



2025:DHC:6918-DB



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

Date of decision: 8th AUGUST, 2025

IN THE MATTER OF:

+ **CRL.REV.P. 163/2024 & CRL.M.A. 3474/2024**

RAHIMULLAH RAHIMI

.....Petitioner

Through: Mr. Pratyush Prasanna, Ms. Malvika Kulkarni, Ms. Saumya Yadav,
Advocates

versus

STATE OF NCT OF DELHI

.....Respondent

Through: Mr. Amit Ahlawat, APP for the State
Mr. Sridhar Potaraju, Senior Advocate (*Amicus Curiae*) with Mr. Lalit Mohan, Ms. Niharika Singh, Advocates

CORAM:

**HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN
SHANKAR**

JUDGMENT

SUBRAMONIUM PRASAD, J

1. The present Criminal Revision Petition has been filed by the Petitioner seeking to assail the Order dated 26.09.2023 passed by the learned Additional Sessions Judge-02, New Delhi District, Patiala House Courts, Delhi (*hereinafter referred to as the 'Trial Court'*) rejecting the Petitioner's default bail application under Section 36A of Narcotic Drugs & Psychotropic Substances Act, 1985 (*hereinafter referred to as the 'NDPS Act'*) read with sub-section (2) of Section 167 of the Code of Criminal Procedure, 1973 (*hereinafter referred to as the 'Cr.P.C.'*).



2. The facts leading to the present revision petition are as follows:-
- i. FIR No. 237/2022 was registered at Police Station Special Cell on 04.08.2022 based on credible intelligence inputs and findings during investigation in FIR No. 172/2021.
 - ii. FIR No. 172/2021 pertains to offences under the NDPS Act and resulted in the recovery of approximately 354 kg of heroin, leading to the arrest of 8 accused persons.
 - a. During investigation in FIR 172/2021 a large scale narco-terror conspiracy involving transnational actors and operations was uncovered.
 - b. This conspiracy was found to be co-ordinated by Khalistani secessionists based in Turkey, with logistical support from narco-syndicates operating along the Afghanistan-Pakistan border region, and was controlled by the Pakistan's Inter-Services Intelligence (*hereinafter referred to as 'ISI'*), indicating a deeper, state-sponsored dimension to the narco-terror nexus.
 - iii. On 03.09.2022 during investigation in FIR 237/2022 secret information was received by police that two Afghan nationals, i.e., the Petitioner and his co-accused i.e. Mustafa Stanikzai, had reached Delhi for delivering a consignment to one of their associates at Kalandi Kunj, Delhi.
 - iv. At about 11:00 AM on the same day the Petitioner and his co-accused were apprehended in a metallic grey coloured Skoda Superb



car bearing No. DL 13CQ 7272 near Kalindi Kunj Metro Station, on Kalindi Kunj, Meethapur Road.

- v. The Petitioner and his co-accused were searched whereafter their car was also searched.
- vi. From the left side of the front passenger seat, a blue-grey coloured bag (black-packed) bearing a silver metallic logo marked “Justice” was recovered. Upon inspection, a transparent polythene packet containing muddy-coloured granules-cum-powder with a pungent odour was recovered. The packet, upon weighing, was found to contain approximately 1.360 kilograms of substance. The substance was tested using a field testing kit and found to be Heroin.
- vii. At the instance of the Petitioner, a dark-blue coloured bag bearing a blue and white embroidered logo marked “Seasons” was recovered from the trunk of the vehicle. The bag contained a transparent polythene packet concealed between clothes, which upon weighing were found to contain approximately 1.040 kilograms of substance. The contents, being muddy-coloured granules-cum-powder with a pungent odour, were tested with a field testing kit and tested positive for Heroin.
- viii. The Petitioner and his co-accused were arrested and their disclosure statements were recorded. As per the story of the prosecution, the Petitioner is an Afghan national who had come to India on a medical visa in the year 2016. He met his co-accused in the year 2019 while working as a translator at Apollo Hospital, Sarita Vihar.



- ix. While working at the hospital the Petitioner came in contact with one Haji Sardar, who introduced him to one Haji Musa @ Baba Jani @ Jarar Sahab i.e. an Afghan national currently living in Pakistan. Thereafter, the Petitioner began supplying and delivering narcotics for Haji Musa and would receive a commission for the same.
- x. On the date of their arrest the Petitioner and his co-accused had come to deliver the recovered consignment to a contact of their handler Haji Musa @ Baba Jani
- xi. Based on the disclosure statements of the Petitioner and the co-accused the following recoveries were made:

| S.NO. | DATE OF RECOVERY | PLACE OF RECOVERY | BASIS ON WHICH RECOVERY WAS MADE | QUANTITY RECOVERED | NATURE OF RECOVERY | FIELD TESTING KIT RESULTS |
|-------|------------------|---|--------------------------------------|--|---|-------------------------------------|
| 1 | 03.09.2022 | Kalindi Kunj Metro Station in a Car Bearing No. DL 13CQ 7272 registered in the name of Waheedullah i.e. son of the Petitioner | Secret Informer | 1) 1.360 Kg 2) 1.040 Kg | Both recovered items contained Muddy coloured granules-cum-powder having pungent smell | Positive for Heroin |
| 2 | 03.09.2022 | SDMC Toll, Kalandi Kunj, White Bolero Maxi Truck Bearing No. UP 41AT 3273 | Statements of the accused persons | 1) 9 bags - 311.415 Kgs 2) 7 bags 277 Kgs | Not specified | Positive for Methamphetamine |
| 3 | 04.09.2022 | House No 399,H Block, Khadda Colony, Jaitpur, rented by co-accused Mustafa | Statements of the co-accused Mustafa | No quantity specified but 1) Two plastic bags recovered containing white powder 2) Blue container containing HCL 3) One big glass pot allegedly used for refining | 1) White coloured powder suspected to be Dextromethorphan 2)Transparent Liquid with HCL written on can | Negative for any Narcotic Substance |



