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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% ***Date of Decision: 27th March, 2024***+ **CRL.REV.P. 312/2024****BALJEET SINGH @ AMAN** PetitionerThrough: **Ms. Ruchika, Advocate.**

versus

STATE

..... Respondent

Through: **Ms. Richa Dhawan, APP for State**
with **SI Rajbir Singh, AGS, Crime.****CORAM:****HON'BLE MS. JUSTICE JYOTI SINGH****JUDGEMENT****JYOTI SINGH, J. (ORAL)****CRL.M.A. 7211-12/2024 (Exemptions)**

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

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3. This revision petition has been preferred on behalf of the Petitioner under Section 397 read with Section 401 Cr.P.C. assailing the impugned order dated 16.02.2024 passed by learned Sessions Court whereby application filed by the Petitioner under Section 167(2) Cr.P.C. seeking default bail has been dismissed.
4. Issue notice.
5. Learned APP accepts notice on behalf of the State.
6. As per the case of the prosecution, on 10.03.2023, at around 02:30 PM, a secret information was received by the Crime Branch that Baljeet @



Aman, who lives near Indian Modern School, Chattarpur, Delhi will be purchasing MDMA tablets and cocaine from one Nigerian. Raiding team was constituted and Baljeet (Petitioner herein) was apprehended along with the co-accused and a polyethene bag was recovered from the Petitioner having 03 small bags containing cocaine 51 gms.; MDMA 35 gms.; 10 green coloured tablets Ecstasy (MDMA); and 50 pink coloured tablets (MDMA) weighing 26.50 gms. Notice was served on both under Section 50 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS Act') before conducting the personal search. On 13.03.2023, Beneth Chukuwuudi @ Michael was arrested on the disclosure statement of Petitioner and the co-accused and 03 polythene bags containing contrabands were recovered. FIR was registered and Petitioner was arrested on 11.03.2023. After completion of investigation, Charge Sheet was filed on 25.08.2023, which was admittedly within 180 days *albeit* without the FSL report, which was received later.

7. Learned counsel for the Petitioner argues that Petitioner is innocent and has been falsely implicated. The contrabands allegedly recovered were planted by the officials of the Crime Branch. Charge Sheet was filed without the FSL report and thus, even if filed within the statutory period of 180 days, as provided under Section 167(2) Cr.P.C. read with Section 36A of the NDPS Act, it is an incomplete Charge Sheet and on this ground alone, Petitioner is entitled to be released on default bail. To support this argument, learned counsel places reliance on the orders in ***Pankaj Gupta v. Narcotics Control Bureau, SLP (Crl.) No. 12200/2023***, decided on 04.12.2023; ***Arif Khan v. State, SLP (Crl.) No. 8610/2023***, decided on 28.07.2023; ***Mohd. Arbaz v. State, SLP (Crl.) No. 8496/2023***, decided on 12.07.2023; ***Divyas***



Bardewa v. Narcotics Control Bureau, SLP (Crl.) No. 11628/2023, decided on 01.05.2023; ***Suleman v. State, SLP (Crl.) No. 1929/2023***, decided on 27.04.2023; ***Saurabh Bali v. State, SLP (Crl.) No. 4826/2021***, decided on 19.10.2022; and ***Babu v. State, SLP (Crl.) No. 6518/2020***, decided on 05.08.2021, wherein Supreme Court has granted default bails to the accused persons on the ground that the Charge Sheet was not filed along with the FSL report, though it is conceded by the learned counsel that question of law whether a Charge Sheet filed without FSL report is incomplete, is pending consideration before the Supreme Court.

8. Learned counsel urges that the Trial Court has erred in rejecting the application filed by the Petitioner under Section 167(2) Cr.P.C. seeking default bail on account of non-filing of FSL report, overlooking several orders passed by the Supreme Court granting default bail only on this ground and has chosen to rely on the orders passed by this Court, to dismiss the application. It is argued that the Punjab and Haryana High Court has also taken a view that the only way nature of a contraband can be established is through a chemical examiner's report and therefore, this report assumes immense significance for the Trial Court to formulate an opinion, as the very cognizance of an offence would depend on it. Non-inclusion of the FSL opinion in a report under Section 173 Cr.P.C. would expose the accused to unfounded dangers imperiling his liberty and therefore, a Charge Sheet although filed within 180 days but without an FSL report is an incomplete Charge Sheet. Reference is made to the decisions of the Punjab and Haryana High Court in ***Ajit Singh alias Jeeta and Another v. State of Punjab, CRL. REV. P. No. 4659/2015***, decided on 30.11.2018 and ***Taswwar Khan v. State of Haryana, CRR No. 2166-2023***, decided on 31.10.2023.



