

13.
21-03-2025
(ct. no.29)
(allowed)
debajyoti

CRM (NDPS) 231 of 2025

In re: An application for bail under Section 439 of the Code of Criminal Procedure/483 of the Bhartiya Nagarik Suraksha Sanhita in connection with Karimpur Police Station Case No.32 of 2024 dated 10-02-2024 under Section 21(c) of the Narcotic Drugs and Psychotropic Substances Act.

- A n d -

**In the matter of : Tasikul Mandal @ Taschhikul Mandal @
Taschhikul @ Tasikul Mondal @ Tarikul
Mondal**
.... Petitioner.

Mr. Soumyajit Das Mahapatra,
Mr. Tapodip Gupta,
Mr. Supriyo Das,
Ms. Madhurai Sinha,
Mr. Ranabeer Halder

... For the Petitioner.

Mr. Joydeep Biswas,
Ms. Rajnandini Das

... For the State.

Dictated by Arijit Banerjee, J.

1. Read order dated March 11, 2025.
2. The charge sheet without the FSL report was filed on the 163rd day after the date of arrest of the petitioner, i.e., July 21, 2024. 180 days from the date of the petitioner's arrest expired on August 08, 2024. Therefore, going by the ratio of the decision in the case of **Idul Mia Vs. The State of West Bengal** reported in **2024 Supreme Court Cases Online Cal 9109**, on August 09, 2024, the petitioner became entitled to default bail.
3. The petitioner appeared before the learned trial Court on August 12, 2024 and September 10, 2024, as would appear from the orders of those two dates recorded by the

learned trial Court. The petitioner was not told that the right of obtaining statutory bail had accrued in his favour.

4. A supplementary charge sheet with the FSL report was filed by the prosecution on September 12, 2024. However, as noted above, already an indefeasible right of obtaining default bail had accrued in favour of the petitioner.

5. Learned State counsel says that the petitioner did not exercise such right by filing an application before the learned trial Court. He, however, submitted that admittedly charge sheet was filed within the statutorily prescribed period, i.e., on the 163rd day. Whether or not such a charge sheet without the FSL report is an invalid charge sheet is a point which is pending consideration before the Hon'ble Supreme Court. Therefore, one cannot proceed on the basis that a charge sheet filed sans the chemical report is an invalid charge sheet.

6. We see that the decision in **Idul Mia** (supra) was carried before the Hon'ble Supreme Court, but was not interfered with. As of now and till such time as the Hon'ble Supreme Court decides the point finally, we are inclined to proceed on the basis that a charge sheet filed without the chemical report does not answer the requirements of law.

7. We are of the view, following the decision in the case of **Rakesh Kumar Paul Vs. State of Assam**, reported at **(2017) 15 Supreme Court Cases 67**, that it was incumbent upon the learned trial Court and learned advocate for the petitioner to inform the petitioner that he could obtain statutory bail. The same was not done.

8. In this connection, we note the following observations of the Hon'ble Supreme Court in the case of **Rakesh Kumar Paul** (supra):

“ 43. This Court and other constitutional courts have also taken the view that in the matters concerning personal liberty and penal statutes, it is the obligation of the court to inform the accused that he or she is entitled to free legal assistance as a matter of right. In *Khatri (2) v. State of Bihar*, (1981) 1 SCC 627 the Judicial Magistrate did not provide legal representation to the accused since they did not ask for it. It was held by this Court that this was unacceptable and that the Magistrate or the Sessions Judge before whom an accused appears must be held under an obligation to inform the accused of his or her entitlement to obtain free legal assistance at the cost of the State. In [*Suk Das v. Union Territory of Arunachal Pradesh*](#) (1986) 2 SCC 401 the accused was tried and convicted without legal representation, due to his poverty. He had not applied for legal representation but notwithstanding this, this Court held that the trial was vitiated and the sentence awarded was set aside, particularly since the accused was not informed of his entitlement to free legal assistance, nor was an inquiry made from him whether he wanted a lawyer to be provided at State expense. In *Rajoo @ Ramakant v. State of Madhya Pradesh* (2012) 8 SCC 553 the High Court dismissed the appeal of the accused without enquiring whether he required legal assistance at the expense of the State even though he was unrepresented. Relying on *Khatri* and *Suk Das* this Court remanded his appeal to the High Court for rehearing after giving an opportunity to the accused to take legal assistance. Finally, in *Mohd. Ajmal Amir Kasab v. State of Maharashtra* (2012) 9 SCC 1 this Court relied on *Khatri* and held that in

paragraph 474 of the Report as follows: (Mohd. Ajmal case, SCC p.186)

"474. ... it is the duty and obligation of the Magistrate before whom a person accused of committing a cognizable offence is first produced to make him fully aware that it is his right to consult and be defended by a legal practitioner and, in case he has no means to engage a lawyer of his choice, that one would be provided to him from legal aid at the expense of the State. The right flows from [Articles 21](#) and [22\(1\)](#) of the Constitution and needs to be strictly enforced. We, accordingly, direct all the Magistrates in the country to faithfully discharge the aforesaid duty and obligation and further make it clear that any failure to fully discharge the duty would amount to dereliction in duty and would make the Magistrate concerned liable to departmental proceedings."

- 44.** Strong words indeed. That being so we are of the clear opinion that adapting this principle, it would equally be the duty and responsibility of a court on coming to know that the accused person before it is entitled to 'default bail', to at least apprise him or her of the indefeasible right. A contrary view would diminish the respect for personal liberty, on which so much emphasis has been laid by this Court as is evidenced by the decisions mentioned above, and also adverted to in *Nirala Yadav* (2014) 9 SCC 457. "

9. It would have been an entirely different thing if the learned trial Court and/or the advocate for the petitioner had informed him of his right to obtain statutory bail and yet, he did not furnish the requisite bail bond or surety. In that case, the petitioner would have no argument as he is advancing now. But that is not what happened. His right to obtain statutory bail was not communicated to him at all. Such

right cannot be defeated by subsequently filing of the FSL report.

10. Hence, we are inclined to grant statutory bail to the petitioner.

11. Accordingly, we direct that the petitioner, namely, **Tasikul Mandal @ Taschhikul Mandal @ Taschhikul @ Tasikul Mondal @ Tarikul Mondal**, shall be released on bail upon furnishing a bond of Rs.25,000/- (Rupees Twenty Five Thousand), with two sureties of like amount each, one of whom must be local, to the satisfaction of learned Judge, Special Court, NDPS Act, Nadia at Krishnagar. The petitioner shall appear before the learned trial Court on every date of hearing and shall not intimidate the witnesses and/or tamper with evidence in any manner whatsoever and/or commit any cognizable offence in any manner whatsoever. The petitioner shall remain within the jurisdiction of local police station and shall report to the Officer-in-Charge/Inspector-in-Charge of the said police station once in a week, until further orders.

12. In the event the petitioner fails to comply with any of the conditions stipulated above, the trial Court shall be at liberty to cancel the bail in accordance with law without further reference to this Court.

13. The application for bail is, thus, **allowed**.

14. All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

15. Criminal Section is directed to supply certified copies of this order to the parties, if applied for, upon compliance of all necessary formalities.

(Apurba Sinha Ray, J.)

(Arijit Banerjee, J.)