

GAHC010056212024



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Bail Appln./962/2024

ADRISH KHAN
SON OF MUNSHI KHAN
R/O GALI NO. 8, WARD NO. 9, KAYAMKHANI MOHALLA
JASWANTGADH, TEHSIL LADNUN, DISTRICT- NAGPUR, RAJASTHAN-
341306.

THROUGH PARIOKAR RUKSANA BANO, W/O ADRISH KHAN
AGED ABOUT 32 YEARS,
R/O GALI NO. 8, WARD NO. 9,
JASWANT GARH, NAGPUR, RAJASTHAN-341304.

VERSUS

UNION OF INDIA
NARCOTICS DRUGS BUREAU, THROUGH, INTELLIGENCE OFFICER (NEW
DESIGNATION -INSPECTOR),
VIP ROAD,
RUOKONWAR PATH CHACHAL, KHANAPARA, GUWAHATI, ASSAM-781022

Advocate for the Petitioner : MR. K N CHOUDHURY

Advocate for the Respondent : SC, NCB

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

Date : 14.05.2024

Heard Ms. A. Mandla, learned counsel for the petitioner. Also heard Mr. S.C. Keyal, learned Standing counsel, NCB.

2. This is an application filed under **Section 439 Cr.P.C.**, seeking bail by the petitioner, namely, **Adrish Khan**, in connection with **NDPS Case No. 193/2023(NCB Guwahati Crime No.09/2023)** registered under **Section 8(c)/20(b)/(ii)(C)/25/28/29/35/54 of NDPS Act**, pending in the court of learned Special Judge(NDPS), Guwahati.

3. The factual matrix leading to this case is that on 20/09/2023 at about 4:00 PM, the NCB officials received an information from a reliable source that one person namely, Parma Ram Bishnoi, resident of Rajasthan, is trafficking huge quantity of ganja from Agartala, Tripura to West Bengal in a truck bearing registration no. RJ11GA6154. Accordingly, the said truck was intercepted by the NCB team. On being searched, flowering top of Cannabis (ganja) in compressed form was found. Small amount of ganja was tested with drug detection kit available with the team. It gave positive test for ganja and accordingly the alleged contraband were seized. Total weight was found to be 2126.660 Kg. On being asked the person found in the vehicle i.e., Parma Ram Bishnoi, admitted that he was consciously involved in the trafficking of ganja for monetary benefits. Thereafter, he was arrested.

4. Subsequently, the present petitioner who is the owner of the said truck was arrested by NCB on 01/11/2023.

5. It was urged by learned counsel for the petitioner that he was not arrayed as an accused in the FIR, as he was not present on the spot, when the contraband was seized from the accused no. 1, Parma Ram Bishnoi. The petitioner was only named in the charge-sheet on the basis of the statement given by one Liyakat Ali u/s 67 of the NDPS Act, registered owner of the truck

who alleged that he sold the said truck to the present petitioner. It is further submitted that the prosecution in the present case filed charge-sheet on 23/11/2023 without FSL report and hence, it is incomplete.

6. It is also the submission of the learned counsel for the petitioner that on the basis of incomplete charge sheet, the trial court took cognizance of the case and charge was also framed. The prosecution has submitted some additional documents which are without the compliance of statutory provision of seeking permission from the court to extend the time period of completion of investigation based on the report of the public prosecutor and the same cannot be carried out by merely adverting to a prayer for the same in the charge sheet. Moreover, a supplementary charge sheet u/s 173(8) of Cr.P.C. can only be filed in the event of any novel evidence or information procured.

7. After framing of charge against the present petitioner and the co-accused, on 15/02/2024 the prosecution filed additional documents containing the FSL report. But there is no cognizance or acceptance of the said documents till filing of the this bail application. It is further submitted that there has been a statutory lapse in the present case.

8. According to the learned counsel for the petitioner, only on the strength of the FSL/examiner report, the court can ascertain that whether the alleged seized substance was narcotic substance under the NDPS Act. Though the charge-sheet was submitted within 180 days, without chemical examination report, it is beyond the contemplation of the proviso to section 36A (4) of the NDPS Act, 1985. It is pointed out that as the prosecution has not filed the FSL report with the charge-sheet, the petitioner is entitled for default bail.

