



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR**

CRIMINAL APPLICATION (BA) NO.285/2024
Wasim Akram @ Raja Khan s/o Abdul Kadir Khan

..VS..

**State of Maharashtra, through PSO Darwha, Police Station
Darwha, Tahsil Darwha, District Yavatmal**

WITH

CRIMINAL APPLICATION (BA) NO.1141/2023
Syed Irshad Syed Gaur

..VS..

**State of Maharashtra, through PSO, Police Station Darwha,
Tahsil and District Yavatmal**

WITH

CRIMINAL APPLICATION (BA) NO.1179/2023
Yunus Khan Amir Khan Poswal

..VS..

**State of Maharashtra, through PSO, Police Station Darwha,
Tahsil and District Yavatmal**

.....
Office Notes, Office Memoranda of Coram,
appearances, Court orders or directions
and Registrar's orders
.....

Court's or Judge's Order

BA No.285/2024

Shri S.H.Sudame, Counsel for the Applicant.

**Ms.H.N.Prabhu, Additional Public Prosecutor for the
Non-applicant/State.**

BA Nos.1141 & 1179/2023

Shri S.P.Bhandarkar, Counsel for the Applicant.

**Shri M.J.Khan, Additional Public Prosecutor for the
Non-applicant/State.**

CORAM : URMILA JOSHI-PHALKE, J.

CLOSED ON : 26/06/2024

PRONOUNCED ON : 03/07/2024

COMMON ORDER

1. By these applications, being moved under Section 439 of the Code of Criminal Procedure, applicants arrested on 18.5.2023 seek regular bail in connection with Crime No.401/2023 registered with the non-applicant police station for offences punishable under Sections 8(b), 8(c), 21(c), and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (the NDPS Act).

2. Heard learned counsel Shri S.P.Bhandarkar for applicants (in Criminal Application Nos.1141 and 1179/2023) and learned counsel Shri S.H.Sudame for applicant (in Criminal Application No.285/2024) and learned Additional Public Prosecutors Shri M.J.Khan and Ms.H.N.Prabhu for the State.

3. The accusations against applicants are on the basis of report lodged by Assistant Police Inspector Amol Krushnaji Mude, attached to the Darwha Police Station. As per his report, he received a secret information that contraband

article "Mephedrone" is being transported in a white colour "Hyundai Verna Car" bearing registration No.MH-49/B/7082 and the said car is proceeding through "Samruddhi Mahamarg". He immediately forwarded the said information to his superior i.e. Assistant Superintendent of Police and also Police Inspector, Darwaha Police Station. He also called two panchas from the Panchayat Samiti Office at Darwaha and also called a jeweller to weigh the contraband article. By carrying the sealing material, police officials proceeded towards spot of incident and intercepted the said car. In the said car, applicants were found. After giving their search and informing rights of applicants, under Section 50 of the NDPS Act, personal search of applicants was carried out. During the search of the said car, a box below dash board was found containing a brown colour envelope, which was opened in presence of panchas, in which "Mephedrone" powder weighing 150 grams was found. The net weight of the said mephedrone powder was 141 grams 600 milligrams. In presence of panchas, samples were obtained. Cash amount

was also seized from applicants. It is also mentioned that they have kept provision for obtaining the samples in presence of the Magistrate in view of compliance under Section 52 of the NDPS Act. After a due compliance of the mandatory provision, they arrested applicants.

4. Learned counsel Shri S.P.Bhandarkar, submitted that the mandate of Section 36-A(4) of the NDPS Act is not followed by the prosecution. Incomplete chargesheet is filed without FSL and Inventory Reports. Only the investigating agency filed applications under Section 36-A(4) for extension of time. In fact, it is to be filed through the Public Prosecutor. Thus, the prosecution has not followed due mandate and no extension was sought after expiry of 180 days for placing on record the FSL Report. The FSL Report was filed on 15.2.2024. The applications filed by the Investigating Officer neither indicate progress of investigation nor indicate compelling reasons required for extension of custody beyond 180 days. The said applications show that the FSL Report is being filed under the garb of Section

173(8) of the Code of Criminal Procedure. The act done by the Investigating Officer frustrates procedural schemes laid down under the NDPS Act. He further submitted that a plain reading of proviso to Section 36-A(4) indicates that the special court is required to consider applications filed by the Public Prosecutor indicating progress of investigation and specific reasons mentioned by the Public Prosecutor for detention of accused beyond period of 180 days. Thereafter, the special court is required to apply its own mind and pass judicial order. However, no such reports indicating the progress of the investigation nor reasons specified need for detention of the accused persons beyond the period of 180 days were filed. No notice was issued to applicants on these applications. The trial court without adhearing to the mandatory and stringent provisions took the FSL Report on record. Thus, incomplete chargesheet is filed and, therefore, an indefeasible right accrues to applicants for being released on bail when the investigating agency failed to file challan/chargesheet within

prescribed period.

5. In support of his contentions, learned counsel Shri S.P.Bhandarkar placed reliance on following decisions:

1. Sanjay Kumar Kedia alias Sanjay Kedia vs. Intelligence Officer, Narcotics Control Bureau and anr, reported in (2009)17 SCC 631;

2. M.Ravindran vs. Intelligence Officer, Directorate of Revenue Intelligence, reported in (2021)2 SCC 485;

3. Nayantara Gupta vs. State of Maharashtra, reported in 2020 SCC OnLine Bom 873;

4. Subhash Yadav vs. State of West Bengal, reported in 2023 SCC OnLine Cal 313;

5. Radhakrishnan and another vs. State by Inspector of Police, Kanniyakumari Police Station, reported in 2005(2) CTC 101;

6. Rakesh Sha vs. State of West Bengal, reported in 2023 SCC OnLine Cal 2463;

7. Sagar Parshuram Joshi vs. State of Maharashtra, reported in 2021 SCC OnLine Bom 3051;

8. Tarsem Singh vs. State of Haryana, reported in 2024 SCC OnLine P&H 2302;

9. Sabarinath vs. State of Kerala, reported in 2023 SCC OnLine Ker 3666, and

10. Opto Circuit India Limited vs. Axis Bank and ors, reported in (2021)6 SCC 707.

Whether chargesheet filed by the prosecution is incomplete and whether the trial court could take cognizance of the same are also addressed by him by relaying upon various decisions and submitted that mere to defeat right of the accused, filing of incomplete chargesheet is not permissible and, therefore, applicants are entitled to avail their rights of statutory bail.

