

INTERNATIONAL JOURNAL OF LAW
MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 5 | Issue 3

2022

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Filing of a Charge Sheet under the NDPS Act, 1985 read with section 173 of the Cr. P.C., 1973 without the Forensic Science Laboratory Reports - Its Implications and the Rulings of different High Courts – An Analysis

SRINIVASAN GOPAL¹

ABSTRACT

In the recent past, under the provisions of the NDPS Act, 1985, which is a special Act, on account of the difficulties being faced by FSL, the empowered officers of empowered departments have been filing charge sheet without annexing the final conformity test report of the Forensic Science Laboratory to the charge sheet under section 173(2) of Criminal Procedure Code, 1973. There has been divergence of views amongst various High Courts on the issue and this article analyses the issues involved extensively.

The NDPS Act, 1985 (hereinafter referred to as “the Act”) is a special Act relating to “*narcotic drugs, to make stringent provisions for the control and regulation of operations relating to narcotic drugs and psychotropic substances, to provide for the forfeiture of property derived from, or used in, illicit traffic in narcotic drugs and psychotropic substances, to implement the provisions of the International Conventions on Narcotic Drugs and Psychotropic Substances and for matters connected therewith.*” Hence, it can be safely concluded that the object of the Act is to, *inter alia*, operationalize the measures to control and regulate the narcotic, psychotropic and controlled substances, which have licit uses in the medical field to cure various illnesses the mankind suffers and simultaneously to proceed against the unscrupulous persons putting these very substances to illicit uses.

2. Readers may please note that an offence under the provisions of the IPC, 1860, the Customs Act, 1962, the CGST Act, 2017, the Income Tax, 1961, etc. operate on a different level *vis a vis* that under the NDPS Act, 1985.

3. With a number of seizures being effected by the empowered agencies like the Narcotics Control Bureau, Central Bureau of Narcotics, State Police, Customs department and the

¹ Author is a Superintendent of Central Tax at Office of Pr. Chief Commissioner of CGST & CX (DZ), New Delhi, India.

Directorate of Revenue Intelligence. The latest continued crackdown in a joint operation by the Gujarat ATS and the Directorate of Revenue Intelligence (DRI) on 21.04.2022 on illicit trafficking of 260 kilograms of heroin through nearly 17 odd containers at Kandla Port by smuggling into India, wherein the consignment declared as gypsum powder (which resembles heroin in colour but not by smell and other features) was moved from Afghanistan to Iran by land and then shipped from Bandar Abbas port in Iran to India (Kandla port) by a firm identified as Balaji Traders. Further, the seizure of 18 kilograms of contraband suspected to be heroin from a Kenyan passenger, who happens to be a serving officer of the Kenyan Administration, at the IGI Airport, New Delhi on 20.04.2022 and 2.5 kilograms of contraband suspected to be heroin in Foreign Post Office, New Delhi on 21.04.2022 is a concern. The trend of innovative *modus operandi* adopted, which was busted by the DRI with the ATS, Gujarat on the basis of an intelligence jointly developed, led to the examination of a container, having gross weight of 9,760 kilogram declared to contain 'thread', by DRI at Pipavav port, Gujarat. The said container on a detailed examination on 28.04.2022, out of 100 jumbo bags, four suspicious bags having a total weight of 395 kilograms, containing threads showed the presence of opiate derivative/Heroin in the field testing done by the regional Forensic Science Laboratory. **(Readers may note the difference in the approach at this stage)** The drug syndicate used this unique *modus operandi* by soaking the threads in a solution containing Heroin which were then dried, made into bales and packed in bags and shipped with normal bales. Multiple cases of seizure of 4.4 kilograms, 5.9 kilograms and 8.4 kilograms of Heroin in three separate seizures at Ahmedabad, seizure of 2.2 kilograms, 1.7 kilograms and 2.25 kilograms Heroin in the form of ingested capsules in three different seizures at New Delhi, seizure of 3.2 kilograms Heroin at Hyderabad and seizure of 4 kilograms and 7.9 kilograms Heroin in two different cases at Chennai have been effected by the DRI in the recent past. In the last two months, DRI has also booked three cases involving seizure of 3.7 kilograms of Cocaine in the form of ingested capsules from passengers arriving into India. In continuing with the fight against the inflow, the NCB, DZU had on 27.04.2022 seized 50 kilograms high-quality heroin, 47 kilograms suspected narcotics, 30 lakhs drug money in cash counting machines and other incriminating materials from a residential premises in Jamia Nagar, Shaheen Bagh, New Delhi.

3.1 In yet another crackdown by the officers attached to the Airport Special Cargo Commissionerate at the International Customs Courier terminal, Mumbai on the basis of an intelligence that a courier package originating from America contained narcotics drugs, watch was kept by the officers. The package was intercepted and 910 grams of Marijuana originating

in California was found concealed in an Air Purifier. Furtherance to the intelligence developed and with the help data analytics, the said officers intercepted three more parcels originating from North America during 22nd to 25th April, 2022. Intensive search of the parcels led to recovery of high quality hydroponics marijuana weighing 27.478 kilograms. During the dummy delivery, it was found that the person receiving the parcel was sending it to another address, where the residents would call another person to collect the package. The third person who came to collect the package was found to be the mastermind of the operation. During the course of search at the residence of mastermind, another 20 kilograms of marijuana, 120 grams of hashish and some other narcotics substances have been found. In the entire operation, using the controlled delivery route, 3 persons were arrested. The seizure of 5.85 kilograms cocaine on 06.04.2022 at the IGI Airport along with the other seizures noted herein signifies the fight carried out by the Indian Customs/DRI/NCB/other empowered organization/agencies against the menace of drugs inflow. The vigorous pursuit continues.

3.1.1 The *modus operandi* of illicit trafficking includes heroin hidden in shampoo bottles, bangles, high quality marijuana hidden in house hold appliances, Outdoor Waterfall, Fake wood Leather Chair, and Propane Gas Fire Pit table and these are apart from the swallow cases detected.

3.2 The trends categorically point out that there is a continuous attempt to pump in narcotic drugs, etc. and maintain a steady supply chain as there is a rise in consumption with especially many young people have started associating with the illicit trafficking and have become a part of the supply chain for the sake of making quick money and the hype it is associated with. The graduation from a small time consumer to a peddler and then slowly graduating to the next level not only destroys the person addicted to it but also, at the same time, destroys the familial ties and consequentially the said person is not only useless to the family but also to the society and the country at large. Eventually, a country cannot prosper or grow to greater heights if the youth of the country are on a self-destruction mode. Hence, the purpose and object of the Act is entirely different from that of the other Acts. Having said this, it is not to be mis-understood that the other Acts do not eat into the vitals of the society or the country. To put it differently, this Act is on a higher pedestal *vis a vis* other Acts which also involve arrests, seizures, etc. In other words, a comparison between the Act and other Acts is not at all necessary.

4. Esteemed readers may note that in terms of the section 36C of the Act, the provisions of the Cr. P.C., 1973 (hereinafter referred to as “the Code”) have been made applicable to the Act. Further in terms of section 51 of the Act, the provisions of Code shall apply to warrants, arrests, searches and seizures insofar as they are not inconsistent with provisions of the Act.

The Act provides for a minimum punishment of 10 years with fine in respect of commercial quantity, while small quantity attracts a sentence of one year with fine with effect from 01.05.2014 *vide* S.O. 1183(E) dated 30.04.2014 against the previous sentence of 6 months. However, the quantity above small but less than commercial quantity is termed as intermediate quantity attracting a sentence of up to 10 years with fine.

5. Before we proceed further, it is essential to understand the significance of the judgment of the Larger Bench of the Hon'ble Supreme Court in the case of Tofan Singh¹. The Larger Bench of the Hon'ble Supreme Court by 2:1 held that the officers who are invested with powers under section 53 of the Act are "police officers" within the meaning of section 25 of the Indian Evidence Act, 1872. Consequently, any confessional statement made cannot be taken into consideration in order to convict an accused under Act. A statement recorded under section 67 of the Act cannot be used as a confessional statement in the trial of an offence under the Act.

Confessions under section 25 of the Indian Evidence Act, 1872

5.1 Section 25 of the Indian Evidence Act, 1872 is to be viewed in contrast to section 24 of the Indian Evidence Act, 1872.

5.1.1 Section 25 of the Indian Evidence Act, 1872 is to be viewed in contrast to section 24 thereof, given the situation in India of the use of torture and third-degree measures². Unlike section 24 of the Indian Evidence Act, 1872, any confession made to a police officer cannot be used as evidence against a person accused of an offence, the voluntariness or otherwise of the confession being irrelevant – it is conclusively presumed by the legislature that all such confessions made to police officers are tainted with the vice of coercion.

5.2 The interpretation of the term "accused"³ in section 25 of the Evidence Act, 1872 is materially different from that contained in article 20(3) of the Constitution of India. The scope of the section is not limited by time – it is immaterial that the person was not an accused at the time when the confessional statement was made. Whereas a formal accusation is necessary for invoking the protection under article 20(3), the same would be irrelevant for invoking the protection under section 25 of the Indian Evidence Act, 1872. Section 26 of the Indian Evidence Act, 1872 extends the protection to confessional statements made by persons while "*in the custody*" of a police-officer, unless it be made in the immediate presence of a Magistrate.

Section 67 of the Act *vis a vis* sections 161 to 164 of the Code

5.3 "Enquiry" in terms of section 67 of the Act is not same as "investigation". Readers may note that it was held that s67 of the Act is at an antecedent stage to the "investigation", which occurs after the concerned officer under section 42 has "reason to believe", upon

information gathered in an enquiry made in that behalf, that an offence has been committed.

“Examination” under Section 67 cannot be equated with a “statement” under section 161 of the Code

5.4 Under s67(c) of the Act, the expression used is “examine” any person acquainted with the facts and circumstances of the case. The “examination” of such person is only for the purpose of gathering information so as to satisfy himself (the empowered investigating officer under the Act) that there is “reason to believe” that an offence has been committed. This cannot be equated to a “statement” under section 161 of the Code.