In support of her submission, the learned counsel for the petitioner has placed reliance on the following case laws –

- a. Rakesh Sha vs. State of West Bengal (2023 SCC Online Cal 2463)
- b. Subhas Yadav and others vs. State of West Bengal (2023 SCC Online Cal 313)
- c. Ravinder @Binder vs. State of Haryana (2014 SCC Online P & H 24880)
- d. Sagar Parshu Ram vs. State of Maharashtra, bail application (ST) No. 4761/2020.
- e. Sukhdev vs. State of Haryana, CRR 1146/2021.
- f. Md. Arbaj vs. State of NCT of Delhi, SLP (Criminal No. 8164/2021) and some others.

9. In response to the submission of learned counsel for the petitioner, learned standing counsel, NCB, Mr. Kayal has vehemently opposed in granting bail to the petitioner. It is submitted that the petitioner was in contact with one Amrit, resident of Cooch Bihar, West Bengal, who happens to be the receiver of alleged ganja and at his behest the petitioner had purchased the seized truck from Liyakat Ali and handed over the said truck to one Roopak of Agartala for trafficking ganja that was seized in this case. It is further stated that Roopak had given Rs. 1 Lac in advance and the said amount Roopak had deposited in the SBI branch, Nagpur which is in the name of Irfan Khan, younger brother of the present petitioner.

10. It is also alleged that the commercial quantity of ganja was recovered

from the seized truck which were kept concealed inside the secret chamber of the said truck; as such it is not possible to build such secret chamber without the knowledge of the owner of the truck. It transpires that the petitioner along with the other co-accused had conspired for trafficking of such ganja for monetary benefit.

11. The learned standing counsel NCB has pointed out that the petitioner has claimed that he is entitled for default bail on the assertion that the investigating agency has failed to file the FSL report along with the charge sheet as such the said report is incomplete. But the learned counsel has stated that as explained by the Hon'ble Supreme Court in case of Nirala Yadav (Supra) that the accused can avail his liberty only by filing an application stating that the statutory period for filing of the challan has expired, the same has not yet been filed and an indefeasible right has accrued in his favour and further he is prepared to furnish the bail bond. Once such an application is filed it is obligatory on the part of the court to verify from the records as well as the public prosecutor whether the time has expired and the charge sheet is filed or not.

In support of his submission, the learned standing counsel NCB has placed reliance on the following case laws –

- a. Mohd Arbaz vs. State of NCT of Delhi [(2020) 0 Supreme (Del) 1471].

12. The main issue in this case is about entitlement of bail on the ground of incomplete charge-sheet. Considering, the submissions made by the learned counsel for the petitioner and on perusal of the materials available on record, it reveals that the petitioner has claimed statutory bail though the charge sheet had been filed well within the statutory period. In this case, the only allegation

against the investigating agency is that though the charge sheet has been filed within the statutory period but without FSL report. As such according to the learned counsel for the petitioner, it is incomplete charge sheet. Hence, the petitioner is entitled for default bail.

13. The Hon'ble Apex Court in ***CBI vs. Kapil Wadhawan and another*** reported in ***2024 SCC Online SC 66*** referring to various earlier judgments held that once charge sheet has been filed against the accused within prescribed time, the accused cannot claim his statutory right of default bail under Section 167(2) of Cr.P.C. on the ground that investigation against other accused was pending. It would be apposite to extract the following relevant paragraphs:

“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.”

24. In ***Dinesh Dalmia vs. CBI***, reported in ***2007 SCC Online SC 1152***, this Court has elaborately explained the scope of Section 167(2) vis-à-vis Section 173(8) Cr.P.C. The paragraphs relevant for the purpose of this appeal are reproduced herein below: -

".....19. A charge-sheet is a final report within the meaning of sub-section (2) of Section 173 of the Code. It is filed so as to enable the court concerned to apply its mind as to whether cognizance of the offence thereupon should be taken or not. The report is ordinarily filed in the form prescribed therefor. One of the requirements for submission of a police report is whether any offence appears to have been committed and, if so, by whom. In some cases, the accused having not been arrested, the investigation against him may not be complete. There may not be sufficient material for arriving at a decision that the absconding accused is also a person by whom the offence appears to have been committed. If the investigating officer finds sufficient evidence even against such an accused who had been absconding, in our opinion, law does not require that filing of the charge-sheet must await the arrest of the accused.

