

Amanpreet Kaur @ Preeti (In Jc) vs State on 2 August, 2024

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IN THE HIGH COURT OF DELHI AT NEW DELHI

CRL.REV.P. 471/2023

AMANPREET KAUR @ PREETI (IN JC)P

Through: Mr. Abhishek Kuma

Deeksha Saggi and

Ritupam

Advocates.

STATE

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

% 02.08.2024

1. The present criminal revision petition under Section 401 of the Code of Criminal Procedure, 1973 ('CrPC') is filed challenging the order dated 18.04.2023 passed by the learned Additional Sessions Judge ('ASJ'), Central District, Tis Hazari Courts, whereby the application filed by the petitioner seeking statutory bail in FIR No.242/2022 dated 12.10.2022, registered at Crime Branch, for offence under Section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS Act'), was dismissed.

2. The brief facts of the case are that on 12.10.2022, on the basis of secret information, the petitioner was apprehended at a hotel in Paharganj, Delhi. It is alleged that one brown parcel containing 1410 grams of Charas was recovered from her.

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3. The contention of the petitioner is that even though the chargesheet in the present case was filed in time on 10.04.2023, however, no FSL report had been obtained at that time.

4. The learned counsel for the accused/applicant submitted that the chargesheet in the present case was filed without FSL Report, the chargesheet in such a case would be considered as 'incomplete' and thus, the applicant would be entitled to default bail since, the investigation was not completed

within the statutory period as provided under Section 36A (4) of the NDPS Act.

5. He further submits that the Hon'ble Apex Court in several recent decisions has enlarged the accused person on interim bail in cases where FSL report was not filed along with the charge sheet within a period of 180 days.

6. He submits that the learned Trial Court had passed the impugned order by placing reliance on the judgment of a Coordinate Bench of this Court in *Suleman v. State (NCT of Delhi)* : CrI. Rev. 351/2022, wherein the petition for default bail was dismissed in light of the dictum of a Division Bench of this Court in the case of *Kishan Lal v. State* : 1989 SCC OnLine Del

7. He submits that the judgment in *Kishan Lal v. State* :

1989 SCC OnLine Del 348 was passed more than two decades back before Section 36A of the NDPS Act was added by way of an amendment in the year 2001.

8. The learned Additional Public Prosecutor for the State submits that commercial quantity has been recovered from the petitioner in the present case.

9. He submits that mere non-filing of the FSL report does not render the charge sheet incomplete.

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10. The principal question that falls for the consideration of this Court is whether the applicant is entitled to the benefit of the statutory right conferred under the proviso to sub-section 2 of Section 167 of the CrPC, on the ground that non-filing of the FSL report renders the charge sheet incomplete, even if the same is filed within the prescribed time limit.

11. It has been held by this Court in plethora of decisions that non-filing of FSL report along with the charge sheet does not render it as 'incomplete charge sheet' and, accordingly, no right of default bail accrues in favour of the accused.

12. This court, while considering the plea of default bail on the ground that charge sheet filed under Section 173(2) of the CrPC is incomplete if not accompanied with FSL report in the case of *Satish Kumar & Anr. v. State* : 2024:DHC:1258, concurred with the view taken by the Coordinate Bench of this Court in *Arif Khan v. State (NCT of Delhi)* : 2023 SCC OnLine Del 2374 and the law laid down by the Division Bench in *Kishan Lal v. State* (supra), and dismissed the petition. This Court held that mere non-filing of FSL Report along with the charge sheet is not sufficient to arrive at the conclusion that the charge sheet filed was incomplete. It was further observed that the said report can be filed by way of a supplementary charge sheet and in any case, FSL report is only a corroborative piece of evidence.

13. This Court had also examined the issue of grant of interim bail by the Hon'ble Apex Court in cases, including, Mohd Arbaz & Ors. v. State of NCT of Delhi : SLP (Criminal) No. 6876- 6877/2022 and Suleman v. The State (GNCT of Delhi : SLP (Criminal) No.1929/2023, where the FSL report was not filed along with the charge sheet within a period of 180 days. It was noted that the said relief has been granted to the accused persons This is a digitally signed order.

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14. It is argued that the decision in Kishan Lal v. State (supra) was passed before Section 36A of the NDPS Act had been added by way of an amendment. It is stated that Section 36A of the NDPS Act empowers the Special Court to extend the time of investigation up to one year on report of the Public Prosecutor indicating the progress of investigation and specific reasons for detention of accused.

15. In the opinion of this Court, the view taken by the Division Bench in Kishan Lal v. State (supra), wherein it was held that there is no mandate under Section 173 of the CrPC that a police report shall enclose the report of a scientific expert and that investigation under the NDPS Act cannot be said to be incomplete in the absence of the report of the Scientific Officer and Chemical Examiner, does not extinguish.

16. As noted by this Court in Satish Kumar & Anr. v. State (supra), this Court is bound by the decision in Kishan Lal v. State (supra) as judicial discipline mandates that this Court has 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.

17. The Hon'ble Apex Court in Union Territory of Ladakh v. Jammu & Kashmir National Conference : 2023 SCC OnLine SC 1140 held as under :

"35. We are seeing before us judgments and orders by High Courts not deciding cases on the ground that the leading This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 06/08/2024 at 07:21:56 judgment of this Court on this subject is either referred to a larger Bench or a review petition relating thereto is pending. We have also come across examples of High Courts refusing deference to judgments of this Court on the score that a later Coordinate Bench has doubted its correctness. In this regard, we lay down the position in law. We make it absolutely clear that the High Courts will proceed to decide matters on the basis of the law as it stands. It is not

open, unless specifically directed by this Court, to await an outcome of a reference or a review petition, as the case may be. It is also not open to a High Court to refuse to follow a judgment by stating that it has been doubted by a later Coordinate Bench. In any case, when faced with conflicting judgments by Benches of equal strength of this Court, it is the earlier one which is to be followed by the High Courts, as held by a 5-Judge Bench in National Insurance Company Limited v. Pranay Sethi, (2017) 16 SCC 680. The High Courts, of course, will do so with careful regard to the facts and circumstances of the case before it."

18. In view of above, this Court finds no infirmity with the impugned order. The present petition is therefore dismissed.

19. The interim order(s) stand vacated. Accordingly, the petitioner is directed to surrender before the concerned Jail Superintendent within a period of five days.

AMIT MAHAJAN, J AUGUST 02, 2024 "ssc"

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