Availability of safeguards under Sections 161 to 164 of the Code to the accused

5.5 Under section 163(1) of the Code, no inducement, threat or promise, as has been mentioned in section 24 of the Evidence Act, 1872 can be made to extort such statement from a person and if a confession is to be recorded, it can only be recorded in the manner laid down in section 164 i.e. before a Magistrate. This confession can only be recorded after the Magistrate explains to the person making it that he is not bound to make a confession and that, if he does so, it may be used as evidence against him. The Magistrate is then to make a memorandum at the foot of the record that he has, in fact, warned the person that he is not bound to make such confession, and that it may be used as evidence against him. Most importantly, the Magistrate is empowered to administer oath to the person whose statement is so recorded.

5.6 Readers may note that what is being emphasized here is that when a person is being examined under section 67 of the Act, no oath is administered. **Furthermore, to draw a parallel, it is akin to s107 of the Customs Act, 1962** wherein any officer of customs empowered in this behalf by general or special order of the Commissioner of Customs may, during the course of any enquiry in connection with smuggling of any goods,— (a) require any person to produce or deliver any document or thing relevant to the enquiry; (b) **examine any person acquainted with the facts and circumstances of the case.**

5.6.1 In contrast, section 108 of the Customs Act, 1962³, any gazetted officer of customs duly empowered by the Central Government in this behalf, shall have power to summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing in any inquiry which such officer is making under this Act and every such inquiry as aforesaid shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228 of the Indian Penal Code (45 of 1860). When a statement under s108 of the Customs Act, 1962 is recorded, the said person is administered

oath. However, notwithstanding the above, the statement recorded under section 108 has to be corroborated.

5.7 It was further held that a “police officer” does not have to be a police officer in the narrow sense of being a person who is a police officer so designated attached to a police station. It was held that “... where a person who is not a police officer properly so-called is invested with all powers of investigation, which culminates in the filing of a police report, such officers can be said to be police officers within the meaning of section 25 of the Evidence Act, as when they prevent and detect crime, they are in a position to extort confessions, and thus are able to achieve their object through a shortcut method of extracting involuntary confessions.” It was further held that to arrive at the conclusion that a confessional statement made before an officer designated under section 42 or section 53 can be the basis to convict a person under the Act, without any non obstante clause doing away with section 25 of the Indian Evidence Act, 1872 and without any safeguards, would be a direct infringement of the constitutional guarantees provided under articles 14, 20(3) and 21 of the Constitution of India.

5.8 The dissenting opinion in Tofan Singh¹ was authored by Justice Ms. Indira Banerjee.

6. The differentiation that was available prior to rendering of the above judgment in the case of Tofan Singh¹ is no longer available i.e. when an officer of Customs investigated the case, the statement recorded by him was not hit by provisions of s25 of the Indian Evidence Act, 1872 as the Customs Officers were not police officers. To put it in a very different way, if a person charged with an offence under the Act and his statement is recorded by a police officer, the same was hit by provisions of section 25 of the Indian Evidence Act, 1872 *vis a vis* the same person’s statement if recorded by an officer of Customs. There appeared to be a dichotomy here and now with the rendering of the judgment in Tofan Singh¹, a neutralization effect has been brought out inasmuch as all the investigating officers under the Act are “police officers”.

7. Moving further, we find that the term “police report” has been defined under section 2(r) of the Code as “a report forwarded by a police officer to a Magistrate under sub-section (2) of section 173;”. The term police officer has not been defined under the Code. However, we find a reference to the term “police officer” in section 2 (o) of the Code which is as under: “officer in charge of a police station” includes, when the officer in charge of the police station is absent from the station-house or unable from illness or other cause to perform his duties, the police officer present at the station-house who is next in rank to such officer and is above the rank of constable or, when the State Government so directs, any other police officer so

present;”. So, it follows that an officer above the rank of constable or when the State government so directs is a police officer. At this stage we find that a reference to sub-section (2) of section 173 of the Code finds mention in s 2(r) of the Code. The empowered officers, at this stage may note that section 173 of the Code falls under Chapter XII of the Code and the Chapter XII contains section 154 to 176 of the Code and this chapter deals with “*Information To The Police And Their Powers To Investigate*”. The empowered officers under the Act may note that only officers superior in rank to constable, sepoy, peon can investigate a case under the provisions of the Act. The term ‘investigation’ is an inclusive definition and has been defined under s2(h) of the Code as under:

“includes all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorised by a Magistrate in this behalf;”

7.1 It follows from a cursory reading of the definition of the term “investigation” that all the proceedings under this Code are for the collection of evidence by a police officer. Since this article deals with the offences under the Act, a useful reference to the classification of the offences and the punishment at this stage is required. Under the Act, all offences have been classified as “cognizable offence” by virtue of section 37 of the Act and the term “cognizable offence” has not been defined under the Act but the same has been defined under section 2 (c) of the Code as under:

(c) “cognizable offence” means an offence for which, and “cognizable case” means a case in which, a police officer may, in accordance with the First Schedule or under any other law for the time being in force, arrest without warrant;

7.2 Since, the offences under the Act are cognizable and non-bailable by virtue of section 37 of the Act, the “police officers” are empowered to arrest the person accused of an offence under the Act and produce him well within the period of 24 hours from the time of arrest. However, time spent on the journey would be excluded. At this stage, it would be useful to note that if the movements of person(s) accused of an offence under the Act (or any other Acts) is restrained, the twenty four hours period would commence from the time of drawal of panchnama itself. At this stage, it will be extremely useful to refer to one of the decisions rendered in the case of Ugochukwu Solomon Ubabuko⁴ by the Goa Bench of the Hon'ble Bombay High Court wherein it was observed that the panchnama itself categorically recorded that the applicant and another person were taken into control and hence their movements were

restricted (meaning thereby they were under custody) on account of the resistance put by them (the bail applicants herein) and on account of minor injuries suffered by the one of the team members. On account of this, the applicant was to be produced within 24 hours from the custody as against 24 hours from the time of arrest. Noting the non-compliance and relying on the judgment in the case of Suaibo Ibow Casamma⁵, the applicant was ordered to be enlarged on bail on stringent conditions under article 22 of the Constitution of India.

8. A careful reading of Chapter XII of the Code reveals that essential there are three different kinds of reports to be made by police officers at three different stages of the investigation as under:

- (i) Section 157 of the Code requires a preliminary report from the officer in charge of a police station to the Magistrate.
- (ii) Section 168 of the Code requires reports from a subordinate police officer to the officer in charge of the station.
- (iii) Section 173 requires a final report of the police officer as soon as investigation is completed to the Magistrate.

9. And it is the final report under s173 of the Code which is also called by various names such as challan/charge sheet, which is under scrutiny. The final report refers to such of the documents which have been obtained, collected or gathered by the police officer to arrive at the conclusion that evidences do indicate that the person can be accused of an offence on the basis of the evidences brought on record. Had that not being the case, the police officer was well within the rights to release him under section 169 of the Code. In terms of section 173(2) well within the rights to release him under section 169 of the Code. In terms of section 173(2) of the Code, “the officer in charge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government, stating—

- (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 has been released on his bond and, if so, whether with or without*

sureties;

(g) whether he has been forwarded in custody under section 170.

(h) ...”

9.1 Sub-section (5) of section 173 of the Code mandates the police officer to “*forward to the Magistrate along with the report—*

(a) all documents or relevant extracts thereof on which the prosecution proposes to rely other than those already sent to the Magistrate during investigation;

(b) the statements recorded under section 161 of all the persons whom the prosecution proposes to examine as its witnesses”

10. Coming directly to the issue as to whether the provisions of s173(2) of the Code read with section 173(5) of the Code are inconsistent with the provisions of the Act is being deliberated in the subsequent paras as there are conflicting judgments on the issue. In other words, whether in a case of commission of an offence punishable under the provisions of the Act which is founded on recovery of narcotic drugs or psychotropic substance or controlled substances, a police report under section 173(2) of the Code can be taken cognizance thereof by the Court without the Chemical Analysis containing the qualitative and quantitative analysis by the Forensic Science Laboratory (FSL) or the Central Revenue Chemical Laboratory (CRCL) with reference to recovered and seized substances.

11. There are divergent opinions as to whether a report under section 173(2) of the Code could be considered as a complete report in absence of the Chemical Examiner’s Report/FSL Report/CRCL Report. There can be no dispute that say in the case of recovery and seizure of ‘Ganja’, the report of the FSL/CRCL may not have a huge role to play as the same may be identified on the characteristic features like colour, texture, smell, etc and the report obtained from the Field Testing Kit (FTK) or Drug Detection Kit (DDK) would supplement and complement the above enumerated features by the results. Similar would be situation in case of seizure of opium plant or heroin where the substances recovered and seized can be definitely identified on the basis of texture, smell, pungency, and other features and the report obtained from the FTK/DDK. Reports of FSL/CRCL, even if not filed with the charge sheet, may not lose its significance and there can be definitely be no two opinions on the same that the recovered and seized substance indeed fall under the ambit under the Act. The cases of seizure of codeine based cough syrups having clear cut batch numbers and name of the manufacturer, date of manufacture, date of expiry, etc would also fall in this category In such of these cases, the charge sheet cannot be said to be incomplete as the CRCL/FSL report would

only supplement the report obtained from the Field Testing Kit or Drug Detection Kit. In other words, the CRCL/FSL report may not be big force to be acted upon and also may not be central to the dispute.