6. In support of his contentions, learned counsel Shri S.P.Bhandarkar placed reliance on following decisions :

1. Special Leave to Appeal (Cri.) No(s)8164-8166/2021 (Mohd Arbaz and ors vs. State of NCT of Delhi) decided on 13.12.2021;

2. Special Leave to Appeal (Cri.) NO.8610/2023 (Arif Khan vs. State (Govt of NCT of Delhi) decided on 28.7.2023;

3. Special Leave to Appeal (Cri.) NO.3446/2024 (Rohit vs. State of Delhi)

decided on 15.3.2024;

4. Special Leave to Appeal (Cri.) NO.12200/2023 (Pankaj Gupta vs. Narcotics Control Bureau) decided on 4.12.2023;

5. Special Leave to Appeal (Cri.) NO(s).15293/2023 (Hanif Ansari vs. State (Govt of NCT of Delhi)) decided on 19.3.2024;

6. Ritu Chhabaria vs. Union of India and ors, reported in 2023 LiveLaw SC 352.

on the basis of these submissions, he submitted that applicants are to be released on bail in view of incomplete chargesheet filed and indefeasible right accrues to applicants.

7. Learned counsel Shri S.H.Sudame, submitted that the applicant was arrested merely on a suspicion. Nothing was found during his personal search. The applicant was also not traveling by the said car. He is not at all concerned with the contraband article found in the car. There is no compliance of Sections 42, 50, and 52 of the NDPS Act. In absence of the mandatory compliance, the application filed by him deserves to be allowed.

8. Learned Additional Public Prosecutor Shri M.J.Khan for the State, opposed these applications and submitted that question posed before the court is that whether the prosecution has followed the procedure laid down under Section 36-A(4) of the NDPS Act while placing on record of FSL Report before the special court before expiry of 180 days as law laid down by the Honourable Apex Court in the case of **Sanjay Kumar Kedia alias Sanjay Kedia** *supra*. He submitted that learned counsel Shri S.P.Bhandarkar attempted to misinterpret provisions of Section 36-A(4). The provision states that in respect of persons accused of an offence punishable under Section 19 or Section 24 and Section 27-A or for offences involving commercial quantity the references in sub-section (2) of Section 167 of the Code (2 of 1974) thereof to "ninety days", where they occur, shall be construed as reference to "one hundred and eighty days'. He further submitted that it further provides 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.

He submitted that in the present case, all the accused persons came to be arrested on 18.5.2023 and the chargesheet is filed after completion of the investigation 14.8.2023 except of filing of FSL Report as the same was not received by the investigating officer. The chargesheet is filed in the present crime on 89th day since the date of the arrest of the accused persons. Thus, the chargesheet is filed well within the prescribed limit of ninety days. In view of the same, there was no requirement for the prosecution to apply for extension of period of detention of the accused. Till 14.8.2023, no bail application was filed by any of the accused persons claiming their rights under Section 167(2) of the Code due the default on the part of the Investigating Officer. As far as the FSL Report is concerned, the same is filed on 15.2.2024. The

issue, whether non-filing of the FSL Report along with the chargesheet will amount to incomplete filing of chargesheet and the same is pending for final adjudication before the Honourable Supreme Court in **Special Leave to Appeal (Cri.) NO(s).15293/2023 (Hanif Ansari vs. State (govt of NCT of Delhi)** *supra* as the issue is referred to a Larger Bench even on the question of grant of *interim* bail along with the main question whether non-filing of the FSL Report is along with chargesheet. Therefore, the order passed in the case of **Mohd Arbaz and ors vs. State of NCT of Delhi**, relied upon by learned counsel Shri S.P.Bhandarkar, is also tagged along with the matter referred to the Larger Bench by the Honourable Apex Court.

9. Learned Additional Public Prosecutor Shri Khan, further submitted that in view of the decision of the Honourable Apex Court in the case of **Tara Singh vs. The State, reported in 1951 AIR 441**, issue referred was expert report opinion was not filed along with chargesheet and, therefore, should be termed as incomplete chargesheet. The

Honourable Apex Court held that under Section 173 of the Code, there is no mandate of police report purporting under the hands of the Government Forensic Expert.

10. Learned Additional Public Prosecutor Shri Khan, submitted that here, in the present case, cognizance taken by the magistrate was proper and valid. He further submitted that the Delhi High Court in the case of **Kishan Lal vs. State, reported in 39(1989) DLT392** has also relied upon the decision of the Honourable Apex Court in the case of **Tara Singh supra** as well as the judgment of the Full Bench of the Punjab and Haryana High Court in the case of **State of Haryana vs. Mehal Singh and anr, reported in AIR 1978 Punjab & Haryana 341** wherein also it is held that non-filing of expert report along with challan will not be termed as incomplete chargesheet.

11. Learned Additional Public Prosecutor Shri Khan, further submitted that the Single Bench of this court at Principal Seat, in **Bail Application No.301/2020 and other connected applications**

(Navinkumar Pandu Jatot vs. State of Maharashtra)
decided on 31.1.2022, has also considered the similar issue and held that a police report or chargesheet containing details specified in Section 173(2), if filed within the period prescribed under Section 167(2), is not vitiated or incomplete simply because the same was not accompanied by CA/FSL Report and based thereon, there is no question of the accused insisting on default bail. With these submissions, he prays for rejection of applications.

12. Learned Additional Public Prosecutor Ms.H.N.Prabhu, endorsed the same contentions made by learned Additional Public Prosecutor Shri Khan and adopted the same.

13. Grounds raised by applicants in these applications are that, they are entitled for bail under Section 167(2) of Code read with 36-A(4) of the NDPS Act as the Investigating Officer has filed chargesheet without report of the Chemical Analyzer. They are charged for offences under the NDPS Act and the CA Report is vital document

determining whether the contraband article is narcotic drug or not. The investigating agency has filed chargesheet without the CA Report. Thus, mandate of Section 36-A(4) is not followed.

14. It is not disputed that applicants are arrested on 18.5.2023 and the chargesheet is filed on 14.8.2023. Undisputedly, at the time of filing of the chargesheet, the CA Report was not accompanied. The chargesheet was filed before completion of 180 days and the CA Report was submitted beyond 180 days. It is submitted that the chargesheet filed without the CA Report is incomplete chargesheet. Hence, applicants are entitled for bail under Section 167(2) of the Code. In the case of **Sanjay Kumar Kedia alias Sanjay Kedia** *supra*, issue regarding compliance of Section 36-A(4) of the NDPS Act was in issue and the said Section is *pari materia* with provisions of sub-section (4) of Section 20 of the TADA Act. It is held that for seeking extension of time under clause (bb) of Sub-section (4) of Section 20 of TADA, Act, the public prosecutor after an independent application of his mind to the request

of the investigating agency is required to make a report to the Designated Court

15. In the case of **M.Ravindran** *supra*, issue regarding default bail under Section 167(2) of the Code was raised and it is held that Section 36-A of the NDPS Act prescribes modified application of the Code as indicated therein. The effect of Sub Clause (4) of Section 36-A is to require that investigation into certain offences under the NDPS Act be completed within a period of 180 days instead of 90 days as provided under Section 167(2). Hence the benefit of additional time limit is given for investigating a more serious category of offences.

