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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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**RESERVED ON – 04.09.2023.
DATE OF DECISION ON – 21.09.2023.**

+ BAIL APPLN. 2869/2023

HASHMAT MOHAMMADI Petitioner

Through: Mr. Hemant Gulati, Advocate

versus

STATE, NCT OF DELHI Respondent

Through: Mr. Amol Sinha, ASC for the State
with Mr. Kshitiz Garg, Mr. Ashvini
Kumar and Ms. Chavi Lazarus and SI
Dinesh, PS Special Cell**CORAM:****HON'BLE MR. JUSTICE DINESH KUMAR SHARMA****J U D G M E N T****DINESH KUMAR SHARMA, J :**

1. The present bail application has been filed under section 167(2) read with section 482 Cr.P.C seeking statutory bail on behalf of Hashmat Mohammadi in case FIR No. 0117/2021 under section 21 Narcotics Drugs and Psychotropic Substances Act, 1985 at P.S Special Cell. The charge sheet in the present case has also been filed under section 21/25/29 of the N.D.P.S Act, 1985.



2. The petitioner is seeking statutory bail on the ground that the charge sheet was filed without being accompanied by an FSL report. The charge sheet in the present case was filed on 30.05.21 and later, the supplementary chargesheet was filed on 03.02.2022.
3. Earlier, the bail application of the accused by was rejected and disposed of by the learned trial court vide order dated 13.04.2022 by relying upon various judgments and held that the mere non-filing of the FSL report do not make the chargesheet incomplete.
4. In brief, secret information was received on 02/05/2021 by SI Sunder Gautam regarding, Altaf@ Mehrajuddin Darji, that somewhere near Zakir Nagar, Delhi he was planning to deliver a consignment of Narcotic Substances (contraband). Pursuant to the information received, a team was formulated and a trap was laid against Altaf @ Mehrajuddin Darji wherein he was found in possession of 4.5kg of contraband and was thereafter arrested. Subsequently, FIR No. 117/21 dated 03.05.2021 was registered at PS Special cell u/s 21 NDPS.
5. During the investigation, a raid was also conducted against a person namely, Abid Hussain Sultan based on the information given by Altaf whereby Abid was found in possession of a total of 12kgs of heroin and the contraband was recovered from his residence situated in Vinobha Puri.
6. Later, Abid Hussain Sultan disclosed about the present petitioner/Hashmat Mohammadi, aged 31 years, is a resident of Afghanistan. Based on the statement given by Abid Hussain Sultan, the Present petitioner was arrested on 04.05.2021, while he was riding a two-wheeler, whereby 5 kg of heroin was recovered from the glove box



of the two-wheeler he was riding. Later, the petitioner revealed that the contraband used to be sourced by persons namely, Kasim and Haji, both based in Afghanistan and apart from that a refining factory is also operational in Zakir Nagar, Delhi which was followed by a raid at the house situated at F-57/11, Batla House, Okhla, Delhi wherein a total of 29.5kgs was seized along with other articles used for the operation of the refining factory.

7. Subsequently, another main accused namely Rohit Kumar was also arrested alleging that he is also involved in similar offences and thereafter, he also revealed that he had kept a huge contraband material in a house at Lalukhedi, UP and also in his fields at Manglora, Karnal, Haryana. Police officials also seized 03kg of the contraband from his house in Lalukhedi, UP.
8. Police officials have in total arrested 6 (six) people with respect to similar offences and have also seized 57.2kgs of Heroin. All the six accused including the present petitioner are in judicial custody.
9. As per the status report the **role** of the present petitioner is as stated below:
 - i. A total of 05 kg heroin has been recovered from the scooty registered no. DL 3SEH 5799 which the accused was using while being arrested from the Asian market bus stop in Khanpur, Delhi.
 - ii. A factory of reconstitution/ refining factory at the house situated at F-57/11 Batla House, Okhla, Delhi was also unearthed on the instance of the accused, a total of 29.5 kgs of heroin was recovered from this factory.



- iii. From the disclosure of the accused persons and the investigation conducted, it is apparent that the person petitioner acted as one of the main culprits/conspirators of the entire racket.
10. Learned counsel for the petitioner has submitted that in the present case the chargesheet was filed on 30.10.2021 and no FSL report was filed along with the chargesheet. Learned counsel further submitted that due to the absence of the FSL report, the Learned Trial Court vide order dated 06.06.2022 could not come to any conclusion that even if the contraband substance would be constituted to be contraband under the NDPS Act.
11. Learned counsel for the petitioner submitted that the application was kept pending with the learned trial court and in the meantime, I.O filed the FSL report on 06.03.2022 which is dated as 15.02.2022. thereafter, on 13.04.2022 the application of the petitioner under section 167 (2) seeking grant of statutory bail was dismissed by the learned trial court on the ground that the FSL report has now been filed.
12. Learned counsel for the petitioner has placed reliance on the *DivyasBardewavs. 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. Similarly, the Hon'ble High Court of Punjab & Haryana in *Mukesh Pal vs. State of Haryana* granted statutory bail to the petitioner under similar circumstances.



13. Learned counsel for the petitioner has further submitted that it is expedient in the interest of justice that the petitioner under similar circumstances may be released on bail after the completion of his detention which is 28 months.
14. Per contra, the learned additional standing counsel has opposed the bail on the ground that the Apex court in the Divyas Bardewa(supra) has left the question of statutory bail open and merely admitted the accused on bail during the period of incarceration.
15. 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 that the petitioners were only granted the interim relief whereas the default bail is still pending consideration.
16. 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....”

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.

Conclusion:

17. I have considered the submissions of the parties and perused the record carefully.
18. It has been a settled law laid down by this court in *Kishan Lal vs. State*, Crl.W.P.No.622/1988, wherein it was *inter-alia* held as under:

"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 incomplete 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 Indian Penal Code. 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 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, AIR 1951 SC 441, the Police had infact filed a report dated the 2nd October, 1949 terming it an "incomplete challan" and on the 5th October they filed a report which they called a "complete challan". Thereafter on the 19" 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 2nd October, 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.

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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."

19. This court in *Suleman vs. The State (Govt. of NCT of Delhi)* in Special Leave to Appeal (Crl.) No.1929/2023,also after taking into



consideration all the judgments on this point has inter alia held as under:

“13. 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 & 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 barring the accused from bail under Section 37 of the NDPS Act.”

20. In regard to the contentions raised by the learned counsels wherein the accused have been released on bail. However, the accused were released on bail without the question of the statutory bail being considered by the courts or the period of incarceration. The main question of default bail was left open. This court is bound by the decision of the division bench in Kishan Lal (supra).
21. In view of the contentions made by the learned counsel for the parties, this court is of the view that the learned trial court has rightly denied the petitioner the bail as mere non-filing of FSL report with the chargesheet. Hence, the bail application of the petitioner stand rejected.
22. In view of the above, the present application stand disposed of.

DINESH KUMAR SHARMA, J

SEPTEMBER 21, 2023/AR