

*** HIGH COURT OF DELHI : NEW DELHI**
+ CRL.REV.P.691 OF 2009

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Decided on: August 05, 2011

SANTOKH SINGH

..... Petitioner

Through: Mr. Vikram Singh, Adv.

versus

STATE OF NCT OF DELHI

..... Respondent

Through: Mr. C.L. Gupta, APP for State.

Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. Whether the Reporters of local papers may
be allowed to see the judgment? Not necessary
2. To be referred to Reporter or not? Yes
3. Whether the judgment should be reported
in the Digest? Yes

MUKTA GUPTA, J. (ORAL)

1. This is a petition against the order dated 5th October, 2009 framing charge against the Petitioner for offences punishable under Section 25A and Section 29 of the Narcotic Drugs and Psychotropic Substance Act (in short NDPS Act).

2. Learned counsel for the Petitioner contends that no recovery was made from the Petitioner. The Petitioner was neither inside the vehicle from which

recovery was made nor was he present at the scene of occurrence. The Petitioner has not even been named in the FIR. Further no role has been assigned to him. Statement of Constable Vijay Kumar in this regard has been recorded who has stated that from the personal search of the Petitioner nothing has been recovered. The Petitioner has been sought to be implicated on the strength of telephone calls between the Petitioner and the co-accused. However in the absence of any recorded conversation it cannot be said that the Petitioner had entered into a conspiracy with the co-accused. Similarly situated Milap Singh has not been made an accused. Moreover, co-accused Pyare Lal has been discharged. The evidence placed on record is not sufficient for sustaining the conviction of the Petitioner. Reliance is placed on *Union of India Vs. Prafulla Kumar Samal and Anr. AIR 1979 SC 366* to contend that the Court has the power to shift and weigh the evidence and only in case if the material placed on record discloses grave suspicion against the accused, the Court would be justified in framing a charge and proceeding with the trial. Relying on *Century Spinning and Manufacturing Co. Ltd. and Ors. Vs. State of Maharashtra AIR 1972 SC 545* it is contended that the order framing charge does substantially affect the person's liberty and it is not possible to countenance the view that the Court must automatically frame the charge merely because the prosecution by relying on certain documents

considers it proper to institute the case. Learned counsel for the Petitioner further states that the trial is proceeding at a snail's pace.

3. Learned APP on the other hand contends that initially one Amarjit was arrested on the 19th February, 2008 who disclosed that the Petitioner was a financier and on the Petitioner's interrogation it was found that one more Satpal Singh was also involved. Recoveries were made from Amarjit Singh, Satpal Singh and Ismael. Besides the call detail records have been traced by the Investigating agency which shows that the Petitioner was in constant touch with the co-accused from whom recoveries have been made and, thus, there is no infirmity in the impugned order. It is submitted by the Learned APP that the evidence of the Prosecution is likely to be concluded soon as 12 out of 17 witnesses have already been examined and only formal witnesses remain to be examined.

4. I have heard learned counsels for the parties. Briefly, the case of the prosecution is about a conspiracy to procure acetic anhydride, a controlled substance illegally and export the same out of India to Afghanistan. A secret information was received that on 19th February, 2008 one Amarjit Singh and Kalim Akhtar would be coming to Delhi from Jaipur via National High Way No.8 having large quantities of acetic anhydride in a white colour Qualis bearing No. DL-IV-7178. This information was recorded vide DD No.14. A

Police party was constituted, and the vehicle was intercepted while approaching from the Haryana border at about 6.00 PM. Three persons were found occupying the vehicle that is Amarjit Singh, Kalim Akhtar and Smt. Rabia Begum wife of Kalim Akhtar. They were informed about the information and also about their legal right to be searched before a Gazetted Officer or a Magistrate. Notice under Section 50 NDPS Act was given and thereafter search was conducted. From the dickey of the vehicle 50.368 k.g. of acetic anhydrate was recovered kept in a plastic can. On their disclosure further investigations were conducted and pursuant thereto on 20th February, 2008 150 k.g. of acetic anhydrate was recovered from a car bearing No. DL-2CV-6225 driven by one Surender Singh, owned by Satpal Singh. As per the disclosure statement of the accused the Petitioner was the financier and made payments of contraband delivered in Afghanistan from here in India after receiving money through hawala. The role assigned to the other co-accused in the conspiracy was that Amarjit Singh, Smt. Rabia Begum and Kalim Akhtar used to handover the same to Satpal Singh who would then take it to Afghanistan. Accused Surender Singh while working as driver with Satpal Singh assisted him in packing etc. of acetic anhydrate and used to take the substance and Satpal to the airport for his visit to Afghanistan. Co-accused Ismael also used to procure acetic anhydrate through various truck drivers.

