

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**Criminal Misc. No. M-23782 of 2015
Date of Decision: 27.8.2015**

Kulwinder Singh

--Petitioner.

Vs.

State of Punjab

--Respondent.

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. D.N.Ganeriwala, Advocate
for the petitioner.

Mr. K.D.Sachdeva, Additional A.G. Punjab.

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

RAMESHWAR SINGH MALIK J. (ORAL)

Important question of law that falls for consideration of this Court is whether a police report filed under Section 173 (2) of the Code of Criminal Procedure ('Cr.P.C.' for short), without a report of Forensic Science Laboratory, would be treated as a complete report and accused will not be entitled to invoke the right of default bail under Section 167 (2) Cr.P.C.

Petitioner, by way of instant petition under Section 439 read with Section 167 (2) Cr.P.C. and Section 36-A (4) of the Narcotic

Drugs and Psychotropic Substances Act, 1985 ('NDPS Act' for short), seeks default bail in the case arising out of FIR No. 38 dated 24.3.2014 under Sections 18/61/85 of NDPS Act, registered at Police Station Bahawwala, District Ferozepur.

Notice of motion was issued.

Learned counsel for the petitioner submits that petitioner was arrested on 24.3.2014. Police report under Section 173 (2) Cr.P.C. was filed on 25.7.2014. Statutory period of 180 days expired on 24.9.2014. Thereafter, custody of the petitioner was illegal in view of the provisions of Section 36 A (4) of the NDPS Act. He further submits that police the report filed under Section 173 (2) Cr.P.C. was an incomplete report, it being without the report of Forensic Science Laboratory, and now receipt of the same will be of no consequence, because an indefeasible right has already accrued in favour of the petitioner, under Section 167 (2) Cr.P.C.

In support of his contentions, learned counsel for the petitioner places reliance on two judgments of the Hon'ble Supreme Court in Union of India Vs. Thamisharasi and others, (1995) 4 SCC 190, Sanjay Kumar Kedia @ Sanjay Kedia Vs. Intelligence Officer, NCB, JT 2009 15 SC 463 and two orders of this Court in Ravinder @ Binder Vs. State of Haryana (CRM-M-28367 of 2014 decided on 26.9.2014) as well as in Ram Kishan Vs. State of Punjab (CRM-M-33931 of 2014 decided on 13.10.2014), Annexures P-2 and P-3 respectively. He also places reliance on an order dated 11.9.2014 passed by this Court in CRR No. 2087 of 2014 (Ranjit Singh @ Rana Vs. State of Punjab), whereby similar issues of identical

nature, under somewhat similar circumstances, have been referred to a Larger Bench and as a consequence thereof, a Division Bench of this Court is seized of the matter. He prays for allowing the present petition.

On the other hand, learned counsel for the State vehemently contended that present petition is wholly misconceived and the same is liable to be dismissed. He further submits that a huge recovery of contraband, i.e. 5.25 Kgs of opium, was recovered from the conscious possession of the petitioner. In such a situation, statutory bar provided under Section 37 of the NDPS Act clearly stands against the petitioner. He concluded by submitting that since now report of chemical examiner has been received, present petition has been rendered infructuous and the same may be dismissed as such. He prays for dismissal of the present petition.

Having heard the learned counsel for the parties at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the rival contentions raised, this Court is of the considered opinion that in the given fact situation of the present case, petitioner has not been found entitled for default bail, for the following more than one reasons.

It is a matter of record and not in dispute that opium of commercial quantity was recovered from the petitioner. It is also not in dispute that police report under Section 173 (2) Cr.P.C has been filed in the present case, much before expiry of statutory period. In such a situation, Section 37 of the NDPS Act would be attracted against the petitioner. It is so said, because the police report cannot

be said to be an incomplete report, if the FSL report was not accompanied with it, as held by the Hon'ble Supreme Court as well as different High Courts, including this High Court, in numerous cases going to be referred hereinafter.

Since the primary issue which fell for consideration of this Court is, as to whether the police report under Section 173 (2) Cr.P.C., without the report of chemical examiner, would be treated to be a complete report or not, it would be appropriate to refer to Section 173 Cr.P.C. and the same reads as under:-

173. Report of police officer on completion of investigation.

(1) Every investigation under this Chapter shall be completed without unnecessary delay].

