

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO. 1358 OF 2022**

Azaruddin Parvez Shaikh

...Applicant

Versus

The State of Maharashtra

...Respondent

.....

Mr.Nitin Gaware Patil a/w Mr. Narayan Rokade for the Applicant.
Mr. S.S. Hulke, APP for the State.

.....

CORAM : N.R. BORKAR, J.

DATED : 24 JANUARY 2023

P.C. :-

This is an application under Section 439 of the Code of Criminal Procedure for bail.

2. The applicant came to be arrested on 18 July 2021 in Crime No. 93 of 2021 registered at Adgaon police station for the offences punishable under Sections 8(c), 20(c), 29 of Narcotic Drugs and Psychotropic Substances Act.

3. I have heard the learned counsel for the applicant and the learned APP for the respondent-State.

4. On 9 July 2021, Ganja of commercial quantity was recovered from Innova car bearing registration No. MH-01-AC-7009, which according to the prosecution was abandoned by the present applicant and other co-

accused on seeing police patrolling party.

5. The applicant is seeking default bail on the ground of non-filing of a CA/FSL report alongwith charge-sheet. The learned counsel for the applicant submits that to launch the prosecution under the NDPS Act, charge-sheet must contain necessary evidence in the form of CA/FSL report containing expert's opinion that the recovered substance was either a Narcotic Drug or a Psychotropic Substance. It is submitted that in absence of such evidence, if the charge-sheet is filed then the only inference which can be drawn is that the same is done to defeat the accused's right to default bail.

6. On the other hand, the learned APP submits that Division bench of this court in Manas Krishna T. K. Versus State¹ has held that presentation of charge-sheet without CA/FSL report is not an incomplete charge-sheet. The learned APP has pointed Para No. 66 of the Judgment which reads thus:

“66. For all the aforesaid reasons, we hold that the presentation of a police report under Section 173(2) unaccompanied by a CA/FSL report does not amount to any incomplete police report or any incomplete charge sheet/challan even in the absence of an extension of time under Section 36-A(4) of the NDPS Act. Based thereon therefore the accused cannot insist upon a default bail.”

7. The learned counsel for the applicant has, however, placed on record the copy of the order passed by the Hon'ble Supreme Court dated

1 2021 SCC Online 2955

9 November 2022 in Petition(s) for Special Leave to Appeal (Crl.) No(s). 8164-8166/2021. The order passed by the Hon'ble Supreme Court reads thus:

“In all these petitions the question that arises for consideration is relating to the completeness of the charge sheet in accordance with law if the same is filed without the CFSL Report. The matter would require detail consideration. In the meantime, all parties to complete their pleadings.

For the present, though the issue of default bail is to be considered in the petitions since it would require some time without reference to that aspect of the matter, keeping in view that the petitioners in SLP(crl.) Nos. 6876-6877/2022, SLP(crl.) No. 532/2022 and SLP (crl.)No. 5190/2022 are still in custody, we order that they be released on bail subject to that conditions to be imposed by the concerned trial courts.

While indicating so we also take note of the objection put forth by the learned counsel for the respondent-State in SLP (crl.) No. 2666/2022 who objects to the grant of bail since the petitioner therein has not surrendered despite the bail being cancelled by the High Court. Though in a normal circumstances we would have taken a serious view of the matter, keeping in view the fact that the petitioner has approached this Court immediately after cancellation of the bail and the petition has been tagged alongwith similar matter and could not be taken up, we allow the benefit of bail to the petitioner. Hence, the order cancelling bail which is impugned in SLP (crl.) No. 2666/2022 shall remain stayed.

List all these petitions on 17.01.2023.”

8. The learned counsel for the applicant submits that as the Hon'ble Supreme Court in the similar facts and circumstances has released the

petitioners in the above petitions on bail, the same benefit be extended to the applicant. However, as Division bench of this Court has held that the police report under section 173(2) unaccompanied by a CA/FSL report does not amount to any incomplete police report, I am not inclined to release the applicant on default bail.

9. Application is rejected.

(N.R. BORKAR, J.)

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