16. Before the Single Bench of this Court at Principal Seat, in case of **Nayantara Gupta vs. State of Maharashtra** *supra*, issue raised was the investigation is not completed within 180 days and, therefore, indefeasible right accrues to the accused and it is held that it is pertinent to note that Section 167 of the Code vests powers in the court to detain a person accused of offences

for a maximum period of 90 or 60 days as specified therein. Section 167 does not authorize extension of the period of detention beyond the specified period. Whereas, in respect of offences referred to in Section 36-A of the NDPS Act, the maximum period of detention is 180 days, with further powers to extend such period upto one year. As the mandate of Section 36-A(4) was not followed, the accused therein were released on bail.

17. The similar view is taken by the Calcutta High Court in the case of **Subhash Yadav** *supra*, by the Kerala High Court in the case of **Radhakrishnan and another** *supra* and **Sabarinath vs. State of Kerala** *supra*.

18. Insofar as the application for default bail is concerned, learned counsel Shri S.P.Bhandarkar relied upon the decision of the Delhi High Court in the case of **Subhash Bahadur @ Upender vs. The State (N.C.T. of Delhi)**, reported in **AIR OnLine Del 1509** and upon the decision of the Honourable Apex Court in the case of **Ritu Chhabaria** *supra*.

In the case of **Ritu Chhabaria** *supra*, accused therein was charged under Section 120(B) read with Section 420 of the Indian Penal Code, 1860 along with Sections 7, 12 and 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988. The investigating agency has filed chargesheet and subsequently two supplementary chargesheets were filed. Thereafter, multiple other supplementary chargesheets were filed and, therefore, issue raised was that, can a chargesheet or a prosecution complaint be filed in piecemeal without first completing the investigation of the case and the Honourable Apex Court observed that the right under Section 167(2) of the Code is a statutory right. If the chargesheet is filed within stipulated period, it will extinguish. The question of resorting to a supplementary chargesheet under Section 173(8) of the Code only arises after the main chargesheet has been filed, and as such, a supplementary chargesheet, wherein it is explicitly stated that the investigation is still pending, cannot under any circumstance, be used to scuttle the right of

default bail, for then, the entire purpose of default bail is defeated, and the filing of a chargesheet or a supplementary chargesheet becomes a mere formality, and a tool, to ensue that the right of default bail is scuttled. It is further held that without completing the investigation of a case, a chargesheet or prosecution complaint cannot be filed by an investigating agency only to deprive an arrested accused of his right to default bail under Section 167(2) of the Code.

19. As far as facts of the present case are concerned, admittedly, the chargesheet was filed on 89th day on completion of the investigation and only the FSL Report was filed subsequent to that. Whether filing of the chargesheet without the FSL Report is incomplete chargesheet or not is the issue.

20. In the case of **Hanif Ansari** *supra*, the Honourable Apex Court considered decisions in the cases of **Mohd Arbaz** and **Kishan Lal** *supra* and **Suleman Rehiman Mulani and anr vs. State of Mah.**, reported in 1968 AIR 829 and held that in view of

their being diversity of views of different Benches of this court even on the question of granting *interim* bail, we are of the opinion that Larger Bench may decide the question as to whether failure on the part of the prosecution to include the FSL Report pertaining to seized contraband article(s) along with the chargesheet, within the time specified in Section 167(2) of the Code read with Section 36-A of the NDPS Act would entitle the accused to default bail or not.

21. Thus, the issue whether the accused are entitled for bail on presenting the chargesheet without FSL Report is under consideration before the Honourable Apex Court and already referred to the Larger Bench.

22. This issue is also extensively dealt with by the Single Bench of this court in the case of **Navin Kumar Pandu Jatot** *supra*.

23. Learned counsel Shri S.P.Bhandarkar, placed reliance on the decision of the Single Bench of this court at Principal Seat in case of **Sagar Parshuram Joshi vs. State of Maharashtra**,

reported in 2021 SCC ONLine Bom 3051 wherein reference was made to handbook about 'Drug Identification and Field Testing'. The said decision was based upon the decision in the case of **Sunil Vasantrao Phulbande vs. State of Maharashtra, reported in 2002(3) Mh.L.J. 689** and it is held that documents relating to Field Test Report of suspect substance were not part of chargesheet. Bare reference in panchanama of test being conducted was not 'sufficient' that "suspect substance" was amphetamine. It was observed that report of the Chemical Analyzer lays foundation of the accused' culpability, without which even the Magistrate cannot form an opinion and take cognizance of the accused involvement and bail was granted in accordance with Section 167(2) of the Code.

24. Section 167 of the Code, contains a necessary safeguard against detention of the persons accused of cognizable offences.

25. In view of Section 2(h) of the Code, which defines investigation, the investigation

comes to an end as soon as report under Section 173 of the Code is filed. Section 173(2) of the Code narrates essential of a valid report. Even if any document is not filed along with the chargesheet, prosecution if able to show good reason, is not precluded from submitting that document at a later stage and if sufficient opportunity is given to accused, the document can well be accepted. Therefore, merely because the CA Report was not there, can it be said that it is an incomplete chargesheet. The Division Bench of this court in the case of **Miss Rohini Mahavir Godse vs. The State Of Maharashtra and ors, reported in 1996(4)Bom MCR 604** held that once the Magistrate receives a police report of facts which constitute a cognizable offence, the Magistrate is under an obligation to take cognizance and he has no discretion to refuse to take cognizance of such a case. Once the chargesheet complies with the requirement of Section 173(2) and cognizable offence is disclosed, the Magistrate is duty bound to accept the charge sheet. Sub-section (5) merely enjoins upon the police officer to forward to the

Magistrate along with the report (a) all documents or relevant extracts thereof on which the prosecution proposes to rely other than those already sent to the Magistrate during the course of investigation; and (b) the statements recorded under Section 161 of all persons whom the prosecution proposes to examine as its witnesses. It is further held that the provisions of this sub-section do not make report under sub-section (2) incomplete or unacceptable if certain documents on which the prosecution proposes to rely are not forwarded to the Magistrate. In fact, the provisions of sub-section (8) of Section 173 contemplate further report or reports under sub-section (2) to be filed even after filing of the first report under the provisions of Section 173(2) and such further report or reports shall be dealt in accordance with the provisions of Section 173(8) of the Code. Where the police had filed a valid chargesheet within a period of 90 days from the date of arrest of the accused and the accused cannot get advantage of Section 167(2) of the Code.