20. Indisputably, the power of the investigating officer to make a prayer for making further investigation in terms of sub-section (8) of Section 173 is not taken away only because a charge- sheet under sub-section (2) thereof has been filed. A further Investigation is permissible even if order of cognizance of offence has been taken by the Magistrate.

21.....

22. It is true that ordinarily all documents accompany the charge-sheet. But, in this case, some documents could not be filed which were not in the possession of CBI and the same were with GEQD. As indicated hereinbefore, the said documents are said to have been filed on 20-1-2006 whereas the appellant was arrested on 12-2-2006. The appellant does not contend that he has been prejudiced by not filing of such documents with the charge-sheet. No such plea in fact had been taken.

Even if all the documents had not been filed, by reason thereof submission of charge-sheet itself does not become vitiated in law. The charge-sheet has been acted upon as an order of cognizance had been passed on the basis thereof. The appellant has not questioned the said order taking cognizance of the offence. Validity of the said charge-sheet is also not in question.

23 to 27.....

28. It is now well settled that the court takes cognizance of an offence and not the offender. (See Anil Saran v. State of Bihar [(1995) 6 SCC 142: 1995 SCC (Cri) 1051] and Popular Muthiah v. State [(2006) 7 SCC 296: (2006) 3 SCC (Cri) 245].)

29. The power of a court to direct remand of an accused either in terms of sub-section (2) of Section 167 of the Code or sub-section (2) of Section 309 thereof will depend on the stages of the trial. Whereas sub-section (2) of Section 167 of the Code would be attracted in a case where cognizance has not been taken, sub-section (2) of Section 309 of the Code would be attracted only after cognizance has been taken.

30. If submission of Mr Rohatgi is to be accepted, the Magistrate was not only required to declare the charge-sheet illegal, he was also required to recall his own order of taking cognizance. Ordinarily, he could not have done so. (See Adalat Prasad v. Rooplal Jindal [(2004) 7 SCC 338: 2004 SCC (Cri) 1927] Subramaniam Sethuraman v. State of Maharashtra [(2004) 13 SCC 324: 2005 SCC (Cri) 242: (2004) 7 Scale 733] and Everest Advertising (P) Ltd. v. State, Govt. of NCT of Delhi [(2007) 5 SCC 54: (2007) 2 SCC (Cri) 444]. It is also well settled that if a thing cannot be

done directly, the same cannot be permitted to be done indirectly. If the order taking cognizance exists, irrespective of the conduct of CBI in treating the investigation to be open or filing applications for remand of the accused to police custody or judicial remand under sub-section (2) of Section 167 of the Code stating that the further investigation was pending, would be of no consequence if in effect and substance such orders were being passed by the court in exercise of its power under sub-section (2) of Section 309 of the Code.

38. It is a well-settled principle of interpretation of statute that it is to be read in its entirety. Construction of a statute should be made in a manner so as to give effect to all the provisions thereof. Remand of an accused is contemplated by Parliament at two stages, pre-cognizance and post-cognizance. Even in the same case, depending upon the nature of charge-sheet filed by the investigating officer in terms of Section 173 of the Code, a cognizance may be taken as against the person against whom an offence is said to have been made out and against whom no such offence has been made out even when investigation is pending. So long a charge-sheet is not filed within the meaning of sub-section (2) of Section 173 of the Code, investigation remains pending. It, however, does not preclude an investigating officer, as noticed hereinbefore, to carry on further investigation despite filing of a police report, in terms of sub-section (8) of Section 173 of the Code.