[(1A) The investigation in relation to rape of a child may be completed within three months from the date on which the information was recorded by the officer in charge of the police Station]

(2) (i) **As soon as it is completed**, the officer in charge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government, stating-

(a) the names of the parties;

(b) the nature of the information;

(c) the names of the persons who appear to be acquainted with the circumstances of the case;

(d) whether any offence appears to have been committed and, if so, by whom;

(e) whether the accused has been arrested;

(f) whether he has been released on his bond and, if so, whether with or without sureties;

(g) whether he has been forwarded in custody under section 170.

(h) Whether the report of medical examination of the woman has been attached where investigation relates to an offence under Section 376,376A,376B,376C or 376D of the Indian Penal Code (45 to 1860)

(ii) The officer shall also communicate, In such manner as may be prescribed by the State Government, the action taken by him, to the person, if any, by whom the information relating to the commission of the offence was first given.

(3) Where a superior officer of police has been appointed under section 158, the report shall, in any case in which the State Government by general or special order so directs, be submitted through that officer, and he may, pending the orders of the Magistrate, direct the officer in charge of the police station to make further investigation,

(4) Whenever it appears from a report forwarded under this section that the accused has been released on his bond, the Magistrate shall make such order- for the discharge of such bond or otherwise as he thinks fit.

(5) When such report is in respect of a case to which section 170 applies, the police officer shall forward to the Magistrate alongwith the report-

(a) all documents or relevant extracts thereof on which the prosecution proposes to rely other than those already sent to the Magistrate during investigation;

(b) the statements- recorded under section 161 of all the persons whom the prosecution proposes to examine as its witnesses.

(6) If the police officer is of opinion that any part of any such statement is not relevant to the subject-matter of the proceedings or that its disclosure to the accused is not essential in the interests of justice and is inexpedient in the public interest, he shall indicate that part of the statement and append a note requesting the Magistrate to exclude that part from the copies to be granted to the accused and stating his reasons for making such request.

(7) Where the police officer investigating the case finds it convenient so to do, he may furnish to the accused copies of all or any of the documents referred to in sub- section (5).

(8) Nothing in this section shall be deemed to preclude further investigation in respect of an offence **after a report under sub- section (2) has been forwarded** to the Magistrate and, where upon such investigation, the officer in charge of the police station **obtains further evidence, oral or documentary**, he shall forward to the Magistrate a **further report or reports** regarding such evidence in the form prescribed; and the provisions of sub-sections (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub- section (2).

A bare reading of Section 173 (1) Cr.P.C. would show that the investigating officer is under legal obligation to complete every investigation, under chapter XII of the Code, without any unnecessary delay. Section 173 (2) casts a statutory duty on the officer-in-charge of the police station, to forward the report in the prescribed form, to the Court of competent jurisdiction, immediately after completion of investigation. Since the investigation to be

carried out by the investigating officer is not dependent on the report of Forensic Science Laboratory, nor receipt thereof is within the control of the investigating officer, officer-in-charge of the police station, will be exceeding his jurisdiction if he detains the report under Section 173 (2), even after completion of the investigation, only with a view to await the report of a Government Scientific Expert.

It is so said because action of not forwarding the report to the learned court of competent jurisdiction, as contemplated in Section 173 (2) Cr.P.C., even after completion of the investigation and only with a view to await the report of chemical examiner, would certainly violate the legislative intent and would run counter to the mandatory provisions of law contained in Section 173 (2) Cr.P.C. Further, in such a situation, Section 173 (8) Cr.P.C. specifically recognises the powers of the investigating agency, to forward any further report or reports, regarding such evidence including oral or documentary, in the form prescribed and the same shall be treated to be an integral part of the report already submitted under Section 173 (2) Cr.P.C. Thus, the power of the investigating agency to further investigate and to submit supplementary report, to the already submitted primary report, has got statutory recognition under Section 173 (8) Cr.P.C.

