

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL MISCELLANEOUS JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble **Justice Arijit Banerjee**

And

The Hon'ble **Justice Prasenjit Biswas**

CRM (NDPS) 101 OF 2025

Navin Kumar @ Navin Mondal

-Versus-

The State of West Bengal

For the Appellant : **Mr. Ayan Basu,
Mr. Sourav Bera,
Mr. Sumit Routh**

For the State : **Mr. Joydeep Biswas,
Mr. Naheed Ahmed.**

Hearing concluded on : **03.03.2025**

Delivered on : **11.03.2025**

Prasenjit Biswas, J:-

1. Mr. Ayan Basu, learned Advocate appearing on behalf of the accused petitioner submits that the accused petitioner is entitled to get default bail under Section 167(2) of Cr.PC (Section 187 of the Bharatiya Nagarik Suraksha Sanhita, 2023) read with Section 36(A)(4) of the NDPS Act as the Investigating Officer of the case has failed to

submit the charge-sheet within the statutory period of 180 days. The period of 180 days was completed on 22.12.2024 including the first day of remand i.e. on 26.06.2024. The petitioner is entitled to get default bail on 23.12.2024. Reliance has been placed on behalf of the petitioner on a decision rendered by the Hon'ble Apex Court in case of **Enforcement Directorate, Government of India -vs.- Kapil Wadhawan & Anr.** reported in **(2024)7 SCC 147**. Attention of this Court is drawn to the paragraph nos. 34 to 36 of the said report. Mr. Basu further said that the Hon'ble Apex Court observed that the production of the accused before the Magistrate is a sequel to his arrest by the police and at the same time, the accused has a right to be produced before the Magistrate within 24 hours of arrest and the date of which the accused was remanded to the judicial custody should not be excluded. Learned Trial Court wrongly excluded the date of remand i.e. 26.06.2024 and declined to grant default bail to this accused person by holding that the charge-sheet has been filed within the stipulated period of 180 days as provided in the Act.

2. It is further assailed by the learned Advocate that the learned Trial Court erroneously excluded the first day of remand for computation of statutory period relying upon a judgment passed by the Hon'ble Apex Court in case of **Ravindran -vs- Intelligence Officer Director** reported in **(2021) 2 SCC 485** which was later on clarified by the Hon'ble Apex Court in the case of **Kapil Wadhawan (supra)** and the Apex Court has been pleased to hold that the first day of remand is to be included for computation of statutory period. So, as per his submission in the instant case the charge-sheet was filed beyond 180 days without there being any prayer for extension on or before 180th day, then consequent order of remand passed by the learned Trial Court is illegal.

3. Mr. Joydeep Biswas, learned Advocate appearing on behalf of the State raises objection against the prayer for statutory bail of the accused person. It is said that the Investigating Officer submitted the charge-sheet within the statutory period of 180 days in view of Section 36A of NDPS Act. So, this accused petitioner is not entitled to get default bail on the ground that the charge-sheet has been submitted beyond the statutory period of 180 days.

4. Section 36(A)(4) of the NDPS Act as well as Sections 167(1)(2) of the Code of Criminal Procedure, 1973 prescribe the maximum period for which an accused person can be remanded in judicial custody without filing a charge-sheet. Section 36(A)(4) of the NDPS Act provides that a reference to 90 days as mentioned in Section 167(2) Cr.PC shall be construed as 180 days for NDPS cases. If investigation cannot be completed within the said period of 180 days, the Special Court may grant further time upon one year if the report of the public prosecutor indicates progress of the investigation along with reasons for detaining the accused beyond 180 days.

5. In an NDPS case, if the charge-sheet is not filed within 180 days, the petitioner became entitled to statutory bail/default bail and the Trial Court erred in not extending that privilege to the petitioner. The Magistrate was obligated to deal with the application for default bail on the day it was filed. Default bail, being an indefeasible right of the accused under the first proviso to Section 167(2) of Cr.PC. read with Section 36(A) (4) of the NDPS Act. Thus, if the accused applies for bail under Section 167(2) Cr.P.C. read with Section 36(A)(4) of NDPS Act upon expiry of 180 days or the extended period as the case may be the Court must release him on bail forthwith without any unnecessary delay after getting necessary information from the public prosecutor for the limited purpose as stated above. If the Magistrate fails to take any

prompt action that should frustrate the legislative mandate to release the accused on bail in case of default by the Investigating Agency.

6. Answering a reference on a significant point of law the Apex Court has held in the case of **Kapil Wadhawan (supra)** that the day of remand is to be included for considering a claim of default bail. The remand period will be calculated from the date when the Magistrate remanded the accused. In the said report the Apex Court held that an accused becomes entitled to default bail if the charge-sheet is not filed by 61st or the 91st day of remand.