12. However, to digress a bit, the author out of his experience would like to put on record that this situation may not be true in some cases, especially tablets, made out of controlled substances say ephedrine or pseudoephedrine wherein it was found that the controlled substances having been illegally/illicitly diverted into the open market, the pharmaceutical company, in order to show the usage of the controlled substances in the manufacture of the final product(decongestant), manufactured the same without the controlled substance and sold it to the distributor and as a part of the modus operandi, on receipt of the alleged decongestant, the same was to be destroyed on an individual strip basis. While it is a fact that the payments were made through legal banking channels, that does not ipso facto translate the same into a valid piece of sale. Although such cases may be few in nature yet the fact remains that different types of illicit trafficking continues and it is in such situation, the CRCL/FSL report may be of vital importance. It is to place on record that but for the specific intelligence, the modus operandi adopted would not have come to light.

13. Many instances have come to notice wherein the findings recorded by the FTK/DDK have not been confirmed by the CRCL/FSL and the confirmation by the FSL/CRCL were contrary to the initial tests recorded. It has been held in some of the confirmatory test reports that the seized substance(s) fall(s) outside the ambit of the Act. Would it be proper for the empowered department to file a charge sheet without the confirmatory test declaring identify of the seized substance in the first instance? This becomes a valid point inasmuch as if the seized substance falls outside the ambit of the Act, the person languishing in jail is entitled to be released on bail and such persons should not suffer for no fault of theirs. What is being emphasized here is that in a situation of mis-match between the results of FTK and the Final Chemical Analysis Report of the CRCL/FSL, the investigating officer is duty bound to bring the same to the notice of the Hon'ble Court. The Investigating Officer, on coming to know of the fact that the seized substance falls outside the ambit of the Act, should inform the Hon'ble Trial Court immediately so that the accused can come out on regular bail. Prolonged custody, when not required in a situation where the seized substance falls outside the ambit of the Act, infringes article 21 of the Constitution of India.

14. In order to illustrate this particular line of thinking, two important cases, which are only illustrative in character, decided by the Hon'ble High Courts are discussed here below for the ease of understanding the issue:

(i) In Shailesh Kanada⁶, a complaint *vide* N.D.P.S. Special Case No. 51 of 2013 came to be filed alleging that the applicant and the other accused had committed offences punishable under section 29 read with section 8(c) and section 22 read with section 8(c) of the Act by acquisition and possession of Methaqualone powder which is a psychotropic substance. On 12.4.2013, the learned Judge of the Special Court took cognizance of the alleged offences on the basis of the allegation that the seized substance was Methaqualone, though no report from Chemical Analyzer in that regard was available. **The Chemical Analysis Report came to be filed 14.06.2013 which indicated that Ketamine was detected in the sample marked as SA/2 and Methamphetamine in Samples marked as SB/2 and SC/2.** The Hon'ble Bombay High Court, while allowing the Criminal Application No. 56 of 2014, in para 49 of its judgment held as under:

“49. In my opinion, such a prosecution which has glaring and manifest defects cannot be permitted to be continued. It is nothing but an abuse of the process of the Court. That the report from CFSL, Hyderabad discloses that Methamphetamine and Ketamine were detected in the samples cannot come to the rescue of the prosecution to hold the present proceedings to be maintainable. The Investigating Agency has to blame itself for creating the present situation. Had it been sincere or careful, the Investigating Agency would have undoubtedly said that though the reports from Dy. C.C did not support the theory of the substance in question being Methaqualone, they still suspected the substance to be a psychotropic substance and that, its further analysis was being done. Had such a sober and reasonable stand been taken without filing the complaint hurriedly, at the most, some of the accused would have got the benefit of the mandatory bail, but a proper complaint could have been filed after receipt of the report from CFSL. Today, if at all, the applicants and the other accused are to be prosecuted, it can be done only on the basis that the Metamphetamine and Ketamine were detected in the samples. Undoubtedly, this can be done only by placing reliance on the report from the CFSL, Hyderabad; and the question as to ‘whether the report, which has been obtained by re-testing done without any permission or order from the trial Court, can at all be looked into’ would arise in that eventuality. Certainly, the observations made by me that ‘the

*report of CFSL cannot form the basis for the prosecution of the applicants and other accused', have been made in the context of the present case, (where the complaint proceeds on the basis that the substance in question was Methaqualone) and may not be treated as conclusive or binding in the event of the question of prosecuting the applicant and other accused on the basis that Metamphetamine and Ketamine were detected in the samples, arising. It is because such a question can be best decided only when a complaint/prosecution to that effect is filed. The Court concerned may decide the same at that time in accordance with law. **The fact, however, remains that the present prosecution, as it is, cannot be permitted to be continued further.**"*

Emphasis Applied.

(ii) In the case of Robin Singh⁷, the petitioner sought regular bail in FIR No. 363 dated 25.12.2020, under section 22(C), section 61 and section 85 of the Act, registered at Police Station Jhabhal, District Tarn Taran. It was contended that **the petitioner is in jail over 6 months and although it is alleged that intoxicant tablets were allegedly recovered from the petitioner yet the recovered substance is neither a narcotic drug nor a psychotropic substance and, therefore, does not fall under the Act.** In view of the above, especially when the recovered substance does not fall under the Act, the Hon'ble High Court extended the concession of regular bail to the petitioner.

15. Readers may note that the mis-match could be fatal too inasmuch as the FTK test report returns a finding that the recovered substance is a narcotic drugs or a psychotropic substance and the confirmatory test reports of the CRCL/FSL declares the same to be a controlled substance, the situation can be different for the simple reason that the concept of small quantity, intermediate or commercial quantity is not applicable to controlled substances and hence the rigours of section 37 of the Act are not attracted. To illustrate this situation too, we find that in the case of Ragib Rais Shaikh @ Sameer⁸, the facts, in brief, were that on secret information received that a person is likely to arrive at the tipped spot in Nerul and on completing the procedural formalities, the raiding team reached the spot at the given time. The person, who arrived on the spot, was identified by his dubious behaviour and was apprehended. On personal search, one plastic pouch containing crystal powder, was recovered from his pant pocket. **The police officers of the raiding team suspected the substance to be 'Mephedrone'**, the weight of which was found to be 67 grams. On completion of formalities,

the complaint was lodged invoking section 8A and section 22 of the Act, to which section 29 of the Act was added at a later stage. **The report received from the Assistant Chemical Analyser, Directorate of Forensic Science Laboratories, Mumbai, after analysing the said substance, which had an appearance in form of off-white crystals and declared the same as 'Ephedrine' and contained 14.84% of ephedrine, a controlled substance.** While releasing the petitioner on bail, the Hon'ble High Court observed and held as under:

'8. In light of the report of the Chemical Analyser, the Applicant cannot be punished under Section 22, which provides punishment for contravention in relation to psychotropic substances. The Applicant is also charged under Section 29, which provides for abetment and criminal conspiracy, which though may be read with reference to Section 25-A. The substance seized, being analysed as 'Ephedrine', the quantity is immaterial and cannot be a matter of consideration while establishing the charge under Section 25-A as the quantity is relevant only as regards the substance which falls under the category of 'Narcotic Drugs' and 'Psychotropic Substances'. As far as bar imposed under Section 37(1) is concerned, it comes into picture when a person is accused of an offence punishable under Section 19 or Section 24 or Section 27-A and for the offence involving commercial quantity. Since the substance seized from the Applicant, which is now identified as a 'controlled substance', prima facie, the offence committed by him do not fall in any of the said category. As far as the controlled substance as defined in Section 2(viid) is concerned, where no quantity is categorised as small or commercial quantity, the twin requirements contemplated in sub-section (1) of Section 37 need not be adhered to, before releasing the Applicant on bail.'

15.1 Reference may also be made to the Sumit Malawat⁹ case wherein it was the case of the prosecution that 112 grams Methamphetamine and 105 grams of Charas were recovered from the possession of the accused-petitioner. During pendency of the trial, the report of the FSL was received, as per which the presence of Methamphetamine could not be detected in the sample of the allegedly recovered packet, marked as A-1 and the only allegation that remained against the petitioner is of carrying 105 grams of Charas, which is less than the commercial quantity.

15.2 In the case of Jetha Ram¹⁰, it was submitted by the petitioner that two samples were

sent for FSL and according to the FSL report, some contents of opium was found in the sample-packet marked "A", which was below the commercial quantity. So far as other sample-packet marked "D" was concerned, though the sample was found to be acidic in nature and gave positive tests for the presence of Ammonium (NH₄⁺)ions, Chloride (Cl⁻)ions and Sulphate (SO₄⁻²) but they were not covered under the NDPS Act. It was further submitted that challan of the case was already presented and no other criminal case of similar nature has been registered against the present.

15.3 Further, in Sam Mathew¹¹, the High Court of Kerala granted bail to the accused on the basis of FSL report by stating the following in para 2 of the said Order:

*“2. On 08.03.2021, at Flat No.2 of Harmony Apartments in Pettah Village, Thiruvananthapuram, the search of the flat by the Inspector of Police, Pettah Police Station, ended in recovery of 39 grams of MDMA, from an almirah in the room. Four persons including the applicant were sitting in the room. Three of them including the applicant were arrested. The applicant has been in custody since then. It is stated that the final report has not yet been filed. **But, the FSL report has been filed which indicates that the contraband seized is not MDMA. But, it is only Metamfetamine coming as item No.159 in the Schedule to the NDPS Act and it requires 50 grams of Metamfetamine to make commercial quantity. The quantity involved is only 39 grams. And, therefore, the rigour of Section 37(1)(b)(ii) of the Act is not attracted in this case.**”*

15.4. At this stage, readers may note that the initially the seized item was MDMA. The said substance falls under serial number 138 of the Notification notified *vide* S.O. No. 1055 (E) dated 19.10.2001, for which small quantity is 0.5 grams and commercial quantity is 10 grams. However, the FSL report declared the seized substance as Metamfetamine, listed at Sl. No. of the Notification *ibid* and for which the small quantity is 2 grams and commercial quantity is 50 grams. In view of the confirmation by the FSL, the offence became bailable and hence the importance of FSL confirmatory test report is required to be understood in this context too.