This is what seems to be the purposeful and harmonious construction of the provisions of law contained in Section 173 (1), (2) and (8) Cr.P.C. The reason to say so is that the legislature does not use any expression purposelessly and without any object. Further, in terms of doctrine of plain interpretation, the courts of law are

supposed to give ordinary meaning to every word used in the statute, unless the context specified, stipulates to the contrary. It goes without saying that the courts of competent jurisdiction shall consider all the reports presented before it under Section 173 (2) as well as Section 173 (8) Cr.P.C., because later would be supplementary to the earlier one. In this regard, reference can be made to the law laid down by the Hon'ble Supreme Court in **Vinay Tyagi Vs. Irshad Ali @ Deepak and others, (2013) 5 SCC 762** as well as by the Privy Council in **Emperor Vs. Khwaja Nazir Ahmad, AIR 1945 (PC) 18**.

In almost identical fact situation, a similar issue fell for consideration of the Hon'ble Supreme Court, more than six decades ago, in the case of **Tara Singh Vs. State, 1951 AIR (SC) 441**. Hon'ble Mr. Justice Vivian Bose, speaking for a Larger Bench of four judges of the Hon'ble Supreme Court, in para 14 of the judgment, held as under:-

“When the police drew up their challan of 2-10-1949 and submitted it to the Court on the 3rd, they had in fact completed their investigation except for the report of the Imperial Serologist and the drawing of a sketch map of the occurrence. It is always permissible for the Magistrate to take additional evidence not set out in the challan. Therefore, the mere fact that a second challan was put in on 5th October would not necessarily vitiate the first. All that Section 173(1)(a) requires is that as soon as the police investigation under Chap. 14

of the Code is complete, there should be forwarded to the Magistrate a report in the prescribed form :

"Setting forth the names of the parties, the nature of the information and the names of the persons who appear to be acquainted with the circumstances of the case."

All that appears to have been done in the report of 2nd October which the police called their incomplete challan. The witnesses named in the second challan of 5th October were not witnesses who were "acquainted with the circumstances of the cases." They were merely formal witnesses on other matters. So also in the supplementary challan of the 19th. The witnesses named are the 1st Class Magistrate, Amristar, who recorded the dying declaration, and the Assistant Civil Surgeon. They are not witnesses who were "acquainted with the circumstances of the case." Accordingly, the challan which the police called an incomplete challan was in fact a completed report of the kind which Section 173(1)(a) of the Code contemplates. There is no force in this argument, and we hold that the Magistrate took proper cognisance of the matter."

This Court is conscious of the fact that later on, the Code of Criminal Procedure came to be amended in the year 1973, but the said amendment would not advance the case of the petitioner herein, in an manner, because there is no amendment in those provisions of

Section 173 Cr.P.C. which are relevant for deciding the present controversy.

Coming to the judgments of the Hon'ble Supreme Court in Thamisharasi's case (supra) and Sanjay Kedia's case (supra), as well as two orders passed by this Court Annexures P-2 and P-3, relied upon by the learned counsel for the petitioner, there is no dispute about the law laid down and observations made therein. However, on a close perusal of the cited judgments and orders, none of them has been found to be of any help to the petitioner, these being distinguishable on facts.

In Thamisharasi's case (supra), the issue which fell for consideration of the Hon'ble Supreme Court was a different one. Admittedly, no police report under Section 173 (2) Cr.P.C. was filed before expiry of the statutory period, in the said case, which is a clear distinguishing feature. Similarly, Sanjay Kedia's case (supra) is also not applicable to the fact situation obtaining in the present case. Further, it is the settled principle of law that peculiar facts of each case are to be examined, considered and appreciated first, before applying any codified or judgemade law thereto. Sometimes difference of one circumstance or additional fact can make the world of difference, as held by the Hon'ble Supreme Court in **Padmausundara Rao and another Vs. State of Tamil Nadu and others, 2002 (3) SCC 533.**

Similarly, in both the orders passed by this Court at Annexures P-2 and P-3, relied upon by the learned counsel for the petitioner, a Full Bench judgment of this Court in State of Haryana

Vs. Mehal Singh and others, 1978 PLR 480, does not seem to have been brought to the notice of the Court, because of which both the said orders Annexures P-2 and P-3, would not apply to the facts of the present case.

