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

% *Date of Decision: 26th February, 2024*

+ CRL.M.C. 1481/2024

SEEMA RANI KHAKHA

..... Petitioner

Through: Mr. Shubhashis Rasik Soren, Mr.
Rahul Kumar & Mr. Harpal Singh, Advocates.

versus

STATE (GOVT. OF NCT DELHI)

..... Respondent

Through: Ms. Rupali Bandhopadhyay, ASC for
State with Mr. Abhijeet Kumar, Advocate along
with Insp. Ajit Kumar, SHO, Burari & SI Bharti
Singh.

+ CRL.M.C. 1482/2024

PREMODYA KHAKHA

..... Petitioner

Through: Mr. Shubhashis Rasik Soren, Mr.
Rahul Kumar & Mr. Harpal Singh, Advocates.

versus

STATE (GOVT. OF NCT DELHI)

..... Respondent

Through: Ms. Rupali Bandhopadhyay, ASC for
State with Mr. Abhijeet Kumar, Advocate along
with Insp. Ajit Kumar, SHO, Burari & SI Bharti
Singh.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J. (ORAL)

CRL.M.A. 5821/2024 (Exemption) in CRL.M.C. 1481/2024 and
CRL.M.A. 5822/2024 (Exemption) in CRL.M.C. 1482/2024

1. Allowed, subject to all just exceptions.
2. Applications stand disposed of.



CRL.M.C. 1481/2024 and CRL.M.C. 1482/2024

3. These petitions have been filed under Section 482 Cr.P.C. on behalf of the Petitioners seeking default bail as well as for quashing the cognizance order dated 08.11.2023 passed by learned Additional Sessions Judge, (FTSC) (POCSO)-01, Central, Tis Hazari Courts, Delhi as well as for seeking quashing of the Charge Sheet filed on 11.10.2023, in case FIR No. 1068/2023 registered under Sections 376(2)(n)/506/509/323/313/120B/34 IPC read with Sections 6/21 of the Protection of Children from Sexual Offences Act, 2012 ('POCSO Act'). For ready reference, the prayers in the petitions are extracted hereunder:-

CRL.M.C. 1481/2024

"Under the circumstance mentioned above it is therefore most respectfully prayed that the Petitioner may be granted default bail in connection with FIR NO.1068/2023, PS:BURARI, DELHI, U/S:- 376(2)(n)/506/509/323/313/120B/ 34 OF IPC r/w 6/21 POCSO Act, registered on 13.08.2023, and also grant order for quashing the cognizance order dated 08.11.2023 passed by the Ms. Richa Parihar, Additional Sessions Judge (FTSC) (POCSO)-01, Central, Delhi and also seeking quashing of charge sheet, filed by the I.O on 11.10.2023 before the Ld. Court of Ms. Richa Parihar, Additional Sessions Judge (FTSC) (POCSO)-01, Central, Delhi since the investigation is not complete, in the interest of justice."

CRL.M.C. 1482/2024

"Under the circumstance mentioned above it is therefore most respectfully prayed that the Petitioner may be granted default bail in connection with FIR NO.1068/2023, PS:BURARI, DELHI, U/S:- 376(2)(n)/506/509/323/313/120B/ 34 OF IPC r/w 6/21 POCSO Act, registered on 13.08.2023, and also for quashing the cognizance order dated 08.11.2023 passed by the Ms. Richa Parihar, Additional Sessions Judge (FTSC) (POCSO)-01, Central, Delhi and also seeking quashing of charge sheet no.01 dated NIL, filed by the I.O on 11.10.2023 before the Ld. Court of Ms. Richa Parihar, Additional Sessions Judge (FTSC) (POCSO)-01, Central, Delhi since the investigation is not complete, in the interest of justice."

4. On account of similitude of facts and legal questions, both petitions are being decided by this common judgment. As per the case of the



prosecution, on 12.08.2023 the Security Officer of St. Stephens Hospital informed SHO, PS: Burari about the admission of a victim alleging sexual assault by her uncle. The victim in her statement alleged that her father passed away in the year 2020 during COVID-19 and thereafter, she and her mother were very depressed. Victim had family relationship with Premodya Khakha and therefore, after the death of her father, she went to live in his house. Due to COVID, schools closed and classes were online. Her uncle Premodya Khakha forcefully raped her several times and her aunty Seema Khakha used to beat her with sticks. In January, 2021, Premodya Khakha again raped the victim resulting in her pregnancy and when the victim informed Seema Khakha, she administered abortion pills to the victim forcefully resulting in her abortion. On account of anxiety attacks resulting from the acts of the Petitioners, victim was admitted to hospital on 12.08.2023, where she disclosed the history of sexual assault to the doctor.

