

NDPS Case No. 28 of 2024

Present : Mukul Kumar Kundu
Additional Sessions Judge,
1st Court, (NDPS), Cooch Behar.
JO Code No. WB00654,

Order No. 18
dated 04.12.2024

Today is fixed for production and charge.

Accused Noor Hossain is produced from J.C. and remanded to further J.C till 17.12.2024.

A bail petition is filed on behalf of above accused praying for bail on the ground stated therein.

Ld. PP in charge and the Ld. Lawyer of the accused are present.

Now the record is taken up for consideration of charge at first.

On perusal of the case diary and the materials on record I find that there are sufficient materials for the offence under section 21(C) of NDPS Act against the accused Noor Hossain. Accordingly charge under section 21(C) of NDPS Act is framed against him. The substance of accusation for the aforesaid case is read over and explained to the accused person to which he plead not guilty by saying "আমি নির্দোষ" and claim to be tried.

Formal charge has been framed separately in detail on a separate sheet and kept with the record.

Now the bail petition filed today is taken up for hearing.

Heard both sides.

It is submitted by the Ld. Advocate for the accused that accused in custody since 12.05.2024 and charge-sheet u/s 21(C) of The NDPS Act submitted by the I.O. on 11.11.2024 without FSL report which is incomplete report u/s 173 of CrPC and therefore, the accused is entitled to statutory bail/ default bail in view of decision of the Hon'ble Calcutta High Court in case of Idul Mia Vs. State in connection with CRM (NDPS) No. 1359 of 2024. In support of his submission he has cited the above decision of the Hon'ble High Court, Calcutta.

It is also submitted by the Ld. Advocate on behalf of the above accused person by filing an affidavit that no bail petition is pending or rejected before/ by the Hon'ble Court.

Ld. PP in charge submits that charge-sheet has been submitted beyond the statutory period of 180 days as the case relates to commercial quantity under section 21(C) of The NDPS Act and FSL report has not yet been received or collected and therefore he prays for passing necessary order in this regard.

Perused the materials on record and submission.

I have also carefully gone through the decision of the Hon'ble High Court as referred in the factual back drop of the instant case.

Having heard the submission of both sides and materials on record as well as case diary, I find that this is a case u/s 21(C) of the NDPS Act which relates to commercial quantity and the charge-sheet has been filed beyond the statutory period of 180 days (11.11.2024 and accused was produced on 12.05.2024) without FSL report. Our Hon'ble High Court, Calcutta in CRM (NDPS) No. 1359 of 2024 has been pleased to observed that " In view of the undisputed fact that in the present case the 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 filed beyond 180 days from the date of the petitioner and after he applied for statutory bail, we have to

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hold that upon expiry of 180 days the petitioner become entitled to statutory bail/ default bail, and the Ld. Trial court erred in not extending that the privilege to the petitioner.”

Admittedly no FSL report or chemical examination report has been submitted by the I.O. at the time of submission of charge-sheet or subsequently as report by the Ld. PP in charge though charge-sheet under section 21 (C) of The NDPS Act was filed beyond the statutory period of 180 days without FSL report and the accused is in custody since 12.05.2024 since after arrest so the accused become entitled to statutory bail/ default bail but in view of the above decision our Hon'ble Court which is squarely applicable in the fact situation of this case. Therefore bail prayer of the above accused may be allowed with certain terms and conditions.

Accordingly, accused Noor Hossain shall be released on interim bail on furnishing bond of Rs. 20,000/- (twenty thousand) with two sureties of Rs. 10,000/- (ten thousand) each one of whom must be local surety who shall file registered deed of conveyance of immovable property standing in his/ her name of the required valuation and shall also report his place of residence and also on condition not to leave the jurisdiction of this court without permission of the court and shall appear before this court on every schedule date of substantive hearing until further order and shall not intimidate the witnesses and/ or tamper with evidence in any manner whatsoever, subject to the satisfaction of Ld. CJM., Cooch Behar. Furthermore, in the event the accused fails to adhere to any of the conditions stipulated above without any justifiable cause, his bail will be canceled automatically.

This bail order is subject to the observation so made by the Hon'ble High Court, Calcutta in CRM (NDPS)- 1523 of 2024 to the effect that Hon'ble has been pleased to observe that *“We make it clear that in the event the Hon'ble Supreme Court decides the issue pending before it against the petitioner, i.e., if it is held that mere non-filing of the FSL report along with the original charge-sheet or filing of the FSL report along with the supplementary charge-sheet beyond 180 days will not entitle the petitioner to statutory bail, then this bail order shall automatically stand recalled and/or cancelled.”*

To 17.02.2025 for evidence of CSW No. 1

To 18.02.2025 for evidence of CSW No. 2

Issue summons accordingly.

Alamat be produced on the date fixed.

Prosecution to take steps.

Let a copy of this order be sent to the Ld CJM, Cooch Behar for information & necessary action.

Dictated & Corrected by,

Sd/-

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

Sd/-

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