

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.103 OF 2024

Dinesh Mohan Kodmur	...	Applicant
Vs.		
State of Maharashtra	...	Respondent

Mr. Sudhir M. Patole for Applicant.

Mr. Babu V. Holambe-Patil for Respondent-State.

CORAM : MANISH PITALE, J.

DATE : JULY 16, 2024

P.C. :

1. Heard Mr. Patole, learned counsel for the applicant and Mr. Holambe-Patil, learned APP for the respondent-State.

2. The present application is filed for granting default bail to the applicant, on the ground that the charge-sheet filed in the present case is not accompanied by FSL report, and therefore, it has to be treated as an incomplete charge-sheet entitling the applicant for default bail.

3. The learned counsel for the applicant relies upon certain orders passed by the Supreme Court, wherein the question as to whether such accused persons are entitled for default bail is pending consideration. In some cases, the Supreme Court has granted interim bail pending consideration of the said question.

4. The learned APP submits that even the Supreme Court, in certain cases, has not granted interim bail while the question is pending consideration and this is evident from the order dated **19.03.2024** passed by the Supreme Court in **SLP (Criminal) Nos.15293 of 2023**, wherein it is specifically noted that there is divergence of views in the different Benches of the Supreme Court itself on the question of granting interim bail in such cases. It is, therefore, directed in the said petition that the larger Bench may decide the question and in the meanwhile, even in the

said case, interim bail was not granted, as the counsel for the petitioner did not press for the same.

5. In any case, insofar as this Court is concerned, Division Bench judgement in the case of *Manas Krishna T K Vs. State, through the Police Inspector and others* (judgement and order dated **17.09.2021** passed in **Criminal Misc. Application (Bail) No.88 of 2021**) has authoritatively answered the question as to whether in such circumstances, the accused is entitled for default bail.

6. The first question framed by the Division Bench reads as follows:-

“i. Whether the presentation of a report under Section 173(2) Cr.P.C. by the police without the report of Chemical Analyser / FSL amounts to incomplete challan and in the absence of any extension of time under Section 36-A(4) of the NDPS Act, whether the accused is entitled to bail under Section 167(2) Cr.P.C.?”

7. The same is answered in paragraph 81 of the said judgement in the following terms:-

“(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.”

8. In the light of the said authoritative pronouncement of the Division Bench of this Court, which is binding on this Bench, the prayer for grant of default bail made in the present application cannot be entertained.

9. Accordingly, the application is dismissed.

(MANISH PITALE, J.)