5. As the chronology goes, MLC of the victim was prepared and present FIR was lodged on 13.08.2023. Petitioners were remanded to judicial custody on 21.08.2023. On 11.10.2023, Charge Sheet was filed in the Court of learned Additional Sessions Judge, Tis Hazari Court, Delhi and the Court took cognizance of the offence on 08.11.2023. After one month of the filing of the Charge Sheet, IO filed an application on 19.11.2023 before the Trial Court seeking directions to the Accused Premodya Khakha, to provide semen sample at the Urology Department, RML Hospital for obtaining a final opinion on whether the Accused was capable of reproducing, in light of the stand adopted by him that he had undergone vasectomy surgery in 2005. Notice was issued in the application for 05.12.2023. An application was thereafter filed by the Petitioners on 05.12.2023, under Section 167 Cr.P.C.,



for grant of statutory/default bail, alleging that incomplete Charge Sheet had been filed by the Investigating Officer. Application was dismissed by the Trial Court on 12.12.2023.

6. Challenging the impugned order of the Trial Court passed on 12.12.2023, rejecting the application for grant of default bail, learned counsel for the Petitioners contends that the Charge Sheet filed on 11.10.2023 was an incomplete Charge Sheet, since investigation was not complete qua the offence under Section 313 IPC. It is urged that the entire prosecution story revolves around the allegation of rape of the victim by Premodya Khakha, resulting in pregnancy and the miscarriage caused by the pills consumed by the victim under pressure of Seema Khakha and thus it was incumbent on the prosecution to have first conducted the reproductivity test by taking the semen sample of Premodya Khakha, in the backdrop of his plea that he had undergone vasectomy in 2005 and only after investigation was complete on this aspect, Charge Sheet should have been filed. Admittedly, IO had filed an application for semen analysis, but after one month of filing the Charge Sheet and thus the Charge Sheet filed without the medical report, is an incomplete Charge Sheet. Trial Court thus erred in declining the relief of default bail without appreciating the settled law that if complete Charge Sheet is not filed within the statutory period, the benefit of default bail must inure to the Accused.

7. It is argued that Section 167(2) Cr.P.C. has a laudable object and is a limb of Article 21 of the Constitution of India. The rationale behind this provision is to ensure that right of the accused to life and personal liberty remains preserved. Reliance is placed on the judgment of the Supreme Court in *Ritu Chhabaria v. Union of India*, 2023 SCC Online SC 502, wherein



the Supreme Court held that the investigating agency cannot deprive an arrested accused of his right to default bail under Section 167(2) Cr.P.C. by filing an incomplete Charge Sheet and therefore if a Charge Sheet is filed, without first completing the investigation, right of the accused to default bail will not be extinguished.

8. Learned APP, *per contra*, opposes the grant of default bail to the Petitioners. It is contended that the Charge Sheet was complete with all requisite details and documents required under Section 173 Cr.P.C., such as MLC of the Victim, her statements under Sections 161 and 164 Cr.P.C., MLC of Accused Premodya Khakha, age proof documents of the Victim, seizure memos, disclosure statements of both the Accused etc. It is a settled law that when a police officer completes his report by filling up the requisite particulars under Section 173(2)(i)(a) to (g) Cr.P.C., investigation can be said to be complete and mere non-filing of the semen analysis report, cannot be a ground to urge that the Charge Sheet was incomplete, entitling the Petitioners to default bail. There was sufficient incriminating material on record before the concerned Court to initiate prosecution against the Petitioners and thereafter take cognizance.

9. Having heard learned counsel for the Petitioners and the learned APP, the issue that arises for consideration before this Court is whether an incomplete Charge Sheet had been filed by the investigating agency, entitling the Petitioners to default bail under Section 167(2) Cr.P.C.

