

## Siya Ram Vs State (U.T.), Chandigarh

**Court:** High Court Of Punjab And Haryana At Chandigarh

**Date of Decision:** July 30, 2008

**Acts Referred:** Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) " Section 20

**Citation:** (2008) 27 CriminalCC 695

**Hon'ble Judges:** Vinod K.Sharma, J

**Bench:** Single Bench

**Advocate:** R.S. Cheema, with Mr. Pawan Girdhar, for the Appellant; N.S. Shekhawat, for the U.T. Administration, for the Respondent

**Final Decision:** Dismissed

### Judgement

Vinod K. Sharma, J.

This order shall dispose of Crl. Misc.No.48138-M of 2007 and Crl.Misc.No.48946-M of 2007 as common

questions of law and facts are involved in both these petitions.

2. The petitioners of both these petitions, seek regular bail in FIR No.39 dated registered u/s 20 of the Narcotic Drugs and Psychotropic

Substances Act (for short the Act) at Police Station, Sector 31, Chandigarh.

3. For facility, facts are being taken from Crl.Misc.No.48138-M of 2007.

4. First Information Report was registered against the petitioners on the basis of written intimation sent by SI Naveen Sharma of Operation Cell,

Chandigarh Police, Sector 26, Chandigarh. FIR reads as under:

To The SHO, PS Sector 31, Chandigarh. Sir, It is submitted that today, I, the SI along with HC Kabul Singh 2230, HC Jasbir Singh 1239,

C.Karishan Kaushik 904, C.Roop Lal 3026, C.Rajinder Singh 578, C.Parveen Kumar 728, in official vehicle No.CH01-G-6154 driven by HC

Gurmeet Singh 103/CP, under the supervision of I/C of Operation Cell, Inspector Vijay Kumar was present at Tribune Chowk, Chandigarh in

connection with patrolling and to check the crimes that Shri Puneet Anand s/o.S.K.Anand resident of H.No.5329, MHC, MM Chandigarh met

me incidentally, who was talking to me, the SI that in the meantime, special informer having met me, the SI intimated that Varinder

Singh r/o. VPO Bamla, District Bhiwani, (HR), Abhilesh Sharma r/o. Village Navrangbad, District Bhiwani (HR), Siya Ram R/o village Gatavli,

District Jind (HR), student of D.A.V.College, Sector 10, Chandigarh and Surinder Singh Village Ram Raj, District Jind (HR) student of Khalsa

College, Sector 26, Chandigarh are the members of the drug pedaling gang, who having brought drugs and contraband intoxicants in large quantity

from Haryana from Drug Smuggler Daya Singh @ Kamal Grewal to Chandigarh smuggle the Charas and other contrabands and are minting heavy

amount of money. After some time, all the aforesaid persons would get together at Jamun Garden situated near Gurudwara Kanthala, Industrial

Area, Ram Darbar, Chandigarh. Even today, they are in possession of charas in large quantity and if the raid is conducted they can be

apprehended and the charas in large quantity could be recovered from their possession. The information is correct and reliable. At about 3.00

P.M., the intimation regarding this information has been sent in writing through C.Rajinder Singh 878 CP to Sri Mohan Lal Verma,

Dy.S.P.Operations. I having given the instructions to the accompanying officials, along with aforesaid Puneet Anand proceeded to conduct the

raid. At about 4.00 P.M., four hair cut youth were noticed standing in the cluster of Jamun trees situated near Gurudwara, Kanthala, Industrial

Area, Phase-I, Ram Darbar, Chandigarh, each one of them was holding polythene bags in their hands. I, the SI with the assistance of the

accompanying officials apprehended them. On questioning, they disclosed their name and addresses as Abhilesh s/o.Laxmi Chand r/o. Village

Navrangabad, P.S.Sadar, Bhiwani, District. Bhiwani (HR), Surinder Singh Son of Ram Rai, District. Jind (HR), Varinder Singh s/o.Azad Singh

r/o. Village Bamla, P.S.Sadar Bhiwani, District Bhiwani (HR) and Siya Ram s/o.Rishi Ram r/o. VPO Gatwali, District Jind (HR). I the SI gave

them the notice in writing, ""I have got the information that you are in possession of charas and your search has to be conducted and if you deem it

proper you could get your search conducted after calling the Gazetted Officer or Magistrate to the spot"" whereupon Abhilesh, Surinder Singh,