15.5 On the basis of the above, it can be safely concluded that the results obtained from the FTK are only preliminary in nature and have to be duly supported by the final test report from FSL/CRCL confirming to the fact that the seized substances fall under the ambit of the Act. The importance of final test report of CRCL/FSL cannot be overemphasized where there are seizures of one substance and that substance is confirmed to fall outside the ambit of the

Act.

16. In the light of the above, the question of annexing the CRCL/FSL report along with the charge sheet assumes, significance and has a direct bearing on the accused person being entitled to default bail under s167(2) of the Code if it is held that the charge sheet is incomplete without the FSL/CRCL report. If it is held otherwise, as has been done by various High Courts, the person accused of the offence would not be entitled to statutory/default bail. Readers may also note the connection and the interplay between filing of the complaint within the statutory period of 180 days in respect of commercial quantity and 60 days for small and intermediate quantity.

17. The statutory period of 180 days for completion of the investigation under section 36A(4) of the Act can be extended by the trial court on the basis of the progress report of the Public Prosecutor outlining the progress of the investigation and need for an extension and in event the Court comes to a conclusion that there is indeed a case made out, the empowered department is allowed the additional period as prayed for and in no case the outer limit of one year can be breached. In a situation of this kind, the prosecution can file the charge sheet and the CRCL/FSL report within a year. Should the Court reject the application for extension, the prosecution is duty bound to file the charge sheet within the stipulated period of 180 days. Needless to mention, the extension of time period is available only in respect of commercial quantity for narcotic drugs and psychotropic substances.

18. The empowered officers should note at this stage that the filing of charge sheet within the period of 180 days or 60 days, as the case may be, without the CRCL/FSL report is different from non-filing of the charge sheet within the mandatory period. In respect of cases falling under the latter category, the person accused of the offence is entitled to default bail once he avails of the right vested under section 167(2) of the Code.

19. To take the matter further, the rulings, mostly rendered during the year 2021 & 2022, by various High Courts on the issue of FSL report to be part of the charge sheet or otherwise are cited below. This has been tempered with a few cases decided prior in time but the reasoning of the Hon'ble Courts is required to be noted in these decisions.

(i) In *Tajudin @ Rohtash*¹² the charge sheet came to be filed within 180 days for recovery and seizure of commercial quantity of charas, without the FSL report, which was filed after the expiry of 180 days. The Hon'ble Punjab and Haryana High Court held that in *Ajit Singh @ Jeeta's* case in CrI. Revision No.4659 of 2015 the issue as to whether a challan without FSL report is an incomplete challan or not was decided and it was held therein to the effect that if a report under s173 of the Code has been

filed without the FSL report, it can at best be termed to be an incomplete challan depriving the Magistrate of relevant material to take cognizance and if it is not submitted within the requisite period of 180 days, it would essentially result in a default benefit to the accused unless an application is moved by the Investigating Agency apprising the Court of status of investigation with a prayer for extension of time to the satisfaction of the Court. It has been further held that the chemical examiner report is an essential, integral and inherent part of investigation under the Act. Accordingly, relying on *Ajit Singh @ Jeeta's and Anr.*¹³, the petitioner was ordered to be released on bail on furnishing of bail bond to the satisfaction of concerned Chief Judicial Magistrate/trial Court/Duty Magistrate.

(ii) In the case of *Vinay Kumar @ Vicky*¹⁴, it was held by the Hon'ble Punjab and Haryana High Court that the Forensic report forms the foundation of a case under the Act and in case the same is not there, the entire case of prosecution would fall to the ground. Importantly, the Hon'ble Punjab and Haryana High Court has referred the question as to whether a challan filed without report of FSL would be an incomplete challan under the Act to a larger bench vide Order dated 09.09.2020 passed in *Julfikar*¹⁵ and the same is pending. Against this backdrop, the Hon'ble High Court extended the concession of bail in terms of 167(2) of the Cr. P.C., 1973 to the petitioner coupled with the fact that the petitioner has been behind bars since more than 9 months and is not stated to be involved in any other case. However, the Hon'ble High Court did clarify that the prosecution would be at liberty to move for cancellation of bail/recall of the Order dated 14.10.2021 in case the reference made to the larger Bench in *Julfikar's* case is answered in the favour of the prosecution.

(iii) In the case of *Bhim Sain*¹⁶ relying on judgments of the Division Bench of the Hon'ble High Court in the case of *Ajit Singh @ Jeeta*¹³ and *Dildar Ram @ Dari*¹⁷ held that the charge sheet filed without the FSL report would not be regarded as a complete challan/charge sheet and accused would be entitled to default bail under s167(2) of the Code.

(iv) In the case of *Sushil Kumar*¹⁸, the Hon'ble Punjab and Haryana High Court relying on judgments of the Division Bench of the Hon'ble High Court in the case of *Ajit Singh @ Jeeta*¹⁵ and *Julfikar*¹³ held that the charge sheet filed without the FSL report would not be regarded as a complete challan/charge sheet and accused would be entitled to default bail under s167(2) of the Code.

(v) In the case Pandurang Nagoba Khandade¹⁹, an application under s439 of the Code was filed for releasing the applicant on bail in connection with Crime No.121 of 2021 registered with Kandhar Police Station, District Nanded, under s20(a)(b) of the Act. It was contested that the filing of the charge sheet without Chemical Analysis (CA) report is incomplete charge sheet and cognizance on the basis of such incomplete charge sheet is impermissible. For this purpose, reliance was placed on the decision of the Hon'ble Bombay High Court in the case of Lakhan²⁰. The Hon'ble Bombay High Court, relying on the decision in the case of Sunil Vasant Rao Phulbande and Another²¹ while allowing the bail application filed by the applicant, held that it is impermissible for the Courts to take cognizance of the offence on the basis of charge sheet without CA report.

(vi) In the case of Ravinder²² the Hon'ble Punjab and Haryana High Court set aside an order where charges were framed by the Trial Court without obtaining a Chemical Examiner's report. In the aforesaid context, it was held as under:

“12. In the present case, the charge has been framed against the petitioner without obtaining Chemical Examiner's Report and in the absence of Chemical Examiner's Report in case of NDPS Act, it cannot be said as to whether the substance found in the bags recovered from the petitioner was a narcotic substance or not. In the absence of CFSL report, the trial Court cannot take cognizance of the offence and in the absence of Chemical Analysis Report, the charge sheet/challan cannot be said to be completed. Failure to file complete charge-sheet within a prescribed period confers on the accused right to be released on bail and the court is not competent to take cognizance of the offence on incomplete charge-sheet. Charge sheet is not complete unless it is accompanied by requisites contemplated under Section 173(5) of the Code.

13. In view of the above facts, it is clear that the charge cannot be framed on the basis of incomplete report and the final report, without having any FSL, narco-analysis and Chemical Examiners' Report is incomplete. The Court is to proceed for framing of charge only after receiving the same.”

(vii) In Rafael Palafox Garcia²³, a Single Judge of the Hon'ble Bombay High Court did not accept the view that a final report would be incomplete if not accompanied by a Chemical Examiner's report in a case relating to offences under the Act. The Court

distinguished the decision of the Division Bench of the Bombay High Court in Sunil Vasant Phulbande's case²¹ on the ground that in that case there was no mention of the samples of the seized material being tested at the spot by using a Field Testing Kit.

(viii) In Bail Application Nos. 301 of 2020 preferred by Navinkumar Pandu Jatot, Bail application No. 3505 of 2019 preferred by Umesh Laxman Gaikwad & Bail Application No. 3506 of 2019 preferred by Anil Raju Gaikwad, applications seeking bail in connection with C.R. No. 528 of 2019 registered with Baramati Taluka Police Station, Pune on 19.06.2019 for offences punishable under sections 20(b) and 22 of the Act came to be filed. The applicants preferred applications for bail under section 167(2) of the Code on 05.12.2019 on the ground that charge-sheet was filed without FSL report and hence the charge sheet was incomplete charge-sheet and the appellants were entitled to be released on bail under section 167(2) of the Code. While dismissing the bail applications by a common dated 31.01.2022²⁴, the Hon'ble Bombay High Court held as under:

“37 The investigating officer has forwarded letter to C.A./F.S.L. with samples for analysis on 2nd August, 2019. The CA report is now part of proceedings. The report is ordinarily filed in the form prescribed. One of the requirement for submission of Police Report is whether any offence appears to have been committed. In the decisions referred to above it is held that, even through experts report did not accompany charge-sheet, it cannot be said that it is incomplete chargesheet. Once a charge-sheet is filed within stipulated time, the question of default bail does not arise. It cannot be held that additional documents cannot be produced subsequently. There is no specific provision due to which no additional documents can be produced. When the charge-sheet is submitted without reports of experts well within the period of 60/90/180 days, merely because the report of expert was not filed along with it, the accused is not entitled to be released on bail under Section 167(2) of Cr.P.C. In the present case C.A./F.S.L. report shows that what was seized from accused is Ganja. The submission that in NDPS case the report under Section 173(2) of the code is incomplete in the absence of expert report cannot be accepted. By virtue of section 293 of the Code any document in the form of report of C.F.S.L. can be used as evidence in any enquiry, trial or other proceedings, under the Code. It is open to the Court to summon and examine scientific expert.

The satisfaction of investigating officer/members of raiding party during seizure of contraband that what is recovered is Narcotic drug/Psychotropic substance or controlled substance cannot be doubted at this stage. The purpose of submission of the police report with the details is to enable the Court to satisfy whether on the basis of report and the material filed along with report, case for taking cognizance has been made out or not. In the light of observations in several decisions referred hereinabove, the police report or charge-sheet containing the details specified under Section 173(2) of the Code is filed within prescribed period, default bail cannot be granted. The word 'shall' used in Section 173(5) cannot be recorded as mandatory but it is directory. As long as police report containing the details in Section 173(2) was filed within stipulated period under Section 173(2), there was no question of an accused claiming default bail. In absence of provisions of law no distinction can be made in NDPS case. In the present case there was no field test conducted. The officers who seized the contraband were of the opinion that on the basis of smell and nature that it was Ganja. Even otherwise in consonance with law laid down in various decisions, in the absence of CA report with charge-sheet, it cannot be termed as incomplete. Bail cannot be granted."

