State of West Bengal Vs Anwar alias Answar alias Anwar Rehman

Court: Calcutta High Court

Date of Decision: Jan. 4, 2000

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€" Section 161, 167(2), 173, 173(2), 173(4)
Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) â€" Section 20, 21, 29, 37

Citation: (2000) CriLJ 2189 : (2000) 2 RCR(Criminal) 745

Hon'ble Judges: Sujit Barman Roy, J; Ranjan Kumar Mazumdar, J

Bench: Division Bench

Advocate: N.N. Guptoo, Gen. and S. Moitra, Addl. P.P, for the Appellant;P.K. Ghose and Debabrata Banerjee, for the Respondent

Judgement

S. Barman Roy, J.
Both these matters are being disposed of by this common judgment as they arise out of the same case between the

same parties.

2. By the application being C.R.R. 2582/97 u/s 482, Cr.P.C. petitioner has prayed for quashing the cognizance taken by the Ld. Special Judge,

24-Parganas (South) in Special Case No. 6(5) 97 Under Sections 21/29 of the Narcotic Drugs and Psychotrophic Substances Act.

3. By C.R.A.N. 1015/97 u/s 482, Cr.P.C, petitioner being the State of West Bengal has prayed for review of the order dated 8-8-97 passed by

another Division Bench of this Court by which accused/O.P. was granted bail pending trial of the aforesaid case. This application has been filed by

the State pursuant to some directions issued by the Apex Court by order dated 13-11-97 in SLP (Cri) No. 3356/97.

4. For better appreciation of the issues involved, brief narration of some facts of the case is considered necessary.

5. Acting upon a secret information, on 24-1-97 police intercepted accused/petitioner and two others and upon search recovered two packets

containing about 2 kgs. herein from the petitioner and another packet containing about 400 gms. of heroin from the possession of one Dipak Giri

being the companion of the petitioner. Police also seized an amount of Rs. 35,200/- from the possession of the third accused Jarnat Ali Mondal.

Accordingly, an FIR was registered against the petitioner and other two accused and on that very day all the three accused were arrested. Before

expiry of 90 days" custody, police filed chargesheet against petitioner and others on 11-4-97.

6. Application of the petitioner for bail was rejected by this Court by an order dated 15-4-97. While rejecting the said prayer for bail, a Division

Bench of this Court directed the trial Court to complete the trial within 6 weeks.

7. Again on 21-6-97 petitioner prayed before the trial Court to release him on bail as the trial could not be completed within 6 weeks, but the said

prayer was turned down. Thereafter, petitioner filed another application for bail before a Division Bench of this Court. By an order dated 27-6-97

the Division Bench of this Court while rejecting the said prayer for bail directed the learned trial Court to furnish the petitioner and other accused

with copies of all documents mentioned in Sub-section (5) of Section 173 of the Code and thereafter proceed with the trial with utmost expedition.

8. Further application of the petitioner for bail before a Division Bench of this Court was allowed by an order dated 8-8-97. In the said order

Division Bench further observed that ""since there was no submission of chargesheet on due compliance of law, the accused person is entitled to be

enlarged on bail. ""Accordingly, the Division Bench of this Court directed by the said order to release the petitioner on bail on certain terms and

conditions as mentioned therein. In the said order the Division Bench also observed that the chargesheet filed by the police was incomplete

inasmuch as papers/statements of witnesses were not filed with police report. Being aggrieved and dissatisfied with the aforesaid order of a

Division Bench of this Court granting bail to the petitioner, State of West Bengal preferred an SLP being SLP (Cri) No. 3356 of 1997 before the

Supreme Court. The following is the order which Supreme Court passed on the said application on 13-11-97 :-

It is plain that whatever observations have been made by the High Court in the impugned order, those are meant only to dispose of the bail

application and not, in any manner, to reflect on the merits of the case. Since there is a factual dispute as to the supply of documents u/s 173 of the

Code of Criminal Procedure and the consequences flowing thereafter Mr. Guptoo, learned Advocate General for the State of West Bengal is

permitted to move the High Court for review. The SLP thus stands disposed of.

9. Soon thereafter State has filed this C.R.A.N. 1015/1997 for review of the said order dated 8-8-97 passed by a Division Bench of this Court

granting bail to the accused petitioner. It must be mentioned here that on an earlier occasion by judgment dated 30-7-88 passed by the learned

City Sessions Court Calcutta in Session Trial No. 3(4) 1988, petitioner was convicted for offences under Sections 21 and 20(b)(ii) of N.D.P.S.

