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

% Judgment delivered on: 04.07.2023

+ CRL.REV.P. 336/2022

MOHD TABREZ

..... Petitioner

versus

STATE (NCT OF DELHI)

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Nitin Bansal, Advocate

For the Respondent : Mr. Shoaib Haider, APP with SI Sudhir
Kumar, ANTF/Crime Branch

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J. (ORAL)

[The proceeding has been conducted through Hybrid mode]

1. This is a revision petition under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973 (for short "Cr.P.C.") seeking to set aside the impugned order dated 05.05.2022 passed by the learned Trial Court in case No. SC/622/2021 emanating out of FIR No. 94/2021 under Sections 21/25/29 of Narcotic Drugs and Psychotropic Substance Act, 1985 (for short "NDPS Act") registered at Police Station Crime Branch (North) whereby the learned Trial Court had dismissed the application under Section 167(2) Cr.P.C. seeking grant of default bail to the petitioner.



2. Mr. Nitin Bansal, learned counsel appearing for the petitioner has made submissions primarily on three grounds:-

- (i) that the incomplete chargesheet which is stated to have been filed within the period of 180 days as stipulated under the Act, is no chargesheet under the eye of law and as such the petitioner would be entitled to the provisions of Section 167(2) Cr.P.C. and automatic grant of default bail;
- (ii) Proviso (4) to Section 36A of NDPS Act itself provides extension of time by the Special Courts to file the chargesheet or the final report in case the final report has not been filed within 180 days as stipulated thereunder; and
- (iii) learned counsel also relies upon the order passed by the Hon'ble Supreme Court of India in *Mohd. Arbaz & Ors vs. State of NCT of Delhi* in SLP (Crl.) 8164-8166 of 2021 where the petitioners were granted interim bail vide order dated 13.12.2021 and had been extended from time to time under similar circumstances.

3. Opposing the aforesaid submissions, Mr. Shoaib Haider, learned APP appearing for State submits that Section 36A of NDPS Act and its proviso is only an enabling provision empowering the Special Courts for extension of time for filing the chargesheet/final report in respect of any offence complained of before it and would not come to the aid of the petitioner for seeking default bail under Section 167(2) Cr.P.C.

4. With respect to the other argument of Mr. Bansal regarding the chargesheet being incomplete though being filed within the stipulated period of 180 days is concerned, Mr. Haider, learned APP submits that



the same would also be untenable in law since there is no distinction in Section 167(2) Cr.P.C. providing for default bail where the chargesheet is incomplete or complete.

5. So far as the order of the Hon'ble Supreme Court is concerned, Mr. Haider submits that the same is not law as of now and is only an interim order passed by the Hon'ble Supreme Court and therefore, cannot be considered to be a judgment which can be taken note of by this Court.

6. After hearing learned counsel for the parties, this Court is of the opinion that the arguments and submissions put across by Mr. Bansal are untenable in law for the following reasons:-

(a) So far as the submissions with respect to filing of the incomplete chargesheet is concerned, it is categorically admitted that the chargesheet indeed has been filed by the prosecution within the stipulated period of 180 days as contemplated under Section 36A of the NDPS Act.

(b) This Court is unable to countenance the argument of splitting the chargesheet into an incomplete or complete chargesheet for the reason that a chargesheet once having been filed, is complete to the extent of what it contains. It is the own interpretation of the petitioner that the chargesheet filed in this particular case is incomplete.

(c) So far as the prosecution is concerned, as on the date of filing of the chargesheet, it is complete in all terms. That apart, as submitted by Mr. Haider and rightly so, the said chargesheet also contains reservation in favour of the prosecution that as and when



any further information is brought around or further FSL results would come, they would form part of the same chargesheet.

(d) The subsequent filing of further material or evidence would not automatically entail the earlier chargesheet as incomplete, so to that extent, the arguments on that basis are not tenable and ought to be rejected.

(e) So far as the reliance on Section 36A of NDPS Act by the petitioner is concerned, the same is recorded for being rejected. This is for the reason that the said proviso to Section 36A of NDPS Act only enables the Special Courts to grant extension of time when the prosecution is unable to file its chargesheet within the time stipulated thereunder. There is no provision or stipulation in either Section 36A or its proviso of the NDPS Act, which would enable the petitioner for grant of default bail. Thus, the said argument is also rejected.

(f) Finally, with respect to the reliance on the order of Hon'ble Supreme Court in *Mohd. Arbaz* (supra) is concerned, the same is only an interim order and cannot become a binding precedent without any reason therein. More particularly, unless the Hon'ble Supreme Court lays down a law in a particular manner, it would be difficult to say that the same would be a binding precedent to be followed by this Court.

7. In that view of the matter, this Court does not find any reason to entertain this petition which is dismissed being devoid of any merits.

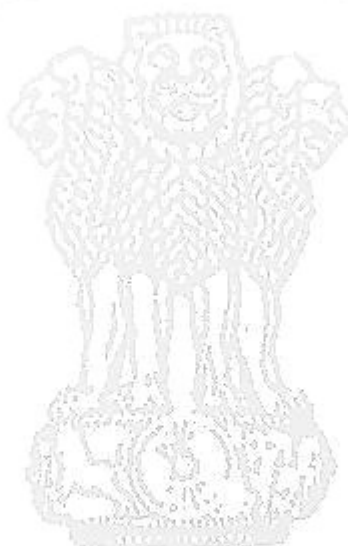
TUSHAR RAO GEDELA, J.



JULY 4, 2023

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HIGH COURT OF DELHI



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