

**IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
Criminal Miscellaneous Jurisdiction
Appellate Side**

Present:

The Hon'ble Justice Md. Shabbar Rashidi

CRM (M) 172 of 2025

**Rajesh Kumar Gupta
Vs
The State Of West Bengal**

For the petitioner : Mr. Janardan Periwal, Adv.
: Ms. Bikash Singh, Adv.

For the State : Mr. Aditi Shankar Chakraborty, Adv.
: Mr. Kallol Nag, Adv.

Hearing concluded on : July 10, 2025

Judgment on : July 11, 2025

Md. Shabbar Rashidi, J.

1. This is an application seeking bail in connection with Matigara Police Station Case no. 184 of 2025 dated March 18, 2025 under Section 103(1)/61(2)(a)/3(5) of B.N.S.S.
2. At the time of hearing of the bail application in spite of being invited by the Court, the petitioner did not make

any submission with regard to the merit of the case for the purpose of bail.

- 3.** It was urged on behalf of the petitioner that the petitioner was arrested in connection with the case on March 18, 2025. He was produced before the Jurisdictional Court and with a prayer for Police Custody which was allowed. Later on a further prayer of police remand was also allowed. It was further contended on behalf of the petitioner that upon completion of the statutory period of custody, the petitioner filed an application for bail under Section 187(3) (i) of B.N.S.S. for default bail with an put-up application. The prayer of the petitioner for putting up the case on the day's list was allowed by learned Additional Chief Magistrate, Siliguri and the case was supposed to be listed at 2 p.m. in the usual course of business. The learned advocate for the petitioner further submitted that the G.R.O. was not authorized to place the record at 10.05 a.m. without prior application even if charge sheet was received in the case. According to the learned advocate for the petitioner the right to get

statutory bail accrued at 00.00 hrs. on June 16, 2025. Such right was availed by the petitioner at the first opportunity available. Learned advocate for the petitioner also submitted that no charge sheet was filed by the investigating authority until June 16, 2025. The petitioner filed an application seeking statutory bail on June 16, 2025 stating, inter alia, that the statutory period of being in custody was reached and the petitioner was entitled for statutory bail. Such application was turned down by learned Additional Chief Magistrate.

4. It has been submitted on behalf of the learned advocate for the petitioner that since the statutory entitlement of the petitioner being released on bail had crystallised at 00.00 hrs. On June 16, 2025, the petitioner was entitled to be released on bail. In support of his contention, learned advocate for the petitioner relied upon an unreported judgment of this Court delivered in **CRM (NDPS) 1509 OF 2024 (Rajiv Mondal @ Rajib vs. The State of West Bengal)** and in **Criminal Appeal Nos. 701-702 of 2020** rendered by the Hon'ble Supreme

Court of India in the case of ***Enforcement Directorate, Government of India vs. Kapil Wadhawan & anr. Etc.***

5. On the other hand, learned advocate for the State submits that charge sheet was submitted by the investigating agency before the petitioner prayed for bail. In such view of the facts, the petitioner was entitled for being released on statutory bail.
6. Having heard learned advocate for the petitioner for the parties and on perusal of the materials placed before this Court, it appears that the petitioner was arrested and has been in custody since March 18, 2025. The case at hand involves Section 103(1) of the B.N.S.S. Having gone through the order passed by the learned Additional Sessions Judge dated June 23, 2025, it appears that the learned Sessions Judge noted that the case record revealed that the charge sheet in the case dated June 15, 2025 was filed against the petitioner and two others on June 16, 2025. It was further noted that learned Chief Additional Chief Magistrate, Siliguri took cognizance prior

to filing of the bail application by the accused petitioner before the learned Additional Chief Magistrate on June 16, 2025. Learned Sessions Judge further noted that the charge sheet was already filed before the bail petition was filed on behalf of the petitioner.