(ix) In Sagar Parshuram Joshi²⁵, the Hon'ble Bombay High Court was pleased to grant bail on the ground that the report of field test was not part of charge sheet, although test was conducted on the field drug kit and resultant colour pattern confirmed and matched suspect substance i.e. amphetamine recovered from the accused.

(x) In the case of Sameer²⁶ it was held that the investigating officer has already initiated proceedings to get analyst report by submitting appropriate requisition before the Court and simply because the analyst report is not received from the laboratory the investigation cannot be held incomplete. In Order dated 08.09.2021 in Bail Appl. No. 5747 of 2021/25 before the Hon'ble High Court of Kerala, a single bench of the High Court of Kerala after hearing the rival submissions observed as under:

"11. Admittedly, Hashish oil and MDMA seized from the apartment are commercial quantities. The detecting officer specifically stated that the identification of Hashish oil and MDMA are confirmed through the Excise

Inspector. Whether the Excise Inspector is competent or an expert to identify the contraband as Hashish oil or MDMA is a matter of evidence. While considering a bail application u/s.439 Cr.P.C, this court cannot go into such questions and conclude that the Excise Inspector who identified the article as MDMA and Hashish oil is not an expert or a competent authority. In this case, admittedly the requisition for getting the analyst report is already submitted and the matter has already reached the lab concerned. The ADGP also submitted that the report will be obtained within two weeks. In this case even though the prosecution is relying the analyst report, they rely on the same to corroborate the oral evidence already collected. Hence it cannot be said that the final report submitted in this case is incomplete and the petitioner is entitled default bail.”

Vide Order dated 28.09.2021²⁷ in the subsequent bail application, the same was also dismissed by the Single Bench of the High Court of Kerala by holding as under:

“2.I considered the bail application of the petitioner based on the facts in this case and considered all the contentions of the petitioner. As far as the non receipt of analyst report is concerned, I considered that matter in detail in the judgment and that is not a ground to allow the bail application.

Therefore, there is no change of circumstances and hence this bail application is dismissed.”

(xi) In the case of Manik Sahebrao Chowgule²⁸ the Hon’ble Bombay High Court held that charge sheet without C.A. report is incomplete and accused is entitled for bail. The facts of that case were that the recovered contraband was Ganja. Field test was not conducted and C.A. report was not filed with chargesheet, which, consequently resulted in the grant of bail under section 167(2) of the Code.

(xii) In the case of Vinay Kumar @ Vicky²⁹, the facts of the case, in brief, are that on 20.12.2020 when a police party headed by ASI Ashok Kumar was patrolling in the area of village Jandwala Bishnoian, a tractor was seen coming on the road and the driver of the said tractor upon noticing the police party abruptly tried to turn his tractor towards the fields but in the said process, his tractor stopped. The said person was apprehended and upon enquiry, he disclosed his name as Vinay Kumar @ Vicky, the bail petitioner herein. Upon checking a plastic bucket tied with the mudguard of the tractor, 7000 tablets of ‘Clovidol-10 SR’ (Tramadol Hydrochloride) were recovered.

The matter was investigated by the police and a report under section 173 of the Code was presented before the trial Court on 04.03.2021. The said report was, however, not accompanied by the report of FSL. Since the prosecution did not file the FSL report even by the said date, the petitioner moved an application under section 167(2) of the Code for his release on bail on 22.06.2021 on the ground that in the absence of report of FSL, the challan could not be said to be complete. The said application was considered by the trial Court but was dismissed *vide* order dated 05.07.2021, which was assailed by way of filing the impugned petition. The Hon'ble High Court, after hearing the rival submissions, while enlarging the petitioner on default bail, held as under:

“10. It is no doubt correct that Hon'ble the Supreme Court and also a full Bench of this Court have held that a challan even if not accompanied by a report of the Chemical Examiner or of the expert cannot be said to be incomplete. However, it needs to be highlighted that the said cases did not pertain to an offence under the NDPS Act. A case under the NDPS Act can only survive in case the prosecution is able to establish that the article recovered is indeed a contraband and which can only be established on the basis of its chemical examination, which is normally got done through FSL established by the Government. In other words, the report of the FSL forms the foundation of the case of prosecution and in case the same is not there the entire case of prosecution falls to ground.

11. On the other hand, in other cases say any injury or hurt or murder case under IPC, even the ocular version coupled with some medical evidence or some other circumstantial evidence may suffice to bring home the guilt of the accused. Though, a report of an expert, if sought, pertaining to some blood stains or comparison of handwriting, ballistic report, could be helpful to establish the case of the prosecution for such offences under IPC or some other Acts but cannot be said to be indispensable in each and every case and even in the absence of such reports, the prosecution may well be able to establish its case. As such, the contention of the petitioner that the report of FSL form very foundation of the case of prosecution and is an integral part of the challan cannot be brushed aside. In any case, since there are some conflicting judgments of this Court and the matter stands referred to a Division Bench and is still sub judice, this Court deem appropriate to extend the concession of bail in terms of Section 167(2) Cr.P.C. to

the petitioner while also keeping in view the fact that the petitioner has been behind bars since the last more than 9 months and is not stated to be involved in any other case.

(xiii) In the case of Manas Krishna T K^{30@}, the main issue which fell for determination in this reference before the Goa Bench of the Hon'ble High Court of Bombay was whether, in a case under the Act, the investigation can be said to be complete within the period prescribed under section 167 (2) of the Code when a police report under section 173 (2) is filed before the Special Court without any CA/FSL report along. After hearing the rival contentions in the case and on the basis of the elaborate analysis of each of the case relied upon, the Hon'ble High Court held that the charge sheet filed under s173(2) without the FSL report is not incomplete and consequently no default bail would arise. It is profitable to extract relevant paras from the Order:

“61. In the precise context of cases under the NDPS Act, there is a long line of decisions delivered by the learned Single Judges of our Court in Suwarnkar (supra), Rafael Palafox Garcia (supra), Aleksander Kurganov (supra), Shrihari Valse (supra), and Sheikh Shabbir (supra) that have taken the view that a chargesheet unaccompanied by a CA/FSL report is not incomplete and therefore, where the same is filed within the prescribed period, the accused, cannot insist on default bail. These decisions according to us, reflect the legal position correctly, and therefore, we endorse them.

62. The contention similar to what is now raised was rejected in Rafael Palafox Garcia (supra). Besides, there can be no general rule that the Magistrate or the Special Court can never take cognizance of any offense under the NDPS Act in the absence of a CA/FSL report. Ultimately, that will be a matter which will have to be decided on the facts of each case by the Magistrate or the Special Court as the case may be.

63. Further, the contention that a Magistrate or the Special Court, in any NDPS case, is not even competent to take cognizance of any offense based only on a field testing report as reflected in the Panchanama or otherwise in the absence of CA/FSL report is again, too wide a proposition to commend acceptance. Ultimately, a Magistrate or the Special Court will have to assess the charge sheet and, if necessary, the documents and the statements produced under Section 173(5) and thereafter decide whether any case is

made out for taking cognizance of the offense.

64. For example, in Jagdish Purohit v. State of Maharashtra 7 SCC 270, the Hon'ble Supreme Court after rejecting the CA/FSL report sustained the conviction by accepting the evidence of the members of the raiding party to prove that the powder which was found from the factory was methaqualone. The witnesses had stated that they had carried a kit to the field and had received sufficient training and had sufficient knowledge of narcotic substances and methods of testing them. This evidence was found sufficient to sustain a conviction even after ignoring CA/FSL report. Therefore, if a conviction could be sustained on such evidence, surely, cognizance of the offense can also be taken based on such material produced along with the charge sheet. All this will have to be assessed on a case-to-case basis and therefore, the general proposition as urged on behalf of the accused cannot be accepted.

65. There is and there can perhaps never be any dispute with the proposition that the right of a default bail in terms of Section 167(2) is a very valuable right that is now even elevated to the status of a fundamental right under Article 21 of the Constitution of India. The several decisions like M. Ravindran (supra), Rakesh Paul (supra), etc. relied on behalf of the accused, in this regard, therefore, need not even be discussed because there is and there can be no quarrel with the proposition laid down therein. However, as was explained by the Hon'ble Supreme Court itself in Dinesh Dalmiya (supra), such a right of default bail, although is a valuable right, the same is a conditional one. The condition precedent being pendency of the investigation. Therefore, once the investigation is complete with the filing of a police report containing the details specified under Section 173(2), the question of a claim or grant for default bail does not arise.

66. For all the aforesaid reasons, we hold that the presentation of a police report under Section 173(2) unaccompanied by a CA/FSL report does not amount to any incomplete police report or any incomplete charge sheet/challan even in the absence of an extension of time under Section 36-A(4) of the NDPS Act. Based thereon therefore the accused cannot insist upon a default bail.

67. Similarly, we hold that a police report under Section 173(2) or a charge sheet/challan accompanied by field testing reports as reflected in the Panchanama or otherwise also cannot be labeled as an incomplete police report/charge sheet/challan simply because the same was not accompanied by a CA/FSL report.”

(xiv) In the case of Mohd. Arbaz & Ors³¹ the Hon’ble High Court of Delhi, following the ratio of the judgment of the Division Bench of the High Court of Delhi in Kishan Lal³² (being a binding precedent on the Hon’ble Single Judge) and Babu³³ went on to hold that “*the petitioners’ contention that the report submitted on 27.05.2019 could not be construed as a report under Section 173(2) of the Cr.P.C must be rejected*”. However, it went on to observe that the decision of the Division Bench of the Hon’ble Punjab and Haryana High Court is an appropriate opinion, the relevant portion being 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.”

