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

RESERVED ON -01.09.2023
PRONOUNCED ON -21.09.2023

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BAIL APPLN. 2612/2022
RAHIMA

..... Petitioner

Through: Mr.Alamgir, Advocate
versus

THE STATE GNCT OF DELHI

..... Respondent

Through: Mr.Amit Sahni, APP for the State
with Mr.Ankur, Mr.Gopesh Jindal
and Mr.Vaibhav Mishra, Advocates
SI Murari Krishan, PS NFC New
Delhi

8

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BAIL APPLN. 2708/2023
RAMINDER SINGH

..... Petitioner

Through: Mr.Anshuman Gangesh and
Mr.Pradeep Kumar, advts.

versus

STATE GOVT OF NCT

..... Respondent

Through: Mr.Amit Sahni, APP for the State
with Mr.Ankur, Mr.Gopesh Jindal
and Mr.Vaibhav Mishra, Advocates
SI Inderveer Singh along with ASI
Suresh Kumar, WR-1 Section, PS
Crime Branch

11

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CRL.REV.P. 48/2022

BAIL APPLN. 2612/2022 & connected matters

Page 1 of 12



MOHAMMAD AKBAR

..... Petitioner

Through: Mr.Amjad Khan, Mr.Sumit Kumar
and Mr.Mohd.Azimuddin, Advocates

versus

STATE

..... Respondent

Through: Mr.Amit Sahni, APP for the State.
SI Rahul, PS Special Cell/NDR

12

+ CRL.REV.P. 338/2022

ABDULLAH NAJIBULLAH @ NABI

..... Petitioner

Through: Mr.Jatin Rajput, Mr.Rajesh Kumar
Jha, Mr.Varun Panwar and
Mr.Sandeep Kumar, advts.
Mr.Amjad Khan, Mr.Sumit Kumar
and Mr.Mohd.Azimuddin, Advocates

versus

STATE

..... Respondent

Through: Mr.Amit Sahni, APP for the State.
SI Dinesh Joshi, PS Special
Cell/NDR

26

+ CRL.REV.P. 578/2023

RAJI

..... Petitioner

Through: Mr.Ankaj Giri, Advocate

versus

THE STATE NCT OF DELHI

..... Respondent

Through: Mr.Amit Sahni, APP for the State
with Mr.Ankur, Mr.Gopesh Jindal
and Mr.Vaibhav Mishra, Advocates
SI Sanjeev, PS Crime Branch



31

+ CRL.REV.P. 391/2022

SHAMBHU SINGHANIA @ VISHAL

..... Petitioner

Through: Mr.Nishant Sharma, Adv. (through
VC)

versus

STATE (NCT OF DELHI)

..... Respondent

Through: Mr.Hemant Mehla, APP for the state
with Mr.Dipanshu Meena, Advocate
SI Yogender.

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

J U D G M E N T

DINESH KUMAR SHARMA,J :

1. The present bail applications have been proposed to be taken together and disposed of vide this common order as the question involved herein is similar that whether the charge sheet filed without the FSL report is an 'incomplete charge sheet' and by virtue of this the petitioners accrued a statutory right to be released on default bail.
2. Learned counsels for the petitioners have argued vehemently that in view of the latest judgment of the Hon'ble Supreme Court in ***Mohd. Arbaz vs. State of NCT of Delhi***, SLP (Crl.)8164-8166/2021 dated 09.11.2022, ***Suleman vs. The State (Govt. of NCT of Delhi)*** in Special Leave to Appeal (Crl.) No.1929/2023, order dated 17.04.2023, ***Divyas***



Bardewa vs. Narcotics Control Bureau in Special Leave to Appeal (Crl.) No.11628/2022 order dated 01.05.2023 and ***Arif Khan vs. State*** in Special Leave to Appeal (Crl.) No.8610/2023 order dated 28.07.2023, the Hon'ble Apex Court has extended the benefit of bail to the accused persons and have kept the question relating to the completeness of the charge sheet in accordance with the law if the same is filed without the CFSL report for consideration. Learned counsels for the petitioners have submitted that the Hon'ble Apex Court is of the view that the matter requires detailed consideration. It has further been submitted that the High Court of Punjab and Haryana vide its Judgment dated 11.02.2022 in ***Joginder Singh vs. State of Haryana***, Crl.Misc.No.M-48705 of 2021, judgment dated 17.02.2022 in ***Ajaib Singh vs. State of Haryana***, CRR-40-2022 (O&M), and in judgment dated 01.06.2022 in ***Rohtas @ Raju vs. State of Haryana***, CRR-933 of 2022 (O&M) have also *inter alia* held as under:

