

THE HIGH COURT OF SIKKIM: GANGTOK
(Criminal Revisional Jurisdiction)

SINGLE BENCH: THE HON'BLE MR. JUSTICE BHASKAR RAJ PRADHAN, JUDGE

CRL. REV. P. No. 04 of 2025

State of Sikkim Revisionist

versus

Bishal Saha,
S/o Shiv Dayal Shah,
Resident of Lower Bazaar, Rangpo,
P.O. and P.S. Rangpo,
District Pakyong, Sikkim,
Pincode: 737132. Respondent

**Revision under Sections 438 and 442 of
the Bhartiya Nagarik Suraksha Sanitha, 2023**

*[against the Order of bail dated 27.8.2025 passed by the Ld. Special Judge Sikkim
(NDPS, 1985), Pakyong, Sikkim in Criminal Misc. Case (NDPS) No. 30 of 2025]*

Appearance:

Mr. Thinlay Dorjee Bhutia, Public Prosecutor and Mr. Yadev Sharma,
Additional Public Prosecutor with Ms Pema Bhutia, Assistant Public
Prosecutor for the Revisionist.

Mr. Pramit Chettri and Mr. Arun Rai, Advocates, for the Respondent.

Date of Hearing : 26th June, 2026
Date of Judgment : 30th June, 2026
Date on which uploaded: 30th June, 2026

Bhaskar Raj Pradhan, J.

The respondent is an accused in a case of the
prosecution alleging that 21.34 gms of brown sugar (heroin) which
falls under the category of 'intermediate quantity' under the Narcotic
Drugs and Psychotropic Substances Act, 1985 (NDPS Act) was
recovered and seized from his possession. The offence is punishable

with imprisonment which may extend up to ten years but does not exceed ten years. On completion of the investigation, the prosecution filed the charge-sheet/police report on 14.08.2025 before the learned Chief Judicial Magistrate, Pakyong, instead of the Court of the learned Special Judge (NDPS, 1985), Pakyong, Sikkim (the learned Special Judge) which had been duly constituted.

2. The State of Sikkim challenges the impugned order dated 27.08.2025 passed by the learned Special Judge. The impugned order held that since the charge-sheet was not filed before the competent Special Judge within sixty days, the prosecution has failed to comply with the statutory requirement. Consequently, it was held that the respondent was entitled to be released on default bail under Section 187(3)(ii) of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS, 2023). It was further held that default bail could not be denied merely on the ground that the charge-sheet was filed before the Court of the Chief Judicial Magistrate which did not have jurisdiction to take cognizance of the offence.

3. The learned Public Prosecutor submits that the prosecution had completed its investigation within the period of sixty days and merely because it filed the charge-sheet before the Court of the learned Chief Judicial Magistrate, it could not be presumed that it had taken more than sixty days to complete the investigation.

4. The learned Counsel for the respondent referred to the provision of section 36A of the NDPS Act and submitted that it

required the charge-sheet to be filed before the learned Special Judge, NDPS Act and the Court of the learned Chief Judicial Magistrate did not have the jurisdiction to take cognizance of the offence under the NDPS Act.

5. The necessary facts for disposal of the present revision petition preferred under Sections 438 and 442 of the BNSS, 2023 is not in dispute. On 15.06.2025, the respondent was apprehended at around 21:30 hours. On 16.06.2025, he was remanded to police custody by the learned Judicial Magistrate from 16.06.2025 to 17.06.2025. On 14.08.2025, charge-sheet was filed by the Investigating Officer before the learned Chief Judicial Magistrate. On the same day, the respondent filed a bail application under Section 187(3)(ii) of the BNSS, 2023 before the Court of the learned Special Judge. On 21.08.2025, the learned Chief Judicial Magistrate committed the case to the learned Special Judge (NDPS), Pakyong, since the offence involved was exclusively triable by the Special Court. Accordingly, the entire case records were sent to the Court of the learned Special Judge. The learned Special Judge on 21.08.2025 recorded receipt of the case files from the learned Chief Judicial Magistrate and listed the matter for hearing on charge on 25.09.2025. The application for default bail filed on 14.08.2025 was still pending before the learned Special Judge. The learned Special Judge, thereafter, passed the impugned order dated 27.08.2025 on the application for default bail granting bail to the respondent.

6. On hearing the learned counsel for the parties, two questions arise for consideration. The first is, whether the charge-

sheet forwarded by the Investigating Officer to the learned Chief Judicial Magistrate and not before the learned Special Court on 14.08.2025, could be considered to defeat the indefeasible right of the respondent? The second is, what would be the status for application for bail filed by the respondent before the learned Special Court on 14.08.2025 before the indefeasible right in his favour accrued to him on the midnight of 14.08.2025?