2025:DHC:6918-DB



| | | | | Heroin | | |
|---|------------|--|--|---|---|---|
| 4 | 04.09.2022 | Toyota Etios Car, bearing No. DL ZA 5139, registered in the name of Arifa i.e. wife of the Petitioner, parked in a garage in village Accher, Greater Noida | Statements of the accused persons | Sixteen plastic bags marked G-1 to G-16 | Crystal Powder and coated on dry fruit nuts | 1 G-1 positive of methamphetamine 2) G-2 to G-6, G-8, G-10 to G-12 positive of Heroin 3) G-7 and G-9 negative of any NDPS |
| 5 | 05.09.2022 | Godown of Md. Gurphan Khan at Village Kushalganj, Lucknow | Statements of the accused persons. | 608 plastic bags; 23897.190 Kg | White colour Granules Powder | All bags tested negative of any NDPS |
| 6 | 15.09.2022 | Container bearing No. TNU9140188 in the premises of ASHTE Logistics at Kon Savle Rasayan Road, Panvel, Raigadh, Maharashtra | Statements of the accused persons dt. 14.09.2022 | 23,040 Kg | Licorice root (<i>mulethi</i>) coated with dark greyish colour material | Positive for Narcotics Drugs |

xii. On 28.02.2023 a chargesheet was filed under Sections 21, 25 and 29 of the NDPS Act. The said chargesheet did not contain the Central Forensic Science Laboratory Report (*hereinafter referred to as 'the CFSL Report'*).

xiii. Thereafter, the Petitioner filed a default bail application on 16.09.2023 before the learned Trial Court.

xiv. On 21.09.2023 a supplementary chargesheet was filed by the investigating agency containing the CFSL Report and the same was taken on record.

xv. The learned Trial Court *vide* order dated 26.09.2023 (*hereinafter referred to as 'the impugned order'*) dismissed the default bail



application of the Petitioner whereafter he filed the present revision petition.

3. Before advertng to the arguments by both sides, we deem it appropriate to list out some important dates.

| | |
|-------------------|---|
| 04.08.2022 | FIR No. 237/2022 registered at Police Station Special Cell. |
| 03.09.2022 | Petitioner arrested. |
| 28.02.2023 | First chargesheet filed before the learned Trial Court without the CFSL report. |
| 14.09.2023 | Default bail application preferred by the Petitioner before the Trial Court |
| 21.09.2023 | Supplementary chargesheet containing the CFSL Report was filed by the Respondent. |

4. Before the learned Trial Court, the Petitioner advanced a threefold submission. Firstly, he contended that, the prosecution had failed to file the CFSL Report along with the chargesheet, rendering it incomplete. Secondly, he contended that, the Prosecution had exhausted its remedy under the proviso to sub-section (4) of Section 36A of the NDPS Act whereby, upon the discretion of the Court, the statutory period within which a chargesheet is to be submitted can be extended from 180 days up to 1 year from the date of detention and as the Petitioner was in judicial custody since 03.09.2022, accordingly, the outer limit of one year expired on 03.09.2023. Finally, he contended that, in the absence of the CFSL Report the Trial Court could not have ascertained as to whether the seized



substances were in fact contraband and hence, the learned Trial Court could not have taken cognizance of the offence.

5. In the impugned order the learned Trial Court, after discussing the contentions of the Petitioner and Respondent rejected the application of the Petitioner for default bail under Section 36A of the NDPS Act read with sub-section (2) of Section 167 of the Cr.P.C. The learned Trial Court took a view that a complete chargesheet was filed within 180 days i.e. on 28.02.2024 and the accused cannot claim the right of default bail. The learned Trial Court relied on the judgment of this Court in Rahima v. State (NCT of Delhi), **2023 SCC OnLine Del 5882**. Further, the learned Trial Court held that the mere absence of CFSL Report at the time of filing of chargesheet does not render the chargesheet *otiose* and incomplete and at the time of filing of the main chargesheet there was sufficient material for it to take cognizance. The relevant portions of the Order dated 26.09.2023 rejecting the default bail application of the Petitioner read as under :-

“11. This Court has relied upon the judgment of the Hon’ble High Court of Delhi titled as “Rahima Vs. The State GNCT of Delhi, Bail Appln. 2612/2022 dated 21.09.2023”, relevant paras of this judgment are as under:

7. Before proceeding further, it is necessary to advert to the settled law laid down by this court in Kishan Lal (supra), whereby, it has been 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 19th 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. XXX 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.”

8. Similarly, in *Babu vs. State (supra)*, this Court *inter alia* held as under:

*“18. Though this Court is of the view that the decision of the Division Bench of the Punjab and Haryana High Court is an appropriate opinion in relation to cognizance of an offence under NDPS Act without the FSL report being an illegality, however, bound by the Division Bench decision of this Court, judicial discipline mandates this Court to follow the same. Consequently, in view of the decision of the Division Bench of this Court in *Kishan Lal v. State (supra)*, it is held that the petitioner is not entitled to grant of bail under Section 167(2) CrPC for non-filing of the FSL report along with the charge sheet.”*

13. In *Judgebir Singh @ Jasbir Singh Samra @ Jasbir & ors. vs. NIA (UAPA)* Crl.A.No 1011/2023, the Apex court in the case of NIA after dealing with the



celebrated judgment of Uday Mohanlal Acharya vs. State of Maharashtra (2001) 5 SCC 453, Rakesh Kumar Pal vs. State of Assam (2017) 15 SCC 67, Achpal @ Ramswaroop vs. State of Rajasthan (2019) 14 SCC 599 inter alia held as under:

“48. The chargesheet is nothing but a final report of police officer under Section 173(2) of the CrPC. Section 173(2) of the CrPC 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, 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 reported in (1980) 3 SCC 152 at 157 that the statutory requirement of the report under Section 173(2) of the CrPC 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) of the CrPC 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) of the CrPC. 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. (See K. Veeraswami v. Union of India, (1991) 3 SCC 655.)”