10. Before proceeding further, it would be useful to examine the relevant provisions of Sections 167 and 173 Cr.P.C., which are extracted hereunder, for ready reference:-

“167. Procedure when investigation cannot be completed in twenty-four hours.—(1) Whenever any person is arrested and detained in custody, and



it appears that the investigation cannot be completed within the period of twenty-four hours fixed by section 57, and there are grounds for believing that the accusation or information is well founded, the officer in charge of the police station or the police officer making the investigation, if he is not below the rank of sub-inspector, shall forthwith transmit to the nearest Judicial Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused to such Magistrate.

(2) The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time, authorise the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole; and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction:

Provided that—

(a) the Magistrate may authorise the detention of the accused person, otherwise than in custody of the police, beyond the period of fifteen days, if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorise the detention of the accused person in custody under this paragraph for a total period exceeding—

(i) ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years;

(ii) sixty days, where the investigation relates to any other offence, and, on the expiry of the said period of ninety days, or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail, and every person released on bail under this sub-section shall be deemed to be so released under the provisions of Chapter XXXIII for the purposes of that Chapter;

(b) no Magistrate shall authorise detention of the accused in custody of the police under this section unless the accused is produced before him in person for the first time and subsequently every time till the accused remains in the custody of the police, but the Magistrate may extend further detention in judicial custody on production of the accused either in person or through the medium of electronic video linkage;

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173. Report of police officer on completion of investigation.—(1) Every investigation under this Chapter shall be completed without unnecessary delay. [(1A) The investigation in relation to [an offence under sections 376, 376A, 376AB, 376B, 376C, 376D, 376DA, 376DB or 376E] from the date on which the information was recorded by the officer in charge of the



police station.

(2) (i) As soon as it is completed, the officer in charge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government, stating—

(a) the names of the parties;

(b) the nature of the information;

(c) the names of the persons who appear to be acquainted with the circumstances of the case;

(d) whether any offence appears to have been committed and, if so, by whom; (e) whether the accused has been arrested;

(f) whether he has been released on his bond and, if so, whether with or without sureties;

(g) whether he has been forwarded in custody under section 170.

(h) whether the report of medical examination of the woman has been attached where investigation relates to an offence under [sections 376, 376A, 376AB, 376B, 376C, 376D, 376DA, 376DB] or section 376E of the Indian Penal Code (45 of 1860)].

(ii) The officer shall also communicate, in such manner as may be prescribed by the State Government, the action taken by him, to the person, if any, by whom the information relating to the commission of the offence was first given.

(3) Where a superior officer of police has been appointed under section 158, the report shall, in any case in which the State Government by general or special order so directs, be submitted through that officer, and he may, pending the orders of the Magistrate, direct the officer in charge of the police station to make further investigation.

(4) Whenever it appears from a report forwarded under this section that the accused has been released on his bond, the Magistrate shall make such order for the discharge of such bond or otherwise as he thinks fit.

(5) When such report is in respect of a case to which section 170 applies, the police officer shall 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 investigation;

(b) the statements recorded under section 161 of all the persons whom the prosecution proposes to examine as its witnesses.”

(6) If the police officer is of opinion that any part of any such statement is not relevant to the subject-matter of the proceeding or that its disclosure to



the accused is not essential in the interests of justice and is inexpedient in the public interest, he shall indicate that part of the statement and append a note requesting the Magistrate to exclude that part from the copies to be granted to the accused and stating his reasons for making such request.

(7) Where the police officer investigating the case finds it convenient so to do, he may furnish to the accused copies of all or any of the documents referred to in sub-Section (5).

(8) Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub-Section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding, such evidence in the form prescribed; and the provisions of sub-Sections (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub-Section (2)."

11. In a recent judgment in the case of ***Central Bureau of Investigation v. Kapil Wadhawan and Another, 2024 SCC OnLine SC 66***, the Supreme Court observed that there cannot be any disagreement with the well-settled legal proposition that right to default bail under Section 167(2) Cr.P.C. is not only a statutory right but a right that flows from Article 21 of the Constitution of India. It is an indefeasible right, nonetheless it is enforceable only prior to filing of the challan or the Charge Sheet, after which the question of grant of bail has to be considered and decided only with reference to merits of the case, under the provisions relating to grant of bail to an accused, post the filing of the Charge Sheet. The bone of contention between the rival parties before the Supreme Court was whether the Charge Sheet filed by the CBI during ongoing investigation qua other Respondents could be treated as a complete Charge Sheet. Referring to the judgment of the Constitution Bench of the Supreme Court in ***K. Veeraswami v. Union of India, (1991) 3 SCC 655***, the Supreme Court held that the statutory requirement of the report under Section 173(2) Cr.P.C. would be complied