26. In the case of **Rafael Palafox Garcia vs. The Union of India and anr**, reported in 2008 ALL MR (Cri.) 3031, the issue raised was that, at the time of filing of chargesheet, the CA Report was not filed. Thus, incomplete chargesheet was filed.

27. In **Bail Application No.301/2020 and other connected applications (Navinkumar Pandu Jatot vs. State of Maharashtra)** *supra*, relied upon by learned Additional Public Prosecutor Shri Khan, also the similar issue was raised and by referring the decision in the case of **Dinesh Dalmia vs. CBI**, reported in AIR 2008 SC 78 wherein it was observed that a charge sheet is a final report within the meaning of Sub-section (2) of Section 173 of the Code. It is filed so as to enable the court concerned to apply its mind as to whether cognizance of the offence thereupon should be taken or not. The report is ordinarily filed in the form prescribed therefor. One of the requirements for submission of a police report is whether any offence appears to have been committed and, if so, by whom. In some cases, the accused having not been arrested, the investigation

against him may not be complete. There may not be sufficient material for arriving at a decision that the absconding accused is also a person by whom the offence appears to have been committed. If the investigating officer finds sufficient evidence even against such an accused who had been absconding, law does not require that filing of the charge sheet must await the arrest of the accused. The power of the investigating officer to make a prayer for making further investigation in terms of sub-section (8) of Section 173 is not taken away only because a charge sheet under Sub-section (2) thereof has been filed. A further investigation is permissible even if order of cognizance of offence has been taken by the Magistrate. It is further observed that But, in this case, some documents could not be filed which were not in the possession of the CBI and the same were with the GEQD (Government Examiner of Questioned Documents).

28. In the decision of the Honourable Apex Court in the case of **Tara Singh vs. The State** *supra*, as relied by learned Additional Public

Prosecutor Shri Khan, the report of the Imperial Serologist and the drawing of a sketch map were produced by the filing second challan, beyond the period prescribed under section 167(2) of the Code. The accused claimed bail under Section 167(2) of the Code and it is held that even though report of Imperial Serologist or drawing of the sketch map of the occurrence did not accompany the same, the chargesheet filed is not incomplete chargesheet.

29. The Full Bench of the Punjab and Haryana High Court, in the case of **State of Haryana vs. Mehal Singh and anr** *supra*, has held that when a chargesheet is submitted without report of experts well within the period of sixty days from the date of arrest, merely because the report of the expert was not filed along with it, the accused is not entitled to be released on bail under Section 167(2) of the Code.

30. In the case of **Kishan Lal vs. State** *supra*, decided by the Delhi High Court, also the question raised by the accused was that

investigation into offences under the NDPS Act cannot be held to be complete without obtaining the opinion of the expert and, therefore, the cognizance of the said offences under Section 190(1)(b) of the Code is not permissible. In the said case also, the opinion of the CFSL had not been received by the Investigating Officer and relying upon the decision in the case of **Tara Singh vs. The State** *supra*, it is held that it is not an incomplete chargesheet.

31. In the case of **State of Maharashtra vs. Sharadchandra Vinayak Dongre, reported in 1995(1) SCC 42**, the Honourable Apex Court, after adverting to requirements of Section 173(2) of the Code, observed that purpose of the submission of the police report with the details as mentioned above, is to enable the Magistrate to satisfy himself, whether on the basis of the report and the material filed along with the police report, a case for taking cognizance has been made out or not. After applying his mind to the police report and the material submitted therewith, if the Magistrate is satisfied that cognizance of the

offence is required to be taken, he shall proceed further in accordance with the provisions of the Code. Section 190(1)(b) of the Code provides that a Magistrate has the power to take cognizance upon a police report of such facts as are provided therein on being satisfied that the case is a fit one for taking cognizance of the offence. Therefore, if the police report and the material filed there with is sufficient to satisfy the Magistrate that he should take cognizance, his power is not fettered by the label which the investigating agency chooses to give to the report submitted by it under Section 173(2) of the Code. Merely, because the prosecution had filed an application, after submission of the chargesheet, seeking permission to file "supplementary chargesheet", it could not affect the jurisdiction of the Magistrate to take cognizance, if he was otherwise satisfied from the material placed before him along with the chargesheet that cognizance of the offence was required to be taken. It is the jurisdiction of the Magistrate and Magistrate alone to decide whether the

material placed by the prosecution with the report (chargesheet) was sufficient to take cognizance or not. The power of the Magistrate to take cognizance cannot be controlled by the investigating agency, whose duty is only to investigate and place the facts and the evidence before the Magistrate.

32. The Single Bench of this Court, considering the conflicting view in the case of **Sagar Parshuram Joshi vs. State of Maharashtra** *supra* and in Criminal Misc. Application (Bail) Nos.37 and 38/2021 (**Aleksander Kurganov vs. State of Goa and anr**) decided on 5.2.2021 referred the matter to the Division Bench. The issue referred to the Division Bench was that whether the presentation of report under Section 173(2) of the Code by the police without the report of CA/FSL amounts to incomplete chargesheet/challan and even in the absence of any extension of time under section 36-A(4) of the NDPS Act whether the accused is entitled to grant bail under section 167(2) of the Code. Further question raised was that, whether in a chargesheet under the NDPS Act

accompanied by a Field Testing Report which is part of the record can be labelled as an incomplete report simply because it is not of CA/FSL Report.

33. While adjudicating the aforesaid reference, reliance was placed on the decision of **Sunil Vasantrao Phulbande vs. State of Maharashtra** *supra*, **Punjaram vs. State of Maharashtra**, reported in **2005 CRI.LJ 4658**, Criminal Bail Application No.509/2014 (**Ranjit Manohar Machrekar vs. State of Maharashtra**) decided by this court, Criminal Bail Application No.241/2017 (**Manik Sahebrao Chaugule vs. State of Maharashtra**), decided by this court, Criminal Bail Application No.65/2018 (**Seema Raju Panchariya vs. The Sajakali Jamadar**), decided by this court and Bail Application (ST) No.4761/2020 (**Sagar Parshuram Joshi vs. The State of Maharashtra**) decided by this court.

34. The prosecution also placed reliance on following decisions:

1. **Balaji Vasantrao Suwarnkar vs. State of Maharashtra**, reported in **1992 Mh.L.J. 159**;

2. State of Maharashtra vs. Sharadchandra Vinayak Dongre *supra*;
3. Babu s/o Rakhmanji Khamkar and anr vs. The State of Maharashtra, reported in (1995)4 BCR 335;
4. Rohini Mahavir Godse vs. State of Maharashtra, reported in 1966(2) Mh.L.J. 492;
5. Rafael Palafox Garcia vs. The Union of India and anr *supra*;
6. Sheikh Shabbir s/o Mohd.Shafi vs. State of Maharashtra, Criminal Application No.143/2011 decided by this court, and
7. Shrihari Mahadu Valse vs. The State of Maharashtra, Criminal Bail Application No.3284/2018.