14. In regard to the contention raised by the learned counsels for the petitioners to the effect that the Hon’ble Supreme Court in cases of Mohd.Arbaz (supra), Suleman (supra), Divyas Bardewa (supra) and Arif Khan (supra) and Kishan Lal (supra) have released the petitioners on bail. The bare perusal of these orders makes it clear that the Apex court has admitted the petitioners on bail without reference to the aspect of the default bail and has kept this question open for consideration. The Apex court has also taken into account the period of incarceration. It is also pertinent to note that the issue of default bail has been kept open for consideration.”

6. The learned Counsel for the Petitioner has assailed the impugned order on multiple grounds, primarily contending that the investigation qua the Petitioner was incomplete even after a year of his arrest. He points out that the Petitioner was arrested on 03.09.2022 and thereafter an “incomplete” chargesheet was filed on 28.02.2023 sans the CFSL Report, Indian Computer Emergency Response Team Report (*hereinafter referred to as the “CERT-In Report”*), analysis of financial transactions and CCTV footage. These investigative aspects remained pending on the date of filing of the chargesheet, on the filing of the default bail application before the learned Trial Court and remain incomplete till date. It was only on 21.09.2023 that a supplementary chargesheet containing the CFSL Report was filed. However, the CERT-In Report as well the report pertaining to



financial transactions remains pending till date and therefore, the Petitioner is entitled to default bail.

7. The learned Counsel for the Petitioner has also assailed the impugned order on the grounds that no application or report was filed by the Public Prosecutor. Such a report is mandatory under sub-section (4) of Section 36A of the NDPS Act, when an extension for investigation is sought. Such a report must indicate the progress of investigation and give specific reasons justifying continued detention of an accused person beyond 180 days. In the present case, no such extension has been sought by means of filing such a report. However, he contends, the investigation was extended beyond the outer limit of one year, i.e. on 03.09.2023, without appraising the Petitioner about his statutory right to default bail. He points out that in the present case no such extension was sought. He has also vehemently contended that in the absence of CFSL Report any opinion formed by police regarding the nature of the contraband seized is merely presumptive and would be inadmissible. He has placed reliance on the judgment of the Apex Court in Sunil Bharti Mittal v. CBI, (2015) 4 SCC 609. He has also contended that before the Courts can take cognizance of a matter, they must form their opinion on sufficient materials. In the present case, the absence of CFSL Report precludes such formulation.

8. The learned Counsel for the Petitioner has submitted that compliance of sub-section (2) of Sections 167, Section 170, sub-section (2) of Section 173(2) and clause (b) of sub-section (1) of Section 190 of the Cr.P.C. is mandatory. In the present case, the filing of a chargesheet without collecting the CFSL Report is an attempt to scuttle the right of the Petitioner and prevent him from availing his right to default bail. He states



that unless the CFSL report is filed, the offence is not made out and the chargesheet sans CFSL report is an incomplete chargesheet. He states that as per the proviso to sub-section (4) of Section 36A of the NDPS Act, any extension for completion of investigation beyond 180 days is sought, it would mandatorily have to be accompanied by a report prepared by a Public Prosecutor, indicating the progress of investigation and specific reasons for the detention of the accused beyond 180 days.

9. Learned Counsel for the Petitioner has also placed reliance on sub-section (8) of Section 173 of the Cr.P.C. to argue that the CFSL Report would not fall within the definition of “further investigation”. He submits that the samples from the recoveries made were sent for FSL examination before the expiry of 180 days/1year, the CFSL Report would not qualify as further investigation. He states that the NDPS Act is a special enactment, and therefore, timelines under Section 36A must prevail over sub-section (8) of Section 173.

10. The learned Counsel for the Petitioner has also contended that sub-section (2) of Section 167 of Cr.P.C. is a facet of Article 21 of the Constitution of India and it mandates that the investigating agency is supposed to complete investigation within a stipulated time frame, failing which the accused is entitled to default bail. He contends that the learned Trial Court has failed to appreciate that even on the date of filing of the chargesheet, investigation qua the Petitioner was pending and he is entitled to default bail, and the said submission has not been recorded under the Impugned Order dated 26.09.2023.



11. The learned Counsel for the Petitioner also states that the impugned Order has been passed in ignorance of the judgment of the Apex Court in Satya Narain v. State of Bihar, **AIR 1980 SC 506**, whereby it has been categorically held that a report under Section 173(2) Cr.P.C. must be accompanied by all necessary documents to be deemed complete.

12. The learned Counsel for the Petitioner has also placed reliance upon proviso to sub-section (4) of Section 36A of the NDPS Act. He contends that after 180 days, the Special Court has discretion to extend the time period to complete the investigation up to one year on the report of the Public Prosecutor indicating the progress of investigation and specific reasons for the detention of the accused beyond the period of 180 days. He states that the Petitioner was arrested on 03.09.2022 and the first chargesheet without the CFSL report was filed on 28.02.2023 and the supplementary chargesheet along with the CFSL report was filed on 21.09.2023 which is beyond the period of one year. He contends that the entire investigation is not over within a period of one year and, therefore, the Petitioner would be entitled to default bail. He states that the supplementary chargesheet having been filed beyond the period of one year would entitle the Petitioner default bail on 03.09.2023.