Varinder and Siva Ram aforesaid gave in writing that they have no objection in getting their search conducted in the presence of Gazetted Police

Officer. They were kept stopped there. At 4:30 P.M. the intimation was sent in this regard on telephone to Shri Mohan Lal Verma,

Dy.S.P.Operations Cell requesting him to reach the spot as per the information. At about 5.00 PM Shri Mohan Lal Verma, Dy.S.P.Operation Cell

reached the spot in official vehicle. The Dy.S.P.having come to the spot enquired of the antecedents of Abhilesh, Surinder, Varinder and Siya

Ram. Mohan Lal Verma, while disclosing his identity said. I am posted as Deputy S.P.Operation Cell, in Chandigarh Police and am a Gazetted

Police Officer. I have got the information that you are in possession of charas in large quantity. Whether they want to get their search conducted in

my presence or some Magistrate may be called to the spot." The Dy.S.P., gave separate notices to them whereupon Abhilesh, Surinder, Varinder

and Siya Ram gave in writing that they had no objection in getting their search conducted in his presence. The Dy.S.P. ordered me, the SI to

conduct the search of Abhilesh, Surinder, Varinder and Siya Ram separately as per procedure whereupon, I the SI conducted the search of the

polythene bag colour white caught in the right hand of Varinder Singh as per procedure whereupon the charas wrapped in polythene envelope was

recovered. On weighing on the spot it turned out to be 3.750 KG. Consequent upon conducting the search of the polythene bag colour yellow

green caught in the right hand of Varinder Singh as per procedure whereupon the charas wrapped in polythene envelope was recovered; on

weighing on the spot it turned out to be 3.00 KG. Consequent upon conducting the search of the polythene bag colour white caught in the left hand

of Siya Ram as per procedure whereupon the charas wrapped in polythene envelop was recovered on weighing on the spot to be 1.750 KG. The

aforesaid could not produce any licence or permit for keeping the charas in their presence. Having taken out 10 grams each from the four

recovered quantity of charas wrapping in the polythene envelopes put the same in 8 small plastic boxes prepared the 8 parcel samples of the

recovered charas and putting the remaining quantity of the recovered charas in the same polythene bags and putting the same in separate 4 cloth

bags four parcels of charas were prepared and all the parcels were sealed with seal "AS" by affixing two seals each on them and retaining the

specimen of the seal, the seal was handed over to witness Puneet Anand aforesaid alter its use. The parcels and the specimen of the seal "AS"

were taken into police possession vide memo. The accused Varinder Singh, Surinder Singh, Abhilesh Sharma, Siya Ram and Daya Singh, having

kept the recovered charas in their possession without any licence and permit have committed an offence punishable u/s 20 NDPS Act. Hence, the

writing is being sent through C.Parveen Kumar 728 to the Police Station for registration of case FIR. After registration of the case number thereof

may kindly be intimated. I, the SI am busy with the investigations on the spot. The intimation has been given to the MHC/OPS Cell by way of

telephone regarding the proceedings and investigations requesting to send some NGO to the spot. From Sd/- Naveen Sharma, SI, From Near

Kanthala Gurudwara, OPS Cell, Sec.26, Chd. Indl. Area. Ph. II, Ram Darbar at 9.00 P.M.

5. Petitioner was arrested on 02.03.2007 as he was apprehended by the police and contraband alleged to be charas weighing 1.750 kilogram was

alleged to have been possessed by him without any licence or permit. The petitioner was a student and hosteller in DAV College, Sector 10,

Chandigarh and was pursuing his BA final year before his arrest.

6. Though the allegations against the petitioner are very serious and in normal circumstances would not be entitled to concession of bail pending

trial. However, the petitioner seeks concession of bail by invoking provisions of Section 167(2)(a)(i) of the Code read with Section 36A(4) of the,

Act. Section 36A(4) of the Act reads as under:

36A. Offenders triable by Special Courts. - (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), -

