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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 18.07.2022

+ **BAIL APPLN. 1892/2022 & CRL.M. (BAIL) 760/2022**

SANDEEP

..... Petitioner

Through: Mr. Nitin Bansal, Mr. Kundan
Kumar, Mr. Saurabh Srivastava Advs.

versus

STATE (NCT OF DELHI)

..... Respondent

Through: Mr. Hirein Sharma, APP for State, SI
Om Prakash, ANTF, Crime Branch

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

: **JASMEET SINGH, J (ORAL)**

BAIL APPLN. 1892/2022

1. This is an application seeking grant of default/mandatory bail to the applicant in FIR No. 179/2021 at P.S. Crime Branch (West), u/s 21/25 NDPS Act until the final disposal of the case.
2. Mr. Bansal, learned counsel for the petitioner states that in the present case complete charge sheet has not been filed within 180 days as provided u/s 36(A)(4) and its proviso NDPS Act, 1985 and hence, the applicant is entitled for mandatory bail u/s 167(2) Cr.P.C.
3. He states that the charge sheet filed before the Trial Court was without FSL report and hence, the charge sheet is incomplete entitling the petitioner to get default bail u/s 167(2) Cr.P.C.



4. In support of this, Mr. Bansal has relied on order dated 13.12.2021 passed by the Hon'ble Supreme Court in Special Leave to Appeal (Crl.) 8164-8166/21 which reads as under:

“SLP(Crl.)No(s).8164-8166/2021

The main relief sought by the petitioners in these petitions is that they are entitled to bail in default on account of the fact that the investigating agency has failed to file a police report under Section 173(2) of the Cr.P.C. within the stipulated period of one hundred and eighty days. Although, it is not disputed that a report was filed within the stipulated period, the petitioners contend that the said report was incomplete as it was not accompanied by the report of the Chemical Examiner.

Heard learned counsel for the parties and carefully perused the material placed on record.

Taking into consideration the fact that the petitioners have suffered incarceration for a period of more than 2 years and 11 months, we are inclined to grant interim bail to them for a period of three months from today subject to the terms and conditions to be imposed by the trial court.

The petitioners are, accordingly, directed to be enlarged on interim bail for a period of three months from today subject to the terms and conditions to be imposed by the trial court.

List these matters on 08.02.2022 for final disposal.

SLP(Crl) No. 8718/2021

The relief sought by the petitioner in this petition is that he is entitled for default bail as the complete and final challan has not been filed within 180 days and the final report was not accompanied with an FSL Report.

Heard learned counsel for the parties and carefully perused the material placed on record.

Taking into consideration the fact that the petitioner has suffered incarceration for a period of more than 1 year and 4 months, we are inclined to grant interim bail to the petitioner for a period of three months from today subject to the terms and conditions to be imposed by the trial court.

The petitioner is, accordingly, directed to be enlarged on interim bail for a period of three months from today subject to



*the terms and conditions to be imposed by the trial court.
List the matter on 08.02.2022 for final disposal.*

5. Per contra, Mr. Sharma, learned APP for the State has relied upon the judgment of this Court in CRL. REV. P. 340/2020, *Mehabub Rehman @ Empha v. State* dated 22.03.2021 as well as judgment dated 29.03.2022 passed in Writ Petition 5934/2022 passed by the High Court of Karnataka at Bengaluru titled *Mr. Sayyad Mohammad @ Nasin v. State of Karnataka*.
6. I have heard learned counsel for the parties.
7. A bare perusal of the order dated 13.12.2021 shows that it is only an interim order and does not lay down legally binding principles.
8. In addition, in the case before the Hon'ble Supreme Court, the petitioner had suffered incarceration for a period of more than 2 years 11 months in one case and 1 year and 4 months in the other case.
9. The present case, the petitioner has been arrested on 07.09.2021. The issue whether a person is entitled to default bail on account of the charge sheet having been filed without FSL report is still yet to be determined by the Hon'ble Supreme Court.
10. This Court in *Mehabub Rehman(supra)* as taken a view which reads as under:

“19. Applying the ratio of decision in Kishan Lal (Supra) to the present case, I find that the learned trial court has rightly dismissed petitioner's bail application while holding that though the FSL report has been filed after filing of bail application and after completion of 180 days of investigation, but the charge-sheet cannot be held to be incomplete because of the pendency of FSL report over voice sample, as preparation of report on voice sample is not in the hands of IO....”

11. For the above reasons, I am of the view that the petitioner does not



automatically gets a right of default bail in the absence of FSL report accompanying charge sheet. The same has also been made clear by the judgments of *Mehabub Rehman (supra)*.

12. For the said reasons, the application is dismissed.

JASMEET SINGH, J

JULY 18, 2022/dm

[Click here to check corrigendum, if any](#)