39. The statutory scheme does not lead to a conclusion in regard to an investigation leading to filing of final form under sub-section (2) of Section 173 and further investigation contemplated under sub-section (8) thereof. Whereas only when a charge-sheet is not filed and investigation is kept

pending, benefit of proviso appended to sub-section (2) of Section 167 of the Code would be available to an offender, once, however, a charge-sheet is filed, the said right ceases. Such a right does not revive only because a further investigation remains pending within the meaning of sub-section (8) of Section 173 of the Code."

14. In the case of ***K. Veeraswami vs. Union of India and others***, reported in **(1991) 3 SCC 655**, wherein it was held that statutory requirement of report u/s 173 (2) of Cr.P.C. would be complied with, if various details prescribed therein are included in the report. The report under Section 173 Cr.P.C., is an intimation to the Court that upon investigation into the cognizable offence, Investigating Officer has been able to procure sufficient evidence for the Court to inquire into the offence and necessary information is being sent to the Court. It is not necessary that all details of the offence must be stated. Though ordinarily all documents relied upon by the prosecution should accompany the Charge Sheet, nonetheless, if for some reasons, all documents are not filed, that reason by itself would not invalidate or vitiate the Charge Sheet, as the Court takes cognizance of the offence and not the offender. Once, from the material produced along with Charge Sheet, Court is satisfied about the commission of an offence and takes cognizance of the offence allegedly committed by the accused, it is immaterial whether further investigation in terms of Section 173(8) Cr.P.C. is pending or not. Pendency of further investigation for production of some documents not available at the time of filing of the Charge Sheet would neither vitiate the Charge Sheet nor entitle the accused to seek default bail on that ground, as a matter of right. Relevant paragraphs from the judgement are as follows:-

"21. In our opinion, the Constitution Bench in K. Veeraswami v. Union of

*India has aptly explained the scope of Section 173(2)."*⁷⁶. The charge-sheet is nothing but a final report of police officer under Section 173(2) of the CrPC. The Section 173(2) provides that on completion of the investigation the police officer investigating into a cognizable offence shall submit a report. The report must be in the form prescribed by the State Government and stating therein (a) the names of the parties; (b) the nature of the information; (c) the names of the persons who appear to be acquainted with the circumstances of the case; (d) whether any offence appears to have been committed and, if so, by whom (e) whether the accused has been arrested; (f) whether he had been released on his bond and, if so, whether with or without sureties; and (g) whether he has been forwarded in custody under Section 170. As observed by this Court in *Satya Narain Musadi v. State of Bihar* [(1980) 3 SCC 152, 157 : 1980 SCC (Cri) 660] that the statutory requirement of the report under Section 173(2) would be complied with if the various details prescribed therein are included in the report. This report is an intimation to the magistrate that upon investigation into a cognizable offence the Investigating Officer has been able to procure sufficient evidence for the court to inquire into the offence and the necessary information is being sent to the court. In fact, the report under Section 173(2) purports to be an opinion of the Investigating Officer that as far as he is concerned he has been able to procure sufficient material for the trial of the accused by the court. The report is complete if it is accompanied with all the documents and statements of witnesses as required by Section 175(5). Nothing more need be stated in the report of the Investigating Officer. It is also not necessary that all the details of the offence must be stated. The details of

the offence are required to be proved to bring home the guilt to the accused at a later stage i.e. in the course of the trial of the case by adducing acceptable evidence."

15. In ***Sanjay Kumar Pundeer v. State of NCT of Delhi***, reported in ***2023 SCC OnLine Del 5696***, it was held that Charge Sheet is filed upon completion of investigation after Investigating Officer has found sufficient evidence to prosecute the accused for offences under which the FIR has been registered while any other scientific examination report is only corroborative in nature to the material collected by the IO and filed with the Charge Sheet. These observations were rendered by the Court in light of the judgment of the Supreme Court in *Serious Fraud Investigation Office v. Rahul Modi and Others*, 2022 SCC OnLine SC 153 and a judgment in *Suraj v. State of NCT of Delhi*, 2022 SCC OnLine Del 3501. Relevant paragraphs of the judgment in *Sanjay Kumar Pundeer* (supra), are as follows:-