35. After hearing extensively learned counsel appearing for respective parties, the Division Bench answered the reference, as follows:

“(i) On the analysis of the statutory provisions, as also the decision that have analyzed various shades of such statutory provisions, Court believe that a police report or charge-sheet containing the details specified in Section 173(2), if filed within the period prescribed under Section 167 (2) is not vitiated or incomplete simply

because the same was not accompanied by CA/FSL report and based thereon, there is no question of the accused insisting on default bail;

(ii) Certain binding precedents, directly on the point were not brought to the notice of the learned single judge who decided Phulbande (Supra). Rather, overruled and reversed decisions were cited before the learned single judge in the said matter. Hence, the decision in Phulbande (Supra) is per incuriam and does not reflect the correct position in law on the subject;

(iii) Phulbande (supra) takes the position that the charge-sheet, though filed within the time limit specified under Section 167(2), if unaccompanied by a CA/FSL report, is incomplete and the accused is entitled to default bail. Phulbande (supra) was relied upon and/or followed in Punjaram (supra), Sagar Joshi (supra), Manik Chaugule (supra), Seema Panchariya (supra), and Ranjit Machrekar (supra). Therefore, if Phulbande (supra) is found to be per incuriam, the decisions which follow it, will not reflect the correct position in law on this subject.

(iv) In Phulbande (Supra), the Court has relied upon the decision of Andhra Pradesh High Court in Matchumari Chima Veskata Reddy Vs. State of Andhra Pradesh (Supra) and decision of this Court in Sharadchandra Vinayak Dongre Vs. State of Maharashtra. The decision in Matchumari (Supra) case is overruled by Division Bench of the same Court in Vellined Puram (Supra), wherein it was observed that the Bench cannot agree with view. It was held that police report filed under Section 173(2) is not complete unless the same is incomplete form complying with all formalities under Section 173(2) and (5) and the accused shall have absolute right for being released on bail, cannot be accepted. The decision in the case of Sharadchandra Dongre (Supra) has been reversed by the Hon'ble Supreme Court in the case of State of Maharashtra Vs. Sharadchandra Dongre, by observing that the view of the High Court is erroneous;

(v) Decision in Phulbande (Supra) is per incuriam and does not reflect correct position of law. Phulbande was relied upon in Punjaram (Supra), Sagar Joshi (Supra), Manik Chaugule (Supra), Seema Pancheriya and Ranjit Machrekar (Supra).

Therefore, if Phulbande is per incuriam, the decision which follow it, will not reflect correction position of law. The decision in the case of Balaji Suvarnakar (Supra) was not brought to the notice of Court. Decision of Suvarnakar was approved by Division Bench in the case of Rohini Godse (Supra), since Phulbande (Supra) was relied upon by Pajaram (Supra), Sagar Joshi (Supra), Manik Chowgule (Supra), Ranjit Machreker (Supra) and Seema Panchariya, these decisions will have to be held as per incuriam.

(vi) Expression such report used in Section 173(5) of Cr.P.C. refers to the police report in terms of Section 173(2) of Cr.P.C. Section 173(5) of Cr.P.C. provides that in respect of a case to which Section 170 applies, the police officer shall forward to the Magistrate along with the report, the documents referred to in sub-clauses (a) and (b). This means that the report under Section 173(2) of Cr.P.C is different and distinct from the documents and statements contemplated by Section 173 (5) Cr.P.C. though, there is a directory requirement that such documents and statements are required to be forwarded

to the Magistrate along with the police report under Section 173(2) of Cr.P.C.

(vii) The police report containing all the details prescribed in section 173(2) is complete in terms of the statutory scheme. Therefore, merely because the documents or statements as contemplated by Section 173(5) may not have been forwarded by the police along with the complete police report under Section 173(2), such police report, will not be an incomplete police report and would not entitle the accused a default bail under section 167(2);

(viii) The decision in the case of Satyanarayn Musadi (Supra) make it clear that as long as the police report contains the details prescribed under Section 173(2), such report is a complete report in terms of Section 2(r). This conclusion was recorded on board based as well as narrow construction of statutory provisions. It was further held that once a charge-sheet in terms of Section 172(2) is filed within the stipulated time, the question of grant of default bail, does not arise;

(ix) In the case of Suresh Kumar Bhikam

Jain (supra), charge-sheet containing the details specified in Section 173(2) had been filed within the time prescribed under Section 167(2). However, no copy of the sanction order was produced along with such a charge sheet. The accused contended that in the absence of a sanction order, the Magistrate had no authority to take cognizance of the offense or to pass any further remand orders under Section 309 and therefore the accused was entitled to default bail under Section 167(2). This contention was however negatived holding that a police report or a charge sheet containing details specified in Section 173(2) had been filed within the period stipulated under Section 167(2) and the issue of cognizance was to be addressed later. The police report was complete even though the sanction order was not accompanying it, and therefore, the accused was not entitled to default bail. In this case the Hon'ble Supreme Court considered its several earlier rulings and held that none of such rulings detract from the position that once a charge sheet is filed within the stipulated time, the question of grant of default bail does not arise. The filing of a charge sheet is sufficient compliance with the

provisions of Section 167(2)(a)(ii) and whether cognizance is taken or not, is not material as far as Section 167 Cr.P.C. is concerned;

(x) In Tara Singh (supra), the police filed their challan (police report or charge sheet) on 03.10.1949 which was the last date as stipulated under Section 167(2). The report of the imperial serologist and drawing of the sketch map of the occurrence was however produced by filing a second challan on 05.10.1949 i.e. beyond the period stipulated in Section 167(2). Based on this, the accused contended that he was entitled to default bail because the challan filed on 03.10.1949 was an incomplete challan or that the first challan filed on 03.10.1949 stood vitiated on account of the filing of the second challan on 05.10.1949. The Hon'ble Supreme court speaking through Vivian Bose J. rejected the aforesaid contention of the accused. The Court held that the challan filed on 03.10.1949 was a complete challan, even though the report of the imperial serologist or the drawing of the sketch map of the occurrence did not accompany the same. The Court held that all that Section 173(1)(a) requires is that as

soon as the police investigation under Chapter XIV is complete there should be a report forwarded to the Magistrate in the prescribed form setting forth names of parties, nature of information, and names of persons who appear to be acquainted with circumstances of the case. Since all this appears to have been done in the report of 02.10.1949, the Court ruled that it was in fact a complete report as contemplated under Section 173(1) of the Code even though the police had themselves referred to it as an incomplete report.

