

INTERNATIONAL JOURNAL OF LAW  
MANAGEMENT & HUMANITIES  
[ISSN 2581-5369]

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Volume 8 | Issue 4  
2025

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# The Necessity of an FSL Report in NDPS Chargesheets

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## ABSTRACT

*In India, all drug related offences are dealt with and under the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS). 36A(4) in particular is of special interest for this essay due to the confounding jurisprudence it has produced giving rise to a concerning dissonance in the rights of stakeholders in the criminal process of India. 36A(4) extends investigative deadlines allowing agencies 180 days to complete investigations instead of the usual 90 days provided as per section 167 of the Code of Criminal Procedure, 1973 (CRPC). It is to be noticed that though, the NDPS (Seizure, Storage, Sampling, and Disposal) Rules, 2022 require that a sample be tested within fifteen days of its receipt chargesheets are regularly submitted without a Forensic Science Laboratory Report (FSL), because the rules do not prescribe a consequence for not conducting the test within fifteen days, regardless of this anomaly in law, can a chargesheet which has been submitted without an FSL be deemed complete? This question is important to answer because the path which a court chooses to tread here, determines whether or not the sanctity of article 21 is upheld. As of now this question is yet to be decided in the form of a reference before the Supreme Court. In this paper, I will undertake a doctrinal analysis of the judgments to discredit the tenability of the conservative anti-bail school of jurisprudence which has emerged owing to incorrect and contrarian interpretation of sections related to investigation and chargesheets by various high courts. In doing so we will end by seeing why the interpretations developed by the pro-bail school be adopted due to criminal law principles and ground reality of NDPS offences.*

**Keywords:** NDPS, Chargesheet, 36A (4) NDPS, 167 CRPC, 173 CRPC.

## I. INTRODUCTION

As has been said earlier, the supreme court is now hearing this question in the case of Jagdish Singh v. State of West Bengal,<sup>2</sup> here, the court has rightly recognized that, this decision involves a balancing of rights of the individual against the interest of the state. Though the supreme court is still hearing the question, the High Courts of various states have confidently chosen a side. Let's see the two threads

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<sup>2</sup> Jagdish Singh v. State of West Bengal SLP No. 3850 of 2023.

that emerge from this jurisprudence and what they entail.

## **II. THE TWO SCHOOLS OF JURISPRUDENCE**

For the sake of convenience, I will name one school as the pro-bail school (comprising of the High Courts of Rajasthan, Calcutta, and Punjab-Haryana), and the anti-bail school (comprising of High Courts of Jammu and Kashmir, Karnataka, Delhi and a few others). The pro bail school as the name suggests, holds that a chargesheet submitted without an FSL is an incomplete and thus in these cases, an accused is eligible to avail bail upon the completion of the prescribed period of 180 days under 36A(4), the anti-bail school on the other hand denies this right to the accused by holding that an FSL report is not necessary for a chargesheet to be deemed complete.

The basis of the anti-bail school's holding can be boiled down to three premises, a) precedent,<sup>3</sup> b) an untenable treatment of the Investigating Officer's opinion as an expert's opinion in identifying contraband, and an equally unjustified confidence in the veracity of the results of a field test kit,<sup>4</sup> and finally c) a misinterpretation of section 173 CRPC to extend investigation timelines indefinitely under the head of further investigations.<sup>5</sup> It is however to be noticed that these premises militate against the purpose of section 167(2) CRPC's institution, the following section of the paper will expose the incongruity of this school and show why this law is untenable within our present understanding of rights of accused and criminal procedure.

## **III. THE INCONGRUENCY OF ANTI-BAIL JURISPRUDENCE WITH SECTION 167(2) OF CRPC**

In the case of *M.Raveendran v. Intelligence Officer*,<sup>6</sup> it has been held that any ambiguity in law must be read to advantage the accused, the same case prescribed the adoption of this approach to even procedural sections of criminal law. Thus, the strict approaches which deny bail by holding that FSL is not necessary to complete an investigation are at the outset itself at loggerheads with settled principles of criminal law which naturally advantage the accused owing to the power disbalance, and disbalance in access to resources between the accused, and the state. This being a preliminary, technical fault in the anti-bail jurisprudence is yet only the first layer of our scrutiny.

