

In the Court of the Ld. Addl. Sessions Judge, 1st Court (NDPS), Cooch Behar
NDPS Case No. 12 of 2025
(Arising out of NCB Crime No. 03/NCB/SLG/2025 dated 05.03.2025)

Order No. 17
dated 01.09.2025

Record is put up today at about 10:30 AM on the prayer of the prosecution.

I.O. SI Santanu Guha of NCB Zonal Unit has appeared by filing hazira and submitted Final Complaint u/s 36A(1)(d) of the NDPS Act for commission of an offence u/s 8(C) and punishable u/s 20(b)(ii)(C)/25 of the NDPS Act against accused Biplab Chaki who is in custody in connection with NCB Crime No. 03/NCB/SLG/2025 dated 05.03.2025 along with relevant documents.

Seen. Let it be kept with the record.

Ld. Special PP for NCB is present.

On perusal of the final complaint and materials on record as well as documents lying in the final report it appears that there are prima facie materials for the offence punishable u/s 20(b)(ii)(C)/25 of the NDPS Act against accused Biplab Chaki and therefore cognizance for the said offence is taken.

After submission of Final Complaint/ Charge-sheet and after taking cognizance of the offence, a put up petition along with a bail petition is also filed today at about 10:55 AM on behalf of accused Biplab Chaki praying for bail on the ground as stated therein.

Copy served.

Ld. Special PP for NCB and Ld. Advocate for the accused person are present.

Now the bail petition is taken up for hearing.

Heard both sides.

It is submitted by the Ld. Advocate on behalf of the above accused Biplab Chaki by filing the petition that he has been falsely implicated in this case and is in custody since 05.03.2025 i.e. more than 180 days but till now the Charge-sheet has not yet been submitted by the I.O. in this case as this case leads commercial quantity. For the aforesaid reasons, the right of default/statutory bail has been accrued after expiry of 180 days from the dates of first production of the accused person i.e on 05.03.2025 before this Court. So, he may be granted default bail as per section 187(3) BNSS.

He further submits that though charge-sheet has been submitted and received today before filing of his default bail application and statutory period of 180 days has already over but within that period no charge-sheet has been submitted by the Investigating Officer when the right of default bail of the accused has been accrued. He further submitted that no such bail petition is pending or rejected by or before the Hon'ble Court. In support of his submission he has referred the decision of the Hon'ble Apex Court in *Enforcement Directorate Government ofVs. Kapil Wadhawan* in *Criminal Appeal Nos. 701-702 of 2020 decided on dated 27.03.2023*.

Ld. Special PP for NCB vehemently opposes the bail prayer when huge quantity of narcotic materials, Ganja like substance of 258.8 kg was recovered and seized in this case and there are sufficient incriminating materials against the accused person. He further submits that the ratio of the decision of the Hon'ble Apex Court cited by the Ld. Advocate for the defence is not applicable in this case as the fact and circumstances of this case is not similar to the fact and circumstances of that case as in this case Final Complaint has been filed before application for prayer for default bail. In support of his submission he has cited a decision of the Hon'ble Apex Court in *Rabiprakash Singh @ Arvind Singh Vs. State of Bihar dated 20.02.2015* wherein it was held that while

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computing period of 90 days, the day on which the accused was remanded to the Judicial Custody should be excluded and the day on which chalan is filed in the Court, should be included. He further submits that there is mandatory power and restriction as per provision of section 37 of NDPS Act for granting bail to the above accused person and the prayer for default bail as submitted should be rejected.

I have perused the case record, Final Complaint with connected documents and decisions of the Hon'ble Apex Court as cited by the Ld. Advocate of both the parties.

Having regard to the submissions of both sides and on perusal of the case record, I find that the instant case was started and registered on 05.03.2025 under NDPS Act when above accused was brought under arrest for commission of offence punishable u/s 20(b)(ii)(C)/25 of NDPS Act where huge quantity of Ganja like substance (258.8 Kg) was recovered from the house of the above accused person and the accused was produced before this Court on that date after arrest and since then he is in custody.

It also appears that today at about 10:30 AM Final Complaint has been filed by the I.O. against accused Biplab Chaki for the alleged offence and cognizance of the offence was taken by this Court today. Subsequently at about 10:55 AM a prayer for default bail was filed on behalf of above accused person as the charge-sheet was not submitted within the statutory period but submitted after expiry of statutory period for which accused claimed default bail.

We know that the right under section 167 (2) of Cr.P.C to be released on bail on default if charge-sheet is not filed within statutory period from the date of first remand is not an absolute or indefeasible right. The said right would be lost if charge sheet is filed and would not survive after the filing of charge sheet.

On perusal of the decision of the Hon'ble Apex Court cited above by the Ld. Advocate for the accused person wherein the Hon'ble Apex Court was pleased to observe that "*the default bail application were filed well before the charge-sheet. In Ravindra (supra) and Vikramjit (supra) which followed the constitution bench of the Hon'ble Apex Court in Sanjay Dutt (supra) it was rightly held that if accused persons avail their indefeasible right to default bail before the charge-sheet/ Final Report is filed, then such right would not stand frustrated or extinguish by any such subsequent filing.*"

It was further held and observed by the Hon'ble Apex Court in Criminal Appeal Nos. 185-186 of 2022 in *Serious Fraud Investigation Office Vs. Rahul Modi & Ors* decided on 07.02.2022 that no prior application for bail was filed in Madar Sheikgh (supra) though the charge-sheet was submitted after the expiry of statutory period. The right to bail cannot be exercised once the charge-sheet has been submitted and cognizance has been taken.

In the instant case, the default bail application is filed after submission of charge-sheet/ Final Complaint and taking cognizance of the offence but no default bail application was filed or pending prior to and at the time of filing Final Complaint even after expiry of statutory period of 180 days. Therefore, the submission of the Ld. Advocate for the accused person is not applicable in the fact situation in the present case.

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Apart from that in this case huge quantity of narcotic substance (258.8 kg of Ganja) has been recovered and seized from the house of the accused person which is commercial quantity in nature and and Final Complaint has already been submitted u/s 20(b)(ii)(C)/25 of NDPS Act by the I.O. for which no such benefit could have been extended to him in view of section 37 of NDPS Act in this regard.

Considering all aspects and the nature of offence as well as the decisions of the Hon'ble Apex Court mentioned above, I am not inclined to enlarge the accused person on bail. Hence prayer for bail in respect of accused Biplab Chaki stands rejected.

The bail petition is hereby disposed of.

Todate (10.09.2025) for production and copy.

Dictated & Corrected by,

Addl. Sessions Judge, 1st Court,
(NDPS) Cooch Behar.

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(NDPS) Cooch Behar.