

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

**RESERVED ON : AUGUST 08, 2014.
DECIDED ON : SEPTEMBER 03, 2014.**

+ CRL.A.827/2011

HARLEY

....Appellant

Through : Mr.Sunil Mehta, Advocate.

VERSUS

STATE

....Respondent

Through : Mr.Lovkesh Sawhney, APP.

**CORAM:
HON'BLE MR. JUSTICE S.P.GARG**

S.P.GARG, J.

1. The appellant-Harley impugns the legality and correctness of a judgment dated 26.04.2011 in Sessions Case No. 105/2006 arising out of FIR No. 43/2003 registered at Police Station Sarai Rohilla Railway Station by which he was convicted for committing offences punishable under Section 21 (b) and 29 of Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred as 'NDPS Act'). By an order dated 12.05.2011, he was awarded RI for 20 years with fine ₹2 lacs under

Section 29 and RI for ten years with fine ₹1lac under Section 21(b) NDPS Act.

2. The prosecution case, as reflected in the charge-sheet, was that on 20.09.2003, ACP Ravi Shanker of Inter State Crime Cell got information that Raj Kumar Mehta was smuggling 'Smack' from Pakistan and had been supplying it to other countries through his local and foreigner conduits. A specific information was received by ACP Ravi Shanker that on 20.09.2003 at about 01.00 P.M. Raj Kumar Mehta would come at Sarai Rohilla Railway Station to deliver 'Smack' to an associate. A raiding party was organised. At around 01.10 P.M., Raj Kumar Mehta was seen coming on the platform No.1, Sarai Rohilla Railway Station. He stood near a toilet which was under construction. Pradeep Kumar Chawla came and shook hands with him. Raj Kumar Mehta exchanged the green bag in his possession with the packet in possession of Pradeep Kumar Chawla. They both were apprehended. The green bag recovered from Pradeep Kumar Chawla contained two packets of 'Smack' each weighing 1 Kilogram. The packet recovered from Raj Kumar Mehta contained 23,000 US Dollars. Necessary proceedings were conducted and First Information Report was lodged. Pursuant to Raj Kumar Mehta's disclosure statement, Harjinder Singh @ Jinda and Inder Singh were

apprehended around 06.00 P.M. from near Gol Dak Ghar. Inder Singh was found in possession of one kilogram 'Smack'. At that time, Harjinder Singh @ Jinda was sitting in the driver-seat of Indica Car bearing No. HR-38-FT-9720 and at his instance, a sweet box containing one kilogram 'Smack' was recovered from the dicky of the car. Subsequently, Mohd.Hanif, a Pak national, was apprehended at 09.00 P.M. from outside House No. H-3/45 in Sector-11, Rohini and at his instance 2 kilograms and 50 grams 'Smack' kept in a tube and concealed under ground near Japani Park was recovered. Pursuant to Harjinder Singh @ Jinda's disclosure statement, Harley (the present appellant) was apprehended on 22.09.2003 at about 01.00 P.M. from Munirka T-Point at Nelson Mandela Road near JNU and 300 grams 'Smack' was recovered from his possession. On his personal search, a mobile phone and a telephone diary were also recovered. He was taken to his room at village Munirka, however, nothing objectionable was recovered from there.

3. During investigation, two mobile phones from Pradeep Kumar Chawla and two mobile phones and four SIM cards from Harjinder Singh @ Jinda were recovered. Call details record revealed that all the accused persons were connected with each other. The samples of contraband were sent to Central Forensic Science Laboratory (CFSL), and

as per its report, these contained Diacetylmorphine (Heroin). Statements of the witnesses conversant with the facts were recorded. After completion of the investigation a charge-sheet under Sections 21/23/24/29 NDPS Act was submitted against all of them before the court. They were duly charged and brought to trial. To substantiate its case, the prosecution examined seventeen witnesses. In their 313 Cr.P.C. statements, the accused persons pleaded false implication. They examined Harjit Singh (DW-1), Ashok Kumar (DW-2), Vijender Singh (DW-3), Sandhya Meta (DW-4), Krishna Rani (DW-5) and Avtar Singh (DW-6) in defence. After appreciating the evidence and considering the rival contentions of the parties, the Trial Court, by the impugned judgment, held all of them guilty for committing offence under Section 29 of NDPS Act. In addition Pradeep Kumar Chawla, Harjinder Singh @ Jinda and Mohd. Hanif were convicted under Section 21 (c) of NDPS Act; Inder Singh and Harley were convicted under Section 21 (b) of NDPS Act. By an order on sentence dated 12.05.2001 they were awarded various prison terms. All the sentences were directed to operate concurrently.

