

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.90989 of 2025

Arising Out of PS. Case No.-398 Year-2025 Thana- BAHADURGANJ District- Kishanganj

Md. Sultan @ Sultan S/O Md. Bhola R/O Ward No. 08, Afsana
Road,Churipatti, P.S- Bahadurganj, Distt.- Kishanganj.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Rabindra Kumar Tiwary, Advocate Mr. Mritunjay Kumar, Advocate
For the Opposite Party/s	:	Mr. Ram Priya Sharan Singh, APP

CORAM: HONOURABLE MR. JUSTICE ASHOK KUMAR PANDEY
ORAL ORDER

4 08-04-2026 Heard learned counsel for the petitioner and learned
APP for the State.

2. The petitioner has prayed for bail in connection with Bahadurganj P.S. Case No. 398 of 2025 registered for the offence punishable under Sections 8(c), 21(c) of the N.D.P.S. Act.

3. The case of the prosecution, in short, is that from the possession of the petitioner, altogether 260 grams of *smack* like substance was recovered.

4. Learned counsel appearing on behalf of the petitioner has submitted that petitioner is innocent and has committed no offence. He has been falsely implicated in this case. He also submits that nothing has been recovered from the



possession of the petitioner. The witnesses of the seizure list are police personnel and the police has not complied with Section 105 of the BNSS while making the seizure. He further submits that in this case a chargesheet has been called and from perusal of the case diary, it will transpire that the I.O. has recorded that the investigation is pending for sending the samples to *FSL*. He further submits that before filing the charge sheet, I.O. has even not sent the samples to the *FSL* for getting a report as to whether the seized material is contraband or not. He further submits that there is an unreasonable delay in sending the *FSL* report, as the same has not been sent till filing of the chargesheet. Moreover, the petitioner is languishing in judicial custody since 01.10.2025.

5. Learned counsel for the petitioner has relied on an order of this Court passed in Cr. Misc. No. 84487 of 2024 and in that order, this court has relied on an order of the learned co-ordinate Bench of this Court passed in Cr. Misc. No. 65898 of 2023 wherein the learned 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 petitioner has 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 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.

7. The application for bail is opposed by learned APP



for the State and submits that the petitioner is having criminal antecedent of one case.

8. Having heard learned counsel for the parties and considering the facts and circumstances of the case, this Court is inclined to enlarge the petitioner on bail. The above named petitioner is directed to be enlarged on bail on furnishing bail bond of Rs. 10,000/- (Rs. ten thousand only) with two sureties of the like amount each to the satisfaction of the learned Sessions Judge-cum-Special Judge (NDPS Act), Kishanganj in connection with Bahadurganj P.S. Case No. 398 of 2025.

(Ashok Kumar Pandey, J)

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