

**IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
(CRIMINAL MISCELLANEOUS JURISDICTION)**

PRESENT:

THE HON'BLE DR. JUSTICE AJOY KUMAR MUKHERJEE

CRM (NDPS) 300 of 2025

**Rahim Ali
Vs.
The State of West Bengal**

For the Petitioner : Mr. Sourav Ganguly
Mr. Anirban Banerjee
Mr. M. Rahaman
Mr. Soumyajit Laskar
Mr. Gopal Roy
Ms. Rishita Chakraborty
Mr. Bibhash Kumar Nandi

For the State : Mr. Aditi Shankar Chakraborty, Ld. APP
Dr. Arjun Chowdhury

For the Union of India : Mr. Sudipto Kumar Majumder , Ld. DSGI
Mr. Sourav Kar

Heard On : 04.11.2025

Judgment on : 07.11.2025

Dr. Ajoy Kumar Mukherjee, J.

1. In the instant case allegations levelled in the FIR are to the effect that on 10.10.2024 at about 2.20 hrs , the defacto complainant acting on a source information conducted a raid at the Padatik Express when it

stationed at platform no.3 of NJP Railway Station and he had apprehended petitioner, from whose possession 62.735 kg of Ganja was recovered.

2. Mr. Sourav Ganguly learned counsel appearing on behalf of the petitioner submits that the investigating officer after completion of investigation submitted charge sheet dated 07.04.2025 without forensic examination report and thereafter he filed supplementary charges along with forensic science report but before filing the supplementary charge sheet, the petitioner made a bail prayer before the court below which was turned down.

3. Being aggrieved by the said order Mr. Ganguly on behalf of the petitioner prayed for default bail mainly on the ground the charge sheet submitted by the investigating agency dated 07.04.2025 without chemical examination report, is an incomplete report.

4. His further contention is that such application for default bail under section 167 (2) of the Cr.P.C. can directly be filed before High Court without first approaching before magistrate or the court original jurisdiction and in this context he relied upon paragraph 40 of the Apex Court of judgment in ***Rakesh Kumar Paul Vs. State of Assam*** reported in **(2017) 15 SCC 67**.

5. In support of his contention that the charge sheet submitted by the investigating agency without the forensic science laboratory report cannot be termed as complete charge sheet, he contended that the said issue is pending before Hon'ble apex Court and relying upon the judgment of ***Md. Arbaz Vs State (NCT of Delhi)*** reported in **2022 SCC Online SC 1673** he argued since main issue is pending before Apex Court and since it would take some time and since the petitioner is in custody for more than one

year, he may be released on interim bail. In this context he also relied upon the judgment of ***Suleman Vs. State (Government of NCT of Delhi)*** (SLP) (Cri) No. 1929/2023 where also court held that considering the length of incarceration, the petitioner shall be released on bail subject to appropriate condition. He further relied upon a recent judgment of the Apex Court decided on April 21, 2025 in ***Jabir Kha Vs. State of M.P.***, SLP (Cri) No. 2993/2025 dealing with similar issue, where commercial quantity of two types of contraband was recovered and the charge sheet was filed without FSL report. It was contended that the charge sheet was hurriedly filed only with a view to defeat the right of appellant to get the statutory bail. Considering the facts and circumstances of the case the appellant in that case was enlarged on bail. In this context he also referred the judgment of ***T.N. Godavarman Thirumulpad Vs. Union of India and Ors.*** Writ petition [(Civil) No. 202 of 1995] wherein Apex Court held that the High Court no doubt is constitutional court, however in judicial matters, when the Apex court is seized of the matter it is expected of the High Courts to keep their hands away.

6. In view of aforesaid discussion and the law laid down by the Apex court Mr. Ganguly on behalf of the petitioner submitted that the petitioner may be enlarged at least on interim bail, since the main issue as to whether charge sheet without FSL report can be termed as complete charge sheet and whether it gives rise to an accused to get statutory bail or not is pending before decision by the Apex Court.

7. Ld. Counsel appearing on behalf of the State Dr. Arjun Chowdhury submits that the NDPS Act is a special statute and has been enacted by the

legislature to curb the menace of drug trafficking throughout the territory of India and also cross border trafficking of narcotics. He further submits that when the statute makes the grant of bail under section 37 to be put under special condition, the court dealing with a case under the said special statute should be very cautious while granting bail to an accused. The present case is not of such a nature that the implication of the accused person in the offence is totally improbable or that the court is of the view that his implication with the case is false.

8. He further submitted that the petitioner relied upon the judgment of ***Ritu Chhabaria Vs Union of India and Ors.*** reported in **(2024) 12 SCC 116** where it was held that filing of incomplete charge sheet without completing investigation and without necessary documents or report cannot be treated as a final report and the accused right to default bail remains unaffected. However, thereafter in ***Directorate of Enforcement Vs. Manpreet Singh Talwar*** reported in **2023 SCC online SC 545** a Division Bench of the Apex Court directed that any application for default bail in any court based on the judgment of **Ritu Chhabaria Case** (supra) shall be deferred until further orders. The Hon'ble Court also took the view that the question whether the omission of FSL report renders a charge sheet 'incomplete' for the purpose of default bail is a substantial question of law and must be referred to a Larger Bench.