with if the various details prescribed therein are included in the report. The report under Section 173 Cr.P.C., is an intimation to the Court that upon investigation into the cognizable offence, investigating officer has been able to procure sufficient evidence for the Court to inquire into the offence and necessary information is being sent to the Court. It is not necessary that all details of the offence must be stated. Though ordinarily all documents relied upon by the prosecution should accompany the Charge Sheet, nonetheless, if for some reasons, all documents are not filed, that reason by itself would not invalidate or vitiate the Charge Sheet, as the Court takes cognizance of the offence and not the offender. Once, from the material produced along with Charge Sheet, Court is satisfied about the commission of an offence and takes cognizance of the offence allegedly committed by the accused, it is immaterial whether further investigation in terms of Section 173(8) Cr.P.C. is pending or not. Pendency of further investigation for production of some documents not available at the time of filing of the Charge Sheet would neither vitiate the charge sheet nor entitle the accused to seek default bail on that ground, as a matter of right. Relevant paragraphs from the judgement are as follows:-

“21. In our opinion, the Constitution Bench in K. Veeraswami v. Union of India has aptly explained the scope of Section 173(2).

“76. The charge-sheet is nothing but a final report of police officer under Section 173(2) of the CrPC. The Section 173(2) provides that on completion of the investigation the police officer investigating into a cognizable offence shall submit a report. The report must be in the form prescribed by the State Government and stating therein (a) the names of the parties; (b) the nature of the information; (c) the names of the persons who appear to be acquainted with the circumstances of the case; (d) whether any offence appears to have been committed and, if so, by whom (e) whether the accused has been arrested; (f) whether he had been released on his bond and, if so, whether with or without sureties; and (g) whether he has been forwarded in custody under Section 170. As observed by this Court in Satya Narain Musadi



v. State of Bihar [(1980) 3 SCC 152, 157 : 1980 SCC (Cri) 660] that the statutory requirement of the report under Section 173(2) would be complied with if the various details prescribed therein are included in the report. This report is an intimation to the magistrate that upon investigation into a cognizable offence the Investigating Officer has been able to procure sufficient evidence for the court to inquire into the offence and the necessary information is being sent to the court. In fact, the report under Section 173(2) purports to be an opinion of the Investigating Officer that as far as he is concerned he has been able to procure sufficient material for the trial of the accused by the court. The report is complete if it is accompanied with all the documents and statements of witnesses as required by Section 175(5). Nothing more need be stated in the report of the Investigating Officer. It is also not necessary that all the details of the offence must be stated. The details of the offence are required to be proved to bring home the guilt to the accused at a later stage i.e. in the course of the trial of the case by adducing acceptable evidence.”

22. *In view of the above settled legal position, there remains no shadow of doubt that the statutory requirement of the report under Section 173 (2) would be complied with if the various details prescribed therein are included in the report. The report under Section 173 is an intimation to the court that upon investigation into the cognizable offence, the investigating officer has been able to procure sufficient evidence for the court to inquire into the offence and the necessary information is being sent to the court. The report is complete if it is accompanied with all the documents and statements of witnesses as required by Section 175 (5). As settled in the afore-stated case, it is not necessary that all the details of the offence must be stated.*

23. *The benefit of proviso appended to sub-section (2) of Section 167 of the Code would be available to the offender only when a chargesheet is not filed and the investigation is kept pending against him. Once however, a chargesheet is filed, the said right ceases. It may be noted that the right of the investigating officer to pray for further investigation in terms of sub-section (8) of Section 173 is not taken away only because a chargesheet is filed under sub-section (2) thereof against the accused. Though ordinarily all documents relied upon by the prosecution should accompany the chargesheet, nonetheless for some reasons, if all the documents are not filed along with the chargesheet, that reason by itself would not invalidate or vitiate the chargesheet. It is also well settled that the court takes cognizance of the offence and not the offender. Once from the material produced along with the chargesheet, the court is satisfied about the commission of an offence and takes cognizance of the offence allegedly committed by the accused, it is immaterial whether the further investigation in terms of Section 173(8) is pending or not. The pendency of the further investigation qua the other accused or for production of some*



documents not available at the time of filing of chargesheet would neither vitiate the chargesheet, nor would it entitle the accused to claim right to get default bail on the ground that the chargesheet was an incomplete chargesheet or that the chargesheet was not filed in terms of Section 173(2) of Cr. P.C.”