(xi) The Full Bench of Punjab and Haryana High Court in *State of Haryana v. Mehal Singh and Anr.* - AIR 1978 P&H 341, on a detailed consideration of statutory provisions and precedents on the subject, has held as follows:

"..... Since a report to qualify itself to be a 'police report' is required to contain only such facts as are mentioned in 173 (2), so if once it is found that the police report contained all those facts, then so far as the 'investigation' is concerned the same has to be considered to have been

completed".Even if the investigating officer had not received the report of the expert, so far as his job of collecting of evidence is concerned, that is over the moment he despatches the material for the opinion of the expert and incidentally cites him as a witness if he relies on his testimony."

(xii) In Narendra Kumar Amin (supra), the Supreme Court enumerated the information that must be detailed in the police report forwarded to the Magistrate by investigating officer as provided under Section 173(2). Even Section 190(1)(b) of Cr.P.C. refers only to a police report under Section 173(2) for taking cognizance. The Court referred to three judge bench judgment in C.B.I. Vs. R.S. Pai (Supra), wherein it is held that omission in not producing relevant documents at the time of submitting the police report can always be made good by the police officer after seeking leave to produce the same. If further investigation is not precluded under Section 173(8), then, there is no question of not permitting the prosecution to produce additional

documents which were gathered prior to or subsequent to the investigation and the word shall used in Section 173(5) cannot be regarded as mandatory, but, is only directory. The Court analysed statutory scheme and concluded that as long as a police report containing the details in Section 173(2) was filed within the period stipulated in Section 167(2), there was no question of an accused claiming a default bail. This decision is a authority for the proposition that there is a distinction between a police report under Section 173(2) and documents and statements under Section 173(5) to ordinarily accompany such a police report and that the provisions of Section 173(5) about forwarding of documents and statements alongwith police report, is only directory and not mandatory. As long as a police report containing the details prescribed in Section 173(2) is filed within period stipulated in Section 167(2) such police report cannot be regarded as incomplete or deficit merely because all the documents or statements in terms of Section 173(5) were not filed alongwith such a police report. No question of default bail would arise in such a case.

(xiii) The decisions in Narendra Kumar Amin, CBI Vs. R.S. Rai and Narayan Rao (Supra) in terms hold that, the provisions of Section 173(5) are only directory notwithstanding the use of the expression "Shall" therein. This means that even if there is omission or failure on the part of police officer to forward the documents and statements as contemplated by Section 173(5) along with the police report under Section 173(5) along with the police report under Section 173(2) there is no scope to hold that the police report under Section 173(2) is either incomplete or that, the same was filed without the completion of investigations by the police officer.

(xiv) The submission of counsel for accused that decision of Supreme Court in the case of Narendra Kumar Amin (Supra) holding that the provisions of Section 173(5) are directory is per incuriam on the ground that it conflicts court ratio in constitution bench decision in K.Veeraraswami (Supra) and that decisions of R.S, Pai (Supra), and Narayan Rao (Supra) were decided under old Cr.P.C. deserves to be rejected. The contention that Narendra Kumar Amin (Supra) conflicts with the ratio of constitution

bench ruling in paragraph 76 of K.Veerawami (Supra) was squarely raised in Narendra Kumar Amin itself, but, the same was turned down. In paragraph 15 of Narendra Kumar Amin (Supra), it was observed that the observations made at paragraph 76 of the constitution bench judgment in the case of K.Veerawami (Supra) that the report is incomplete if it is accompanied by all documents and statements of witnesses as required under Section 173(5) of Cr.P.C. cannot be construed as statement of law, since it was not made in the context of the police report under Section 2(r) read with Section 173(2)(5) and (8) of Cr.P.C. On the contrary, the three judge bench in the decision in C.B.I. Vs. R.S. Pai (Supra) after referring to the earlier judgment of the coordinate bench in Narayan Rao's case (Supra), categorically held that, the word 'shall', used in Sub-section (5) cannot be interpreted mandatory, but, directory. Therefore, filing of the report containing particulars mentioned under Section 173(2) amounted to completion of filing of report. The reference bench then observed that, Narendra Kumar Amin (Supra) makes specific reference to K. Veerawami (Supra) will be binding on

this Court and decision of Narendra Kumarj Amin (Supra) cannot be held to be per incuriam.

(xv) Incidentally, in Aleksander Kurganov v. State of Goa & Anr. - Criminal Misc. Application (Bail) No.37 & 38 of 2021 (F) (Bombay) dated 05.02.2021, the learned Single Judge of our Court, in the context of NDPS Cases noted the conflicting set of decisions on the issue of whether a charge sheet can be said to be incomplete merely because the CA/FSL report was not filed along with it within the period stipulated under Section 167(2) Cr.P.C. After noting this conflict the learned Single Judge further noted that as a Single Judge, faced with a decisional conflict, the principles of precedent do not allow him to choose one over the other and that this issue must be resolved by a bench of superior numeric strength. However, the learned Single Judge, at para 66 held that the necessity of a reference to a Division Bench is obviated on account of the ratio in Dinesh Dalmiya (supra). The learned Single Judge has observed that Dinesh Dalmiya (supra) is an authority for the proposition that a mere absence of a forensic report neither renders the

charge sheet as incomplete nor vitiates such a charge sheet. The Court endorsed this reasoning of the learned Single Judge.

(xvi) The counsel for accused were unable to demonstrate that there was some significant change in the provisions of the old Code and the new Code insofar as the status of a police report or charge-sheet was concerned. On the analysis of statutory provisions as also the decision that have analysed various shades of such statutory provisions, a police report or a charge - sheet containing the details specified in Section 173(2), if filed within the period prescribed under Section 167(2) is not vitiated or incomplete simply because the same was not accompanied by a C.A./F.S.L. report and based thereon, there is no question of the accused insisting on default bail.

(xvii) The contention of learned counsel for the accused that the cases under N.D.P.S. Act deserve special treatment when it comes to interpreting the provisions of Section 167, 173, 190 and 309 of Cr.P.C. on account of the identity of the substance is foundational fact to launch a prosecution and in the absence

of C.A./F.S.L. report in N.D.P.S. cases, the Magistrate or special court will not be in a position to take cognizance of the offences, cannot be accepted. In the absence of any support from provisions of Cr.P.C., it is not possible to accept the submission. The charge-sheet is the expression of opinion on the part of investigating officer that so far he is concerned the investigation is complete. Thereafter, it is for the Magistrate or the special court to decide whether a case has been made out to take cognizance of the offence or not. In the precise context of cases under the N.D.P.S. Act, there is a long line of decisions delivered by the learned Single Judge of this Court in Suwarnkar (Supra), Rafel Garcia (Supra), Aleksander Kurgaonkar (Supra), Shrihari Valse (Supra) and Sheikh Shabir (Supra), that had taken a view that a charge-sheet unaccompanied by C.A./F.S.L. report is not complete and, therefore, where the same is filed within prescribed period, the accused cannot insist on default bail. This decision reflects the legal position correctly, and, therefore, the Court endorses them.

