

Divyas Bardewa vs Narcotics Control Bureau on 3 June, 2022

Author: Asha Menon

Bench: Asha Menon

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IN THE HIGH COURT OF DELHI AT NEW DELHI
CRL.REV.P. 368/2022, CRL.M.A. 11647/2022
DIVYAS BARDEWA

..... Peti

Through: Mr. Vikram Hegde, Advocate
versus

NARCOTICS CONTROL BUREAU

..... Resp

Through: Mr. Subhash Bansal, Sr. Standi
Counsel with Mr. Raghav Bans
Advocate

CORAM:

HON'BLE MS. JUSTICE ASHA MENON
ORDER

% 03.06.2022

1. This revision petition has been filed under Sections 397 and 401 read with Section 482 Cr.P.C. seeking the setting aside of the order dated 29 th April, 2022 passed by the Special Judge, NDPS Act, Patiala House Court in Sessions Case No.104/2022 titled NCB versus Dibyas Bardewa.

2. Mr. Vikram Hegde, learned counsel for the petitioner submits that vide the said orders, the learned Special Court had declined to grant default bail to the petitioner under Section 439 Cr.P.C. read with Section 167(2) Cr.P.C. read with Section 36A of the NDPS Act.

3. It is the contention of the learned counsel for the petitioner that the FSL report has not been filed alongwith the chargesheet and therefore the chargesheet was incomplete and hence it could not be treated as a proper filing to deny the petitioner bail on failure of the respondent to file the chargesheet within the specified time of 90 or 180 days as required under Section 167 Cr.P.C..

4. Learned counsel has relied on the observations of a Co-ordinate Bench of this Court in Babu vs. State (GNCT of Delhi) 2020 SCC OnLine Del 1229 in support of his contention. Particularly, the observation in Para No.17 and 18 thereon.

5. Mr. Subhash Bansal, learned counsel for the respondent/NCB however submitted that the Division Bench of this Court had already decided otherwise, that chargesheet could be filed without the FSL Report and the accused would not be entitled to default bail and, therefore, the relief had been rightly denied to him by the Special Judge. Learned counsel for the petitioner has fairly placed before this Court, the said decision of the Division Bench of this Court in Kishan Lal v. State, 1989 SCC OnLine Del 348 where it has been held as below:

17. As far as the expert's report is concerned, we may note that by virtue of sub-section (4) of Section 293 of the Code, any document purporting to be report under the hand of the Director or a Deputy Director of Assistant Director of a Central Forensic Science Laboratory of State Forensic Science Laboratory can be used as evidence in any inquiry, trial or other proceedings under the Code. It is true that it is open to the Court where it thinks fit to summon and examine the Government scientific expert. But he is not a formal witness and, therefore, no duty is cast upon the investigating officer to cite him as a witness.

18. 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.

(emphasis added)

6. When the Division Bench has in unequivocal terms answered the question, the learned Trial Court was bound, as is this Court, by the said decision. Hence, no error is made out in the impugned orders. The learned counsel for the petitioner did submit that the Supreme Court has in petitions before it issued interim orders directing release, but that the issue is still pending consideration as the main matter is listed on 22nd July, 2022.

7. Since the question of grant of bail when a charge-sheet is filed without the FSL Report, is pending consideration of the Supreme Court, for the present, this Court is bound to follow the decision of the Division Bench in Kishan Lal (supra) in this regard.

8. The petition, along with the pending application, is accordingly dismissed as no ground to interfere with the impugned orders is made out.

9. The order be uploaded on the website forthwith.

ASHA MENON, J JUNE 3, 2022/ak