

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR

CRIMINAL APPLICATION (APL) NO. 1323 OF 2022

Fahim Karim Sheikh

Aged about 26 years, Occu: Driver,

R/o Kumbharpura, Yavatmal

...APPLICANT

---VERSUS---

State of Maharashtra,

Through Police Station Officer,

Ner, Yavatmal

...NON-APPLICANT

Shri M.N. Ali, Advocate for applicant.

Shri A.R. Chutke, APP for non-applicant/State.

CORAM : G.A. SANAP, J.

DATE : DECEMBER 01, 2022.

ORAL JUDGMENT :

. In this application, the applicant has prayed for setting aside the order dated 15.03.2022 passed below Exh.11 in Special Case no.105 of 2021 by the learned Additional Sessions Judge, Yavatmal, whereby the learned Additional Sessions Judge pleased to reject the application for default bail made by the applicant under Section 167(2) of the Code of Criminal Procedure (Cr.P.C.).

2. A crime bearing No.282 of 2021 came to be registered at Police Station, Ner on 18.08.2021 against this applicant for the

offences punishable under Sections 20(c), 22(c), 25 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'NDPS'). The applicant was arrested on 18.08.2021. He was produced before the Court on 19.08.2021 and remanded to the police custody. After investigation, the charge-sheet was filed against the applicant for the commission of the above offences on 08.11.2021. It is stated that the charge-sheet was filed without CA report of the analysis of the samples of the Ganja seized in the crime. On this premise, the applicant stated that the charge-sheet was not complete in all respect in the eyes of law. It is stated that the incomplete charge-sheet was filed just to defeat the right of default bail to the applicant. It is stated that even on the date of the application made by the applicant, the CA report was not placed on record. As such, indefeasible right to get default bail accrued in favour of the applicant.

3. The application was opposed. It is the case of the prosecution that on the basis of the secrete information the raid was conducted. The applicant was apprehended and from his possession Ganja weighing 190 Kg came to be seized. After completion of the investigation, the complete charge-sheet was filed. The charge-sheet

was complete in all respect. The charge-sheet could not be said to be incomplete charge-sheet. The learned Additional Sessions Judge, Yavatmal for the reasons recorded in the order dated 15.03.2022 rejected the application for default bail under Section 167(2) of the Cr.P.C.

4. The applicant has challenged the correctness of the order dated 15.03.2022 in this application.

5. I have heard Shri M.N. Ali, learned advocate for the applicant and Shri A.R. Chutke, learned Additional Public Prosecutor for the non-applicant/State. Perused the record and proceedings.

6. The learned advocate submitted that the Hon'ble Supreme Court of India in the case of **Mohd. Arbaz and others Vs. State of NCT of Delhi** (Petition for Special Leave to Appeal (Cri.) No.8164-8166/2021 order dated 13.12.2021) in identical facts has granted bail to the accused. He pointed out that the Hon'ble Supreme Court is seized with the issue. He further submitted that therefore by applying the same parameters the applicant is entitled to be released on bail.

7. As against this, learned Additional Public Prosecutor submitted that in view of the decision of the Division Bench of this Court, Bench at Goa in the case of **Manas Krishna T.K. Vs. State and others** reported in **2021 SCC OnLine Bom 1015**, the submissions advanced by the learned advocate for the applicant cannot be accepted. The learned Additional Public Prosecutor submitted that in the case of *Manas Vs. State* the Division Bench has held that the charge-sheet filed without the CA report could not be said to be incomplete charge-sheet and thereby vest any right in favour of an accused under Section 167(2) of the Cr.P.C. to get the bail.

8. It is to be noted that the quantity of the recovered Ganja from the possession of the applicant is a commercial quantity. The non-commercial quantity of Ganja, as per Schedule appended to NDPS Act, is 20 Kg. The quantity recovered in this case is 190 Kg. It is therefore apparent that apart from the non-commercial quantity, it is a huge quantity. The applicant was therefore not entitled to get the bail in the ordinary course in view of the rigor of Section 37 of NDPS Act.

