

IN THE HIGH COURT AT CALCUTTA
Criminal Miscellaneous Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

C.R.M (NDPS) 1617 of 2024

Ananta Barman

Vs.

The State of West Bengal

with

C.R.M (NDPS) 1811 of 2024

Samim Sk

Vs.

The State of West Bengal

with

C.R.M (NDPS) 1850 of 2024

Bachan Mandal

Vs.

The State of West Bengal

with

C.R.M (NDPS) 1893 of 2024

Roushan Kumar Yadav

Vs.

The State of West Bengal

For the Petitioner
in CRM (NDPS) 1617
of 2024

: Ms. Sompurna Chatterjee, Adv.
Mr. Apan Saha, Adv.
Mr. Ishan Sen, Adv.

For the Petitioner in CRM (NDPS) 1811 of 2024	: Mr. Apolok Basu, Adv. Mr. Avinaba Patra, Adv. Mr. Nazir Ahmed, Adv. Mr. Agnik Maulik, Adv.
For the Petitioner in CRM (NDPS) 1850 of 2024	: Mr. Ayan Bhattacharjee, Sr. Adv. Mr. Arup Kr. Bhounick, Adv. Mr. Sharequl Haque, Adv. Mr. Shounak Mondal, Adv.
For the Petitioner in CRM (NDPS) 1893 of 2024	: Mr. Soumyajit Das Mahapatra, Adv. Mr. Jisan Iqubal Hossain, Adv. Ms. Madhurai Sinha, Adv. Mr. Ranabeer Halder, Adv.
For the State in CRM (NDPS) 1617 of 2024	: Mr. Rudradipta Nandy, Ld. APP Ms. Amita Gaur, Adv. Mr. Sayeed Khan, Adv. Ms. Rituparna De Ghose, Adv.
For the State in CRM (NDPS) 1811 of 2024	: Mr. A. Basu, Adv. Mr. Raju Mondal, Adv. Ms. Rituparna De Ghose, Adv.
For the State in CRM (NDPS) 1850 of 2024	: Mr. Rudradipta Nandy, Ld. APP Mr. Anand Keshari, Adv. Ms. Afrin Begum, Adv. Ms. Rituparna De Ghose, Adv.
For the State in CRM (NDPS) 1893 of 2024	: Mr. Rudradipta Nandy, Ld. APP Mr. Bibaswan Bhattacharya, Adv. Mr. Subhajit Chowdhury Adv.
Hearing Concluded on	: March 26, 2025
Judgement on	: May 02, 2025

DEBANGSU BASAK, J.:-

1. Four applications for bail have been heard analogously as the issues involved are similar. For the sake of convenience, learned advocates appearing for the petitioner in the respective bail applications, collated their contentions and allowed learned Senior Advocate appearing for the petitioner

in CRM (NDPS) 1850 of 2024 to put forward the same to the Court. In addition thereto, respective advocates for the petitioners, also made their submissions. Again for the sake of convenience, the contentions of the petitioners are noted as if being made by learned Senior Advocate appearing for the petitioner in CRM (NDPS) 1850 of 2024, particularly in view of the fact that there are no inherent contradictions amongst the petitioners with regard to their contentions.

2. Learned Senior Advocate appearing for the petitioner has contended that, a police report without the Chemical Examination Report of the contraband seized, is an incomplete report and the detenu is entitled to statutory bail. In support of such contention, he has referred to sections 169, 170 and 173 of the Criminal Procedure Code, 1973. He has referred to **2004 Volume 7 Supreme Court Cases 768 (Gangadhar Janardan Mhatre vs. State of Maharashtra and Others)** and contended that it would be evident on a combined reading of sections 169, 170 and 173 of the Criminal Procedure Code that in cases where there is no sufficient evidence, a closure report will be filed whereas in cases where sufficient evidence is found, a positive report will be filed.

3. Learned Senior Advocate appearing for the petitioner has contended that, investigation includes all the proceedings under the Criminal Procedure Code for the collection of evidence conducted by a police officer. It ends with the formation of the opinion as to whether the materials collected has made out a case for trial as against the accused or not. He has contended that, the purpose of an investigation is augmentation of the evidence. He has relied upon ***All India Reporter 1955 Supreme Court 196 (H.N. Rishbud & Anr. vs State of Delhi)***. He has also relied upon ***2003 volume 6 Supreme Court Cases 195 (Union of India vs Prakash P. Hinduja & Anr.)*** in support of his contention that, the formation of opinion by an investigating officer is made on the basis of the materials collected. The manner and method of conducting investigation is left entirely to the investigating agency and that the Magistrate has no power to interfere with the same.

4. Learned Senior Advocate appearing for the petitioner has contended that, when the purpose of an investigation is to collect evidence, non-collection of the Chemical Examination Report signifies an inherent lacuna in the investigation.

5. Relying upon **2007 Volume 1 Supreme Court Cases 110 (M.C. Mehta (Taj Corridor Scam) vs Union of India & Ors.)** learned Senior Advocate appearing for the petitioner has contended that, even a court of law cannot compel the investigating agency to formulate a particular opinion.

6. Learned Senior Advocate appearing for the petitioner has contended that, police report is complete where a case is not dependant on further evidence and the trial can proceed on the basis of the evidence and material placed on record with the police report. In support of such contention, he has relied upon **2024 Volume 6 SCR 86 (Sharif Ahmed and Another v. State Of Uttar Pradesh and Another)**.