7. Section 36A(1) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act) provides for offences triable by Special Courts. It begins with a *non obstante* clause “*Notwithstanding anything contained in the Code of Criminal Procedure, 1973*” and provides that all offences under this Act which are punishable with imprisonment for a term of more than three years shall be triable only by the Special Court constituted for the area in which the offence has been committed.

8. Section 36(1)(b) provides that where a person accused of or suspected of the commission of an offence under this Act is forwarded to a Magistrate under sub-section (2) or sub-section (2A) of section 167 of the Code of Criminal Procedure, 1973 (2 of 1974), such Magistrate may authorise the detention of such person in such custody as he thinks fit for a period not exceeding fifteen days in the whole where such Magistrate is a Judicial Magistrate and seven days in the whole where such Magistrate is an Executive Magistrate: provided that in cases which are triable by a Special Court where such Magistrate considers – when such person is forwarded to him as aforesaid; or upon at any time before the expiry of period of

detention authorised by him, that the detention of such person is unnecessary, he shall order such person to be forwarded to the Special Court having jurisdiction.

9. Section 36A(1)(c) provides that the Special Court may exercise, in relation to the person forwarded to it under clause (b), the same power which a Magistrate having jurisdiction to try a case may exercise under section 167 of the Code of Criminal Procedure, 1973 (2 of 1974), in relation to an accused person in such case who has been forwarded to him under that section.

10. Section 36A(1)(d) provides that a Special Court may, upon perusal of police report of the facts constituting an offence under the Act or upon complaint made by an Officer of the Central Government or a State Government authorised in his behalf, take cognizance of that offence without the accused being committed to it for trial.

11. In ***Supreme Court Legal Aid Committee representing Undertrial Prisoners vs. Union of India and Others***¹, the Supreme Court opined that on a conjoint reading of section 36 and section 36-A(1)(a), it becomes clear beyond any manner of doubt that once a Special Court (or more than one) has been constituted for an area or areas in which the offence has been committed, than notwithstanding anything contained in the Code, the Special Court alone will have jurisdiction and all other Courts exercising jurisdiction prior to the constitution of the Special Court will cease to

¹ (1994) 6 SCC 731

have jurisdiction. It was also held that it was clear from the provision of section 36-A(1)(a) and (d) that the Special Court can take cognizance of an offence without the accused being committed to it for trial.

12. Section 36A, therefore, makes it clear that once a Special Court has been constituted, it is that Special Court alone, which has exclusive jurisdiction to take cognizance of the offence on receipt of the police report and try the offence as mentioned therein.

13. Section 187 of the BNSS, 2023 provides procedure when investigation cannot be completed in twenty-four hours. Section 187(3) provides that the Magistrate may authorise the detention of the accused person, beyond the period of fifteen days, if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorise the detention of accused person in custody under this sub-section for a total period exceeding –

“(i)

(ii) sixty days, where the investigation relates to any other offence, and, on the expiry of the said period of ninety days, or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail, and every person released on bail under this sub-section shall be deemed to be so released under the provisions of Chapter XXXV for the purposes of that Chapter.”

14. It is, therefore, evident that the prosecution ought to have filed the charge-sheet/police report before the Special Court which had the exclusive jurisdiction to try the offence against the respondent. However, admittedly, the charge-sheet/police report was filed before the learned Chief Judicial Magistrate on 14.08.2025

who did not have the jurisdiction to try the offences against the respondent. The order dated 14.08.2025 passed by the learned Chief Judicial Magistrate records the fact of seeing the charge-sheet filed by the prosecution and taking cognizance of the offences. Both the filing of the charge-sheet before the Chief Judicial Magistrate and the taking of cognizance by the Chief Judicial Magistrate were illegal.

