

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 29TH DAY OF MARCH, 2022

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BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

WRIT PETITION No.5934 OF 2022(GM-RES)

BETWEEN

MR. SAYYAD MOHAMMAD @ NASIM

... PETITIONER

(BY SRI. HASHMATH PASHA, SR. ADVOCATE A/W
SRI.KARIAPPA.N.A., ADVOCATE)

AND

1. STATE OF KARNATAKA
BY ECONOMIC AND NARCOTIC CRIME
POLICE STATION
MANGALORE CITY – 575 001.
2. MR.SANDEEP.J.S.
POLICE INSPECTOR
OF ULLA POLICE STATION
MANGALORE CITY – 575 001.

(BOTH ARE REPRESENTED BY

LEARNED STATE PUBLIC PROSECUTOR
HIGH COURT OF KARNATAKA)

... RESPONDENTS

(BY SMT. K.P.YASHODHA, HCGP)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE ORDER DATED 03.01.2022 PASSED IN CRIME NO.30/2021 ON THE FILE OF HON'BLE PRINCIPAL DISTRICT AND SESSIONS JUDGE, D.K., MANGALORE, WHICH IS ARISING OUT OF CRIME NO.30/2021 OF ECONOMIC AND NARCOTIC CRIME POLICE STATION, MANGALORE CITY FOR OFFENCES U/S 25 AND 3 OF ARMS ACT AND U/S.8(3), 20(B)(ii)(c) OF THE NDPS ACT AS PER ANNEXURE-C AND CONSEQUENTLY RELEASE HIM ON BAIL ON SUCH TERMS AND CONDITIONS.

THIS WRIT PETITION HAVING BEEN RESERVED ON 22.03.2022, COMING ON FOR PRONOUNCEMENT OF ORDERS THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

The petitioner is before this Court calling in question proceedings in Crime No.30 of 2021 registered for offences punishable under Sections 25 and 3 of the Indian Arms Act, 1959 and Sections 8(c), 20(B)(ii)(c) of the Narcotic Drugs & Psychotropic Substances Act, 1985 ('the Act' for short).

2. Brief facts leading to the filing of the present petition, as borne out from the pleadings, are as follows:-

On 26-05-2021 on the basis of a report submitted by the 2nd respondent/Police alleging that on 25-05-2021 when they were on rounds, they received credible information that one accused involved in a dacoity case is on the run towards Moodabidri in a car and they followed the said car and found the car being driven by Mohamed Farooq. The petitioner was seated in the car and another Eicher Truck was moving towards Moodabidri. Both the vehicles were intercepted and the dickey of Skoda car was searched which resulted in unearthing of 60.60 Kgs. of Ganja. The Eicher Truck which was also seized was searched and such search resulted in recovery of 157 Kgs. of Ganja. It was seized and the accused were arrested and produced before the Police for further action. The Special Court under the Act on 26-05-2021 remanded

the petitioner to judicial custody. On 20-11-2021 the Police after investigation filed a final report/charge sheet before the Court. The petitioner, after filing of the charge sheet before the Court, has now knocked on the doors of this Court in the subject petition, for quashment of entire proceedings in Crime No.30 of 2021 and seeks an interim prayer for release by grant of interim bail.

3. Heard the learned senior counsel Sri Hashmath Pasha appearing for the petitioner and Smt.K.P.Yashodha, learned High Court Government Pleader appearing for the respondents.

4. The learned senior counsel would submit that the petitioner is entitled to an interim bail as an interim order and later quashment of proceedings on one solitary ground viz., the charge sheet filed by the Police purportedly after investigation on 20-11-2021 is a defective charge sheet or an incomplete charge sheet, as

the contraband substance has been sent for its test to the Forensic Science Laboratory and the report is yet to come. In the absence of the report, the substance that was seized is unidentifiable and, therefore, becomes a defective charge sheet. The Police have hurriedly filed an incomplete charge sheet only to get over the rigour of default bail under Section 167(2) of the Cr.P.C. He would submit that filing of the final report being in violation of Section 173(2) of the Cr.P.C., the petitioner is entitled to be released forthwith on bail. In support of his submissions, he would place reliance upon the judgments in the cases of:

(i) UNION OF INDIA v. BAL MUKUND AND OTHERS

(ii) NOOR AGA v. STATE OF PUNJAB AND ANOTHER and

(iii) CHANDRU KUNTHUR RAGHUVÉGOWDA v. STATE BY INSPECTOR OF CUSTOMS CIU, BENGALURU.

