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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRR-1227-2023 (O&M)

Date of decision: 13.03.2026

Date of uploading: 13.03.2026

Kamal Kumar

....Petitioner

Versus

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present:- Mr. Keshav Pratap Singh & Mr. Abhishek Kharb, Advocates
for the petitioner.

Ms. Priyanka Sadar, Sr. DAG, Haryana.

SUMEET GOEL, J. (ORAL)

1. The substantive prayer made in the instant petition reads thus:

“It is, therefore, respectfully prayed that the record of the case be perused after and perusal of the same impugned order dated 9.1.2023 passed by learned Additional Sessions Judge, Fatehabad may kindly be set aside/quashed. Revision petition be allowed and the application under section 167 (2) of Cr.P.C. for grant of default bail may kindly be allowed, in the interest of justice.”

2. Learned counsel appearing for the petitioner has urged that the petitioner ought to have been extended the concession of default bail as the Chemical Examiner Report was not filed alongwith the challan. Learned counsel appearing for the petitioner has further submitted that the petitioner was arrested on 15.10.2022, whereinafter he was extended the concession of interim regular bail by this Court vide order dated 16.11.2023 and the said order is enuring till date. Learned counsel appearing for the petitioner has further submitted that the contraband involved into the FIR in question is

50.66 grams of heroin, which is non-commercial in nature. Learned counsel appearing for the petitioner has further iterated that there is no allegation of misusing the concession of interim regular bail earlier afforded to him at his instance. Thus, regular bail is prayed for.

3. *Per contra*, learned State counsel has submitted that the petitioner is a habitual offender and multiple FIRs have been registered against him. Learned counsel appearing for the petitioner has further submitted that the petitioner is involved in a serious offence and, hence the petition is ought to be declined. She seeks to place on record custody certificate dated 12.03.2026, which is taken on record.

4. I have heard counsel for the rival parties and have gone through the available records of the case.

5. It is not in dispute before this Court that the question of law; as to whether an accused ought to be granted the concession of default bail in a NDPS case, where the Chemical Examiner Report/FSL is not filed alongwith the challan, is still pending before the Hon'ble Supreme Court in **SLP (Crl.) No.15293-2023** titled **Hanif Ansari vs. State (Govt of NCT of Delhi)**. Relevant part of the order dated 19.03.2024 passed in the said case reads thus:

“The point to be addressed in this matter is as to whether non-furnishing of the FSL report with the chargesheet, within the prescribed time, would entitle an accused to default bail on the ground that it would be an incomplete chargesheet without such a report. The High Court in the impugned judgment rejected the bail plea of the petitioner, holding, inter- alia:-

“9. A Coordinate Bench of this Court in Mohd. Arbaz v. State (NCT of Delhi), 2020 SCC OnLine Del 2542, had taken a view that the accused would not be entitled to statutory bail merely because

the FSL Report was not part of the chargesheet. An appeal against the said judgment is pending before the Supreme Court.

10. The Division Bench of this Court in Kishan Lal v. State, 1989 SCC OnLine Del 348, has held that it is not mandatory to file the FSL Report along with the chargesheet. The relevant observations are set out below: “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. A Coordinate Bench of this Court in Suleman v. The State (NCT of Delhi), 2022 SCC OnLine Del 2346, has held that non filing of the FSL Report with the chargesheet would not entitle the accused to grant of statutory bail. Relevant observations are set out below:

“14. At present, the settled law persists in the view that non filing of FSL Report with the charge sheet does not fall within the realms of Section 173(2) of the Cr.P.C so as to consider it as "incomplete report". In the present case although FSL Report has not been filed, however, the charge sheet was already filed on 03.03.2021 within the time period as per law. Further, the amount of quantity recovered from the accused is of commercial nature barring the accused from bail under Section 37 of the NDPS Act.”

12. The aforesaid judgments were followed by another Coordinate Bench of this Court in Hashmat Mohammadi (supra), in which the grant of statutory bail was rejected by the Coordinate Bench despite non-filing of the FSL Report with the chargesheet.” In the special leave petition filed by said Mohd. Arbaz [SLP (crl.) Nos.8164-8166/2021], interim bail was granted to the petitioner therein. A Co-ordinate Bench of this Court in the case, Central Bureau of Investigation vs. Kapil Wadhawan and Anr., 2024 INSC 58 dealt with the question of an incomplete chargesheet and its impact on the bail plea of an accused. It has been held and observed in this judgment:-

“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.”