Act and accordingly, he was sentenced to suffer R.I. for 10 years and to pay a fine of Rs. 1 lakh and on default to suffer R.I. for further 2 years

with direction that sentences would run concurrently. Petitioner has served out the said sentences and thereafter he was released on 5-11-93 as he

was given some remissions.

10. In this case the accused petitioner vehemently agitated that along with the chargesheet relevant papers/statement of witnesses as required by

Sub-section (5) of Section 173 of the Code were not filed nor the copies of all such documents were furnished to the petitioner. On this ground it

is contended by the learned Counsel for the petitioner that chargesheet filed in connection with this case without relevant documents is bad in law

and hence cognizance taken in this case on the basis of such incomplete chargesheet is also equally bad and, therefore, same should be quashed.

The facts as to filing of relevant papers along with the chargesheet or the question whether copies of each and every such paper were furnished to

the petitioner are disputed to some extent.

11. Before entering into the question as to whether each and every document or statements mentioned in Sub-section (5) of Section 173, Cr.P.C.

were filed along with the chargesheet or whether copies of all such documents have or have not been furnished to the petitioner, we may proceed

with the case on the assumption that the contentions of the petitioner on the aforesaid grounds are correct and then decide on that basis as to

whether the cognizance taken in this case can be held to be bad?

12. Petitioner (accused) in C.R.R. 2582/97 has prayed for quashing the cognizance taken in this case as the chargesheet filed in connection with''

this case was incomplete according to him. Petitioner agitated the same grounds for rejecting the review application. Therefore, it appears to us a

decision on the question as to whether cognizance taken in this case was bad or not will be the deciding factor for disposal of both these

applications.

13. In this connection, Mr. P. Ghosh learned counsel for the petitioner drew our attention to Section 362 of the Code and contended that under

the Code of Criminal Procedure no such review is possible. The order dated 8-8-97 passed by Division Bench of this Court granting bail to the

petitioner is final order disposing of the said application for bail and hence same cannot be altered. We do not like to enter into this controversy in

view of what was directed by the Apex Court. We decline to give any decision as to whether review of an order granting bail is possible or not, as

in our opinion Apex Court has permitted the State of West Bengal to prefer this review application and hence we are bound to dispose of the

same as directed by the Apex Court.

14. We, therefore, first take up the application for quashing the cognizance on the assumption that all the papers and statements were not filed

along with the chargesheet as required under Sub-section (5) of Section 173.

15. Mr. P.K. Ghosh, Ld. Counsel for the petitioner contended that (i) police did not forward the document/statements, referred to in Sub-section

(5) of Section 173, along with the chargesheet; (ii) such statements/documents are part and parcel of the police report contemplated u/s 173(2);

(iii) unless such documents/statements accompany the report, it cannot be regarded as chargesheet/police report at all; (iv) hence, no cognizance

can at all be taken on such report; (v) therefore no chargesheet/police report can at all be said to have been filed within 90 days" period of custody

of the petitioner and, accordingly, petitioner was rightly released on bail by the order under review in view of proviso to Section 167(2) and same

cannot be interfered with in this review application; and (vi) cognizance taken in this case by the trial Court must be quashed.

16. We have heard Mr. P.K. Ghosh, Ld. Counsel for the petitioner and Mr. N.N. Guptoo, Ld. Advocate General of the State being assisted by

Mr. S. Moitra, Ld. Addl. P.P.

17. Now the question is what is exactly the meaning of the term ""Police Report"" within the meaning of Section 173(2) of the Code? The term

police report has been defined in Section 2(r) of the Code. As per this definition, it means ""a report forwarded by a police officer to a Magistrate

under Sub-section (2) of Section 173."" This definition refers to the report contemplated by or under Sub-section (2) of Section 173 only. It does

not refer to documents/statements mentioned in Sub-section (5) of Section 173. If it was really the intention of the legislature that

statements/documents referred to in Section 173(5) shall form part of the police report, legislature surely would have indicated this in the definition

of the term ""police report"". Definition of the term ""police report"", as provided in Section 2(r), does not contain any such indication that without

those documents/statements of witnesses, a police report shall cease to be a valid police report. Section 2(r) containing definition of the term

police report"" is completely silent about the documents/statements mentioned in Sub-section (5) of Section 173.