5. On the other hand, the learned High Court Government Pleader would vehemently refute the submissions of the learned senior counsel and submit that mere non-filing of FSL report will not vitiate the charge sheet that is filed, as it can always be filed in the proceedings subsequently. Since contraband substance being Ganja it can be easily identifiable by structure and smell and FSL report is only a formality. She would place reliance upon a Division Bench judgment of the Bombay High Court in the case of **MANAS KRISHNA T.K. v. STATE** and the judgment of the Apex Court in the case of **SUPERINTENDENT, NARCOTICS CONTROL BUREAU, CHENNAI v. R.PAULSAMY**¹.

6. I have given my anxious consideration to the submissions made by the learned senior counsel and the learned High Court Government Pleader and

¹ (2000)9 SCC 549

perused the material on record. In furtherance whereof, the only issue that falls for my consideration is,

“Whether the charge sheet/final report filed by the Police on 20-11-2021 is incomplete in the absence of FSL report and resultantly, render entire proceedings vitiated?”

7. The afore-narrated facts of seizure of goods, the quantity and the contraband substance are not in dispute. It was 60.60 Kgs. of Ganja in the car and 157 kgs. of Ganja in the truck. Thus, the seizures were of Ganja and not any other contraband substance. The petitioner was remanded to judicial custody on 26-05-2021 and before the period of default bail was to be over, the Police filed a charge sheet on 20-11-2021. The charge sheet was filed admittedly without the report of FSL enclosed to the said charge sheet. Whether this would entail release of the petitioner on default bail is the issue to be considered. To consider the said issue it

is germane to notice both Sections 167 and 173 of the Cr.P.C. Sub-sections (1) and (2) of Section 167 of the Cr.P.C. read as follows:

“167. Procedure when investigation cannot be completed in twenty-four hours.—

(1) Whenever any person is arrested and detained in custody, and it appears that the investigation cannot be completed within the period of twenty-four hours fixed by section 57, and there are grounds for believing that the accusation or information is wellfounded, the officer in charge of the police station or the police officer making the investigation, if he is not below the rank of sub-inspector, shall forthwith transmit to the nearest Judicial Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused to such Magistrate.

(2) The Magistrate to whom an accused person is forwarded under this section may, whether he has or has no jurisdiction to try the case, from time to time, authorise the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole; and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction:

Provided that—

(a) the Magistrate may authorise the detention of the accused person, otherwise than in custody of the police, beyond the period of

fifteen days, if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorise the detention of the accused person in custody under this paragraph for a total period exceeding –

- (i) ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years;**
- (ii) sixty days, where the investigation relates to any other offence,**

and, on the expiry of the said period of ninety days, or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail, and every person released on bail under this sub-section shall be deemed to be so released under the provisions of Chapter XXXIII for the purposes of that Chapter;

(b) no Magistrate shall authorise detention of the accused in custody of the police under this section unless the accused is produced before him in person for the first time and subsequently every time till the accused remains in the custody of the police, but the Magistrate may extend further detention in judicial custody on production of the accused either in person or through the medium of electronic video linkage;

(c) no Magistrate of the second class, not specially empowered in this behalf by the High Court, shall authorise detention in the custody of the police.

Explanation I.—For the avoidance of doubts, it is hereby declared that, notwithstanding the expiry of the period specified in paragraph (a), the accused shall be detained in custody so long as he does not furnish bail.

Explanation II.—If any question arises whether an accused person was produced before the Magistrate as required under clause (b), the production of the accused person may be proved by his signature on the order authorising detention or by the order certified by the Magistrate as to production of the accused person through the medium of electronic video linkage, as the case may be.

