

IN THE HIGH COURT AT CALCUTTA
CRIMINAL MISCELLANEOUS JURISDICTION
APPELLATE SIDE

CRM (NDPS) 1883 of 2024

Sanjit Mondal

Vs.

The State of West Bengal

Before: The Hon'ble Justice Arijit Banerjee
&
The Hon'ble Justice Apurba Sinha Ray

For the Petitioner : : Mr. Arnab Chatterjee, Adv.
 Ms. Dhanasree Biswas, Adv.
 Ms. Poulami Bose, Adv.

For the State. : Mr. Debasish Roy, Ld. P.P.,
 Mr. Koushik Kundu, Adv.
 Mrs. Kanchan Roy, Adv.

CAV On : 30.01.2025

Judgment On : 20.03.2025

Apurba Sinha Ray, J. :-

Factual Matrix:-

1. The petitioner filed this instant bail application against the order dated 11.11.2024 passed by Special Court, 5th Court, Berhampore, Murshidabad in connection with N.D.P.S Case No. 118 of 2023 arising out

of Farakka Police Station Case No. 443 of 2023 dated 25.11.2023 under Sections 21(C)/22(C)/29 of NDPS Act, 1985.

2. The petitioner was arrested on 25.11.2023 with a nylon bag containing 307 gm Heroin from NH 34 road of the flank from Omarpur to Farakka side near Ankura Bridge, along with co-accused namely, Subhas Mondal.

3. Charge-sheet was submitted without a chemical report on 14.05.2024.

4. Chemical report was directly sent to the Learned Special Judge on 09.07.2024

5. Bail petition was filed and rejected on 11.11.2024 by the Learned Trial Judge.

Contention of the Petitioner:-

6. Mr. Chatterjee, learned Advocate, contends that a chargesheet filed without chemical report is an incomplete one, and the Learned Court cannot take cognizance over such incomplete document and further the laboratory cannot send the report of chemical examination directly to the court.

7. To support his contention the Learned Counsel for the petitioner relied upon a case law of **Babubhai V. State of Gujarat & Ors.** reported in

(2010) 12 SCC 254. It is settled principle of law that not only fair trial but also fair investigation is a part of Articles 20 and 21 of the Constitution of India. Thus, investigation must be fair, transparent and judicious as it is the minimum requirement of rule of law. The investigating agency cannot be permitted to conduct an investigation in a tainted and biased manner.

8. Further, learned counsel for the petitioner relied upon a case law of **State of Maharashtra Vs. Sharadchandra Vinayak Dongre & Ors.** reported in **(1995) 1 SCC 42.** The purpose of the submission of the police report with the details is to enable the Magistrate to satisfy himself, whether on the basis of the report and the material filed along with the police report, a case for taking cognizance has been made out or not. After applying his mind to the police report and the material submitted therewith, if the Magistrate is satisfied that cognizance of the offence is required to be taken, he shall proceed further in accordance with the provisions of the Criminal Procedure Code. Thus, his power is not fettered by the label which the investigating agency chooses to give to the report submitted by it under Section 173(2) Cr.P.C. Merely, because the prosecution had filed an application, after submission of the charge-sheet, seeking permission to file "supplementary charge-sheet", it could not affect the jurisdiction of the Magistrate to take cognizance, if he was otherwise satisfied from the material placed before him along with the charge-sheet that cognizance of the offence was required to be taken. It is the jurisdiction of the Magistrate and Magistrate alone to decide whether the material placed by the

prosecution with the report (charge-sheet) was sufficient to take cognizance or not. The power of the Magistrate to take cognizance cannot be controlled by the investigating agency, whose duty is only to investigate and place the facts and the evidence before the Magistrate. The prayer of the investigating agency seeking permission to further investigate and submit a "supplementary charge-sheet" could not vitiate the cognizance taken by the Chief Judicial Magistrate nor denude him of his jurisdiction to take cognizance of the offence.

9. In the instant case, the chargesheet was submitted without an FSL Report. When the incomplete chargesheet was submitted before the Special Judge, then the Special Judge, without satisfying himself took cognizance of the offence. This is bad in law. Without a forensic report, no one can say that the alleged seized article was Heroin and not any other white powder.

10. By citing the judicial decision in **Sagar Parshuram Joshi Vs. State of Maharashtra**, reported in **2021 SCC OnLine Bom 3051**, learned counsel for the petitioner has submitted that prima-facie to accept the authenticity of the preliminary test of the suspect substance recovered from the accused persons, the prosecution is expected to place on record some more particulars or at least test memos, which has not been done in the case at hand.

