

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR-1690-2025

Date of Decision: 18.07.2025

Satbir Singh

... Petitioner

VS.

State of Punjab

... Respondent

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. Hakam Singh, Advocate for the petitioner

Sandeep Moudgil, J.

(1). This criminal revision petition has been filed under Section 442 BNSS by the petitioner seeking grant of default bail against the impugned order dated 30.06.2025 passed by JMIC, Ajnala vide which application under Section 167(2) CrPC (now Section 187(2) BNSS) has been dismissed.

(2). Learned counsel for the petitioner submits that the petitioner has been in custody for more than 100 days and the charge-sheet filed is incomplete as the FSL report was not appended and therefore, in the absence therefore, the charge-sheet is incomplete and does not comply with the requirement of a complete investigation under Section 173(2) CrPC and as such, the petitioner is entitled to released on default bail.

(3). It is argued that in murder case, the FSL report forms basis as crucial scientific evidence to, *inter alia*, establish the nature and cause of death vis-à-vis its connection with the accused of the crime and since the FSL report has not been filed along with the charge-sheet dated 18.06.2025 rendering the same as invalid whereas this fact has not been even discussed and the trial court has mechanically dismissed the application of default bail of the petitioner.

(4). Notice of motion. Mr. Sandeep Singh, AAG Punjab accepts notice. He has filed custody certificate dated 17.07.2025 which is taken on record and in terms whereof, the petitioner has undergone 3 months and 18 days of custody. He argued that that the Courts have consistently taken a view that a charge sheet filed under Section 173 CrPC without the FSL opinion is not an incomplete charge sheet and accordingly, no right of default bail can accrue to the petitioner on this ground alone. He further averred that there was sufficient material available on record to show the involvement of the petitioner, after following due process of law, enabling the prosecution to file a charge sheet and moreover, it is an admitted position of fact that the charge-sheet has been filed within the stipulated time frame.

(5). Heard learned counsel for the parties.

(6). The question before this Court as to whether petitioner is entitled to the benefit of Section 167(2) Cr.P.C., which mirrors Section 187(2) BNSS, on account of non-filing of FSL report along with the Charge Sheet which was admittedly filed within the prescribed time limit is no longer *res integra*.

(7). 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.

(8). The Supreme Court further held that 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."

(9). 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. 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.

(10). 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 Delhi High Court in **Suraj v. State of Delhi NCT, 2022 SCC OnLine Del 3501.**

(11). In the present case, Charge Sheet is filed within a period of 90 days and this is a conceded position on behalf of the Petitioner. Therefore, this Court finds no reason to release the petitioner on default bail merely because the FSL report was not filed along with the Charge Sheet. As per the FIR, allegedly, there is a confession made by the petitioner that he fired directly from his 12 bore rifle on Gurmit Singh with the intention to kill him and also got the weapon recovered to the police party and therefore, sufficient and cogent material was available for filing the Charge Sheet. Even otherwise, going by the scheme of Section 173 Cr.P.C., the FSL report can always be filed along with the supplementary Charge Sheet.

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

(13). Nothing stated herein shall be taken as opinion on merits of the case before the trial court.

18.07.2025

V.Vishal

(Sandeep Moudgil)
Judge

1. *Whether speaking/reasoned?* **Yes/No**
2. *Whether reportable?* **Yes/No**