4. Aggrieved by the impugned order, all the convicts preferred appeals before this Court. It is relevant to note that Inder Singh expired during the pendency of the appeal and proceedings against him stood

abated. Convict Raj Kumar Mehta in Crl.A.No.895/2011 decided on 18.09.2013 opted not to challenge the findings of the Trial Court recorded under Section 29 of NDPS Act and prayed for modification of the sentence order. Keeping various facts and mitigating circumstances in view, the substantive sentence was reduced to RI for 12 years with fine ₹1 lac and in default of payment of fine to further undergo SI for three months. In Crl.A.No.860/2011 filed by Pradeep Kumar Chawla @ Chhottu, the substantive sentence was reduced to RI for 12 years by an order dated 04.04.2013. Similarly, in Crl.A.No.911/2011 and Crl.A.No.1261/2011 filed by Harjinder Singh @ Jinda and Mohd. Hanif, while maintaining their conviction, the sentence order was modified.

5. I have heard learned counsel for the parties and have examined the record. During the course of arguments, learned counsel for the appellant restricted/confined his arguments only to challenge conviction under Section 29 NDPS Act. He vehemently urged that there was no material before the learned Trial Court to infer 'conspiracy' of the present appellant with co-convicts. The recovery from each of the convicts was independent. The disclosure statement made by co-accused Harjinder Singh @ Jinda on 21.09.2003 cannot be relied upon under Section 27 of Evidence Act. Harjinder Singh did not state if he had any

connection or nexus with the contraband found from the possession of the appellant. Only inference which can be drawn from the disclosure statement is that the appellant was one of the persons who dealt in such type of contraband. The investigating agency did not collect call details of phone No.9818278778 allegedly recovered from the appellant. Learned Additional Public Prosecutor urged that the conspiracy is formulated in secrecy and direct evidence is rarely available to establish it. The prosecution has brought on record cogent circumstances from where inference can be drawn that all the convicts were hand in glove and ran a racket or syndicate to possess and dispose of contraband.

6. Since the appellant-Harley has not opted to challenge the findings of the Trial Court regarding recovery of contraband i.e. 300 gms. Heroin from his possession, his conviction under Section 21 (b) stands affirmed. The prosecution examined PW-13 (Darshan Lal), an independent public witness, who was associated at the time of recovery of contraband from him. He fully supported the prosecution and identified Harley in the court to be the individual from whom Heroin weighing 300 gms. was recovered besides one mobile phone. No material discrepancy could be elicited in his cross-examination. PW-12 (Pankaj Sood), PW-14 (SI Harbir Singh) and PW- 16 (SI Ramesh Sharma) all have deposed of

the apprehension of the present appellant on 22.09.2003 pursuant to the disclosure statement (Ex.PW-14-B) made by Harjinder Singh at around 1:00 pm at 'T' point, Nelson Mandela Marg and Munirika Marg. Earlier they had gone to the room of the appellant which was found locked. Their testimony on material facts remained unchallenged in the cross-examination. They denied if Darshan Lal (PW-13) was acquainted with them prior to the occurrence. Darshan Lal categorically deposed that he had never appeared as a police witness in any other case. The appellant did not produce any document to show if Darshan Lal was a stock witness of the police, as alleged.

7. Criminal conspiracy is committed when two or more persons agree to do or cause to be done an illegal act or legal act by illegal means. Unlawful agreement is the gist or essence of the offence of conspiracy. The offence takes place with the meeting of minds even if nothing further is done. In reaching the stage of meeting of minds, two or more persons share information about doing illegal act or legal act by illegal means. This is the stage where each is said to have knowledge of a plan for committing illegal act or legal act by illegal means. Among those sharing the information, who do form the requisite intention would be parties to the agreement and would be conspirators. Criminal conspiracy is

generally hatched in private or in secrecy and is rarely possible to establish it by direct evidence. In most cases, proof of conspiracy is largely inferential though the inference must be founded on solid facts. Surrounding circumstances and antecedents and subsequent conduct, among other factors, constitute relevant material. Criminal conspiracy is a partnership in crime and there is in each conspiracy a joint or mutual agency for the prosecution of a common plan.