Coming to the argument raised by learned counsel for the petitioner about the reference of somewhat similar issues to the Larger Bench, vide order dated 11.9.2014 in Rajit Singh's case (supra), this Court is of the considered view that merely because of pendency of similar issue for consideration before the Larger Bench, instant petition cannot be adjourned sine die to await the decision of the Larger Bench, because the matter deserves immediate attention of the Court, as the petitioner is seeking default bail.

The view taken by this Court is also supported by a judgment of the Hon'ble Supreme Court in Ashok Sadarangani and another Vs. Union of India and others, 2013 (1) SCC (Cri) 638. The relevant observations made by the Hon'ble Supreme Court in para 19 of the judgment, read as under:-

“As was indicated in Harbhajan Singh's case (supra), the pendency of a reference to a larger Bench, does not mean that all other proceedings involving the same issue would remain stayed till a decision was rendered in the reference. The reference made in Gian Singh's case (supra) need not, therefore, detain us. Till such time as the decisions cited at the Bar are not modified

or altered in any way, they continue to hold the field.

In addition to the Full Bench judgment of this Court in Mehal Singh's case (supra), the view taken by this Court also finds support from the numerous judgments and orders passed by the Hon'ble Supreme Court, this Court as well as other High Courts, particulars of which are as under:-

- Tara Singh Vs. State, 1951 AIR (SC) 441 (SC)
- Abdul Azeez P.V. and others Vs. National Investigation Agency 2015 (1) RCR (criminal) 239 (SC)
- Narender Kumar Amin Vs. CBI and others, 2015 (1), RCR (criminal) 566 (SC)
- Amritpal Singh @ Sonu Vs. State of Punjab, (CRM-M-12928 of 2015 decided on 29.4.2015) (Pb & Hry)
- Buta Singh @ Makhan Singh Vs. State of Punjab (CRM-M-18261 of 2014 decided on 29.8.2014) (Pb & Hry)
- Nirmal Singh @ Kala Vs. State of Punjab (CRM-M-9411 of 2015 decided on 27.5.2015) (Pb & Hry)
- Sukhwinder Kumar @ Sukha Vs. State of Punjab and connected matter (CRR o. 2092 of 2014 decided on 13.5.2015 (Pb & Hry)
- Prem Singh Vs. State of Punjab (CRM-M-42076 of 2013 decided on 4.2.2014) (Pb & Hry)
- Ashok Kumar & Anr. Vs. State of Punjab, (CRM-M-6725 of 2015 decided on 31.3.2015) (Pb & Hry)
- Avtar Singh @ Rinku & Anr. Vs. State of Punjab (CRM-M- 4785 of 2015) (Pb & Hry)
- Jagdish Singh Vs. State of Punjab (CRM-M-34489 of 2013 decided on 22.3.2014) (Pb & Hry)
- Amar Singh Vs. State of Punjab (CRM-M-8543 of 2015 decided on 24.3.2015) (Pb & Hry)
- Kaka Singh Vs. State of Punjab (CRM-M-22760 of 2014

decided on 12.8.2014) (Pb & Hry)

- Manpreet Singh Vs. State of Punjab (CRM-M-24528 of 2014 decided on 13.11.2014. (Pb & Hry)
- Himmat Singh Vs. State of Rajasthan, 1995 CRILJ 2967 (Rajasthan High Court)
- Gaurav Vs. State of Rajasthan, RCR (Criminal) 2035 (Rajasthan High Court.)
- Rafael Palafox Garcia Vs. Union of India and another, 2009 (3) Cri.CC 1323 (Bombay High Court)
- Kishan Lal Vs. State, 1989 (3) DL 401 DB(Delhi High Court)
- Saira Bano Vs. State (Govt. of NCT) Delhi, 1999 (3) RCR (Criminal) 642 (Delhi High Court)

The Hon'ble Supreme Court, in its two recent judgments, in **Abdul Azeez'** case (supra) and **Narender Kumar Amin's** case (supra) has set this controversy at rest.

