

In the court of 1st District and Additional Sessions Judge, Aurangabad.
GR (NDPS) Case No. 32/2023 and CIS No. 02/2024
NCB Crime Case No. 14/2023

04.01.2025

The petitions filed under Section 227 of the Criminal Procedure Code, 1973 of dated 29.11.2024 on behalf of the accused/petitioner **Ling Raj Behara @ Dilip** for discharge are posted today for passing order. The rejoinder of dated 29.11.2024 is well with the file. The parties have already been heard.

The learned counsel for the accused/petitioner noted as above by his respective petition had tried to stress upon that the learned Court has mechanically without scrutinizing the facts and material collected during the course of investigation has taken cognizance under Sections 8, 20, 25 and 29 of the NDPS Act and there is no material against this petitioner for which cognizance has taken. It is well settled law that taking cognizance and framing of charges are different. Charge cannot be framed because cognizance has taken and at the time of framing charge the learned court has to explain the facts for which charge is going to be framed against the accused/petitioner. He added that framing of charge is not a mere formality and meticulous analysis of the facts collected during investigation is necessary to be considered at the time of framing of charge. From perusal of the materials collected during investigation, it will appear that there is no evidence at all that this petitioner has any participation in the offence stated in the FIR and police has arrested this very petitioner on mere suspicion and they have only doubt on the petitioner. It is settled law that suspicion cannot take place of evidence and on the basis of a mere suspicion, charge cannot be framed against the petitioner. He further added that from the perusal of the prosecution report it will appear that nothing has recovered from the conscious possession of this petitioner and police has not followed the requirement of search laid down under Sections 42, 50 and 52-A and 55 of the NDPS Act and hence all procedure became illegal and reliance cannot place on the same. He further added that the perusal of the seizure list it will appear that it has not mentioned in seizure list that where the same has prepared and the same cast stigma on the truthiness of the factum of search and seizure and there is no material against the petitioner to frame charge and to proceed against him and has prayed to discharge the accused/petitioner praying so.

Per-contra, the learned Special Public Prosecutor praying for the state has narrated the whole journey of investigation and showing the recovery of huge quantity of contraband from the persons involved showing the well proved involvement of the accused/petitioner. It has been prayed that such petition has been filed on behalf of the accused/petitioner in order to linger and weaken the case of the prosecution, by dawdling the time of the Court. He added that the Court has rightly taken cognizance against the accused/petitioner and has prayed to reject their prayer.

After having a glimpse over the prayer of the accused/petitioner and the contentions appeared during the arguments including material available with the file, it appears that this court has taken cognizance against the accused/petitioner after considering the material so collected during the course of investigation and there is nothing either in the file or in the petition of the accused/petitioner which may lead to show this court to opine differently. Moreover, the petitioner was caught red handed being the driver of the vehicle, in which the contraband was found. As such the prayer **under Section 227 of the Criminal Procedure Code, 1973**, the petition of dated 29.11.2024 on behalf of the accused/petitioner **Ling Raj Behara @ Dilip** is **rejected** and the accused/petitioner is ordered to be in attendance on the next date for hearing charge.

(Dictated)

1st Distt & Addl. Sessions Judge,
Aurangabad (Bihar)
Dated: 04.01.2025

Civil Court, Aurangabad