18. Sub-section (2) of Section 173 further provides as to the form and contents of police report. It provides that police report shall contain certain

particulars as mentioned therein and it shall be in such form as may be prescribed by the State Government. It is, therefore, clear that apart from

the particulars mentioned therein, a police report is not expected to contain any further statements/documents. Had it been the intention of the

legislature that police report should also include documents/statements of witness as mentioned in Sub-section (5) of Section 173, it could have

easily indicated that requirement in Sub-section (2) of Section 173. But Sub-section (2) is completely silent in this regard. Equally, Section 2(r)

does not make any reference to Section 173(5) though makes reference to Section 173(2).

19. Therefore, if an Investigating Officer by accident or by design omits to forward the relevant documents/statements of witnesses to the Court

along with the police report, it cannot be said that the chargesheet is incomplete or that no cognizance can be taken by the Court on the basis of

such chargesheet.

20. Furthermore, the words ""a report in the form prescribed by the State Government"" occurring in Sub-section (2) of Section 173 of the Code

clearly signify that the police report has to be submitted in the form prescribed by the State Government containing various particulars mentioned in

various clauses of Sub-section (2) of Section 173. The Code of Criminal Procedure does not require the State Government to prescribe any

particular form in which statements of witnesses are to be recorded in course of investigation or the seizure list and other documents are to be

drawn up. Section 173(2) requires the State Government to prescribe a form in which police report is required to be submitted. From this fact the

intention of the legislature is further clear that what is understood by the term police report is not expected to include the statements of witnesses or

other documents referred to in Sub-section (5) of Section 173, Cr.P.C. though these papers are required to be forwarded to the Court along with

police report.

21. Section 190 of the Code prescribes 3 modes in which Court can take cognizance of cases. Section 190 of the Code reads as under :-

190. Cognizance of offences by Magistrate.- (1) Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of

the second class specially empowered in this behalf under Sub-section (2), may take cognizance of any offence-

(a) upon receiving a complaint of facts which constitute such offence;

(b) upon the police report of such facts;

(c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

(2) The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under Sub-section (1) of such offences as

are within his competence to inquire into or try.

22. Therefore, Section 190(1)(b) requires that Court can take cognizance of a case upon a police report of facts which constitute such offence

alleged against the offender. Section 190 does not require that cognizance cannot be taken only on the basis of police report but also the

statements of witnesses and other documents should be the foundation for taking cognizance of alleged offences. If the police report contains the

particulars as required under Sub-section (2) of Section 173 of the Code and it contains the essential facts which constitute the alleged offences, it

will be enough for the Court to take cognizance of the case. It is of course true that Court is free to peruse the statements of witnesses and other

documents along with the police report before taking cognizance of a case. However, it cannot be said that if the Court does not take into

consideration the statements of witnesses/documents while taking cognizance of offences only on the basis of police report, such cognizance would

be invalid. Essential requirements of law as contemplated u/s 190 read with Sections 2(r) & 173(2) of the Code is that the police report must be in

the form prescribed by the Government and it shall contain various particulars as required by or under Sub-section (2) of Section 173 and shall

also contain the essential facts constituting the alleged offences. If the police report contains the essential facts constituting the alleged offences, the

Court is fully within its power to take cognizance of the offences on the basis of such report. Court may or may not further delve into the

statements of witnesses/documents. The test is whether the Court taking cognizance is satisfied upon perusal of the police report that it contains the

essential facts constituting such offences. If the Magistrate derives his satisfaction on perusal of police report itself as to the existence of facts

constituting the offences, one cannot take exception if the Court takes cognizance on that basis. Ultimate test is whether Magistrate was satisfied as

to the existence of facts constituting the offence.

23. Therefore, in our opinion police report means the police report itself. Police report cannot include the statements of witnesses/documents

referred to in Sub-section (5) of Section 173. It is equally true that police has a duty to forward these statements of witnesses/documents along

with police report to the Court for taking cognizance. But mere omission to forward the said statements/documents along with the police report will

not invalidate the cognizance taken by the Court on the basis of police report alone provided other requirements of law in this regard are satisfied.

