

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.22192 of 2025**

Arising Out of PS. Case No.-57 Year-2020 Thana- KORANSARAI District- Buxar

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Raju Kanu @ Raju Gupta S/o- Late Shivlal Sahu @ Shivlal Kanu Residence
of Village-PO PS- Koransarai District-Buxar

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Arvind Kumar Pradhan, Advocate
For the Opposite Party/s : Mr. Raj Ballabh Singh, APP

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**CORAM: HONOURABLE MR. JUSTICE RUDRA PRAKASH
MISHRA**

ORAL JUDGMENT

Date : 08-01-2026

Heard learned counsel for the petitioner and learned
counsel for the State.

2. That the instant application is being filed for
quashing of the order dated 19.02.2025 passed by the learned
A.D.J.-1, Cum Special Judge SC/ST (P.O.A) Act, Buxar in
connection with N.D.P.S. Case no. 30 of 2020 arising out of
Koransarai P.S. Case No. 57 of 2020 dated 09.06.2020 lodged
under Sections 20, 25 of the N.D.P.S. Act 1985 by which
cognizance of the offences has been taken under Sections 21(b),



27A, 29 N.D.P.S. Act against the petitioner.

3. On 29.06.2020, the S.H.O. of Koransarai P.S., on secret information, apprehended co-accused Dharmendra Ram @ Dharmendra Dom while he was fleeing and recovered 56 grams of heroin from his possession in presence of witnesses. The co-accused disclosed Raju Kanu, petitioner herein, as the source of the contraband, after which the seizure was made and the F.I.R. was lodged.

4. Learned counsel for the petitioner submits that the petitioner is innocent and has been falsely implicated only on the basis of his past antecedents, without any independent or incriminating material. As is evident from the F.I.R., recovery of 56 grams of heroin was effected solely from the co-accused, and the petitioner has been implicated merely on the disclosure statement of the co-accused, which is inadmissible in law. During investigation, the police found the case true only against the co-accused and submitted charge-sheet accordingly, while no material was found to connect the petitioner with the alleged offence.

5. Learned counsel for the petitioner further submits that the case diary further records that during the relevant period the petitioner was under medical treatment for a fractured leg



and was unable to move, and his mobile tower location was found in his native village, clearly ruling out his involvement. There are no independent witnesses and material contradictions exist in the prosecution case. Even if the allegations are taken at face value, no *prima facie* offence is made out against the petitioner, and continuation of the proceedings would amount to abuse of the process of the Court; hence, the impugned order dated 19.02.2025 deserves to be quashed to secure the ends of justice.

6. Learned counsel for the State have supported the impugned order taking cognizance stating that the court below after considering all the materials against the petitioner took cognizance under Sections 21(b), 27(a), 29 of the NDPS Act.

7. Having heard submissions made by both parties and the material placed on record, it appears that upon completion of the supplementary investigation relating to petitioner, supplementary case diary was submitted before the Court on 15.10.2020, and as noted in paragraph 24 thereof, the Investigating Officer opined that no case was found to be true against the petitioner and accordingly he was not sent up for trial, though admittedly no formal final form under Section 173(2) Cr.P.C. was submitted pursuant to the supplementary



investigation.

8. The record further discloses that in Koransarai P.S. Case No. 57 of 2020, original charge-sheet No. 65 of 2020 dated 30.08.2020 under Sections 20, 25 of the N.D.P.S. Act has already been submitted against co-accused Dharmendra Ram @ Dharmendra Dom, pursuant to which N.D.P.S. Case No. 14 of 2020 is pending before the court below. As per the FIR and the case diary, 56 grams of heroin was recovered from the possession of the said co-accused, who, in the presence of an Executive Magistrate and police officials, disclosed that he had procured the contraband from the present petitioner.

9. The learned court below has considered the entire material available on record, including the disclosure statement, recovery, and the manner in which supplementary investigation was conducted. The court below has also recorded a finding that the Investigating Officer acted negligently during the supplementary investigation and that the absence of a formal final form cannot curtail the power of the Court to take cognizance on the basis of material already on record..

10. In *Abhinandan Jha v. Dinesh Mishra*, reported in **1967 SCC Online SC 107**, the Hon'ble Supreme Court observed in Paragraph 19 as follows:



“The question can also be considered from another point of view. Supposing the police send a report viz. a charge-sheet, under Section 170 of the Code. As we have already pointed out, the Magistrate is not bound to accept that report, when he considers the matter judicially. But can he differ from the police and call upon them to submit a final report, under Section 169? In our opinion, the Magistrate has no such power. If he has no such power, in law, it also follows that the Magistrate has no power to direct the police to submit a charge-sheet, when the police have submitted a final report that no case is made out for sending the accused for trial. The functions of the Magistracy and the police are entirely different, and though, in the circumstances mentioned earlier, the Magistrate may or may not accept the report, and take suitable action according to law, he cannot certainly infringe upon the jurisdiction of the police by compelling them to change their opinion, so as to accord with his view.”