(xviii) The contention that a Magistrate or the Special Court, in any N.D.P.S.

case, is not competent to take cognizance of any offence based on a field-testing report, as reflected in the panchanama or otherwise in the absence of C.A./F.S.L. report is too wide a proposition to commend acceptance. The Magistrate or Special Court will have to assess the charge-sheet and if necessary, the documents and the statements produced under Section 173(5) and thereafter decide whether any case is made out for taking cognizance of the offence.

(xix) In Jagdish Purohit Vs. State of Maharashtra (Supra), the Supreme Court after rejecting the C.A./F.S.L. report sustained the conviction by accepting the evidence of the members of the raiding party to prove that the powder which was found in the factory was methaqualone. The evidence was found sufficient to sustain a conviction even after ignoring C.A./F.S.L. report. If a conviction could be sustained on such evidence, cognizance of offence can be taken based on such material produced along with the charge-sheet. This has to be assessed on a case-to-case basis.

(xx) Presentation of a police report under Section 173(2) unaccompanied by a

C.A./F.S.L. report does not amount to any incomplete charge-sheet/ challan even in the absence of an extension of time under Section 36 A(4) of the N.D.P.S. Act. The accused cannot insist upon a default bail.

(xxi) Police report under Section 173(2) or a charge-sheet/challan accompanied by field testing reports, 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 C.A./F.S.L. report.

(xxii) The "Drug Law Enforcement Field Officers Handbook", issued by N.C.B. has no legal efficacy in the sense that it has no statutory flavour or the handbook is not a set of executive instructions issued by the Central Government.

(xxiii) The reference was answered as follows:

(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 a set of executive instructions issued by the Central Government.

36 In the light of the decision of Division Bench in the case of Manas Krishna T.K. and various decisions referred to hereinabove, these applications seeking bail in accordance with Section 167(2) of Cr.P.C. read with

Section 36A(4) of N.D.P.S. Act are devoid of merits. Charge-sheet was filed within 180 days. The material on record in the nature of panchanama, statement of witnesses, nature of commodity seized satisfied the investigating agency that what was recovered is Ganja. In the absence of field test which was not conducted and C.A. report accompanying charge-sheet, it cannot be said that charge-sheet was incomplete. C.A. report which opines that the contraband is Ganja, is on record. Requisition calling upon analysis of samples were made to C.F.S.L. before completion of 180 days. Absence of C.A./F.S.L. report with charge-sheet would not result in declaring the charge-sheet as incomplete. The Division Bench has answered the reference as above. The decision is binding on this Court. In several other decisions the contention about right of default bail claiming that charge-sheet is incomplete in the absence of CA/FSL has been rejected. I am in agreement with the said view. The Division Bench while answering the reference has endorsed the said view. The decisions of this Court in which the said provisions is accepted is held to be per incuriam.

37 The investigating officer has forwarded letter to C.A./F.S.L. with samples for analysis on 2nd August, 2019. The CA report is now part of proceedings. The report is ordinarily filed in the form prescribed. One of the requirement for submission of Police Report is whether any offence appears to have been committed. In the decisions referred to above it is held that, even through experts report did not accompany charge-sheet, it cannot be said that it is incomplete charge-sheet. Once a charge-sheet is filed within stipulated time, the question of default bail does not arise. It cannot be held that additional documents cannot be produced subsequently. There is no specific provision due to which no additional documents can be produced. When the charge-sheet is submitted without reports of experts well within the period of 60/90/180 days, merely because the report of expert was not filed along with it, the accused is not entitled to be released on bail under Section 167(2) of Cr.P.C. In the present case C.A./F.S.L. report shows that what was seized from accused is Ganja. The submission that in NDPS case the report under Section 173(2) of the code is incomplete in the absence

of expert report cannot be accepted. By virtue of section 293 of the Code any document in the form of report of C.F.S.L. can be used as evidence in any enquiry, trial or other proceedings, under the Code. It is open to the Court to summon and examine scientific expert. The satisfaction of investigating officer/members of raiding party during seizure of contraband that what is recovered is Narcotic drug/Psychotropic substance or controlled substance cannot be doubted at this stage. The purpose of submission of the police report with the details is to enable the Court to satisfy whether on the basis of report and the material filed along with report, case for taking cognizance has been made out or not. In the light of observations in several decisions referred hereinabove, the police report or charge-sheet containing the details specified under Section 173(2) of the Code is filed within prescribed period, default bail cannot be granted. The word 'shall' used in Section 173(5) cannot be recorded as mandatory but it is directory. As long as police report containing the details in Section 173(2) was filed within stipulated period under Section 173(2), there was no question of an accused

claiming default bail. In absence of provisions of law no distinction can be made in NDPS case. In the present case there was no field test conducted. The officers who seized the contraband were of the opinion that on the basis of smell and nature that it was Ganja. Even otherwise in consonance with law laid down in various decisions, in the absence of CA report with charge-sheet, it cannot be termed as incomplete. Bail cannot be granted."

36. The Full Bench of the Punjab and Haryana High Court in the case of **State of Haryana vs. Mehal Singh and anr** *supra* also held that, "since a report to qualify itself to be a 'police report' is required to contain only such facts as are mentioned in sub-section (2) of Section 173, so if once it is found that the police report contained all those facts, then so far as the investigation is concerned the name has to be considered to have been completed. Even if the investigating officer had not received the report of the expert, so far as his job of collecting of the evidence is concerned, that is over the moment he despatches

the material for the opinion of the expert and incidentally cites him as a witness if he relies on his testimony".

