

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

% Decided on: 10th April, 2018

+ **CRL.L.P. 220/2018**

NARCOTICS CONTROL BUREAU

..... Petitioner

Represented by: Mr. P.C. Aggarwal, Advocate

versus

SAAD ANSARI & ORS.

..... Respondent

Represented by: None

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

Crl.M.A.6308/2018 (exemption)

Allowed, subject to all just exceptions.

CRL.L.P. 220/2018

1. Aggrieved vide judgment dated 25th September, 2017, whereby the Learned Additional Sessions Judge acquitted Respondent No. 1 Saad Ansari for the offences punishable under Section 20(b)(ii)(B) read with Section 28 of Narcotics Drugs and Psychotropic Substances Act, 1985 (in short 'NDPS Act') and Section 29/20(b)(ii)(C) NDPS Act and Respondent No. 2 Sonam Dava for the offences punishable Section 20 (b)(ii)(C) and Section 29 of NDPS Act, petitioner has preferred the present leave petition.

2. Briefly stated, prosecution case is that on 10th January, 2013 at about 10:00 A.M., a secret information was received by Azad Singh that one person namely Saad Ansari, aged about 25-26 years, medium built, fair complexion, was coming from Mumbai to Delhi by Rajdhani Express to receive charas from another person namely Dava Lama. The charas was to be delivered to Saad Ansari at Brij Palace Hotel, Paharganj, New Delhi.

Aforesaid information was reduced into writing and K.S. Chauhan, Asst. director, NCB constituted a raiding team consisting of Azad Singh, C.S. Rai, Vishwanath Tiwari, Sarita Kataria, Ct. Vasudev and Ct. Ganesh. The team reached the hotel and the receptionist, after checking the hotel register, informed that Saad Ansari checked into the hotel on 10th January, 2013 and room no. 103 was allotted to him. Surveillance was mounted near the hotel and raiding team waited for the person who was to deliver the consignment of charas. At about 2:30 P.M., one person of similar description as mentioned in the information entered the hotel and wanted to meet the person staying in room no. 103. Raiding team also proceeded towards the room and found two persons namely Saad Ansari and Sonam Dava (respondents herein). Notice under Section 50 NDPS Act was given to them and they were explained their legal right to be searched before a Magistrate or Gazetted Officer, however, both of them refused to exercise their right. Nothing incriminating was found from the personal search of Sonam Dava. From the personal search of Saad Ansari, Rs.52,000/- was recovered and on enquiry, he revealed that out of the total amount, Rs.35,000/- was to be paid to Sonam Dava for purchasing charas. During the search of the room, two bags of black colour lying on the bed were recovered. One black colour bag on which "HP" was written was identified by Saad Ansari as his bag and the other bag with "Converse" written on it was identified by Sonam Dava as his bag. 19 pieces of rectangular shape of dark brown colour solid substance was recovered from the bag of Sonam Dava and its total weight was 2 kg. Two samples of 25 grams each were taken out and kept in small polythene pouches and were marked as A1 and A2. On the basis of material on record, charges under Section 20(b)(ii)(B) read with Section 28 NDPS Act and

Section 29/20(b)(ii)(C) NDPS Act were framed against Saad Ansari and charges under Section 29/20(b)(ii)(C) NDPS Act were framed against Sonam Dava.

3. Prosecution examined 16 witnesses in order to prove its case. Rajesh Kumar (PW-2), C.S. Rai (PW-3), Sarita Kataria (PW-4), Azad Singh (PW-7) and Vishwanath Tiwari (PW-9), members of the raiding team, deposed on the lines of complaint. V.K. Sharma (PW-11), Chemical examiner, proved the chemical analysis report as Ex.PW-11/A.

4. Saad Ansari, in his statement recorded under Section 313 Cr.P.C., stated that on 10th January, 2013, his train reached New Delhi Railway Station. At that time, he was accompanied by his friend Mohsin Shaikh and went to Y2K Hotel, Paharganj for taking room. Since no room was available, the Manager of the said hotel referred them to KBM Hotel. They took the room in KBM Hotel. Thereafter, they went to Paharganj market, from where he was taken to Hotel Brij Palace in room no. 103 by NCB officials. Thereafter, NCB officials spun a false story and falsely implicated him in the present case. He was forced to sign in the hotel register of Brij Palace.

5. Sonam Dava, in his statement recorded under Section 313 Cr.P.C., stated that he never visited Brij Palace Hotel in Paharganj on 10th January, 2013 or at any point of time. He further stated that he was apprehended by NCB officials from Tibetan market in the morning hours of 10th January, 2013 in the presence of his brother Amar and other people. From there, he was taken to NCB office and falsely implicated in the present case.

6. Respondents lead defence evidence and Amar, brother of Sonam Dava, was examined as DW-1 and Ashok Kumar, owner of KVM

International Hotel, Paharganj, Delhi was examined as DW-2.

7. Learned Trial Court acquitting the respondents held that, firstly, non-production of the log book of official vehicle by the complainant Azad Singh goes to the root of the matter and casts shadow of doubt on the visit of NCB officials to Brij Palace Hotel, Paharganj. Secondly, non production of the CCTV footage of hotel casts doubt on the prosecution case since Saad Ansari had taken the plea in his cross examination that he was picked up from somewhere else and DW-2 Ashok Kumar stated that Saad Ansari was staying in his hotel. Sonam Dava also took the defence that he was picked up from Tibetan market. Neither any call connection between the respondents was shown nor the source of drugs was verified by the NCB officials despite the availability of phone numbers of the respondents. There was non-compliance of Section 41 and 42 of NDPS Act. Since, it was the admitted case of the prosecution that they had prior secret information, provisions under Section 41 and 42 of NDPS Act were squarely applicable and the case was not covered by Section 43 NDPS Act. Authorization (Ex.PW-7/B) in favor of Azad Singh (PW-7) given by K.S. Chauhan (PW-8) to conduct search/seizure was doubtful. Case property was tampered with as evident from the testimonies of V.K. Sharma (PW-11), Chemical examiner and S.K. Sharma (PW-16), Malkhana Incharge. When the case property was opened in court, it was found to be in torn condition. Lastly, conviction cannot be solely on the basis of statements under Section 67 NDPS Act in the present case.

8. Considering the findings of the learned Additional Sessions Judge particularly the fact that when the case property was opened in the Court, it was not found properly deposited and sealed, this Court concurs with the

view expressed by the learned Additional Sessions Judge. Hence, the impugned judgment acquitting the respondents cannot be said to be perverse warranting interference of this Court.

9. Leave to appeal is dismissed.

(MUKTA GUPTA)
JUDGE

APRIL 10, 2018
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