“The report of the FSL goes to the root of the case and is a material document and as such, filing of challan without the same is not to be treated as complete challan, as has been held by the coordinate Bench of this Court in Jagvinder Singh case (supra) and Ajaib Singh's case (supra). The similar view has been taken by the coordinate Bench of this Court in Criminal Revision No.1314 of 2021, Joginder Singh Vs. State of Haryana, decided on 11.02.2022.

Even the Hon'ble Apex Court in SLP (Criminal) No.8164-8166/2021 Mohammad Arbaz and others Vs. State of NCT and Delhi, also granted relief to the accused, under the similar circumstances.

In the light of the above, the impugned order dated 24.03.2022 rejecting default bail to the petitioner is hereby set aside and he is ordered to be released on default bail on furnishing requisite bail bonds to the satisfaction of concerned trial Court/Special Judge



(Duty).”

3. Learned counsels for the petitioners have also submitted that this court has also followed the same view in *Crl. Rev. P.135/2023* titled ***Gurjeet Singh vs. State of NCT of Delhi*** and in *Crl. Rev. P.471/2023* titled ***Amanpreet Kaur @ Preeti (in JC) vs. State*** in order dated 28.04.2023. It is pertinent to mention that in ***Amanpreet Kaur @ Preeti*** (supra) only the interim bail was granted.
4. Learned APP for the state has vehemently opposed the bail applications and has submitted that the Division Bench of this court in ***Kishan Lal vs. State***, *Crl.W.P.No.622/1988*, has authoritatively held that under Section 173 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. Learned APP submits that in the present cases, as the cognizance of the offences has already taken by the magistrate properly and validly, therefore, no order releasing the petitioners on bail under Section 167 (2) of the Code is required to be passed. Learned APP for the State has submitted that ***Kishan Lal*** (supra) has been followed by this court in ***Babu vs. State*** (1951)2 SCR 729, ***Mehabub Rehman @ Empha vs. State*** *Crl.Rev.P. 340/2020* and ***Suleman*** (supra) and a plethora of other cases.
5. Learned APP has submitted that the Sikkim High Court in ***Anwar Alam vs. State of Sikkim***, *Crl. Rev P. No. 4 of 2022* (date of decision 29.11.2022) has also *inter alia* held that since the charge sheet having been filed within the statutory period regardless of the admitted fact of



absence of the FSL report, the bail was declined.

6. I have considered the submissions of the parties and perused the record carefully.
7. Before proceeding further, it is necessary to advert to the settled law laid down by this court in **Kishan Lal** (supra), whereby, it has been *inter alia* held as under:

“5. The question raised by the petitioners in a nut shell is whether the investigation of a case under the NDPS Act can be said to be complete in the absence of the report of the Scientific Officer and Chemical Examiner? The contention is that where the accused person is allegedly found in possession of or transporting a prohibited drug or substance, mainly two facts have to be established by the prosecution viz., (1) that of recovery of the commodity or substance and (2) that the possession of the said recovered material is illegal under the provisions of the NDPS Act. It is submitted that the Investigating Officer would be unable to give his opinion regarding the second aspect till he obtains the report of the expert and, therefore, the report submitted by the Investigating Officer even if purported to be under Section 173 (2) of the Code, must be held to be based on incomplete investigation.

6. The learned Single Judge in his reference Order has noticed that the reported cases in which this question has been settled related to offences under the Indian Penal Code. It was urged before him that the principles enunciated in those cases are not applicable to cases involving an offence under the NDPS Act or the old Opium Act or the Excise Act. To appreciate the contentions raised in these petitions, we have to notice the case law to some extent to highlight the settled principles.