Provided further that in case of a woman under eighteen years of age, the detention shall be authorised to be in the custody of a remand home or recognised social institution.”

(Emphasis supplied)

In terms of Section 167 (2)(a) of the Cr.P.C., an accused will be entitled to bail in the event the final report is not filed within 90 days from the date on which the accused was sent to judicial custody. Filing of charge sheet is dealt with under Section 173 of the Cr.P.C. which reads as follows:

“173. Report of police officer on completion of investigation.—(1) Every investigation under this Chapter shall be completed without unnecessary delay.

(1A) The investigation in relation to rape of a child may be completed within three months from the date on which the information was recorded by the officer in charge of the police station.

(2)(i) As soon as it is completed, the officer in charge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government, stating—

- (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 has been released on his bond and, if so, whether with or without sureties;**
- (g) whether he has been forwarded in custody under section 170.**
- (h) whether the report of medical examination of the woman has been attached where investigation relates to an offence under section 376, 376A, 376B, 376C 2 [376D or section 376E of the Indian Penal Code (45 of 1860).**

(Emphasis supplied)

(ii) The officer shall also communicate, in such manner as may be prescribed by the State Government, the action taken by him, to the person, if any, by whom the information relating to the commission of the offence was first given.

(3) Where a superior officer of police has been appointed under section 158, the report shall, in any case in which the State Government by general or special order so directs, be submitted through that officer, and he may, pending the orders of the Magistrate, direct the officer in charge of the police station to make further investigation.

(4) Whenever it appears from a report forwarded under this section that the accused has been released on his bond, the Magistrate shall make such order for the discharge of such bond or otherwise as he thinks fit.

(5) When such report is in respect of a case to which section 170 applies, the police officer shall forward to the Magistrate along with the report—

(a) all documents or relevant extracts thereof on which the prosecution proposes to rely other than those already sent to the Magistrate during investigation;

(b) the statements recorded under section 161 of all the persons whom the prosecution proposes to examine as its witnesses.

(6) If the police officer is of opinion that any part of any such statement is not relevant to the subject-matter of the proceedings or that its disclosure to the accused is not essential in the interests of justice and is inexpedient in the public

interest, he shall indicate that part of the statement and append a note requesting the Magistrate to exclude that part from the copies to be granted to the accused and stating his reasons for making such request.

7) Where the police officer investigating the case finds it convenient so to do, he may furnish to the accused copies of all or any of the documents referred to in sub-section (5).

(8) Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of sub-sections (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub-section (2).”

Section 173 of the Cr.P.C. (*supra*) deals with filing of final report by the Police after investigation. Section 173(2) of the Cr.P.C. mandates that once investigation is completed the officer in-charge of a Police Station shall forward to the Magistrate empowered to take cognizance of the offence on the final report, indicating the factors that are narrated in sub-section (2) of Section 173.

Section 173(5) mandates that when such report is in respect of a case to which Section 170 applies, the Police Officer shall forward to the Magistrate along with the report all documents or relevant extract thereof on which the prosecution proposes to rely on, other than those already sent to the Magistrate during investigation and the statements recorded under Section 161 of all the persons whom the prosecution proposes to examine as its witnesses. Section 173(8) of the Cr.P.C. deals with power of the Magistrate to direct further investigation to be conducted in a given case. Therefore, it is open for the Police to conduct further investigation in terms of Section 173(8) of the Cr.P.C. This is the frame work on which release of bail of an accused and filing of charge sheet are dealt with. It is these that are germane to be noticed in the case at hand.

8. The admitted fact is that FSL report was not yet in place when the Police filed the charge sheet on

20-11-2021. The issue whether the petitioner would get a right to get himself enlarged on bail in the absence of FSL report in the charge sheet need not detain this Court for long as the Division Bench of the Bombay High Court in the case of **MANAS KRISHNA T.K. v. STATE²** (*supra*) was answering a reference to the Division Bench in view of conflicting views of two learned single Judges on the very issue of an accused becoming entitled to enlargement on default bail on the ground that FSL report did not accompany the final report. The Division Bench answering the question holds as follows:

“2. The main issue which falls for determination in this reference is whether, in a case under the NDPS Act, the investigation can be said to be complete within the period prescribed under Section 167 (2) of the Criminal Procedure Code (Cr.PC), when a police report under Section 173 (2) is filed before the Special Court without any CA/FSL report along. If, based upon such a police report, an investigation is held as incomplete, then, the accused will be entitled to default bail. However, if the investigation is

² 2021 SCC ONLINE BOM.2955

held as complete, no question of default bail would arise.