XXX XXX XXX

XXX XXX XXX

(4) In respect of persons accused of an offence punishable u/s 19 or Section 24 or Section 27 A 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. Mr.R.S.Cheema, learned senior counsel appearing on behalf of the petitioner contended that the Investigating Agency was bound to present the

charge-sheet/report under sections 173(2) and (5) of the Code within a period of 180 days from the date of first remand i.e. 03.03.2007. It is the

contention of the learned senior counsel for the petitioner that in the absence of extension as provided under proviso to Section 344 of the Act the

trial court was bound to release the petitioner on bail forthwith on expiry of 180 days. The contention of the learned senior counsel was that in the

present case though challan was presented on 30.05.2007 within the stipulated period, however, the report of Central Forensic Science

Laboratory (for short CFSL) regarding the contraband alleged to be seized from the petitioner had not been filed along with the same and

therefore, it could not be said to be a complete challan. The report of the Chemical Examiner was for the first time placed on record on

06.09.2007 i.e. after expiry of 180 days.

8. The contention of the learned senior counsel was that in view of the law laid down by Full Bench of this Court in the case of State of Haryana v.

Mehal Singh & Anr., AIR 1978 P&H. 341 in the absence of CFSL report the learned trial court could not take cognizance of the offence and

therefore detention after 180 days was not warranted. In support of this contention learned senior counsel also placed reliance on the judgment of

this court in the case of Jaswinder Singh & Anr. v. State of Punjab, 2005(2) RCR(Cr) 663 wherein this court has been pleased to lay down that if

the challan is not put up within 180 days then in the absence of an application seeking extension of time by indicating the progress of the

investigation or giving by specific reason for extending time the accused is entitled to bail. It has also been laid by this court that the request for

extension has to be made by the Public Prosecutor indicating the progress of investigation or for any other specific reason and the period cannot be

extended on the request of the Investigating Agency.

9. Reliance was also placed on the judgment of Hon"ble Calcutta High Court in the case of Subodh Kundu v. State of Calcutta, 2004(2) Criminal

Court Cases 505 (Calcutta) : 2004(3) RCR (Criminal) 117.

10. Learned senior counsel appearing on behalf of the petitioner in support of his contention that in the absence Chemical Analysis report, charge-

sheet cannot be said to be complete and therefore, cannot be said to be charge-sheet within the meaning of Section 173(5) of the Code so as to

enable the Magistrate to take cognizance of the offence, placed on the judgment of Hon"ble Bombay High Court in the case of Sunil Vasant Rao

Phulbande & Anr. v. State of Maharashtra, 2003(1) Criminal Court Cases 477 (Bombay): 2003(2) RCR(Criminal) 171 (Bom.).

11. Learned senior counsel appearing on behalf of the petitioner also placed reliance on the judgment of Hon"ble Andhra Pradesh High Court in

the case of Matchumari China Venkatareddy & Ors. v. State of Andhra Pradesh, 1994 C.L.J 257, to contend that failure to file complete charge-

sheet within a prescribed period confers on the accused right to be released on bail and court is not competent to take cognizance of the offence

on incomplete charge-sheet. Charge sheet is not complete unless accompanied by papers contemplated u/s 173(5) of the Code. Hon"ble High

Court of Andhra Pradesh has been pleased to lay down that where the prosecution files incomplete charge-sheet within 90 days contemplated u/s

167(2) of the Code and the same is returned for removing objection it could not be said that the mandatory provisions of Section 167(2) of the

Code were complied with. Hon"ble High Court has further pleased to hold that filing of charge unaccompanied by copies of material papers belies

the right contemplated under Article 21 of the Constitution of India.

12. Thus, the contention of the learned senior counsel was that the petitioner has a statutory right to bail under the provisions of Section 167(2) of

the Code read with Section 36A(4) of the Act.

13. Learned counsel appearing on behalf of UT Administration has opposed the bail primarily on the ground that in view of the proviso to Section

36A(4) of the Act bail could not be granted to the accused on expiry of 180 days. In support of his contention learned counsel for the State relied

upon the judgment of Hon"ble Karnataka High Court in the case of Rasheed & Ors. v. State of Karnataka, 2008(1) RCR (Cr.) 48 wherein

Hon"ble Karnataka High Court has been pleased to lay down as under:

3 A. As could be seen from the provisions of Section 36-A(4) of the NDPS Act, the Magistrate may authorize detention of the accused person for

custody for a total period exceeding 180 days, if the investigation cannot be completed by that time. The proviso to sub-section (4) of Section 36-