"18. In the present case, the investigation qua the applicant was complete at the time the first chargesheet was filed, as regards the offences mentioned in the FIR, on 02.12.2021. At the time of filing of the first chargesheet, there was sufficient material on record qua the applicant such as statements of eyewitnesses and other material evidence collected and placed on record. Mere non-filing of the FSL Report is not sufficient to conclude that the chargesheet filed in the present case was incomplete. The said report can be filed by way of a supplementary chargesheet. In any case, the case of the prosecution is primarily based on the eye witness account of the complainant. The FSL report, if any, would be a corroborative piece of evidence. As pointed out hereinabove, even after the filing of the chargesheet, further investigation can continue

under Section 173(8) of the CrPC. The opinion of the expert can always be filed before the learned Trial Court by way of supplementary chargesheet. It is further pertinent to note that in the present case, the learned Trial Court had taken the cognizance after the chargesheet was filed and the said order was not challenged by the petitioner.

20. In view of the observations made in Judgebir Singh (supra) and Syed Maqbool (supra), it is noted that the chargesheet filed in the present case satisfies the conditions contained in sub-clause (a) to (d) of Section 173(2)(i). There is a distinction between filing of a chargesheet and obtaining an expert opinion. The chargesheet is filed upon completion of investigation after the Investigating Officer has found sufficient evidence to prosecute an accused for offences under which the FIR has been registered. The FSL report or any other scientific examination would only be corroborative in nature to the material collected by the Investigating Officer and filed alongwith the chargesheet. Collection of a report of the FSL or a scientific expert, would therefore, be covered under Section 173(8) of the CrPC. The proposition also finds support from a judgment rendered by a coordinate bench of this Court in Suraj v. State of Delhi NCT, 2022 SCC OnLine Del 3501. In the said case, in an application for default bail in a case under Section 377/34 of the IPC, while taking note of the decisions of the Hon'ble Supreme Court in Serious Fraud Investigation Office v. Rahul Modi, 2022 SCC Online 153 and Suresh Kumar Bhikamchand Jain (supra), the coordinate bench observed and held as under:

"13. In the instant case, the Petitioner was arrested on 20.08.2021. Chargesheet was filed on 14.10.2021, i.e. within the period prescribed by

the statutory provision. The material on record indicates that cognizance had not been taken by the Ld. Trial Court on the ground that certain clarifications were required with respect to an FSL report which was pending as well as a video recording of the offences allegedly being committed that had been mentioned by the victim child in his Section 164 Cr. P.C. statement. On 16.12.2021, the Investigating Officer had informed the Ld. Trial Court that further investigation would be conducted and that a supplementary chargesheet would be filed in that regard.

14. At this juncture, it would be pertinent to note that the Petitioner can be convicted on the basis of the testimony of the victim, and the video recording can be collected and filed by way of a supplementary chargesheet and that filing of a chargesheet would entail completion of investigation and that the right to default bail under Section 167 (2) CrPC would not survive. Further, flowing from the judgments of the Supreme Court that have been discussed above, cognizance of the Ld. Trial Court is immaterial to the compliance of Section 167(2) Cr.P.C. This Court is of the opinion that as the chargesheet had been filed well within the time period as stipulated under Section 167(2), the Petitioner is no longer entitled to his right to seek default bail."

16. In the case of **Rafael Palafox Garcia vs. Union of India**, reported in **2008 All MR (Cri) 3031**, it was held that a charge sheet is a final report within the meaning of sub section (2) of section 173 of the code. It is filed as to enable the court concern to apply mind as to whether cognizance of the offence thereupon should be taken or not. The report is ordinarily filed in the form prescribed thereof. One of the requirement for submission of police report is whether any offence appears to have been committed and by whom. Even

though the report of chemical analyst was not filed, it cannot be said that an incomplete charge sheet has been filed and court could not have taken cognizance. Accused was not entitled for bail u/s 167(2) of Cr.P.C.

