

IN THE HIGH COURT AT CALCUTTA
CRIMINAL MISCELLANEOUS JURISDICTION
APPELLATE SIDE

CRM (NDPS) 1627 of 2024

Delwar Sk. @ Delwar Seikh

Vs.

The State of West Bengal

Before: The Hon'ble Justice Arijit Banerjee

&

The Hon'ble Justice Apurba Sinha Ray

For the Petitioner :

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

For the State.

Mr. Debasish Roy, Learned Public
Prosecutor,
Mr. Arijit Ganguly, Adv.
Mr. Koushik Kundu, Adv.

CAV On:

20.01.2025

Judgment On:

18.02.2025

Apurba Sinha Ray, J. :-

1. The petitioner claims that he was arrested on 21.02.2024 with some contraband articles being commercial quantities and charge sheet was filed without FSL Report on 16.08.2024. 180 days expired from his arrest on

19.08.2024. The chemical examiner directly sent the Forensic Science Laboratory Report ('the FSL Report' in short) to the Trial Court on 26.09.2024 and the present petitioner filed a statutory bail application on 27.09.2024. The concerned I.O. submitted supplementary charge sheet along with FSL Report on 30.10.2024.

2. According to the learned counsel, Mr. Soumyajit Das Mahapatra that the FSL Report cannot be directly sent to the Trial Court by the chemical examiner and the same cannot automatically become part of the charge sheet. The learned counsel has submitted that according to section 190(1)(b) of Cr.P.C. the Learned Trial Court may take cognizance of any offence on the basis of police report. Section 173(2)(i) of Cr.P.C. prescribes that as soon as the investigation is complete, officer-in-charge shall forward the report to the Magistrate for taking cognizance of the offence on a police report as per the form prescribed by the State Government. The learned counsel has relied upon the judicial decision of **King Emperor Vs. Khwaja Nazir Ahmad reported in 1944 SCC OnLine PC 29** wherein it was observed that the functions of the judiciary and the police are complementary, not overlapping, and the combination of individual liberty with a due observance of law and order is only to be obtained by leaving each to exercise its own function, always, of course, subject to the right of the court to intervene in an appropriate case.

3. The learned counsel has also referred the decision of **Rakesh Kumar Paul Vs. State of Assam reported in (2017) 15 SCC 67** in support of his

contention that the petitioner can file bail petition before submission of the charge sheet. In matters of personal liberty and Article 21 of the Constitution, it is not always advisable to be formalistic or technical.

4. The learned counsel has also referred to the judicial decision of **M. Ravindran Vs. Intelligence Officer, Directorate of Revenue Intelligence, reported in (2021) 2 SCC 485** wherein the Hon'ble Apex Court observed that once the right to default bail has become indefeasible by filing application when right accrues, the court has to release him on bail. Right to default bail is an integral part of personal liberty against unlawful and arbitrary detention under Article 21.

5. The learned counsel has also drawn our attention to the judicial decision reported in **2023 SCC OnLine Cal 313 (Subhas Yadav Vs. State of West Bengal)** and also the judicial decision reported in **2023 SCC OnLine Cal 2463 (Rakesh Sha Vs. State of West Bengal)** in support of his contention that the right of the accused to statutory bail upon expiry of the statutory period, is an incomplete one till he avails of his right by seeking statutory bail either by way of an application or even by oral prayer. Further filing of charge sheet without examination report or FSL Report in relation to an offence under the NDPS Act, is an exercise in futility and resist the presumption of I.O. 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. The learned counsel has again drawn our attention to the case law reported in **2021**

SCC OnLine Cal 3788 (Chandi Charan Garani & Ors. Vs. State of West Bengal) wherein the learned Single Judge of this Hon'ble Court adopted the view expressed in the case law of **Pradip Churiwala Vs. Dilip Kumar Nemani reported in 2003 C Cr LR (Cal) 249** wherein it was stated that it is also the principle embedded in section 190 of the Criminal Procedure Code that the word 'may take cognizance' should be read as must as it has some mandatory aspect. At the same time it requires a great exercise of judicial mind. The learned counsel has relied upon one unreported decision of this court being **CRR 4713 of 2022 (Sri Abhoy Biswas Vs. The State of West Bengal & Anr.)** in support of his contention that cognizance cannot be taken unless there is at least some materials indicating the guilt of the accused. In fact, taking cognizance is a mental as well as judicial act, meaning thereby that the Magistrate has come to the conclusion that there is a case and that is to be adjudicated.

