



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

Reserved on : 13.07.2023

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Pronounced on : 05.09.2023

+ **CRL.REV.P. 336/2023 AND CRL.M.(BAIL) 451/2023**

PANKAJ GUPTA

..... Petitioner

Through: Mr. Naveen Malhotra and Mr. B. S. Arora, Advocates.

versus

NARCOTICS CONTROL BUREAU

..... Respondent

Through: Mr. Subhash Bansal, Sr. Standing Counsel for NCB with Mr. Shashwat Bansal, Advocate.

CORAM:

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

JUDGMENT

RAJNISH BHATNAGAR, J.

1. The present revision petition has been filed by the petitioner under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973 for setting aside the impugned order dated 03.01.2023 passed by Ld. Special Judge, NDPS, Patiala House Courts, Delhi vide which the interim bail application as well as default bail application filed under Section 167(2) Cr.P.C. r/w Section 36A NDPS Act, were dismissed.

2. The present petition has been preferred on the ground that the petitioner was formally arrested in this case on 25.09.2021 and thereafter, complaint/ chargesheet was filed on 23.03.2022 without the CRCL report.

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Subsequently, it is only after the petitioner filed default bail application on 04.04.2022, the CRCL report was filed at a belated stage on 22.04.2022.

3. In the aforesaid circumstances of the case, petitioner filed an application seeking interim bail under Section 439 Cr.P.C and default bail under Section 167(2) Cr.P.C. r/w Section 36A NDPS Act on 04.04.2022. In the meanwhile, on 22.04.2022, the CRCL Report was filed and vide impugned order dated 03.01.2023, the Ld. Trial Court dismissed petitioner's bail application with the following observations:

"The charge-sheet was filed within limitation i.e. on 23.03.2022 however, the CRCL report was filed on 23.04.2022. As far as the factum of incomplete charge-sheet is concerned on the basis of non filing of CRCL report, it is held by Hon'ble High Court of Delhi in Mehabub Rehman @ Empha Vs State, Crl. Revision P. No. 340/2020 dated 22.03.2021 and Mohd. Arbaz Vs. State of NCT of Delhi Crl. Revision Petition 1219/2019 dated 03.11.2020 that mere non filing of FSL report do not make the chargesheet incomplete. The charge sheet was filed within 180 days i.e. on 23.03.2022. Hence, no ground made out to release the applicant/accused Pankaj Gupta on bail u/s 167 (2) Cr.PC r/w section 36A (4) NDPS Act. The orders of the Hon'ble Apex Court are of no help to that applicant as in the present matter the CRCL report has already been filed before the order in the abovementioned SLPS i.e. on 09.11.2022 and the FSL report was filed in the present matter on 22.04.2022 moreover still the matter is pending before the Hon'ble Supreme Court for adjudication. Hence, the present applications for default and interim bail stands dismissed.

Application disposed of accordingly.."

4. Ld. Counsel for the petitioner submitted that the petitioner was arrested on 25.09.2021 and the complaint was filed, without the CRCL report, on 23.03.2022, therefore the petitioner is entitled to default bail as the CRCL report was filed subsequently on 23.04.2022 but the application u/s 167(2) Cr.P.C. read with Section 36A NDPS Act was filed on



04.04.2022, which was before the filing of the CRCL report, and submitted that if the complete chargesheet is not filed within the requisite period of 180 days, the accused persons are entitled to default bail. He further submitted that the CRCL report is the primary evidence in this case and the most critical part of the chargesheet, without which the whole case of the NCB could not be proved prima facie. He further submitted that at the time of seizure no testing was done prima-facie to ascertain whether the property recovered was covered under the NDPS act or not. He further submitted that as per the prosecution the complaint is filed without CRCL report which means investigation is still going on U/s 173(8) of Cr.P.C, however, no permission was ever sought for extension of investigation beyond 180 days and hence, the custody of the petitioner beyond 180 days for not filing the complete chargesheet is illegal and he is liable to be released on bail. Lastly, it is further submitted by the Ld. Counsel for the petitioner that the petitioner is not a previous convict and there is no reasonable ground to believe that he will commit any offence if released on bail. Ld. counsel for petitioner, in support of his contentions, has placed reliance on *Ajit Singh @ Jeeta @ Anr. vs. State of Punjab (Revision Petition No. 4659 of 2015)*, *Tarlok & Ors vs. State of Haryana, Ravinder @ binder vs. State of Haryana (2014 SCC OnLine P & H 24880)*, *Gurpal Singh & anr. vs. State of Punjab (CRR No. 791 of 2916)* and *Rakesh Kr. Paul vs. State of Asam [(2017) 15 SCC 67]*.