7. Learned Senior Advocate appearing for the petitioner has referred to the Drug Law Enforcement Field Officer Hand Book issued by the Narcotic Control Bureau, Ministry of Home Affairs, Government of India and in particular to Chapter 7 thereof. He has also referred to the Sampling and Sealing as appearing in such Hand Book as also, Chapter 19 thereof relating to launching of prosecution filing of criminal complaint/chargesheet. He has contended that, without an appropriate chemical analysis report, it is difficult to come to a conclusion that the contraband is a narcotic drug or a

psychotropic substance. He has pointed out that, mere smell or visual appearance of an article is often misleading.

8. Referring to **2015 Volume 3 Supreme Court Cases 417 (Narendra Kumar Amin vs Central Bureau of Investigation & Ors.)** learned Senior Advocate appearing for the petitioner has contended that, although, police report is complete even in absence of appropriate document, nonetheless, formation of opinion of the police must be on the basis of sufficient materials. According to him, the absence of the Chemical Examination Report, does not permit the police to form an opinion that, the seized contraband is either a drug or a narcotic substance. He has also referred to **1947 Volume 2 All ER 680 (Associated Provincial Picture Houses, Ltd. vs Wednesbury Corporation)** and contended that, a person entrusted with a discretion must direct himself properly in law.

9. Learned Senior Advocate appearing for the petitioner has relied upon Chapter XXX of the Criminal Procedure Code and contended that, such provisions are intrinsically linked to Article 21 of the Constitution of India. He has contended that the provisions under Section 167 of the Criminal Procedure Code is absolute in nature and requires strict adherence. In

support of such contention, he has relied upon **2021 Volume 12 Supreme Court Cases 1 (S. Kasi vs. State)**.

10. Relying upon **2020 Volume 10 Supreme Court Cases 616 (Bikramjit Singh Vs. State of Punjab)** learned Senior Advocate appearing for the petitioner has contended that, the concept of statutory bail is now elevated to the status of a fundamental right.

11. Relying upon **2015 Volume 4 Supreme Court Cases 609 (Sunil Bharti Mittal Vs. Central Bureau of Investigation,)** learned Senior Advocate appearing for the petitioner has contended that, a police report is filed to enable the Court to apply its mind as to whether cognizable offence exists or not. He has contended that, in absence of a Chemical Examination Report, opinion of the investigating officer, regarding the contraband becomes an opinion based on suspicion which is not permissible.

12. Learned Senior Advocate appearing for the petitioner has relied upon **1992 Volume 4 Supreme Court Cases 272 (Aslam Babalal Desai vs State of Maharashtra)** and **2017 Volume 15 Supreme Court Cases 67 (Rakesh Kumar Paul vs State of Assam)** and contended that, the Law Commission in its 37th report on Criminal Procedure Code, 1889 and 31st

report on Criminal Procedure Code, 1898 took into consideration the ratio of such decisions. He has contended that, once a police report is filed, it is expected that a proceeding will go to the next stage that is under Section 226 of the Criminal Procedure Code. He has contended that, since a drug detection kit is no evidence, therefore, the hurdle of Section 226 of the Criminal Procedure Code cannot be crossed, therefore, the accused will be incarcerated for an indefinite period, jeopardising his constitutional right of compulsive bail under Article 21 of the Constitution of India.

13. Relying upon **2013 Volume 2 Supreme Court Cases 590 (Thana Singh vs Central Bureau of Narcotics)** learned Senior Advocate appearing for the petitioner has contended that, absence of adequate number of forensic laboratories does not permit a tailor made police report to be filed as a device to cope with such situation. Such course of action, according to him is a fraud on legislation as also on the Constitution.

14. Relying upon **All India Reporter 1964 SC 358 (State of Uttar Pradesh vs. Singhara Singh & Ors.)** learned Senior Advocate appearing for the petitioner has contended

that, where a power is given to do a certain thing in a certain way the thing must be done in that way or not at all.

15. Relying upon **1994 Volume 15 Supreme Court Cases 410 (Sanjay Dutt V. State Through CBI, Bombay)** learned Senior Advocate appearing for the petitioner has contended that, penal statute is required to be interpreted strictly.

16. Learned Senior Advocate appearing for the petitioners has contended that, filing of chargesheet, without the forensic Chemical Examination Report is colourable exercise of power which is not permissible. In support of such contention he has relied upon **All India Reporter 1987 SC 579 (Dr. D.C. Wadhwa & Ors. Vs. State of Bihar)**.

17. Learned Senior Advocate appearing for the petitioner has contended that, Sections 167(2), 170, 173(2) and 190(1)(b) of the Criminal Procedure Code are held to be mandatory and therefore, total compliance thereof is required. According to him, filing of a document in the midst of an investigation without collecting evidence thereof just to frustrate the right of a citizen cannot be said to be total compliance of the provisions under Section 170 read with Section 170(2) of the Criminal Procedure Code and therefore, the same is bad. He has relied upon **2011 Volume 1 Supreme Court Cases 609**

(Vijaysinh Chandubha Jadega Vs. State of Gujarat) in this regard.

18. Learned Senior Advocate appearing for the petitioner has contended that, where, there are conflicting opinions of Co-ordinate Bench of the same Court, with respect to the law in question, a reference to a larger Bench ought to be made to give a quietus as to the same. In support of such contention he has relied upon **2017 SCC OnLine Cal 759 (Mrinal Kanti Sil Vs. Smt. Sampa Kabiraj)**.

19. Relying upon **AIR 1975 SC 43 (Shri Umed vs. Raj Singh & Ors.)** learned Senior Advocate appearing for the petitioner has contended that, it is always open to a Court to change its perspective and revisit an issue if and when circumstances of a case so warrant.