A of the NDPS Act makes it further clear that, if it is not possible to complete the investigation within the period of 180 days, the Special Court

may extend the said period up to one year on the report of the Public Prosecutor indicating the progress of investigation and the specific reasons

for detention of the accused beyond the period of 180 days. The provision in sub-section (4) of Section 36A of the NDPS Act is exception to the

general rule contained in Section 167(2) of C.P.C. The NDPS Act is enacted for the purpose of declaring law relating to narcotic drugs to make

stringent provisions for the control and regulation of operations relating to narcotic drugs and psychotropic substances, to provide for the forfeiture

of the property derived from or used in illicit traffic in narcotic drugs and psychotropic substances, to implement the provisions of international

conventions of narcotic drugs and psychotropic substances and for the matters connected therewith. This is a special enactment covering the

aforesaid subject and thus, the provisions containing in NDPS Act shall naturally override the provisions of Criminal Procedure Code wherever the

provisions of Criminal Procedure Code are contrary to the provisions of the NDPS Act. Section 37(1 )(b) of the NDPS Act specifies that the

person accused of the offences punishable u/s 19 or 24 or 27 A of the NDPS Act shall not be released on bail unless the Court is satisfied that

there are reasonable grounds for believing that he is not guilty of such offences. Thus, it is incumbent on the Court to record its satisfaction that

there are reasonable grounds to believe that the accused is not guilty of the offences charges while releasing the accused on bail. The expression

reasonable grounds"" as used in Section 37 of the Act means something more than prima facie grounds.

14. Learned counsel for UT Chandigarh contended that if the charge-sheet filed"" without all the documents which were not available at that the

time and filed subsequently would not render the charge-sheet to vitiated in law. Learned counsel further contended that in the present case

charge-sheet stands filed and therefore, the right claimed by the accused ceased to exist.

15. Learned senior counsel appearing on behalf of the petitioner, however, controverted the stand taken by the State that the petitioner would not

be entitle to bail in view of proviso to Section 36A(4) of the Act. The contention of the learned senior counsel was that the judgment of Hon"ble

Karnataka High Court in the case Rasheed & Ors. v. State of Karnataka (supra), was dealing with a situation where the extension was granted for

further investigation and was not a case where no application was moved thus was no application in the present case, as no application for

extension was made or requested by the Public Prosecutor.

16. Learned senior counsel also contended that proviso to Section 36A(4) of the Act would be applicable only where an application is made by

Public Prosecutor giving the details of investigation carried out and making out a case for said extension. In support of this contention learned

senior counsel has placed reliance on the judgment of Hon"ble Supreme Court in the case of Hitendra Vishnu Thakur and Others Vs. State of

Maharashtra and Others, where provisions of Terrorist and Disruptive Activities (Prevention) Act, 1987 were considered. The contention of the

learned senior counsel was that Clause (bb) of sub-section (4) of Section 20 of TADA Act which reads as under:

Provided further that, if it is not possible to complete the investigation within the said period of one hundred and eighty days, die Designated Court

shall 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; and.

is para materia with that of Section 36A(4) of the Act where the Public Prosecutor has been empowered to seek extension of time. The said

provision has been interpreted by Hon"ble Supreme Court in the case of Hitendra Vishnu Thakur & Ors. v. State of Maharashtra & Ors. (supra)

as under:

23. We may at this stage, also on a plain reading of clause (bb) of sub-section (4) of Section 20, point out that the Legislature has provided for

seeking extension of time for completion of investigation on a report of the public prosecutor. The Legislature did not purposely leave it to an

investigating officer to make an application for seeking extension of time from the court. This provision is in tune with the legislative intent to have

the investigations completed expeditiously and not to allow an accused to be kept in continued detention during unnecessary prolonged

investigation at the whirled of the police. The Legislature expects that the investigation must be completed with utmost promptitude but where it

becomes necessary to seek some more time for completion of the investigation, the investigating agency must submit itself to the scrutiny of the

public prosecutor in the first instance and satisfy him about the progress of the investigation and furnish reasons for seeking further custody of an

accused. A public prosecutor is an important officer of the State Government and is appointed by the State under the Code of Criminal Procedure.

