

IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
(CRIMINAL MISCELLANEOUS JURISDICTION)
APPELLATE SIDE

Present :

Hon'ble Justice Moushumi Bhattacharya

&

Hon'ble Justice Prasenjit Biswas.

CRM (NDPS) 552 of 2023

Rakesh Sha

vs

The State of West Bengal

For the petitioner : Ms. Ashima Mandla, Adv.
Ms. Mandakini Singh, Adv.
Mr. Deborshi Dhar, Adv.
Mr. Surya Pratap Singh, Adv.

For the State : Mr. Aditi Sankar Chakraborty, Ld.APP
Mr. Aniruddha Biswas, Adv.

Last heard on : 24.08.2023

Delivered on : 25.08.2023.

Moushumi Bhattacharya, J.

1. The present application has been filed under section 439 of The Code of Criminal Procedure, 1973 on 2.8.2023 in connection with Bhaktinagar Police

Station Case No. 12 of 2023 dated 3.1.2023 under sections 21(c)/22(c)/25 of N.D.P.S. Act, 1985. The petitioner prays for bail upon being charged under the provisions of The Narcotics Drugs and Psychotropic Substances Act, 1985 (NDPS Act). The petitioner was arrested on 31.3.2023 and the charge-sheet was filed on 1.7.2023. The petitioner filed several applications for bail before the learned Special Court under the NDPS Act, Jalpaiguri; all of which were rejected. The petitioner is hence before us.

2. The petitioner complains that there is considerable delay in the matter since charges are still to be framed and there are 15 prosecution witnesses who are to be examined. The petitioner does not have any confidence of the trial being concluded in the near future.

3. The primary contention urged on behalf of the petitioner through learned counsel is on section 36A(4) of the NDPS Act read with the proviso. Counsel submits that the I.O submitted the charge-sheet on 30.6.2023 without the CFSL / Chemical Examination Report. Counsel submits that the learned Trial Court mechanically took cognizance of the submission of the charge-sheet by the order dated 1.7.2023. Counsel relies on a line in the charge-sheet stating that a supplementary charge-sheet will be submitted after receiving of the Examination Report to submit that this is contrary to the proviso to section 36A(4) of the NDPS Act.

4. Learned counsel for the Prosecution submits that the charge-sheet dated 30.6.2023 contains of a prayer of the Investigating Officer for filing of a supplementary charge-sheet upon obtaining the Report of the Drug Control

Laboratory and hence there is no requirement of obtaining any permission from the learned Trial Court for conducting further investigation in terms of section 173(8) of the Cr.P.C. Counsel places emphasis on the fact that the investigation in the present case was completed within 180 days time frame and no further extension of time was required.

5. Section 36A of the NDPS Act relates to offences triable by Special Courts. Section 36A(4) is *pari materia* to section 167(2) of the Cr.P.C. and requires investigation to be completed within the stipulated time period of 180 days. The only difference is that the time frame of 90 days under section 167(2) of the Cr.P.C. is to be read and construed as 180 days in respect of offences punishable under the specific provisions of the NDPS Act as provided under section 36A(4) or for offences involving commercial quantity.

6. The proviso to section 36A(4) of the NDPS Act is relevant for this case and is set out below :

“36.A(4). In respect of persons accused of an offence punishable under section 19 or section 24 or section 27A or for offences involving commercial quantity the references in sub-section (2) of section 167 of the Code of Criminal Procedure, 1973 (2 of 1974) thereof to “ninety days”, where they occur, shall be construed as reference to “one hundred and eighty days”:

Provided that, if it is not possible to complete the investigation within the said period of one hundred and eighty days, the Special Court may extend the said period up to one year on the report of the Public Prosecutor indicating the progress of the investigation and the specific reasons for the detention of the accused beyond the said period of one hundred and eighty days.”

7. It would be evident from the above that the proviso clearly indicates that in the event of the investigation not being completed within 180 days :

i) The Special Court may extend the period beyond 180 days but up to a maximum of one year;

ii) On the requirement of the Public Prosecutor indicating the progress of the investigation, and

iii) On the specific reasons for the detention of the accused beyond the period of 180 days.

The points i, ii and iii are not disjunctive and should be read in continuity.