The relevant observations made by the Hon'ble Supreme Court in para 13, 14 and 16 of its judgment in Narender Kumar Amin's case (supra), which can be gainfully followed in the present case, read as under:-

*“In this regard he squarely relied on the three Judge Bench judgment of this Court in **Central Bureau of Investigation v. R.S. Pai & Anr. 2002 (2) RCR (Criminal) 536: (2002) 5 SCC 82** wherein at para 7, regarding relevant documents to be submitted at the time of charge sheet, it is held as 6 (2002) 5 SCC 82 under:-*

“7. From the aforesaid sub-sections, it is apparent that normally, the investigating officer is required to produce all the relevant documents at the time of submitting the charge-sheet. At the same time, as

*there is no specific prohibition, it cannot be held that the additional documents cannot be produced subsequently. If some mistake is committed in not producing the relevant documents at the time of submitting the report or the charge-sheet, it is always open to the investigating officer to produce the same with the permission of the court. In our view, considering the preliminary stage of prosecution and the context in which the police officer is required to forward to the Magistrate all the documents or the relevant extracts thereof on which the prosecution proposes to rely, the word "shall" used in sub-section (5) cannot be interpreted as mandatory, but as directory. Normally, the documents gathered during the investigation upon which the prosecution wants to rely are required to be forwarded to the Magistrate, but if there is some omission, it would not mean that the remaining documents cannot be produced subsequently. Analogous provision under Section 173(4) of the Code of Criminal Procedure, 1898 was considered by this Court in **Narayan Rao v. State of A.P.** (SCR at p. 293) and it was held that the word "shall" occurring in sub-section (4) of Section 173 and sub-section (3) of Section 207-A is not mandatory but only directory. Further, the scheme of sub-section (8) of Section 173 also makes it abundantly clear that even after the charge-sheet is submitted, further investigation, if called for, is not precluded. If further investigation is not precluded then there is no question of not permitting the prosecution to produce additional documents which were gathered prior to or subsequent to the investigation. In such cases, there cannot be any prejudice to the*

accused. Hence, the impugned order passed by the Special Court cannot be sustained.” In the said decision it is held that if some mistake is committed in not producing the relevant documents at the time of submitting the report, it is always open to the investigating officer to produce the same with the permission of the court. The Bench proceeded further to observe that if further investigation is not precluded, then there is no question of not permitting the prosecution to produce additional documents which were gathered prior to or subsequent to the investigation and the word “shall” used in sub-section (5) cannot be interpreted as mandatory, but as directory. Therefore, it is contended that the High Court is justified in refusing to grant Default Bail in favour of the appellant.

14. With reference to the aforesaid rival legal contentions we have examined the impugned order to find out the correctness of the findings and reasons recorded keeping in view the statutory provisions under Section 173 (2) and (5) read with Section 2 (r) of Cr.P.C. and with reference to the judgments on which both the learned senior counsel placed reliance upon. In our considered view, it is an undisputed fact that the charge sheet was filed on 3.7.2013 that is 90th day. Section 2 (r) of Cr.P.C. defines the expression “police report” as a report forwarded by a police officer to a magistrate under Section 173 (2) of Cr.P.C. The particulars to be furnished in the police report which are extracted as above are complied with in the instant case. Therefore, filing of the police report as required under Section 173 (2) is within 90 days in the instant case.

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*The observation made at para 76 of the constitution Bench judgment of this Court in the case of **K. Veeraswamy** (supra) that the report is complete if it is accompanied by all documents and statement of witnesses as required under Section 173 (5) of Cr.P.C. cannot be construed as the statement of law, since it was not made in the context of the police report under Section 2 (r) read with Section 173 (2) (5) and (8) of Cr.P.C. On the contrary, the three Judge Bench of this Court in the decision in **Central Bureau of Investigation v. R.S. Pai's case** (supra), after referring to the earlier judgment of the coordinate Bench in **Narayan Rao's case** (supra) categorically held that the word "shall" used in sub-Section (5) cannot be interpreted as mandatory, but directory. The said statement of law is made after considering the provisions of Section 2(r) read with Section 173 (5) and (8) of Cr.P.C. Therefore, filing of police report containing the particulars as mentioned under Section 173 (2) amounted to completion of filing of the report before the learned ACJM, cognizance is taken and registered the same. The contention of the appellant that the police report filed in this case is not as per the legal requirement under Section 173 (2) & (5) of Cr.P.C. which entitled him for default bail is rightly rejected by the High Court and does not call for any interference by this Court."*