6. The learned counsel, Mr. Das Mahapatra has submitted that as the I.O. has failed to submit complete charge sheet within the statutory period, the petitioner is entitled to bail in view of the judicial pronouncement in Rakesh Sha's Case (supra) and also Idul Mia's Case (**2024 SCC OnLine Cal 9109**) of this Bench authored by my Learned Brother.

7. The learned counsel has also reiterated his submission that the chemical examiner's report which was directly sent to the learned Trial Court cannot improve the case of the prosecution.

8. The Learned Public Prosecutor has vehemently opposed the prayer for bail. According to him, no prejudice is caused to the petitioner as the chemical examiner's report was directly sent to the Learned Trial Court.

9. The Learned Public Prosecutor has drawn our attention to section 190(1)(c) of the Criminal Procedure Code wherein the concerned Magistrate has been empowered to take cognizance of an offence upon information received from any person other than a police officer or upon his own knowledge that such offence has been commenced. Therefore, according to learned public prosecutor, as the court has the authority to take cognizance on receipt of some information from any person other than a police officer, in this case there was no illegality in receiving the chemical examiner's report directly from the laboratory concerned on 26.09.2024 and in view of such factual aspect, the statutory bail application filed by the present petitioner on 27.09.2024 was not at all maintainable and the learned Trial Court has rightly refused to enlarge the petitioner on bail.

10. The learned Public Prosecutor has also submitted that judicial decisions cited by the learned counsel for the petitioner are not applicable to the factual scenario of this case. He has specifically submitted that in **Rakesh Kumar Paul's case (supra)** in para 40 it has been held by the Hon'ble Court that the petitioner, Mr. Das Mahapatra, has to apply for 'default bail' before the date on which date his indefeasible right got extinguished. As the statutory bail application has been filed on 27.09.2024

i.e. after receiving the chemical examiner's report in the court on 26.09.2024 the same cannot be allowed. The public prosecutor has also relied upon the judicial decision reported in **(1994) 5 SCC 410 (Sanjay Dutt Vs. State Through C.B.I., Bombay (II))**.

11. The learned counsel for the petitioner in his reply has stated that in the case law of **M. Ravindran Vs. Intelligence Officer, Directorate of Revenue Intelligence**, reported in **(2021) 2 SCC 485** the Hon'ble Supreme Court has dealt with the meaning of the words 'if not already availed of' in Sanjay Dutt's case. The Hon'ble Apex Court has expressed in the following manner:-

"We agree with the view expressed in Rakesh Kumar Paul that as a cautionary measure, the counsel for the accused as well as the Magistrate ought to inform the accused of the availability of the indefeasible right under Section 167(2) once it accrues to him, without any delay. This is especially where the accused is from an underprivileged section of society and is unlikely to have access to information about his legal rights. Such knowledge sharing by Magistrates will thwart any dilatory tactics by the prosecution and also ensure that the obligations spelled out under Article 21 of the

*Constitution and the Statement of Objects and
Reasons of the CrPC are upheld."*

12. Accordingly, the learned counsel for the petitioner has submitted that petitioner was not given such privilege as expressed in **M. Ravindran's case (supra)**.

13. We have considered the rival contentions of the parties.

14. The judicial decisions submitted on behalf of the parties do not deal with the issue that if the concerned laboratory sends the chemical examiner's report directly to the learned Trial Court whether such action on the part of the laboratory can be considered as due observance of the law of the land or not. There is no provision in the Criminal Procedure Code that debars the laboratory to send the FSL report directly to the Learned Trial Court even though there was no such direction from the Learned Trial Court.