11. Learned counsel for the petitioner has relied upon a case law of **Rakesh Sha Vs. State of West Bengal**, reported in **2023 SCC OnLine Cal**

2463, and contended that there is a fundamental difference between the expression “further evidence” under section 173(8) of the Cr. P.C. where the presumption is of new evidence and the laboratory report in an NDPS case where the report forms the fulcrum of the charge-sheet on which the Trial Court is to take cognizance of the offence. In **Sagar Parshuram Joshi v. The State of Maharashtra, 2021 SCC OnLine Bom 3051**, a Single Bench of the Bombay High Court held that the Magistrate cannot form an opinion and take cognizance of the commission of the offence under the Act without the Chemical Analysis Report. Filing a charge-sheet without the Examination Report or FSL Report in relation to an offence under the NDPS Act is an exercise in futility and raises the presumption of the 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.

12. Learned counsel for the petitioner has also relied upon a case law of **Idul Mia Vs. State of West Bengal**, reported in **2024 SCC OnLine Cal 9109**. In the said decision, it is laid down that charge-sheet, although filed within the period of 180 days, was not accompanied by the FSL report, and that the FSL report was filed as part of a supplementary charge-sheet beyond 180 days from the date of arrest of the petitioner and after he applied for statutory bail, the court has to hold that upon expiry of 180 days, the petitioner became entitled to statutory bail/default bail. An incomplete charge-sheet cannot curtail the accused’s right of statutory bail/default bail.

13. Learned counsel for the petitioner has contended that the case law of **Ritu Chhabaria Vs. Union of India and Others**, reported in **2023 SCC OnLine SC 502**, has laid down that it is axiomatic that first investigation is to be completed, and only then can a chargesheet or a complaint be filed within the stipulated period, and failure to do so would trigger the statutory right of default bail under Section 167(2) of Cr.P.C. In the case of **Union Of India v. Thamisharasi (1995) 4 SCC 190** it was observed that when investigation was not complete and a chargesheet was not filed within the prescribed period, denial of default bail was held to be in violation of Article 21 of the Constitution of India, and it was further held that even the twin limitations on grant of bail would not apply.

14. The Hon'ble Apex Court came to the conclusion that –

- i. Without completing the investigation of a case, a chargesheet or prosecution complaint cannot be filed by an investigating agency only to deprive an arrested accused of his right to default bail under Section 167(2) of the Cr.P.C.
- ii. Such a chargesheet, if filed by an investigating authority without first completing the investigation, would not extinguish the right to default bail under Section 167(2) Cr.P.C.
- iii. The trial court, in such cases, cannot continue to remand an arrested person beyond the maximum stipulated time without offering the arrested person default bail.

15. Learned counsel for the petitioner relied upon a case law of **Hitendra Vishnu Thakur & Ors. Vs. State of Maharashtra & Ors**, reported in **(1994) 4 SCC 602** and contended that once the period for filing the charge-sheet has expired and either no extension under clause (bb) has been granted by the Designated Court or the period of extension has also expired, the accused person would be entitled to move an application for being admitted to bail under sub-section (4) of Section 20 TADA read with Section 167 of the Code and the Designated Court shall release him on bail, if the accused seeks to be so released and furnishes the requisite bail. In the instant case, taking cognizance based on incomplete charge-sheet is bad in law and further judicial remand without intimating the accused about his legal right of statutory bail is illegal.

Contention of State:-

16. Mr. Roy, learned Public Prosecutor submits that charge-sheet (without Chemical Report) was filed on 14.05.2024 and on 09.07.2024 chemical report was sent to Court directly from the laboratory. Between these dates no statutory bail application was filed either in writing or orally.

17. Learned counsel for the State has relied on case law of **Mohamed Iqbal Madar Sheikh & Ors. Vs. State of Maharashtra**, reported in **(1996) 1 SCC 722**, wherein the Hon'ble Apex Court observed that the right of statutory bail cannot be exercised after the charge-sheet has been submitted and cognizance has been taken, because in that event the remand of the accused concerned including one who is alleged to have committed an

offence under TADA, is not under Section 167(2) but under other provisions of the Code. If an accused charged with any kind of offence becomes entitled to be released on bail under proviso (a) to Section 167(2), that statutory right should not be defeated by keeping the applications pending till the charge-sheets are submitted so that the right which had accrued is extinguished and defeated.