5. On the other hand, Ld. Sr. Standing counsel for NCB has vehemently opposed the present petition by submitting that in this case, chargesheet was filed after completion of the investigation on 23.03.2022, which is well



within the statutory period. Subsequently, the CRCL report was received and the same was filed on 22.04.2022. He submitted that once the chargesheet has been filed within the limitation period, the petitioner cannot be released on default bail merely on the ground that the CRCL report was not filed alongwith the chargesheet. He further submitted that when the chargsheet has already been filed, the same cannot be deemed to be incomplete merely because the CRCL report was not filed with it on the very same day. Ld. Sr. Standing counsel for NCB has emphasised that the chargesheet was filed way back on 23.03.2022, within the limitation period and on 22.04.2022, the CRCL report was also filed and thus, submitted that there is no merit in the present petition and the same deserves to be dismissed.

6. In the instant case, the question as required to be answered is whether the chargesheet filed without CRCL report qualifies to be a defective chargesheet, and if so, whether an accused who has been in custody for more than 180 days prior to the filing of the CRCL report before the Court is entitled to default bail.

7. For answering the aforesaid issue, it is necessary to have a look at the provisions contained in Section 36A of NDPS Act which provides for modified application of the provisions contained in Section 167 of Cr.P.C which read as follows:-

“36A. Offences triable by Special Courts.—(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—

(a) all offences under this Act which are punishable with imprisonment for a term of more than three years shall be



triable only by the Special Court constituted for the area in which the offence has been committed or where there are more Special Courts than one for such area, by such one of them as may be specified in this behalf by the Government;

(b) where a person accused of or suspected of the commission of an offence under this Act is forwarded to a Magistrate under sub-section (2) or sub-section (2A) of section 167 of the Code of Criminal Procedure, 1973 (2 of 1974), such Magistrate may authorise the detention of such person in such custody as he thinks fit for a period not exceeding fifteen days in the whole where such Magistrate is a Judicial Magistrate and seven days in the whole where such Magistrate is an Executive Magistrate:

Provided that in cases which are triable by the Special Court where such Magistrate considers—

(i) when such person is forwarded to him as aforesaid; or

(ii) upon or at any time before the expiry of the period of detention authorised by him, that the detention of such person is unnecessary, he shall order such person to be forwarded to the Special Court having jurisdiction;

(c) the Special Court may exercise, in relation to the person forwarded to it under clause (b), the same power which a Magistrate having jurisdiction to try a case may exercise under section 167 of the Code of Criminal Procedure, 1973 (2 of 1974), in relation to an accused person in such case who has been forwarded to him under that section;

(d) a Special Court may, upon perusal of police report of the facts constituting an offence under this Act or upon complaint made by an officer of the Central Government or a State Government authorised in his behalf, take cognizance of that offence without the accused being committed to it for trial.

(2) When trying an offence under this Act, a Special Court may also try an offence other than an offence under this Act with which the accused may,



under the Code of Criminal Procedure, 1973 (2 of 1974), be charged at the same trial.

(3) Nothing contained in this section shall be deemed to affect the special powers of the High Court regarding bail under section 439 of the Code of Criminal Procedure, 1973 (2 of 1974), and the High Court may exercise such powers including the power under clause (b) of sub-section (1) of that section as if the reference to “Magistrate” in that section included also a reference to a “Special Court” constituted under section 36.

(4) In respect of persons accused of an offence punishable under section 19 or section 24 or section 27A or for offences involving commercial quantity the references in sub-section (2) of section 167 of the Code of Criminal Procedure, 1973 (2 of 1974) thereof to “ninety days”, where they occur, shall be construed as reference to “one hundred and eighty days”: Provided that, if it is not possible to complete the investigation within the said period of one hundred and eighty days, the Special Court may extend the said period up to one year on the report of the Public Prosecutor indicating the progress of the investigation and the specific reasons for the detention of the accused beyond the said period of one hundred and eighty days.

(5) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the offences punishable under this Act with imprisonment for a term of not more than three years may be tried summarily.”

8. Before proceeding further, it would also be profitable to notice the provisions contained in Section 167 of Cr. P. C. which reads as under:

“167. Procedure when investigation cannot be completed in twenty-four hours.—(1) Whenever any person is arrested and detained in custody, and it appears that the investigation cannot be completed within the period of twenty-four hours fixed by section 57, and there are grounds for believing that the accusation or information is well-founded, the officer in charge of the police station or the police officer making the investigation, if he is not below the rank of sub-inspector, shall forthwith transmit to the nearest Judicial Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused to such Magistrate.