20. Learned additional public prosecutor has referred to **2022 SCC OnLine Cal 534 (Debashish Tarafder vs. State of West Bengal)** and contended that, infraction if any of Section 52A of the NDPS Act, 1985 should be left to be decided at the trial and ought not to be decided at the stage of consideration of an application for bail.

21. Learned additional public prosecutor has relied upon **2022 SCC OnLine Cal 331 (State vs. Ebrahim Hossain and**

Another), 2022 SCC OnLine Cal 623 (Raju Mandal vs. State of West Bengal) in support of his contention that, chargesheet filed sans the Chemical Examination Report will not entitle the accused to default bail.

22. Learned public prosecutor has contended that, the issue as to whether, a chargesheet sans the Chemical Examination Report will entitle the accused to a default bail did not fall for consideration in **2023 SCC OnLine Cal 313 (Subhas Yadav vs. State of West Bengal)**. He has drawn the attention of the Court to the issues that were framed by the full bench for decision in **Subhas Yadav (supra)** in this regard.

23. Learned public prosecutor has contended that, the coordinate bench of **Rakesh Sha (supra)** and **Idul Mia (supra)** were not made aware of the decisions rendered in **Ebrahim Hossain and Another (supra)**, **Raju Mandal (supra)** and **Debashish Tarafder (supra)** which are binding precedents on the subsequent coordinate Benches.

24. Learned additional public prosecutor has relied upon **2005 Volume 2 Supreme Court Cases 673 (Central Board of Dawoodi Bohra Community and another Vs. State of Maharashtra and another)** for the proposition that, law laid

down by a coordinate bench is binding on any subsequent bench of the same strength.

25. Learned additional public prosecutor has contended that, chargesheet submitted without the Chemical Examination Report does not entitle the accused to bail simplicitor on such fact. He has relied upon **2002 Volume 5 Supreme Court Cases 82 (Central Bureau of Investigation vs. R S Pai and another)** in support of the contention that, additional evidence gathered during investigation can be produced by the police officer even after submission of the chargesheet. He has contended that, the word “shall” used in sub-section (5) for requiring the police officers to forward to the Magistrate “all documents” is directory and not mandatory.

26. Learned additional public prosecutor has relied upon **2021 SCC OnLine Bom 2955 (Manas Krishna T.K. vs. State, the Police Inspector/Officer in Charge and Another)** and contended that, investigation can be said to be complete within the period prescribed under Section 167 (2) of the Criminal Procedure Code when a police report under Section 173 (2) is filed before the Special Court without any Chemical Examination Report.

27. Learned additional public prosecutor has relied upon **2023 SCC OnLine SC 502 (*Ritu Chhabaria versus Union of India and Others*)** for the proposition that, a chargesheet can be filed piecemeal without completing the investigation and that, filing of such chargesheet will extinguish the right of an accused for grant of the default bail. He has relied upon **2023 SCC OnLine SC 751 (*Directorate of Enforcement vs. Manpreet Singh Talwar*)** to contend that, it will not prevent the High Court from considering an application for grant of default bail under Section 167 of the Criminal Procedure Code independent of and without relying on the judgement dated April 26, 2023.

28. Learned additional public prosecutor has relied upon **2024 Volume 3 Supreme Court Cases 734 (*Central Bureau of Investigation Vs. Kapil Wadhawan and another*)** for the contention that, filing of chargesheet within the statutory period is sufficient compliance with the provisions of section 167 (2) (a) (ii) of the Criminal Procedure Code.

29. Learned additional public prosecutor has relied upon **2024 SCC OnLine Gau 1916 (*Jitul Ali vs. Union of India*)** in support of the contention that, Guwahati High Court

negated the contention that non-submission of the Chemical Examination Report entitled the accused to default bail.

30. Learned additional public prosecutor has referred to the order dated December 6, 2024 passed by the Supreme Court in ***Special Leave to Appeal (Crl) No. 16698 of 2024*** arising out of ***Idul Mia (supra)*** and contended that, the Supreme Court did not interfere with the order granting default bail in the peculiar facts and circumstances of that case. However, State had been permitted to render assistance in the pending reference.

31. Learned additional public prosecutor has referred to the order dated July 18, 2024 passed in Special Leave to Appeal (Crl.) Nos. 8164-8166 of 2021 and contended that, the reference is still pending.

32. The issues that have fallen for consideration in the present proceedings are: –

(i) does a chargesheet without the Chemical Examination Report make the investigation incomplete?

(ii) does a chargesheet without the Chemical Examination Report entitle the accused to default bail under the Act of 1985?

(iii) should this Court refer the two above noted issues to a larger bench?

(iv) to what relief for reliefs are the parties entitled to?

33. In all the 4 police cases before us, police had filed chargesheets before the jurisdictional Courts without the Chemical Examination Report.

34. A Co-ordinate Bench in ***Ebrahim Hossain (supra)*** has considered the issue as to whether chargesheet without the Chemical Examination Report submitted within the statutory period can be considered as a chargesheet within the meaning of section 173 of the Criminal Procedure Code or not. ***Ebrahim Hossain (supra)*** has considered such issue in the context of an application for cancellation of bail granted on the point that, chargesheet was unaccompanied with the Chemical Examination Report and therefore, the accused was entitled to default bail. The Coordinate Bench in ***Ebrahim Hossain (supra)*** has held that, chargesheet submitted without the Chemical Examination Report, could be construed as a report under section 173 (2) of the Criminal Procedure Code, and therefore the accused was not entitled to default bail.