9. Learned APP appearing for the State, on the other hand, argues that 03 polythene bags containing cocaine and MDMA were recovered from the Petitioner and at his instance, co-accused Beneth Chukuwuudi @ Michael was arrested, from whom also heroin and MDMA were recovered in huge quantities, after service of notice under Section 50 of the NDPS Act. She argues that this Court has in several judgments taken a view that a Charge Sheet filed under Section 173 Cr.P.C. without the FSL opinion is not an incomplete Charge Sheet and accordingly, no right of default bail can accrue to the accused on this ground alone. There was sufficient material available on record to show the involvement of the Petitioner and the other co-accused including recoveries made, after following due process of law, enabling the prosecution to file a Charge Sheet. It is an admitted position and a matter of record that Charge Sheet was filed within a period of 180 days as per the statutory scheme of Section 36A of the NDPS Act read with Section 167(2) Cr.P.C. No doubt, the Supreme Court has granted interim bails to the accused in the cases referred to by the counsel for the Petitioner, but the larger question is still pending and during the pendency, this Court has consistently declined default bail negating the contention that Charge Sheet without FSL report is an incomplete Charge Sheet.

10. Heard learned counsel for the Petitioner and learned APP for the State.

11. By this petition, Petitioner seeks default bail on the ground that Charge Sheet was not accompanied by the FSL report and on this score seeks setting aside of the impugned order dated 16.02.2024, whereby learned Sessions Court has dismissed the application filed by the Petitioner under Section 167(2) Cr.P.C. Thus, the only question that falls for



consideration before this Court is whether Petitioner is entitled to the benefit of Section 167(2) Cr.P.C. on account of non-filing of FSL report along with, even though Charge Sheet was filed within the prescribed time limit of 180 days.

12. It has been repeatedly and consistently held by Courts that the right to personal life and liberty, enshrined and embedded in Article 21 of the Constitution of India has an interconnection with Section 167(2) Cr.P.C. When the investigation is not completed within the statutory timeframe, accused is entitled to default bail as also where Charge Sheet is filed within the prescribed period, but is incomplete.

13. 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.”

14. 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.”*

15. 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, Haffkeine 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.”*

16. In the context of the present case, I may now allude to the judgment of the Division Bench of this Court in ***Kishan Lal v. State, 1989 SCC OnLine Del 348***, where the Court held as follows: -

“5. The question raised by the petitioners in a nut shell is whether the investigation of a case under the NDPS Act can be said to be complete in the absence of the report of the Scientific Officer and Chemical Examiner? The contention is that where the accused person is allegedly found in possession of or transporting a prohibited drug or substance,



mainly two facts have to be established by the prosecution viz., (1) that of recovery of the commodity or substance and (2) that the possession of the said recovered material is illegal under the provisions of the NDPS Act. It is submitted that the Investigating Officer would be unable to give his opinion regarding the second aspect till he obtains the report of the expert and, therefore, the report submitted by the Investigating Officer even if purported to be under Section 173 (2) of the Code, must be held to be based on incomplete investigation.

6. The learned Single Judge in his reference order has noticed that the reported cases in which this question has been settled related to offences under the Penal Code, 1860. It was urged before him that the principles enunciated in those cases are not applicable to cases involving an offence under the NDPS Act or the old Opium Act or the Excise Act; To appreciate the contentions raised in these petitions, we have to notice the case law to some extent to highlight the settled principles.

7. It has been held by the Supreme Court that although the police are not permitted to send an incomplete report under Section 173(2) of the Code, yet the investigation except for the report of an expert like the Sero-logist or Scientific Officer and Chemical Examiner is complete and, therefore, the Magistrate is empowered to take cognizance of the offence on a police report which does not include the expert's opinion. In *Tara Singh v. State*, 1951 SCC 903 : AIR 1951 SC 441, the Police had infact filed a report dated the 2nd October, 1949 terming it an "incomplete challan" and on the 5th October they filed a report which they called a "complete challan". Thereafter on the 19th October they filed yet another report which was termed as "Supplementary challan". The objection taken at the trial was that the Magistrate had no power to take cognizance of the case on 3rd October when the incomplete challan dated 2nd October, 1949 was placed before him. It was contended that the Police are not permitted to file an incomplete report under Section 173(2) of the Code.

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19. We thus hold that under Section 173(2) of the Code there is no mandate that a police report must enclose the document purporting to be a report under the hand of a Government scientific expert. In the present cases, as cognizance of the offences taken by the Magistrate was proper and valid, no order releasing the petitioners on bail under Section 167(2) of the Code was required to be passed."

17. The Division Bench of the Bombay High Court in ***Manas Krishna T.K. v. State the Police Inspector/Officer In Charge and Another, 2021 SCC OnLine Bom 2955***, in view of conflicting views of two Single Judges



of the said Court, on this issue, answered the reference, as follows: -

“81. Resultantly, we answer this reference by holding the following:

(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.”