Emphasis applied

It follows from the above that the Hon’ble High Court of Delhi has expressed an opinion that the view taken by the Hon’ble Punjab & Haryana High Court is “*an appropriate view*”, however in view of the binding precedent, the Hon’ble High Court of Delhi expressed its inability to hold otherwise.

(xv) In Nitin Nagpal³⁴ it was held by the Hon’ble High Court of Delhi that if Chemical Analyser's report is the foundation to a case, in the absence thereof, cognizance cannot be taken and therefore, non filing of FSL report within the statutory period mandated, gives indefeasible right to the petitioner under section 167(2) of the Code.

(xvi) In the case of Mehabub Rehman @ Empha³⁵, petition came to be preferred on the ground that the petitioner was formally arrested in this case on 11.03.2020 and thereafter, charge sheet under section 173(2) of the Code was filed in this case. However, petitioner's name was not there in the charge sheet. *Vide* order dated 20.03.2020, learned Special Court had directed the petitioner to give his voice sample for getting it matched with the intercepted call recordings available with the prosecution. Thereafter, on 26.08.2019 supplementary charge sheet was filed against the petitioner without the Central Forensic Science Laboratory (CFSL) report of the voice samples and no extension of time was sought by the prosecution for completion of investigation in terms of section 36 A(4) of the Act. The statutory period of 180 days for completion of investigation and filing of complete charge sheet expired on 10.09.2020. In aforesaid circumstances of the case, petitioner filed an application seeking bail under section 167(2) of the Code read with section 364(A) of the Act on 23.09.2020. In the meanwhile, on 28.09.2020 report from CFSL was filed and *vide* impugned order dated 05.10.2020, the Ld. trial court dismissed petitioner's bail application. The Hon'ble High Court, after hearing the rival submissions, held 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. It cannot be lost sight of the fact that immediately after petitioner's arrest on 13.03.2020, prosecution filed an application seeking permission to obtain voice sample of petitioner/accused which was allowed on 20.03.2020 and on the same day voice samples were taken, but thereafter, because of lockdown due to covid pandemic, report could be obtained only on 26.09.2020.”

(xvii) In the case of Sayyad Mohammad @ Nasim^{36#} it was held as under:

“The Division Bench in the afore-mentioned judgment has delineated inter-play between Section 167(2) and 173 of the Cr.P.C. and has finally held that even if the charge sheet is not accompanied by a field testing report it cannot be labeled as in-complete police report simply because it

was not accompanied by FSL report. Resultantly, the accused would not become entitled to default bail for the reason that it was not accompanied by FSL report. 9. FSL report sometimes depends upon the nature of contraband substance. In the case at hand the contraband substance is Ganja. Ganja is a substance that can be easily identifiable by its smell, texture and structure.

The fact that ganja, unlike other synthetic drugs, is recognizable by the substance or identifiable by its smell, texture and structure. This is what is held by the Bombay High Court in the aforesaid case. Therefore, merely because the charge sheet did not accompany FSL report, the right of the petitioner cannot swing back to contend that he is entitled to be enlarged on bail. As long as the police report containing details as necessary under Section 173(2) is filed within the stipulated period, the accused will not get a right to contend that he is entitled to default bail on the ground that the final report filed is in violation of Section 173(5) of the Cr.P.C.

10. Section 173(8) of the Cr.P.C. directs further investigation in the matter. If the Police are entitled to further investigation, further documents can also be filed before the Court. Therefore, the FSL report is open to be placed before the Court. On this ground, the petitioner applied for default bail before the Sessions Judge. The Sessions Judge refused to accede to the submissions made by the petitioner holding that the principles laid down in the judgments of various High Courts would not entitle the petitioner to a default bail merely because FSL report is not part of the charge sheet. I find no error or infirmity in the order passed by the learned Sessions Judge declining to grant default bail.

(xviii) In the case of *Duo Jou Vireimi*³⁷, the petitioner was apprehended on suspicion on 18.02.2019 and 425 grams of heroin falling in the category of commercial quantity was allegedly recovered from the conscious possession of the petitioner. After completion of the investigation, challan/report under section 173 of the Code was presented before the Court against the petitioner without receiving the chemical examiner report/FSL. On account of the fact that the Police did not file the FSL report along with report under section 173(2) of the Code the petitioner filed an application for grant of bail on the ground that the FSL report was not submitted in the Court and in the absence of the same, it cannot be said that investigation has been completed and the petitioner be granted bail in view of the provision of section 167(2)

of the Code. The above said application was dismissed by learned Additional Sessions Judge, Panipat vide impugned order dated 30.08.2019. Feeling aggrieved, the petitioner filed the revision petition along with the application as referred to above. The Hon'ble High Court, after hearing the rival submissions, held as under:

“17. Admittedly, the report under Section 173(2) of the Cr.P.C. was filed in the present case on 10.04.2019. However, the said report/challan was filed without accompanying the FSL Report and the same was not filed despite the expiry of 180 days from the date of arrest of the petitioner. On expiry of the period of 180 days indefeasible right to grant of default bail is accrued to the petitioner.

18. In case Ravinder @ Binder Versus State of Haryana 2015 Vol. IV, RCR (Criminal) 441, this Court has observed that the police investigating into an offence and submitted report under Section 173 (2) within 90 days but report was not accompanied by chemical examiner report, it was thus incomplete charge-sheet and the Court is not competent to take cognizance of the offence on incomplete charge- sheet and held that the accused has indefeasible right to be released on bail as per the provision of Section 167 (2) Cr.P.C.

“19. In case, Criminal Revision No. 4659 of 2015 titled as Ajit Singh alias Jeeta and another Versus. State of Punjab decided on 30.11.2018, Hon'ble Division Bench of this Court on calling upon to answer the question as to whether the presentation of report under Section 173(2) Cr.P.C. by the police without the report of Chemical examiner/Forensic Science Laboratory amounts to incomplete challan.....”

The Hon'ble High court went on to hold as under:

“24. It follows from the above discussion that the impugned order passed by learned Additional Sessions Judge, Panipat suffers from material illegality and is liable to be set aside and the petitioner is entitled to grant of default bail under Section 167 (2) of the Cr.P.C. on the ground of filing an incomplete challan/report under Section 173(2) of the Cr.P.C. by the police on account of not filing the Chemical Examiner/Forensic Science Laboratory Report within the period of 180 days from the date of arrest of the petitioner.”

(xix) In the case of Sushil Kumar³⁸, the facts of the case, in brief, were that the bail application filed by the petitioner under section 167(2) Cr. P.C. for enlarging him on

default bail because the complete challan/police report was not filed (FSL report not being attached), was declined by the Additional Sessions Judge, Sirsa. In this case also, the Hon'ble High Court, after hearing the rival submissions, enlarged the petitioner on bail.

19.1 Similar Orders came to be passed in a number of cases by the Hon'ble Punjab and Haryana High Court, some of which are given below:

- (i) CRR-1041-2021 (O & M) decided on 03.03.2022 in the case of Rajender Kumar @ Surender @ Chhinda vs. State of Haryana
- (ii) CRR-1516-2021 decided on 21.02.2022 in the case of Pawan Kumar vs. State of Haryana
- (iii) CRM-M-50932-2021 decided on 03.02.2022 in the case of Yogpal vs. State of Haryana
- (iv) CRM-M-43133 of 2021 decided on 28.01.2022 in the case of Gurvinder Singh vs. State of Haryana
- (v) Criminal Revision No.1395 of 2021 decided on 16.12.2021 in the case of Gajjan Singh vs. State of Haryana
- (vi) CRR-1348 of 2021 decided on 16.12.2021 in the case of Bachan Singh @ Kala vs. State of Haryana
- (vii) CRR-1613-2021 decided on 16.12.2021 in the case of Chandan Kumar vs. State of Haryana
- (viii) Ravinder @ Binder vs. State of Haryana 2014 SCC OnLine P&H 24880
- (ix) CRR No. 168 of 2019 (O&M) decided on 26.03.2019 in the case of Tarlok and Others vs. State of Haryana
- (x) CRR No. 791 of 2016 decided on 23.04.2016 in the case of Gurpal Singh & Anr. vs. State of Punjab

19.2 In the case of Nishanth C³⁹ the Hon'ble High Court of Kerala granted default bail to the accused as the prosecution could not file chemical examination report even though final report was filed within the statutory period. In Nishant C's case, the High Court of Kerala had granted statutory bail under S. 167(2) of the Code by stating thus in para 3 of the Judgment:

“3. The jurisdictional court dismissed the application for statutory bail stating that the final report has already been filed. The contraband involved

is 2.045 kgs of ganja which is intermediary quantity and 25 grams of MDMA. Without chemical examination report to confirm that the contraband is MDMA, it cannot be said that the applicant was in possession of commercial quantity of MDMA. It has been more than a year and the prosecution has not been able to secure a chemical examination report confirming their final report that the contraband seized from the accused is MDMA. Under these circumstances, I find that the applicant is entitled to statutory bail under Section 167(2) r/w. Section 36-A(4) of the NDPS Act.”

19.2.1. Further, in Sam Mathew¹¹ case, the High Court of Kerala granted bail to the accused on the basis of FSL report.

19.3 In the case of Ram Babu Yadav⁴⁰ vs. State of Bihar, the Hon’ble High Court held as under:

“Considering the submissions of the parties, the Court finds considerable force in the contention raised by the learned counsel for the petitioner that though the present case is not with regard to default bail, but then charge-sheet came to be submitted in absence of F.S.L., merely because the Investigating Officer felt that the accused would get the benefit of default bail under Section 167(2) of the Cr.P.C. amply reflects that the Investigating Officer was not aware of the provisions relating to N.D.P.S. Act and was completely oblivious of Section 36A(4) of the N.D.P.S. Act as such mere filing of charge-sheet in absence of FSL does not justify the incarceration of the petitioner in custody as such for the present, for the purposes of bail, without expressing any opinion on merits of the case, the petitioner is directed to be enlarged on bail...”

