

T. R Case No. 42 of 2023
CNR No. WBHW01-006599-2023

Order No. 16 dated: 06-07-2024

Today is fixed for hearing bail petition filed by the accused persons, namely Ezaz Afzal and Md. Shamsher.

Three accused persons are produced from JC and placed on dock.

The bail petition is taken up for hearing. Heard both sides. Considered.

Perused the petition. Considered.

It is stated that accused persons were arrested on 10-12-2023 at 2.55 hours under the N.D.P.S Act. Charge sheet was filed on 12-03-2024 in contravention of prescribed format, rules, regulations, by laws etc. only to defect the accused's rights to default bail. It is stated that in Ritu Chhabaria, the Hon'ble Apex Court relied on the pendency of investigation as the ground for holding that the charge sheet filed in the case did not meet threshold of section 167(2) of Cr.P.C and could not be used as a ground to deny default bail. It is further stated that the accused persons were not present at the place of occurrence which can be revealed with one incident that no CC footage of nearest location was brought before the court. On this ground, accused prayed for bail.

On this ground accused referred a case reported in 2010 (1) SCR 555, Sanjay Kumar Kedia @ Sanjay Kedia Vs. Intelligence Officer, NCB and another, where Hon'ble Apex Court has held that if it is not possible to complete the investigation within said period of 180 days, the such time may be extended on the report of public prosecutor. He also referred another unreported judgement of Hon'ble High Court for the State of Telengana of Hyderabad whereby Hon'ble Court has held that when there is blatant violation of standing order, the accused persons are entitled to be released on bail. He also referred a reportable decision of Hon'ble Apex Court taking in Writ Petition (Criminal) No. 60 of 2023, where it has been held by Hon'ble Apex Court that if a charge sheet filed by an investigating authority without first completing the investigation, it would not extinguished the right to default bail U/s 167 (2) of Cr.P.C. and the trial court, in such cases, cannot continue to remand an arrested person beyond the maximum stipulated time without offering the arrested person default bail.

He also referred another reportable decision of Hon'ble Apex Court in Suo Moto Writ (CRL) No. (S) 1/17 and Hon'ble Calcutta High Court notification whereby it has been laid down what documents should be given along with charge sheet.

Ld. PP raised objection and submitted that he is ready to supply any copy which has been left out.

It is fact that by filing a petition on 04-04-2024, accused persons raised a question that all the necessary documents upon which prosecution wants to rely has not been filed with charge sheet and prayed for direction upon IO to produce all the documents. Though defence counsel did not mention what particular documents were not served upon him but IO was directed to supply all the documents upon which they want to rely.

Prior to that charge sheet was filed on 13-03-2024 and cognizance was taken by my Ld. Predecessor-in-Chair.

Our Hon'ble Apex Court in a reportable decision of Criminal Appeal No. 391 of 2024 (@ Special Leave Petition (Crl) No. 11775 of 2023), Central Bureau of Investigation Vs. Kapil Wadhawan and another has held that the charge sheet having been filed against the accused within the prescribed time limit and the cognizance having been taken by this special court of the offences allegedly committed by them, the accused persons could not have claimed the statutory right of default bail under Section 167(2) on the ground that the investigation was not completed or charge sheet submitted was not incomplete. When a charge sheet is not filed and investigation is kept pending, benefit of proviso appended to Sub Section 2 of Section 167 of the code would be available to an offender. Whoever, if the charge sheet is filed the said right seizes.

In this case also charge sheet has been submitted and cognizance has been taken. Even if all the documents have not been filed, submission of charge sheet itself does not become vitiated in law. Charge sheet has been acted upon as an order of cognizance had been passed on the basis thereof. So following the guide lines of Hon'ble Apex Court, I am not inclined to accused persons on bail, though they have got right to receive all the documents as per Gazette Notification.

Prayer for bail is rejected.

IO is directed to supply all documents as per rule 91A of Calcutta High Court Criminal (Subordinate Courts) rules, 1985.

To 14-08-2024 for supply of documents if any and production of accused persons.

Dictated & Corrected by me

Special Judge

**Judge, under N.D.P.S Act,
-cum-
Additional Sessions Judge,
3rd Court, Howrah.
JO Code No. WB00644**