He is not a part of the investigating agency. He is an independent statutory authority. The public prosecutor is expected to independently apply his

mind to the request of the investigating agency before submitting a report to the court for extension of time with a view to enable the investigating

agency to complete the investigation. He is not merely a post office or a forwarding agency. A public prosecutor may or may not agree with the

reasons given by the investigating officer for seeking extension of time and may find that the investigation had not progressed in the proper manner

or that there has been unnecessary, deliberate or avoidable delay in completing the investigation.

In that event, he may not submit any report to the court under clause (bb) to seek extension of time. Thus, for seeking extension of time under

clause (bb), the public prosecutor after an independent application of his mind to the request of the investigating agency is required to make a

report to the Designated Court indicating therein the progress of the investigation and disclosing justification for keeping the accused in further

custody to enable the investigating agency to complete the investigation. The public prosecutor may attach the request of the investigating officer

along with his request or application and report but his report as envisaged under clause (bb), must disclose on the face of it that he has applied his

mind and was satisfied with the progress of the investigation and considered grant of further time to complete the investigation necessary. The use

of the expression "'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'" as occurring in clause (bb) in sub-section (2) of Section 167 as amended by Section 20(4) are important and

indicative of the legislative intent not to keep an accused in custody unreasonably and to grant extension only on the report of the public

prosecutor. The report of the public prosecutor, therefore, is not merely a formality but a very vital report, because the consequence of its

acceptance affects the liberty of an accused and it must, therefore, strictly comply with the requirements as contained in clause (bb). The request of



an investigating officer for extension of time is no substitute for the report of the public prosecutor. Where either no report as is envisaged by clause

(bb) is filed or the report filed by the public prosecutor is not accepted by the Designated Court, since the grant of extension of time under clause

(bb) is neither a formality nor automatic, the necessary corollary would be that an accused would be entitled to seek bail and the court "shall"

release him on bail if he furnishes bail as required by the Designated Court. It is not merely the question of form in which the request for extension

under clause (bb) is made but one of substance. The contents of the report to be submitted by the public prosecutor, after proper application of his

mind, are designed to assist the Designated Court to independently decide whether or not extension should be granted in a given case. Keeping in

view the consequences of the grant of extension i.e. keeping an accused in further custody, the Designated Court must be satisfied for the

justification, from the report of the public prosecutor, to grant extension of time to complete the investigation. Where the Designated Court declines

to grant such an extension, the right to be released on bail on account of the "default" of the prosecution becomes indefeasible and cannot be

defeated by reasons other than those contemplated by (sub-section) of Section 20 as discussed in the earlier part of this judgment. We are unable

to agree with Mr.Madhava Reddy or the Additional Solicitor General Mr.Tulsi that even if the public prosecutor "presents" the request of the

investigating officer to the court or "forward" the request of the investigating officer to the court, it should be construed to be the report of the

public prosecutor. There is no scope for such a construction when we are dealing with the liberty of a citizen. The courts are expected to zealously

safeguard his liberty. Clause (bb) has to be read and interpreted on its plain language without addition or substitution of any expression in it. We

have already dealt with the importance of the report of the public prosecutor and emphasized that he is neither a "post office" of the investigating

agency nor its forwarding agency but is charged with a statutory duty. He must apply his mind to the facts and circumstances of the case and his

report must disclose on the face of it that he had applied his mind to the conditions contained in clause (bb) of sub-section (4) of Section Since the

law requires him to submit the report as envisaged by the section, he must act in the manner as provided by the section and in no other manner. A

Designated Court which overlooks and ignores the requirements of a valid report fails in the performance of one of its essential duties and renders

its order under clause (bb) vulnerable. Whether the public prosecutor labels his report as a report or as an application for extension, would not be

of much consequence so long as it demonstrates on the face of it that he has applied his mind and is satisfied with the progress of the investigation

and the genuineness of the reasons for grant of extension to keep an accused in further custody as envisaged by clause (bb) (supra). Even the mere

reproduction of the application or request of the investigating officer by the public prosecutor in his report, without demonstration of the application

of his mind and recording his own satisfaction, would not render his report as the one envisaged by clause (bb) and it would not be a proper report

to seek extension of time. In the absence of an appropriate (sic) the Designated Court would have no jurisdiction to deny to an accused his

indefeasible right to be released on bail on account of the default of the prosecution to file the challan Within the prescribed time if an accused

seeks and is prepared to furnish the bail bonds as directed by the court. Moreover, no extension can be granted to keep an accused in custody

beyond the prescribed period to enable the investigation to be completed and as already stated before any extension is granted under clause (bb),

the accused must be put on notice and permitted to have his say so as to be able to object to the grant of extension.

