

Monu @ Sandeep vs State (Nct Of Delhi) on 13 September, 2023

Author: Amit Sharma

Bench: Amit Sharma

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IN THE HIGH COURT OF DELHI AT NEW DELHI
BAIL APPLN. 2889/2023
MONU @ SANDEEP

versus
STATE (NCT OF DELHI)

CORAM:
HON'BLE MR. JUSTICE AMIT SHARMA

% 13.09.2023

1. The present application under Section 439 read with Section 167(2) of the CrPC seeks default bail in case FIR No. 14/2022 under Sections 21/25/29 of the NDPS Act registered at PS Crime Branch.
2. The case of the prosecution is that based on secret information, the present applicant was apprehended on 16.02.2022 from his house. His personal search was conducted but no contraband was recovered. At the instance of the applicant, 500 grams of heroin was recovered from an almirah in his house. The applicant was formally arrested on 17.02.2022. The FIR was registered under Section 21 of the NDPS Act on 17.02.2022. Upon completion of investigation in the present case, the chargesheet was filed on 08.08.2022 under Section 21/25/29 of the NDPS Act.
3. Learned counsel or the applicant submits that the latter was arrested on 17.02.2022. In terms of Section 167(2) of the CrPC read with Section 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 16/09/2023 at 19:10:41 36A of the NDPS Act, the chargesheet in the present case was required to be filed within 180 days thereafter. It is submitted that though the chargesheet in the present case was filed well within the stipulated period of time, the same was incomplete as the FSL report was not filed and therefore, the applicant is entitled to default bail. In support of his contentions, learned counsel for the applicant places reliance on:

- i. Mohd. Arbaz & Ors. v. State of NCT of Delhi, Order dated 13.12.2021 and 12.07.2023 passed by the Hon ble Supreme Court in SLP (Crl.) 8164-8166/2021.

ii. Babu v. The State (GNCTD of Delhi), Order dated 25.09.2020 passed by a coordinate bench of this Court in BAIL APPLN. 2075/2020. iii. Babu v. The State (GNCTD of Delhi), Order dated 05.08.2021 passed by the Hon ble Supreme Court in SLP (Crl.) 6518/2020.

4. Per contra, learned APP for the State opposes the present application and submits that the main chargesheet in the present case was filed well within the stipulated time period of 180 days and the same was complete in all respects. It is submitted that mere non-filing of the FSL report does not render the chargesheet incomplete. It is submitted that the FSL report is only a corroborative piece of evidence and sufficient material has been placed on record in support of the case of the prosecution qua the applicant. Reliance in that regard is placed on:

i. Rahmat Gul Shinwari v. State (NCT of Delhi), Order dated 11.05.2023 passed by this Court in BAIL APPLN. 189/2022. ii. Suleman vs. State (NCT of Delhi), 2022 SCC OnLine Del 2346.

5. Heard learned counsel for the parties and perused the record.

6. A coordinate bench of this Court in Suleman vs. State (NCT of 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 16/09/2023 at 19:10:41 Delhi), 2022 SCC OnLine Del 2346, in the background of the similar factual matrix, after discussing various judgments of this Court held as under:

"10. In the present case, the charge-sheet was filed on 3-3- 2021, however, without the FSL report. The charge-sheet was thus filed within the limitation period prescribed under law. The question in dispute narrows down as to whether the FSL report forms part of the charge-sheet and is an essential prerequisite to file with the charge-sheet.

FSL report not part of the charge-sheet

11. In Kishan Lal v. State [Kishan Lal v. State, 1989 SCC OnLine Del 348 : (1989) 39 DLT 392] , a Division Bench of this Court observed that a police report does not need to enclose an expert opinion of Government scientific expert with the charge- sheet and thus, no bail was granted under Section 167(2) as the charge-sheet was already filed within stipulated time. The observation reads 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 in complete 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 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 16/09/2023 at 19:10:41 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 serologist 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* [*Tara Singh v. State*, AIR 1951 SC 441] , (1) the Polka had infact filed a report dated the 2-10-1949 terming it as 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 2-10-1949 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."

12. Further in view of the decision of *Kishan Lal v. State* [*Kishan Lal v. State*, 1989 SCC OnLine Del 348 :

(1989) 39 DLT 392] , a Coordinate Bench of this Court in a recent judgment of *Babu v. State (NCT of Delhi)* [*Babu v. State (NCT of Delhi)*, 2020 SCC OnLine Del 1229] , observed as under:

"... s18. Though this Court is of the view that the decision of the Division Bench of the Punjab and Haryana High Court is an appropriate opinion in relation to cognizance of an offence under the NDPS Act without the FSL report being an illegality, however, bound by the Division Bench decision of this Court, judicial discipline mandates this Court to follow the same. Consequently, in view of the decision of the Division Bench of this Court in *Kishan Lal v. State* [*Kishan Lal v. State*, 1989 SCC OnLine Del 348 :

(1989) 39 DLT 392] , it is held that the petitioner is not entitled to grant of bail under Section 167(2)CrPC for non-filing of the FSL report along with the charge sheet...."

13. A similar view was followed by the Coordinate Bench of this Court in Mohd. Arbaz v. State (NCT of Delhi) [Mohd. Arbaz v. State (NCT of Delhi), 2020 SCC OnLine Del 2542 :

(2020) 275 DLT 323] , wherein it was observed that the accused should not be entitled to bail in default as the charge-sheet was already filed. The court held that the report shall not form part of This is a digitally signed order.

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"... 24. This Court concurs with the view expressed by the Coordinate Bench of this Court in Babu case [Babu v. State (NCT of Delhi), 2020 SCC OnLine Del 1229] . Thus, the view expressed by the Division Bench of Punjab and Haryana High Court in Ajit Singh v. State of Punjab [Ajit Singh v. State of Punjab, 2018 SCC OnLine P&H 6941] and the view expressed by the Bombay High Court in Sunil Vasantrao Phulbande v. State of Maharashtra [Sunil Vasantrao Phulbande v. State of Maharashtra, 2002 SCC OnLine Bom 153] , convinced this Court that the view of the Division Bench in Kishan Lal case [Kishan Lal v. State, 1989 SCC OnLine Del 348 : (1989) 39 DLT 392] is binding.

25. In view of the above, the petitioners' contention that the report submitted on 27-5-2019 could not be construed as a report under Section 173(2)CrPC must be rejected. The first question is, thus, answered in the negative..."

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)CrPC 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 3-3-2021 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."

7. In view of the judgment rendered by a coordinate bench of this Court in Suleman (supra), this Court is of the opinion that the chargesheet filed in the present case is not incomplete.

8. In the facts and circumstances of the case, the present application is dismissed and disposed of accordingly.

9. The applicant is at liberty to approach the concerned learned Trial Court seeking bail on merits.

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10. It is made clear that the present application is limited to the issue of default bail and nothing stated hereinabove is an opinion on the merits of the case.

11. A copy of this order be sent to the concerned Jail Superintendent, for necessary information.

12. Order to be uploaded on the website of this Court forthwith.

AMIT SHARMA, J SEPTEMBER 13, 2023/bsr This is a digitally signed order.

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