(2) The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time, authorise the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole; and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction:

Provided that—(a) the Magistrate may authorise the detention of the accused person, otherwise than in custody of the police, beyond the period of fifteen days, if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorise the detention of the accused person in custody under this paragraph for a total period exceeding—

(i) ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years;

(ii) sixty days, where the investigation relates to any other offence, and, on the expiry of the said period of ninety days, or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail, and every person released on bail under this sub-section shall be deemed to be so released under the provisions of Chapter XXXIII for the purposes of that Chapter;

(b) no Magistrate shall authorise detention of the accused in custody of the police under this section unless the accused is produced before him in person for the first time and subsequently every time till the accused remains in the custody of the police, but the Magistrate may extend further detention in judicial custody on production of the accused either in person or through the medium of electronic video linkage;

(c) no Magistrate of the second class, not specially empowered in this behalf by the High Court, shall authorise detention in the custody of the police.

[Explanation I.—For the avoidance of doubts, it is hereby declared that, notwithstanding the expiry of the period specified in paragraph (a), the accused shall be detained in custody so long as he does not furnish bail.



[Explanation II.—If any question arises whether an accused person was produced before the Magistrate as required under clause (b), the production of the accused person may be proved by his signature on the order authorising detention or by the order certified by the Magistrate as to production of the accused person through the medium of electronic video linkage, as the case may be.

Provided further that in case of a woman under eighteen years of age, the detention shall be authorised to be in the custody of a remand home or recognised social institution.

(2A) Notwithstanding anything contained in sub-section (1) or sub-section (2), the officer in charge of the police station or the police officer making the investigation, if he is not below the rank of a sub-inspector, may, where a Judicial Magistrate is not available, transmit to the nearest Executive Magistrate, on whom the powers of a Judicial Magistrate or Metropolitan Magistrate have been conferred, a copy of the entry in the diary hereinafter prescribed relating to the case, and shall, at the same time, forward the accused to such Executive Magistrate, and thereupon such Executive Magistrate, may, for reasons to be recorded in writing, authorise the detention of the accused person in such custody as he may think fit for a term not exceeding seven days in the aggregate; and, on the expiry of the period of detention so authorised, the accused person shall be released on bail except where an order for further detention of the accused person has been made by a Magistrate competent to make such order; and, where no order for such further detention is made, the period during which the accused person was detained in custody under the orders made by an Executive Magistrate under this sub-section, shall be taken into account in computing the period specified in paragraph (a) of the proviso to sub-section (2):

Provided that before the expiry of the period aforesaid, the Executive Magistrate shall transmit to the nearest Judicial Magistrate the records of the case together with a copy of the entries in the diary relating to the case which was transmitted to him by the officer in charge of the police station or the police officer making the investigation, as the case may be.

(3) A Magistrate authorising under this section detention in the custody of the police shall record his reasons for so doing.

(4) Any Magistrate other than the Chief Judicial Magistrate making such order shall forward a copy of his order, with his reasons for making it, to the Chief Judicial Magistrate.

(5) If in any case triable by a Magistrate as a summons-case, the investigation is not concluded within a period of six months from the date



on which the accused was arrested, the Magistrate shall make an order stopping further investigation into the offence unless the officer making the investigation satisfies the Magistrate that for special reasons and in the interests of justice the continuation of the investigation beyond the period of six months is necessary.

(6) Where any order stopping further investigation into an offence has been made under sub-section (5), the Sessions Judge may, if he is satisfied, on an application made to him or otherwise, that further investigation into the offence ought to be made, vacate the order made under sub-section (5) and direct further investigation to be made into the offence subject to such directions with regard to bail and other matters as he may specify.”

9. From a conjoint reading of Section 36A of NDPS Act and Section 167 of Cr.P.C, it becomes clear that if an accused has been detained in connection with investigation of a case for a period of more than 180 days in an offence under NDPS Act, he is entitled to be released on bail if he is prepared to and does furnish bail unless the Special Court has extended the period of detention during investigation of the case beyond 180 days.

10. In the instant case, the chargesheet without CRCL report has been filed within the statutory period of 180 days. The question whether a final report presented before the Court in terms of Section 173 Cr.P.C is incomplete or defective without the opinion of the CRCL expert is required to be considered in the light of the provisions contained in Section 173 Cr.P.C so as to determine whether the petitioner is entitled to default bail. Section 173 Cr.P.C provides that officer incharge of the police station has to forward to the Magistrate empowered to take cognizance of the offence, the report of the police after completion of the investigation. Sub-Secton (2) provides the particulars which are required to be mentioned in the final report. Sub-section (8) of Section 173 clearly states that the investigating



agency is not precluded from undertaking further investigation of the case and to forward further reports regarding evidence which may be collected during further investigation.

11. In view of the above, this Court is of the opinion that the Ld. Trial Court has rightly dismissed the default bail application filed by the petitioner while observing that though the CRCL Report was filed after filing of the bail application and after completion of the period of 180 days, however, the chargesheet so filed, cannot be regarded as being incomplete as the same was filed after completion of the investigation on 23.03.2022, which was well within the statutory period and prior to the filing of the default bail application which was moved by the petitioner at a later stage, on 04.04.2022.