17. The High court of Kerala in the case of **Sameer vs. State of Kerala**, reported in **2021 0 Supreme (Kerela) 648**, dealt with similar issue. The final report was submitted by investigating officer in a case registered under NDPS Act without analyst report. Hence, the accused had contended that it is an incomplete final report. The statutory period of 180 days is over. Incomplete final report is filed to defeat the right of accused to get bail u/ s 167(2) of Cr.P.C. The accused is entitled for bail u/ s 167(2) of Cr.P.C. The Court took a view that, as per Section 2(h) investigation includes all the proceedings under Cr.P.C., for collection of evidence conducted by a police officer or by any person (other than Magistrate), who is authorized by a Magistrate in this behalf. Therefore, the investigation includes all the proceedings under the Code for collection of evidence. The investigating officer has already taken proceedings to get the analyst report by submitting requisition before the Court concerned and it is already reached the laboratory. Therefore, it cannot be said that simply because the analyst report is not received from the laboratory, the investigation is not complete.

18. In **Tara Singh vs. State**, reported in **AIR 1951 SC 441**, the report of imperial serologist and drawing of the sketch map of the occurrence was produced by filing second challan, beyond the period prescribed under Section 167(2) of Cr.P.C. The accused claimed bail Section 167(2) of Cr.P.C. on the ground that the first challan was incomplete. The submission was rejected by the Court. It was held that first challan was complete, even though the report of imperial serologist or the drawing of the sketch map of the occurrence did not

accompany the same. Section 173(1)(a) requires that as soon as the police investigation under Chapter XIV is complete, there should be a report forwarded to the Magistrate in the prescribed form setting forth names of parties, nature of information and names of persons who appear to be acquainted with circumstances of the case. Thus, it was complete report.

19. In the case of ***Central Bureau of Investigation Vs. R.S.Pai and another***, reported in ***AIR 2002 SUPREME COURT 1644***, it was observed that-

"it cannot be held that the additional documents cannot be produced subsequently. If some mistake is committed in not producing the relevant documents at the time of submitting the report or charge-sheet, it is always open to the Investigating Officer to produce the same with the permission of the Court."

It was further observed that-

"the word 'shall' used in sub-section (5) cannot be interpreted as mandatory, but as directory. Normally, the documents gathered during the investigation upon which the prosecution wants to rely are required to be forwarded to the Magistrate, but if there is some omission, it would not mean that the remaining documents cannot be produced subsequently. Further, the scheme of sub-section (8) of Section 173 also makes it absolutely clear that even after the charge- sheet is submitted, further investigation, if called for, is not precluded. If further investigation is not precluded then there is no question of not permitting the prosecution to produce additional documents which were gathered prior to or subsequent to investigation. In such cases, there cannot be any prejudice to the

accused."

20. In the case of ***State of Haryana Vs. Mehal Singh and another***, reported in ***1978 CRI.L.J.1810***, has held that when a charge-sheet is submitted without the reports of experts well within the period of 60/90 days from the date of arrest, merely because the report of the expert was not filed along with it, the accused is not entitled to be released on bail under Section 167(2) of Cr.P.C. In the said case it was observed that :

"The investigation of an offence cannot be considered to be inconclusive merely for the reason that the investigating officer, when he submitted his report in terms of sub-sec. (2) of S.173 to the Magistrate, still awaited the reports of the experts or by some chance, either inadvertently or by design, he failed to append to the police report such documents or the statements under S.161 of the Code, although these were available with him when he submitted the police report to the Magistrate. Therefore, when a charge- sheet is submitted without the reports of experts well within the period of 60 days from the date of arrest, the accused is not entitled to be released on bail under Section 167(2)....."

21. In the case of ***Kisan Lal Vs. State of NCT of Delhi***, reported in ***39 (1989) DLT 392***, decided by the Delhi High Court, the question raised by the accused was that investigation into the offences under the N.D.P.S. Act cannot be held to be complete without obtaining the opinion of the expert and therefore the cognizance of offences under Section 190(1) (b) of Cr.P.C. is not permissible. The admitted fact is that opinion of the C.F.S.L. by then had not been received by the investigating officer. The reports were subsequently received and filed before the concerned Courts. Those reports show that, samples from seized commodity were falling within the ambit of the N.D.P.S.

