

**IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
(Criminal Revisional Jurisdiction)
APPELLATE SIDE**

Present:

The Hon'ble Justice Krishna Rao

CRR No. 41 of 2024

Jagdish Singh

Versus

State of West Bengal & Anr.

Ms. Ashima Mandla

Mr. Surya Pratap Singh

Mr. Deborshi Dhar

Ms. Oshmita Mukherjee

Mr. Nigam Mittal

.....For the Petitioner.

Mr. Saurav Ganguli

Mr. A.S. Chakraborty

Mr. Aniruddha Biswas

.....For the State.

Hearing Concluded On : 24.05.2024

Judgment on : 18.07.2024

Krishna Rao, J.:

1. The petitioner has filed the present application under Section 482 of the Code of Criminal Procedure for quashing of FIR No. 1312 of 2021 date 11th December, 2021 under Section 21(c) and 22 (c) of the Narcotics Drugs and Psychotropic Substances Act, 1985 of P.S New Jalpaiguri, pending before the Learned Judge, Special Court (NDPS), Jalpaiguri being NDPS Case No. 120 of 2021.
2. On 11th December, 2021, Police of P.S. New Jalpaiguri registered a case being F.I.R. No. 1312 of 2021 for the offence under Sections 21(c) and 22 (c) of the Narcotics Drugs and Psychotropic Substances Act, 1985, on the allegation that on receipt of a secret information that one truck is proceeding towards Assam via NH-31D carrying with huge quantity of cough syrup, accordingly, the raiding party detained one truck at Sitaguri near Kalpataru Petrol Pump having Registration No. PB-23-T/0745 and apprehended the driver of the said truck. During the search of the said truck, 90 (Ninety) paper made cartons each containing 160 bottles, total 14400 bottles which contains “ESKUF” Syrup Codeine Phosphate and Chlorpheniramine Maleate Syrup, each bottle containing 100 ml. cough syrup was recovered and after completion of all formalities, items were seized and the accused was arrested.
3. The police has started investigation and on completion of investigation, charge-sheet being No. 1032 of 2022 dated 25th

November, 2022 was filed without the CFSL report and the Learned Trial Court has taken cognizance of the same.

- 4.** Ms. Ashima Mandla, Learned Counsel representing the petitioner submits that the Learned Trial Court has erroneously taken cognizance of the charge-sheet without the FSL report. She submits that on 8th December, 2022, the period of extension granted by the Learned Trial Judge on 7th September, 2022 in terms of Section 36A(4) of the NDPS Act expired.
- 5.** Ms. Mandla submits that on 11th December, 2022, the period of one year for completion of investigation in terms of Section 36A(4) of the NDPS Act expired and on 4th January, 2023, the police has submitted supplementary charge-sheet being No. 01 of 2022 along with CFSL Report.
- 6.** Ms. Mandla submits that the Learned Trial Judge has not considered the provisions of NDPS Act that the period of one year has expired on 11th December, 2022 and the prosecution cannot continue investigation beyond the time period and has erroneously taken cognizance of the supplementary charge-sheet and fixed the matter for framing of charge. On 4th January, 2023, the prosecution filed a supplementary charge-sheet under Section 173 (8) of the Code of Criminal Procedure being supplementary charge-sheet No. 01 of 2022 before the Learned Trial Court, Jalpaiguri and cognizance was taken.

