

NDPS Case No. 49 of 2024

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

Order No. 15

dated 30.01.2025

Record is put up today.

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

Received charge sheet without F.S.L report vide charge sheet No. 14/2025 dated 24-01-2025 U/sec. 21(C) NDPS Act against sole accused **Sanatan Barman** in connection with Sitai P.S. Case No. 163/2024 dated 02-08-2024 by the I.O SI Dibakar Sarkar..

I.O has also submitted the copies of the documents in connection with the case for supplying the copies to the accused person.

I have perused the case diary along with written complaint, statement of witnesses recorded u/s 161 of Cr.P.C., seizure lists and other materials on the case diary.

After careful perusal of the case diary it appears that there is sufficient prima facie materials for the offence U/sec.-21(C) of NDPS Act against accused **Sanatan Barman**.

Accordingly, **cognizance** for the offence U/sec.-21(C) of NDPS Act is **taken** against accused **Sanatan Barman**.

Ld. PP in charge and the Ld. Lawyer of the accused persons 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 that he has been falsely implicated in this case and is in custody more than 180 days as today is the 181 days which counted from the first day of remand i.e. 03.08.2024 till today and the Charge-sheet has been submitted today by the I.O. without FSL report which is incomplete report u/s 167(5) Cr.P.C./ 187(9) of BNSS and therefore, the accused is entitled to statutory bail/ default bail. In support of his submission Ld. Advocate for the above accused cited the decision of the Hon'ble Apex Court in case of Enforcement Directorate, Govt. of India Vs. Kapil Wadhawan and Anr. in Criminal Appeal No. 701-702 of 2020 and the decision of the Hon'ble Calcutta High Court in case of Idul Mia Vs. State in connection with CRM (NDPS) No. 1359 of 2024.

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 today without FSL report beyond the statutory period of 180 days as today is the 181 days and the case relates to commercial quantity under section 21(C) of The NDPS Act and therefore he prays for passing necessary order in this regard.

NDPS Case No. 49 of 2024

Perused the materials on record and submission.

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 is filed today without FSL report after statutory period of 180 days i.e. today is the 181 days which counted from 03.08.2024 including the first remand date. In this connection our Hon'ble High Court, Calcutta in CRM (NDPS) No. 1359 of 2024 has been pleased to observe 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 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 FSL report or chemical examination report has not been submitted by the I.O. at the time of submission of charge-sheet today which was beyond the statutory period of 180 days as reported by the Ld. PP in charge and the accused is in custody since 03.08.2024 since after arrest so the accused become entitled to statutory bail/ default bail as charge-sheet is submitted without FSL report beyond the period of 180 days. The above decision of our Hon'ble Court is squarely applicable in the fact situation of this case and therefore bail prayer of the above accused may be allowed with certain terms and conditions.

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.”*

Accordingly accused Sanatan Barman shall be released on interim bail on furnishing bond of Rs. 10,000/- (ten thousand) with two sureties of Rs. 5,000/- (five thousand) each one of whom must be local surety and shall also report his place of residence and on condition to meet with the I.O. if required for the purpose of investigation 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.

To date 10.02.2025 for appearance and copies.

NDPS Case No. 49 of 2024

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

Let another copy of this order be sent to the I.O. SI Dibakar Sarkar through I.C. Sitai PS for information and taking necessary action.

Dictated & Corrected by,

Sd/-

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

Sd/-

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