

JPD-19
Ct No.01
25.07.2024
AK

Calcutta High Court
In The Circuit Bench at Jalpaiguri
Appellate Side

CRM (NDPS) 307 of 2024

In Re: - An application for bail under Section 483 of the Bharatiya
Nagarik Suraksha Sanhita, 2023 in connection with NJP Police
Station Case No. 1152 of 2023 dated 20.12.2023 under Section
21(C)/22(C)/25/28/29 of the NDPS Act.

And

In the matter of: **Lahaik Ahammed**

.... petitioner

Mr. Jagriti Mishra
Ms. Ananya Bhattacharya
Mr. Naser Ali
Ms. Mrinmayee Das
Mr. Manish Gupta
Ms. Silpi Basu

... for the petitioner

Mr. Nilay Chakraborty
Mr. Biswarup Roy

... for the State

1. The petitioner raises an interesting issue.
2. There have been conflicting judgments of different High Courts, two of which are cited, being of the Delhi High Court and the Punjab and Haryana High Court, where the issue involved is whether if a charge sheet in an NDPS case is filed within the statutory outer time limit but without the FSL report, the same can be construed to be a complete charge sheet for the purpose of considering whether default bail ought to be granted to the accused under the contemplation of Section 167 of the Code of Criminal Procedure, 1973.

3. A learned Single Judge of the Punjab and Haryana High Court, in the matter of *Vinay Kumar @ Vicky vs. State of Haryana*, opined that although the Hon'ble Supreme Court and a Full Bench of the Punjab and Haryana High Court have held that a challan, even if not accompanied by a report of the chemical examiner or of the expert, cannot be said to be incomplete, such general observation is distinguishable from an NDPS case, as under the said Act, the prosecution case can only survive in case prosecution is able to establish that the article recovered is indeed a contraband and which can only be established on the basis of its chemical examination which is normally got done through FSL established by the Government.
4. In other words, the report of the FSL forms the foundation of the case of the prosecution and in case the same is not there the entire case of prosecution falls to the ground.
5. Learned counsel for the petitioner, in his usual fairness, has also pointed out that the said issue is at present sub judice in the matter of *Mohd. Arbaz & ors. vs. State of NCT of Delhi* before the Supreme Court.
6. Learned counsel for the State opposes the prayer for bail.
7. The short issue which is involved is whether in a case under the NDPS Act, a charge sheet which is filed within time but without the FSL report can be construed to be a complete charge sheet for the purpose of considering a prayer of the accused for default bail.

8. We must take note of the fact that the concept of default bail has been recognized in Section 167 of the Code of Criminal Procedure.
9. Interestingly, the said provision does not contemplate the *filing of a charge sheet* as such but construes the default period in the context of the *investigation having been completed*.
10. In an NDPS case, as rightly observed by the Punjab and Haryana High Court, the FSL report is the foundation of the prosecution case and the crux of the matter.
11. In fact, the chemical analysis report is the very essence and spirit of an NDPS prosecution, without which there cannot be any conviction at all.
12. Having said so, we are also to look into the provisions of Section 167, which stipulates that if the investigation is not concluded within the statutory outer limit, default bail is to be granted to the accused as a matter of right.
13. As in the present case, even if a charge sheet has been filed and a prayer has been made for filing a supplementary charge sheet in future, the original charge sheet being without the FSL report, it cannot be said by any stretch of imagination that the investigation stands concluded. Hence, we go one step further than holding that the charge sheet without an FSL report is incomplete, which might still be debatable. We are of the opinion that since Section 167 of the Code requires the investigation to be concluded, there cannot be any manner of doubt that even if a charge sheet is filed within time, the investigation cannot be said to be concluded in

an NDPS matter until and unless the chemical analysis report is filed. Thus, even without entering into the debatable domain of whether the charge sheet is complete or incomplete without an FSL report, there cannot be any manner of doubt that the investigation is not completed in an NDPS case without such report, thus making it mandatory for the FSL report to be submitted in court before the statutory time limit to disentitle the accused to default bail.

- 14.** Accordingly, in the present case, the petitioner comes well within the ambit of default bail as envisaged in Section 167 of the Code of Criminal Procedure, since the investigation in an NDPS case could not be said to be concluded prior to filing of the FSL report and it is undisputed that such report was not so filed.
- 15.** It is also to be noted, as evident from the papers before the court, that in the seizure list, there is no specific mention of the particulars of the contraband articles seized, such as batch number, etc., which violates the NDPS Rules, 2022.
- 16.** Hence, read in such context as well, there is no semblance of certainty as to whether the petitioner was even *prima facie* guilty of the offence alleged under the NDPS Act.
- 17.** In view of the above observations, we respectfully agree with the view of the Punjab and Haryana High Court and conclude that in the event FSL report has not been filed within the statutory period, the accused persons are entitled to default bail within the contemplation of Section 167 of the Code of Criminal Procedure,

since the investigation cannot be said to have been concluded in such case.

- 18.** Keeping in view such circumstances, we are inclined to grant bail to the petitioner.
- 19.** Accordingly, CRM (NDPS) 307 of 2024 is allowed, thereby granting bail to the petitioner on condition that the petitioner shall furnish bonds of Rs.10,000/-, with two sureties of like amount each, one of whom must be local, to the satisfaction of Learned Judge, Special Court (under NDPS Act), First Court at Jalpaiguri.
- 20.** The petitioner shall not leave the territorial jurisdiction of the trial court during the entire period of trial and shall attend each and every date of trial.
- 21.** Further, the petitioner shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts and circumstances of the case so as to dissuade such person from disclosing such facts to any police officer or the court and/or tamper with the evidence in any manner whatsoever.

(Sabyasachi Bhattacharyya, J.)

(Prasenjit Biswas, J.)