- 7.** Ms. Mandla submits that after receipt of the supplementary charge-sheet before the Learned Trial Judge on 4th January, 2023, charges against the petitioner was framed for the offence under Section 21 (c) and Section 25 of the NDPS Act, 1985. She submits that petitioner has preferred a Special Leave Petition before the Hon'ble Supreme Court for grant of bail. By an order dated 12th July, 2023, the Hon'ble Supreme Court has granted interim bail to the petitioner pending the application along with the connected other applications of different courts.
- 8.** Learned Counsel for the petitioner submits that in terms of the provision of Section 36A (4) and the proviso thereto of the NDPS Act, 1985, which finds its basis on Section 167 (2) of the Cr.P.C., captures the time limit for completion of investigation and filing of the charge-sheet. She submits that Section 36A (4) of the NDPS Act, 1985, mandates that charge-sheet be filed within 180 days and the proviso thereto extends the same upto one year. She submits that in the present case, the prosecution only on the sole ground of non-availability of CFSL/ Chemical Examination Report filed an application for extension of time on three occasions and the Learned Trial Court acting contrary to the judgment passed by the Full Bench of this Court allowed the applications filed by the prosecution and extended the time on the ground of non-availability of CFSL report.
- 9.** Learned Counsel for the petitioner submits that 180 days from the date of remand of the petitioner was completed on 11th June, 2021 but

the Learned Trial Judge has erroneously granted extension thrice to the prosecution in addition to 180 days. She submits that only with the intension to deny the statutory bail to the petitioner, the prosecution has filed charge-sheet on 22nd November, 2022, pending CFSL report with the prayer that the prosecution will file supplementary charge-sheet on receipt of CFSL report.

10. Learned Counsel for the petitioner relying upon the judgment in the case of ***Ravinder @ Binder –vs- State of Haryana*** reported in ***2014 SCC OnLine P&H 24880*** and submitted that charge cannot be framed on the basis of incomplete report and the final report, without having any FSL, narco – analysis and Chemical Examiner’s Report. She has further relied upon the judgment of the Bombay High Court in the case of ***Sagar Parshuram Joshi –vs- State of Maharashtra*** passed in ***Bail Application (ST) No. 4761 of 2020*** and submitted that it may not be overlooked that the Chemical Analyzer’s report is an essential, integral and inherent part of investigation under the NDPS Act, 1985 and would lay foundation of accused’s culpability without which Magistrate is not able to form an opinion and to take cognizance of the accused involved in the commission of the offence under NDPS Act.

11. Learned Counsel for the petitioner has relied upon the following judgments in support of her submission:

- i. *2023 SCC OnLine 2463 (Rakesh Sha –vs- State of West Bengal).*

- ii. *Unreported judgment in the case of Ajit Singh @ Jeeta & Anr. –vs- State of Punjab passed in CRR No. 4659 of 2015, dated 30.11.2018.*
- iii. *2014 SCC OnLine P&H 24880 (Ravinder @ Binder –vs- State of Haryana).*
- iv. *2021 SCC OnLine Bom 3051 (Sagar Parshuram Joshi –vs- Maharashtra).*
- v. *2023 SCC OnLine Cal 313 (Subhas Yadav –vs- State of Bengal).*
- vi. *(2013) 5 SCC 762 (Vinay Tyagi –vs- Irshad Ali).*
- vii. *Unreported judgment in the case of Surender @ Tannu @ Tanva –vs- State of NCT of Delhi passed in Cr. Rev. P. 197 of 2018.*

12. *Per contra*, Learned Counsel for the State submits that after the initiation of the FIR, the police had started investigation and after complying all formalities, the narcotics seized from petitioner were sent to CFSL for Chemical Examination. As there was delay for getting the CFSL report, pending CFSL report, the police has submitted charge-sheet with the prayer that supplementary charge-sheet will file after obtaining CFSL report.

13. As there was delay for obtaining report from CFSL, the prosecution has filed an application from time to time for extension of time and accordingly, the Learned Trial Judge has granted extension of time. After obtaining CFSL report, the prosecution has submitted supplementary charge-sheet after serving the copy to the petitioner

and accordingly cognizance was taken and charge was framed against the petitioner.