35. *Debashish Tarafder (supra)* has considered the issue as to whether, infraction if any, of section 52A (4) of the Act of 1985 entitles the accused to bail or not. It has relied upon various authorities of the Supreme Court as also of the coordinate bench of this court and held that, the infraction if there be any, of section 52A (4) of the Act of 1985 has to be evaluated at the time of trial and not otherwise. It has also noted that, the procedure prescribed under section 52A of the Act of 1985 is a post seizure exercise and that failure to comply with such procedure does not affect the legality of the seizure.

36. *Raju Mandal (supra)* has considered the issue of the entitlement of an accused to default bail under Section 167 (2) of the Criminal Procedure Code on the police failing to submit a chargesheet with the Chemical Examination Report within 180 days from the date of arrest of the accused. It has considered various authorities of the Supreme Court as also of the other High Courts. It has also considered Section 36A of the Act of 1985 including Section 36A (4) thereof. It has noted that, filing of chargesheet or report under section 173 of the Criminal Procedure Code and the taking of cognizance of an offence under Section 190 thereof are two different distinct

and separate acts. While, a chargesheet or report under Section 173 of the Criminal Procedure Code is filed by the investigating agency, the cognizance of the offence has to be taken by the Court under section 190 thereof. It has negated the contention of the accused that it was entitled to default bail in view of the Chemical Examination Report not being filed along with the chargesheet. It has observed as follows: –

“13. Section 190 of the Criminal Procedure Code has provided for the mechanism by which the Cognizance of an offence is taken by the Magistrate. Section 36A(1)(d) has empowered the Special Court, upon perusal of the police report of the facts constituting the offence under the Act of 1985 or upon complaint being made by the officer of the Central Government or State Government authorized in his behalf, take cognizance of that offence without the accused being committed to it for trial. Cognizance is understood to mean that the Court has applied its mind as to whether there is sufficient cause or ground for it to do so. Taking cognizance by the Court has also been understood to mean discharge of a judicial function. While taking cognizance, the Court has to be satisfied that there is sufficient ground for proceeding against the accused for the offence alleged to be committed. The Court does not have to be satisfied that the evidence placed at that stage, would be sufficient to convict the accused. Sufficiency of the evidence has to be considered at the trial.

14. Section 36A(4) does not stipulate that the Special Court has to take cognizance of the offence within the prescribed period of 180 days. The Act of 1985 has not prescribed any time period for the taking of cognizance.

Rather, it has stipulated that the report under Section 173 of the Criminal Procedure Code has to be submitted by the police within 180 days from the date of the arrest of the accused or within the extended period which is extendable for the maximum period of one year. Section 173(2) of the Criminal Procedure Code has not stipulated that, the police report must be accompanied by Chemical Examination Report with regard to the contraband seized. Absence of the Chemical Examination Report in the police report submitted under Section 173 of the Criminal Procedure Code does not vitiate the police report by itself. A police report submitted under Section 173 of the Criminal Procedure Code without the Chemical Examination Report nonetheless is a police report within the meaning of Section 173 of the Criminal Procedure Code. Whether or not the Court, takes cognizance on the basis of a police report without the Chemical Examination Report reflects on the decision of taking cognizance and not the filing of the police report under Section 173 of the Criminal Procedure Code.”

37. Special Bench in **Subhas Yadav (supra)** has considered 5 issues as tabulated in paragraphs 1 and 2 thereof which are as follows: –

“1. The reference was made on the following issue:—

“Whether an accused upon expiry of period of detention pending investigation as prescribed under Section 36A(4) of the NDPS Act is to be released automatically on statutory bail without a prayer made by him availing such right and expressing his willingness to furnish bail?

2. During hearing the parties proposed additional issues as follows:—

- *Whether retrospective extension of the period of investigation by the learned Special Court is permissible on a juxtaposed reading of section 36A(4) of the NDPS Act vis-à-vis Article 21 of the Constitution of India?*

- *Whether at the time of passing of the order extending the period of investigation the learned Special Court would apply the parameters of observing the “progress of investigation” and “the specific reasons of detention” prior to the passing of such order?*

- *Whether in the interregnum period between the conclusion of the period of investigation, and an order retrospectively extending the period of investigation the petitioner would be liable to be released on statutory bail, especially on a harmonious interpretation of section 36A(4) of the NDPS Act and section 167 of the Cr. P.C.?*

- *Whether the mere filing of an application for extension in the absence of an order extending the period of investigation would render the application for statutory bail filed by the petitioner to be infructuous?”*

38. Subhas Yadav (supra) has answered such reference as follows: –

“31. In light of the aforesaid discussion, the issues are answered as follows:—

1. *Right of an accused to statutory bail upon expiry of the period of detention prescribed under section 36A(4) of NDPS Act is an inchoate one till he avails of his right by seeking statutory bail either by way of an application or even orally. Hence, he cannot be released automatically on statutory bail on the mere expiry of 180 days even if the prosecutor has failed to submit report*

seeking extension of detention in terms of the proviso to section 36A(4) of the Act before expiry of the said period;

2. Order extending the period of detention under proviso to section 36A(4) of NDPS Act on a report of the Public Prosecutor submitted after expiry of 180 days but prior to the accused availing of his right does not envisage retrospective operation but the total period of detention under the aforesaid provision cannot exceed one year in the whole;

3. As per Para 25.3 of M. Ravindran (supra) the right to statutory bail stands extinguished once the report of the Public Prosecutor seeking extension is filed. Hence, remand of the accused till the prayer of the prosecutor is disposed of is traceable to section 167(2) Cr. P.C. read with section 36A(4) of the NDPS Act. In the event, the application for extension is dismissed or an order extending detention is set aside by a superior court right to statutory bail revives in favour of the accused;