13. Mr. Sridhar Potaraju, learned Senior Counsel and Amicus Curiae, has submitted that a chargesheet filed under Section 173(2) without enclosing scientific report is complete if all essential particulars stipulated under sub-section (2) of Section 173 are duly provided. He places reliance on the judgment of CBI v. Kapil Wadhwan (2024) 3 SCC 734 and has argued that the chargesheet dated 28.02.2023 provides all the particulars which are required under Section 173(2) of Cr.P.C. The police report dated



28.02.2023 provides all the particulars which are required under sub-section (2) of Section 173. He also submits that it is not the case of the Petitioner that the particulars as contemplated in sub-section (2) of Section 173 are not fulfilled by the prosecution in the chargesheet filed on 28.02.2023.

14. The learned Amicus has also drawn the attention of this Court to a judgement of a coordinate bench of this Court titled Taj Singh v. State, **1987 SCC Online Del 244**, whereby this Court had the occasion to examine when investigation is complete under Section 173 of the Cr.P.C. He states that, in the aforementioned judgement, this Court had held that so long as a police officer is able to complete his report by filing the particulars required under sub-clause (a) to (h) of clause (i) of sub-section (2) of Section 173 of Cr.P.C, the investigation of the offence can be said to be complete, because if investigation is not complete he would not be able to submit a report with the necessary particulars as contemplated in sub-section (2) of Section 173. Therefore, in essence, police report as defined under clause (r) of Section 2 and as referred to under sub-section (2) of Section 173 of the of Cr.P.C is complied with once the details as enumerated in sub-clause (a) to (h) of clause (i) of sub-section (2) of Section 173 of Cr.P.C are provided and the chargesheet does not have to include an FSL Report or scientific expert report.

15. Finally, it has been submitted by the learned *Amicus Curiae* that mere filing of supplementary chargesheet subsequently enclosing the scientific report under sub-section (8) of Section 173 does not render the report filed under sub-section (2) of Section 173 incomplete. He has placed reliance on the case of Tara Singh v. State, **1951 SCC 903**, and has submitted that filing of a second chargesheet would not vitiate the first



chargesheet or make it incomplete. As long as the report is deemed to be complete within the meaning of clause (b) of sub-section (1) of Section 190 read with sub-section (1) of Section 173 of the Cr.P.C. and enables a Magistrate to lawfully take cognizance of an offence, it would not be deemed to be incomplete. The facts of the present case disclose that the officer in-charge forwarded the seized/ recovered contraband to the Forensic Science Laboratory, Delhi way back in October 2022. However, the FSL Report was given by the laboratory only on 06.09.2023 and was subsequently placed before the learned Trial Court through a supplementary chargesheet on 21.09.2023. Therefore, once the initial chargesheet was filed within 180 days, the question of the Petitioner's right under sub-section (2) of Section 167 of the Cr.P.C. never crystallized.

16. Additionally, the learned Counsel for the Respondent has submitted that in the present case massive recoveries have been made at the instance of the Petitioner and his co-accused. There is a strong *prima facie* case against the Petitioner as well as his risk of absconding given the fact that he is an Afghan national.

17. Heard learned Counsel for the parties and perused the material on record.

18. The moot question of law for the consideration of this Court is whether a chargesheet filed without the CFSL Report can be considered to be an “incomplete” chargesheet and whether the Petitioner would be entitled to grant of default bail in terms of sub-section (4) of Section 36A of the NDPS Act read with sub-section (2) of Section 167 of the Cr.P.C.



19. This Court is unable to agree with the contention advanced by the learned Counsel for the Appellant. It cannot be said in any manner whatsoever that the non-filing of the CFSL Report vitiates the chargesheet and renders it incomplete. The chargesheet filed by the investigating agency on 28.02.2023 was a complete chargesheet which was in compliance with all the requirements of sub-sections (2) and (5) of Section 173.

20. In order to appreciate the rival contentions of the parties it would be appropriate to reproduce Section 167(2) of the Cr.P.C. and Section 36A of the NDPS Act.

21. Sub-section (2) of Section 167 of the Cr.P.C, which deals with the right of the accused to default bail reads as under:-

“167(2) The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not 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.]

[(2A) Notwithstanding anything contained in sub-section (1) or sub-section (2), the officer in charge of the police station or the police officer making the investigation, if he is not below the rank of a sub-inspector, may, where a Judicial Magistrate is not available, transmit to the nearest Executive Magistrate, on whom the powers of a Judicial Magistrate or Metropolitan Magistrate have been conferred, a copy of the entry in the diary hereinafter prescribed relating to the case, and shall, at the same time, forward the accused to such Executive Magistrate, and thereupon such Executive Magistrate, may, for reasons to be recorded in writing, authorise the detention of the accused person in such custody as he may think fit for a term not exceeding seven days in the aggregate; and, on the expiry of the period of detention so authorised, the accused person shall be released on bail except where an order for further detention of the accused person has been made by a Magistrate competent to make such order; and, where no order for such further detention is made, the period during which the accused person was detained in custody under the orders made by an Executive Magistrate under this sub-section, shall be taken into account in computing the period specified in paragraph (a) of the proviso to sub-section (2):

Provided that before the expiry of the period aforesaid, the Executive Magistrate shall transmit to the nearest Judicial Magistrate the records of the case together with a copy of the entries in the diary relating to the case which was transmitted to him by the officer in charge of the police station or the police officer making the investigation, as the case may be.] ”



22. Section 36A of the NDPS Act, which modifies the applicability of Section 167(2) of the Cr.P.C. reads as under:-

“36A(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—

(a) all offences under this Act which are punishable with imprisonment for a term of more than three years shall be triable only by the Special Court constituted for the area in which the offence has been committed or where there are more Special Courts than one for such area, by such one of them as may be specified in this behalf by the Government;

