

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL MISC.APPLICATION NO. 10557 of 2022****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE SAMIR J. DAVE**

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	-YES-
2	To be referred to the Reporter or not ?	-YES-
3	Whether their Lordships wish to see the fair copy of the judgment ?	-NO-
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	-NO-

SHANKAR @ SHIVA MAHESHWAR SAVAI

Versus

STATE OF GUJARAT

Appearance:

MR A S TIMBALIA(7372) for the Applicant(s) No. 1,2

MR JK SHAH, APP for the Respondent(s) No. 1

CORAM: HONOURABLE MR. JUSTICE SAMIR J. DAVE**Date : 06/12/2022****ORAL JUDGMENT**

1. The present bail application is filed by the applicants with a request to release the applicants on default bail in connection with CR No. II-470 of 2019 registered with Kadodara GIDC Police Station, District Surat for the offence punishable under Sections 8(c), 20(c), 29 of the NDPS Act.

2. Brief facts of the present case are as under:

2.1 That, the applicants came to be arrested with

contraband which prima facie suggests Ganja and investigating agency has registered an offence being CR No. II-470 of 2019 registered with Kadodara GIDC Police Station, District Surat for the offence punishable under Sections 8(c), 20(c), 29 of the NDPS Act. Thereafter, the investigation of the offence has been started and contraband has been sent to the FSL by letter No. DFS/EE/2019/NC/250 dated 01.11.2019 and thereafter, the investigating agency has filed the incomplete charge sheet on 24.12.2019 and in column no. 15 of the charge sheet, it has been mentioned that the contraband has been sent to the FSL and once FSL will issue the certificate, they will be produced. As per noting of column no.15- Certificate was not available with the investigating agency on 24.12.2019 at the time of filing of charge sheet. That, in absence of FSL report, the charge sheet cannot be said as complete charge sheet especially in the case of NDPS. Thereafter, the applicants have filed application under Section 167(2) of the Code of Criminal Procedure read with Section 36(4) of the NDPS Act for default bail which came to be rejected vide NDPS case No. 36 of 2019 on 16.04.2019 and as against that order, the applicants have approached this court with a request to release them on bail as indefeasible right.

3. Heard learned advocate for the applicants and

learned APP for the respondent-State.

4. It was submitted by learned advocate for the applicants that only report of FSL can decide whether seized contraband does fall under the purview of Narcotics Drugs and Psychotropic Substance or in absence of such a crucial certificate, the investigation cannot be said as a complete and in absence of such certificate, the charge sheet cannot be said as an incomplete charge sheet. That, the learned Special Judge has ignored the provisions of law and rejected the application of the applicants. Ultimately, it was submitted by learned advocate for the applicants to allow present application.

5. On the other side, learned APP for the respondent-State has strongly objected the submissions made by learned advocate for the applicants and submitted that FSL Gandhinagar was given dated 26.11.2019 as per which the muddamal confiscated was shown as narcotic substance ganja and thereafter, the charge sheet against the accused was filed on 24.12.2019 within period prescribed under law. That, the stand taken by the applicants for default bail is not proper and valid. Ultimately, it was submitted by learned APP for the respondent-State has requested to reject the present application.

6. Having heard learned advocates for the respective

parties and having considered the documents produced on record as well as conclusion of the learned trial court regarding rejecting the default bail application of the applicants, it appears that in connection with CR No. II-470 of 2019 registered with Kadodara GIDC Police Station, District Surat for the offence punishable under Sections 8(c), 20(c), 29 of the NDPS Act, accused no.1 and 3 means present applicants were arrested on 28th October 2019 and later on charge sheet was filed on 24.12.2019. Thereafter the applicants approached the learned trial court with request of default bail but the said request was rejected observing that mere inadvertence of entry in column no.15 of the charge sheet cannot make the applicants entitled to default bail as prayed for.

7. Of course, it is the submissions of the learned advocate for the applicants that after completing the investigation, charge sheet was filed by the investigating officer but FSL report was not supplied and that is how, incomplete charge sheet has been submitted by the investigating officer.

8. Hon'ble Supreme Court in the case of Dinesh Dalmia vs. CBI, (2007) 8 SCC 770, has held that though ordinarily all documents should accompany the charge sheet but even if all documents have not been filed, the same would not vitiate filing of the same.

9. If we consider the law point then Section 173 of the Cr. P.C provides that officer incharge of the police station has to forward to the Magistrate empowered to take cognizance of the offence, the report of the police after completion of the investigation. Sub-Section (2) provides the particulars which are required to be mentioned in the final report. Sub-section (8) of Section 173 clearly states that the investigating agency is not precluded from undertaking further investigation of the case and to forward further reports regarding evidence which may be collected during further investigation.

10. Thus, it is not that after completion of investigation of the case and presentation of final report before the Magistrate the investigating agency is precluded from collecting further evidence and producing it before the competent court. In these circumstances it may not be correct to hold that merely because certain report of expert is not accompanying with the final report, the said report is defective or incomplete. On the analysis of the statutory provisions of Section 173 and 167 of Cr. P. C, it can safely be stated that a charge sheet containing details specified in Section 173 of the Cr. P. C, if filed within the period prescribed under Section 167(2) is not vitiated or incomplete simply because the same was not accompanied by the FSL report.

11. While considering aforesaid law point and facts of the case, this is considered view of this court that the investigating agency has completed the investigation and police authorities is awaiting FSL report does not invite provision of 167(2) of Code of Criminal Procedure because FSL report is only to be considered as expert opinion/scientific conclusion. Not only that, the charge sheet of the present case was filed by NDPS Case No. 36 of 2019 on 24.12.2019 and looking to the charge sheet the said Forensic Officers of FSL, Gandhinagar have been shown as witness no.24 in the charge sheet.

12. Thus, it can safely be stated that the charge sheet in the instant case has been filed and the same without annexing with it the FSL report cannot be termed as defective or incomplete. Hence, the applicants are not entitled for default bail and no infeasible right is violated by non filing/non supplying the FSL report. Therefore, I do not find any merit in this bail application. The same is, accordingly, dismissed.

Rule stands discharged.