4. Upon expiry of 180 days of detention, Special Court as a cautionary measure ought to inform the accused (particularly if he is from an underprivileged section of society and is unrepresented by a counsel) of his right to statutory bail. However, failure to intimate the accused of his right by itself would not entitle him to statutory bail unless he avails of such relief;

5. Prayer for extension of period of detention must be on the basis of a report of Public Prosecutor which must record progress of investigation and spell out specific reasons to justify further detention beyond 180 days pending investigation;

6. Special Court on the basis of the report of Public Prosecutor and materials in support of such plea must be satisfied of the twin requirements, i.e., (a) there is appreciable

progress in the investigation and (b) there are specific/compelling reasons to justify further detention pending investigation. Each case has to be decided on its own merits. For example, failure to complete investigation solely on the score of non-submission of FSL report of the samples drawn from the contraband is an institutional shortcoming. This by itself may not justify further detention pending completion of investigation. But if the aforesaid fact situation is coupled with compelling circumstances like complexities in investigation in an organized crime racket or inter-state/trans-border trafficking, criminal antecedents of the accused giving rise to possibility of recidivism, abscondence of co-accused, etc., constituting 'specific reasons' justifying further detention, the Court may be inclined to extend the period of detention and deny liberty;

7. Prayer for extension of period of detention must be decided at the earliest without undue delay preferably within 7 days from making such application. Reasons for adjournment must be specifically stated;

8. No written notice or copy of report of Public Prosecutor requires to be served upon the accused or his counsel but the accused or his counsel must be present personally or through video linkage at the time of consideration of the application. Accused and/or his counsel must be aware of such consideration and may raise objection, if any, with regard to compliance of mandatory requirements of law."

39. It has been fairly conceded on behalf of the petitioners appearing before us that, the issue as to whether, a chargesheet sans the Chemical Examination Report would entitle the accused to a default bail or not did not fall for

consideration before the Special Bench in **Subhas Yadav (supra)**. Apart from the concession made at the Bar, we have noted the points of reference that **Subhas Yadav (supra)** considered and the conclusions arrived at with regard to such points of reference. It cannot be said that, given the points of reference noted by the Special Bench in paragraphs 1 and 2 of **Subhas Yadav (supra)**, it has considered and decided on any of the issues that have fallen for consideration before us. Therefore, **Subhas Yadav (supra)** cannot be applied to decide any of the issues that have fallen for consideration before us.

40. A coordinate bench in **Rakesh Sha (supra)** has granted bail to an accused on the ground that, the chargesheet filed was not accompanied with the Chemical Examination Report and therefore, the prosecution failed to comply with the statutory mandate of proviso to section 36A (4) of the Act of 1985 as well as the procedural infirmity of a chargesheet sans the Chemical Examination Report. It has relied on **Subhas Yadav (supra)** and a decision of the Bombay High Court reported that **2021 SCC OnLine Bom 3051 (Sagar Parshuram Joshi)**.

41. Significantly, attention of the coordinate bench rendering **Rakesh Sha (supra)** was not drawn to the binding

precedents of ***Ebrahim Hossain (supra)***, ***Debashish Tarafder (supra)*** and ***Raju Mandal (supra)***. ***Subhas Yadav (supra)*** did not decide the issue which fell for consideration in ***Rakesh Sha (supra)***. The view of the Bombay High Court which was referred to and relied upon in ***Rakesh Sha (supra)*** was overruled by the Bombay High Court in ***Manas Krishna TK (supra)*** much prior in point of time. ***Rakesh Sha (supra)*** was decided on August 25, 2023 while ***Manas Krishna TK (supra)*** was decided on September 17, 2021.

42. Another coordinate bench has followed ***Rakesh Sha (supra)*** in ***Idul Mia (supra)***. Again, neither the binding precedents of ***Ebrahim Hossain (supra)***, ***Debashish Tarafder (supra)*** and ***Raju Mandal (supra)*** nor the persuasive precedent of ***Manas Krishna TK (supra)*** were drawn to the attention of the coordinate bench rendering ***Idul Mia (supra)***.

43. State had preferred a Special Leave Petition directed against ***Idul Mia (supra)***. Such Special Leave Petition being Special Leave to Appeal (CRL) No. 16698 of 2024 was disposed of by an order dated December 6, 2024 after noting that, the issue of grant of default bail in a case where chargesheet has been filed without the Chemical Examination Report in

relation to the offence committed under the Act of 1985 is pending consideration before a three-judge bench of the Supreme Court. Supreme Court in such Special Leave Petition has however requested the learned State Counsel to render assistance on such question before the three-judge bench. In the peculiar facts and circumstances of ***Idul Mia (supra)*** the Supreme Court has refused to interfere with the order granting bail to the accused therein.

44. The issue therefore, whether, an accused is entitled to grant of default bail in a case where chargesheet was filed without the Chemical Examination Report in relation to an offence committed under the Act of 1985 was not conclusively pronounced upon by the Supreme Court in the Special Leave Petition carried against ***Idul Mia (supra)***.

