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HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No. 468 of 2021****Order reserved on 03.09.2021****Order delivered on 15.09.2021**

ROYDEN HAROLD BUTHELLO, aged about 29 years, R/o – Flat No. 20, Arunodaya CHS Ltd., A Wing, Manipada, Sunder Nagar, Kalina University, Near Buth Vihar, Kalina Santacruz East, Mumbai -400098

---- Petitioner**Versus**

State of Chhattisgarh, Through – Station House Officer, Thana/P.S. - Kotwali, Raipur (C.G.)

----Respondent

For Petitioner	:	Mr. Vimal Patel, Mr. D.M. Galani and Mr. Neeraj Choubey, Advocates.
For Respondent	:	Mr. Alok Bakhshi, Additional Advocate General with Mr. Adil Minhaj, Govt. Adv.

Hon'ble Shri Justice N.K. Chandravanshi**ORDER [C.A.V.]**

(1) Proceedings of the matter have been taken-up through Video Conferencing.

(2) This Criminal Revision has been brought challenging the legality, propriety and correctness of the order dated 14-07-2021 passed by Special Judge (NDPS Act), Raipur in Special Criminal Case No. 98/20 whereby petitioner's application filed under Section 227 of the Code of Criminal Procedure, 1973 (henceforth "the Code") was dismissed and has framed the charges under Sections 29 read with Section 22 (b), 22 (c), 25 & 27 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for brevity "the NDPS Act").

(3) Brief facts of the case are that a secret information was received by the Police of Police Station City Kotwali, Raipur, that accused Shreyansh Jhabak and Vikash Banchore are standing and waiting for customers to sell cocaine near Govt. Polytechnic College, Byron Bazar, Raipur. After noting down the information in the *Rojnamcha Sanha*; preparing *mukhbir* panchnama; and informing the City Superintendent of Police, Assistant Sub Inspector Mohd. Asrar Ali with Constable Kumar Gaurav Patel & Girdhar Prajapati reached the place of occurrence and having found the above two accused persons, they were raided and after making necessary compliance of provisions contained in Section 50 of the NDPS Act, they were searched, in which, Shreyansh Jhabak was found in illegal possession of 7 gms. cocaine whereas Vikash Banchore was found in illegal possession of 10 gms. of cocaine, which were wrapped in polythene sheet in their trousers' pocket. The seizure memos were prepared and the seized was weighed in electronic weighing machine. On being interrogation & verification of their mobile phones and call details, it was found that accused persons are part of drug cartel/mafia, who are engaged in the illicit trade and trafficking of cocaine and MDMA [Methylene-dioxy-methamphetamine] throughout the country including in several districts of the State of Chhattisgarh. FIR of Crime No. 255/2020 was registered under Section 20 (b) of the NDPS Act against the said accused persons.

(4) Based on the information received during the course of investigation, accused – Abhishek Shukla was arrested and from his possession 93.610 gms. MDMA was recovered. Since total quantity of seized contraband was 110.610

gms, which is more than the commercial quantity [100 gms], therefore, investigation further proceeded for the offence under Section 22 (c) instead of Section 22 (b) of the NDPS Act. During further investigation, it was revealed to the police that co-accused persons namely Abdul Azim, Mohammad Minhaz, Rohiz Ahuja, Laxman Gain, Rakesh Arora, Allen Soren, Gaurav Shukla, Ashish Joshi, Nikita Panchal, Sambhav Parak, Harshdeep Singh Juneja and present petitioner – Royden Harold Buthello are also involved in illicit trade and trafficking including sell, transportation and possession as also consumption of cocaine and MDMA. It was also found that the illicit drugs were brought to Raipur from Mumbai & Goa and consumed at the drugs party by the accused persons and is also sold to other intending customers. The police has recorded the statements of witnesses to the search and seizure operation; disclosure statements of accused persons; and diary statements of other witnesses i.e. Shiv Mudaliyar, Prakash Harpal, Kewal Barmeda, Avinash Shukla, Dashmit Chawla, Mayank Agrawal & Har Kiran Kaur. Statements under Section 164 of the Code have also been recorded of the witnesses namely Dashmit Chawla & Avinash Shukla. Petitioner had been arrested by police of Police Station Azad Chowk, Raipur on 21.10.2020 in connection with Crime No. 232 / 2020, therefore, after taking due permission of the Court, he was formally arrested on 2.11.2020 in this case. After completion of investigation, charge sheet was filed by the police against Shreyansh Jhabak & 14 other accused persons including the present petitioner.