12. In this context, it would be relevant to allude to the judgment of the Supreme Court in ***Dinesh Dalmia v. CBI, (2007) 8 SCC 770***, relevant paragraphs of which are as follows:-

“19. 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, in our opinion, law does not require that filing of the charge-sheet must await the arrest of the accused.

20. Indisputably, 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.

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38. It is a well-settled principle of interpretation of statute that it is to be read in its entirety. Construction of a statute should be made in a manner so as to give effect to all the provisions thereof. Remand of an accused is contemplated by Parliament at two stages; pre-cognizance and post-cognizance. Even in the same case, depending upon the nature of charge-sheet filed by the investigating officer in terms of Section 173 of the Code, a cognizance may be taken as against the person against whom an offence is said to have been made out and against whom no such offence has been made out even when investigation is pending. So long a charge-sheet is not filed within the meaning of sub-section (2) of Section 173 of the Code, investigation remains pending. It, however, does not preclude an investigating officer, as noticed hereinbefore, to carry on further investigation despite filing of a police report, in terms of sub-section (8) of Section 173 of the Code.



39. *The statutory scheme does not lead to a conclusion in regard to an investigation leading to filing of final form under sub-section (2) of Section 173 and further investigation contemplated under sub-section (8) thereof. Whereas only when a charge-sheet is not filed and investigation is kept pending, benefit of proviso appended to sub-section (2) of Section 167 of the Code would be available to an offender; once, however, a charge-sheet is filed, the said right ceases. Such a right does not revive only because a further investigation remains pending within the meaning of sub-section (8) of Section 173 of the Code."*

13. In ***Sanjay Kumar Pundeer v. State of NCT of Delhi, 2023 SCC OnLine Del 5696***, a Co-ordinate Bench of this Court observed that there is a distinction between filing a Charge Sheet and obtaining an expert opinion. Charge Sheet is filed upon completion of investigation after Investigating Officer has found sufficient evidence to prosecute the accused for offences under which the FIR has been registered while any other scientific examination report is only corroborative in nature to the material collected by the IO and filed with the Charge Sheet. These observations were rendered by the Court in light of the judgment of the Supreme Court in ***Serious Fraud Investigation Office v. Rahul Modi and Others, 2022 SCC OnLine SC 153*** and a judgment of this Court in ***Suraj v. State of Delhi NCT, 2022 SCC OnLine Del 3501***. Relevant paragraphs of the judgment in ***Sanjay Kumar Pundeer (supra)***, are as follows:-

"18. In the present case, the investigation qua the applicant was complete at the time the first chargesheet was filed, as regards the offences mentioned in the FIR, on 02.12.2021. At the time of filing of the first chargesheet, there was sufficient material on record qua the applicant such as statements of eyewitnesses and other material evidence collected and placed on record. Mere non-filing of the FSL Report is not sufficient to conclude that the chargesheet filed in the present case was incomplete. The said report can be filed by way of a supplementary chargesheet. In any case, the case of the prosecution is primarily based on the eye witness account of the complainant. The FSL report, if any, would be a corroborative piece of evidence. As pointed out hereinabove, even after the filing of the chargesheet, further investigation can continue under Section 173(8) of the CrPC. The opinion of the expert can always be filed



before the learned Trial Court by way of supplementary chargesheet. It is further pertinent to note that in the present case, the learned Trial Court had taken the cognizance after the chargesheet was filed and the said order was not challenged by the petitioner.

