankata, Distt.- Deoria (U.P).

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Lokesh Kumar Singh, Advocate

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

CORAM: HONOURABLE MR. JUSTICE ASHOK KUMAR PANDEY
CAV ORDER

4 07-03-2025 Heard Mr. Lokesh Kumar Singh, learned counsel for the petitioners and Mr. Yogendra Kumar Singh, learned APP for the State.

2. The petitioners have prayed for regular bail in a case registered for the offence punishable under Sections 20(b)(ii)(c), 23, 25 and 29 of the N.D.P.S. Act.

3. The case of the prosecution is that on 03.07.2024 at about 09:15 O'clock, police received a secret information that three male and one female having *charas* are standing near N.H. 27 and they are going somewhere to sell it. At about 09:40 O'clock, the police party arrived at spot and saw that three male persons and one female were standing there and out of them,



one had some articles in a bag. Having seen the police, they begin to flee away but three persons were caught by the police, whereas, one person succeeded in fleeing away. On interrogation, apprehended persons disclosed their name as Harishankar Yadav (co-accused), Ram Tapseya Gond (Petitioner No. 1) and Chameli Devi (Petitioner No. 2). Harishankar Yadav disclosed that he is carrying *charas* in the bag and the four persons were standing there for sale and were waiting for some vehicle. They also disclosed the name of the fled away person as Parmeshwar Yadav.

4. Learned counsel for the petitioners Mr. Lokesh Kumar Singh has stated that in this case, recovery has been made from one Harishankar Yadav, which is clear from the search and seizure memo. Altogether, 4.582 kg of *charas* was recovered from the possession of Harishankar Yadav. He has told that these petitioners along with him was gathered there for the distribution of the said contraband. It is also submitted that the police has filed charge-sheet without *FSL* report. There is no material to indicate that the material recovered was really *charas* or not. No *FSL* report has been obtained during investigation. The charge-sheet has been submitted against the petitioners and others on 30.09.2024 under Sections 8, 20(b)(ii)



(c), 25 and 29 of the N.D.P.S. Act. The witnesses of search list of seizure are not the independent witnesses. From perusal of the case diary, it transpires that without the *FSL* report, charge-sheet was filed. Petitioners are having no criminal antecedent. It is further submitted that the petitioners are languishing in judicial custody since 03.07.2024.

5. The prayer of the petitioners are two fold: First is that the recovery was made from the possession of co-accused and his name has surfaced in the statement of the co-accused namely, Harishankar Yadav. Second is that the charge-sheet was filed without *FSL* report. In answer to first question, it is pertinent to note here that the FIR and seizure list goes to show that the seizure was made from the possession of one Harishankar Yadav and he has stated that these petitioners are associates. So, there is no recovery from the possession of these petitioners. This much is clear. 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 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 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.

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.

8. Having heard learned counsel for the parties and considering the facts and circumstances of the case as well as custody of the petitioners, this court is inclined to enlarge the petitioners on bail. The above named petitioners are directed to be released on bail in connection with Kuchaikote P.S. Case No. 289 of 2024 on furnishing bail bond of Rs.10,000/- (ten thousand) **each** with two sureties of the like amount each to the satisfaction of learned Principal Sessions Judge, Gopalganj.

(Ashok Kumar Pandey, J)

Sudhanshu/-

U		T	
---	--	---	--