24. Mr. P.K. Ghosh, Ld. Counsel for the petitioner cited large number of case laws in support of his contention that under the circumstances of the

case the cognizance must be quashed. In this connection he cited the decision of the Apex Court in Satya Narain Musadi and Others Vs. State of

Bihar, . But, on perusal of the said decision we do not find that the Supreme Court held any such view that if by accident or by design the

Investigation Officer fails to produce the statements of witnesses/documents referred to in Sub-section (5) of Section 173 along with his report

under Sub-section (2) thereof, the cognizance taken by the Court on the basis of such police report alone has to be quashed. It has not been held

that the cognizance taken on the basis of police report alone will render it invalid. In fact, it has been held by the Supreme Court in the case of

Musadi (supra) that the report u/s 173(2) purports to be an opinion of the Investigating Officer that as far as he is concerned, he has been able to

procure sufficient evidence for the trial of the accused by the Court and when he states in the report not only the names of the accused but also

names of the witnesses, the nature of the offence and makes a request that the case be tried, there is compliance with Section 173(2). Therefore,

police report contains merely the opinion of the Investigating Officer. Surely, the statements of witnesses recorded u/s 161, Cr.P.C. and other

documents referred to in Section 173(5) cannot contain any such opinion of the Investigating Officer and hence, these papers cannot form part and

parcel of the police report.

25. Supreme Court further observed in the case of Satyanarayan Musadi that the report as envisaged by Section 173(2) has to be accompanied,

as required by Sub-section (5), by all the documents and statements of the witnesses therein mentioned. The whole of it is submitted as a report to

the Court. But even if a narrow construction is adopted that the police report can only be what is prescribed in Section 173(2) there would be

sufficient compliance if what is required to be mentioned by the statute has been set down in the report. It is true that the report u/s 173(2) along

with other papers/statements of witnesses referred to in Sub-section (5) may be loosely called police report as a whole. Perhaps for this reason

Supreme Court observed that ""whole of it is submitted as a report to the Court."" Otherwise other observations of the Apex Court to the contrary

elsewhere in the same decision would become irreconcilable with above quoted observation of the Court, i.e., ""The whole of it is submitted as a

report to the Court."" It must be mentioned here that decision in Satyanarayan Musadi''s case was rendered by a Bench of two Judges of the Apex

Court. However, in this connection we may refer to the decision rendered by a larger Bench of three Judges of the Apex Court in Narayan Rao

Vs. The State of Andhra Pradesh, . This is a decision under the corresponding provisions of the old Code as amended by the Amending Act,

1955. In paragraph 9 of the report it was, inter alia, held by the Apex Court that in order to simplify commitment proceedings preceding the trial of

accused person by a Court of Session, Section 207A (old code) was added by way of amendment of the Code in 1955. From Sub-sections (3)

and (4) of the Section it is clear that in cases exclusively triable by a Court of Session, it is the duty of the Magistrate while holding preliminary

inquiry, to satisfy himself that the documents referred in Section 161 have been furnished to the accused and if he found that the police officer

concerned had not carried out his duty in that behalf, the Magistrate should see to it that it is done. Supreme Court further proceeded to examine

the relevant law on this point on the assumption that there was an entire omission to carry out the provisions of Sub-section (4) of Section 161

read with Sub-section (3) of Section 207A and held that""..... We are not prepared to hold non-compliance with these provisions has, necessarily,

the result of vitiating those proceedings and subsequent trial. The word ""shall"" occurring both in Sub-section (4) of Section 161 and Sub-section

(3) of Section 207A, is not mandatory but only directory, because an omission by a police officer, to fully comply with the provisions of Section

161 should not be allowed to have such a far-reaching effect as to render the proceedings including the trial before the Court of Session, wholly

ineffective."" It was further observed by the Apex Court that such omissions are always curable unless it is shown that because of such omissions,

prejudice was caused to the accused.

26. In view of the aforesaid authorities and clear intention of the Parliament we have inferred on a combined reading of Section 2(r) providing

definition of the term ""police report"", Section 173(2) providing for the contents and form of the ""police report"" and Section 190(1)(b) providing for

mode of taking cognizance of a case on police report, we have absolutely no hesitation in our mind to hold that cognizance taken in this case

cannot be interfered with merely on the ground of alleged failure of the police to forward the papers/statements of witnesses along with the

chargesheet to the Court. Such omissions/failure on the part of the police are always curable under appropriate provision of the Code. However,

we must make it clear here that we have not given any decision in this case on the controversy whether police forwarded all documents/statements

of witnesses along with the chargesheet to the Court. We find the controversy highly disputed and it is not possible for us in this review

application/revision petition to express any definite opinion as to whether each and every documents/statement of witnesses or at least the case

diary were in fact forwarded by the police along with the chargesheet to the Court? We merely proceeded on the assumption that police omitted to

do so and on that basis we are giving this decision in this case.

