

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

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

C.R.A. (DB) 199 of 2023

Guljar Hussain @ Chiku

vs.

The State of West Bengal

For the Appellant

**: Mr. Arnab Chatterjee
Mr. Amit Roy
Ms. Dhanasree Biswas
Ms. Poulami Bose**

For the State

**: Mr. Anand Keshari
Ms. Rajashree Tah**

Heard and Judgment on

: April 30, 2025

DEBANGSU BASAK, J.:-

1. Appeal is directed against judgment dated June 15, 2023 convicting the appellant under Section 21 (c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 and the order of sentence dated June 16, 2023 sentencing the appellant to 10 years of rigorous imprisonment and a fine of Rs.1 lakh, in default, a rigorous imprisonment for further one year.

2. In course of hearing of the appeal, attention of the Court is drawn on behalf of the appellant to the Order No. 26, dated May 17, 2023. It is contended on behalf of the appellant that the Criminal Examination Report which was marked as Exhibit 'C' at the trial was not supplied to the appellant when the process under Section 207 of the Cr.P.C. was undertaken.
3. It is contended on behalf of the appellant that the order dated May 17, 2023 records that Criminal Examination Report is marked as Exhibit '6' under Section 293 of the Cr.P.C. although no formal application was made before the learned Trial Judge. Process under Section 294 of the Cr.P.C. was also not undertaken.
4. State is represented.
5. We find from the records that by the Order No. 26 dated May 17, 2023, learned Trial Judge proceeded to close the evidence of the prosecution. Learned Trial Court was pleased to fix June 3, 2023 for the examination of the appellant under Section 313 of the Cr.P.C.
6. Same order dated May 17, 2023 directs the Chemical Examination Report to be marked as Exhibit '6' under Section 293 of the Cr.P.C. Our attention is not drawn to any formal application being made for such purpose. Process under Section 294 of the Cr.P.C. apparently

was not followed for the purpose of marking the Chemical Examination Report as Exhibit at the trial.

7. Consequently, we find substance in the contention of the appellant that the Chemical Examination Report introduced in evidence without the due process of law and was incorrectly marked as an Exhibit.
8. Chemical Examination Report is a crucial piece of evidence in order to arrive at a finding of guilt of an accused involved in a charge under the Act of 1985.
9. Exhibit '6' was not tendered in evidence by any witness. No formal application for accepting the same under Section 293 of the Criminal Procedure Code appears from the records. Process under Section 294 Criminal Procedure Code was not followed. Chemical Report was introduced after closure of the evidence of the prosecution.
10. In such circumstances, we deem it appropriate to set aside the impugned judgment of conviction as also the order of sentence and the portion of the order dated May 17, 2023 which records that the Chemical Examination Report is marked Exhibit '6' under Section 293 of the Cr.P.C. passed by the learned Trial Judge. We remand the trial to the learned Trial Judge for a *de novo* trial from the stage of introduction of the Chemical Examination Report in evidence. Prior

thereto, no doubt, the prosecution will make over a copy of the Chemical Examination Report to the appellant.

11. In the event, prosecution seeks to introduce the Chemical Examination Report in the evidence at the trial and/or if such document is tendered in evidence and marked as Exhibit, then the appellant is at liberty not only to examine the witness who introduced the Chemical Examination Report as an evidence at the trial, but also any of the prosecution witnesses examined earlier, at the concluded trial.

12. In view of the discussions above, judgment of conviction and the order of sentence is set aside for the reasons as noted above. Since the Chemical Examination Report is yet to be marked as an Exhibit at the trial by a process known to law, and in view of the long incarceration of the appellant, it would be appropriate to enlarge the appellant on bail.

13. Accordingly, the appellant, **Guljar Hussain @ Chiku** shall be released on bail of Rs.20,000/- (Rupees twenty thousand), with two sureties of Rs.10,000/- (Rupees ten thousand) each, one of whom must be local, to the satisfaction of the learned Trial Court, Raiganj, Uttar Dinajpur on condition that he shall appear before the said Court on every date of hearing till disposal of the trial.

14. In the event, the appellant fails to do so, the bail granted shall stand cancelled and the trial Court is at liberty to take appropriate steps to secure his presence.

15. When our attention was drawn to the order sheet as appearing in the first file of the Trial Court records, particularly to the Order No. 26 dated May 17, 2023, we find that the words “ Chemical Report is marked Exbt 6 U/S 293 Cr.P.C.” is written in hand in such order sheet. We requested the department to produce the server copy of such order from the NJDG server. The downloaded version of server copy countersigned by the person who downloaded the same be kept with the record. Such downloaded order sheet does not contain such sentence in the Order No. 26 dated May 17, 2023.

16. Consequently, this aspect be placed before the Administrative Committee for appropriate steps.

17. C.R.A. (DB) 199 of 2023 is **disposed** of.

(Debangsu Basak, J.)

18. I agree.

(Md. Shabbar Rashidi, J.)

S.D.

