

Order no. 13, Dated 24/02/2022

Accused Basarul Shaik is not produced before this Court room to avoid overcrowding in view of existing pandemic situation.

One bail petition is filed and moved on behalf of accused Basarul Shaik with fresh Vakalatnama. Copy served.

The Ld. Advocate submits that the accused has been falsely implicated in this case. He refers decision of the Hon'ble Punjab and Haryana High Court vide CRR 712 2021 Vinay Kumar @ Vicky vs. State of Haryana praying that the Hon'ble Court has granted bail in an NDPS case where charge-sheet has been submitted without chemical report. He prays for bail.

Ld. Special PP-in-charge raises objection.

Heard both sides.

Perused the bail petition and the case record.

It has been observed in the afore referred decision that the Hon'ble Supreme Court and also full bench of Punjab and Haryana High Court have held that the challan even if not accompanied by a report of chemical examiner or of the expert cannot be said to be incomplete, and that a case under NDPS Act can only survive in case the prosecution is able to establish that the articles recovered is indeed a contraband and which can only be established on the basis of its chemical examination, which is normally got done through FSL established by the govt. and that report of the FSL forms the foundation of the case of prosecution and in case the same is not there the entire case of the prosecution case falls to ground.

In the instant case the charge-sheet has been filed with the prayer to file or submit chemical examination report in future as the said could not be obtained or procured. Just because of delay in filing chemical examination report later on will not defeat the prosecution case and it is not illegal or in contravention of any law to submit the charge-sheet without chemical report, with the prayer to submit the same at the earliest as soon as it is obtained. Generally investigation in NDPS case completed within a very short span of time, but the charge-sheet or final report is not submitted earlier due to want of chemical examination report. Thus, not submitting of chemical examination report along with the charge-sheet cannot be sufficient ground for granting bail where there is a provision in the charge-sheet for filing chemical examination report soon after receiving.

It appears that prima facie huge quantity of contraband, prohibited under NDPS Act, or in contravention of NDPS Act, has been seized from the accused person. Granting of bail with regard to commercial quantity is barred under section 37 of the NDPS Act. Considering this, gravity of the offence alleged, entire facts and circumstances of this case and nature and quantity of contraband seized, the bail petition stands rejected.

The case is adjourned.

To 01.04.2022 for production, supply of copy and charge hearing.

D/c by me

Sd/-

Judge, Special Court
NDPS Act, Siliguri

Sd/-

Judge, Special Court
NDPS Act, Siliguri
WB00683