

ITEM NO.1

COURT NO.5

SECTION II-C

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Cr1.) No(s). 15293/2023

(Arising out of impugned final judgment and order dated 10-10-2023 in BA No. 2154/2023 passed by the High Court Of Delhi At New Delhi)

HANIF ANSARI

Petitioner(s)

VERSUS

STATE (GOVT OF NCT OF DELHI)

Respondent(s)

(IA No. 245374/2023 - EXEMPTION FROM FILING C/C OF THE I/JUDGMENT)

Date : 19-03-2024 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ANIRUDDHA BOSE
HON'BLE MR. JUSTICE SANJAY KUMAR

For Petitioner(s) Mr. Akshay Bhandari, Adv.
Mr. Ashish Batra, AOR
Mr. Anmol Sachdeva, Adv.
Ms. Megha Saroa, Adv.

For Respondent(s) Mr. K M Nataraj, A.S.G.
Mr. Mukesh Kumar Maroria, AOR
Mr. Kanu Agarwal, Adv.
Mr. B K Satija, Adv.
Mr. Sharath Nambiar, Adv.
Mr. Raman Yadav, Adv.
Mr. Madhav Sinhal, Adv.
Mr. Divyansh H Rathi, Adv.
Mr. T.S. Sabarish, Adv.

UPON hearing the counsel, the Court made the following
O R D E R

In this proceeding, the petitioner was implicated for committing offences under various provisions of The Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter called "the NDPS Act"). Allegations against him involve recovery of 2 Kgs. of heroin

and the main ground on which he approached the High Court was that the complete chargesheet was not submitted within the stipulated amount of time as per Section 167(2) of the Code of Criminal Procedure, 1973 ("the Code"). The petitioner was arrested on 07.04.2022 and the chargesheet was filed on 07.10.2024. At that point of time, the report of the Forensic Science Laboratory, identifying the specimen allegedly seized as the aforesaid contraband article, was not available. Invoking the provisions of Section 167(2) of the Code, the petitioner sought default-bail. The FSL Report was submitted later on 05.07.2023, confirming the seized material as heroin.

On behalf of the State, Mr. Nataraj, learned additional solicitor general, argued that the spot-testing kit used by the arresting team revealed that the seized material was heroin, but submission of the learned counsel for the petitioner is that such spot-testing kit results have no evidentiary value.

The point to be addressed in this matter is as to whether non-furnishing of the FSL report with the chargesheet, within the prescribed time, would entitle an accused to default bail on the ground that it would be an incomplete chargesheet without such a report. The High Court in the impugned judgment rejected the bail plea of the petitioner, holding, *inter- alia*:-

"9. A Coordinate Bench of this Court in *Mohd. Arbaz v. State (NCT of Delhi)*, 2020 SCC OnLine Del 2542, had taken a view that the accused would not be entitled to statutory bail merely because the FSL Report was not part of the chargesheet. An appeal against the said judgment is pending before the Supreme Court.

10. The Division Bench of this Court in *Kishan Lal v.*

State, 1989 SCC OnLine Del 348, has held that it is not mandatory to file the FSL Report along with the chargesheet. The relevant observations are set out below:

"19. 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."

11. A Coordinate Bench of this Court in **Suleman v. The State (NCT of Delhi)**, 2022 SCC OnLine Del 2346, has held that non filing of the FSL Report with the chargesheet would not entitle the accused to grant of statutory bail. Relevant observations are set out below:

"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) of the Cr.P.C 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 03.03.2021 within the time period as per law. Further, the amount of quantity recovered from the accused is of commercial nature baring the accused from bail under Section 37 of the NDPS Act."

12. The aforesaid judgments were followed by another Coordinate Bench of this Court in **Hashmat Mohammadi** (supra), in which the grant of statutory bail was rejected by the Coordinate Bench despite non-filing of the FSL Report with the chargesheet."

In the special leave petition filed by said Mohd. Arbaz [SLP (cr1.) Nos.8164-8166/2021], interim bail was granted to the petitioner therein. A Co-ordinate Bench of this Court in the case, Central Bureau of Investigation vs. Kapil Wadhawan and Anr., 2024 INSC 58 dealt with the question of an incomplete chargesheet and its impact on the bail plea of an accused. It has been held and observed in this judgment:-

"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. Once from the material produced along with the chargesheet, the court is satisfied about the commission of an offence and takes cognizance of the offence allegedly committed by the accused, it is immaterial whether the further investigation in terms of Section 173(8) is pending or not. The pendency of the further investigation qua the other accused or for production of some documents not available at the time of filing of chargesheet would neither vitiate the chargesheet, nor would it entitle the accused to claim right to get default bail on the ground that the chargesheet was an incomplete chargesheet or that the chargesheet was not filed in terms of Section 173(2) of Cr.P.C."

Learned counsel for the petitioner relied on certain orders passed by this Court in (i) SLP(Cr1.)Nos.8164-8166/2021 (Mohd. Arbaz & Ors. vs. State of NCT of Delhi) on 13.12.2021, (ii) SLP (Cr1.) No.12200/2023 (Pankaj Gupta vs Narcotic Control Bureau) on 04.12.2023, (iii) SLP (Cr1.) No.11628/2022 (Divyas Bardewa Vs. Narcotics Control Bureau) on 01.05.2023 and (iv) SLP (Cr1.) No.8610/2023 [Arif Khan Vs. State (Govt. Of NCT of Delhi)] on 28.07.2023.

The lead matter on this point is the case of Directorate of Enforcement Vs. Manpreet Singh Talwar [SLP(Cr1.) No.5724 of 2023], which is still pending before a three-Judge Bench of this Court. The case of Mohd. Arbaz (supra) stands tagged with this matter.

There are other orders also passed by this Court tagging, where similar questions of law are involved. But interim bail has not been granted in every tagged petition. It has been declined in the cases of Pabitra Narayan Pradhan -vs- The State (NGT) of Delhi [SLP (cr1.) Diary No.43791 of 2023], Shankar @ Shiva Maheshwar Savai -vs- The State of Gujarat (order dated 03.03.2023 in SLP (Cr1.) No.2562/2023) but in none of these cases, it has been finally determined as to whether failure on the part of the prosecution to include the FSL report along with the chargesheet in relation to offences under the Narcotic Drugs and Psychotropic Substances Act, 1985 would automatically entitle the accused to default bail or not. Further, certain other factors like the quantity of the contraband articles being seized and period of incarceration were considered in the aforesaid orders while granting interim bail to the petitioner(s)/applicant(s).

Learned counsel for the petitioner has not pressed for an interim bail at this stage but wants the point of law to be adjudicated.

In view of there being diversity of views of different Benches of this Court even on the question of granting interim bail, we are of the opinion that a larger Bench may decide the question as to whether failure on the part of the prosecution to include the FSL report pertaining to the seized contraband article(s) along with the chargesheet, within the time specified in Section 167(2) of the Code read with Section 36A of the NDPS Act, would entitle the accused to default bail or not.

Let this case be placed before the Hon'ble the Chief Justice of India for considering tagging this matter with SLP(Cr1.) No. 5724 of 2023.

We make it clear that we have not made any observations on the merits of this case.

(NIRMALA NEGI)
COURT MASTER (SH)

(VIDYA NEGI)
ASSISTANT REGISTRAR