12. In the judgment in the case of **Mr. Sayyad Mohammad @ Nasim Vs. State of Karnataka and Anr. (W.P.(Crl) No. 5934/2022)** the learned Single Judge of the High Court of Karnataka has clearly observed that that the petitioner does not get a right to demand default bail under Section 167(2) of the Cr.P.C. merely because the charge sheet/final report filed by the Police after investigation is without FSL report, as non-filing of the FSL report by itself would not make the charge sheet contrary to Section 173(2) of the Cr.P.C. While taking the aforesaid view, the learned Single Judge of the High Court of Karnataka has relied upon the judgment of the Division Bench of the High Court of Bombay in the case of **Manas Krishna T. K. v. State, 2021 SCC Online Bom 2955**. In the said case, the Division Bench of the High Court of Bombay, in view of conflicting views of two learned



Single Judges on the same very issue of an accused becoming entitled to default bail on the ground that FSL report did not accompany the final report, answered the reference in the following manner:

“ 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 23 a set of executive instructions issued by the Central Government.”

13. The Hon’ble Supreme Court in the case of ***Dinesh Dalmia vs. CBI, (2007) 8 SCC 770***, has held that though ordinarily all documents should accompany the charge sheet but even if all documents have not been filed, the same would not vitiate filing of the same.

14. In ***Kishan Lal Vs. State (1989 SCC OnLine Del 348)***, the Division Bench of this Court has observed and held as follows:

"14. We respectfully agree with the earlier decision of this Court in Tej Singh's case (supra). The decision in Hari Chand and Raj Pal v. State (supra) by a Single Judge of this Court wherein it has been



held that an "incomplete challan" is not a police report within the ambit of Section 173(2) of the Code does not support the case of the petitioners. From the reported judgment it is not clear where all the witnesses or some of them "acquainted with the circumstances of the case" were yet to be examined when the report was filed. The reason for calling it incomplete is not discernible. But it is safer to assume from the reading of the judgment that the investigation was not complete. Thus the report as envisaged under Section 173(2) of the Code could not have been filed.

15. It is unnecessary for us to notice other judgments cited by the learned Counsels 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.

16. Now to advert to the main plea. It is contended that for offences under the NDPS 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 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 NDPS 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(l)(b) of the Code.

17. 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 inquiry, 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 a witness.

18. 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."

15. Reliance can also be placed Upon **Mehabub Rehman @ Empha Vs. State Through: Spl Cell, Delhi Police (CRL.REV.P. 340/2020)**, wherein, the Coordinate Bench of this Court has observed and held as follows:

"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. It cannot be lost sight of the fact that immediately after petitioner's arrest on 13.03.2020, prosecution filed an application seeking permission to obtain voice sample of petitioner/accused which was allowed on 20.03.2020 and on the same day voice samples were taken, but thereafter, because of lockdown due to covid pandemic, report could be obtained only on 26.09.2020.



20. Moreover, in the impugned order, the learned trial court has taken note of the fact that the case of the prosecution rests upon alleged call interception and petitioner is allegedly the main member of syndicate whose mobile was intercepted. It has been brought to the notice of this court that non bailable warrants were issued against the petitioner and he was arrested in FIR No. 91/2020, registered at police station Kalichak, Malda, West Bengal for the offence under Section 21 of NDPS Act and after issuance of production warrants, he was arrested in this case. Pertinently, 10.5 kg of heroin was recovered from his associates in the present case. Whether or not petitioner is involved in the offence in question is a matter of trial and cannot be gone into at this stage. Accordingly, I am not inclined to grant relief to the petitioner."

16. 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 within the period of limitation i.e. 23.03.2022 and the charge-sheet could not be held to be incomplete merely because the CRCL report has not been filed along with the chargesheet.

17. Learned counsel for the petitioner has argued that the Hon'ble Supreme Court in **SLP (Crl.) No. 68776-6877/2022**, **SLP (Crl.) No. 8718/2021** and **SLP (Crl.) No. 8496-8497/2021** dated 09.11.2022 has granted interim bail in similar matters. Therefore, it was argued that the petitioner may be admitted to interim bail or default bail.

18. On the contrary, it is submitted by the learned Senior Standing Counsel for NCB that orders passed by the Apex Court in the above mentioned petitions are of no help to the petitioner as the matters are still pending adjudication before the Hon'ble Supreme Court, and the petitioner can approach the Hon'ble Supreme Court seeking similar relief as granted



by the Hon'ble Supreme Court in above petitions. He further submitted that Hon'ble Supreme Court has granted relief to the petitioners who had approached the Hon'ble Supreme Court and the matters have not yet been finally decided. Therefore, no relief as prayed for by the petitioner can be granted to him in the present petition.

19. This Court is of the opinion that the petition lacks merit and accordingly the same is dismissed, along with pending application.

RAJNISH BHATNAGAR, J

SEPTEMBER 05, 2023/ib