7. It has been held by the Supreme Court that although the police are not permitted to send an incomplete report under Section 173(2) of the Code, yet the investigation except for the report of an expert like the Serologist or Scientific Officer and



Chemical Examiner is complete and, therefore, the Magistrate is empowered to take cognizance of the offence on a police report which does not include the expert's opinion. In Tara Singh v. State, AIR 1951 SC 441, the Police had infact filed a report dated the 2nd October, 1949 terming it an "incomplete challan" and on the 5th October they filed a report which they called a "complete challan". Thereafter on the 19th October they filed yet another report which was termed as "Supplementary challan". The objection taken at the trial was that the Magistrate had no power to take cognizance of the case on 3rd October when the incomplete challan dated 2nd October, 1949 was placed before him. It was contended that the Police are not permitted to file an incomplete report under Section 173(2) of the Code.

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19. 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."

8. Similarly, in **Babu vs. State** (supra), this Court *inter alia* held as under:

"18. Though this Court is of the view that the decision of the Division Bench of the Punjab and Haryana High Court is an appropriate opinion in relation to cognizance of an offence under NDPS Act without the FSL report being an illegality, however, bound by the Division Bench decision of this Court, judicial discipline mandates this Court to follow the same. Consequently, in view of the decision of the Division Bench of this Court in Kishan Lal v. State (supra), it is held that the petitioner is not entitled to grant of bail under Section 167(2) CrPC for non-filing of the FSL report along with the charge



sheet.”

9. In ***Mohd. Arbaz; Abdul Rashid and Mohd. Nazim vs. State of NCT of Delhi***, (2020) 275 DLT 323, this court, while considering the question as to “whether in a case of commission of an offence punishable under the provisions of the NDPS Act, which is founded on recovery of narcotic drugs and/or psychotropic substance, a police report under Section 173(2) of the CrPC can be considered as such if it is not accompanied by a Chemical Examiner's Report with regard to the substance recovered, and; whether an accused would be entitled to bail in default under Section 167(2) of the CrPC where his application for such bail has been filed prior to the submission of the report under Section 173(2) of the CrPC but is taken up for consideration simultaneously with the said report being filed” held as under:

“24. This Court concurs with the view expressed by the Coordinate Bench of this Court in Babu (supra). Thus, the view expressed by the Division Bench of Punjab and Haryana High Court in Ajit Singh @Jeeta (supra) and the view expressed by the Bombay High Court in Sunil Vasantrao Phulbande (supra), convinced this Court that the view of the Division Bench in Kishan Lal (supra) is binding.

25. In view of the above, the petitioners' contention that the report submitted on 27.05.2019 could not be construed as a report under Section 173(2) of the Cr.PC must be rejected. The first question is, thus, answered in the negative.”

10. In ***Mehabub Rehman @ Empha*** (supra), this court while following the decisions in ***Kishan Lal*** (supra), ***Babu vs. State*** (supra) and ***Mohd. Arbaz*** (supra), *inter alia* held as under:



“19. Applying the ratio of decision in Kishan Lal (Supra) to the present case, I find that the ledtrned trial court has rightly dismissed petitioner's bail application while holding that though the FSL report has been filed after filling 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 10. It cannot be lost sight of the fact that immediately after petitioner's arrest on 13.03.2020,' prosecution filed ap 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.”

11. This court in **Suleman** (supra) also after taking into consideration all the judgments on this point has *inter alia* held as under:

“13. At present, the settled law persists in the view that non filing of FSL Report with the charge sheet does not fall within the realms of Section 173(2) of the Cr.P.C so as to consider it as "incomplete report". In the present case although FSL Report has not been filed, however, the charge sheet was already filed on 03.03.2021 within the time period as per law. Further, the amount of quantity recovered from the accused is of commercial nature baring the accused from bail under Section 37 of the NDPS Act.”