7. Accordingly, learned Sessions Judge proceeded to reject the prayer for bail of the petitioner.

8. In the case of ***Enforcement Directorate, Government of India(supra)***, it was held by the Hon'ble Supreme Court that,

“50. Since there exists vacuum in the application and details of Section 167 CrPC, we have opted for an interpretation which advances the cause of personal liberty. The accused herein were remanded on 14.05.2020 and as such, the chargesheet ought to have been filed on or before 12.07.2020 (i.e. the sixtieth day). But the same was filed, only on 13.07.2020 which was the 61st day of their custody. Therefore, the right to default bail

accrued to the accused persons on 13.07.2020 at 12.00AM, midnight, onwards. On that very day, the accused filed their default bail applications at 8.53 AM. The ED filed the chargesheet, later in the day, at 11.15 AM. Thus, the default bail Applications were filed well before the chargesheet. In Ravindran(supra) and Bikramjit(supra), which followed the Constitution Bench in Sanjay Dutt(supra) it was rightly held that if the accused persons avail their indefeasible right to default bail before the chargesheet/ final report is filed, then such right would not stand frustrated or extinguished by any such subsequent filing. We therefore declare that the stipulated 60/90 day remand period under Section 167 CrPC ought to be computed from the date when a Magistrate authorizes remand. If the first day of remand is excluded, the remand period, as we notice will

extend beyond the permitted 60/90 days' period resulting in unauthorized detention beyond the period envisaged under Section 167 CrPC. In cases where the chargesheet/final report is filed on or after the 61st /91st day, the accused in our considered opinion would be entitled to default bail. In other words, the very moment the stipulated 60/90 day remand period expires, an indefeasible right to default bail accrues to the accused."

9. In Rajib Mondal (supra), it was held that, default bail can be granted even on oral prayer and no written application need be made. Even the Court is unable to take up an application for bail for whatever reason and during pendency of the application, a valid charge sheet is filed, the same cannot adversely affect the indefeasible right that arose in favour of the accused persons, which he has exercised by filing an application.

10. However, the facts and circumstances in the case at hand are completely different. The record goes to show that the charge sheet was filed prior to the accused having exercised his right by filing an application to avail the indefeasible right to be released on bail. The materials on record also go to show that the charge sheet was received at 10.05 a.m. on June 16, 2025 and bail petition was filed at 11 a.m. The learned advocate for the petitioner submitted that the right of statutory bail accrued upon him at 00.00 hrs on June 16, 2025 which he exercised by filing an application at 11 a.m. on June 16, 2025 when the Court commenced. As such, although the right to be released on statutory bail, as contended by learned advocate for the petitioner, might have accrued at 00.00 hrs. on June 16, 202, it was admittedly not availed until 11 a.m. on June 16, 2025. The charge sheet was received in the Court before such right was exercised by filing appropriate application.

11. It is a trite law to that the indefeasible right occurring to the accused is enforceable only prior to the

filing of the challan/ charge sheet and it does not survive or remain enforceable on the challan/ charge sheet being filed, if already not availed of. Once the challan/ charge sheet has been filed, the question of grant of bail has to be considered only with reference to the merits of the case under the provision relating to grant of bail to an accused after filing of the challan/ charge sheet. If that right had accrued to the accused but it remained unenforced till the filing of challan/ charge sheet then there is no question of its enforcement thereafter, since it is extinguished the moment its challan/ charge sheet is filed.

12. As noted above, the charge sheet was submitted by the investigating authority before the petitioner exercised his entitlement to be released on bail.

13. In such view of the facts and circumstances, since the right to be released on statutory was bail not availed by the petitioner by filing an appropriate application and that a charge sheet was filed before the petitioner applied for statutory bail, I am of the opinion that the petitioner's

right to get an statutory bail extinguished with the filing of such charge sheet and as such he was not entitled for the such bail.

14. In the facts and the circumstances, the bail prayer of the petitioner is rejected.

15. **CRM (M)/172/2025** is accordingly, disposed of.

[MD. SHABBAR RASHIDI, J.]