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20. In view of the observations made in Judgebir Singh (supra) and Syed Maqbool (supra), it is noted that the chargesheet filed in the present case satisfies the conditions contained in sub-clause (a) to (d) of Section 173(2)(i). There is a distinction between filing of a chargesheet and obtaining an expert opinion. The chargesheet is filed upon completion of investigation after the Investigating Officer has found sufficient evidence to prosecute an accused for offences under which the FIR has been registered. The FSL report or any other scientific examination would only be corroborative in nature to the material collected by the Investigating Officer and filed alongwith the chargesheet. Collection of a report of the FSL or a scientific expert, would therefore, be covered under Section 173(8) of the CrPC. The proposition also finds support from a judgment rendered by a coordinate bench of this Court in Suraj v. State of Delhi NCT, 2022 SCC OnLine Del 3501. In the said case, in an application for default bail in a case under Sections 377/34 of the IPC, while taking note of the decisions of the Hon'ble Supreme Court in Serious Fraud Investigation Office v. Rahul Modi, 2022 SCC OnLine SC 153 and Suresh Kumar Bhikamchand Jain (supra), the coordinate bench observed and held as under:

“13. In the instant case, the Petitioner was arrested on 20.08.2021. Chargesheet was filed on 14.10.2021, i.e. within the period prescribed by the statutory provision. The material on record indicates that cognizance had not been taken by the Ld. Trial Court on the ground that certain clarifications were required with respect to an FSL report which was pending as well as a video recording of the offences allegedly being committed that had been mentioned by the victim child in his Section 164 Cr. P.C. statement. On 16.12.2021, the Investigating Officer had informed the Ld. Trial Court that further investigation would be conducted and that a supplementary chargesheet would be filed in that regard.

14. At this juncture, it would be pertinent to note that the Petitioner can be convicted on the basis of the testimony of the victim, and the video recording can be collected and filed by way of a supplementary chargesheet and that filing of a chargesheet would entail completion of investigation and that the right to default bail under Section 167 (2) CrPC would not survive. Further, flowing from the judgments of the Supreme Court that have been discussed above, cognizance of the Ld. Trial Court is immaterial to the compliance of Section 167(2) Cr. P.C. This Court is of the opinion that as the chargesheet had been



filed well within the time period as stipulated under Section 167(2), the Petitioner is no longer entitled to his right to seek default bail.”

(emphasis supplied)

21. As far as the other judgments relied upon by learned counsel for the applicant are concerned, it is noted that a perusal of the said judgments reflect that they have been rendered in the context of distinct facts and circumstances and do not apply to the facts of the present case. In view of the foregoing discussion, this Court is of the opinion that the chargesheet filed in the present case was not incomplete.”

14. A Division Bench of this Court in **Taj Singh v. State, 1987 SCC OnLine Del 244**, dealing with the requisites of a Charge Sheet delineated under Section 173 Cr.P.C. observed as follows:-

“6. Reading together sub-sections (1) and (2) of S. 173 of the Code the stage and the point of time at which the police report or the challan is to be filed before a Magistrate by the police officer is clearly made out in the sense that the police report or the challan is to be filed before a Magistrate as soon as the investigation of the offence is concluded. Sub-section 2(ii)(a) to (g) of S. 173 further details the requirements by way of particulars to be mentioned in police report. It would, thus, mean that then a police officer is able to complete his report by filling up therein the above mentioned particulars as required under sub-section (2)(i)(a) to (g), the investigation of the offence can be said to be complete because if the investigation is not complete he would not be able to make his report with the aforesaid requisite particulars, and so that supplies to us the acid test for determining whether the investigation of the offence is complete or not. The relevant requirements would be the ones contemplated in Clauses (c) and (d) of Sub-section 2(i) of Sec. 173 which pertain to the names of the persons who appear to be acquainted with the circumstances of the case and whether any offence appears to have been committed and, if so, by whom. When the Investigating Officer is ready with these requirements, the other requirements being not very difficult to know, the police report is complete as per its definition given in S. 2(r) as per sub-section (2) of S. 173 of the Code. The persons contemplated in Clause (c) of sub-section 2(i) of S. 173 appear to be the witnesses of the occurrence or who are otherwise in the know of the facts of the case but do not appear to include an expert of CFSL or any other Government Scientific Expert mentioned in sub-section (4) of Section 173 of the Code whose reports have been made admissible under Section 193 by tendering the same in evidence without any formal proof thereof. The following are the Government Scientific Experts mentioned in sub-section (4) of Section 293:—



- “(a) any Chemical Examiner or Assistant Chemical Examiner to Government;
(b) the Chief Inspector of Explosives;
(c) the Director of the Finger Print Bureau;
(d) the Director, Haffkine Institute, Bombay;
(e) the Director, (Deputy Director or Assistant Director) of a Central Forensic Science Laboratory or a State Forensic Science Laboratory;
(f) the Serologist to the Government.*