18. In **Sanjay Dutt Vs. CBI, (1994) 5 SCC 410**, it has been held that If the accused applies for bail on expiry of the period of 180 days or the extended period, then he has to be released on bail forthwith. The accused released on bail may be arrested and committed to custody according to the provisions of the Criminal Procedure Code. The right of the accused to be released on bail after filing of the challan, notwithstanding the default in filing it within the time allowed, is governed from the time of filing of the challan only by the provisions relating to the grant of bail applicable at that stage. Now, Appellant's claim to bail under Proviso (a) to Section 167(2) of Cr.P.C., is not open.

19. Learned counsel for the State has also relied on case law of **M. Ravindran Vs. Intelligence Officer, Directorate of Revenue Intelligence**, reported in **(2021) 2 SCC 485**. The Apex Court here also referred to **Mohamed Iqbal Madar Sheikh & Ors. Vs. State of Maharashtra and Sanjay Dutt Vs. CBI case**.

20. In case of **Aslam Babalal Desai Vs. State of Maharashtra** reported in **(1992) 4 SCC 272**, it was observed that if an accused person fails to exercise his right to be released on bail for the failure of the prosecution to file the charge-sheet within maximum days allowed by law, he cannot contend that he had an indefeasible right to exercise it at any time. If he exercises the right within the time allowed by law and he is released on bail under such circumstances, he cannot be rearrested on mere filing of charge-sheet.

21. This view was also taken by a Three Judges Bench in case of **Uday Mohanlal Acharya V. State of Maharashtra**, reported in **(2001) 5 SCC 453**. The decision in Sanjay Dutt case lays down as a precautionary principle that accused must apply for default bail when the right under Section 167(2) accrues. If he fails to do so, he cannot claim the right at a subsequent stage, after prosecution has filed a charge-sheet.

22. Learned counsel for the State has placed his reliance on different case laws where the Court rejected the application for bail as the police report was already submitted and they are: **State Vs. Mohd. Ashraf Bhat**, reported in **(1996) 1 SCC 432**; **Ateef Nasir Mulla Vs. State of Maharashtra**, reported in **(2005) 7 SCC 29**; **Mustaq Ahmed Mohammed Isak Vs. State of Maharashtra**, reported in **(2009) 7 SCC 480**.

23. Learned counsel for the State has further relied on case law of **Rakesh Kumar Paul Vs. State of Assam** reported in **(2017) 15 SCC 67**. The

petitioner can file default bail petition before submission of charge-sheet, in matters of personal liberty and Article 21 of the Constitution. In this case, Mohamed Iqbal Madar Sheikh's case was referred to where it was stated that the Court rejected the claim for statutory bail under Section 167(2) on the ground that no application was made in this regard.

24. By citing the case law of **Dablu Kujur Vs. The State of Jharkhand**, reported in **(2024) 6 SCC 758**, he submits that such issues often arise when the accused would make his claim for default bail under Section 167(2) Cr.P.C. and contend that all the documents having not been submitted as required under Section 173(5), or the investigation qua some of the persons having being kept open while submitting police report under Section 173(2), the requirements under Section 173(2) could not be said to have been complied with. In this regard, the Court relied upon **CBI Vs. Kapil Wadhawan**, reported in **(2024) 3 SCC 734**. The Court states that when from the material produced along with the charge-sheet, the Court is satisfied about the commission of an offence and it takes cognizance of the offence allegedly committed by the accused, it is immaterial whether the further investigation in terms of Section 173(8) is pending or not. The pendency of the further investigation qua the other accused or for production of some documents not available at the time of filing of charge-sheet would neither vitiate the charge-sheet, nor would it entitle the accused to claim right to get default bail on the ground that the charge-sheet was an

incomplete charge-sheet or that the charge-sheet was not filed in terms of Section 173(2) Cr.P.C.

25. It is further observed in the case of **Sharif Ahmed & Anr. Vs. State of Uttar Pradesh & Anr**, reported in **2024 SCC OnLine SC 726**, the Court has taken the view of **Tara Singh Vs. State**, reported in **1951 SCC 903**. It was held that a challan submitted in the said case was complete except for submission of the report of the Imperial Serologist and drawing of the sketch map of the occurrence. In this context, reference was made to Section 173(1) of the 1898 Code and that the report/challan should set forth viz. the names of the parties, nature of the information and names of persons who appear to be acquainted with the circumstances of the case. The cognizance was proper.

26. With regard to Section 190(1)(c) of Cr.P.C., he relied upon a case law of **Gangadhar Janardan Mhatre Vs. State of Maharashtra & Ors.** reported in **2004 SCC OnLine SC 1214** wherein the Court has taken the view of **Abhinandan Jha Vs. Dinesh Mishra**, reported in **AIR 1968 SC 117** where it was observed that the functions of the magistracy and the police are entirely different, and the Magistrate cannot impinge upon the jurisdiction of the police, by compelling them to change their opinion so as to accord with his view. However, he is not deprived of the power to proceed with the matter. There is no obligation on the Magistrate to accept the report if he does not agree with the opinion formed by the police. The power to take

cognizance, notwithstanding formation of opinion by the police which is the final stage in the investigation, has been provided for in Section 190(1)(c).