11. Thus, the Hon’ble Supreme Court held that although a Magistrate is not bound by the opinion of the police and may apply an independent judicial mind to the materials on record, he cannot compel the investigating agency to alter the



nature of its report. Whether the police submit a charge-sheet under Section 170 Cr.P.C. or a final report under Section 169 Cr.P.C., the Magistrate may accept or refuse the report and proceed in accordance with law, but cannot direct the police to file a different report. The Court emphasized that the functions of investigation vested in the police and the judicial functions of the Magistracy are distinct, and any direction requiring the police to change their opinion would amount to an impermissible encroachment upon the statutory domain of the investigating agency.

12. This Court finds that at the stage of cognizance, a meticulous appreciation of evidence or adjudication on the truthfulness of the allegations is neither required nor permissible. The test is whether a *prima facie* case is made out. On the basis of materials collected during investigation, including the recovery, disclosure, and linkage of the petitioner with the alleged offence, the learned court below has rightly formed an opinion that *prima facie* offences under Sections 21(b), 27A and 29 of the NDPS Act are disclosed against the petitioner.

13. It is well settled that the power under Section 482 Cr.P.C. is to be exercised sparingly, and quashing of criminal



proceedings at the threshold is justified only in exceptional cases where no offence is made out or where the proceedings amount to abuse of process of law.

14. The legal position with regard to the scope of judicial interference at the initial stage of criminal proceedings is well settled by a catena of judgments of the Hon'ble Supreme Court. In State of *Haryana v. Bhajan Lal*, 1992 Supp (1) SCC 335, the Supreme Court authoritatively held that where the allegations made in the complaint or the FIR, taken at their face value and accepted in their entirety, disclose the commission of a cognizable offence, the courts ought not to interfere at the threshold. The Court cautioned that the extraordinary or inherent jurisdiction to quash criminal proceedings should be exercised sparingly and with great circumspection, and only in the rarest of rare cases, lest it stifle a legitimate prosecution at its inception.

15. Similarly, in *Amit Kapoor v. Ramesh Chander*, (2012) 9 SCC 460, the Supreme Court delineated the parameters governing the exercise of jurisdiction at the stage of cognizance or framing of charge. It was held that at this preliminary stage, the court is not expected to conduct a meticulous examination of the evidence or evaluate its probative value as if conducting a



trial. The court is only required to determine whether the material placed on record, if taken at face value, discloses the existence of sufficient grounds to proceed against the accused. The likelihood of the prosecution ultimately resulting in conviction is wholly immaterial at this stage.

16. Further, in *State of Tamil Nadu vs. N Suresh Rajan, (2014) 11 SCC 709*, the Supreme Court reiterated and reaffirmed that the test to be applied at the stage of framing of charge is whether there exists a strong suspicion, based on the material on record, that the accused has committed the offence. The Court emphasized that even if the materials give rise to grave suspicion, as opposed to proof beyond reasonable doubt, it is sufficient to justify proceeding against the accused. The probative value, credibility, or admissibility of the evidence is a matter to be assessed during trial and not at the preliminary stage.

17. Thus, the consistent judicial view is that at the inception of criminal proceedings, the courts must refrain from embarking upon a roving enquiry into the merits of the case or substituting their own assessment in place of a full-fledged trial. So long as the allegations and supporting material disclose the commission of an offence and raise a strong suspicion against



the accused, the continuation of the proceedings is warranted in the interest of justice.

18. In the present case, police after completion of due investigation, did not sent the petitioner on trial, whereas the learned Magistrate, upon independent judicial scrutiny of the case diary and materials on record, took cognizance of the offence, observing that the police opinion was erroneous. Such an action is consistent with the law laid down in *Abhinandan Jha and Others v. Dinesh Mishra, 1967 SCC Online SC 107* which affirms that while a Magistrate cannot compel the police to alter their report, he is not bound by their conclusions and may take cognizance if an offence is disclosed. As the Magistrate has exercised statutory jurisdiction without directing the police to file a charge-sheet, no illegality or abuse of process is made out.

19. In view of the above facts and settled legal position, this Court finds no perversity, illegality, or jurisdictional error in the impugned cognizance order warranting interference under Section 482 Cr.P.C. The issues raised by the petitioner relate to matters of defence, which can be appropriately adjudicated during trial.

20. Accordingly, the quashing petition is dismissed.



The petitioner shall appear before the court below and face trial
in accordance with law.

(Rudra Prakash Mishra, J)

Alok Verma/-

AFR/NAFR	AFR
CAV DATE	N/A
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