(b) where a person accused of or suspected of the commission of an offence under this Act is forwarded to a Magistrate under sub-section (2) or sub-section (2A) of section 167 of the Code of Criminal Procedure, 1973 (2 of 1974), such Magistrate may authorise the detention of such person in such custody as he thinks fit for a period not exceeding fifteen days in the whole where such Magistrate is a Judicial Magistrate and seven days in the whole where such Magistrate is an Executive Magistrate: Provided that in cases which are triable by the Special Court where such Magistrate considers— (i) when such person is forwarded to him as aforesaid; or (ii) upon or at any time before the expiry of the period of detention authorised by him, that the detention of such person is unnecessary, he shall order such person to be forwarded to the Special Court having jurisdiction;

(c) the Special Court may exercise, in relation to the person forwarded to it under clause (b), the same power which a Magistrate having jurisdiction to try a case may exercise under section 167 of the Code of Criminal Procedure, 1973 (2 of 1974), in relation to an accused person in such case who has been forwarded to him under that section;



(d) a Special Court may, upon perusal of police report of the facts constituting an offence under this Act or upon complaint made by an officer of the Central Government or a State Government authorised in his behalf, take cognizance of that offence without the accused being committed to it for trial.

(2) When trying an offence under this Act, a Special Court may also try an offence other than an offence under this Act with which the accused may, under the Code of Criminal Procedure, 1973 (2 of 1974), be charged at the same trial.

(3) Nothing contained in this section shall be deemed to affect the special powers of the High Court regarding bail under section 439 of the Code of Criminal Procedure, 1973 (2 of 1974), and the High Court may exercise such powers including the power under clause (b) of sub-section (1) of that section as if the reference to “Magistrate” in that section included also a reference to a “Special Court” constituted under section 36.

(4) In respect of persons accused of an offence punishable under section 19 or section 24 or section 27A or for offences involving commercial quantity the references in sub-section (2) of section 167 of the Code of Criminal Procedure, 1973 (2 of 1974) thereof to “ninety days”, where they occur, shall be construed as reference to “one hundred and eighty days”: Provided that, if it is not possible to complete the investigation within the said period of one hundred and eighty days, the Special Court may extend the said period up to one year on the report of the Public Prosecutor indicating the progress of the investigation and the specific reasons for the detention of the accused beyond the said period of one hundred and eighty days.

(5) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the offences punishable under this Act with imprisonment for a



term of not more than three years may be tried summarily.”

23. *Chapter XII* of the Cr.P.C. deals with “*Information to the Police and Their Power to Investigate*”. The investigation of a cognizable offence commences after registration of an FIR under Section 154 of the Cr.P.C., whereafter Section 57 of the Cr.P.C. mandates that the arrested person is to be presented to the nearest Magistrate within 24 hours. In the event it is not possible to complete the investigation within 24 hours, Sub-Section (2) of Section 167 mandates that the accused person be produced before a Magistrate so that their remand may be sought. There are three different kinds of reports which are required to be made by a police officer at different stages of investigation. Firstly, under Section 157 of the Cr.P.C a preliminary report is to be sent by the officer-in-charge of the police station to the Magistrate. Secondly, Section 168 of the Cr.P.C. requires report from a subordinate police officer to the officer-in-charge of the police station. Finally, under Section 173 of the Cr.P.C. the investigating officer is required to submit a final report to the Magistrate as soon as the investigation is complete.

24. Thus, the statutory scheme of *Chapter XII* contemplates the submission of a Final Police Report or Chargesheet only when the Investigating Agency is of the view that there are adequate grounds for proceeding against the accused. Sub-section (2) of Section 173 of the Cr.P.C. lays down the general format and contents of the Police Report. It sets out the details which need to be included in this report such as the nature of offence, details of the parties involved and the factual matrix of the case. Sub-section (5) of Section 173 of the Cr.P.C, requires the



documents relied upon by the prosecution as well as the statements under Section 161 of the Cr.P.C. be submitted along with the chargesheet. This is proceeded by sub-section (8) of Section 173 of the Cr.P.C, whereby the investigating agency is bestowed with the power to conduct further investigation and to ensure that any developments or investigative discoveries during the investigation of the case are brought to the attention of the Court. These provisions, upon a conjoint reading, reflect the legislative intent to ensure that the Magistrate is furnished with a complete report on the basis of which it can take cognizance.

25. It is against this statutory backdrop that the right to default bail assumes significance. Sub-section (2) of Section 167 Cr.P.C. confers upon an accused an indefeasible right. It is a statutory limb of the right to personal liberty guaranteed by Article 21 of the Indian Constitution and imposes a prescriptive time limit upon the investigating agencies to complete investigation. Section 167(2) created a legal fiction and the right to default bail is automatically triggered if the chargesheet is not submitted within the prescribed time. Even though the applicability of Section 167(2) is somewhat modified under special enactments like the NDPS Act, the underlying principle remains the same.

26. Section 36A of the NDPS Act modifies the applicability of Section sub-section (2) of Section 167 of the Cr.P.C. to the extent that in respect of persons accused of an offence punishable under Section 19 or Section 24 or Section 27A or for offences involving commercial quantity the term “90 days” is construed as “180 days”. Further, it also relaxes the timeline for completion of investigation to the extent that when it is not possible to complete the investigation within 180 days, the Special Court has been



empowered to extend the period by up to one year on the report of the Public Prosecutor indicating the progress of the investigation and the specific reasons for the detention of the accused beyond the said period of one hundred and eighty days.