3. This reference arose on the account of the following:—

(a) On 07.01.2020, FIR No. 5/2020 was registered at the Anjuna Police Station against the applicant/accused alleging commission of an offense under section 20 (C) of the NDPS Act, 1985. The FIR alleged that the accused was found in possession of a commercial quantity (0.5 gms) of L.S.D. contraband under the NDPS Act. The accused was arrested on the same date i.e. 07.01.2020. The accused's bail application No. 76/2020 was rejected by the Special Court 29.05.2020.

(b) The Investigating Officer (IO) filed a report under Section 173 (2) Cr.PC (Charge-sheet) before the Special Court on 04.07.2020. This was the 179th day since the arrest of the first remand. This means that the charge-sheet was filed within the 180 days time limit provided in Section 167 (2) Cr.PC r/w Section 36(A)(4) of the Narcotic Drugs & Psychotropic Substances Act (NDPS Act).

(c) Along with the charge-sheet, the IO also filed before the Special Court on 04.07.2020 itself several documents in terms of Section 173 (5) of Cr.PC. This included a Panchanama in which it was recorded that a field test was conducted at the spot where the accused was apprehended and that the results suggested that the substance recovered from the shoulder bag carried by the accused, was indeed L.S.D. However, the IO, along with the charge sheet, did not file any Chemical Analyser (CA)/FSL report concerning the sample attached and sent to the laboratory. Such CA/FSL report was ultimately filed beyond the

period prescribed in section 167(2) Cr.PC confirming that the substance recovered was indeed L.S.D.

(d) The accused had applied for bail before this Court on 07.07.2020 but withdrew this application on 07.08.2020 with liberty to apply before the Special Court. Such bail application was filed on 22.09.2020 but was rejected on 21.11.2020. The accused then applied for bail before this Court vide Criminal Misc. Application (Bail) (Filing) no. 88 of 2021 (the present application).

(e) Mr. Poulekar relied on the following set of decisions which according to him, support the aforesaid position urged by him : (i) Sunil Vasanttrao Phulbande v. State of Maharashtra, (2002) 3 Mah LJ 689, (ii) Punjaram v. State of Maharashtra, 2005 Cri LJ 4658, (iii) Ranjeet Manchar Machrekar v. The State of Maharashtra, Criminal Bail Application No. 509/2014 (Bombay), (iv) Manik Sahebrao Chaugule v. State of Maharashtra, Criminal Bail Application No. 241/2017 (Bombay), (v) Seema Raju Panchariya v. The State of Maharashtra, Criminal Bail Application No. 65/2018 (Aurangabad), (vi) Sagar Parshuram Joshi v. The State of Maharashtra, Bail Application (ST) No. 4761/2020 (Bombay).

(f) On the other hand, the Learned Public Prosecutor (PP) pointed out to the Learned Single Judge, a set of judgments that might invite a finding that the decisions relied on by Mr. Poulekar are either 'per incuriam' or at any rate, in direct conflict. The decisions relied on by the learned Public Prosecutor included the following : (i) Balaji Vasanttrao Suwarnkar v. State of Maharashtra, 1992 Mah LJ 159, (ii) State of Maharashtra v. Sharadchandra Vinayak Dongre, (1995) 1 SCC 42, (iii) Babu s/o Rakhmanji Khamkar v. The State of Maharashtra, (1995) 4 Bom CR 335, (iv) Rohini

Mahavir Godse v. State of Maharashtra, (1996) 2 Mah LJ 492, (v) Rafael Palafox Garcia v. Union of India, 2008 All M.R. (Cri) 3031, (vi) Sheikh Shabbir s/o Mohd Shafi v. State of Maharashtra, Criminal Application no. 143/2011 (Nagpur Bench), (vii) Srihari Mahadu Valse v. The State of Maharashtra, Criminal Bail Application No. 3284/2018, (viii) Dheeraj Wadhawan v C.B.I. - 2020 SCC OnLine Bom 9461.

