



\$~

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

%

Reserved on: 08.01.2024
Pronounced on: 12.01.2024

+ **BAIL APPLN. 70/2024**

LEISHANGTHEM I LOYANGAMBA Petitioner

Through: Mr. R.A. Worso Zimik,
Advocate.

versus

STATE Respondent

Through: Mr. Manoj Pant, APP for the
State.
S.I. Nishant Suran, Special
Cell.

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.

1. The instant application has been filed under Section 167(2) read with Sections 439 and 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C.') for grant of default bail in case FIR bearing no. 43/2023, registered at Police Station Special Cell, under Sections 18/25/29 of Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS Act').

2. Brief facts of the case are that a secret information was received by the Special Cell on 13.02.2023 that in next 4-5 days, two people from Imphal, Manipur would be carrying drugs from Manipur for supplying them in areas of Delhi NCR and Punjab. On



17.02.2023, the Special Cell had received information that at around 3-4 PM, two residents of Imphal i.e. Ranbir Singh and Loyangamba (applicant herein), who are involved in business of heroin, will come through loop road from MB road towards Sarita Vihar, Delhi in white coloured Maruti Brezza Car, bearing no. AS 01 DR 9488. Thereafter, a raiding team was formed and at around 03:25 PM, the said car had reached the spot and had stopped on the side of road. Accused Ranbir Singh i.e. the driver of the car had then got down from the car and stood on the footpath at about 20 steps away from the car, carrying *apittu* bag (black and red colour on which 'Elaichi' was written) on his shoulder. After some time, the accused had started running towards the car. Immediately thereafter, the raiding team had apprehended the accused, and then the present applicant who was sitting in the car, with a black coloured bag with HP logo, had also started running, but he was captured by the raiding team. After complying with statutory provisions, the raiding team had conducted search of the car and the bags being carried by the accused persons, and 10kg of opium each was recovered from the bags being carried by the accused persons and 30kg of opium was recovered from the car. Accordingly, the present FIR was registered, accused persons were arrested, and were sent to police remand on 18.02.2023.

3. Learned counsel for the accused/applicant argues that the chargesheet in this case was filed without an FSL Report, which is considered as main focal point of prosecution in a case under NDPS Act. It is stated that since FSL report was not filed along with the chargesheet, the chargesheet in such a case would be considered as



'incomplete' and thus, the applicant would be entitled to default bail. It is also submitted that the Hon'ble Apex Court in several recent decisions, including in *Mohd Arbaz & Ors. v. State of NCT of Delhi SLP (Criminal) No. 6876-6877/2022*, has granted bail to accused persons in cases where FSL report was not filed alongwith main chargesheet within a period of 180 days.

4. Learned APP for the State submits that the present case pertains to recovery of 50kgs of opium, which is a commercial quantity, from the possession of accused persons who are allegedly involved in inter-state trade of narcotic drugs. It is argued that in the case of *Mohd Arbaz (supra)*, the Hon'ble Apex Court has only opted to examine the legal issue in detail and for the time being, interim relief has been granted to the petitioners. It also stated that till the issue in question i.e. whether a charge-sheet filed without FSL report is complete or incomplete for the purpose of default bail is decided by the Hon'ble Apex Court, the prevailing law will cover the present case and the petitioner will not be entitled to grant of default bail, in view of decisions to this effect passed by several Benches of this Court.

5. This Court has heard arguments advanced by learned counsel for the applicant petitioner as well as learned APP for the State, and has perused the material on record.

6. The present application has been filed seeking default bail on the ground of non-filing of FSL report alongwith the chargesheet, and the main grievance of applicant is that the learned Special Judge, NDPS, Patiala House Court, New Delhi has erroneously declined the



relief of default bail to him. In this regard, the observation of the learned Special Judge in the impugned order, reads as under:

“ Hon’ble Delhi High Court in case titled *Mohd. Arbaz Vs. State of NCT of Delhi Crl. Revision Petition 1219/2019* dated 03.11.2020 observed as under:

Thus, in view of the mandate of this judgment, mere non filing of FSL report do not make the charge sheet incomplete. The charge sheet was filed on 11.08.2023 i.e. before the filing of present application. Hence, no ground made out to release the applicants/accused persons namely Ranbir Singh and Leishangthem I Loyangamba on bail u/s 167 (2) CrPC, hence, the present bail application stands dismissed. Application disposed of accordingly.”