9. He further submitted that the Apex Court vide order dated 12.05.2022 clarified its earlier direction dated 01.05.2023 passed in the same matter observing that the interim order dated 01.05.2023 shall not preclude any trial Court or High Court from considering an application for grant of default

bail under section 167 Cr.P.C. independent of and without relying on the judgment dated 26.04.2023 in **Ritu Chhabaria Case** (Supra). He further submits although on 31st July, 2025 a review a petition (R.P.) CRL No. 124 of 2025 in Writ Petition (Cri) No. 60 of 2023 was filed by the CBI challenging the judgment in **Ritu Chhabaria** (Supra) case but said review petition was dismissed by the Apex court on the ground that no justifiable reason existed to entertain the review. It is his further contention that the dismissal of the review petition signifies that the legal position enunciated in **Ritu chhabaria** (supra) that an incomplete charge sheet cannot defeat the right to default bail under section 167 (2) Cr.P.C. remains in place as the ratio, though its operation has been kept in abeyance by an interim order in another petition i.e. in **Directorate of Enforcement Vs. Manpreet Singh Talwar** (Supra) and the issue is pending for consideration before a Larger Bench of the Supreme Court.

10. Therefore the issue needs to be adjudicated in the present context as to whether pending disposal of the main question by the Apex court, the petitioner is entitled to be released on interim bail on the ground that the prosecution submitted charge sheet for the first time without FSL report and before filing supplementary charge sheet with the FSL report, the petitioner has made a prayer before the trial court for granting bail though not in the form of statutory bail.

11. Mr. Sudipto Kumar Majumder, Ld. DSGI submits the law as it stands today is that a charge sheet cannot be said to be incomplete merely because it does not contain FSL report. On the contrary it is said to be complete if

the materials and evidence before the court along with charge sheet are sufficient to take cognizance by a court.

12. I have considered submissions made by both the parties.

13. Needless to say that several High Court on the same issue passed orders which are contradictory to each other and thus the issue i.e. whether a charge sheet without FSL/examiner's report in an NDPS Case can be termed as an incomplete report under section 173 of the Code of criminal procedure 1973 is now pending for consideration before the Apex Court in a bunch of Special Leave Petition (Cri) in ***Md. Arbaz & Ors. case.***

14. A division Bench of this court in ***Ananta Burman Vs. State of W.B.*** [CRM (NDPS) 1617 of 2024 along with other applications] while dealing with the same issue i.e. whether charge sheet without the chemical examination report makes the investigation incomplete and whether such charge sheet entitles the accused in an NDPS case to default bail, observed that though the said issue is pending before Supreme Court but the supreme Court has not decided such issue finally and at present the law on the subject as its stand today lays down 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. Therefore 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 (para 68 & 69). It was also held in the said judgment that the ratio laid down by Division Bench in ***Idul Miya's case*** [CRM (NDPS) 1359 of 2024] is not a good law.

15. The Apex Court in ***Hanif Ansari Vs. State*** (Government of NCT of Delhi) reported in **2024 SCC Online SC 537** relied upon the case of ***Central***

Bureau of Investigation Vs. Kapil Wadhawan, reported in **2024 INSC 58**

considered similar question in para 6 as follows:-

“6..The lead matter on this point is the case of Directorate of Enforcement v. Manpreet Singh Talwar [SLP(Crl.) No. 5724 of 2023], which is still pending before a three-Judge Bench of this Court. The case of Mohd. Arbaz (supra) stands tagged with this matter. There are other orders also passed by this Court tagging, where similar questions of law are involved. But interim bail has not been granted in every tagged petition. It has been declined in the cases of Pabitra Narayan Pradhan v. The State (NGT) of Delhi [SLP (crl.) Diary No. 43791 of 2023], Shankar @ Shiva Maheshwar Savai v. The State of Gujarat (order dated 03.03.2023 in SLP (Crl.) No. 2562/2023) but in none of these cases, it has been finally determined as to whether failure on the part of the prosecution to include the FSL report along with the chargesheet in relation to offences under the Narcotic Drugs and Psychotropic Substances Act, 1985 would automatically entitle the accused to default bail or not. Further, certain other factors like the quantity of the contraband articles being seized and period of incarceration were considered in the aforesaid orders while granting interim bail to the petitioner(s)/applicant(s).”

16. The Apex Court in that judgment concluded while answering the same in para 8 that in view of their being diversity of views of different Benches of the Court even on the question of granting interim bail, the Supreme Court is of the view that a larger Bench may decide the question as to whether failure on the part of the prosecution to include the FSL report pertaining to the seized contraband articles along with the charge sheet, within the time specified in section 167(2) of the Code read with section 36A of the NDPS Act, would entitle the accused to default bail or not.

17. In view of aforesaid discussion and the position of law as it stands today and also considering the materials placed before me, which discloses that the petitioner has failed to overcome the statutory restrictions imposed in section 37 of the NDPS Act, the prayer for bail made by the petitioner stands rejected.

18. CRM (NDPS) 300 of 2025 stands disposed of.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, on priority basis on compliance of all usual formalities.

(DR. AJOY KUMAR MUKHERJEE, J.)