

63. 20.11.2024
Court
No.29 (Tanmoy)

Allowed

IN THE HIGH COURT AT CALCUTTA
CRIMINAL MISCELLANEOUS JURISDICTION

CRM (NDPS) 1523 of 2024

In Re: - An application for bail under Section 439 of the Code of Criminal Procedure, 1973 / Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023, arising out of **Ashoknagar** Police Station Case No. **716/2023** dated **15.10.2023** under Section **21(c)** of the NDPS Act, 1985.

And

In the matter of: - **Uttam Sarkar**

...petitioner.

Mr. Raja Mukherjee

...for the petitioner.

Mr. Avishek Sinha

Ms. Jonaki Saha

...for State.

Dictated by Arijit Banerjee, J.

1. The petitioner says that he is entitled to statutory bail. However, his prayer was rejected by the learned Trial Court. Hence this application for bail.
2. The petitioner says that he was arrested on October 15, 2023. Charge-sheet was filed on December 11, 2023, without FSL report. He applied for statutory bail in April 2024. By an order dated April 20, 2024, the learned Trial Court rejected such application.
3. The petitioner relies on a decision of this Bench rendered on October 8, 2024, in CRM (NDPS) 1359 of 2024 (*Idul Mia v. State of West Bengal*), in support of the contention that if a charge-sheet is filed in an NDPS case without the FSL report and the charge-sheet is not filed within 180 days from the date of arrest of the accused, the accused person becomes entitled to statutory bail, since a charge-sheet filed without

FSL report is not a charge-sheet within the meaning of the provisions of the Code of Criminal Procedure, 1973.

4. Learned State Advocate opposes the prayer for bail and says that supplementary charge-sheet has been filed in July 2024 with which the FSL report has been filed. It was not the fault of the Investigating Agency that the FSL report was made available belatedly and not within 180 days from the date of the petitioner's arrest. The issue as to whether or not a charge-sheet filed without FSL report, in an NDPS case, would entitle the accused to statutory bail upon expiry of 180 days from the date of the arrest, is pending consideration before the Hon'ble Supreme Court.
5. We are also told that the order of bail passed in the case of Idul Mia (supra) has been carried to the Hon'ble Supreme Court by way of Special Leave Petition. However, there is no order of stay.
6. In view of the aforesaid, we feel constrained to follow the decision in the case of Idul Mia (supra). Admittedly, the FSL report was not filed with the original charge-sheet or within 180 days from the date of the petitioner's arrest. Upon expiry of 180 days the petitioner applied for statutory bail. The learned Trial Court ought to have granted such bail. Hence we allow the petitioner's prayer for bail.
7. Accordingly, we direct that the petitioner, namely, **Uttam Sarkar** shall be released on bail upon furnishing a bond of Rs.25,000/- (Rupees Twenty Five Thousand), with two sureties of like amount each, one of whom must be local, to the satisfaction of the learned Additional Sessions Judge, 6th

Court, Barasat, North 24 Parganas, subject to condition that the petitioner shall appear before the Trial Court on each and every date of substantive hearing subject to the provisions of Section 317 of the Code of Criminal Procedure, 1973 / Section 355 of Bharatiya Nagarik Suraksha Sanhita, 2023, and shall not intimidate the witnesses and/or tamper with evidence in any manner whatsoever.

8. In the event the petitioner fails to adhere to any of the conditions stipulated above without any justifiable cause, the Trial Court shall be at liberty to cancel his bail in accordance with law without further reference to this Court.
9. We make it clear that in the event the Hon'ble Supreme Court decides the issue pending before it against the petitioner, i.e., if it is held that mere non-filing of the FSL report along with the original charge-sheet or filing of the FSL report along with the supplementary charge-sheet beyond 180 days will not entitle the petitioner to statutory bail, then this bail order shall automatically stand recalled and/or cancelled.
10. The application for bail being CRM (NDPS) 1523 of 2024 is accordingly disposed of.
11. Criminal Section is directed to make available urgent photostat certified copies of this order to the parties, if applied for, upon compliance with all requisite formalities.

(Arijit Banerjee, J.)

(Apurba Sinha Ray, J.)