

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.80266 of 2025

Arising Out of PS. Case No.-226 Year-2025 Thana- GORIAKOTHI District- Siwan

1. Sharda Tiwari Son of Late Osihar Tiwari Resident of Village- Saidpur, P.S.- Goriakothi, District- Siwan
2. Deepak Tiwari Son of Late Gaata Tiwari Resident of Village- Saidpur, P.S.- Goriakothi, District- Siwan

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Sarvesh Kashyap, Advocate

For the Opposite Party/s : Mr. Md. Aslam Ansari, APP

CORAM: HONOURABLE MR. JUSTICE ASHOK KUMAR PANDEY
ORAL ORDER

3 21-01-2026 Heard learned counsel for the petitioners and
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)B and 22 of the N.D.P.S. Act.

3. The case of the prosecution is that the from the two rooms of the petitioners, altogether 19.200 kg of ganja was recovered.

4. Learned counsel for the petitioners submits that the petitioners are innocent and have committed no offence. Learned counsel for the petitioners has submitted that from perusal of the seizure list, it is clear that the recovery is from



two rooms and it is a joint house. The seizure list witnesses are police personnel. Police has not followed Section 105 of B.N.S.S. while preparing seizure. Learned counsel for the petitioner has further submitted that from perusal of para-34 of the diary, it is clear that I.O. has recorded that this case is pending for sampling and FSL report and on the same day, the charge sheet was filed this goes to show that even on that day i.e., 01.09.2025, even the sampling of the contraband has not been done and the FSL report is also not available. He has further submitted that from perusal of the FIR, it is also clear that the team which has conducted the raid was not having the kit to examine the contraband and it is only the personal satisfaction of the informant that the contraband is ganja. Moreover, the petitioners are languishing in judicial custody since 04.07.2025.

5. Learned counsel for the petitioner has further submitted that this case is squarely covered with the order passed by this Court in **Cr. Misc. No. 65898 of 2023**, wherein the 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.

6. In the present case, the Additional Public Prosecutor for the State 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 heard 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 Goreyakothi P.S. Case No. 226 of 2025 on furnishing bail bond of Rs.10,000/- (ten thousand) each with two sureties of the like amount each to the satisfaction of learned Judicial Magistrate-1st, Siwan.

(Ashok Kumar Pandey, J)

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