15. By referring to the judgment of **King Emperor (supra)** the learned counsel for the petitioner has argued that it is the duty of the police authority to submit the FSL Report along with supplementary charge sheet in view of section 173(8) of Cr.P.C. Such action is needed so that FSL Report can form a part of charge sheet. Neither the court nor the laboratory is empowered under the law to abort such direction of the law. After going through the provisions as laid down in sub-section (8) of Section 173 of

Cr.P.C. it reveals that such sub-section deals with issue of further investigation after submission of chargesheet. But, we have strong doubt whether submission of pending chemical examiner's report after filing of charge sheet before the Learned Trial Court can be treated as further investigation in terms of sub-section (8) of Section 173 of the Code as aforesaid. As the chemical examiner's report is sought for by the concerned investigating officer during investigation, it is expected that such chemical examiner's report should reach to the concerned Learned Trial Court through the investigating officer or the concerned police officer-in-charge of the investigation. But the question is if the laboratory sends such report to the concerned Trial Court whether it causes any prejudice to the accused or not. In fact, in this case also it is revealed that the laboratory sent the chemical examiner's report to the Learned Trial Court directly as well as a copy of such report was also sent to the concerned police officer who filed the supplementary charge sheet along with the said chemical examiner's report to the court approximately after one month from the date of receipt of such report from the laboratory. Therefore, it goes to show that the laboratory by sending such report directly to the concerned trial court has reduced one month's delay. It further shows that due to procedural complexities the same report which was sent to the police officer, reached to the court through the police officer at least one month after the date of receipt of chemical examiner's report by the court directly from the laboratory. The action of the laboratory by sending the report directly to the court can be viewed as an effort on the part of the laboratory to reduce the

‘systemic’ delay which usually occurs in our courts. It is the duty of everyone involved in the matters of criminal investigation to reduce the systemic delay as far as practicable.

16. The petitioner is unable to show that such direct transmission of the report to the Learned Trial Court along with a report sent to the concerned police officer causes any prejudice or harm to him.

17. The chemical examiner’s report or the status of chemical examiner has been given a very important place under the provisions of Criminal Procedure Code. The chemical examiner has, indeed, been put on a different pedestal in the Code. Section 292 reads as follows:-

“Section 292. Evidence of officers of the Mint-

(1) Any document purporting to be a report under the hand of any such gazetted officer of the Mint officer of any mint or of any Note Printing Press or of any Security Printing Press (including the officer of the Controller of Stamps and Stationery) or of any Forensic Department or Division of Forensic Science Laboratory or any Government Examiner of Questioned Documents or any State Examiner of Questioned Documents, as the case may be, as the Central Government may, by notification, specify in this behalf, upon any matter or thing duly submitted to him for

examination and report in the course of any proceeding under this Code, may be used as evidence in any inquiry, trial or other proceeding under this Code, although such officer is not called as a witness.

.....”

18. Therefore, as the report of chemical examiner can be tendered in evidence without calling him as a witness, it goes to show that how much reliance has been placed upon such report, unless challenged, by the Code itself. In our case, there is no challenge to the contents of the chemical examiner’s report but only the action of the laboratory that the report has been sent directly to the Learned Trial Court has been resisted as illegal.

19. In our view, as the report of the chemical examiner has been given a different status by the Code itself and as the contents of the said report were not challenged, sending/transmission of such report directly to the Learned Trial Court does not cause any prejudice to the accused particularly when Section 190(1)(c) has authorized the Learned Trial Court to act on his own information or on the report other than the police officer. As such, we do not find that the petitioner is able to override the restrictions of Section 37 of NDPS Act and, accordingly, the prayer for bail stands rejected.

20. However, Mr. Das Mahapatra has raised a valid question of law on the basis of decisions of Rakesh Pal (supra) and M. Ravindran (supra) cases. The aforesaid decisions have specifically endorsed the view that the accused

should be informed of his right of statutory default bail by the learned Magistrate or the concerned advocate when such right of the accused becomes infeasible. In this case it is alleged that the petitioner has not been informed of his such right by the learned Special Judge.