7. *Even if the Investigating Officer had not received the report of the CFSL, so far as his job of collecting the evidence is concerned, that is over the moment he collects the material exhibits and despatches the same for the opinion of the CFSL and this position remains unaltered even though he relies upon the CFSL report in his own report. In this view of the matter it will not be correct to say that the police report which did not include the CFSL report, would not be a complete police report as envisaged in sub-section (2) of Section 173 of the Code which is prepared and forwarded to the magistrate only after the conclusion of the investigation.*

8. *For this view we find complete support from the Full Bench decision of the Punjab & Haryana High Court reported as State of Haryana v. Mahal Singh, AIR 1978 Punjab & Haryana 341 (at 347), (1). No authority to the contrary was available nor cited by the learned counsel for the petitioner and whatever authorities were relied upon by the learned counsel for the petitioner had not decided this question. The authorities relied upon by him are Noor Mohd. v. State, ILR (1978) II Delhi 442, (2) Raghuvir Singh v. State of Bihar, 1987 Cr. L.J. 157, (3) Natabar Parida v. State of Orissa, (1975) 2 SCC 220 : AIR 1975 SC 1465 (4) and Hari Chand and Raj Pal v. State, ILR (1977) II Delhi 367.(5) Much stress was, however, laid by the learned counsel for the petitioner on the last mentioned authority but the perusal thereof shows that even though there was mention of ‘incomplete challan’ filed in the court, it was not pointed out in terms as to what was actually lacking therein and so even this authority is of no help in determining the question before us.”*

15. A Co-ordinate Bench of this Court in **Saurabh Bali v. State, 2021 SCC OnLine Del 3605**, was in seisin of the issue of grant of default bail, sought by the Accused, alleging filing of incomplete Charge Sheet. The accused was charged with offences punishable under Sections 376/377/328/323 IPC and the primordial contention was that in the absence of FSL report and CDR/CAF details, the Charge Sheet was incomplete, entitling the Petitioner to statutory bail. Court held that the requirements of



Section 173(2) Cr.P.C were met since the FIR, statement of the prosecutrix under Section 164 Cr.P.C., medical report and statements under Section 161 Cr.P.C. had been filed with the Charge Sheet and only on the basis of the statement of the prosecutrix and her medical report, the Magistrate could take cognizance. Non-filing of FSL result and the mobile phone CDR/CAF with certificate under Section 65B could not vitiate the Charge Sheet. Relevant paragraphs are as under:-

“12. A perusal of the charge-sheet would show that all the requirements of Section 173(2) have been met. The FIR, the statement of the prosecutrix under Section 164 Cr.P.C, the medical report and the statement of the witnesses under Section 161 Cr.P.C. have all been filed along with the charge-sheet dated 09.11.2020. Only on the basis of the statement of the prosecutrix and her medical report the Magistrate can take cognizance of the offence. The last paragraph of the translated version of the charge-sheet, as provided by the petitioner, reads as under:

“That investigation of the case is continuing and upon receiving the FSL result, Mobile Phone CDR/CAF with certificate u/s 65 B and other facts coming forth would be presented before the’ Hon’ble Court through filing of supplementary charge sheet. That in; this case from the investigation conducted till now, statement of the witnesses against; accused Saurabh Bali S/o Sushil Bali above named enough evidence has been collected for charge-sheeting him therefore, charge-sheet u/s 376/377/328/323/506 IPC is being issued and presented before the court. The witnesses be summoned thought issue of summon and accused be summoned through issue conducted.”

xxx

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16. These two judgments have been followed in the judgment of this Court dated 25.09.2020 in Bail Application No. 2075/2020, titled Babu v. The State. This Court after quoting the judgment in Taj Singh (supra) has observed as under:

“17. As noted above, the Division Bench of this Court relied upon the decision of the Supreme Court in (1951) 2 SCR 729 Tara Singh v. State which did not relate to an offence punishable under NDPS Act. A distinction can clearly be drawn between the cases relating to offences under the Penal Code, 1860 and offences under NDPS Act, for the reason, in a charge sheet filed without a FSL report, say for example, for an offence punishable under Section 302 IPC, the prosecution cites witnesses who may be the eye witnesses or of circumstantial evidence besides the post-mortem report, MLC etc.



