

GAHC010214062023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.Pet./1020/2023

ABDUL JALIL
S/O- LATE NURUDDIN
VILL- DURLABPUR
P.S- PATHERKANDI
DIST- KARIMGANJ
ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP
ASSAM

Advocate for : MR. M A CHOUDHURY
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

Date : 30.11.2023

- 1.** Heard Mr. A. Ahmed, learned counsel for the petitioner. Also heard Mr. B. B. Gogoi, learned Additional Public Prosecutor for the State.
- 2.** This application under Section 482 of the Code of Criminal Procedure, 1973 read with Article 227 of the Constitution of India has been filed by the

petitioner, namely, *Abdul Jalil* praying for setting aside the order dated 07.02.2023 passed by learned Sessions Judge, Karimganj in Special (NDPS) Case No. 119/2022 whereby learned Special Judge, Karimganj had shown the receipt of the charge-sheet in Special (NDPS) Case No. 119/2022 without following the directions contained in “***Samsun Noor @ Samsul Noor –Vs- The State of Assam***” reported in “***(2022) 5 GLT 405***”.

3. The facts relevant for consideration of the instant criminal petition are as follows:-

i. On the basis of an FIR lodged by one R.P. Singh, S.I. of Patharkandi Police Station on 13.08.2022, recovery of commercial quantity of suspected Yaba tablets were made from the possession of present petitioner and Patharkandi P.S. Case No. 205/2022 was registered and the investigation was initiated.

ii. During the course of investigation, the present petitioner was arrested on 13.08.2022 and on 14.08.2022, he was remanded to judicial custody. Thereafter, charge-sheet was laid against the present petitioner in this case. It is the case of the present petitioner that charge-sheet was not laid within a period of 180 days from the date of remand of the present petitioner and, hence, he is entitled to get default bail under Section 167(2) Cr.P.C. read with Section 36A(4) of the NDPS Act, 1985.

4. The learned counsel for the petitioner has submitted that the present petitioner was remanded to judicial custody on 14.08.2022 and he completed 180 days of detention on 9th February, 2023, hence, according to learned counsel for the petitioner, the present petitioner was entitled to be released on bail after 9th February, 2023 as according to learned counsel for the petitioner

on the said date, the charge-sheet was not laid.

5. In support of his submissions, learned counsel for the petitioner has pointed out that on 10th February, 2022, the present petitioner had moved a bail application before the Court of learned Special Judge, Karimganj which was fixed for consideration on 13th February, 2023 and in the said order it is reflected that "as reported, the charge-sheet in this case is laid".

6. The learned counsel for the petitioner has laid emphasis on the word "as reported" used by learned Special Judge in the order dated 13.02.2023 to impress upon this Court that the charge-sheet was not before the learned Special Judge, when the order dated 13.02.2023 was passed, otherwise, the learned Court would not have used the word "as reported" in its order.

7. Further, it also appears that as per order of this Court the scanned copy of the Register of charge-sheet maintained in the PI Office, Karimganj Court for the month of February, 2023 along with Register of charge-sheet of NDPS Cases maintained by the Office of the Special Judge, Karimganj for the month of February, 2023 was requisitioned and learned counsel for the petitioner submits that on perusal of the PI Register, it shows that the PI Register does not contain any signature of the Magistrate. Similarly, it is also submitted that the Register of NDPS cases maintained in the Office of the learned Special Judge, Karimganj does not contain any seal/signature of Presiding Officer. This according to learned counsel for the petitioner is in violation of provisions of Rule 38, Part-IV of the Assam Police Manual as well as direction issued by this Court in "***Samsun Noor @ Samsul Noor –Vs- The State of Assam***" reported in "***(2022) 5 GLT 405***".

8. The learned counsel for the petitioner has also submitted that though

by order dated 07.02.2023, learned Special Judge has stated that charge-sheet has been submitted under Section 22(C) of the NDPS Act against the present petitioner, namely, *Abdul Jalil*. However, it is submitted that in the CIS i.e. Case Information System maintained by the Gauhati High Court, the entry of 07.02.2023 against the Special (NDPS) Case No. 119/2022 has been missing which creates suspicion as to whether the order dated 07.02.2023 was passed on that day or whether it was subsequently passed.