9. In this case, undisputedly, the charge-sheet was filed

without the CA report. It is not the case of the applicant that on the date of the filing of the charge-sheet the investigating officer had not taken steps either to forward the samples to CA for analysis or sincere efforts to procure the report within time. It is pertinent to mention at this stage that analysis of the sample is in the hands of the Incharge of the Forensic Science Laboratory. The investigating officer has no direct control over the Forensic Science Laboratory and as such the analysis of the sample. In my view, therefore, the investigating officer cannot be held responsible in this matter. The investigating officer had no option than to file the charge-sheet without CA report. A perusal of the charge-sheet indicate that it is otherwise complete in all respect.

10. The Hon'ble Supreme Court as can be seen from the order placed on record by the learned advocate for the applicant was pleased to grant the bail to the accused. The matter is still pending before the Hon'ble Supreme Court. In my view, this factual situation may not stand in the way of the prosecution in justifying its stand to deny bail to the applicant.

11. It would be appropriate to consider the decision in the case of *Manas Vs. State* (supra). The question which was referred to

the Larger Bench (Division Bench) in view of the divergent views on the point, can be seen from paragraph 3 of the judgment. The paragraph 3 reads thus:

“.....(g) Confronted with the rival sets of judgments, the Learned Single Judge, by her order dated 07.07.2021 opined that the following questions arise and can be more advantageously considered by the Division Bench of this Court:-

i. Whether the presentation of a report under Section 173(2) Cr.PC. by the police without the report of Chemical Analyser/ FSL amounts to incomplete challan and in the absence of any extension of time under Section 36-A(4) of the NDPS Act, whether the accused is entitled to bail under Section 167(2) Cr.P.C.?

ii. Whether, in a charge-sheet under NDPS Act, accompanied by a field testing report which is a part of the record, can be labelled as an incomplete report, simply because it is not accompanied by a report of Chemical Analyser/FSL ?

iii. What is the legal efficacy of “Drug Law Enforcement, Field Officers' Handbook” issued by the Narcotics Control Bureau, Ministry of Home Affairs, Government of India?....”

12. The Division Bench has made threadbare analysis of the issues/questions referred for its consideration. The Division Bench held in categorical terms that the earlier decisions of the Bombay High Court rendered by the Single Judge holding that the charge-

sheet filed without CA report would be incomplete was not the correct law. The questions have been answered in paragraph 81. The paragraph 81 reads thus:

“81. Resultantly, we answer this reference by holding the following:

(a) Question no. (i) is answered by holding that even in an NDPS case a police report containing the details prescribed under Section 173(2) Cr.P.C. is a complete police report or a charge sheet or a challan even if it is unaccompanied by a CA/FSL report. If such police report is filed within the period stipulated under Section 167(2) Cr.P.C. r/w. Section 36-A(4) of the NDPS Act, the accused cannot insist upon a default bail.

(b) Question no. (ii) is answered by holding that in an NDPS case, a charge sheet accompanied by a field testing report as reflected in the Panchanama or otherwise also cannot be labelled as an incomplete police report/charge sheet/challan simply because the same was not accompanied by a CA/FSL report.

(c) Question no. (iii) is answered by holding that the Drug Law Enforcement Field Officers' Handbook issued by the NCB has no legal efficacy, in the sense that the handbook has no statutory flavour or the handbook is not a set of executive instructions issued by the Central Government.”

13. In my view, the decision of the Division Bench is binding on this Court. The Division Bench has held that if the charge-sheet/

police report has been filed within stipulated period without CA report, the accused cannot insist upon the default bail. In my view, considering this binding precedent the application made by the applicant was rightly rejected by the learned Additional Sessions Judge. Perusal of the order passed by the learned Additional Sessions Judge shows that this decision in the case of *Manas Vs. State* (supra) was considered by the learned Additional Sessions Judge.

14. It is to be noted that the decision in the case of *Manas Vs. State* (surpa) was followed by the Single Judge at Principle Seat of this Court in the case of **Navinkumar Pandu Jatot Vs. State of Maharashtra** (Bail Application No.301/2020 and connected matters) decided on 31.01.2022.

15. In view of above, the application stands rejected.

JUDGE

Wagh