45. *Gangadhar Janardan Mhatre (supra)* has noticed that, when a report is submitted by the police to the Magistrate under Section 173(2)(1) of the Criminal Procedure Code, several situations arise. It has held as follows :-

“9. When a report forwarded by the police to the Magistrate under Section 173(2)(i) is placed before him several situations arise. The report may conclude that an offence appears to have been committed by a particular person or persons and in such a case, the Magistrate may either (1) accept the report and take

cognizance of the offence and issue process, or (2) may disagree with the report and drop the proceeding, or (3) may direct further investigation under Section 156(3) and require the police to make a further report. The report may on the other hand state that according to the police, no offence appears to have been committed. When such a report is placed before the Magistrate he has again option of adopting one of the three courses open i.e. (1) he may accept the report and drop the proceeding; or (2) he may disagree with the report and take the view that there is sufficient ground for further proceeding, take cognizance of the offence and issue process; or (3) he may direct further investigation to be made by the police under Section 156(3). The position is, therefore, now well settled that upon receipt of a police report under Section 173(2) a Magistrate is entitled to take cognizance of an offence under Section 190(1)(b) of the Code even if the police report is to the effect that no case is made out against the accused. The Magistrate can take into account the statements of the witnesses examined by the police during the investigation and take cognizance of the offence complained of and order the issue of process to the accused. Section 190(1)(b) does not lay down that a Magistrate can take cognizance of an offence only if the investigating officer gives an opinion that the investigation has made out a case against the accused. The Magistrate can ignore the conclusion arrived at by the investigating officer and independently apply his mind to the facts emerging from the investigation and take cognizance of the case, if he thinks fit, exercise his powers under Section 190(1)(b) and direct the issue of process to the accused. The Magistrate is not bound in such a situation to follow the procedure laid down in Sections 200 and 202 of the Code for taking cognizance of a case under Section 190(1)(a) though it is open to him to act under Section 200 or Section 202 also. [See *India Carat (P) Ltd. v. State of Karnataka* [(1989) 2 SCC

132 : 1989 SCC (Cri) 306 : AIR 1989 SC 885] .] The informant is not prejudicially affected when the Magistrate decides to take cognizance and to proceed with the case. But where the Magistrate decides that sufficient ground does not subsist for proceeding further and drops the proceeding or takes the view that there is material for proceeding against some and there are insufficient grounds in respect of others, the informant would certainly be prejudiced as the first information report lodged becomes wholly or partially ineffective. Therefore, this Court indicated in Bhagwant Singh case [(1985) 2 SCC 537 : 1985 SCC (Cri) 267 : AIR 1985 SC 1285] that where the Magistrate decides not to take cognizance and to drop the proceeding or takes a view that there is no sufficient ground for proceeding against some of the persons mentioned in the first information report, notice to the informant and grant of opportunity of being heard in the matter becomes mandatory. As indicated above, there is no provision in the Code for issue of a notice in that regard.”

46. Gangadhar Janardan Mhatre (supra) has discussed the Magistrate’s powers to take cognizance of an offence. It has held that, even if, the report forwarded to the police by the Magistrate makes out no case against the accused, the Magistrate can ignore the conclusion arrived at by the Investigating Officer, independently apply his mind to the, facts emerging from the investigation, and take cognizance, if he thinks fit, by exercising powers under Section 190(1)(b) of the Criminal Procedure Code. It has also held that, a Magistrate is not bound to follow the procedure under

Sections 200 and 202 for taking cognizance under Section 190(1)(a) of the Criminal Procedure Code though, it is open to him to act under Section 200 or 202 also.

47. *H.N. Rishbud & Anr. (supra)* has explained the scheme of the Criminal Procedure Code with regard to investigation. It has considered the scope of Section 5 (4) of the Prevention of Corruption Act, 1987 in light of the scheme of the Criminal Procedure Code. It has held that, a defect or illegality in investigation, however serious, has no direct bearing in the competence or the procedure relating to cognizance or trial. It has held that, no doubt in one sense, Clauses (a), (b) and (c) of Section 190(1) are conditions or requisites for taking cognizance, it is not possible to say that cognizance on an invalid police report is prohibited and therefore, is a nullity. An illegality committed in the course of the investigation does not affect the competence and the jurisdiction of the Court of trial.

48. *Prakash P. Hinduja & Anr. (supra)* has explained that investigation includes all proceedings under the Criminal Procedure Code for collection of evidence conducted by a police officer or by any person other than a Magistrate as authorized by a Magistrate in this regard. Investigation means

the formation of the opinion as to whether on the material collected, there is a case to place the accused before a Magistrate for trial and if so, taking necessary steps for the same by filing a chargesheet under Section 173. It has held that, a Magistrate cannot interfere with the investigation and that, a Magistrate is not bound to accept the final report. If the Magistrate feels that the evidence and the material collected during investigation has justified prosecution of the accused, he may not accept the final report and take cognizance of the offence. This action of the Magistrate does not amount to interference with the investigation.

49. *M.C. Mehta (Taj Corridor Scam) (supra)* has emphasised the importance of the opinion formed by the officer-in-charge of the police station. It has observed that, even a competent Magistrate cannot compel the police officer concerned to form a particular opinion, although the Magistrate may have certain supervisory power under the Criminal Procedure Code. It has also observed that the opinion of the investigating officer is not a legal evidence and that, at the stage of Section 173(2) the question of interpretation of legal evidence does not arise.

50. In ***Sharif Ahmed and Another (supra)***, Supreme Court has held that, the requirement of further evidence or supplementary chargesheet as referred to under Section 173(8) of the Criminal Procedure Code is to make additions to a complete chargesheet and not to make up or reparate for a chargesheet which does not fulfil the requirements of Section 173(2) thereof. It has held that, a chargesheet is complete when it refers to material and evidence sufficient to take cognizance and for the trial. The nature and standard of evidence to elucidate in a chargesheet should prima facie show that an offence is established if the material and evidence is proven. The chargesheet is complete where a case is not exclusively dependent on further evidence and the trial can proceed on the basis of evidence placed on record with the chargesheet.