27. Therefore, a preliminary point of consideration is whether the preliminary chargesheet filed by the investigating agency on 28.02.2023 was in fact “incomplete”. The Apex Court in Suresh Kumar Bhikamchand Jain v. State of Maharashtra, (2013) 3 SCC 77, has held as under :-

“17. In our view, grant of sanction is nowhere contemplated under Section 167 CrPC. What the said section contemplates is the completion of investigation in respect of different types of cases within a stipulated period and the right of an accused to be released on bail on the failure of the investigating authorities to do so. The scheme of the provisions relating to remand of an accused, first during the stage of investigation and, thereafter, after cognizance is taken, indicates that the legislature intended investigation of certain crimes to be completed within 60 days and offences punishable with death, imprisonment for life or imprisonment for a term of not less than 10 years, within 90 days. In the event, the investigation is not completed by the investigating authorities, the accused acquires an indefeasible right to be granted bail, if he offers to furnish bail. Accordingly, if on either the 61st day or the 91st day, an accused makes an application for being released on bail in default of charge-sheet having been filed, the court has no option but to release the accused on bail. The said provision has been considered and interpreted in various cases, such as the ones referred to hereinbefore. Both the decisions in Natabar Parida case [(1975) 2 SCC 220 : 1975 SCC (Cri) 484] and in Sanjay Dutt case [(1994) 5 SCC 410 : 1994 SCC (Cri) 1433] were instances where the



charge-sheet was not filed within the period stipulated in Section 167(2) CrPC and an application having been made for grant of bail prior to the filing of the charge-sheet, this Court held that the accused enjoyed an indefeasible right to grant of bail, if such an application was made before the filing of the charge-sheet, but once the charge-sheet was filed, such right came to an end and the accused would be entitled to pray for regular bail on merits.

18. None of the said cases detract from the position that once a charge-sheet is filed within the stipulated time, the question of grant of default bail or statutory bail does not arise. As indicated hereinabove, in our view, the filing of charge-sheet is sufficient compliance with the provisions of Section 167(2)(a)(ii) in this case. Whether cognizance is taken or not is not material as far as Section 167 CrPC is concerned. The right which may have accrued to the petitioner, had charge-sheet not been filed, is not attracted to the facts of this case. Merely because sanction had not been obtained to prosecute the accused and to proceed to the stage of Section 309 CrPC, it cannot be said that the accused is entitled to grant of statutory bail, as envisaged in Section 167 CrPC. The scheme of CrPC is such that once the investigation stage is completed, the court proceeds to the next stage, which is the taking of cognizance and trial. An accused has to remain in custody of some court. During the period of investigation, the accused is under the custody of the Magistrate before whom he or she is first produced. During that stage, under Section 167(2) CrPC, the Magistrate is vested with authority to remand the accused to custody, both police custody and/or judicial custody, for 15 days at a time, up to a maximum period of 60 days in cases of offences punishable for less than 10 years and 90 days where the offences are punishable for over 10 years or even death sentence. In



the event, an investigating authority fails to file the charge-sheet within the stipulated period, the accused is entitled to be released on statutory bail. In such a situation, the accused continues to remain in the custody of the Magistrate till such time as cognizance is taken by the court trying the offence, when the said court assumes custody of the accused for purposes of remand during the trial in terms of Section 309 CrPC. The two stages are different, but one follows the other so as to maintain a continuity of the custody of the accused with a court.”

28. The Apex Court in the case of CBI v. Kapil Wadhawan, (2024) 3 SCC 734, while relying on their judgment in K. Veeraswami v. Union of India, (1991) 3 SCC 655, has held that the statutory requirements under sub-section (2) of Section 175 would be complied with as long as the chargesheet provides various details prescribed under it. In the case of Kapil Wadhawan (*supra*) the Apex Court has also elucidated the position *vis-a-viz* the right to default bail. The relevant excerpts read as under:-

“21. In our opinion, the Constitution Bench in K. Veeraswami v. Union of India [K. Veeraswami v. Union of India, (1991) 3 SCC 655 : 1991 SCC (Cri) 734] has aptly explained the scope of Section 173(2) : (SCC p. 716, para 76)

“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* [*Satya Narain Musadi v. State of Bihar*, (1980) 3 SCC 152 : 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.”*

22. In view of the above settled legal position, there remains no shadow of doubt 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. The report under



Section 173 is an intimation to the court that upon investigation into the 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. The report is complete if it is accompanied with all the documents and statements of witnesses as required by Section 175(5). As settled in the aforesaid case, it is not necessary that all the details of the offence must be stated.

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 charge-sheet is not filed and the investigation is kept pending against him. Once however, a charge-sheet 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 charge-sheet is filed under sub-section (2) thereof against the accused. Though ordinarily all documents relied upon by the prosecution should accompany the charge-sheet, nonetheless for some reasons, if all the documents are not filed along with the charge-sheet, that reason by itself would not invalidate or vitiate the charge-sheet. 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 charge-sheet, 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 charge-sheet would neither vitiate the charge-sheet, nor would it entitle the accused to claim right to get default bail on the ground that the charge-sheet was an incomplete charge-sheet or that the



charge-sheet was not filed in terms of Section 173(2)CrPC.”

(emphasis supplied)

29. A perusal of the foregoing paragraphs of the judgements of the Apex Court makes it abundantly clear that a chargesheet is complete so long as it meets all the requirements enumerated under sub-section (2) of Section 173 of the Cr.P.C. and is accompanied by all the documents and statements of witnesses as mandated under sub-section (5) of Section 175. The Apex Court has also clarified that, even though the right to default bail under sub-section (2) of Section 167, flows from Article 21 of the Indian Constitution the benefit of the proviso upended to sub-section (2) of Section 167 would accrue to the accused only when a chargesheet has not been filed and the investigation is kept pending against him. However, if the chargesheet is filed within the time period prescribed under sub-section (2) of Section 167 of the Cr.P.C. and is in compliance with the requirements of sub-section (2) of Section 173, the statutory period stands tolled, and the right to default bail ceases to exist and the right to statutory bail becomes unenforceable. Further investigation in terms of sub-section (8) of Section 173 is not precluded simply because a chargesheet has been filed in terms of sub-section (2) of Section 173. Similarly, a chargesheet would not be invalidated simply because of the reason that all documents relied upon by the prosecution have not been filed with the chargesheet. What needs to be seen is whether the Court, on the basis of the chargesheet and the materials produced before it is satisfied about the commission of an offence.