- 14.** Learned Counsel for the State submits that the Learned Trial Judge has not committed any error as the prosecution has filed applications from time to time within the prescribed time limit and accordingly, the Learned Trial Judge has extended time for file supplementary charge-sheet and accordingly the prosecution has filed supplementary charge-sheet which were duly accepted by the Court.
- 15.** Learned Counsel for the State submits that about 14400 bottles in which contains “ESKUF” Syrup Codeine Phosphate and Chlorpheniramine Maleate Syrup each bottle containing 100 ml cough syrup in which 05 ml contains mixtures of 10 mg of Codeine Phosphate and 04 mg Chlorpheniramine Maleate Syrup was seized from the possession of the petitioner.
- 16.** Learned Counsel for the State submits that the judgments relied by the petitioner is not applicable in the present case as the prosecution has submitted the charge-sheet within the extended time granted by the Learned Trial Judge and on receipt of FSL Report, supplementary charge-sheet is filed and charge is framed against the petitioner.
- 17.** Heard the Learned Counsel for the respective parties, perused the materials on record and the judgments relied by the petitioner. The petitioner has filed the present application for quashing the FIR on the ground that the incomplete charge-sheet filed by the prosecution

dated 25th November, 2022 without any CFSL/ Chemical Examination Report is indispensable for the offence under the NDPS Act, 1985.

- 18.** Police of New Jalpaiguri registered a case against the petitioner for the offence under Section 21 (c) and 22(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 on 11th December, 2021. On completion of investigation, police has submitted Charge Sheet being No. 1032 of 2022 against the petitioner without CFSL report and the Learned Court has taken cognizance. On 11th December, 2022, the maximum period of one year to complete investigation in terms of provision of Section 36A (4) of the NDPS ACT, 1985, is completed. The Police has submitted supplementary charge sheet under Section 173(8) of the Code of Criminal Procedure by enclosing CFSL report before the learned Court on 4th January, 2023 and the Learned Trial Judge has taken cognizance and on 26th April, 2023, charge for the offence under Section 21(c) and 25 of the NDPS Act is framed against the petitioner.
- 19.** In the charge-sheet No. 1032 of 2022 dated 22.11.2022 under Section 21(c) and 22(c) of the NDPS Act, Police has mentioned that supplementary charge sheet will be submitted after collecting the Chemical Examination Report from Kolkata. Considering the said charge sheet, the Learned Trial Court has taken cognizance for the offence punishable under Section 21(c) and 22(c) of the NDPS Act. Subsequently on receipt of FSL Report from the Director, State Drug Control and Research Laboratory, the police has submitted

supplementary charge-sheet being Supplementary Charge Sheet No.01 of 2022 dated 7th December, 2022. On receipt of supplementary charge-sheet, the Learned Trial Court by an order dated 4th January, 2023 has taken cognizance on the said supplementary charge sheet and copies were supplied to the petitioner and on 26th April, 2023, charge for the offence under Section 22(c) and 25 of the NDPS Act, 1985, is framed against the petitioner.

20. Now the question whether the proceeding initiated against the petitioner being FIR No. 1312 of 2021 dated 11.12.2021 for the offence under Section 21(c)/22 of the NDPS Act, 1985 of P.S. New Jalpaiguri is liable to be quashed on the ground that the police has submitted supplementary charge sheet against the petitioner by enclosing CFSL report after the period of one year.

21. The provision of Section 36A (4) of the NDPS Act, 1985, is relevant for this case which reads as follows:

“36-A. Offences triable by Special Courts.-

(4) In respect of persons accused of an offence punishable under Section 19 or Section 24 or Section 27-A or for offences involving commercial quality the references in sub-section (2) of Section 167 of the Code of Criminal Procedure, 1973 thereof to “ninety days”, where they occur, shall be construed as reference to “one hundred and eighty days”.

Provided that, if it is not possible to complete the investigation within the said period of one hundred and eighty days, the Special Court may extend the said period up to one year on the report of the Public Prosecutor indicating the progress of

the investigation and the specific reasons for the detention of accused beyond the said period of one hundred and eighty days.”