which material in itself is sufficient to constitute the ingredients of the offence(s) alleged by the prosecution. The FSL report in the said charge sheet only supplements the material already filed by the prosecution. This is in contradistinction to an offence punishable under NDPS Act where the possession of the contraband itself is an offence and if the prosecution in the charge sheet is not able to show that the alleged recovery from the accused was prohibited under the provisions of the NDPS Act, the basic ingredient of the offence would be missing, therefore, the cognizance on such a charge sheet would suffer from total non-application of mind and would be non-est. It is trite law that Court takes cognizance of the offence and not the offender. Thus unless the ingredients which constitute the offence are established in the charge sheet, the cognizance of the offence alleged in the charge sheet by the Magistrate/Special Court would be illegal.”

(emphasis supplied)

16. Coming to the present case, there is no dispute that the Charge Sheet was filed within the stipulated time on 11.10.2023 and cognizance was taken by the Court on 08.11.2023. Substantial investigation was complete when the Charge Sheet was filed and as rightly pointed out by learned ASC, the same was filed along with FIR, statements of the prosecutrix under Sections 161 and 164 Cr.P.C., MLCs of the victim and accused, seizure report, disclosure statements of the accused etc. and therefore, there was enough material before the Magistrate to take cognizance. Applying the ratio of the judgment of the Supreme Court in **Kapil Wadhawan** (*supra*) and the Division Bench of this Court in **Taj Singh** (*supra*), the requisite details prescribed under Section 173(2)(i)(a) to (g) Cr.P.C. are part of the final report and it is also compliant with and meets the threshold of the requirements of Section 173(5) Cr.P.C. As observed by the Supreme Court, the final report under Section 173 (1) Cr.P.C. is an intimation to the Magistrate that upon investigation into cognizable offence, the investigating officer has been able to procure sufficient evidence for the Court to inquire into the offence and if the Charge Sheet is filed within the stipulated period



and cognizance is taken, accused cannot claim the statutory right of default bail under Section 167(2) Cr.P.C., merely because some investigation is pending. There is thus no merit in the contention that incomplete charge sheet was filed within the statutory period.

17. The investigating officer had indeed filed an application seeking direction to the accused Premodya Khakha for the semen sample, so that his reproductive capacity could be verified, however, merely because this scientific/medical opinion was pending, the Charge Sheet, which was otherwise complete in all respects and was accompanied with all requisite documents, as aforementioned, cannot be termed as 'incomplete'. Medical/scientific opinion is at best corroborative of the material placed by an investigating officer with the Charge Sheet.

18. Learned counsel for the Petitioners emphasized that semen analysis would have pointed to the innocence of Premodya Khakha and belied the prosecution story as also that investigation qua the offence under Section 313 Cr.P.C was incomplete in the absence of the report. It needs to be mentioned in this context that efforts were made by the investigating officer on 31.08.2023 to collect the semen sample, however, the medical documents indicate that the accused was unable to give the sample for reasons mentioned therein. In fact, State has taken a categorical position that initially at the time of MLC, Accused Premodya Khakha had refused to give his semen sample. Be that as it may, as per the settled law, this report is at best a corroborative evidence and defence for the accused and its absence at the time of filing the charge sheet, which is otherwise complete as per requirements of law, cannot be a reason enough to grant statutory bail to the Petitioners. This is besides the scientifically and medically proven fact that



procedures such as vasectomy are not 100% foolproof and there are known cases of pregnancy despite a male having undergone vasectomy. Medical data has also shown pregnancy after years of vasectomy and the procedure is known to be reversible. Therefore, it would be a matter of trial whether Accused Premodya Khakha was capable of reproducing and at this stage it is premature to rule on this issue. The scientific opinion can always be brought in later by way of a supplementary Charge Sheet. Insofar as the reliance on the judgment of the Supreme Court in *Ritu Chhabaria (supra)*, is concerned, learned ASC apprises the Court that the issue is under consideration before a three-Judge Bench of the Supreme Court in S.L.P. (Criminal) No.5724/2023 titled *Directorate of Enforcement v. Manpreet Singh Talwar*.

19. For all the aforesaid reasons, this Court finds no infirmity with the impugned order and the petitions are dismissed being devoid of merit.

JYOTI SINGH, J

FEBRUARY 26, 2024 /B.S. Rohella/shivam/KA