

**CIRCUIT BENCH OF CALCUTTA HIGH COURT
AT JALPAIGURI**

08.03.2024
Court No.1
(D/L 08)
(AK)

CRM (NDPS) 44 OF 2024

In Re: An application for bail under Section 439 of the Code of Criminal Procedure, 1973 in connection with Alipurduar Police Station Case No.192 of 2023 dated 01.07.2023 under Sections 20(b)(ii)(C)/25/29 of N.D.P.S. Act, 1985.

And

In the matter of: **Uday Lal Roy**

... Petitioner.

Mr. Jagriti Mishra
Ms. Ananya Bhattacharya
Mr. Naser Ali
Mr. Raj Kumar Mitra
Ms. Mrinmayee Das

...for the petitioner.

Mr. Aditi Shankar Chakraborty, Ld. APP
Mr. Sourav Ganguly
Mr. Kallol Nag

...for the State.

1. Although learned counsel appearing for the petitioner has taken two points, namely one of statutory bail under the proviso to Section 36A(4) of the NDPS Act, 1985 and the charge sheet filed by the prosecution being incomplete in the absence of a CFSL Report, we are of the view that only the second point merits are consideration. This is by reason of the fact that it is arguable whether the plea for statutory bail

can survive once the charge sheet has been filed on the 180th day.

2. The second point, that is, whether the charge sheet can be seen to suffer from a fundamental infirmity by reason of not containing the chemical examination Report of the alleged contraband substance seized from the petitioner, the petitioner rests its case entirely on the judgment of the Supreme Court in *Ritu Chhabaria Vs. Union of India & Ors.* reported at (2023) SCC Online SC 502.
3. *Ritu Chhabaria (supra)* was pronounced by the Supreme Court on 26th April, 2023 with the issue as to whether a charge sheet can be filed in a piecemeal manner without completing the investigation of the case and whether such a charge sheet will extinguish the right of an accused for grant of default bail. In *Ritu Chhabaria (supra)*, the Supreme Court held that a supplementary charge sheet where it is explicitly stated that the investigation is still pending cannot scuttle the right of the accused to default bail and further that the right of default bail under Section 167(2) of the CrPC is not merely a statutory right but a fundamental right under Article 21 of the Constitution of India.
4. Learned counsel appearing for the prosecution argues that although *Ritu Chhabaria (supra)* was followed in a number of decisions after 26th April, 2023, the Supreme Court passed

an order on 12th May, 2023 directing that the High Courts may consider an application for grant of default bail under Section 167 of the CrPC independent of and without relying on the judgment passed in *Ritu Chhabaria (supra)*. Counsel submits that the question whether the petitioner can obtain any relief solely on the dictum in *Ritu Chhabaria (supra)* is pending consideration before a Larger Bench of the Supreme Court.

5. We however note from the series of orders passed by the Supreme Court after 12th May, 2023 that the Supreme Court proceeded to grant interim bail/bail to the petitioner before it despite the pendency of the issue before the Larger Bench.
6. The first of such order is dated 1st May, 2023 when the petitioner was released on bail despite the Supreme Court noting that the reference was pending before the Supreme Court. The second order dated 12th July, 2023 also shows Supreme Court was of the view that while the reference is pending, the petitioner should be released on interim bail subject to appropriate conditions being imposed by the trial Court. The next order is of 4th December, 2023 where the Supreme Court was similarly of the view that the petitioner should be released on interim bail subject to conditions imposed by the court.

7. Although learned counsel appearing for the prosecution submits that these orders were passed solely on the ground of long period of incarceration of the petitioner before the Supreme Court, the orders show that the Supreme Court did not proceed to grant bail on a specific number of days/years but simply on the ground that the petitioner has been in custody for some time. This could mean that the question of long incarceration is a subjective issue and there cannot be any strait-jacket formula for determining what would qualify as long incarceration.
8. Considering the fact that the issue of the legal question as to filing of piecemeal chargesheet without containing the CFSL Report is pending consideration before the Supreme Court since December 2021 (as informed by counsel) and the fact that the Supreme Court proceeded to grant interim/bail to the petitioner before it despite pendency of such question, we deem it fit to grant similar relief to the petitioner before us.
9. The petitioner has been in custody since 1st June, 2023, we refrain from alluding to further dates since the issue as to whether the petitioner has a case under the provisions of the NDPS Act including Section 52A(2) thereof would depend on the Larger Bench decision of the Supreme Court.
10. It is undisputed that the first charge sheet filed by the prosecution did not contain the CFSL Report. The CFSL

Report was made part of a supplementary charge sheet which was filed subsequently on 6th February, 2024. These facts are sufficient to rebut the statutory restriction in Section 37 of the NDPS Act.

11. We are hence inclined to allow the prayer for bail.
12. The petitioner shall accordingly be released on bail upon furnishing bond of Rs. 10,000/- (Rupees Ten Thousand) with two sureties of like amount each, one of whom must be local, to the satisfaction of the Learned Judge, Special Court (under NDPS Act, 1985) 1st Court, Jalpaiguri. The petitioner shall not induce or influence witnesses or tamper with evidence in any manner whatsoever. The petitioner shall also make himself available for the trial as and when the petitioner is required and shall also not leave the local limits of the concerned Police Station during the entire period of trial without obtaining leave from the learned Court.
13. C.R.M.(NDPS) 44 of 2024 is accordingly allowed and disposed of in terms of the above.

(PRASENJIT BISWAS, J.)

(MOUSHUMI BHATTACHARYA, J.)