12. Moreover, the High Court of Sikkim also in **Anwar Alam** (supra) has *inter alia* held as under:

“8. In the instant case, the Petitioner is in Judicial custody since 08-06-2022. Indubitably, the Charge-Sheet was filed within the statutory period of sixty days, as provided in Section 167(2) of the Cr.P.C., the SADA, 2006, not having prescribed the specific period for completion of investigation. The



Petitioner alleges that the Charge-Sheet is incomplete on account of non-filing of CFSL Report. The Hon'ble Supreme Court is yet to determine the question reflected supra in Mohd. Arbaz (supra) and is therefore seised of the matter. Appositely, I desist from delving into a detailed discussion and opinion on the question pending consideration and what the provisions of Section 167(2), Section 173 and Section 190 of the Cr.P.C. entails. Suffice it at this juncture to notice that in Sanjay Dutt v. State through CBI, Bombay (IT) (1994) 5 SCC 410 the Hon'ble Supreme Court held that the indefeasible right to bail under Section 167(2) of the Cr.P.C. enures to the accused and is enforceable only prior to filing of the Charge-Sheet. That, it does not survive or remain enforceable on the Challan being filed, if already not availed of. Once the Challan has been filed the question of grant of bail has to be considered and decided only with reference to the merits of the case under the provisions relating to grant of bail to an accused, after the filing of the Challan."

13. In **Judgebir Singh @ Jasbir Singh Samra @ Jasbir & ors. vs. NIA (UAPA)** CrI.A.No 1011/2023, the Apex court in the case of NIA after dealing with the celebrated judgment of **Uday Mohanlal Acharya vs. State of Maharashtra** (2001) 5 SCC 453, **Rakesh Kumar Pal vs. State of Assam** (2017) 15 SCC 67, **Achpal @ Ramswaroop vs. State of Rajasthan** (2019) 14 SCC 599 *inter alia* held as under:

"48. The chargesheet is nothing but a final report of police officer under Section 173(2) of the CrPC. Section 173(2) of the CrPC provides that on completion of the investigation, the police officer investigating into a cognizable offence shall submit a report. The report must be in the form prescribed by the State Government, stating therein (a) the names of the parties; (b) the nature of the information; (c) the names of the persons who appear to be acquainted with the circumstances of



*the case; (d) whether any offence appears to have been committed and, if so, by whom (e) whether the accused has been arrested; (f) whether he had been released on his bond and, if so, whether with or without sureties; and (g) whether he has been forwarded in custody under Section 170. As observed by this Court in *Satya Narain Musadi v. State of Bihar* reported in (1980) 3 SCC 152 at 157 that the statutory requirement of the report under Section 173(2) of the CrPC would be complied with if the various details prescribed therein are included in the report. This report is an intimation to the magistrate that upon investigation into a cognizable offence the Investigating Officer has been able to procure sufficient evidence for the court to inquire into the offence and the necessary information is being sent to the court. In fact, the report under Section 173(2) of the CrPC purports to be an opinion of the Investigating Officer that as far as he is concerned he has been able to procure sufficient material for the trial of the accused by the court. The report is complete if it is accompanied with all the documents and statements of witnesses as required by Section 175(5) of the CrPC. Nothing more need be stated in the report of the Investigating Officer. It is also not necessary that all the details of the offence must be stated. The details of the offence are required to be proved to bring home the guilt to the accused at a later stage i.e., in the course of the trial of the case by adducing acceptable evidence. (See *K. Veeraswami v. Union of India*, (1991) 3 SCC 655.)”*

14. In regard to the contention raised by the learned counsels for the petitioners to the effect that the Hon’ble Supreme Court in cases of *Mohd.Arbaz* (*supra*), *Suleman* (*supra*), *Divyas Bardewa* (*supra*) and *Arif Khan* (*supra*) and *Kishan Lal* (*supra*) have released the petitioners on bail. The bare perusal of these orders makes it clear that the Apex court has admitted the petitioners on bail without reference to the



aspect of the default bail and has kept this question open for consideration. The Apex court has also taken into account the period of incarceration. It is also pertinent to note that the issue of default bail has been kept open for consideration.

15. Thus, the Hon'ble Apex court pending consideration of the issue involved, granted bail. However, the judicial precedents mandates this court to follow the law laid down in ***Kishan Lal*** (*supra*) till the time it is set aside or altered in any manner. This court is bound by the decision of the division bench of this court in ***Kishan Lal*** (*supra*).
16. In view of the discussion made hereinabove, I consider that the petitioners are not entitled to be admitted to bail. Hence, the bail applications and all other pending applications moved by the petitioners are rejected.

DINESH KUMAR SHARMA, J

SEPTEMBER 21, 2023

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