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

% ***Date of Decision: 30th January, 2024***

+ **BAIL APPLN. 3753/2023**

ROHIT

..... Petitioner

Through: Mr.Nitin Bansal, Advocate.

versus

STATE (NCT OF DELHI)

..... Respondent

Through: Ms.Richa Dhawan, APP for State
with SI Pankaj, PS: ANTF/Crime Branch.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J. (ORAL)

1. This application has been filed by the Applicant Rohit S/o Sh. Shailender under Section 167(2) Cr.P.C. read with Section 439 Cr.P.C. for grant of default bail in FIR No.145/2022 dated 20.07.2022 under Sections 21 and 25 of Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act) registered at PS: Crime Branch (N-W).
2. Case of the prosecution is that on secret information being received, a trap was laid by the team of the Crime Branch near Nala Road, A-Block, Sultanpuri Park and after statutory compliances of the provisions of the NDPS Act, one person was apprehended, who was identified as Rohit, the Applicant herein. Raiding team conducted personal search of the Applicant and one transparent polythene pouch containing pink colour powder was recovered, which upon checking through Field Testing Kit turned out to be heroin, with weight of 410 grams. The recovered contraband was taken into



police possession through seizure memo and after due compliances, the present FIR was registered. Applicant was apprehended on the same day i.e. 20.07.2022. It is stated in the status report that all mandatory provisions of NDPS Act i.e. Sections 42, 50, 52, 55 and 57 with respect to recovery and arrest were complied with.

3. Learned counsel for the Applicant argues that the Applicant is innocent and has been falsely implicated since the contraband was planted by the police officials of the Crime Branch. Charge Sheet was filed without the FSL report and therefore, even if it was filed within the stipulated timeframe of 180 days, as provided under Section 167(2) Cr.P.C. read with Section 36A of NDPS Act, it would be an incomplete Charge Sheet, entitling the Applicant to default bail. Reliance in this context is placed on the orders of the Supreme Court in ***Babu v. The State (GNCT of Delhi), Special Leave to Appeal (Crl.) No. 6518/2020***, decided on 05.08.2021, ***Mohd. Arbaz & Ors. v. State of NCT of Delhi, Special Leave to Appeal (Crl.) No. 8164-8166 of 2021***, decided on 13.12.2021 and ***Suleman v. The State (GNCT of Delhi), Special Leave to Appeal (Crl.) No. 1929 / 2023***, decided on 17.04.2023, wherein the Supreme Court has granted bails to the accused persons in cases where FSL report was not filed along with the Charge Sheet within a period of 180 days *albeit* the question of law, whether a Charge Sheet can be said to be incomplete without FSL report, is still pending consideration before the Supreme Court.

4. Learned APP for the State, *per contra*, submits that 410 grams of heroin was recovered from the Applicant, which is a commercial quantity. During interrogation, Applicant stated that he procured heroin/smack from a lady named Kajal, resident of Mangolpuri, however, analysis of the CDRs of



the mobile phone of the Applicant showed no linkage between the two. It is argued that the Supreme Court in *Babu (supra)*, *Mohd. Arbaz (supra)* and *Suleman (supra)*, has only granted interim reliefs to the Petitioners therein but the larger question whether the charge sheet filed without FSL report is complete or not for the purpose of default bail is yet to be decided.

5. Heard learned counsel for the Applicant and learned APP for the State.

6. The primordial ground taken by the Applicant in the present application for seeking default bail is that complete Charge Sheet has not been filed within the stipulated period of 180 days, as the Charge Sheet was not accompanied by a FSL report. On this ground, the order of the learned Special Judge, NDPS, Rohini Courts, Delhi is assailed and it is prayed that the Applicant be granted default bail.

7. Before examining the rival contentions, it would be useful to allude to provisions of Section 36A of NDPS Act and Section 167 of Cr.P.C. When read together and conjointly, it is palpably clear that in respect of persons accused of an offence punishable under Sections 19/24/27A or offences involving commercial quantity, references in sub-section (2) of Section 167 Cr.P.C. thereof to 'ninety days' wherever they occur, shall be construed as reference to 'one hundred and eighty days'. Proviso to Section 36A (4) further provides that if it is not possible to complete the investigation within 180 days, the Special Court may extend the period upto one year on the report of the Public Prosecutor indicating the progress of the investigation and specific reasons for detention of the accused beyond 180 days.

8. The question whether a final report presented before the Court in terms of Section 173 Cr.P.C. is incomplete or defective without FSL report



has to be considered in light of Section 173 Cr.P.C., which reads as follows:-

“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 2[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 4[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 proceedings 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).”

9. This question came up for consideration before the Jammu and 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 and 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.

10. In this context, I may 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."

11. 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.”

12. 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.: Pankaj Gupta v. Narcotics Control Bureau, 2023 SCC OnLine Del 5613, Leishangthem I Loyangamba v. State, 2024 SCC OnLine Del 208 and Mohd. Tabrez v. State (NCT of Delhi), 2023 SCC OnLine Del 3995*]. 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 along with 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.”

13. As observed in the aforesaid judgments, in **Mohd. Arbaz (supra)** and the other orders of the Supreme Court, the Supreme Court has granted interim reliefs and enlarged the Petitioners on bail, but the larger question of the Charge Sheet being complete or incomplete in the absence of FSL report accompanying it, is still pending consideration and no general directions have been given to release the accused on default bail on the ground of the Charge Sheet being filed without an FSL report.

14. In the present case, indisputably, the Charge Sheet was filed within the statutory period of 180 days *albeit* without the FSL report. In view of the aforementioned judgments/orders passed by this Court and other High Courts, Applicant cannot be released by granting him the benefit of default bail. For the sake of completeness, it may be noted that as per the status report, FSL report has been received on 30.11.2023 and as per the report, on chemical analysis of the recovered contraband, it was found to contain Monoacetylmorphine, Acetaminophen, Dextromethorphan, Morphine, Acetyl codeine, Trimethoprim and Alprazolam. FSL report has been filed



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along with supplementary Charge Sheet before the Trial Court.

15. Petition is dismissed being devoid of merit.

16. Nothing in this order shall tantamount to an expression on the merits of the case.

JYOTI SINGH, J

JANUARY 30, 2024/DU/shivam

Signature Not Verified

Digitally Signed By: KAUSHAL
KUMAR SACHDEV
Signing Date: 22.02.2024
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