27. However, it needs to be mentioned here that on behalf of the petitioner it was never contended before us that the police report did not contain

the essential facts constituting the offence and hence we further assume that police report contains complete statement as to the facts constituting

the alleged offence and hence it must be held that the Court below derived his satisfaction therefrom for taking cognizance of the case within the

meaning of Section 190(1)(b).

28. It is of course true that learned counsel for the petitioner cited the following case laws to buttress his contention on the question of legality of

the cognizance taken in this case : (i) Inspector of Police, CBI v. Manique Majumder 1997 Cri LR 126; (ii) Satyanarayan Paul v. State of West

Bengal, (1992) 96 CWN 606, (iii) Raghubirsaran Jain and Another Vs. The State and Another, (iv) Matchumari China Venkatareddy and Others

Vs. State of Andhra Pradesh, ; (v) Suresh Mahato Vs. State of West Bengal, ; (vi) In re: Pradip Patra v. State of West Bengal (1996) 2 CHN

147; (vii) Birendra Kr. Roy v. Hindustan Fertilizer Corporation Ltd. (1995) 2 C LT 77 : 1995 AIHC 5055; (viii) P.V. Venka Teswaran v. State

of West Bengal (1998) 2 CHN 27; (ix) Suraj Kr. Shaw v. State of West Bengal 1998 (2) CHN 308; (x) Anwar v. State of West Bengal 1997

Cri LR 394; (xi) Satya Narain Musadi and Others Vs. State of Bihar, and (xii) State of West Bengal and another Vs. Mohammed Khalid and

others, .

29. In State of West Bengal and another Vs. Mohammed Khalid and others, , Apex Court held that while taking cognizance of offence, Court can

take into consideration not only the police report but also other materials on record. Therefore, in taking cognizance, Court has power to take into

consideration other materials on record apart from the police report. It was never held by the Apex Court in this case that cognizance would be

invalid if the same is taken merely on the basis of the chargesheet. Therefore, in our opinion this decision of the Supreme Court does not support

the contention of Mr. Ghose, Ld. Counsel for the accused petitioner.

30. Equally decisions of this Court in Inspector of Police, CBI v. Manique Majumder 1997 Cri LR 126; Suresh Mahato Vs. State of West

Bengal, and P.V. Venkateswaran v. State of West Bengal (1998) 2 CHN 27 do not support proposition contended before us by Mr. Ghosh, Ld.

Counsel for the accused. These decisions were cited by Mr. Ghose. Rather these decision support the contention of the Ld. Advocate General

that cognizance on the basis of police report alone will be valid if such report contain; statement of facts constituting the offence. Non-production

of documents/statements of witnesses along with police report before the Court will not invalidate the cognizance taken in such circumstances.

31. It is of course true that above-noted other decisions of this Court and one decision of Andhra Pradesh High Court cited by Mr. Ghose;

support the proposition advanced before us by him. All these decisions are based on the decision of the Apex Court in the case of Satya Narain

Musadi and Others Vs. State of Bihar, . But in our opinion ratio laid down in Masudi''s case was not correctly interpreted in any of these

decisions. We have already given our reasons in this regard. Contrary view taken in some of the above-noted decisions of this Court and Andhra

Pradesh High Court are, in our opinion, decisions per incuriam inasmuch as in none of these decisions provisions of Section 2(r) providing

definition of ""police report."" Section 173(2) providing for the form and contents of police report and Section 190(1)(b) providing for mode/manner

of taking cognizance on a police report and the decisions of the Apex Court In Narayan Rao Vs. The State of Andhra Pradesh, were taken into

consideration. We are of the further opinion that is none of these decisions cited on behalf of the accused, ratio laid down in Musadi''s case was

correctly interpreted and applied. It has been clearly held in this case that even if a narrow construction in adopted that the police report can only

be what is prescribed in Section 173(2), there would be sufficient compliance if what is required to be mentioned by the statute have been set

down in the report.