As mentioned earlier, the anti-bail schools lay heavy reliance on the results of a field-testing kit and subsequently raise the investigating officer's opinion to that of an expert's opinion, the scrutiny of this act of the court is relevant because it significantly lowers the threshold of proof from proof beyond

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<sup>3</sup> *Suleman v. The State (NCT of Delhi)* 2022 LiveLaw (Del) 771.

<sup>4</sup> *Mustafa Plumber, NDPS Act, Chargesheet Without FSL Report Not Defective, No Ground for Default Bail Under Section 167(2) CrPC: Karnataka High Court, LIVE LAW (Apr. 7, 2022, 4:18 PM), <https://www.livelaw.in/news-updates/karnataka-high-court-absence-fsl-report-chargesheet-no-default-bail-section-173-1672-crpc-196062>.*

<sup>5</sup> *Sayyid Mohammad v Karnataka* 2022 LiveLaw (Kar) 108.

<sup>6</sup> *M.Raveendran v. Intelligence Officer* 2021 2 SCC 485.

reasonable doubt to reasonable belief. A field-testing kit is the first test which is undertaken by the seizing officer to determine the nature of a seized substance, a field testing kit is a reagent kit, meaning it contains a collection of chemicals (reagents) which change colour when they contact certain substances. It is to be noted that these tests according to police manuals themselves, are prone to error, and serve no other purpose beyond allowing the formation of a reasonable belief in the investigating officer's mind.<sup>7</sup> That being said, an important observation by the pro bail school is pertinent in this context. In cases like *Bhim Sain v. State of Haryana*,<sup>8</sup> *Rakesh Shah v. State of West Bengal*,<sup>9</sup> the High Courts of Bengal and Haryana-Punjab have rightly said that the purpose of a chargesheet is to enable a court to take cognizance of a matter, in that concrete determination of a substance's nature is crucial which remains doubtful in the absence of an FSL, thus an FSL essentially forms the very basis of the case of the prosecution while also allowing for a trial which is fair to the accused as well. If that is the case, how do anti-bail courts circumvent this very logical and important requirement? To understand this legal trickery, one has to look at a certain thread of oft cited cases which have enabled the birth and sustenance of the anti-bail school.

In *Sayyid Mohammad v. Karnataka*,<sup>10</sup> justice Nagaprasanna relied on two cases known as *Manas Krishna*,<sup>11</sup> and *Jagdish Purohit v. State of Maharashtra*.<sup>12</sup> In *Jagdish Purohit*, the supreme court relied upon the evidence provided by the raiding party and field testing kit to conclude that the seized substance was indeed a contraband, and convicted on the basis of that evidence. It is to be noted that the leeway provided by this precedent is borrowed cut and dry without any analysis of facts and such adoption raises the weight of field-testing kits and anecdotal evidence leading to a dangerous dilution of standard of proof which will now be reasonable belief as opposed to proof beyond reasonable doubt. Secondly as mentioned earlier it equates the investigating officer's opinion to an expert's opinion, the problem with this alteration is that it is oblivious of the interested status of the prosecution. Apart from that in more cases than one, it has been noted that officers not only frame dubious charges, but also misidentify substances.<sup>13</sup> With neither the reagent kit, nor the officer's opinion fulfilling the threshold of beyond reasonable doubt of probative value, one of the two glaring shortcomings of this jurisprudence is exposed, which is an unjustified, dangerous elevation of probative value to evidences which are known to be erroneous, and tainted with bias.

While weaknesses in terms of incongruency with standards of proof and evidence exist, another crucial

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<sup>7</sup> *Sagar Parshuram Joshi v. State of Maharashtra* (2021) 2021 SCC OnLine Bom 3051.

<sup>8</sup> *Bhim Sain v. State of Haryana* 2023 PHHC 120182.

<sup>9</sup> *Rakesh Shah v. State of West Bengal* 2023 LiveLaw (cal) 240 [Judgment extract: Filing of a charge-sheet without the Examination Report in relation to an offence under the NDPS Act is an exercise in futility and raises the presumption of the I.O filing a cipher only for the sake of closing the first window of the 180 days under the proviso to 36A(4) of the Act]

<sup>10</sup> *Sayyid Mohammad v. Karnataka* 2022 LiveLaw (Kar) 108.