A plain reading of the proviso to Section 36A (4) indicates that the Special Court is required to consider the requirement of Public Prosecutor indicating the progress of the investigation and the specific reasons for the detention of the accused beyond the period of 180 days, apply his mind and pass a judicial order on the report of Public Prosecutor. The Special Judge in its order must give reasons for allowing or rejecting the prayer for extension of time beyond 180 days for completing investigation. In the present case there is no dispute with regard to extension of time to complete investigation beyond 180 days. The dispute with regard to submission of supplementary charge-sheet after the period of one year.

- 22.** The question whether a final report presented before the Court in terms of Section 173 Cr.P.C. is incomplete or defective without FSL report has to be considered in light of Section 173 Cr.P.C., which reads as follows:

"173. Report of police officer on completion of investigation-

(1) Every investigation under this Chapter shall be completed without unnecessary delay.

[(1A) The investigation in relation to 2[an offence under sections 376, 376A, 376AB, 376B, 376C, 376D, 376DA, 376DB or 376E] from the date on which the information was recorded by the officer in charge of the police station.]

(2) (i) As soon as it is completed, the officer in charge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government, stating-

(a) the names of the parties;

(b) the nature of the information;

(c) the names of the persons who appear to be acquainted with the circumstances of the case;

(d) whether any offence appears to have been committed and, if so, by whom;

(e) whether the accused has been arrested;

(f) whether he has been released on his bond and, if so, whether with or without sureties;

(g) whether he has been forwarded in custody under section 170.

(h) whether the report of medical examination of the woman has been attached where investigation relates to an offence under 4[sections 376, 376A, 376AB, 376B, 376C, 376D, 376DA, 376DB] or section 376E of the Indian Penal Code (45 of 1860)].

(ii) The officer shall also communicate, in such manner as may be prescribed by the State Government, the action taken by him, to the person, if any, by whom the information relating to the commission of the offence was first given.

(3) Where a superior officer of police has been appointed under section 158, the report shall, in any case in which the State Government by general or special order so directs, be submitted through that officer, and he may, pending the orders of the Magistrate, direct the officer in charge of the police station to make further investigation.

(4) Whenever it appears from a report forwarded under this section that the accused has been released on his bond, the Magistrate shall make

such order for the discharge of such bond or otherwise as he thinks fit.

(5) When such report is in respect of a case to which section 170 applies, the police officer shall forward to the Magistrate along with the report-

(a) all documents or relevant extracts thereof on which the prosecution proposes to rely other than those already sent to the Magistrate during investigation;

(b) the statements recorded under section 161 of all the persons whom the prosecution proposes to examine as its witnesses.

(6) If the police officer is of opinion that any part of any such statement is not relevant to the subject-matter of the proceedings or that its disclosure to the accused is not essential in the interests of justice and is inexpedient in the public interest, he shall indicate that part of the statement and append a note requesting the Magistrate to exclude that part from the copies to be granted to the accused and stating his reasons for making such request.

(7) Where the police officer investigating the case finds it convenient so to do, he may furnish to the accused copies of all or any of the documents referred to in sub-section (5).

(8) Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of sub-sections (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub-section (2)."

23. This question came up for consideration before the Jammu and Kashmir and Ladakh High Court in ***Abdul Majid Bhat v. UT of J&K***,

MANU/JK/0285/2022, and the Court observed that it is not that after completion of investigation of the case and presentation of final report before the Magistrate, the investigating agency is precluded from collecting further evidence and producing it before the Competent Court and therefore, it may not be correct to hold that merely because an expert's report does not accompany the final report, the charge-sheet is defective or incomplete. If the Charge Sheet contains details required under Section 173 Cr.P.C. and is filed within the period prescribed, it cannot be termed as incomplete, in the absence of FSL report. In making these observations, the Jammu and Kashmir and Ladakh High Court found strength from the judgment of the Karnataka High Court in **Mr. Sayyad Mohammad @ Nasim v. State of Karnataka and Another, Writ Petition No. 5934/2021**, decided on 29.03.2022, where the Karnataka High Court had observed that Petitioner does not get a right to default bail merely because the Charge Sheet/Final Report filed by the police after investigation is without the FSL report.