51. The Court of Appeal in ***Wednesbury Corporation (supra)*** is of the view that a Court is entitled to investigate the action of the local authority with a view to seeing whether it has taken into account matters which it ought not to take into account or conversely it has refused to take into account matters which are to be taken into account. Once that question is answered in favour of the local authority, it may

still be permissible to say that the local authority nevertheless has come to a conclusion so unreasonable that no reasonable authority would ever have come to it and in such a case Court can interfere. The power of the Court, however, to interfere in any case is not that of an appellate authority to override decision of local authority but that of a judicial authority which is concerned only to see whether the local authority has contravened the law by acting in excess of the powers, which Parliament has confided in it.

52. *S. Kasi (supra)* has held that, if the Co-ordinate Bench does not agree with the principles of the law enunciated by another Bench a matter may be referred only to a Larger Bench and that, no decision can be arrived at contrary to or inconsistent with the law laid down by the Co-ordinate Bench.

53. *Bikramjit Singh (supra)* has noticed the right to default bail under Section 167(2) of the Criminal Procedure Code. It has held that, right to default bail becomes complete and indefeasible as soon as application for grant of default bail is made on the expiry of the maximum period prescribed before a chargesheet is filed. It has also held that, this indefeasible right cannot be defeated by filing of a chargesheet

nor can it be defeated by non-disposal or wrong disposal of an application for default bail before or after filing of chargesheet and that, filing a subsequent application for default bail will not defeat the indefeasible right already standing accrued to the accused based on the first application. It has held that, right to default bail is a fundamental right and not a mere statutory right.

54. *Aslam Babalal Desai (supra)* has considered the issue as to whether bail granted under Section 167(2) of the Criminal Procedure Code can be cancelled for failure to complete the investigation within the period prescribed on the presentation of the chargesheet thereafter. It has held that, mere filing of chargesheet, in absence of any strong ground, is not a correct approach to cancel bail granted.

55. *Rakesh Kumar Paul (supra)* has held that, an accused is entitled to make an application for grant of default bail.

56. *Thana Singh (supra)* has issued directions and guidelines to be followed during the trials under the Act of 1985.

57. *Singhara Singh & Ors. (supra)* has observed that the principle, where a power is given to do a certain thing in a

certain way the thing must be done in that way or not at all and that the other method or purposes are necessarily forbidden applies to judicial officer making a recording under Section 164 of the Criminal Procedure Code.

58. *Sanjay Dutt (supra)* has held that, in interpreting penal statute, in case of two reasonable and possible constructions, one which leans in favour of the accused should be preferred.

59. *Dr. D.C. Wadhwa & Ors. (supra)* has observed that, repeated promulgation of ordinances of the Governor from time to time without getting them replaced by Acts is a practice in flagrant violation of the constitutional provisions.

60. *Vijaysinh Chandubha Jadega (supra)* has held that, non-compliance with Section 50 of the Act of 1985 would cause prejudice to the accused and would render the recovery of contraband suspect as also vitiate the conviction if the same is recorded only on the basis of recovery of the contraband. It has also held that, whether Section 50 stands complied with or not is a matter of trial and no absolute formula can be laid down with regard thereto.

61. *Narendra Kumar Amin (supra)* has considered the contentions of default bail. It has held that non-filing of full

set of documents with the chargesheet within the statutory period does not entitle the accused to default bail so long as the chargesheet is in compliance with Section 173(2) of the Criminal Procedure Code. It has held that, Section 173 (5) of the Criminal Procedure Code is directory.

62. *Mrinal Kanti Sil (supra)* having found that its view ran counter to the ratio of Co-ordinate Bench in another matter, referred the issue of law for decision by a Larger Bench.

63. *Shri Umed (supra)* has dwelt upon the issue of reconsideration of an earlier orbiter ruling not really arising on the facts before the Court. The former ruling which was considered as an orbiter was overruled as being erroneous because of its binding effect on the High Courts.

64. *R S Pai and another (supra)* has held that, additional evidence gathered during investigation can be produced by the police officer even after submission of the chargesheet. It has construed sub-section (5) of Section 173 of the Criminal Procedure Code as directory and not mandatory.

65. *Central Board of Dawoodi Bohra Community and Another (supra)* has held that, law laid down by the Supreme Court is binding on any subsequent Bench of lesser strength.

A smaller Bench cannot disagree or dissent from the view of law taken by a Larger Bench. In case of doubt, smaller Bench can invite attention of the Chief Justice and request the matter for being placed for hearing before a Bench larger than one whose decision is being doubted. However, it will be open only for a Bench of co-equal strength to express an opinion doubting the correction of the view taken by the Bench whose decision is being doubted.

66. Drug Enforcement Field Officers Hand Book issued by the Narcotics Control Bureau, Ministry of Home Affairs, requires the raiding party to have a narcotics drugs kit to test the contraband. It has provided that since the tests returned by the Narcotics Drug Kit are only indicative, it is often possible that a designated lab will return a negative report. However, by that time the suspected person has already been arrested and spent some time in judicial custody. It has noted such fact in order to emphasise that, the arrest must be preceded with the sample being tested through the Narcotics Drug Kit so that the person is not arrested merely on the basis of a suspicion but on the basis of some empirical evidence as that of the result undertaken through Narcotics Drugs Kit.