7. It is profitable to quote the observation of the Hon'ble Apex Court at paragraphs 57 and 62 of the said report which are quoted as below:

*“57. The right to personal liberty is directly related to the inalienable right towards human dignity and personhood. The concept of dignity is central to our constitutional law discourse. In fact, the Preamble itself, provides the guarantee of upholding “the dignity of the individual”. The constitutional scheme provides that all human rights, including the right to personal liberty, are specifications of one special fundamental right-that is the right to have one’s personal dignity respected. The same proposition is also supported by the scholar Hannah Arendt. According to Arendt, dignity consists of the “right to have rights” and the “right to equal political membership of some kind of organized community”. Furthermore, constitutional courts around the world have endorsed that the question of human dignity and equality form the base of personal liberty. The US Supreme Court in *Munn v. Illinois* explained the term liberty in context of the 14th Amendment to the US Constitution, and stated that : (SCC OnLine US SC para 51)*

“51. By the term “liberty”, as used in the provision, something more is meant than mere freedom from physical restraint or the bounds of a prison. It means freedom to go where one may choose, and to act in such manner, not inconsistent with the equal rights of others,... that is, to

pursue such callings and avocations as may be most suitable to develop (individual) capacities and give to them their highest enjoyment.”

These words were later adopted by this Court, in the context of Article 21 to suggest that life under Article 21 does not mean, mere animal existence, but rather, a dignified existence.

62. We therefore declare that the stipulated 60/90 day remand period under Section 167 CrPC ought to be computed from the date when a Magistrate authorizes remand. If the first day of remand is excluded, the remand period, as we notice will extend beyond the permitted 60/90 days’ period resulting in unauthorized detention beyond the period envisaged under Section 167 Cr.PC. In cases where the charge-sheet/final report is filed on or after the 61st/91st day, the accused in our considered opinion would be entitled to default bail. In other words, the very moment the stipulated 60/90 day remand period expires, an indefeasible right to default bail accrues to the accused.”

8. In this case, admittedly this accused petitioner was remanded on 26.06.2024. The charge-sheet was filed on 23.12.2024. The accused argued that the 180 days expired on 22.12.2024 if it is computed from the date of remand. Prosecution contended otherwise. The Trial Court denied default bail to this accused taking the view that 180 days will have to be computed by excluding the date of first remand i.e. 26.06.2024. The learned Trial Court excluded the first day of remand for computation and relied upon a judgment passed by the Hon’ble Apex Court in the case of **Ravindran -vs- Intelligence Officer Director reported in 2021(2) SCC 485** which was clarified by the three Judges’ Bench of the Hon’ble Apex Court in the case of **Kapil Wadhawan (supra)** and has been pleased to hold that the statutory period will have to be computed from the date when the Magistrate remanded the accused and as

such the first day of remand is to be taken for computation of this statutory period. In the present case charge-sheet was filed by the prosecuting agency on 181st day.

9. So, when the charge-sheet was filed beyond 180 days without there being any prayer for extension on or before 180 days then we can hold that the order of consequent remand is illegal. The learned Special Court does not have any jurisdiction to pass an order of remand beyond 180 days without there being any prayer for extension filed on or before 180 days in terms of Section 36(A)(4) of the NDPS Act, 1985.

10. So, we are of the opinion that the impugned order dated 23.12.2024 (Order no. 19) passed by the learned Special Court excluding the first day of remand i.e. 26.06.2024 while computing the period of 180 days is erroneous. Accordingly, we hold that the filing of charge-sheet by the prosecuting agency on 23.12.2024 being on the 181st day, would entitle this accused petitioner to default bail.

11. Accordingly, we direct that the petitioner namely, Navin Kumar @ Navin Mondal shall be released on bail upon furnishing a bond of Rs. 10,000/- (Rupees Ten Thousand only) with two sureties of like amount each, one of whom must be local to the satisfaction of learned Additional Sessions Judge, 1st Court, Tamluk. The petitioner shall appear before this Special Court on every date of hearing until further order and shall not intimidate the witnesses and/or tamper with evidence in any manner whatsoever. The petitioner shall remain within the District of Purba Medinipur but shall not enter the territorial jurisdiction of Tamluk Police Station except for the purpose of attending the Court proceedings. The petitioner shall, through his learned Advocate, inform the learned Special Court, Tamluk Police Station and the jurisdictional Police Station under whose jurisdiction he shall be residing while on bail and he shall appear before the Officer-in-Charge/Inspector –in-

Charge of the said jurisdictional Police Station once in every week, until further orders.

12. In the event of the petitioner fails to comply with any of the conditions stipulated hereinabove without any justifiable cause; the learned Trial Court shall be at liberty to cancel the bail in accordance with law without further reference to this Court.

13. Thus, CRM(NDPS) 101 of 2025 is disposed of.

I agree.

(Arijit Banerjee, J.)

(Prasenjit Biswas, J.)