32. Learned Advocate General cited and relied upon number of case laws in support of his contention that cognizance taken only on the basis of

police report meeting the requirements of Section 173(2) and Section 190(1)(b) will not be invalid merely because police omitted to forward to the

Court documents/statements of witnesses mentioned in Section 173(5) along with the police report. We find that these decisions cited by learned

Advocate General fully support the view we have taken in this case. Followings are the case laws relied upon by the learned Advocate General :

(i) State of Haryana Vs. Mehal Singh and Another, ;

(ii) State of West Bengal v. Debabrata Bose 1999 Cri LR 20;

(iii) Md. Yusuf Rather v. State of West Bengal (1999) 1 CLJ 389;

(iv) Inspector of Police, CBI v. Manique Majumder 1997 Cri LR 126.

(v) P.V. Venkataswaran v. State of West Bengal (1998) 2 CHN 27;

(vi) Suresh Mahato Vs. State of West Bengal, .

33. In view of these circumstances and aforesaid being the correct position of law in this regard, we are of the view that application being C.R.R.

2582/97 filed by the petitioner for quashing the cognizance taken in this case must be dismissed and accordingly we do the same. However, to

avoid any prejudice to the accused, we direct that within 7 days from today accused may in an application before the trial Court state as to copies

of which documents and statements were not furnished to him. For this purpose, trial Court may give an opportunity of inspection of the trial Court

records to the accused and upon such inspection accused may file such application setting out documents/statements which were not supplied to

him. Such inspection should be allowed to the petitioner or his counsel in presence of a staff of the trial Court a day before the 7th day from today.

Thereafter without entering into any further controversy with the petitioner, he should be furnished with copies of all such documents/statements of

witnesses. If any of such copies is/are found to be not legible petitioner on that very day shall file further application in writing before the trial Court

setting out therein which copies are not legible according to him. Trial Court should thereafter furnish the petitioner with legible copies of such

documents/statements. These steps are necessary to avoid any further controversy and consequential delay of the trial.

34. Now, we are left with the last question in this matter, namely, the review of the order dated 8-8-97 passed by a Division Bench of this Court

granting bail to the accused petitioner on the ground that the police did not forward the documents/statements of witnesses as required by Section

173(5) along with the police report within 90 days'' custody of the petitioner. It is not in dispute that the police report was in fact filed within 90

days'' custody of the accused. Only question in dispute is as to whether documents/statements as required by Section 173(5) were forwarded

along with police report? In view of the disputed nature of this question, we have already expressed our inability to give any decision on this

question. We have, however, given our decision on the legal issues involved in this regard, on the assumption that such documents/statements of

witnesses did not accompany the police report though the police report was filed in the Court within 90 days'' custody of the accused. We have

also held that omission on the part of the police to send these documents/statements along with police report will not invalidate the cognizance

taken in this case on the basis of the police report containing statement of essential facts constituting the offences alleged and satisfying the

requirements of Section 173(2).

35. It is settled position of law that if chargesheet is filed within 90 days'' custody of the accused and as restrictions imposed by Section 37 of the

N.D.P.S. Act are clearly applicable in this case, accused cannot claim bail as of right. He can be released on bail only in case requirements of

Section 37 of the Act are satisfactorily met. We have already held that chargesheet was filed within 90 days'' custody of the accused petitioner.

Chargesheet was a valid chargesheet. Even if police failed to forward the documents/statements of witnesses along with the chargesheet to the

Court, though we are not sure whether police really failed to do so, it will not invalidate the chargesheet. Offences under the NDPS Act allegedly

committed by the petitioner are punishable with imprisonment for five years or more. Hence, restrictions imposed by Section 37 of the Act against

granting bail to person accused of offences under the Act, punishable with imprisonment for five years or more are clearly applicable to the

petitioner. No attempt was at all made by Mr. Ghose, learned counsel for the petitioner to show us that the circumstances in which bail can be

granted to such an accused as contemplated u/s 37 of Act exist in this case.

36. Therefore, we are of the view that the order under review by which accused petitioner was granted bail is clearly bad in law. Division Bench

committed a serious error of law by holding that chargesheet was incomplete one as other documents /statements of witnesses did not accompany

it or that for this reason chargesheet was not filed within 90 days'' custody of the accused petitioner.

37. However, Mr. Ghose contended that even if it is assumed that accused was granted bail wrongly, yet his bail cannot be cancelled at this stage

unless it is shown that he abused the liberties granted to him during the period since he was granted bail. In support of his this contention, he cited

large number of case laws. For the sake of brevity, we do not like to embark upon detailed discussion of these case laws except what is observed

hereinafter.