Act. One of the accused preferred bail application under Section 167(2) of Cr.P.C. The accused Kisan Lal filed habeas corpus petition on the plea that his detention in judicial custody after 90 days of arrest was without the authority of law. The learned single Judge referred the matter to Division Bench. The Court had observed that, it is unnecessary to notice other judgments since the Supreme Court decision in Tara Singh's case (Supra), holds that, a police report which is not accompanied by the experts opinion is to be held to be complete report as long as the witnesses who are acquainted with the circumstances of the case have been examined, continues to be a law inspite of amendments in Section 173 of the Code. The arguments that for offences under N.D.P.S. Act, the report under Section 173(2) of the Code, which in law is complete, is to be considered incomplete in the absence of the opinion of the expert, is entirely misconceived. Apparently, the power of the Magistrate to take cognizance of offences upon a police report is being related to the duty of the S.H.O. to forward a report on completion of investigation. The duty of the investigating officer under the Code is to complete the investigation without unnecessary delay. On its completion, which necessarily means that the witnesses acquainted with the circumstances of the case have been examined, the officer in charge of the police station has to forward a police report in a prescribed form to a Magistrate empowered to take cognizance of the offence. As far as the experts report is concerned, by virtue of Sub-section (4) of Section 293 of the code, any document purporting to be a report under the hand of Director or a Deputy Director of a C.F.S.L. or S.F.S.L. can be used as evidence in any enquiry, trial or other proceedings under the Code. It is open to the Court where it thinks fit to summon and examine the scientific expert. Under Section 173 of the code, there is no mandate that a police reports must enclose the document purporting

to be a report under the hand of a Government scientific expert. The cognizance of the offences taken by the Magistrate was proper and valid. Accused is not entitled for bail under Section 167(2) of Cr.P.C.

22. In the case of ***Aleksander Kurganov vs. State of Maharashtra***, reported in ***2021 SCC Online Bom 150***, the Court dealt with questions viz. does a charge-sheet without FSL report in the crime under the NDPS Act remain incomplete and attracting Section 36-A (4) of the Act and findings of the 'field test' suffer evidently because the test is by the Police and not an independent agency. Several decisions were placed for consideration before the Court including the decision in the case of Sunil Phulbande and Rafael Palafox Garcia (supra). The Court considered the decision of the full bench of Punjab and Haryana High Court in the case of State of Haryana Vs. Mehal Singh and another (Supra). Reference was also made to the decision in the case of Dinesh Dalmia vs. C.B.I. (Supra). The Court observed that the ratio of Dinesh Dalmiya (Supra) has to be considered as it holds that mere absence of forensic report does not vitiate the charge-sheet nor it should be treated as incomplete one.

23. Reverting, to the case in hand, it is an admitted fact that charge sheet has been submitted without FSL report. But it appears from the record that when the contraband was recovered, the field test was done by the NCB team with the help of drug detection kit and the contraband was found to be positive test of ganja and accordingly the driver of the truck was arrested and the seized contraband were sent for chemical examination by following the required procedure. The FSL report is now part of the proceeding. The report is ordinarily filed in the form prescribed. One of the requirements for the submission of police report is whether any offence appears to have been committed. In the

decisions referred to above, it was held that even though experts report did not accompany charge sheet, it cannot be said that it is incomplete charge sheet. Once a charge sheet is filed within stipulated time, the question of default bail does not arise. It cannot be held that additional documents cannot be produced subsequently. There is no specific provision due to which no additional documents can be produced. When the charge sheet is submitted without reports of experts well within with the period of 60/90/180 days, merely because the report of experts were not filed along with it, the accused is not entitled to be released on bail u/s 167(2) of Cr.P.C.

24. In view of the aforesaid legal proposition, this court has no hesitation to hold that the charge sheet having been filed against the accused/petitioner within the prescribed time limit and the cognizance having been taken by the Special court of the offence allegedly committed by the petitioner and the other co-accused, the petitioner could not have claimed the statutory right of default bail u/s 167(2) of Cr.P.C. on the ground that the investigation is incomplete, as the charge sheet has been submitted without the FSL report.

25. Accordingly, the bail application is rejected and disposed of accordingly.

JUDGE

Comparing Assistant