

26.11.2024
Ct. No. 01
SL No. 08
Cp

CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI

CRM (NDPS) 493 of 2024

In Re: - An application for bail under Section 483 of the B.N.S.S. 2023 in connection with New Jalpaiguri Police Station Case No.407 of 2024, dated 01/05/2024, under Section 21(c) of Narcotic Drugs and Psychotropic Substance Act.

And

In the matter of: Saddam Hussain

Mr. Supritam Nag
Ms. Trishna Roy
Mr. Arko Sarkar
Ms. A. Paul
Mr. Bikram Barman

... for the petitioner

Mr. Aditi Shankar Chakraborty
Mr. Aniruddha Biswas

...for the State

1. The petitioner has been in custody for 206 days. His first contention was that he was entitled to default bail. The investigating agency submitted an incomplete charge-sheet, without any chemical report. Subsequently, the chemical report was filed. The subsequent filing of the chemical report was only to frustrate the right of the petitioner to default bail.
2. Learned advocate for the State opposes the prayer for bail and submits that the point as to whether the petitioner would be entitled to default bail on account of non-furnishing of the chemical examination report along with it, is pending before the Hon'ble Apex Court. Further it is submitted that the report is positive. Reference is made to Section 37 of the NDPS Act.

3. The petitioner relies on a decision of the Division Bench of this Court in the matter of in Re: Idul Mia [CRM (NDPS) 1359 of 2024]. The Division Bench upon considering the provisions of law as also other decisions, held that a charge-sheet of such nature is an incomplete charge-sheet.
4. Judicial discipline warrants that we take a similar view and we do not find any reason to deviate from the observations of Their Lordships as Their Lordships have considered all relevant decisions and the provisions of law in this regard. The relevant paragraphs is quoted below:

"8. On the aforesaid issue, there is divergence of opinion. A Division Bench of this Court in the case of Rakesh Sha (Supra) held that a charge sheet submitted within 180 days without the Chemical Examination Report with an observation that a supplementary charge sheet will be filed in future with the FSL report is beyond the contemplation of the proviso to Section 36A(4) of the NDPS Act. The Bench observed:- "filing of a charge-sheet without the Examination Report in relation to an offence under the NDPS Act is an exercise in futility and raises the presumption of the 1.0 filing a cipher only for the sake of closing the first window of the 180 days under the proviso to 36A(4) of the Act".

9. The Division Bench also observed as follows:-
 "The petitioner, before us, on the other hand, has been charged for commission of an offence under the NDPS Act which requires the Trial Court to take cognizance of the offence committed under the Act. This means that the CFSL/Laboratory Report becomes an essential and integral part of the investigation for establishing the charges under the NDPS Act. The Chemical Examination Report therefore becomes the most vital piece of evidence which is required to be made part of the charge-sheet."

14. In view of the undisputed fact that in the present case the charge sheet, although filed within the period of 180 days, was not accompanied by the FSL

report, and that the FSL report was filed as part of a supplementary charge-sheet filed beyond 180 days from the date of arrest of the petitioner and after he applied for statutory bail, we have to hold that upon expiry of 180 days, the petitioner became entitled to statutory bail/default bail, and the learned Trial Court erred in not extending that privilege to the petitioner.”

5. Considering the materials on record and the submissions of the respective parties and the law as discussed above, we direct that the petitioner shall be released on bail upon furnishing a bond of Rs.25,000/- with two sureties of like amount each, one of whom must be local, to the satisfaction of learned Special Court under NDPS Act, Jalpaiguri (learned Additional Sessions Judge, 1st Court, Jalpaiguri) subject to the condition that the petitioner shall appear before the learned Trial Court on each and every date of hearing subject to the provisions of Section 317 of the Code of Criminal Procedure corresponding to Section 355 of the B.N.S.S., 2023, and shall not intimidate witnesses or tamper with evidence in any manner whatsoever or commit similar offences in future. The petitioner will not leave the jurisdiction of the trial court.
6. In the event the petitioner fails to comply with the conditions as stated hereinabove, the trial court shall be at liberty to cancel his bail in accordance with law without further reference to this Court.
7. The application for bail is, thus, allowed and disposed of.

(Partha Sarathi Chatterjee, J.)

(Shampa Sarkar, J.)