8. In the instant case, the prosecution was not aware about the appellant's involvement prior to the recording of the disclosure statement (Ex.PW-14-B) made by co-convict Harjinder Singh @ Jinda on 21.09.2003. At the first instance, the investigating agency was successful to apprehend Raj Kumar Mehta and Pradeep Kumar Chawla from Sarai Rohilla Railway Station. During investigation, Raj Kumar Mehta disclosed names of his associates and informed the police team about their whereabouts. On the pointing of Raj Kumar Mehta, Harjinder Singh @ Jinda and Inder Singh were apprehended at 06:00 p.m. from near Gol Dak Ghar and recoveries were effected from their possession. On the basis of disclosure statement made by Harjinder Singh @ Jinda, the appellant-Harley was apprehended and the recovery was effected from his possession. Co-convict Harjinder Singh had disclosed the residential

address of the present appellant i.e. House No.33- E, second floor, village Munirika. It was found locked. After the appellant's arrest, he was taken to this residence but nothing objectionable was found. The appellant did not deny that the said accommodation was not in his occupation. The apprehension of the present appellant and recovery of the contraband from his possession pursuant to Harjinder Singh's disclosure statement speaks volume of their acquaintance with each other.

9. At the time of appellant's arrest, a mobile phone 9818278778 (M-7) was recovered from him. There is no specific denial about its recovery. Two mobiles and four sims 9891010713 (M-3); 36502705 (M-4); 9818357749 (M-5) and 9815836701 (M-6) were recovered from the possession of Harjinder Singh. The prosecution has produced on record call details showing connectivity of mobile M-7 with Mobile M-3 and M-4. It reflects that from 14.09.2003 to 20.09.2003, there were number of incoming/outgoing calls for various duration on these three mobile phones. Harjinder Singh who has already confessed the guilt did not deny genuineness and authenticity of the call details. The appellant admittedly, a foreign national was apprehended with contraband in his possession in Delhi. At the time of his arrest, he did not have any passport or visa. He did not elaborate or explain as to how and in what

connection he was in constant touch with co-convict Harjinder Singh from his mobile M-7 to his mobile M-3 and M-4. Being a foreigner, apparently, he had no close association or link with co-convicts. It was within appellant's special knowledge as to when and for what purpose, he came into contact with co-convict Harjinder. Nothing was divulged by him in 313 statement. This connectivity among the convicts is a strong circumstance to show their equation with each other. The appellant did not explain as to when and for what purpose he visited India; since when he was staying in India; and what business or job he was performing in Delhi prior to his arrest. He even did not disclose from where he had procured the contraband and for whom it was meant.

10. The very fact that co-convicts have confessed their guilt and have not challenged their conviction under Section 29 NDPS Act, goes to show that they all were in conspiracy to deal in contraband recovered from their possession. Learned Trial Court has already dealt with this aspect minutely in the impugned judgment. On the basis of the call details and the recovery of the mobile phones (M-1 to M-7), the Trial Court concluded that the convicts used to have constant conversation on the mobiles from time to time. Minor discrepancies or lapses highlighted by the appellant's counsel are not material to disturb the findings of the Trial

Court on this issue. Accordingly, the conviction of the appellant under Section 29 NDPS Act stands affirmed.

11. Regarding sentence order, on parity the sentence awarded to the present appellant for RI for 20 years under Section 29 NDPS Act needs modification. Considering all the facts and circumstances of the case, the fact that the appellant is not a previous convict; co-convicts have been given similar relief, the sentence order is modified to the extent that RI for 20 years with fine ₹2 lacs would be RI for 12 years with fine ₹1 lac under Section 29 NDPS Act. The default sentence for non-payment of fine of ₹1 lac shall be SI for three months. Sentence under Section 21 (b) of NDPS Act would remain RI for ten years with fine ₹1 lac. However, the default sentence for non-payment of fine would be SI for three months instead of SI for one year. Both the sentences shall run concurrently and the appellant will be given benefit under Section 428 Cr.P.C.

12. The appeal stands disposed of in the above terms. Trial Court record be sent back along with the copy of this order.

(S.P.GARG)
JUDGE

SEPTEMBER 03, 2014/sa