Under somewhat similar circumstances, a Division Bench of Delhi High Court in **Kishan Lal's case** (supra), followed the law laid down by the Hon'ble Supreme Court in **Tara Singh's case**

(supra). The issue involved in the present case, was the precise issue before the Hon'ble Division Bench of Delhi High Court in **Kishan Lal's case** (supra). In fact, the Hon'ble Division Bench discussed in detail the relevant provisions of law contained in Section 173 Cr.P.C. as well as Section 36 of the NDPS Act.

The relevant observations made by the Hon'ble Division Bench in **Kishan Lal's case** (supra), in para 16 to 19 on Section 173 Cr.P.C. and in para 21 to 23 on Section 37 of the NDPS, which aptly apply to the facts of the present case, read as under:-

“It is unnecessary for us to notice other judgments cited by the learned Counsel in support of their plea that the investigation in a case like the present is to be held to be incomplete. In our view the Supreme Court decision in Tara Singh's case (supra) holding, inter alia, that a police report which is not accompanied by the expert's opinion, is to be held to be complete report as long as the witnesses who are acquainted with the circumstances of the case have been examined, continues to be law in spite of amendments in Section 173 of the Code.

Now to advert to the main plea, it is contended that for offences under the Narcotic Drugs And Psychotropic Substances Act, the report under Section 173(2) of the Code, which in law is complete (the investigating officer having carried out all his mandatory duties), is to be considered "incomplete" in the absence of the opinion of the expert. In our view the submission is entirely misconceived. Apparently the power of the Magistrate to take cognizance of offences upon a police report is being related to the duty of the

S.H.O. to forward a report on completion of investigation. The duty of the Investigating Officer under the Code is to complete the investigation without unnecessary delay. On its completion which necessarily means that the witnesses acquainted with the circumstances of the case have been examined, the officer incharge of the police station has to forward a police report in a prescribed form to a Magistrate empowered to take cognizance of the offence. However, no duty is cast on the Magistrate to take cognizance of the offence on a report which although complete except for the expert's opinion, does not make out an offence. While exercising his judicial discretion it is open to the Magistrate to seek a copy of the expert's opinion. There may even be cases under the Narcotic Drugs And Psychotropic Substances Act where no public witnesses have been cited but that fact by itself would not show that till such time the Government expert's opinion is received, the investigation is incomplete. The police report if filed in accordance with the provisions of Section 173(2) of the Code would be complete report but the Magistrate in his judicial discretion may not take cognizance of the offence. Thus the provisions of Section 173(2) of the Code have to be considered separate and distinct from Section 190(1)(b) of the Code.

As far as the expert's report is concerned, we may note that by virtue of sub-section (4) of Section 293 of the Code, any document purporting to be report under the hand of the Director or a Deputy Director or Assistant Director of a Central Forensic Science Laboratory or State Forensic

Science Laboratory can be used as evidence in any enquiry, trial or other proceedings under the Code. It is true that it is open to the Court where it thinks fit to summon and examine the Government scientific expert. But he is not a formal witness and, therefore, no duty is cast upon the investigating officer to cite him as witness.

We thus hold that under Section 173(2) of the Code there is no mandate that a police report must enclose the document purporting to be a report under the hand of a Government scientific expert. In the present cases, as cognizance of the offences taken by the Magistrate was proper and valid, no order releasing the petitioners on bail under Section 167(2) of the Code was required to be passed.

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During the course of arguments it was pointed out that Section 37 of the Narcotic Drugs And Psychotropic Substances Act stood amended but the amended provision had yet not been enforced. We were further informed on 20th April, 1989 that the Gazette notification enforcing the amended provisions of the Act was likely to be issued within week or so. We were of the opinion that while deciding these cases, the ambit of the amended provisions which have added two limitations on grant of bail, required to be looked into. Learned Counsel for the parties sought time and thus the cases were adjourned as part-heard to be listed after the summer vacation.

