

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

CRM No. M-22075 of 2016.

Decided on: 22.08.2016.

Parminder Singh and others

... Petitioners

Versus

State of Punjab

... Respondent

CORAM : Hon'ble Mr. Justice Jitendra Chauhan

Present : Mr. ADS Sukhija, Advocate,
for the petitioners.

Mr. Luvinder Sofat, AAG Punjab.

Mr. Arshdeep S. Kler, DAG, Punjab.

JITENDRA CHAUHAN.J.(ORAL)

By filing this petition, under Section 167(2) Cr.P.C. read with Section 439 of Code of Criminal Procedure, the petitioners seek default bail in FIR No.324 dated 03.12.2015 registered under Section 15 of the NDPS Act, 1989 at Police Station Salem Tabri, District Ludhiana.

It is contended by the learned counsel for the petitioners that the challan/report under Section 173 Cr.P.C was filed before the Court without attaching the report of CFSL. It is further contended that without the CFSL report, the challan cannot be said to a complete challan. In the absence of report from the CFSL, it cannot be said that the substance recovered from the accused is a prohibited

substance under the NDPS Act.

On the other hand, the learned State counsel submits that even without the CFSL report, the challan is complete and as and when the report is received, the same shall be produced before the Court. Learned State counsel cites (i) Kishan Lal vs. State 1989(2) RCR (Criminal) 656; (ii) Dr. Ravdeep Kaur vs. State of Punjab 2006(4) RCR (Criminal) 328; (iii) Narendra Kumar Amin vs. CBI and others 2015(1) RCR (Criminal) 566; (iv) Gaurav vs. State of Rajasthan 2014(9) RCR (Criminal) 2035; (v) State of Haryana vs. Mehal Singh and others 1978 AIR (Punjab) 341.

I have heard the learned counsel for the parties and have gone through the case file.

The question raised at the hands of the petitioners in the instant petition is as to whether the challan/report filed under Section 173 Cr.P.C without the CFSL report can be said to be complete or not. The question was considered in Dr. Ravdeep Kaur's case, Gaurav's case and Kishan Lal's case (supra). In Kishan Lal's case, it was held as under:-

“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 SHO 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 acquitted 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.”

In view of the proposition of law considered and held in **Kishan Lal's case (supra)**, this Court unhesitatingly holds that mere non-filing of the CFSL report would not make the charge-sheet incomplete. Consequently, finding no merit, the present bail application is dismissed.

22.08.2016.
SN

(JITENDRA CHAUHAN)
JUDGE

Whether speaking/reasoned :	Yes/No
Whether reportable :	Yes/No