30. A Division Bench of this Court in Kishan Lal v. State, **1989 SCC OnLine Del 348** had the opportunity to examine a similar question i.e.



whether the investigation of a case under the NDPS Act can be said to be complete in the in the absence of the report of the scientific officer and the chemical examination. While relying on the judgment of the Apex Court in Tara Singh v. State, **1951 SCC 903**, this Court held that sub-section (2) of Section 173 of the Cr.P.C. proscribes submitting an incomplete police report to the magistrate. However, 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 an offence based on the police report which does not include the expert's opinion. The relevant excerpts from Kishan Lal (supra) are reproduced hereunder:

“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.

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9. A Full Bench of the Punjab & Haryana High Court in State of Haryana v. Mehal Singh, AIR 1978 Punjab



& Haryana 341, after surveying the case law including a judgment of a single Judge of this Court in Harichand and Raj Pal v. State, ILR (Delhi) 1977 Vol. 2 at page 367 on which case, petitioners have placed great reliance, has also held that the investigation of an offence cannot be considered to be un-conclusive merely for the reason that the Investigating Officer when he submitted his report in terms of Sub-section (2) of Section 173 of the Code, still awaited the report of the expert. It was further observed that even if the Investigating Officer failed to append to the Police report, the statement under Section 161 of the Code or the opinion of the experts although available with him, yet the investigation was complete and the report filed before the Magistrate was proper. In the said case the accused were seeking bail on the ground that the investigation had not been completed within sixty days of their arrest and the cognizance taken by the Magistrate was vitiated as it had been taken on an incomplete report. Thus although the offence involved was different but the plea was exactly the same as is before us.

10. A Division Bench of this Court in Tej Singh v. State, Criminal Law Journal 1988 at page 1635 has taken the same view as that of the Punjab & Haryana High Court. In that case also the contention was that it was obligatory on the Investigating Officer to forward to the Magistrate alongwith the police report the opinion of the Central Forensic Science Laboratory and in the absence of the expert's report, the investigation could not be said to be complete and therefore, the cognizance taken not being valid, the accused was entitled to be ordered to be released on bail under Section 167(2) of the Code. In support of the argument it was submitted that Sub-section (5) of Section 173 of the Code cast an additional duty on the Investigating Officer to forward to the Magistrate the



expert's opinion. It was unsuccessfully urged that without that opinion, the report could not be termed as a complete report.

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12. The learned counsel laid great stress on the fact that the investigation could not be said to be complete in cases where the expert's opinion was still awaited as in its absence the investigating officer would neither be in a position to form his opinion nor would he be able to furnish to the accused copy of that opinion. In the said two decisions this very contention was repelled. In Tej Singh's case (supra) it was held that:

“This contention does not appear to be correct for the reason that Sub-section (5) of Section 173 appears to cast on the Investigating Officer only an additional duty of sending alongwith the report documents or extracts thereof on which the prosecution proposes to rely and this additional duty cannot be construed as in any manner prejudicing the police report envisaged in Sub-section (5) of Section 173 and this additional duty appears to have been necessitated to enable the Magistrate taking cognizance of the ease to comply with the mandatory provisions of law contained in Section 207 of the Code for the purpose of furnishing to the accused, free of cost, a copy of such document.”

15. We respectfully agree with the earlier decision of this Court in Tej Singh's case (supra). The decision in Hari Chand and Raj Pal v. State (supra) by a single Judge of this Court wherein it has been held that an “incomplete challan” is not a police report within the admit of Section 173 (2) of the Code does not support the case of the petitioners. From the reported judgment it is not clear whether all the witnesses or some of them



“acquainted with the circumstances of the case” were yet to be examined when the report was filed. The reason for calling it incomplete is no discernible. But it is safer to assume from the reading of the judgment that the investigation was not complete. Thus the report as envisaged under Section 173(2) of the Code could not have been filed.

16. It is unnecessary for us to notice other judgments cited by the learned counsel in support of their plea that the investigation in a case like the present is to be held to be incomplete. In our view the Supreme Court decision in Tara Singh's case (supra) holding, inter alia, that a police report which is not accompanied by the expert's 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 law in spite of amendments in Section 173 of the Code.

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18. As far as the expert's report is concerned, we may note that by virtue of Subsection (4) of Section 293 of the Code, any document purporting to be report under the hand of the Director or a Deputy Director or Assistant Director of a Central Forensic Science Laboratory or State Forensic Science Laboratory can be used as evidence in any inquiry, trial or other proceedings under the Code. It is true that it is open to the Court where it thinks fit to summon and examine the Government Scientific expert. But he is not a formal witness and, therefore, no duty is cast upon the investigating officer to cite him as a witness.”