9. Learned counsel for the petitioner has submitted that in the instant case there are violation of mandatory provisions regarding receipt and submission of charge-sheet as well as directions passed by this Court in exercise of power under Article 227 of the Constitution of India in “***Samsun Noor @ Samsul Noor –Vs- The State of Assam***” reported in “**(2022) 5 GLT 405**” as no initial or seal along with the date was affixed by the Presiding Officer or the Court before whom the charge-sheet was laid to show that it was placed before the concerned Court within time. Learned counsel for the petitioner has also submitted that in the last part of the charge-sheet at Column No. 18 of the Charge-sheet, the date of dispatch is shown as 22.07.2022 where as the charge-sheet was itself dated 30.11.2022 and therefore the date mentioned in the Column No. 18 of the Charge-sheet is a wrong date.

10. Learned counsel for the petitioner has also submitted that the impugned order dated 07.02.2023 and 14.02.2023 were passed in the case record on single sheet whereas for all earlier orders it is found that on a single page two orders were written in every case except for order dated 07.02.2023 and 14.02.2023. Learned counsel for the petitioner has also submitted that when the application for default bail was moved on behalf of the present petitioner on 10.02.2023, neither the officials nor the Public Prosecutor informed

the court about the submissions of the charge-sheet before the said date which according to the learned counsel for the petitioner raises doubt regarding the fact that the charge-sheet was laid before the Trial Court on 07.02.2023 as has been stated in the impugned order. It is further stated by the learned counsel for the petitioner that from the case information system available at the E-Court portal, it also appears that on 07.02.2023 no order has been shown to have been passed in the Special (NDPS) Case No. 119/2022.

11. Learned counsel for the petitioner submits that in the instant case there is a clear violation of provisions of Rule 38 and 69 of the Assam Police Manual, Part-IV and the guidelines issued by this Court in “**Samsun Noor @ Samsul Noor –Vs- The State of Assam**” reported in “**(2022) 5 GLT 405**”. It is submitted that the date on which the Magistrate or the Court empowered to take cognizance of the offence, puts the initials in the charge-sheet as well as in the register maintained with date and seal of the Magistrate and the Court would be deemed to the date on which the charge-sheet has been submitted and, therefore, in the instant case as no such signatures/initials and date and seal of the Magistrates are there in the charge-sheet or the register maintained for the purpose, it would have to be assumed that the charge-sheet was not laid before the learned Trial Court on 07.02.2023 when it is shown to have been laid as per the impugned order.

12. Learned counsel for the petitioner has submitted that when this Court had issued directions under Article 227 of the Constitution of India to comply with the directions issued under “**Samsun Noor @ Samsul Noor –Vs- The State of Assam**”(supra) it was imperative upon all the Courts to follow the same in letter and spirit and having failed to do so, the order dated 07.02.2023 is bad in law and same is liable to be interfered.

13. On the other hand, learned Additional Public Prosecutor has submitted that in view of the categorical mention in the judicial order which has been impugned in this case that the charge-sheet was laid on 07th February, 2023 before the said Court, there is no reason to disbelieve the correctness of the facts stated in a judicial order.

14. I have considered the submissions made by learned counsel for both sides and have perused the scanned copy of case record of Special (NDPS) Case No. 119/2022 as well as scanned copy of registers, charge-sheet and other documents which are placed before this Court.

15. It is pertinent to mention herein that the issue in “***Samsun Noor @ Samsul Noor –Vs- The State of Assam***” (supra) was as to when in a given case the charge-sheet was submitted to the office of the Court and there is nothing on record to show it was actually placed before the Magistrate who is competent to take cognizance and no initials of such Magistrate was obtained in the charge-sheet as well as in the register maintained for receiving the charge-sheet, under such circumstances mere submission of the charge-sheet before the office of the Magistrate/the Court would not be sufficient compliance in terms with Section 173(2) of the Code of Criminal Procedure, 1973 Read with Rule 38 and 69 of the Assam Police Manual, Part-IV. However, in the instant case, it is not the case of the petitioner that the charge-sheet was laid first before the Office of the concerned Court and thereafter after a lapse of time it was laid before the Court competent to take cognizance.