Learned counsel for the petitioner relied on certain orders passed by this Court in (i) SLP(Crl.)Nos.8164-8166/2021 (Mohd. Arbaz & Ors. vs. State of NCT of Delhi) on 13.12.2021, (ii) SLP (Crl.) No.12200/2023 (Pankaj Gupta vs Narcotic Control Bureau) on 04.12.2023, (iii) SLP (Crl.) No.11628/2022 (Divyas Bardewa Vs. Narcotics Control Bureau) on 01.05.2023 and (iv) SLP (Crl.) No.8610/2023 [Arif Khan Vs. State (Govt. Of NCT of Delhi)] on 28.07.2023.

The lead matter on this point is the case of Directorate of Enforcement Vs. Manpreet Singh Talwar [SLP(Crl.) No.5724 of 2023], which is still pending before a three-Judge Bench of this Court. The case of Mohd. Arbaz (supra) stands tagged with this matter. There are other orders also passed by this Court tagging, where similar questions of law are involved. But interim bail has not been granted in every tagged petition. It has been declined in the cases of Pabitra Narayan Pradhan - vs- The State (NGT) of Delhi [SLP (crl.) Diary No.43791 of 2023], Shankar @ Shiva Maheshwar Savai -vs- The State of Gujarat (order dated 03.03.2023 in SLP (Crl.) No.2562/2023) but in none of these cases, it has

been finally determined as to whether failure on the part of the prosecution to include the FSL report along with the chargesheet in relation to offences under the Narcotic Drugs and Psychotropic Substances Act, 1985 would automatically entitle the accused to default bail or not. Further, certain other factors like the quantity of the contraband articles being seized and period of incarceration were considered in the aforesaid orders while granting interim bail to the petitioner(s)/applicant(s).”

5.1. Having heard learned counsel for the rival parties and upon perusal of the record; especially keeping in view the fact that the question of law as to whether an accused is entitled for grant of concession of default bail, in a case where the Chemical Examiner Report/FSL has not been filed alongwith the challan, is still pending before the Hon’ble Supreme Court; the petitioner having been involved in a case pertaining to 50.66 grams of heroin & the Chemical Examiner Report/FSL has not been filed alongwith the challan; rigors of Section 37 of the NDPS Act not being attracted; the petitioner having been granted the concession of interim regular bail vide order dated 16.11.2023 & the said concession has not been misused by the petitioner; this Court deems it appropriate not to keep the present petition alive & confirm the order dated 16.11.2023 whereby the petitioner was released on interim regular bail.

6. *Ergo*, the present petition is **allowed** and the order dated 16.11.2023 is hereby confirmed. Petitioner is ordered to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the Ld. concerned trial Court/Duty Magistrate. However, in addition to conditions that may be imposed by the concerned trial Court/Duty Magistrate, the petitioner shall remain bound by the following conditions:

- (i) The petitioner shall not mis-use the liberty granted.

- (ii) The petitioner shall not tamper with any evidence, oral or documentary, during the trial.
- (iii) The petitioner shall not absent himself on any date before the trial.
- (iv) The petitioner shall not commit any offence while on bail.
- (v) The petitioner shall deposit his passport, if any, with the trial Court.
- (vi) The petitioner shall give his cellphone number to the Investigating Officer/SHO of concerned Police Station and shall not change his cell-phone number without prior permission of the trial Court/Illaqa Magistrate.
- (vii) The petitioner shall not in any manner try to delay the trial.

7. In case of breach of any of the aforesaid conditions and those which may be imposed by concerned trial Court/Duty Magistrate as directed hereinabove or upon showing any other sufficient cause, the State/complainant shall be at liberty to move cancellation of bail of the petitioner.

8. Ordered accordingly.

9. Nothing said hereinabove shall be construed as an expression of opinion on the merits of the case.

10. Since the main case has been decided, pending miscellaneous application, if any, shall also stands disposed off.

(SUMEET GOEL)
JUDGE

March 13, 2026
Naveen

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No