(g) Confronted with the rival sets of judgments, the Learned Single Judge, by her order dated 07.07.2021 opined that the following questions arise and can be more advantageously considered by the Division Bench of this Court:—

i. Whether the presentation of a report under Section 173(2) Cr.PC. by the police without the report of Chemical Analyser/FSL amounts to incomplete challan and in the absence of any extension of time under Section 36-A(4) of the NDPS Act, whether the accused is entitled to bail under Section 167(2) Cr.P.C.?

ii. Whether, in a charge-sheet under NDPS Act, accompanied by a field testing report which is a part of the record, can be labelled as an incomplete report, simply because it is not accompanied by a report of Chemical Analyser/FSL?

iii. What is the legal efficacy of “Drug Law Enforcement, Field Officers' Handbook” issued by the Narcotics Control Bureau, Ministry of Home Affairs, Government of India?

(h) Based on the above opinion, the Registrar (Judicial-I) at Bombay, vide letter dated 22.07.2021 informed the Registrar (Judicial) at Goa that the

Hon'ble the Chief Justice has been pleased to approve the constitution of Division Bench for answering the questions raised by the Hon'ble Court (Coram : M. S. Jawalkar, J.) in Criminal Miscellaneous Application (Bail) (Filing) No. 88/2021 and to place the same before this Division Bench for consideration.

... ..

42. Therefore, on the analysis of the statutory provisions, as also the decisions that have analyzed various shades of such statutory provisions, we believe that a police report or a charge sheet containing the details specified in Section 173(2), if filed within the period prescribed under Section 167(2) is not vitiated or incomplete simply because the same was not accompanied by a CA/FSL report and, based thereon, there is no question of the accused insisting on default bail.

... ..

61. In the precise context of cases under the NDPS Act, there is a long line of decisions delivered by the learned Single Judges of our Court in *Suwarnkar (supra)*, *Rafael Palafox Garcia (supra)*, *Aleksander Kurganov (supra)*, *Shrihari Valse (supra)*, and *Sheikh Shabbir (supra)* that have taken the view that a charge-sheet unaccompanied by a CA/FSL report is not incomplete and therefore, where the same is filed within the prescribed period, the accused, cannot insist on default bail. These decisions according to us, reflect the legal position correctly, and therefore, we endorse them.

62. The contention similar to what is now raised was rejected in *Rafael Palafox Garcia (supra)*. Besides, there can be no general rule that the

Magistrate or the Special Court can never take cognizance of any offense under the NDPS Act in the absence of a CA/FSL report. Ultimately, that will be a matter which will have to be decided on the facts of each case by the Magistrate or the Special Court as the case may be.

63. *Further, the contention that a Magistrate or the Special Court, in any NDPS case, is not even competent to take cognizance of any offense based only on a field testing report as reflected in the Panchanama or otherwise in the absence of CA/FSL report is again, too wide a proposition to commend acceptance. Ultimately, a Magistrate or the Special Court will have to assess the charge sheet and, if necessary, the documents and the statements produced under Section 173(5) and thereafter decide whether any case is made out for taking cognizance of the offense.*

64. *For example, in Jagdish Purohit v. State of Maharashtra, (1998) 7 SCC 270, the Hon'ble Supreme Court after rejecting the CA/FSL report sustained the conviction by accepting the evidence of the members of the raiding party to prove that the powder which was found from the factory was methaqualone. The witnesses had stated that they had carried a kit to the field and had received sufficient training and had sufficient knowledge of narcotic substances and methods of testing them. This evidence was found sufficient to sustain a conviction even after ignoring CA/FSL report. Therefore, if a conviction could be sustained on such evidence, surely, cognizance of the offense can also be taken based on such material produced along with the charge sheet. All this will have to be assessed on a case-to-case basis and therefore, the general proposition as urged on behalf of the accused cannot be accepted.*