27. Learned counsel for the State has relied on case law of **Devendra Nath Singh Vs. State of Bihar & Ors**, reported in **(2023) 1 SCC 48**. If the report filed before the magistrate is not satisfactory, then he may order investigation in terms of 156(3)/ 173(8) Cr.P.C. or he may straightaway take cognizance under Section 190(1)(c).

28. Learned counsel for the State has further relied on the case law of **State of Maharashtra Vs. Sharadchandra Vinayak Dongre & Ors.**, reported in **(1995) 1 SCC 42**. The purpose of submission of a police report with the details is to enable the magistrate to satisfy himself whether on the basis of the report and the materials filed along with the police report. If the Learned Magistrate, after applying his mind to the police report and the material submitted therewith, is satisfied that cognizance of the offence is required to be taken, he shall proceed further in accordance with the provisions of the Code. Section 190(1)(b) Cr.P.C. provides that a Magistrate has the power to take cognizance upon a police report of such facts as are provided therein on being satisfied that the case is a fit one for taking cognizance of the offence. Therefore, if the police report and the materials filed therewith are sufficient to satisfy the Magistrate that he should take cognizance, his power is not fettered by the label which the investigating agency chooses to give to the report submitted by it under Section 173(2) Cr.P.C. Merely, because the prosecution had filed an application, after

submission of the charge-sheet, seeking permission to file "supplementary charge-sheet", it could not affect the jurisdiction of the Magistrate to take cognizance, if he was otherwise satisfied from the material placed before him along with the charge-sheet that cognizance of the offence was required to be taken. It is the jurisdiction of the Magistrate and Magistrate alone to decide whether the material placed by the prosecution with the report (charge-sheet) was sufficient to take cognizance or not. The power of the Magistrate to take cognizance cannot be controlled by the investigating agency, whose duty is only to investigate and place the facts and the evidence before the Magistrate.

29. Cognizance can be taken upon the knowledge of the magistrate based on a police report. In case of **Nasib Singh Vs. Maman & Ors.**, reported in **1979 SCC OnLine P&H 276**, it is held that a Magistrate can take cognizance of an offence under Section 190(1) (c) of the Code, 1973 when he has knowledge of the same. That knowledge the Magistrate may derive from or without a police report so as to bring the foundation of cognizance under Section 190(1)(c). The same object can even be achieved under clause (b) of sub-section (1) of Section 190 of the Code when a police report is submitted under section 173(2) for that report has to particularize whether any offence appears to have been committed besides mentioning other particulars. The police report may postulate that an offence has or has not been committed and on the placing of it before the Magistrate, requesting him to apply his

judicial mind thereon, the Magistrate is taken to have taken cognizance of the matter.

30. We have considered the rival submissions of the parties.

31. The petitioner's argument is based on two vital points namely, cognizance taken by the Learned Special Judge on the relevant date in connection with this case was bad in law since the FSL Report (chemical examiner's report) was not available before the Learned Court. The second point where the petitioner urges that the laboratory cannot directly send the chemical examiner's report to the Learned Trial Court.

32. So far as the first point is concerned this Court finds that the term 'cognizance' has not been defined either in the definition clause or anywhere in the Criminal Procedure Code (henceforth 'the Code' in short). However, the term 'cognizance' indicates a stage when the Learned Court is primarily satisfied about the possible occurrence of any offence defined under the law. The term 'cognizance' denotes the approval of the Learned Court to proceed further in search of truthfulness of the allegation. The Code prescribes different checks and balances at different stages of the proceedings. While in the initial stage when the court is primarily satisfied that there may have been a possibility of the alleged offence being committed at the relevant point of time, the cognizance of possible occurrence of such offence can be taken. The stage of framing of charge has prescribed scrutiny of the materials brought before the court after an enquiry or investigation on a

higher standard. The submission of the learned counsel of the petitioner in this case, in effect, shows that he needs that higher standard of scrutiny by the court is to be done at the time of taking cognizance of the offence, which is akin to the stage of framing of charge. Probably, that is not the intention of the legislature. Taking cognizance of offence by the court is at the nascent stage of the proceeding when the court takes judicial notice of the offence. In other words, when the court considers that allegation is of such a nature that further proceeding under the Code is necessary, it takes cognizance. The stage of taking cognizance cannot be equated with the stage of framing of charge. In order to check frivolous cases or false claims, the Code prescribes a higher standard of scrutiny of materials on record at the time of framing of charge. If there is any false implication or non-availability of certain essential documents to prove the claim of the prosecution, the Learned Trial Court has the authority to discharge the accused at the time of framing of charge for such non-availability of documents or essential materials but the stage of framing of charge cannot be equated with the stage of taking cognizance by the Learned Trial Court.