7. This Court, while considering the plea of default bail on a similar ground, in case of *Arif Khan v. State (NCT of Delhi) 2023 SCC OnLine Del 2374*, had made the following observations, while dismissing the petition:

“9. ...Learned counsel for the petitioner had primarily relied upon the decision in *Mohd. Arbaz* (supra) where the Hon'ble Apex Court has been pleased to observe as under:

“In all these petitions the question that arises for consideration is relating to the completeness of the charge sheet in accordance with law if the same is filed without the CFSL Report. **The matter would require detailed consideration.** In the meantime, all parties to complete their pleadings.

For the present, **though the issue of default bail is to be considered in the petitions since it would require some time, without reference to that aspect of the matter**, keeping in view that the petitioners in SLP (CrL.) Nos. 6876-6877/2022, SLP (CrL.) No. 532/2022 and SLP (CrL.) No. 5190/2022 are still in custody, we order that they be released on bail subject to the conditions to be imposed by the concerned trial courts.



While indicating so we also take note of the objection put forth by learned counsel for the respondent-State in SLP (Crl.) No. 2666/2022 who objects to the grant of bail since the petitioner therein has not surrendered despite the bail being cancelled by the High Court. Though in a normal circumstances we would have taken a serious view of the matter keeping in view the fact that the petitioner has approached this Court immediately after cancellation of the bail and the petition has been tagged along with similar matters and could not be taken up, we allow the benefit of bail to the petitioner. Hence, the order cancelling bail which is impugned in SLP (Crl.) No. 2666/2022 shall remain stayed. List all these petitions on 17.01.2023.”

(Emphasis supplied)

10. In the aforesaid case, **the Hon'ble Supreme Court has been pleased to grant bail to the petitioners therein, however, it has been clearly mentioned that bail was granted without ‘reference to that aspect of the matter’.** It is, thus, clear that bail in the said case was not granted with reference to the question of completeness of charge-sheet in accordance with law, if the same is filed without **FSL report.** Therefore, the contention of learned counsel for the petitioner that since the Hon'ble Supreme Court has granted bail in the case of Mohd. Arbaz (supra), the present petitioner is also entitled to same relief is devoid of merit.

11. Further, in one of the petitions i.e. SLP (Crl.) No. 2666/2022 before the Hon'ble Supreme Court in the aforesaid case, the petitioner had not surrendered despite the bail being cancelled by the High Court. It is also clearly mentioned in the order of the Hon'ble Supreme Court that the petition for grant of bail of the said petitioner had been tagged along with similar matters dealing with the question of law mentioned above and could not be taken up and thus, benefit of bail was being granted to the petitioner. It is also to be noted that in facts of the said case, the quantity of contraband recovered were not placed before the Court, also as to whether it was a case of commercial quantity of recovery of contraband or not.

12. It is, thus, clear that no general directions have been passed by the Hon'ble Supreme Court for grant of default bail



in case of charge-sheet being filed without FSL report in NDPS cases.

13. On the issue in question, this Bench in *Suleman v. State (NCT of Delhi)*, (2022) 5 HCC (Del) 108 : 2022 SCC OnLine Del 2346 had observed that non-filing of FSL report along with the chargesheet does not fall within the ambit of Section 173(2) Cr. P.C. so as to consider it as “incomplete chargesheet” and the same does not give any right of default bail to the accused...”

(Emphasis supplied)

8. Thus, it has been held by this Court that non-filing of FSL report alongwith the chargesheet does not fall within the ambit of Section 173(2) of Cr.P.C. so as to consider it as “incomplete chargesheet and accordingly, no right of default bail is accrued in favour of the accused.

9. Though in case of *Mohd Arbaz (supra)*, as well as in other subsequent cases filed assailing the orders of refusal of grant default bail, the accused persons have been enlarged on bail by the Hon’ble Apex Court, the said relief however has been granted to the accused persons on the ground of pendency of larger issue i.e. whether chargesheet filed without an FSL report is incomplete chargesheet, before the Hon’ble Apex Court in batch of petitions. However, neither the decisions challenged before the Hon’ble Apex Court have been stayed, nor any general directions have been given to the Courts to release the accused persons on default bail if the chargesheet is filed without an FSL report.

10. Therefore, in view of the aforesaid reasons, there is no ground for grant of default bail to the present accused/applicant.



11. Accordingly, the present application stands dismissed.
12. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

JANUARY 12, 2024/at