18. This question came up for consideration before the Jammu & Kashmir and Ladakh High Court in ***Abdul Majeed Bhatt v. UT of J&K, MANU/JK/0285/2022***, and the Court observed that it is not that after completion of investigation of the case and presentation of final report before the Magistrate, the investigating agency is precluded from collecting further evidence and producing it before the Competent Court and therefore, it may not be correct to hold that merely because an expert report does not accompany the final report, the Charge Sheet is defective or incomplete. If the Charge Sheet contains details required under Section 173 Cr.P.C. and is filed within the period prescribed, it cannot be termed as incomplete, in the absence of FSL report. In making these observations, the Jammu & Kashmir and Ladakh High Court found strength from the judgment of the Karnataka High Court in ***Mr. Sayyad Mohammad @ Nasim v. State of Karnataka and Another, Writ Petition No. 5934/2021***, decided on 29.03.2022, where the



Karnataka High Court had observed that Petitioner does not get a right to default bail merely because the Charge Sheet/Final Report filed by the police after investigation is without the FSL report.

19. Several Co-ordinate Benches of this Court have consistently held that non-filing of FSL report along with the Charge Sheet does not fall within the ambit of Section 173(2) Cr.P.C. so as to consider it as 'incomplete Charge Sheet' and accordingly, no right of default bail accrues in favour of the accused. [Ref.: *Mohd. Tabrez v. State (NCT of Delhi)*, 2023 SCC OnLine Del 3995; *Leishangthem I Loyangamba v. State*, 2024 SCC OnLine Del 208; and *Rohit v. State (NCT of Delhi)*, BAIL APPLN. No. 3753/2023, decided on 30.01.2024]. Relevant would it also be to refer to observations of this Court in a recent judgment in *Ranbir Singh v. State*, 2024 SCC OnLine Del 204, as follows: -

"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 circumstance 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 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.”

20. For the sake of completeness, I may refer to another recent judgment of this Court in **Satish Kumar v. State, 2024 SCC OnLine Del 1235**, wherein relying on judgments of the Supreme Court and earlier decisions of this Court, plea of the Petitioner for grant of default bail was rejected and the contention that a Charge Sheet filed without FSL report was incomplete, was rejected. Relevant paragraphs from the judgment are as under:-

“25. The purpose of a further investigation is to bring the true facts before the Court even if they are discovered at a stage subsequent to the primary investigation. Thus, it cannot be said that the complaint filed, be treated as incomplete. A further investigation is not antithetical to an investigation being completed. (Ref : Vinod Tyagi v. Irshad Ali, (2013) 5 SCC 762)

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27. 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 alongwith 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.

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 chargesheet 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."

28. Thus, it has been held by this Court in plethora of decisions that non-filing of FSL report along with the charge sheet does not fall within the ambit of Section 173(2) of CrPC so as to consider it as "incomplete charge sheet" and, accordingly, no right of default bail is accrued in favour of the accused.

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32. Mere non-filing of the FSL Report along with the charge sheet is not sufficient to arrive at the conclusion that the charge sheet filed was incomplete. The said report can be filed by way of a supplementary charge sheet. In any case, The FSL report, if any, would only be a corroborative piece of evidence. And, even after filing of the charge sheet, further investigation can continue under Section 173(8) of the CrPC."



21. In view of the aforementioned judgments of the Supreme Court and this Court, I am not persuaded to take a different view and follow the observations of the Punjab and Haryana High Court, rendered in the decisions relied upon by counsel for the Petitioner. The only other contention espoused on behalf of the Petitioner was that the Supreme Court has enlarged the accused on bail by interim orders, pending consideration of the larger issue and therefore, this Court cannot deny default bail to the Petitioner. This very issue was considered by this Court in **Satish Kumar (supra)** and relevant passages are as under:-

“29. Though in case of Mohd Arbaz v. State of NCT of Delhi (supra), as well as in other subsequent cases filed assailing the orders of refusal of grant of default bail, the accused persons have been enlarged on interim 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 charge sheet filed without FSL report is incomplete charge sheet. However, neither the decisions challenged before the Hon'ble Apex Court have been stayed, nor any directions have been given to the Courts to release the accused persons on interim bail if the charge sheet is filed without FSL report.

30. Thus, the judicial discipline mandates this Court 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. This Court is, therefore, bound by the decision of the Division Bench of this Court in Kishan Lal v. State (supra) and cannot refuse to follow a judgment on the ground that the issue is now pending consideration before the Hon'ble Apex Court.”

22. In none of the orders relied upon by the counsel for the Petitioner, there is a general direction to release an accused on default bail merely on the ground that FSL report was not filed along with the Charge Sheet, in cases where the Charge Sheet is otherwise filed within the statutory timeframe. In the present case, Charge Sheet is filed within a period of 180 days and this is a conceded position on behalf of the Petitioner. Therefore,



applying the aforesaid judgments, this Court finds no reason to release the Petitioner on default bail merely because the FSL report was not filed when the Charge Sheet was filed. As per the FIR, allegedly, there is recovery from the Petitioner of 03 polythene bags containing cocaine and MDMA and therefore, sufficient and cogent material was available for filing the Charge Sheet. Even going by the Scheme of Section 173 Cr.P.C., the FSL report which has now been received can always be filed along with the supplementary Charge Sheet.

23. In view of the aforesaid, this Court finds no infirmity with the impugned order and the petition is dismissed being devoid of merits.

JYOTI SINGH, J

MARCH 27, 2024/shivam