65. *There is and there can perhaps never be any dispute with the proposition that the right of a default bail in terms of Section 167(2) is a very valuable right that is now even elevated to the status of a fundamental right under Article 21 of the Constitution of India. The several decisions like M. Ravindran (supra), Rakesh Paul (supra), relied on behalf of the accused, in this regard, therefore, need not even be discussed because there is and there can be no quarrel with the proposition laid down therein. However, as was explained by the Hon'ble Supreme Court itself in Dinesh Dalmiya (supra), such a right of default bail, although is a valuable right, the same is a conditional one. The condition precedent being pendency of the investigation. Therefore, once the investigation is complete with the filing of a police report containing the details specified under Section 173(2), the question of a claim or grant for default bail does not arise.*

66. *For all the aforesaid reasons, we hold that the presentation of a police report under Section 173(2) unaccompanied by a CA/FSL report does not amount to any incomplete police report or any incomplete charge sheet/challan even in the absence of an extension of time under Section 36-A(4) of the NDPS Act. Based thereon therefore the accused cannot insist upon a default bail.*

67. *Similarly, we hold that a police report under Section 173(2) or a charge sheet/challan accompanied by field testing reports as reflected in the Panchanama or otherwise also cannot be labeled as an incomplete police report/charge sheet/challan simply because the same was not accompanied by a CA/FSL report.*

68. *Question no. (i) and (ii) in this reference are answered accordingly.*

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80. For all the aforesaid reasons we hold that the Drug Law Enforcement Field Officers' Handbook issued by the NCB has no legal efficacy, in the sense that the handbook has no statutory flavor or the handbook is not a set of executive instructions issued by the Central Government as contended by Mr. Gaonkar. Question No. (iii) is answered accordingly.

81. Resultantly, we answer this reference by holding the following:

(a) Question no. (i) is answered by holding that even in an NDPS case a police report containing the details prescribed under Section 173(2) Cr.P.C. is a complete police report or a charge sheet or a challan even if it is unaccompanied by a CA/FSL report. If such police report is filed within the period stipulated under Section 167(2) Cr.P.C. r/w. Section 36-A(4) of the NDPS Act, the accused cannot insist upon a default bail.

(b) Question no. (ii) is answered by holding that in an NDPS case, a charge sheet accompanied by a field testing report as reflected in the Panchanama or otherwise also cannot be labelled as an incomplete police report/charge sheet/challan simply because the same was not accompanied by a CA/FSL report.

(c) Question no. (iii) is answered by holding that the Drug Law Enforcement Field Officers' Handbook issued by the NCB has no legal efficacy, in the sense that the handbook has no statutory flavour or the handbook is not

a set of executive instructions issued by the Central Government.”

(Emphasis Supplied)

The Division Bench in the afore-mentioned judgment has delineated inter-play between Section 167(2) and 173 of the Cr.P.C. and has finally held that even if the charge sheet is not accompanied by a field testing report it cannot be labeled as in-complete police report simply because it was not accompanied by FSL report. Resultantly, the accused would not become entitled to default bail for the reason that it was not accompanied by FSL report.

9. FSL report sometimes depends upon the nature of contraband substance. In the case at hand the contraband substance is Ganja. Ganja is a substance that can be easily identifiable by its smell, texture and structure. A learned Single Judge of the Bombay High Court, in the case of **SAGAR PARASHURAM JOSHI VS.**

STATE OF MAHARASHTRA³, while considering the handbook for guidance of Drugs Law Enforcement Officers, has held as follows:

“18. Before advertng to the arguments of the learned counsel for the applicant, it may be stated that the Director General of the Narcotic Control Bureau has issued a field officer's hand-book for guidance of Drugs Law Enforcement Officers. Chapter VI refers to, ‘Drug Detection Kit’, the relevant paragraph is as under:

*“**Drug Detection Kit:** These kits assist the DLEO in forming a reasonable belief about a substance being a drug. The kit is a portable case containing different reagents that are used to test a small quantity of the substance recovered and determine the nature of the substance based on the color range resulting from the reactions of the suspect substance with the reagents. There are three types of test kits used at present : Narcotic Drugs Kit to test traditional drugs like Ganja, Charas, Opium Heroin, Cocaine, and the like; Precursor Chemicals Kit to test Acetic Anhydride, Ephedrine, Pseudoephedrine etc. and Ketamine Kit. All these kits are very user friendly and come with an Instruction sheet to guide the the user draw appropriate Inference. It is essential that the DLEO conducts the test, matches the resultant color and forms a reasonable belief that the substance gives positive color pattern for a drug. This process must be recorded In the Panchanama.”*

19. I have perused the hand-book. Chapter VII of the hand-book is about ‘Drug Identification and

³ 2021 SCC OnLine BOM 3051

Field Testing'. Chapter I enumerates, check-list, for Drugs Law Enforcement Officers, while executing the field operation, to ensure that the Drugs Law Enforcement Officer does not overlook anything, which might subsequently affect the case. Item No. 10 in the check-list reads as under:

"10. Were all recovered suspect substances field tested with Drug Detection Kits/Precursor Testing Kits and the matching colour results to show presence of ND, PS or CS and was it all documented?"

20. *In relation to the identification of drug, it states -*

"Identification: Natural narcotic drugs like Ganja, Charas, Opium Poppy can be easily identified by their color, texture and smell. But, most of the drugs abused today are refined and processed substances and are mostly circulated as white, off-white or brown powder, crystals or flakes or colorless odorless liquids. It is very difficult to identify a substance as a drug unless it is tested with different reagents."

21. *So far as the Drug Detection Kit is concerned, it is stated in the hand-book that these kits assist Drugs Law Enforcement Officers in forming reasonable belief about substance being a drug. The kit is a portable case containing different reagents that are used to test a small quantity of substance recovered and to determine the nature of substance based on the colour range resulting from the reactions of the suspect substance with reagents. It is stated that this process must be recorded in the panchanama.*

22. *Obviously, these tests are only indicative and preliminary tests and need further confirmation*

for which sample is sent to a laboratory. Instructions in Hand-book also suggest preparation of the test memo in triplicate on the spot and facsimile in print of seal used in sealing the envelopes, to be affixed on test memos.

(Emphasis supplied)

The fact that ganja, unlike other synthetic drugs, is recognizable by the substance or identifiable by its smell, texture and structure. This is what is held by the Bombay High Court in the aforesaid case. Therefore, merely because the charge sheet did not accompany FSL report, the right of the petitioner cannot swing back to contend that he is entitled to be enlarged on bail. As long as the police report containing details as necessary under Section 173(2) is filed within the stipulated period, the accused will not get a right to contend that he is entitled to default bail on the ground that the final report filed is in violation of Section 173(5) of the Cr.P.C.

10. Section 173(8) of the Cr.P.C. directs further investigation in the matter. If the Police are entitled to further investigation, further documents can also be

filed before the Court. Therefore, the FSL report is open to be placed before the Court. On this ground, the petitioner applied for default bail before the Sessions Judge. The Sessions Judge refused to accede to the submissions made by the petitioner holding that the principles laid down in the judgments of various High Courts would not entitle the petitioner to a default bail merely because FSL report is not part of the charge sheet. I find no error or infirmity in the order passed by the learned Sessions Judge declining to grant default bail.

11. The learned senior counsel lays much emphasis on Standing Instructions of Government in Standing Instructions No.1/88. The Standing Instructions read as follows:

**“NARCOTICS CONTROL BUREAU,
NEW DELHI**

Standing Instructions No.1/88

1.18 Expeditious Test.

Expeditious analysis of narcotic drugs and psychotropic substance is of essence to all proceedings under N.D.P.S. Act, 1985. In many cases the Court may refuse to extend police/judicial remand beyond 15 days in the absence of a chemical report. Accordingly, it is essential that the analysis is completed and the report is despatched within 15 days from the date of receipt of the sample. However, where quantitative analysis is requires longer time, the results of the qualitative test should be despatched to the officer from whom the samples were received within the aforesaid time limit on the original copy of the Test Memo so that court proceedings can start immediately. In the next 15 days the results of quantitative test (purity of the drug) should also be indicated on the duplicate test memo and sent to the officer from whom the samples were received.”

