

01.11.2023

Court No.8

Item. 08

(Suvendu/Sandip)

CRM(NDPS) 1779 OF 2023

In Re: An application for Bail under Section 439 of the Code of Criminal Procedure, 1973 filed in connection with English Bazar Police Station Case No. 546 of 2023 dated 07.04.2023 under Sections 21(c)/25/27A/29 of the NDPS Act, 1985 pending in the Court of the learned Additional District & Sessions Judge, 3rd Court, Special Court at Malda being NDPS Case No. 51 of 2023.

And

In the matter of: Sanjay Kashyap & Anr.

.Petitioners.

Mr. Purbayan Chakraborty
Mr. Swastika Chowdhury

for the Petitioners.

Mr. Swapan Banerjee
Mr. Suman De

for the State.

1. Learned counsel for the petitioners argues that there are several contraventions of the NDPS Act and as such, the rigour of Section 37 of the NDPS Act is not applicable to the present case. It is contended that in the present case, the charge-sheet has been filed within the statutory period of 180 days, but without the CFSL report.
2. By placing reliance on a coordinate Bench judgment in the case of *Rakesh Sha Vs. The State of West Bengal* in CRM (NDPS) 552 of 2023, it is argued that where the material placed before the Court falls

significantly short of the statutory mandate of the proviso to Section 36A(4) of the said Act, bail ought to be granted to the petitioner.

3. Learned counsel for the State vehemently opposes such submission and submits that the provisions of Section 36A of the NDPS Act have been duly complied with. By placing reliance on Section 36A(4), it is pointed out that CFSL report is not a mandatory constituent of the charge-sheet. For this purpose, learned counsel also places reliance on Section 173 of the Criminal Procedure Code, which specifically contemplates that Medical Examination Report only has to be filed in certain offences, which do not come within the purview of the present case.
4. Learned counsel also places reliance on a judgment of the Supreme Court reported at *1998 Supreme Court Cases (Cri) 1578 [Jagdish Budhroji Purohit Vs. State of Maharashtra]* for such proposition. The State also places reliance on a Special Bench judgment of this court rendered in the context to argue that the CFSL report is not mandatory for the purpose of consideration of grant of bail.
5. A perusal of the provisions of Section 36A(4) of the NDPS Act shows that for the purpose of offences punishable under Sections 19,24 or 27A or for offences involving commercial quantity, the references in Sub-section (2) of Section 167 of the Code of Criminal Procedure relating to 90 days shall be construed as 180 days. The proviso stipulates that if it is not possible to complete the investigation within the said period, the Special Court may extend the said period up to one year on the report of the Public Prosecutor indicating the progress

of the investigation and the specific reasons for the detention of the accused beyond the said period of 180 days.

6. Insofar as the judgment of the coordinate Bench is concerned, the same was rendered in the context of grant of bail where the Division Bench observed that filing of a charge-sheet without the examination report in relation to an offence under the NDPS Act is an exercise in futility and raises the presumption of the investigating officer filing a cipher only for the sake of closing the first window of 180 days under the proviso to Section 36A(4) of the Act. In such circumstances, the Court granted bail.
7. However, Section 36A(4) or its proviso do not specifically stipulate the requirement of filing of a CFSL report along with the charge-sheet.
8. But the ratio laid down in the coordinate Bench judgment also finds currency in the present context. Insofar as the Supreme Court judgment cited by the State is concerned, the same is irrelevant for the purpose of present adjudication. In the said case, only at the stage of trial and for considering the conviction and its justification, the Supreme Court observed that even if the Exhibits 61 to 67, including the report, were ignored, there was sufficient evidence on record to show that the contraband article was found from the appellant's factory. The said ratio was laid down in the context of the said case, at the stage of conviction, which is the final stage of trial and has no bearing at the present stage of the present matter.
9. Insofar as the judgment of the Larger Bench of this Court is concerned, the same clearly indicates that the institutional laches on

the part of the State in conduct of the investigation cannot be a deterrent for the Courts to detain the accused person further.

10. It was considered that in spite of the non-filing of the CFSL report, if there are other circumstances which incriminate the accused, the accused may be kept in custody.
11. However, it is found from the proviso to Section 36A(4) of the NDPS Act as well as the judgment of the Larger Bench that the test is whether there was any basis for further incarcerating the accused persons during trial. We do not find from the materials placed in this case that there is any such justification.
12. Moreover, although the proviso to Section 36A(4) of the NDFPS Act has been complied with by filing the charge-sheet within 180 days, the same was merely lip-service paid to the provisions of the statute. Insofar as the rigour of Section 37 of the NDPS Act is concerned, the same has to be strictly construed since it operates against the fundamental rights of personal liberty of a person. So considered, we find that there is nothing on record to show that till date any CFSL report has been submitted by the investigating authorities. We do not find anything from the materials on record to indicate that any supplementary charge-sheet has also been filed as of today. Hence, in the absence of the CFSL report, we do not find any reason to obligate the petitioners with the rigour of Section 37 of the NDPS Act.
13. Seen from such perspective and considering the fact that the initial charge-sheet has already been filed and the CFSL report is not yet on board before the trial court due to institutional laches, we are inclined

to grant bail to the petitioners on the premise that rigour of Section 37 of the NDPS Act is not applicable to the petitioners.

14. Accordingly, CRM (NDPS) 1779 of 2023 is allowed, thereby granting bail to the petitioners on condition that the petitioners shall furnish individual bond of Rs. 10,000/- (Rupees Ten Thousand only) each, with two sureties of like amount each, one of whom must be local, to the satisfaction of the Special Court under NDPS Act, Malda.
15. Further, the petitioners shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with facts and circumstances of the case so as to dissuade such person from disclosing such facts to any police officer or the court and/or tamper with the evidence in any manner whatsoever.
16. The petitioners shall also not leave the territorial jurisdiction of the trial court during the entire period of trial and shall attend each and every date of trial.
17. In default of compliance of any of the above conditions, the bail granted to the petitioners shall stand automatically cancelled.

(SABYASACHI BHATTACHARYYA, J.)

(PARTHA SARATHI CHATTERJEE, J.)