(emphasis supplied)

31. In Mohd. Arbaz v. State (NCT of Delhi), **2020 SCC OnLine Del 2542** and Tushar Chaudhary v. State (NCT of Delhi), **2024 SCC OnLine Del 4782**, a learned Single Judge of this Court while dealing with a similar



issue has relied upon on Kishan Lal (*supra*) and held that mere non-filing of FSL Report at the time of filing of the chargesheet is not sufficient to render it incomplete. The learned *Amicus Curiae* has brought it to the attention of this Court that these judgments are subject matter of challenge in SLP (Crl) No. 1864/2021 and SLP (Crl) No. 10939/2024 and have been tagged together along with a batch of connected matters, dealing with the same issue and is presently pending adjudication before a three Judges Bench of the Apex Court. However, in SLP (Crl) 5724/2023, *vide* its Order dated 12.05.2023, the Apex Court, in Paragraph 1 of its Order dated 12.05.2023 clarified that neither the Trial Courts nor the High Courts are precluded from considering applications for grant of default bail under Section 167 of the Cr.P.C. without relying on the judgement of the Apex Court in Ritu Chhabaria v. Union of India, **2023 SCC OnLine SC 502**. The relevant excerpts of the Order dated 12.05.2025 passed by the Apex Court in SLP (Crl) 5724/2023, read as under:-

“1 In continuation of the interim order of this Court dated 1 May 2023, we clarify that the order shall not preclude any trial court or, as the case may be, High Court from considering an application for the grant of default bail under Section 167 of the Code of Criminal Procedure 1973 independent of and without relying on the judgment dated 26 April 2023 in Writ Petition (Criminal) No 60 of 2023.”

32. This Court has perused the material on record and we are of the considered opinion that the chargesheet filed by the investigating agency submitted before the Trial Court on 28.02.2023 fulfilled all the statutory requirements as mandated under sub-section (2) of Section 173. It clearly delineates details such as the names of the accused (Petitioner and his-co-



accused), the nature of information, the details of the offence which has been committed, whether he has been forwarded in custody in terms of Section 170 etc. We also do not find any merit in the contention advanced by the learned Counsel for the Petitioner that sub-section (8) of Section 173 permits further investigation and CFSL Report would not qualify as “further investigation” as the samples were sent before the expiration of 180 days.

33. The present case does not involve re-investigating, but rather a further investigation into certain aspects of what *prima facie* appears to be a large scale narco-terror conspiracy involving transnational actors and possible enemy-state sponsored involvement. A perusal of the chargesheet submitted by the investigating agency clearly demonstrates that it is in compliance with the requirements of sub section (2) and sub-section (5) of Section 173. The chargesheet dated 28.02.2023 clearly discloses:

- a. The names of the accused persons (including the Petitioner and his co-accused).
- b. The nature of information such as the facts of the case, how the FIR came to be registered, how the information was reduced into writing, how the accused persons were apprehended, interlinkages with other cases etc.
- c. The chargesheet also discloses the names of the persons who appear to be acquainted with the circumstances of the case.
- d. The chargesheet clearly demonstrates the offences which appear to have been committed under the NDPS Act.



e. The chargesheet clearly demonstrates how and when the accused person was arrested.

34. A perusal of the chargesheet submitted on 28.02.2023 also demonstrates that substantial recoveries of narcotic substances have been made, falling within the bracket of “commercial quantity”, were made at the instance of the Petitioner from various locations across the country. Accordingly, the chargesheet submitted before the learned Trial Court on 28.02.2023 clearly demonstrates the existence of sufficient material in terms of clause (d) of sub-section 1 of Section 36A of the NDPA Act, enabling the Court to take cognizance of the offence.

35. In continuation of the material already placed on record through the chargesheet, it is equally pertinent to note the legal permissibility of the prosecution to file additional documents at a later stage. A closer reading of sub-section (5) and (8) of Section 173 makes it manifestly clear that there is no bar on the investigating agency from subsequently placing on record additional documents that have been relied upon by the prosecution. The Apex Court in Central Bureau of Investigation v. R.S. Pai, (2002) 5 SCC 82, has held that the provisions of sub-section (5) of Section 173 are directory rather than being mandatory. The relevant excerpt of the judgement read as under:

7. From the aforesaid sub-sections, it is apparent that normally, the investigating officer is required to produce all the relevant documents at the time of submitting the charge-sheet. At the same time, as there is no specific prohibition, 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 the charge-sheet, it is always open to the investigating officer to produce the same with the permission of the court. In our view, considering the preliminary stage of prosecution and the context in which the police officer is required to forward to the Magistrate all the documents or the relevant extracts thereof on which the prosecution proposes to rely, 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. Analogous provision under Section 173(4) of the Code of Criminal Procedure, 1898 was considered by this Court in Narayan Rao v. State of A.P. [AIR 1957 SC 737 : 1958 SCR 283 : 1957 Cri LJ 1320] (SCR at p. 293) and it was held that the word “shall” occurring in sub-section (4) of Section 173 and sub-section (3) of Section 207-A is not mandatory but only directory. Further, the scheme of sub-section (8) of Section 173 also makes it abundantly 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 the investigation. In such cases, there cannot be any prejudice to the accused. Hence, the impugned order passed by the Special Court cannot be sustained.

36. In view of the settled position of law and the dictum laid down by the Apex Court, this Court does not find any reason to interfere with the learned Trial Court’s order rejecting the Petitioner’s default bail application. As long as the chargesheet is deemed to be complete within the meaning of clause (b) of sub-section (1) of Section 190 read with sub-



2025:DHC:6918-DB



section (1) of Section 173 of the Cr.P.C. and enables a magistrate to lawfully take cognizance of an offence, it would not be deemed to be incomplete. It would most certainly not be “incomplete” because the CFSL report is not filed with it. Thus, the chargesheet filed on 28.02.2023 was a complete chargesheet in terms of sub-section (2) and (5) Section 173 and as soon as it was filed, the statutory period stood tolled, and the right of the Petitioner to default bail ceased to exist and became unenforceable. Thus, the question of default bail under Section 36A of the NDPS Act read with sub-section (2) of Section 167 of the Cr.P.C. would not arise at all.

37. Resultantly, the present petition is dismissed along with pending applications, if any.

38. It is made clear that the observations made in this judgment are limited to the aspect of the default bail application of the Petitioner. Any observation made herein will not have any bearing on the merits of this case.

SUBRAMONIUM PRASAD, J

HARISH VAIDYANATHAN SHANKAR, J

AUGUST 08, 2025
hsk/VR