16. The case of the present petitioner is that though the charge-sheet has been shown to have been submitted before the court in the impugned order dated 07.02.2023, however, from the facts and circumstances, it appears that

on the said date no charge-sheet was laid before the learned Trial Court.

17. On perusal of the scanned copy of the Register maintained by the Office of the Sessions Judge, Karimganj, it appears that the charge-sheet No. 265/2022 dated 30.11.2022 in Special(NDPS) Case No. 119/2022 was received on 07.02.2023. However, it is also seen that no seal has been put under the signature of the person who have put his signature on the remark column of the said Register. Similarly, it also appears that in the scanned copy of the Register maintained in the PI office of the Karimganj Court that the charge-sheet No. 265/2020 was received on 06.02.2023 at 6.15 p.m. at the PI Office Court. However, there appears no signature or seal as required under Rule 38 Part-IV of the Assam Police Manual and as directed by this Court in "**Samsun Noor @ Samsul Noor**" (supra).

18. In the impugned order dated 07.02.2023, there has been a categorical mention about submission of the charge-sheet under Section 22(c) of the NDPS Act, 1985 against the present petitioner. The plain reading of the impugned order would show that on 07.02.2023 when the impugned order was passed, the charge-sheet has been submitted before the Court.

19. Section 114 of the Indian Evidence Act provides that the Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case. Illustration (e) to Section 114 of the Indian Evidence Act provides that "The Court may presume that the judicial and official acts have been regularly performed". To rebut this legal presumption, there has to be concrete materials on record which would suggest otherwise.

20. In the instant case, though it appears that the charge-sheet and the register were not signed in the manner prescribed under Rule 38 and Rule 69 of the Assam Police Manual, Part-IV, which raises doubt regarding the date of submission of the charge-sheet before the Court, however, in view of the judicial order dated 07.02.2023, which categorically states that the charge-sheet is submitted under Section 22(c) of the NDPS Act, 1985 against the present petitioner, it leaves no doubt that the charge-sheet was there before the learned Sessions Judge, Karimganj when the impugned order was passed.

21. The submissions made by learned counsel for the petitioner that only the order dated 07.02.2023 and 14.02.2023 were written on single sheets whereas in case of all other orders it appears that on a single sheet two orders were written would not in itself be sufficient reason for disbelieving the contents of order dated 07.02.2023.

22. Though, there is no doubt that the directions issued by this Court in ***“Samsun Noor @ Samsul Noor –Vs- The State of Assam”*** (supra) as regards the manner in which the provisions of Rule 38 and 69 of the Assam Police Manual, Part-IV has to be complied with by the Magistrate/Court before whom the charge-sheet has been laid is to be followed unscrupulously by all Courts/Magistrate. However, in the instant case as there is a judicial order i.e., order dated 07.02.2023 passed by passed by learned Sessions Judge, Karimganj in Special (NDPS) Case No. 119/2022 which categorically states that the charge-sheet is submitted which means that the charge-sheet was before the learned Sessions Judge, Karimganj where the impugned order was passed. In the light of the provisions of Section 114(e) of the Indian Evidence Act as well as in light of the principle of the sanctity of a judicial order, this Court is of the considered opinion that in the instant case, in view of the categorical statement in the

impugned order, there is nothing to disbelieve that the charge-sheet was not before the Court when the impugned order was passed.

23. In view of above, this Court finds no sufficient material to interfere in the impugned order dated 07.02.2023.

24. Before parting, this Court deems it proper to make the following observations:-

(a) Learned Sessions Judge, Karimganj shall henceforth ensure that the guidelines issued by this Court in “***Samsun Noor @ Samsul Noor –Vs- The State of Assam***” (supra) are scrupulously followed in all cases.

(b) Learned Sessions Judge, Karimganj shall also conduct an enquiry to find out as to why the order dated 07.02.2023 passed in Special (NDPS) Case No. 119/2022 was not uploaded in CIS of E-Court portal and thereafter shall take corrective administrative steps so that such lapse does not recur in future.

25. The Registry is directed to send a copy of this order to the learned Sessions Judge, Karimganj for compliance.

26. With the above observations, this criminal petition is hereby dismissed.

JUDGE

Comparing Assistant