15. In view of the judgment of the Supreme Court in ***Enforcement Directorate, Government of India vs. Kapil Wadhawan & Another***², the sixty days remand period under section 167 Cr.P.C. ought to be computed from the date when a Magistrate authorises remand. The learned Judicial Magistrate, in the present case, authorised remand on 16.06.2025. Thus, the sixty days period would end on 14.08.2025. There is no dispute of this fact. The application for default bail was also admittedly filed by the respondent on 14.08.2025 before the jurisdictional Special Judge (NDPS, 1985), Pakyong. However, on 14.08.2025, the indefeasible right of the respondent for the default bail had not yet accrued in his favour until the midnight of 14.08.2025. Hence, it is certain from the midnight of 14.08.2025, the respondent's indefeasible right for default bail accrued in his favour and, as the application for default bail filed on 14.08.2025 had neither been returned as premature nor rejected, he was entitled to the bail from then onwards. The unnecessary committal proceedings done by the learned Chief Judicial Magistrate could not have affected the respondent's right to

² (2024) 7 SCC 147

the default bail. Section 193(3)(i) of the BNSS, 2023 provides that as soon as the investigation is completed, the officer in charge of the police station shall forward, including through electronic communication to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form as prescribed. The Court of the learned Chief Judicial Magistrate before whom the police report was forwarded was not the Magistrate empowered to take cognizance. Admittedly again, the charge-sheet was sent to the Court of the learned Special Judge who was empowered to take cognizance only on 21.08.2025 when the application for default bail filed on 14.08.2025 was still pending.

16. In view of the judgment passed in the Supreme Court in ***Uday Mohanlal Acharya vs. State of Maharashtra***³, it would be more in consonance with the legislative mandate to hold that an accused must be held to have availed of his indefeasible right, the moment he files an application for being released on bail and offers to abide by the terms and conditions of bail. Therefore, the learned Special Judge correctly interpreted the provision for default bail and granted it in favour of the respondent on 27.08.2025.

17. In ***M. Ravindran vs. Directorate of Revenue Intelligence***⁴, the Supreme Court held that the moment accused files application for bail on default of investigating agency in filing charge-sheet within prescribed period and offers to furnish bail bonds as directed by Court, he is deemed to have "availed of" his indefeasible right to

³ (2001) 5 SCC 453

⁴ (2021) 2 SCC 485

be released on bail. "Availed of" means actual release from custody by furnishing bail and complying with terms and conditions of bail order within time stipulated by Court. Once the right to default bail has become indefeasible by filing application when right accrues, it continues, irrespective of pendency of bail application or subsequent filing of charge-sheet, additional complaint, or Public Prosecutor's report seeking extension of time. Court has to release him on bail, uninfluenced by merits of the case but Court cannot suo motu grant bail without ascertaining whether accused is ready to furnish bail bond or not.

18. Therefore, it is held in answer to the two questions posed before, that the charge-sheet forwarded by the Investigating Officer to the learned Chief Judicial Magistrate and not before the learned Special Judge, contrary to the mandate of section 36A of the NDPS Act and section 187(3)(ii) of the BNSS, 2023 could not defeat the indefeasible right of the respondent to be granted the default bail. It is further held that the application for default bail which was pending before the learned Special Judge on 14.08.2025 could be considered by the learned Special Judge after the respondent's indefeasible right accrued in his favour.

19. It was argued that the prosecution did not take any further time beyond the stipulated time of sixty days for completing the investigation since the charge-sheet was filed within that time albeit before the Court of the learned Chief Judicial Magistrate. However, it is held that when section 36A of the NDPS Act mandated the filing of the charge-sheet/police report and taking of cognizance

of the offence under the NDPS Act only by the Special Judge constituted under the NDPS Act, it could not have been done in any other manner. The act of the prosecution forwarding the charge-sheet to the learned Chief Judicial Magistrate was non-compliance of the mandate of the law. As the charge-sheet was forwarded by the learned Chief Judicial Magistrate only on 21.08.2025 to the Court of the learned Special Judge (NDPS, 1985), by that time the indefeasible right had already accrued in favour of the respondent. Further, he had also applied for default bail and was prepared to furnish bail, it was incumbent upon the learned Special Judge to grant it. I am inclined to hold that section 187(3)(ii) of the BNSS, 2023 is a provision meant for the benefit of the accused person and therefore, an interpretation which advances the cause of personal liberty should be accepted.

20. Section 438 of the BNSS, 2023 corresponds to Section 397 of the Cr.P.C. The High Court may call for and examine the records of the proceedings of an inferior criminal Court for the purposes of satisfying itself as to the correctness or legality or propriety of the impugned order. The impugned judgment has correctly appreciated the relevant provisions and applied the judgments passed by the Supreme Court. I am of the firm view that the impugned judgment was correct, legal and proper. It calls for no interference. Accordingly, the criminal revision petition is dismissed.

21. Copy of this judgment be sent to the Court of the learned Special Judge (NDPS 1985), Pakyong, for information.

(Bhaskar Raj Pradhan)
Judge

Approved for reporting: **Yes/No**
Internet: **Yes/No**

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