5. Indubitably no charge can be framed against an accused merely on the basis of the confessional statements of the accused or co-accuseds. However, in the present case the telephone call details shows that accused Santokh Singh and Satpal Singh were in constant touch with each other and Amarjit Singh. Accused Sampat Singh and Pyare Lal have been discharged for the reason that no role was assigned to them and there was no evidence against them. Though Petitioner has not been named in the FIR however his name has surfaced during the disclosure of the co-accused pursuant to which the call details were verified which shows that the two were together.

6. A perusal of the call record of phone No. 981195762 in the name of Speed Line International Co. Ltd. which is the Petitioner's company revealed that the Petitioner was in touch with the co-accused from 11th November till 12th February, 2008. Telephone records of co-accused persons Amarjit having no. 989991952 and Satpal having no. 9810698795 were also scrutinized. From a scrutiny of call records of all the three accused persons it has surfaced that co-accused Amarjit called the Petitioner on 10.11.07 at about 2:19 pm and on the same day around 6:21 pm co-accused Satpal called Amarjit. The Petitioner and Amarjit had conversation on 12.11.07 and also on 15.11.07 there were four calls made between co-accused Amarjit and Santokh, the Petitioner at 4:47 pm, 4:48 pm, 6:21 pm and then at 6:27 pm. On 16.11.07

eight calls were made to the Petitioner by co-accused Amarjit and soon after the last call at 7:13 pm the next call is made to co-accused Satpal by Amarjit at 7:30 pm and thereafter at 10:21 pm.. There are calls made on 16th and 17th November, 2007 also between all the three accused persons. On 18th November, 2007 there are consecutive calls between the Petitioner and co-accused Amarjit and then between Amarjit and Satpal. The accused persons were in constant touch with each other even thereafter. Call details show that they all were in touch on 20.11.07, 21.11.07, 29.11.07, 1.12.07, 7.1.2008, 8.1.2008, 12.2.2008 and number of calls were made between them. A perusal of the record of all the accused persons and Petitioner shows that intermittently as and when the calls are made on that date a number of calls are made, unlike in the case of an acquaintance where there would be regular calls. This also leads to the suspicion that as and when operation had to be carried out parties were in touch with each other. This conduct of the Petitioner and co-accused persons is also relevant under Section 8 of Evidence Act.

7. In *State v. Mohd. Afzal and others*, 107 (2003) DLT 385 a Division Bench of this Court observed as under:-

“327. Let us download the facts emerging from the cellphone records. Mobile number 9811489429 was

first activated on 6.11.2001. The SIM card of this number was used in the handset recovered from deceased terrorist Mohd. and Raja. On 13.12.2001 it was used on the handset recovered from the truck when accused Afzal and Shaukat were intercepted in the truck at Srinagar. Afzal for the first time took on rent premises at 281, Indra Vihar in the first week of November, 2001 coinciding with the activation of mobile No. 9811489429. This number was regularly in touch with the number of Shaukat Gilani and the terrorists. All these proved facts lead to only one hypothesis that this was the number of accused Afzal. We have already noted that the SIM card of this number was used on the mobile sets recovered from deceased terrorists Mohd. and Raja. This establishes frequent contact between accused Afzal and the terrorists. It also establishes that accused was in touch with the same satellite number as was in touch by the deceased terrorists. The learned Special Judge has relied upon eye witness evidence to hold that Afzal was interacting with the terrorist. We have preferred to use the unimpeachable evidence pertaining to the use of mobile numbers, their Sim cards and handsets. Our conclusion is the same.”

8. As observed above, call records data is unimpeachable evidence. At this stage a perusal of the call details record creates a strong suspicion and it cannot be said that there is no evidence against the Petitioner warranting his discharge.

9. Petition is dismissed.

**(MUKTA GUPTA)
JUDGE**

AUGUST 5, 2011/‘ga’