19.4. In MS Daphira Wallang⁴¹, in para Nos. 5 & 6 of the said judgment, the Hon’ble High Court of Karnataka stated thus:

@“5. The object of chemical examination and quantitative analysis is to find out as to whether the accused was in possession of commercial quantity or smaller or less than commercial quantity, so as to know to what punishment he is liable. If the quantity is of smaller quantity, the punishment is only six months, it is more than smaller quantity and less than commercial quantity, the punishment is extendable upto 10 years and fine and if it is more than commercial quantity the punishment is upto 20 years and minimum is 10 years and in case of commercial

quantity the investigation can be done upto 180 days.

6. From the provision of the Act it is clear that, the chemical and quantity analysis has to be done at the earliest. Purpose of chemical examination is to find out the contents of Narcotic drug, if the chemical examination is delayed, there is every possibility of substance losing its character and on account of default in doing chemical examination at the earliest, it will result in failure of investigation and to book the accused for the said crime. But it is unfortunate that these matters are not seriously viewed by the authority and their lapse yield to the benefit of the accused.”

20. The end result of the aforesaid rulings clearly reveals that there is divergence of view amongst the various High Courts. The problem of not annexing the confirmatory test report is that of FSL, as the FSL is enjoined to do/perform tests for not only under the Act but also perform tests on samples for other offences under the IPC, etc. Of late with the enforcement machinery geared up, a lot of cases not only under the Act but also under the IPC, 1860, etc. have been booked, which have led to increase in workload of the FSL and on account of the mis-match between the number of personnel available to the number of samples received, pendency is created and this pendency is the main reason for gross delay in issuance of confirmatory test reports. Of course, it may be noted that such reports are submitted timely by the CRCL and this is a non-issue insofar as empowered officers of Customs, NCB, DRI, etc. are concerned.

21. Having noted the reasons for the non-annexing of FSL report, readers may note that it is not in dispute that section 173(2) of the Code enjoins upon the empowered officer to file a final report called the charge sheet and the same cannot be labelled as an incomplete police report/charge sheet/challan simply because the same was not accompanied by a Chemical Analysis Report furnished by FSL/CRCL report.

21.1 However, respectfully differing on this, it is submitted that when the provisions of s173(2) of the Code is read in conjunction with the definition of investigation under s2(h) of the Code, the same “*includes all the proceedings under this Code for the collection of evidence conducted by a police officer*”. Hence, the question that arises is that is it not the bounden duty of the investigating officer under the Act to collect all the evidences and then submit a holistic report to enable the Hon’ble Court to take cognizance thereof. While there can be definitely no two opinions on the issue that the offences under the Act are serious one causing immense loss not only to the family and society on one hand and to the nation as a

whole on the other hand and such unscrupulous persons indulging in illicit trafficking should not be in a position to come out on bail – be it default or regular – as these persons are threat to the country as a whole. Having said that it is equally important mandate of any investigation to be very fair, honest, & judicious and there should not be colourable exercise of power to put somebody behind bars even for a short duration and such actions are against the mandate of article 21 of the Constitution of India. The difficulties faced by the empowered officers are well taken but having taken note of, it cannot at the cost of innocent citizens, as has been pointed herein. *Ergo*, an enormous task is cast upon the empowered investigating officer to collect the evidences in a time bound manner and submit the charge sheet along with the final FSL report. Non-filing should be occasioned by proper reasons and for reasons beyond the control of the empowered investigating officers. It is required to be noted at this juncture that the Hon'ble Punjab and Haryana High Court, on a few occasions, had directed, DGP, Punjab/Haryana Police to look into the matter for not annexing the FSL report with the charge sheet.

22. In the alternative, to ease the workload, the State Police Departments facing difficulties in obtaining the FSL report in a time bound manner can enter into correspondence with the Union Ministry of Finance, Department of Revenue, Central Board of Customs and Indirect Taxes under whose administrative jurisdiction the Central Revenues Control Laboratories function by entering into an agreement, albeit, on a temporary basis to ease the work load in the overall interest of the empowered department. This measure would be win-win situation for all. At the same time, efforts to create a dedicated FSL to the cater to needs of this area can be initiated.

23. Be that as it may, the judgment of the Hon'ble High Court of Delhi in the case of Mohd Arbaz & Ors³¹ was carried forward by way of filing of SLP and the same have been numbered as Special Leave to Appeal (Crl.) No (s).8164-8166/2021. In terms of the Order dated 13.12.2021 passed by the Larger Bench of the Hon'ble Supreme Court, the main relief sought by the petitioners in these petitions was that they are entitled to bail in default on account of the fact that the investigating agency failed to file a police report under section 173(2) of the Code within the stipulated period of one hundred and eighty days. It was observed by the Hon'ble Supreme Court that although it is not disputed that a report was filed within the stipulated period, yet the petitioners contend that the said report was incomplete inasmuch as it was not accompanied by the report of the Chemical Examiner. After hearing the rival submissions and after taking material available on record, the Hon'ble Supreme Court directed that the petitioners be enlarged on interim bail for a period of three months from 13.12.2021

subject to the terms and conditions to be imposed by the trial court and posted the matter for 08.02.2022 for final disposal.

24. Special Leave to Appeal (Crl.) No(s). 2666/2022 (arising out of impugned final judgment and order dated 07-03-2022 in CRM No. 7556/2021 passed by the High Court at Calcutta) was tagged to the above Special Leave to Appeal (Crl.) No(s).8164-8166/2021. Special Leave to Appeal (Crl.) No.532/2022 (arising out of impugned final judgment and order dated 10.11.2021 in CRM No. 4989/2021 passed by the High Court at Calcutta) was also tagged to the said Special Leave to Appeal (Crl.) No(s).8164-8166/2021. Similarly, Special Leave to Appeal (Crl.) No(s).355/2022 (arising out of impugned final judgment and order dated 09.09.2021 in CRLR No.619/2021 passed by the High Court of Punjab & Haryana at Chandigarh) also stood tagged to the Special Leave to Appeal (Crl.) No(s).8164-8166/2021. SLP(Crl.)Nos.8496-8497/2021 also stood tagged to Special Leave to Appeal (Crl.) No(s).8164-8166/2021. *Vide* Order dated 07.12.2021, notice was issued in SLP(Crl.)Nos.8496-8497/2021

25. In SLP(Crl) No.8574/2021 decided on 11.12.2021, the Larger Bench of the Hon'ble Supreme Court after hearing the counsel for the petitioner and carefully perused the material placed on record observed and held as under:

“Although the petitioner – State of Haryana has challenged the impugned order affirming the order passed by the Sessions Court granting default bail to the respondent in terms of Section 167 (2) Cr.P.C. due to the failure of the prosecution in filing the FSL report with the challan under Section 173(2) Cr.P.C. yet taking into consideration the fact that the smack found in the possession of the respondent was small quantities of 15 gm 100 mg and more particularly the fact that the petitioner has suffered incarceration for a period of three months, we are not inclined to interfere with the impugned order passed by the High Court.

The special leave petition is, accordingly, dismissed.

The question of law is left open.”

25.1 SLP (CRL.) No. 2666/2022 stood tagged with SLP (Crl.) Nos. 8496-8497/2021 and in I.A.No.53398/2022 IN SLP (CRL.) No.2666/2022, the Division Bench of the Hon'ble Supreme Court posted the matter for 25.04.2022.

26. On account of the elaborate discussion on various aspects of the confirmatory test report of FSL, it categorically emerges that there is no consensus ad idem amongst the High Courts on the issue of annexing FSL test report with the charge sheet and it is expected that the matter

is laid to rest and given a quietus by the Hon'ble Supreme Court.

26.1 Notwithstanding the above, the results of the FTK/DDK are only indicative in nature and cannot be accepted with certainty. Certainty is only by way of a final confirmation test report of FSL. It would be unwise to accept the authenticity of the preliminary test (except in certain natural substances like cannabis, Ganja, opium plant) report of the suspect substance recovered from the accused persons. The case laws that have been cited in para supra further this cause. The investigating officers are expected to place on record additional material evidence in the shape of test reports to fortify their claim that the person accused of the offence has indeed committed an offence under the Act. One of the reason which fortify this is that small quantity and commercial quantity of different narcotic drugs and psychotropic substances have been prescribed and mis-match in the preliminary test report of FTL/DDK *vis a vis* final conformity test report of FSL would be fatal to the accused, as is evident from the case law discussed herein as the non-bailable offence becomes a bailable offence and further this only gives credence to the fact the initial test report cannot be relied upon all the time.

26.2 The purpose of filing an incomplete charge sheet should not be to frustrate the benefit of default bail available to the person accused of the offence under the Act. Mere filing of a charge sheet in the absence of FSL does not justify the person accused of an offence to be continued in custody. This is emphasized for the reason that most of the seizures in the recent past under the Act are of refined and processed substances and come in off-white, pale yellow, brown colours and they are colourless & odourless. Without the confirmatory test report from the FSL, it is terribly hazardous to place reliance only on the FTK/DDK initial test results.

26.3 Further, unlike in the US, there is no standardization on the use of reagents, which cause chemical reaction. It is also a fact that although the end results by using reagents, which corresponds to different substances being identified is necessary at the initial stage even by FSL yet the contraband needs to be tested further by other methods before the same is certified by the FSL.

26.4 The identification of the contraband by smell or otherwise seems to be arbitrary as it is left to the understanding, skill and wisdom of the seizing officer and it is a settled provisions of law that higher the punishment the higher would be scrutiny of the evidences and hence criminal jurisprudence requires that the final report of FSL is taken into account and not the initial FTK/DDK test report, which is always preliminary.