33. According to the petitioner, the Learned Trial Court should have considered all materials before taking cognizance of the offence and as in this case the chemical examiner's report was not before the Learned Trial Court, taking cognizance is bad in law. Such a proposition, in essence, postulates that if the FSL Report is not submitted along with the

chargesheet or at the time of submission of the charge sheet, the criminal proceeding should be aborted immediately.

34. This view cannot be accepted. If there are other sufficient materials on record to persuade the Learned Court to hold that the investigating agency has prima facie established the commission of offence, the proceeding should continue further. The Code does not prescribe any power to the concerned court to defer its decision of taking cognizance when the primary charge sheet is submitted before it. In this case, the sample of contraband article was sent to the laboratory but unfortunately the laboratory could not submit the report at the time of submission of the primary charge sheet. But, subsequently, it submitted the chemical examiner's report before the Trial Court. If we rely upon the submission of the learned counsel of the petitioner, it would have a disastrous effect on the criminal proceedings. Let us imagine a situation after accepting the argument of the learned counsel of the petitioner that the court should consider the FSL Report at the time of taking cognizance, then what would happen if the FSL Report is not there when the primary charge sheet is filed by the investigating agency? If the court at the time of taking cognizance discloses that he is unable to take cognizance only because of non-availability of chemical examiner's report, and discharges the accused, then, what would happen if, say, after two months of the expiry of the statutory period the laboratory reports that the seized articles are covered under NDPS Act.

35. In that case, can the court start proceedings *de novo* against the accused who has already been discharged for non-availability of the chemical examiner's report at the time of taking cognizance? Therefore, the submission of the learned counsel in this regard does not impress us that at the time of taking cognizance all documents including FSL Report are required to be produced before the court.

36. It appears that delay in submission of FSL Report may be beyond the control of the investigating agency and it is undoubtedly a 'systemic' delay. However, the Code prescribes enough power to the Learned Trial Court/Magistrate to take cognizance on the basis of Magistrate's own information also.

37. However, in this case, it appears that the right of statutory bail has been extinguished as soon as the FSL Report becomes part of the record of the Court. During that period the petitioner did not exercise his right of statutory bail. In view of judicial decisions in Sanjay Dutt's case (*supra*), it has now become settled that the petitioner is under a duty to exercise his right of statutory bail. In this case, the petitioner did not exercise his right of statutory bail before 09.07.2024. Therefore, the Learned Public Prosecutor's submission has merits.

38. So far as regards, the allegation that laboratory cannot directly send the FSL Report to the concerned Court, we recollect that on 18.02.2025 in ***CRM (NDPS) 1627 of 2024 (Delwar Sk @ Delwar Sk Vs. of State of West***

Bengal) this Bench was of the view that there is no embargo upon the laboratory in sending such report to the court concerned directly. We reiterate the said proposition in this case also.

39. 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 the 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 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 a 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. 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.

40. The petitioner is unable to show that such direct transmission of the report to the Learned Trial Court causes any prejudice or harm to him.

41. Needless to mention, 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 report of 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.

.....”

42. Therefore, as the report of the chemical examiner can be tendered in evidence without calling him as a witness, it goes to show how much reliance has been placed upon such a 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.

43. 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) of the Code has authorized the Learned Trial Court to act on his own information or on a report other than that of the police officer. As such, we do not find that the petitioner is able to overcome the restrictions of Section 37 of NDPS Act and, accordingly, the prayer for bail stands rejected.

44. However, in view of the decision of **Rakesh Kr. Pal (supra)** and **M. Ravindran (supra)** it appears that the direction of the Hon'ble Apex Court that the petitioner should have been intimated about his right of statutory bail has not been complied with and that is indeed a fault on the part of the Learned Trial Court and also the concerned learned advocate of the petitioner. However, by our order dated 18.02.2025 in **CRM (NDPS) 1627 of 2024 (Delwar Sk. Vs. State of West Bengal)** we have already directed the

Learned Special Judges dealing with NDPS Act henceforth strictly to follow the directions issued by the Hon'ble Apex Court in the above noted case.

45. In view of the above CRM (NDPS) 1883 of 2024 is disposed of.

46. 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.)