38. None of these case laws deal with any offence under the provisions of the NDPS Act. Therefore, none of the restrictions against granting of

bail as contained in Section 37 of the Act were applicable to the offences dealt with in the case laws cited on behalf of the petitioner. These

decisions lay down the proposition that bail granted to an accused under the proviso to Section 167(2) of the Code for failure of the police to file

the chargesheet within the time stipulated thereunder is deemed to be release on bail under the provisions of Chapter XXXIII of the Code. When

an accused is granted bail under the proviso to Section 167(2) or under the provisions of Chapter XXXIII of the Code, same cannot be cancelled

later on except u/s 437(5) or Section 439(2) provided special grounds exist for cancellation of such bail. Generally, grounds for cancellation of

such bail, broadly speaking, are interference or attempt to interfere with the due course of justice or evasion or attempt to evade the course of

justice or abuse of the liberty granted to the accused.

39. We fully agree with the correctness of the aforesaid principle of law laid down in various decisions of the Apex Court cited on behalf of the

accused. It is also true that aforesaid grounds for cancellation of bail are not available in this case against the accused. But this is only a general

statement as to the grounds for cancellation of bail. This cannot be exhaustive statements of such grounds.

40. But in this case we have found that by the order under review, Division Bench of this Court granted bail to the accused on wrong assumption

that chargesheet was not filed within 90 days'' custody of the accused. We are further of the view that such wrong assumption was drawn on the

basis wrong interpretation of relevant provisions of the code and the decision of the Apex Court in Satya Narain Musadi and Others Vs. State of

Bihar, . We have already held in this judgment that the chargesheet was filed in this case before expiry of 90 days'' custody of the accused and the

chargesheet was certainly a valid chargesheet. Therefore, bail granted to the accused by the order under review was not an order for default of the

police to submit chargesheet within time as stipulated in the proviso to Section 167(2).

41. Restrictions against grant of bail to an accused as provided by or under the Section 37 of the Act in respect of offence under the said Act

punishable with imprisonment for five years or more were fully applicable to the accused when he was granted bail by the order under review. As

the chargesheet in this case was filed before expiry of 90 days'' custody of the accused, he could not be released on bail by invoking the proviso to

Section 167(2). Supreme Court held in Union of India (UOI) Vs. Thamisharasi and Others, that provision in Section 37 of the Act to the extent it

is inconsistent with Section 437 of the Code supercedes the corresponding provision in the Code and imposes limitations on our power to grant

bail in addition to limitations under the Code as expressly provided by Section 437(2).

42. In our opinion, case of the accused is not at all covered by the proviso to Section 167(2) and hence in view of Section 37 of the Act and the

decision of the Apex Court in Thamisharasi''s case, accused should not have been released on bail.

43-44. We cannot overlook the fact that in another case accused was convicted Under Sections 21 and 20(b)(ii) of the NDPS Act by judgment

dated 30-7-88 passed by the City Sessions Court, Calcutta in Session Trial No. 3(4)88. His appeal against the said judgment was dismissed by

this Court with some modification of the sentence and he was ultimately sentenced to suffer R.I. for 10 years and a fine of Rupees one lac and in

default to undergo further R.I. for two years with a direction that both the sentences would run concurrently. Accused served out the entire

sentence and thereafter he was released only on 5-11-93. Yet he has not reformed himself. He is still continuing with same nefarious activities. It is,

therefore, not at all safe to keep him free until the trial is over and he is proved to be innocent. He appears to be a menace to the society and

interest of the State.

45. In these circumstances and in view of the position of law in this respect, we are constrained to allow the review application being C.R.A.N.

1015/1997 and recall the order dated 8-8-97 passed by a Division Bench of this Court in C.R.M. 2987/1997 and cancel the bail granted to the

accused. We also direct trial Court to take all necessary steps for arrest and production of the accused before him and to take him to judicial

custody until the trial is over and he is proved to be innocent. We further direct the trial Court to comply with directions given by us in paragraph

33 of this judgment and complete the trial within the shortest possible time giving this case highest priority as far as possible.

In the result, C.R.R. 2582/1997 is dismissed and C.R.A.N. 1015/1997 is allowed.

Ranjan Kumar Mazumdar, J.

46. I agree.