21. In view of aforesaid decisions, we think that the accused under NDPS Act are also entitled to be informed of their such right by the learned Special Judge. After pronouncement of Rakesh Sha and Idul Mia (supra), subject to the decision of Special Bench of Hon'ble Apex Court, it is now clear that if the charge sheet is filed within the statutory period of 180 days or within the extended period under section 36A(4) without chemical examination report, the charge-sheet submitted shall be deemed to be an incomplete one and the accused has the right to be released on statutory default Bail, if applied for, until the chemical examination report is submitted. Therefore, **it is expected that the Learned Special Judges dealing with NDPS Act henceforth will strictly follow the directions given by the Hon'ble Apex Court in Rakesh Kumar Pal (supra) and M. Ravindran (supra) cases in letters and spirit.**

22. The above direction of this Bench may be brought to the kind notice of the learned Special Judges, NDPS Act immediately through the learned Registrar General for due and effective compliance.

I Agree.

(APURBA SINHA RAY, J.)

(ARIJIT BANERJEE, J.)

Arijit Banerjee, J.: -

1. I have read the detailed judgment of my learned Brother. I completely agree with the conclusion reached by his Lordships. However, I take this opportunity to add a few words.

2. In a case under the Narcotics Drugs and Psychotropic Substances Act, 1985 (in short 'NDPS Act'), undoubtedly the most important and vital piece of evidence is the chemical report. If the forensic laboratory returns a report that the sample from the seized articles has tested negative for the presence of narcotics, meaning thereby that the seized articles do not come within the purview of the NDPS Act, the prosecution case would fall flat. It is presumably for this reason that a Coordinate Bench in the case of **Rakesh Sha, supra**, held that filing of charge sheet without the chemical report, even within the statutory period does not satisfy the requirements of sections 36A(4) of the NDPS Act and an accused person becomes entitled to statutory bail upon expiry of 180 days (or one year if the period of investigation is extended by the Special Court) from the date of his arrest.

3. Following the decision in Rakesh Shah, in the case of **Idul Mia, supra**, this Bench held that if prior to the chemical report being filed by way of supplementary chargesheet or otherwise, and after expiry of 180 days from the date of an accused person's arrest, if he applies for statutory bail, his right to obtain the statutory bail crystallises and becomes indefeasible. Subsequent filing of the chemical report would not affect such right.

4. No particular mode of filing the chemical report before the learned Trial Court is prescribed by the Code of Criminal Procedure (now BNSS) or the NDPS Act. In a scenario where the charge sheet is filed without the chemical report but before the accused person exercises his right to obtain statutory bail upon expiry of 180 days (or one year as the case may be), the chemical report is brought on record before the learned Trial Court by way of a supplementary charge sheet, the right of the accused person to obtain statutory bail stands extinguished. I do not see why the position should be any different if instead of the chemical report being brought on record by way of a supplementary charge sheet filed by the investigating officer, the concerned forensic laboratory directly delivers the chemical report to the learned Trial Court and the learned Trial Judge accepts it as a part of the records. In that case also, if the forensic report tests positive for presence of narcotics substances in the samples sent for testing, in my opinion, the accused person's right to obtain for statutory bail would stand extinguished.

5. Hence, I agree with my learned Brother that in the present fact scenario, petitioner cannot claim statutory bail since the chemical report was delivered to the learned Trial Court and was taken note of by the learned Trial Judge prior to the petitioner filing the bail application. Be it noted that the learned advocate for the petitioner argued only on the point of statutory bail and not on the point of bail on merits. Therefore, the bail petition deserves to be dismissed.

6. Urgent photostat certified copies of this judgment, if applied for, be supplied to the parties on compliance of all necessary formalities.

I Agree.

(APURBA SINHA RAY, J.)

(ARIJIT BANERJEE, J.)