26.5 The importance of FSL test report cannot be overstressed primarily for the reason that the FSL test report provides adequate safeguard and protection to a person accused of an

offence under the Act against being accused for a wrong offence. The drawal of samples in the presence of a Magistrate, on the basis of the directions contained in *UOI vs. Mohanlal*⁴², ensures and rules out the possibility of tampering of the sample. Taking such a precaution is to complete the material link in the prosecution case by eliminating the possibility of the sample being tampered with at any stage. However, promptness in drawing the sample and getting it tested will also take away chances of the seized contraband changing colour, losing its smell, shrinkage in weight, etc.

26.6 A balance is always required to be struck between the need of the empowered department/organizations & the empowered officers on the one hand and the protection of person accused of offence(s) under the Act from injustice or discrimination on the other hand and the injustice and discrimination, if found, is hit by article 14 of the Constitution of India.

26.7 The empowered departments/officers falling under the jurisdiction of the respective Hon'ble High Courts would be bound by the rulings of the High Court under which they fall. As the question of law is still open until an authoritative pronouncement is made, it is incumbent upon the empowered officers to obtain the test report within time and file charge sheet along with final report from the FSL notwithstanding some of the rulings in favour of the empowered departments.

27. At the same time, it is also the duty of the FSL, notwithstanding the difficulties being faced, including manpower crunch, to put their whole hearted efforts in quick submission of the final confirmatory test reports so as to enable the empowered department/officers to submit the charge sheet well within time

References/Bibliography

1. Tofan Singh vs. State of Tamil Nadu - 2020 SCC OnLine SC 882 : (2021) 4 SCC.
2. In Bail Appln. 1590/2018 decided on 16.11.2018 by the Hon'ble High Court of Delhi in the case of Rajesh Sharma vs . DRI, the petitioner sought regular bail in Case SC No. 118/2013, titled as 'DRI vs. Rajesh Sharma & Ors.' under Sections 22(c), 25(A) & 29 of Act. In this case the bail petitioner had retracted the statements given by him and contended that force, coercion and third degree methods were used to extract the confession. Medical report of the medical officer (jail) dated 15.07.2013 along with the prescription dated 27.05.2013 showed that the petitioner was admitted as an inmate on 26.05.2013. There was tenderness over mid back & both soles and bruises over gluteal* region. He had swelling over both ankles. The injuries indicated towards use of force against the petitioner. Based on the above, the Hon'ble High Court held that there are reasonable grounds for believing that petitioner is not guilty of the offence under Ss22 (c), 25(A) & 29 of the Act.

*Any one of three large skeletal muscles that form the buttock and move the thigh.

3. K.I.Pavunny vs. Assistant Collector (HQ), Central Excise Collectorate, Cochin (1997) 3 SCC 721. In this case, the Hon'ble Supreme Court held that he Supreme Court had held that the person suspected by a customs officer, for having committed an offence, under the Customs Act, 1962, cannot be held to be an accused at that stage. He becomes an accused only when summons are issued by the competent court/Magistrate, pursuant to a complaint lodged by the competent customs officer. Hence, the statement recorded during an enquiry, under section 108 of the Customs Act, 1962, or during the confiscation proceedings is not that of an accused, within the meaning of section 24 of the Indian Evidence Act, 1872.

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4. Ugochukwu Solomon Ubabuko vs. UOI (NCB) through the Intelligence Officer, NCB, Sub Zone Goa, Porvorim, Goa in Criminal Miscellaneous Application (Bail) No. 585 of 2021 decided on 21.10.2021 by the Goa Bench of the Hon'ble Bombay High Court
5. Suaibo Ibow Casamma vs. UOI - 1994(1) Bom CR 64

6. Shailesh Kanada vs. Intelligence Officer, Air Intelligence Unit, Customs, Mumbai decided on 09.02.2015 by the Hon'ble High Court of Bombay -2015 SCC OnLineBom 3452
7. Robin Singh vs. State of Punjab arising out of CRM-M-20140-2021 decided on 30.06.2021 by the Hon'ble Punjab and Haryana High Court
8. Ragib Rais Shaikh @ Sameer vs. The State of Maharashtra (at the instance of Sr. P.I. Nerul Police Station vide C.R. No. II 48/15) in Criminal Bail Application No.1080 of 2021 decided on 23.09.2021 by the Hon'ble High Court of Bombay
9. S.B. Criminal Miscellaneous 4th Bail Application No. 2327/2022 decided by the Jaipur Bench of the Hon'ble High Court of Judicature for Rajasthan in the case of Sumit Malawat vs. State of Rajasthan
10. S.B. Criminal Misc. Bail Application No. 10995/2021 dated 28.03.2022 decided by the Jodhpur Bench of the Hon'ble High Court of Judicature for Rajasthan in the case of Jetha Ram vs State of Rajasthan
11. Bail Appl. No. 4910 of 2021 decided on 12.08.2021 by the Hon'ble High Court of Kerala in the case of Sam Mathew vs. State of Kerala
12. CRR-596-2021 decided on 7.10.2021 by the Hon'ble Punjab and Haryana High Court in the case of Tajudin @ Rohtash vs. State of Haryana
13. CRR No. 4659 of 2015 decided on 30.11.2018 by the Hon'ble Punjab and Haryana High Court in the case of Ajit Singh @ Jeeta and another vs. State of Punjab
14. CRR-712-2021 (O&M) dated 14.10.2021 decided by the Hon'ble Punjab and Haryana High Court in the case of Vinay Kumar @ Vicky vs. State of Haryana
15. Order dated 09.09.2020 passed in Julfikar vs. State of Haryana – 2020 (4) Law Herald 3188
16. CRR-1300-2021 (O & M) dated 28.10.2021 decided by the Hon'ble Punjab and Haryana High Court in the case of Bhim Sain vs. State of Haryana.
17. CRM-M-25600-2021 decided on 15.07.2021 by the Hon'ble Punjab and Haryana High Court in the case of State of Haryana vs. Dildar Ram @ Dari
18. CRR-710-2021 dated 16.03.2022 by the Hon'ble Punjab and Haryana High Court in the case of Sushil Kumar vs. State of Haryana
19. Bail Application No.1131of 2021 dated 16.11.2021 decided by the Aurangabad Bench of the Hon'ble Bombay High Court in the case Pandurang Nagoba Khandade vs. State of

Maharashtra

20. . Bail Application No.318 of 2021 and connected matter decided by the Hon'ble High Court of Bombay in the case of Lakhani S/o Deepak Jedhe vs. State of Maharashtra.
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26. Order dated 08.09.2021 in Bail Appl. No. 5747 of 2021 in the case of Sameer vs. State of Kerala decided by the Hon'ble High Court of Kerala
27. Order dated 28.09.2021 passed by the Hon'ble High Court of Kerala in Bail Appl. No. 7580 of 2021, in the case of Sameer vs. State of Kerala
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29. CRR-712-2021 (O&M) decided on 14.10.2021 in the case of Vinay Kumar @ Vicky vs. State of Haryana
30. Criminal Misc. Application (Bail) No.88 of 2021 (F) in the case of Manas Krishna T K vs. State, through the Police Inspector/Officer In Charge, Anjuna Police Station, Anjuna, Goa and others decided by the Goa Bench of the Hon'ble High Court of Bombay reported as 2021 SCC ONLINE BOM.2955.

@ In this case, the Goa Bench of the Hon'ble High Court of Bombay has held that the judgments rendered by the Bombay High Court where it was held that non-annexing of FSL report

to the charge sheet entitles the person accused of an offence under the Act to bail, as *per incuriam* for the reasons set out therein.

31. CRL.REV.P. 1219/2019 and CRL.M.A. 10252/2020 decided on 03.11.2020 by the

Hon'ble High Court of Delhi in the case of Mohd. Arbaz & Ors vs. State of NCT of Delhi

32. Kishan Lal³¹ vs State -1989 (39) DLT 392

33. Bail Appln. No. 2075 of 2020 decided on 25.09.2020 by the Hon'ble High Court of Delhi in the case of Babu vs. State

34. Nitin Nagpal vs. State 2006 SCC OnLine Del 704

35. CRL.REV.P. 340/2020 decided on 22.03.2021 by the Hon'ble High Court of Delhi in the case of Mehabub Rehman @ Empha vs. State Through: Spl Cell, Delhi Police

36. Writ Petition No.5934 of 2022(GM-RES) decided on 29.03.2022 by the Hon'ble High Court of Karnataka in the case of Sayyad Mohammad @ Nasim vs. State of Karnataka & Ors.

This decision along with the decision in the case of Manas Krishna T K(see sl. no. 30) was referred to in the case of Abdul Majeed Bhat vs. UT of J & K in Bail App No.24/2022 decided on 15.04.2022 by the High Court of Jammu & Kashmir and Ladakh at Srinagar

37. Criminal Revision No. 2531 of 2019 decided on 05.04.2022 by the Hon'ble Punjab and Haryana High Court in the case of Duo Jou Vireimi vs. State of Haryana

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39. Nishanth C vs. State of Kerala reported as 2021 SCC OnLine Ker 2870

40. Criminal Miscellaneous No.21326 of 2021 decided on 02.12.2021 in the case of Ram Babu Yadav vs. State of Bihar by the Hon'ble High Court of Patna, arising out of PS. Case No.-267 Year-2020 Thana- DINARA District- Rohtas

41. Inspector of Customs vs. MS Daphira Wallang - 2009 SCC OnLine Kar 364 @ For the purpose of determination of small quantity or commercial quantity, the entire substance (neutral substance + the narcotic/psychotropic substance) shall be taken into account in terms of the Larger Bench judgment of the Hon'ble Supreme Court of India in Criminal Appeal No. 722 of 2017 in the case of Hira Singh vs. UOI & Ors decided on 22.4.2020 reported as 2020 (4) TMI 671 - SUPREME COURT. Accordingly, the judgment rendered in E. Micheal Raj vs. Intelligence Officer, Narcotic Control Bureau (2008) 5 SCC 161 stands overruled. However, during the time this was prevalent, the quantitative analysis played an important role in the determination of small quantity and commercial quantity.

42. Union of India v. Mohanlal & Anr. -2016 (5) TMI 500-Supreme Court