<sup>11</sup> CRM. MISC. APP. (Bail) No. 88 of 2021 (F) (SEP 17, 2021).

<sup>12</sup> *Jagdish Purohit v. State of Maharashtra* (1998) 7 SCC 270.

<sup>13</sup> *Hanumantha & ANR AND State of Karnataka & ANR* 2024 LiveLaw (Kar) 403, & *Dheeraj Singh Parmar v. State of Rajasthan* 2025 LiveLaw (Raj) 71.

drawback of anti-bail jurisprudence lies in the fact that it is based on a misunderstanding of powers to conduct further investigations under section 173 of CRPC. This misunderstanding disempowers section 167(2) of CRPC which serves as a limit on days allowed to conclude investigation by an agency or an officer. This cap on days was placed to protect article 21 rights and enable fair trial and expeditious investigations.<sup>14</sup> However for it to serve its purpose it has been held that the section must be interpreted broadly, and a narrow technical interpretation must be avoided at all costs.<sup>15</sup> By resorting to a lax interpretation of section 173, anti-bail courts frustrate the protections afforded to an accused under section 167. The approach adopted under cases like *Manas Krishna, T.K. v. State* and other cases of the like,<sup>16</sup> reduces the threshold of completeness for a chargesheet and expands the time period given for an investigation indefinitely by accommodating them under the head of further investigations. As said earlier this expansive reading essentially nulls the purpose of section 167(2) and undermines the article 21 rights of the accused by subjecting him to a detainment which has been deemed unconstitutional in the case of *Dheeraj Singh Parmar v. State of Rajasthan*,<sup>17</sup> while diluting the accountability of the investigator.

#### IV. CONCLUSION

All in all the anti-bail school facilitates an unjustified dilution of the rights of the accused, by frustrating the inbuilt checks and balances provided for within the procedural provisions of 36A(4) NDPS, and its cousin 173 CRPC. It is to be noted that this dilution is happening in the face disappointing rates of success in prosecution,<sup>18</sup> and an extremely slow rate of establishment of testing facilities by the government.<sup>19</sup> It is obvious that the adoption of ratios emanating from the anti-bail school will allow the prosecution to take advantage of their own mistakes, thus in deciding the issue, the supreme court must recognize the faults in this school, and instil ratios which uphold the sanctity of criminal law principles in our country which not only uphold rights of the accused, but also inject accountability into the ethos of our investigative agencies.

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<sup>14</sup> *Uday Mohanlal Acharya v. State of Maharashtra* (2001) 5 SCC 453, & *Naimuddin Laskar v The State of West Bengal* C.R.M No. 8389 of 2021 (Calcutta High Court).

<sup>15</sup> *Rakesh Kumar Paul v. State of Assam* (2017) 15 SCC 67, & *M. Raveendran v. Intelligence Officer* AIR 2020 SUPREME COURT 5245, & *S. Kasi v. State* (2021) 12 SCC 1.

<sup>16</sup> 2021 SCC ONLINE BOM 2955; *Sagar Parashuram Joshi v. State of Maharashtra* 2021 SCC OnLine BOM 3051.

<sup>17</sup> *Dheeraj Singh Parmar v. State of Rajasthan* 2025 LiveLaw (Raj) 71.

<sup>18</sup> Suresh Deepala, Data: While the Number of Arrests Under the NDPS Act Increased in Recent Years, Convictions Remain Very Low, Factly (Mar. 10, 2025) (last accessed July 7, 2025), <https://factly.in/data-while-the-number-of-arrests-under-the-ndps-act-increased-in-recent-years-convictions-remain-very-low/>. The total number of cases resulting in conviction in the year 2019 was just about 89, which further fell in subsequent years.

<sup>19</sup> K. Salma Jennath, NDPS Trials Affected Due to Delay in Filling Vacancies in Forensic Labs: Kerala High Court, LIVE LAW (July 4, 2025, 10:04 AM) (last accessed July 7, 2025), <https://www.livelaw.in/high-court/kerala-high-court/kerala-high-court-city-police-commissioner-students-drug-use-296464>.