

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRR No.3262 of 2017 (O&M)
Date of Decision: December 07, 2017

Sher Bahader

...Petitioner

VERSUS

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Preetinder Singh Ahluwalia, Advocate
for the petitioner.

Ms.Simranjeet Kaur, Asstt. Advocate General, Punjab
for the respondent-State.

INDERJIT SINGH, J.

The present revision petition has been filed by petitioner Sher Bahader against respondent State of Punjab, challenging the impugned order dated 31.07.2017 passed by learned Judge, Special Court, Patiala, vide which the petitioner was summoned under Section 319 Cr.P.C.

Notice of motion was issued. Learned State counsel appeared and contested the petition.

I have heard learned counsel for the petitioner as well as learned State counsel and have gone through the record.

From the record, I find that in the present case, FIR has been registered on the basis of secret information against co-accused Paramjit Kaur that she used to sell smack and drug tablets from her house and by

roaming on her scooty and if a raid is conducted at her house or if a naka is set up, a large quantity of smack and drug tablets can be recovered from her. As per the prosecution version, intoxicant tablets were recovered from the house of Paramjit Kaur during raid after the registration of the FIR. There is no allegation against the present petitioner Sher Bahader. During investigation, he was nominated in this case at the instance of SHO/Inspector Charanjiv Lamba. The main allegation against the present petitioner is that he has illicit relations with Paramjit Kaur and he used to connive with her and also helps her. There is also allegation that he used to talk on telephone with Paramjit Kaur. There is no other evidence on record of any type to show that present petitioner is involved in the commission of the offence under NDPS Act or he, in any way, connived in the commission of the offence.

Learned counsel for the petitioner brought to the notice of this Court, the cross-examination of PW-2 SI Baltej Singh. PW-2 Baltej Singh, Investigating Officer stated that he has not seen HC Sher Bahader in the surrounding area of house of Paramjit Kaur whenever he raided her house. It has not come during his investigation that Sher Bahader has illicit relations with Paramjit Kaur nor he has recorded any statement in this regard. He also stated that no record was collected of the telephone numbers during the investigation. He also admitted during cross-examination that there is no disclosure statement of Paramjit Kaur and Sher Bahader on the file regarding illicit relations between them. He further admitted that there is no direct evidence which shows that Sher Bahader aided accused in this case. SI Baltej Singh voluntarily deposed that it came

noted period.

The perusal of the statement given by SI Baltej Singh, Investigating Officer, in the Court, itself shows that there is no direct evidence showing involvement of Sher Bahader.

Again, I have gone through the statement of Inspector Charanjiv Lamba, who was posted as SHO at P.S. Sadar at that time. In the chief-examination, he has stated he nominated HC Sher Bahader as accused under Section 120-B IPC and gave direction to Investigating Officer Baltej Singh to investigate the matter thoroughly. In cross-examination, this PW stated that he only nominated the accused in the zimni on the basis of disclosure of the Investigating Officer as well as after going through the call details. He also admitted that no incriminating articles were recovered from HC Sher Bahader. He further admitted that it has not come that HC Sher Bahader assisted or financed to anybody in connection with the narcotics. He also admitted that if a person talks on telephone with another, then, on the face of it, that telephonic conversation does not fall in the purview of NDPS Act.

The perusal of the statements of the material witnesses shows that there is no case, even prima facie case, against the present petitioner to summon him under Section 319 Cr.P.C. It is settled law that standard of proof for summoning additional accused is somewhat more than prima facie case. It is also settled law that from the evidence, it should appear to the Court that the person whom the prosecution wants to summon as additional accused, is involved in the commission of the offence and should be tried along with accused already challaned. In the present case, it does not appear

offence.

In view of the above discussion, I find that the impugned order dated 31.07.2017 passed by learned Judge, Special Court, Patiala, summoning the present petitioner under Section 319 Cr.P.C., is not as per law and the same is set aside.

Therefore, finding merit in the present petition, the same is allowed.

December 07, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No