

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL MISCELLANEOUS JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Debangsu Basak

AND

The Hon'ble Justice Bibhas Ranjan De

CRM (NDPS) 159 of 2022

Akhtarul Gazi

Vs.

The State of West Bengla

For the Petitioner : Mr. Mohammad Khairul

For the State : Mr. Tapandeb Nandy
Mr. Antarikhya Basu

Heard on : 04.02.2022

Judgement on : 04.02.2022

DEBANGSU BASAK, J.:

1. Petitioner renews the prayer for bail.

2. Learned advocate appearing for the petitioner submits that although the police filed charge-sheet within the statutory period, the same was not accompanied by the Chemical Analysis Report. Consequently, the petitioner is entitled to bail. In support of such

contention, he relies upon an order of the Hon'ble Supreme Court passed in Special Leave to Appeal (Criminal) Nos. 8164-8166/2021 (Md. Arbaz & Ors Vs. State of NCT of Delhi) dated December 13, 2021. He submits that the petitioner is similarly situated as the person granted interim bail by the Hon'ble Supreme Court.

3. Learned advocate appearing for the State submits that this is the third application for bail. Narcotic of commercial quantity was seized from the exclusive possession of the petitioner. Charge-sheet was filed within 180 days of the date of arrest of the petitioner. He submits that a court while considering a prayer for grant of bail in a matter involving the provisions of the NDPS Act, 1985 is mandatorily required to consider the provisions of Section 37 of the Act of 1985. In support of such contention, he relies upon **(2018) 13 Supreme Court Cases 813 (Satpal Singh Vs. State of Punjab) and (2020) 12 Supreme Court Cases 122 (State of Kerela & Ors. Vs. Rajesh & Ors.)**

4. The Hon'ble Supreme Court in **Satpal Singh (supra)** is of the view that the provisions of Section 37 of the Act of 1985 is mandatory for the purpose of considering a petition for trial involving the provisions of the NDPS Act, 1985.

5. In **Rajesh & Ors. (Supra)** the Supreme Court is of the following view:-

19. The scheme of Section 37 reveals that the exercise of power to grant bail is not only subject to the limitations contained under Section 439 Cr.P.C., but is also subject to the limitation placed by Section 37 which commences with non obstante clause. The operative part of the said section is in the negative form prescribing the enlargement of bail to any person accused of commission of an offence under the Act, unless twin conditions are satisfied. The first condition is that the prosecution must be given an opportunity to oppose the application; and the second, is that the court must be satisfied that there are reasonable grounds for believing that he is not guilty of such offence. If either of these two conditions is not satisfied, the ban for granting bail operates.

6. In *Md. Arbaz & Ors* (supra), the Supreme Court granted interim bail. Taking into considering that the accused there suffered in corceration for a period of more than 2 years and 11 months. It is an interim order with the prayer for bail being yet to be granted finally. The order seems to suggest that interim bail was granted in the consideration of infringement of rights guaranteed under Article 21 of the Constitution rather than there being a default in filing of charge-sheet within the statutory period.

7. In an application under Section 439 of the Criminal Procedure Code attracting the provisions of Section 37 of the NDPS

Act, 1985 apart from the limitations under Section 439 of the Criminal Procedure Code, the limitations prescribed under Section 37 of the NDPS Act, 1985 apply. The tests noted in **Rajesh & Ors. (supra)** needs to be applied while considering an application for bail involving Section 37 of the NDPS Act, 1985. Bail can be granted in terms of Section 36A(4) of the NDPS Act, 1985 in default of the filing of the charge-sheet within the statutory period. In the facts of the present case, charge-sheet was submitted within the statutory period albeit without the Chemical Analysis Report.

8. Filing up a charge-sheet without a Chemical Analysis Report within the statutory period cannot be equated with no filing up the charge-sheet within the statutory period. Chemical Analysis Report can be filed subsequently by way of a supplementary charge-sheet. **Md. Arbaz & Ors.(supra)** cannot be construed to mean that non-filing of the Chemical Analysis Report alongwith the charge-sheet within the statutory period is a default in filing of the charge-sheet within the statutory period prohibited under Section 36A(4) of the NDPS Act, 1985.

9. In view of the ratio laid down in **Satpal Singh (supra)** and **Rajesh & Ors. (supra)** of the Hon'ble Supreme Court and considering the fact that, charge-sheet was filed within the statutory period and considering the fact that commercial quantity of narcotic was seized from the exclusive possession of the petitioner, we are of the view that

the petitioner is unable to overcome the restrictions under Section 37 of the Narcotic Drugs and Psychotropic Substances Act, 1985. Consequently, we are unable to grant bail to the petitioner.

10. Moreover, there is hardly any change in circumstances subsequent to the earlier order of rejection warranting grant of bail of the petitioner.

11. Accordingly, the prayer for bail of the petitioner is rejected.

12. C.R.M. (NDPS) 159 of 2022 is dismissed.

(DEBANGSU BASAK, J.)

I agree.

(BIBHAS RANJAN DE, J.)