24. In judgment of the Division Bench of Delhi High Court in **Kishan Lal v. State, 1989 SCC OnLine Del 348**, where the Court held as follows:

"5. The question raised by the petitioners in a nut shell is whether the investigation of a case under the NDPS Act can be said to be complete in the absence of the report of the Scientific Officer and Chemical Examiner? The contention is that where the accused person is allegedly found in possession of or transporting a prohibited drug or substance, mainly two facts have to be established by the prosecution viz., (1) that of recovery of the commodity or substance and (2) that the

possession of the said recovered material is illegal under the provisions of the NDPS Act. It is submitted that the Investigating Officer would be unable to give his opinion regarding the second aspect till he obtains the report of the expert and, therefore, the report submitted by the Investigating Officer even if purported to be under Section 173 (2) of the Code, must be held to be based on incomplete investigation.

6. The learned Single Judge in his reference order has noticed that the reported cases in which this question has been settled related to offences under the Penal Code, 1860. It was urged before him that the principles enunciated in those cases are not applicable to cases involving an offence under the NDPS Act or the old Opium Act or the Excise Act; To appreciate the contentions raised in these petitions, we have to notice the case law to some extent to highlight the settled principles.

7. It has been held by the Supreme Court that although the police are not permitted to send an incomplete report under Section 173(2) of the Code, yet the investigation except for the report of an expert like the Sero-logist or Scientific Officer and Chemical Examiner is complete and, therefore, the Magistrate is empowered to take cognizance of the offence on a police report which does not include the expert's opinion. In Tara Singh v. State, 1951 SCC 903: AIR 1951 SC 441, the Police had infact filed a report dated the 2nd October, 1949 terming it an "incomplete challan" and on the 5th October they filed a report which they called a "complete challan". Thereafter on the 19th October they filed yet another report which was termed as "Supplementary challan". The objection taken at the trial was that the Magistrate had no power to take cognizance of the case on 3rd October when the incomplete challan dated 2nd October, 1949 was placed before him. It was contended that the Police are not permitted to file an incomplete report under Section 173(2) of the Code.

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19. We thus hold that under Section 173(2) of the Code there is no mandate that a police report must enclose the document purporting to be a

report under the hand of a Government scientific expert. In the present cases, as cognizance of the offences taken by the Magistrate was proper and valid, no order releasing the petitioners on bail under Section 167(2) of the Code was required to be passed."

25. The Division Bench of the Bombay High Court in ***Manas Krishna T.K. v. State the Police Inspector/Officer In Charge and Another, 2021 SCC OnLine Bom 2955***, in view of conflicting views of two single Judges of the said Court, on this issue, answered the reference, as follows:

"81. Resultantly, we answer this reference by holding the following:

(a) Question no. (i) is answered by holding that even in an NDPS case a police report containing the details prescribed under Section 173(2) Cr. P.C. is a complete police report or a charge sheet or a challan even if it is unaccompanied by a CA/FSL report. If such police report is filed within the period stipulated under Section 167(2) Cr. P.C. r/w. Section 36-A(4) of the NDPS Act, the accused cannot insist upon a default bail.

(b) Question no. (ii) is answered by holding that in an NDPS case, a charge sheet accompanied by a field-testing report as reflected in the Panchanama or otherwise also cannot be labelled as an incomplete police report/charge sheet/challan simply because the same was not accompanied by a CA/FSL report.

(c) Question no. (iii) is answered by holding that the Drug Law Enforcement Field Officers' Handbook issued by the NCB has no legal efficacy, in the sense that the handbook has no statutory flavour or the handbook is not a set of executive instructions issued by the Central Government."

