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

+ CRL.REV.P. 135/2023

GURJEET SINGH

.....Petitioner

Through: Mr. Amit Chadha, Mr.
Tushar Lamba, Mr. Atin
Chadha, Ms. Munisha
Chadha, Mr. Harjas Singh
Chhatwal & Ms. Aeshana
Singh, Advocates.

versus

THE STATE OF NCT OF DELHI

.....Respondent

Through: Mr. Ajay Vikram Singh,
APP for the State with SI
Narender (P.S. Vikaspuri).

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

14.08.2024

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1. The present criminal revision petition is filed under Section 397 read with Sections 401 and 482 of the Code of Criminal Procedure, 1973 ('CrPC'), challenging the order dated 24.01.2023 passed by the learned Special Judge (NDPS), Dwarka Courts, whereby the application filed by the petitioner seeking statutory bail in FIR No.27/2022 dated 08.01.2022, registered at Police Station Vikaspuri, for offences under Section 18/25 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS Act') was dismissed.

2. The brief facts of the case are that on 07.01.2022 at approximately 9:45 PM, on the basis of secret information, the petitioner was apprehended from his house. It is alleged that two



polybags containing 750 grams of opium were recovered from his refrigerator.

3. The contention of the petitioner is that the chargesheet has been filed without the FSL report and hence is an incomplete chargesheet.

4. The learned counsel for the accused/applicant submitted that the chargesheet in the present case was filed without FSL Report, the chargesheet in such a case would be considered as 'incomplete' and thus, the applicant would be entitled to default bail since, the investigation was not completed within the statutory period as provided under Section 36A (4) of the NDPS Act.

5. He further submits that the Hon'ble Apex Court in several recent decisions has enlarged the accused person on interim bail in cases where FSL report was not filed along with the charge sheet within a period of 180 days.

6. The learned Additional Public Prosecutor for the State submits that commercial quantity has been recovered from the petitioner in the present case.

7. He submits that mere non-filing of the FSL report does not render the charge sheet incomplete.

8. The principal question that falls for the consideration of this Court is whether the applicant is entitled to the benefit of the statutory right conferred under the proviso to sub-section 2 of Section 167 of the CrPC, on the ground that non-filing of the FSL report renders the charge sheet incomplete, even if the same is filed within the prescribed time limit.

9. It has been held by this Court in plethora of decisions that non-filing of FSL report along with the charge sheet does not render it as 'incomplete charge sheet' and, accordingly, no right



of default bail accrues in favor of the accused. In ***Satish Kumar & Anr. v. State : 2024:DHC:1258***, this Court concurred with the view taken by the Coordinate Bench of this Court in ***Arif Khan v. State (NCT of Delhi) : 2023 SCC OnLine Del 2374*** and the law laid down by the Division Bench in ***Kishan Lal v. State : 1989 SCC OnLine Del 348***, and dismissed the petition that was filed urging the same ground. This Court held that mere non-filing of FSL Report along with the charge sheet is not sufficient to arrive at the conclusion that the charge sheet filed was incomplete. It was further observed that the said report can be filed by way of a supplementary charge sheet and in any case, FSL report is only a corroborative piece of evidence.

10. The Division Bench of this Court, in ***Kishan Lal v. State (supra)***, has held that there is no mandate under Section 173 of the CrPC, that a police report shall enclose the report of a scientific expert and that an investigation under the NDPS Act cannot be said to be incomplete in the absence of the report of the Scientific Officer and Chemical Examiner.

11. As noted by this Court in ***Satish Kumar & Anr. v. State (supra)***, this Court is bound by the decision in ***Kishan Lal v. State (supra)*** as judicial discipline mandates that this Court has to decide the matters on the basis of the law as it stands and the pendency of any reference would not mean that the other proceedings involving the similar issue would remain stayed.

12. The Hon'ble Apex Court in ***Union Territory of Ladakh v. Jammu & Kashmir National Conference : 2023 SCC OnLine SC 1140*** held as under :

“35. We are seeing before us judgments and orders by High Courts not deciding cases on the ground that the leading judgment of this Court on this subject is either referred to a larger Bench or a review petition relating thereto is pending. We have also come across examples of High Courts refusing deference to judgments of this Court



*on the score that a later Coordinate Bench has doubted its correctness. In this regard, we lay down the position in law. We make it absolutely clear that the High Courts will proceed to decide matters on the basis of the law as it stands. It is not open, unless specifically directed by this Court, to await an outcome of a reference or a review petition, as the case may be. It is also not open to a High Court to refuse to follow a judgment by stating that it has been doubted by a later Coordinate Bench. In any case, when faced with conflicting judgments by Benches of equal strength of this Court, it is the earlier one which is to be followed by the High Courts, as held by a 5-Judge Bench in *National Insurance Company Limited v. Pranay Sethi*, (2017) 16 SCC 680. The High Courts, of course, will do so with careful regard to the facts and circumstances of the case before it.”*

13. In view of the above, this Court finds no infirmity in the impugned order and the present petition is, therefore, dismissed.

14. The petitioner, by order dated 10.02.2023, was directed to be released on interim bail.

15. The petitioner is directed to surrender before the learned Trial Court within a period of ten days.

16. The petitioner is also at liberty to file an application seeking bail before the learned Trial Court.

AMIT MAHAJAN, J

AUGUST 14, 2024

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