In the meanwhile as expected, vide notification of the 29th May, 1989, the amended

provisions of the Narcotic Drugs And Psychotropic Substances Act were brought into force. Section 37 of the Act reads as under :-

"37. Offences to be cognizable and non-bailable :

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974).

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for a term of imprisonment of five years or more under this Act shall be released on bail or on his own bond unless :-

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitation under the Code of Criminal Procedure, 1973 (2 of 1974), or any other law for the time being in force on granting of bail."

It was brought to our notice that on coming into operation of the above provision, a learned Single Judge of this court during the summer vacation while dealing with the application seeking interim bail on an accused, who had been arrested for an offence under Section 21 of the Narcotic

*Drugs And Psychotropic Substances Act has held that the added limitations in Section 37 of the Act have necessarily to be read as limitations on the powers of the High Court under Section 439 of the Code. In that case (Cr. Misc. (M) 888/89 entitled **Satish Kumar v. U.O.I.**), the petitioner who was on interim bail granted by this Court and was to surrender on 13th June, 1989, sought extension of the period to enable him to look after his wife who had not yet recovered from the major operation and who, it was so averred, had been recommended another operation. The learned Single Judge after analysing the provisions of the said Section 37 concluded that :*

"Since the court has no power to grant bail on the ground of illness of the wife, certainly the court has no power to grant interim bail or extension of the period of the interim bail as already granted by this Court. Therefore, the bail petition in such circumstances is not maintainable."

Reverting back to the facts and circumstances of the case in hand and respectfully following the law laid down by the Hon'ble Supreme Court, Full Bench of this Court, Division Bench judgment of Delhi High Court and other judgments of different High Courts, including this Court, referred to hereinabove, it is unhesitatingly held that report submitted by the investigating agency under Section 173 (2) Cr.P.C. without FSL report, cannot be said to be an incomplete report, because of which the petitioner is not entitled to invoke the provisions of Section 167 (2) Cr.P.C., for seeking default bail.

It is also pertinent to note here that all the abovesaid

judgments passed by the Bombay High Court, Rajasthan High Court as well as Delhi High Court were under the NDPS Act itself. In every case, different High Courts came to the same conclusion that police report under Section 173 (2) Cr.P.C., without the report of chemical examiner, would not amount to an incomplete report. It was so held by the Division Bench of Delhi High Court that there was no such mandate of law that police report must include the document purporting to be a report under the hand of a Government Scientific expert. It was further held that exercise of powers under Section 439 Cr.P.C. is circumscribed by Section 37 of the NDPS Act.

Exactly, this very issue was discussed in detail by the Division Bench of Delhi High Court in **Kishan Lal's case** (supra), declining default bail to an accused under NDPS Act. It was held that police report under Section 173 (2) Cr.P.C. in NDPS cases, cannot be said to be an incomplete report in the absence of FSL report and the accused is not entitled for default bail under Section 167 (2) Cr.P.C.

No other argument was raised.

In view of what has been discussed hereinabove, the answer to the first part of the question posed at the outset is and has to be in the affirmative and to the second part of the question in the negative. Accordingly, it is held that the police report filed under Section 173 (2) Cr.P.C., without the report of FSL, will be treated as a complete report. The accused will not be entitled to invoke the provisions of Section 167 (2) Cr.P.C. seeking default bail, only on the ground that police report filed under Section 173 (2) Cr.P.C. was not

a complete report, in the absence of FSL report.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this court is of the considered view that present petition has been found wholly misconceived, bereft of merit and without any substance, thus, it must fail. No case for default bail under Section 167(2) Cr.P.C., has been made out.

Resultantly, with the above said observations made, present petition stands dismissed, however, with no order as to costs.

Registrar General of this Court is directed to send a copy of this order to the Chief Secretaries, Director Generals of Police and District and Sessions Judges of both the States of Punjab and Haryana. A copy of this order shall also be sent to the Home Secretary, Senior Superintendent of Police as well as Sessions Judge, Chandigarh.

Let a copy of this order be also placed on the record of abovesaid CRR No. 2087 of 2014, which is stated to be pending consideration before a Division Bench of this Court.

(RAMESHWAR SINGH MALIK)
JUDGE

27.8.2015
AK Sharma