26. Before filing of the present application, the petitioner had filed an application before the Hon'ble Division Bench under Section 439 of the Code of Criminal Procedure for grant of bail being **CRM (NDPS) 99 of 2023, Jagdish Singh Vs. The State of West Bengal** and this Court by an order dated 27th February, 2023, has rejected bail application by passing the following order:

"It is submitted on behalf of the petitioner that he is in custody for more than one year. It is further submitted police report was filed without chemical examiner's report.

Learned Additional Public Prosecutor opposes the prayer for bail.

We have considered the materials on record. Statements of witnesses including contemporaneous document i.e. seizure memo disclose recovery of narcotics i.e. codeine phosphate above commercial quantity from the possession of the petitioner. The application for extension was filed and the period of detention was made in terms of Section 36A(4) of the NDPS Act. Initial charge sheet was filed within the extended period. Thereafter, subsequent charge sheet enclosing chemical examiner's report was filed.

Learned Advocate for the petitioner relied on interim directions passed by the Hon'ble Apex Court. In the orders referred to by the learned Advocate, no proposition of law entitling the petitioner to statutory bail is made out.

Be that as it may supplementary charge sheet enclosing chemical examiner's report has already been filed and the matter is ready to proceed to the next stage. Under such circumstances, we do not consider it prudent to enlarge the petitioner on bail.

*The application for bail is thus **rejected**.*

Trial court is directed to consider the issue of framing of charge at the earliest and in the event

charge is framed, to take the proceeding to its logical conclusion.”

27. After rejection of the bail prayer by the Hon’ble Division Bench of this Court, the petitioner has preferred an SLP (Crl.) No. 3850 of 2023 and by an order dated 12th July, 2023, the Hon’ble Supreme Court has passed the following order:

“UPON hearing the counsel the Court made the following

ORDER

SLP (CRL.) Nos.2562/2023 & SLP (CRL.) NO. 3050/2023

The main issue requires detailed consideration. However, in instant cases since the petitioners have undergone custody for quite some time and the main issue is to be resolved, without reference to the main issue, we direct that the petitioners be released on interim bail subject to appropriate conditions being imposed by the trial court.

For the said purpose, the petitioners shall be produced before the trial court forthwith.

SLP(Crl.) Nos. 8164-8166/2021, SLP(Crl.) Nos. 8496-8497/2021, SLP(Crl.) No. 8718/2021, SLP(Crl.) No. 355/2022, SLP(Crl.) No. 532/2022, SLP(Crl.) No. 2666/2022, SLP(Crl.) No. 5190/2022, SLP(Crl.) No.11181/2022, SLP(Crl.) No. 6876-6877/2022, SLP(Crl.) No. 11349/2022, SLP(Crl.) No. 11628/2022, SLP(Crl.) No. 11628/2022, SLP(Crl.) No. 4107/2023, SLP(Crl.) No. 2562/2023, SLP(Crl.) No. 3850/2023, SLP(Crl.) No. 5744-5746/2023 and SLP(Crl.) No. 1929/2023.

It is brought to our notice that the issue which arises for consideration in these petitions has been referred to a larger Bench in SLP (Crl.) No. 5724 of 2023.

Registry to take appropriate orders from Hon'ble the Chief Justice of India and list all petitions alongwith SLP (Crl.) No. 5724 of 2023, before the larger Bench."

28. The Special Leave petition filed by the petitioner is pending before the Hon'ble Supreme Court. As the issue raised by the petitioner in the present case is pending before the Hon'ble Supreme Court and the application filed by the petitioner is also referred to the Hon'ble Three Judges Bench along with other connected application for consideration and thus it would not be appropriate to decide the issue by this Court during pendency of the matter before the Hon'ble Supreme Court.

29. In view of the circumstances mentioned herein above, the application is disposed of without any further order.

30. CRR No. 41 of 2024 is disposed of.

Parties shall be entitled to act on the basis of a server copy of the Judgment placed on the official website of the Court.

Urgent Xerox certified photocopies of this Judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Krishna Rao, J.)