The Standing Instructions directs that the analysis report should be despatched within 15 days from the date of receipt of the sample.

12. The learned senior counsel placed reliance on two judgments of the Apex Court to demonstrate that the aforesaid Standing Instructions has been considered with approval by the Apex Court. The Apex Court in the

case of **UNION OF INDIA v. BAL MUKUND AND OTHERS**⁴ (*supra*) has held as follows:

“36. There is another aspect of the matter which cannot also be lost sight of. Standing Instruction 1/88, which had been issued under the Act, lays down the procedure for taking samples. The High Court has noticed that PW 7 had taken samples of 25 gm each from all the five bags and then mixed them and sent to the laboratory. There is nothing to show that adequate quantity from each bag had been taken. It was a requirement in law.”

The Apex Court in the case of **NOOR AGA v. STATE OF PUNJAB AND ANOTHER**⁵ (*supra*) has considered the Standing Instructions and has held as follows:

“89. Guidelines issued should not only be substantially complied with, but also in a case involving penal proceedings, vis-à-vis a departmental proceeding, rigours of such guidelines may be insisted upon. Another important factor which must be borne in mind is as to whether such directions have been issued in terms of the provisions of the statute or not. When directions are issued by an authority having the legal sanction granted therefor, it becomes obligatory on the part of the subordinate authorities to comply therewith.

⁴ (2009) 12 SCC 161.

⁵ (2008) 16 SCC 417.

90. *Recently, this Court in State of Kerala v. Kurian Abraham (P) Ltd. [(2008) 3 SCC 582] , following the earlier decision of this Court in Union of India v. Azadi Bachao Andolan [(2004) 10 SCC 1] held that statutory instructions are mandatory in nature.”*

In the case of **BAL MUKUND** the Apex Court no doubt considers Standing Instructions 1/88 and holds that it is requirement in law. In **NOOR AGA** (*supra*), the Apex Court considers importance of guidelines of Standing Instructions. This Court in the case of **CHANDRU KUNTHUR RAGHUVÉGOWDA v. STATE BY INSPECTOR OF CUSTOMS CIU, BENGALURU**⁶ (*supra*) also observes that if quantitative analysis of the sample was not carried out there would be infraction of Standing Instructions. This Court in **CHANDRU KUNTHUR RAGHUVÉGOWDA** holds as follows:

“19. *The report dated January 13, 2017 issued by the Custom House Laboratory, Chennai, shows that the six samples answered the test for presence of Pseudoephedrine Hydrochloride. The foot note contained in the report is categorical to the effect that ‘quantitative analysis’ of the sample was not carried out. Thus,*

⁶ **ILR 2017 KAR 4053**

there has been infraction of Standing Instruction No. 1/88. Compliance with the 'Standing Instruction' is a requirement of law as held by the Hon'ble Supreme Court in the case of Union of India v. Bal Mukund (supra)."

MANAS KRISHNA T.K. (*supra*) considers entire spectrum of law and holds that merely because FSL report is not found in charge sheet, particularly, if contraband substance is Ganja would not vitiate the charge sheet for it to become contrary to Section 173(2) of the Cr.P.C. and consequence thereof given two divergent results -- (i) quashment of proceedings and (ii) enlargement on default bail would not arise.

13. The law laid down by the Division Bench of Bombay High Court in the circumstance is apposite, as the Apex Court in the case of **BAL MUKUND** or **NOOR AGA** does not consider the fact whether filing of the charge sheet without FSL report would vitiate the proceedings.

14. In the light of the preceding analysis, it is the considered view of this Court that the petitioner does not get a right to demand for enlargement on the ground of default bail under Section 167(2) of the Cr.P.C. merely because the charge sheet/final report filed by the Police after investigation is without FSL report, as non-filing of the FSL report by itself would not make the charge sheet contrary to Section 173(2) of the Cr.P.C.

15. In the result, the Writ Petition lacks merit and is dismissed.

**Sd/-
JUDGE**

bkp
CT:MJ