38. We are unable to persuade ourselves to accept the view of the Designated Court that since the application of the investigating officer was

supported by the Public Prosecutor, the request of the investigating agency could be treated as the report of the. Public prosecutor when read with

the objections filed by the Public Prosecutor to the bail application. The observations of the Designated Court show that the said court lost sight of

the importance of the report and treated the whole thing in a rather casual manner. The application of the investigating officer dated 29.06.1993,

reproduced above, can by no stretch of imagination be construed as a report of the Public Prosecutor as envisaged by Section 20(4)(bb) of

TADA and therefore no extension under clause (bb) could have been granted by the Designated Court without the receipt of the report of the

Public Prosecutor. That apart, even if we ignore the discrepancy in the various dates regarding the presentation of the application in the court it

appears from a bare perusal of the application of the investigating officer that the Public Prosecutor did not even endorse the application with any

comments to indicate as to whether or not he was agreeing with the statements contained in the application. The Public Prosecutor obviously did

not apply his mind to the request of the investigating agency and merely acted as its "post office". The Designated Court was deprived of the

opportunity of scrutinizing the report of the Public Prosecutor before granting extension. We need not, therefore, even comment upon the reasons

given by the investigating officer in the

application to test their correctness or otherwise because we are firmly of the view that the said letter/application of the investigating officer cannot

be construed or treated as a substitute for the report of the Public Prosecutor as contemplated by clause (bb) of Section 20(4) of TADA. Faced

with this situation, learned counsel for the respondents submitted that the objections filed by the Public Prosecutor to the bail application read with

the application of the investigating officer may be held to be substantial compliance with the requirements of clause (bb). We cannot agree.

17. In view of the law laid down by Hon"ble Supreme Court it has to be held that the accused who is tried under the Act would be entitled to

concession of bail on expiry of 180 days if the complete challan is not presented, and no application for extension is made and order is passed by

learned court after hearing the accused.

18. However, it may be noticed that in the present case though Complete challan was not presented within a period of 180 days and the same was

in fact present on 196th day. Thus as on today the challan stands presented.

19. The Hon"ble Supreme Court in the case of Sanjay Dutt v. State through C.B.I. Bombay II, 1994(3) RCR(Crl.) 684 has been pleased to lay

down as under:

27.....

53. (2)(b) The "indefeasible right" of the accused to be released on bail in accordance with Section 20(4) (bb) of the TADA Act read with Section

167(2) of the Cr.P.C. in default of completion of the investigation and filing of the challan within the time allowed, as held in Hitendra Vishnu

Thakur is a right which enures to, and is enforceable by the accused only from the time of default till the filing of the challan and it does not survive

or remain enforceable on the challan being filed. If the accused applies for bail under this provision on expiry of the period of 180 days or the

extended period, as the case may be, then he has to be released on bail forthwith. The accused, so released on bail may be arrested and

committed to custody according to the provisions of the Cr.P.C. The right of the accused to be released on bail after filing of the challan,

notwithstanding the default in filing it within the time allowed, is governed from the time of filing of the challan only by the provisions relating to the

grant of bail applicable at that stage.

20. The Hon"ble Supreme Court in the case of Dinesh Dalmia v, C.B.I. 2007(3) Apex Court Judgments 413 (S.C.): 2007(4) Criminal Court

Cases 355 (S.C.): 2007(4) RCR(Criminal) 282 by following the earlier judgment in case of Sanjay Dutt v. State through CBI Bombay (supra) has

been pleased, to lay down as under:

The statutory scheme does not lead to a conclusion in regard to an investigation leading to filing of final form under sub-section (2) of Section 173

and further investigation contemplated under sub-section (8) thereof. Whereas only 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, once, however, a charge-

sheet is filed, the said right ceases. Such a right does not revive only because a further investigation remains pending within the meaning of sub-

section (8) of Section 173 of the Code.12:04 PM 2/10/2012

21. Thus, in view of the fact that the challan against the petitioner stands presented keeping in view the quantity of contraband recovered from the

petitioner and his co-accused i.e. 11-1/2 kilograms of charas, they are not entitled not entitled concession of bail, after the challan is filed.

No merit. Dismissed.