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MCRC-16602-2025

IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE

BEFORE

HON'BLE SHRI JUSTICE SANJEEV S KALGAONKAR

ON THE 8th OF MAY, 2025

MISC. CRIMINAL CASE No. 16602 of 2025

MOHAMMAD TOKIR

Versus

THE STATE OF MADHYA PRADESH

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Appearance:

Shri Khuzema Kapadia, Advocate for the applicant.

Ms. Mridula Sen, Govt. Advocate for the respondent/State.
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ORDER

This *second* application has been filed by applicant under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023 for grant of bail in connection with Crime No.156/2024 registered at Police Station-Nai Aabadi, District Mandsaur(M.P.) for offence punishable under Sections 8/15, 22 and 29 of NDPS Act, 1985. Applicant is in judicial custody since 05.08.2024. His first application was dismissed as withdrawn *vide* order dated 13.03.2025, passed in M.Cr.C. No.56007 of 2024.

As per the case of prosecution, A.S.I. Sunilsingh Tomar of P.S. Nai Aabadi, Mandsaur(M.P.) received a secret information that Tokir Ahmad @ Mohammad Tokir S/o Mohammad Ismail Ahmad is transporting the narcotic contraband *Doda-chura*(poppy-straw) and MD powder(Mephedrone). Accordingly, the higher officials were intimated and a raid was conducted on 05.08.2024. Tokir Ahmad(applicant) was apprehended on Jaipura Fanta



bifurcation at Dalauda, Mandsaur road. On his search in compliance with the procedure, 7 Kilo 500 Grams of narcotic contraband - poppy-straw and 160 Grams of narcotic contraband MD(Mephedrone) was recovered from the possession of Tokir Ahmad. Both the contrabands were seized in due compliance with the procedure. Applicant - Tokir was arrested. Crime No.156/2024 for offence punishable under Sections 8 R/w Section 15, 22 and 29 of NDPS Act was registered. On completion of investigation, final report was submitted on 31.01.2025.

Learned counsel for the applicant, in addition to the grounds mentioned in the application, submits that the applicant is falsely implicated in this matter. The chemical analysis report of C.F.S.L. Bhopal with regard to contraband Mephedrone, was not submitted alongwith the charge-sheet, therefore, charge-sheet was incomplete. Learned counsel referring to the order dated 05.11.2024, passed in M.Cr.C. No.32575/2024, order dated 11.12.2021 and 13.12.2021, passed in S.L.A.(Crl.) No(s)8164-8166/2021 by the Hon'ble Supreme Court, order dated 01.05.2023, passed by the Hon'ble Supreme Court in SLA(Crl.) No(s)11628/2022, order dated 04.12.2023(*Pankaj Gupta Vs. Narcotics Control Bureau*), passed by the Hon'ble Supreme Court in SLA(Crl)No(s).12200/2023, order dated 21.11.2023, passed in SLA(Crl) No(s).43791/2023 [*Pabitra Narayan Pradhan Vs. The State (NCT) of Delhi*] and order dated 21.04.2025, passed in S.L.P. (Criminal) No.2993/2025(*Jabir Kha Vs. State of M.P.*) contends that the FSL report was tendered without filing the supplementary charge-sheet. Therefore, the applicant deserves to be enlarged on bail.



Per contra, learned counsel for the respondent/State opposes the bail application on the ground of gravity of alleged offence.

Heard the arguments, perused the grounds for grant of bail stated in the application and the case diary.

As per the case of prosecution, applicant was apprehended while transporting two different contrabands. 07 Kilo 500 Grams of narcotic contraband - poppy-straw and 160 Grams of narcotic contraband MD(Mephedrone) were allegedly recovered from the possession of the applicant. The chemical analysis report with regard to the Poppy-straw was received and enclosed with the final report. The chemical analysis report with regard to other contraband i.e. Mephedrone(MD) was received and submitted after filing of the final report on 05.05.2025. Hon'ble Supreme Court in the case of **Hanif Ansari Vs. State(Govt. of NCR of Delhi)** reported in 2024 SCC OnLine SC 537 referring to order in the case of **Mohd. Arbaz v. State(NCT of Delhi)** 2020 SCC OnLine Del 2542 and **Kishan Lal v. State** 1989 SCC OnLine Del. 348 held as under :-

3. 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 barring 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."

4. In the special leave petition filed by said *Mohd. Arbaz [SLP (crl.) 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 v. 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."

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

6. The lead matter on this point is the case of *Directorate of Enforcement v. Manpreet Singh Talwar [SLP(Crl.) 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 v. The State (NGT) of Delhi [SLP (crl.) Diary No.43791 of 2023]*, *Shankar @ Shiva Maheshwar Savai v. The State of Gujarat (order dated 03.03.2023 in SLP (Crl.) 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).

8. 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.

The factual scenario of the present case is examined in the light of the aforesaid dictum of law. The final report was submitted alongwith the chemical analysis report with regard to contraband poppy-straw within prescribed time. The chemical analysis report with regard to other contraband MD(Mephedrone) submitted subsequently does render the final report illegal. The applicant is in custody since 05.08.2024. The complicity of applicant in alleged offence is *prima facie* made out from material on record. Considering the interdict contained u/S 37 of the NDPS Act and the



gravity of alleged offence, the custody of the applicant cannot be treated as inappropriately long. The trial is underway.

In view of the afore-stated facts, this Court is of the considered opinion that the applicant does not deserve to be extended benefit of bail. The bail application stands dismissed accordingly.

(SANJEEV S KALGAONKAR)
JUDGE

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