8. A plain reading of the proviso to section 36A(4) indicates that the Special Court is required to consider point (ii) and (iii), apply its mind and pass a judicial order on the Report of the Public Prosecutor on what has been brought before the Court. The order of the Special Court must reflect the basis for allowing or rejecting the prayer for extension of time beyond 180 days for completing the investigation.

9. The case of the Prosecution rests on the line contained in the charge-sheet submitted on 30.6.2023 stating that a supplementary charge-sheet will be submitted after receiving of the Chemical Examination Report from the office of the Director of State Drugs Control and Research Laboratory (SDCRL). This, in our view, is not an answer to the specific mandate of the proviso to section 36A(4) of the NDPS Act. A mere statement of filing of a supplementary charge-sheet upon obtaining the Examination Report does not conform to the

statutory mandate under the proviso to section 36A(4) of the Act. The rigours of proviso to section 36A(4) of the NDPS Act was held to be a condition precedent for extension of the period of detention by a Special Bench in *Subhas Yadav vs The State of West Bengal; 2023 OnLine Cal 313*. In that decision, the Special Bench also took judicial notice of the systemic reasons for the failure to obtain Reports from the Central and State Forensic Laboratories and the fundamental right of the accused to a speedy investigation. *Subhas Yadav* proceeds to hold that the steps required to obtain the analysis report does not require continued detention of an accused.

10. The reliance of the Prosecution on section 173(8) of the Cr.P.C. is also not tenable for the following reason. Section 173(8) of the Cr.P.C. permits further investigation in respect of an offence after a Report under section 173(2) has been forwarded by the Officer-in-charge of a Police Station to a Magistrate empowered to take cognizance of the offence if the Officer in-charge of the Police Station obtains further evidence.

11. The petitioner, before us, on the other hand, has been charged for commission of an offence under the NDPS Act which requires the Trial Court to take cognizance of the offence committed under the Act. This means that the CFSL / Laboratory Report becomes an essential and integral part of the investigation for establishing the charges under the NDPS Act. The Chemical Examination Report therefore becomes the most vital piece of evidence which is required to be made part of the charge-sheet.

12. Moreover, there is a fundamental difference between the expression “further evidence” under section 173(8) of the Cr.P.C. where the presumption is of new evidence and the Laboratory Report in an NDPS case where the report forms the fulcrum of the charge-sheet on which the Trial Court is to take cognizance of the offence. In *Sagar Parshuram Joshi vs. The State of Maharashtra; 2021 SCC OnLine Bom 3051* a Single Bench of the Bombay High Court held that the Magistrate cannot form an opinion and take cognizance of the commission of the offence under the Act without the Chemical Analysis Report.

13. The fact that the charge-sheet was submitted within 180 days without the Chemical Examination Report with simply a line that a supplementary charge-sheet will be filed in future with the Examination Report is beyond the contemplation of the proviso to section 36A(4) of the NDPS Act. Filing of a charge-sheet without the Examination Report in relation to an offence under the NDPS Act is an exercise in futility and raises the presumption of the I.O filing a cipher only for the sake of closing the first window of the 180 days under the proviso to 36A(4) of the Act. Moreover, the material placed before us falls significantly short of the statutory mandate of the proviso to section 36A(4).

14. The Prosecution has thus failed on both counts, that is on the statutory mandate of the proviso to section 36A(4) as well as the procedural infirmity of a charge-sheet *sans* the Chemical Examination Report.

15. The non-compliance as stated above is sufficient to rebut the statutory restriction under section 37 of the NDPS Act, 1985.

16. We accordingly grant the prayer for bail.

17. The petitioner shall be released on bail upon furnishing a bond of Rs.10,000/- (Rupees ten thousand only) with two sureties of like amount each, one of who must be local, to the satisfaction of the learned Judge, Special Court (under NDPS Act) 1st Court, Jalpaiguri. The petitioner shall not induce witnesses or influence them or tamper with the evidence. The petitioner shall report to the I.O of the concerned Police Station once every fortnight and shall not leave the local limits of the local Police Station without leave of the learned Special Court (Under NDPS Act), 1st Court at Jalpaiguri. The petitioner shall also make himself available for the trial as and when the petitioner is required.

18. CRM (NDPS) 552 of 2023 is accordingly allowed and disposed of in terms of the above.

Urgent photostat certified copies of this judgment, if applied for, be supplied to the parties upon fulfillment of requisite formalities.

I agree.

(Prasenjit Biswas, J.)

(Moushumi Bhattacharya, J.)