

# Hashmat Mohammadi vs State, Nct Of Delhi on 4 September, 2023

**Author: Dinesh Kumar Sharma**

**Bench: Dinesh Kumar Sharma**

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IN THE HIGH COURT OF DELHI AT NEW DELHI  
BAIL APPLN. 2869/2023  
HASHMAT MOHAMMADI

STATE, NCT OF DELHI

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA  
OR

% 04.09.2023 CRL.M.A. 23193/2023 (for exemption) Exemption is allowed, subject to all exceptions. Accordingly, the present application is disposed of.

1. The present bail application has been filed under section 167(2) read with 482 Cr. P.C for the grant of statutory bail/ default bail in case FIR No. 117/2021 registered at PS Special Cell under section 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985 on the ground that the charge sheet was filed without an FSL report.

2. Learned counsel for the Petitioner submits that the Petitioner in the 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 16:22:23 present case was arrested on 02.05.2021 for indulging in the sale/purchase of a Narcotic substance. The charge sheet u/s 21/25/29 of the N.D.P.S Act was filed on 03.05.2021, without being accompanied by the FSL report.

3. The learned counsel submits that even cognizance was not taken by the learned Trial Court due to the absence of the FSL report as indicated in the order dated 09.02.2022.

4. The learned counsel for the petitioner further submitted that the FSL report was filed only on 06.03.2022 which was originally dated 15.02.2022 only after the application was moved for the statutory bail. Learned counsel submits that in view of the order passed by the Hon'ble Supreme Court in Divyas Bardewa vs Narcotics Control Bureau in SLP (Crl.) no. 11628/2022, has categorically held that while granting statutory bail to the petitioner on the same proposition where the FSL report has not been filed along with the chargesheet, the same was considered to be an incomplete chargesheet and the matter is pending for consideration before the Hon'ble Supreme Court.

5. Per contra, the learned additional standing counsel has opposed the bail on the ground that the Apex court in the Divyas Bardewa case has left the question of statutory bail open and merely admitted the accused on bail during the period of incarceration.

6. Learned additional standing counsel has further placed relied on the order passed by the Hon'ble Supreme Court in an earlier case titled Mohd. Arbaz vs. NCT of Delhi SLP (Crl.) no. 8164-8166/2021 vide order dated 13.12.2021 wherein it was inter alia held as under:

"SLP(Crl.)No(s).8164-8166/2021 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 16:22:23 The main relief sought by the petitioners in these petitions is that they are entitled to bail in default on account of the fact that the investigating agency has failed to file a police report under Section 173(2) of the Cr.P.C. within the stipulated period of one hundred and eighty days. Although, it is not disputed that a report was filed within the stipulated period, the petitioners contend that the said report was incomplete as it was not accompanied by the report of the Chemical Examiner.

Heard learned counsel for the parties and carefully perused the material placed on record.

Taking into consideration the fact that the petitioners have suffered incarceration for a period of more than 2 years and 11 months, we are inclined to grant interim bail to them for a period of three months from today subject to the terms and conditions to be imposed by the trial court.

The petitioners are, accordingly, directed to be enlarged on interim bail for a period of three months from today subject to the terms and conditions to be imposed by the trial court.

The relief sought by the petitioner in this petition is that he is entitled for default bail as the complete and final challan has not been filed within 180 days and the final report was not accompanied with an FSL Report.

Heard learned counsel for the parties and carefully perused the material placed on record.

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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 16:22:23 Taking into consideration the fact that the petitioner has suffered incarceration for a period of more than 1 year and 4 months, we are inclined to grant interim bail to the petitioner for a period of three months from today subject to the terms and conditions to be imposed by the trial court. The petitioner is, accordingly, directed to be enlarged on interim bail for a period of three months from today subject to the terms and conditions to be imposed by the trial court. List the matter on 08.02.2022 for final disposal."

7. Per Contra, Learned additional standing counsel has vehemently opposed the contentions of the opposite party and submits that a similar issue was taken into account by the coordinate bench of this court in a case titled Sandeep vs State (NCT of Delhi) Bail Appl. 1892/2022 and Crl.M.(Bail) 760/2022 wherein it was inter alia held as under:

"10. This Court in Mehabub Rehman(supra) as taken a view which reads as under:

"19. Applying the ratio of decision in Kishan Lal (Supra) to the present case, I find that the learned trial court has rightly dismissed petitioner's bail application while holding that though the FSL report has been filed after filing of bail application and after completion of 180 days of investigation, but the charge-sheet cannot be held to be incomplete because of the pendency of FSL report over voice sample, as preparation of report on voice sample is not in the hands of IO...."

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11. For the above reasons, I am of the view that the petitioner does not automatically gets a right of default bail in the absence of FSL report accompanying charge sheet. The same has also been made clear by the judgments of Mehabub Rehman (supra).

12. For the said reasons, the application is dismissed."

8. Arguments heard. Order reserved.

9. Let both parties file their written submissions not exceeding three pages within seven days with an advance copy to the opposite party.

DINESH KUMAR SHARMA, J SEPTEMBER 4, 2023/rk This is a digitally signed order.

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