37. In the case of **Judgebir Singh and ors vs. National Investigation Agency, reported in MANU/SC0501/2023** also the issue regarding default bail on account of non-submitting sanction order along with chargesheet was raised and the Honourable Apex Court, while dismissing the appeal, held that there is no merit in principal argument canvassed on behalf of the appellants that a chargesheet filed without sanction is an incomplete chargesheet which could be termed as not in consonance with sub-section (5) of Section 173 of the Code. It was conceded by the learned counsel appearing for the appellants that the chargesheet was filed well within the statutory time period i.e., 180 days, however, the court concerned could not have taken cognizance of such chargesheet in the absence of the orders of sanction not being a part of such chargesheet. Whether the sanction is required or not under a statute, is a question that has to be considered

at the time of taking cognizance of the offence and not during inquiry or investigation. There is a marked distinction in the stage of investigation and prosecution. The prosecution starts when the cognizance of offence is taken. It is also to be kept in mind that cognizance is taken of the offence and not of the offender. It cannot be said that obtaining sanction from the competent authorities or the authorities concerned is part of investigation. Sanction is required only to enable the court to take cognizance of the offence. The court may take cognizance of the offence after the sanction order was produced before the court, but the moment, the final report is filed along with the documents that may be relied on by the prosecution, then the investigation will be deemed to have been completed. Taking cognizance is entirely different from completing the investigation. To complete the investigation and file a final report is a duty of the investigating agency, but taking cognizance of the offence is the power of the court. The court in a given case, may not take cognizance of the

offence for a particular period of time even after filing of the final report. In such circumstance, the accused concerned cannot claim their indefeasible right under Section 167(2) of the Code for being released on default bail. What is contemplated under Section 167(2) of the Code is that the Magistrate or designated Court (as the case may be) has no powers to order detention of the accused beyond the period of 180 days or 90 days or 60 days as the case may be. If the investigation is concluded within the prescribed period, no right accrues to the accused concerned to be released on bail under the proviso to Section 167(2) of the Code. Once a final report has been filed with all the documents on which the prosecution proposes to rely, the investigation shall be deemed to have been completed. After completing investigation and submitting a final report to the Court, the investigating officer can send a copy of the final report along with the evidence collected and other materials to the sanctioning authority to enable the sanctioning authority to apply his mind to accord sanction.

According sanction is the duty of the sanctioning authority who is not connected with the investigation at all. In case the sanctioning authority takes some time to accord sanction, that does not vitiate the final report filed by the investigating agency before the Court. Section 173 of the Code does not speak about the sanction order at all. Section 167 of the Code also speaks only about investigation and not about cognizance by the Magistrate. Therefore, once a final report has been filed, that is the proof of completion of investigation and if final report is filed within the period of 180 days or 90 days or 60 days from the initial date of remand of accused concerned, he cannot claim that a right has accrued to him to be released on bail for want of filing of sanction order. Filing of chargesheet is sufficient compliance with the provisions of proviso (a) to Section 167(2) of the Code and that taking of cognizance is not material to Section 167 of the Code and that an accused could not claim any indefeasible right of being released on statutory/default bail under Section 167(2) of the Code on

the ground that cognizance had not been taken before the expiry of statutory time period to file the chargesheet. The error on the part of the investigating agency in filing chargesheet first before the court of the Magistrate had nothing to do with the right of the accused to seek statutory default bail under Section 167(2) of the Code.

38. Thus, it is held by the Honourable Apex Court that proof of completion of investigation and if final report is filed within the period of 180 days or 90 days or 60 days from the initial date of remand of accused concerned, he cannot claim that a right has accrued to him to be released on bail for want of filing of sanction order.

39. In the light of the decision of the Division Bench of this Court in Criminal Misc. Application (Bail) No.88/2021 (**Manas Krishna T.K. vs. State**) and in the light of the decision of the Honourable Apex Court in the case of **Judgebir Singh and ors vs. National Investigation Agency** *supra*, wherein various decisions are referred, it

shows that application seeking bail in accordance with Section 167(2) of the Code read with 36-A(4) of the NDPS Act is not sustainable as the chargesheet was filed within 180 days. The material on record, in the nature of panchanama, statements of witnesses, nature of commodity seized, satisfies the investigating agency that recovered contraband was "Mephedrone" powder. The investigating officer forwarded the sample for analysis and the report was received on 15.2.2004 and, thereafter, it was submitted. Thus, when the chargesheet is submitted within 180 days, merely because the report of expert was not filed with it, the accused is not entitled to be released on bail under Section 167(2) of the Code.

40. The other ground raised by applicants was that there was no compliance of Sections 42(2) and 50 of the NDPS Act. As far as the information to the superior is concerned, the communication placed on record shows that the information was given to the superiors. As far as the compliance under Section 50 of the NDPS Act is concerned, before conducting the search, applicants were

informed about their rights and they can ask for search in presence of a gazetted officer. One of the accused was illiterate and endorsement on the letter issued to the accused shows that they understood about their rights, but he denied to give search before the gazetted officer.

41. Thus, there was a due compliance of Section 50 of the NDPS Act. Moreover, the said Section would be applicable in cases of personal search and not in respect of baggages, articles, and vehicles and containers.

42. Second limb of submissions was that there was no compliance of Section 52-A of the NDPS Act. Chapter-V of the Act pertains to procedure. Section 51 contained in the said Chapter provides that provisions of the Code shall apply insofar as they are not inconsistent with the provisions of the NDPS Act to all warrants issued and arrests, searches and seizures, made under the NDPS Act.

Thus, if there is anything contrary provided in the NDPS Act, in relation to all warrants issued, arrests, searches, and seizures

carried out by the investigating agency during course of investigation, provisions of the Code would apply.

43. Admittedly, the samples were obtained in presence of panchas. Recital of the First Information Report shows that the provision was made to obtain samples in presence of the Magistrate who conducts inventory. The inventory is conducted on 20.5.2023. The report of the investigation shows that after taking the samples, the weight of the remaining muddemal is again taken along with red rubber band and the label were pasted on the said samples and signatures of the panchas are obtained. The entire procedure of opening of packets, measurement of contraband found therein, taking samples from the contraband, sealing, labelling of all packets, and photographs are conducted in presence of the Magistrate.

44. Thus, the samples were obtained not only in presence of panchas but also the Magistrate.

45. Thus, the investigating agency has followed the provisions of Section 52-A of the

NDPS Act.

46. Thus, the entire mandatory provisions are followed by the investigating agency.

47. In the present case, CA/FSL Reports show what was seized was "Mephedrone" powder. The FSL Report was filed by virtue of Section 293 of the Code. The satisfaction of the investigating officer, that the seized contraband is covered under the narcotic drugs, cannot be doubted at this stage.

48. In view of rigor under Section 37 of the NDPS Act, applicants have not made out a *prima facie* case to show that they are not guilty of the alleges offences. The recording of satisfaction on this aspect is *sine qua non* for grant of bail.

49. In the light of various decisions and the law laid down in cases referred above, in absence of CA Report, chargesheet cannot be termed as an incomplete chargesheet. Submissions of learned counsel appearing for respective applicants cannot be accepted and these bail applications deserve to

be rejected and the same are **rejected**.

Applications stand **disposed of**.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!