67. What emanates out of the authorities cited before us namely, ***Gangadhar Janardan Mhatre (supra)***, ***H.N. Rishbud & Anr. (supra)***, ***Prakash P. Hinduja & Anr. (supra)***, ***M.C. Mehta (Taj Corridor Scam) (supra)***, ***Sharif Ahmed and Another (supra)*** and ***Narendra Kumar Amin (supra)***, are that power of the Magistrate to accept or not to accept a report submitted by an investigating agency, under Section 173(2)(i) of the Criminal Procedure Code is sufficiently large enough for the Magistrate to either accept the report, take cognizance of the offence and issue process or to disagree with the report or drop the proceedings or direct further investigation. The Magistrate can also ignore the conclusion of the investigating agency as returned in the report and take cognizance by exercising powers under Section 190(1)(b). A Magistrate is not bound to follow the procedure laid down under Sections 200 and 202 of the Criminal Procedure Code for taking cognizance under Section 190 (1)(a) though it is open to him to do so under Section 200 or Section 202 also. The cognizance taken on an invalid police report cannot be said to be a nullity as illegality committed in the course of investigations does not affect the competence and the jurisdiction of the Court. A report under Section 173(2) of the

Criminal Procedure Code is the opinion of the investigating officer and not a legal evidence and therefore, the question of interpretation of legal evidence does not arise at that stage of submission of the chargesheet. Supplementary chargesheet under Section 173(8) of the Criminal Procedure Code allows further evidence to be filed.

68. As on date therefore, if a charge sheet which delineates the evidence required for the accused to stand trial is filed within time, then the accused is not entitled to default bail. A charge sheet without the Chemical Examination Report filed within time is nonetheless a charge sheet which disentitles the accused to default bail, as the Law stands today.

69. The issue as to whether, chargesheet without the Chemical Examination Report entitles the accused in an NDPS case to default bail is pending consideration before the Supreme Court. Supreme Court has not decided such issue finally. At present, the law on the subject as it stands today, lays down, a charge-sheet is complete if, the materials and the evidence are before Court along with the charge-sheet for the Court to take cognizance. Filing of supplementary charge-sheet in order to bring on record the forensic laboratory test report is also permissible. Law as it stands today also requires

the Courts to decide an application for grant of bail, notwithstanding the pendency of the issue as to whether, Chemical Examination Report must accompany the chargesheet or not. Two High Courts namely, Bombay and Guwahati have held that charge-sheet without the Chemical Examination Report does not entitle the accused to a default bail.

70. On the strength of the authorities presently subsisting, we are not in a position to return a finding that the charge-sheet without the Chemical Examination Report makes the investigation incomplete. The first issue is answered accordingly.

71. On parity with the seasons for the findings on the first issue, the second issue is also answered in the negative and as against the accused.

72. So far as the third issue is concerned, we find that, three coordinate Benches judgments rendered in ***Ebrahim Hossain (supra)***, ***Debashish Tarafder (supra)*** and ***Raju Mandal (supra)*** are binding upon us. They are first in point of time and required to be followed by the subsequent Division Benches. Two subsequent Division Benches did not follow the ratio laid down in ***Ebrahim Hossain (supra)***, ***Debashish***

Tarafder (supra) and **Raju Mandal (supra)** since apparently, attention of those two Division Benches were not drawn to such authorities.

73. Be that as it may, since, **Ebrahim Hossain (supra)**, **Debashish Tarafder (supra)** and **Raju Mandal (supra)** are binding upon us, and we are not in a position to take a view which is contrary to that returned in those three binding authorities. We need not refer any issue to the larger Bench as suggested. The third issue is answered accordingly.

74. On the merits of the plea for bail, we have recorded the situation with regard to individual petitioners in their respective applications for bail on March 26, 2025. Police had filed chargesheet on September 15, 2024 and subsequently a supplementary charge sheet along with Chemical Examination Report in CRM (NDPS) 1811 of 2024. Commercial quantity of brown sugar was seized from the possession of the petitioner therein. In CRM (NDPS) 1850 of 2024, chargesheet was filed on June 21, 2024 and supplementary chargesheet along with Chemical Examination Report was filed on October 21, 2024. Commercial quantity of brown sugar was seized from the possession of the petitioner therein. In respect of the petitioner in CRM (NDPS) 1893 of 2024, both chargesheet and

supplementary chargesheet along with Chemical Examination Report were submitted before the jurisdictional Court. Again, commercial quantity of narcotics was seized from such petitioner.

75. None of the petitioners, therefore, have been able to overcome the restrictions under Section 37 of the Act of 1985. Co-accused in CRM(NDPS) 1893 of 2024 was enlarged on bail by the Co-ordinate Bench on November 27, 2024 on the basis of ***Idul Mia (supra)***. We have held that, ***Idul Mia (supra)*** was rendered without considering three binding precedence and, therefore, cannot be considered as good law. In our view, since co-accused in CRM (NDPS) 1893 of 2024 was enlarged on bail by the Co-ordinate Bench on the basis of ***Idul Mia (supra)***, the petitioner before us cannot claim parity and is not entitled to bail on such basis.

76. Therefore, interim bails granted in favour of the petitioners stand cancelled.

77. Petitioners will surrender forthwith.

78. In default, jurisdictional Court will take appropriate steps. The fourth issue is answered accordingly.

79. C.R.M (NDPS) 1617 of 2024, C.R.M (NDPS) 1811 of 2024, C.R.M (NDPS) 1850 of 2024, C.R.M (NDPS) 1893 of

2024 along with all connected applications are disposed of accordingly.

[DEBANGSU BASAK, J.]

80. I agree.

[MD. SHABBAR RASHIDI, J.]