(5) Petitioner had filed an application under Section 227 of the Code before learned Special Judge (NDPS Act), Raipur for his discharge from the alleged

offences.

(6) After affording due opportunity of hearing to both the parties, learned trial Judge, vide impugned order dated 14.07.2021, dismissed the application filed by the petitioner holding that *prima facie* there are sufficient ground for his involvement in crime in question and thus framed charges against him as mentioned in opening paragraph of this order. Hence, this revision.

(7) Learned counsel appearing for the petitioner would submit that while considering police report to act under Sections 227 & 228 of the Code, the Court has vast power to peruse the record of the case and documents submitted therewith to form a judicial opinion to find out that whether there are reasonable grounds to frame charges against the accused or not, and after hearing submissions of accused and the prosecution, if judge considers that there is no sufficient ground for proceeding against the accused, then he shall discharge the accused. He further submits that while framing charges, the Court is required to evaluate materials and documents on record to decide whether facts emerging therefrom taken at their face value would disclose existence of ingredients constituting the alleged offence. At the same time, accused has right to put his contentions on materials submitted by prosecution to explain away the materials giving rise to the grave suspicion. During the course of arguments, learned counsel for the petitioner would draw attention of this Court mentioning that there are various contradictions, improbabilities and discrepancies in the proceedings made by the police in this case. Neither, the petitioner was found in

possession of any contraband articles nor at his instance, any recovery of any contraband has been made. There is nothing on record, on the basis of which, alleged charges have been framed against the petitioner. The petitioner was arrested on 21.10.2020 by police station – Azad Chowk, Raipur in connection with Crime No. 232/2020 but till date no evidence was brought in this case against the petitioner. After his arrest, statements of Dashmit Chawla and Avinash Shukla were recorded under Section 164 of the Code to falsely implicate the petitioner with the said crime in this case whereas they have not stated the name of petitioner in their police statements, therefore, their statements recorded under Section 164 of the Code have no evidentiary value. He further submits that if the entire police report & material appended therewith is accepted as it is, then also petitioner cannot be held guilty for the alleged offences, despite that learned trial Court without properly appreciating / considering the materials filed by the police have framed the aforesaid charges against the petitioner, which is erroneous and unsustainable in law.

(8) Learned counsels for the petitioner placed reliance upon the judgment of the Supreme Court in the matter of **M.E. Shivalingamurthy v. Central Bureau of Investigation, Bengaluru**¹ wherein their Lordships of the Supreme Court has held legal principles applicable in regard to an application seeking discharge, as below :-

“17. This is an area covered by a large body of case law. We refer to a recent judgment which has referred to the earlier decisions, viz.,

1 (2020) 2 SCC 768

P. Vijayan v. State of Kerala² and discern the following principles:

17.1. If two views are possible and one of them gives rise to suspicion only as distinguished from grave suspicion, the Trial Judge would be empowered to discharge the accused.

17.2 The Trial Judge is not a mere Post Office to frame the charge at the instance of the prosecution.

17.3 The Judge has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding. Evidence would consist of the statements recorded by the Police or the documents produced before the Court.

17.4 If the evidence, which the Prosecutor proposes to adduce to prove the guilt of the accused, even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, “cannot show that the accused committed offence, then, there will be no sufficient ground for proceeding with the trial”.

17.5 It is open to the accused to explain away the materials giving rise to the grave suspicion.

17.6 The court has to consider the broad probabilities, the total effect of the evidence and the documents produced before the court, any basic infirmities appearing in the case and so on. This, however, would not entitle the court to make a roving inquiry into the pros and cons.

17.7. At the time of framing of the charges, the probative value of the material on record cannot be gone into, and the material brought on record by the prosecution, has to be accepted as true.

17.8. There must exist some materials for entertaining the strong suspicion which can form the basis for drawing up a charge and refusing to discharge the accused.

18. The defence of the accused is not to be looked into at the stage when the accused seeks to be discharged under [Section 227](#) of the Cr.PC

² (2010) 2 SCC 398

(see *State of J & K v. Sudershan Chakkar*³). The expression, “the record of the case”, used in [Section 227](#) of the Cr.PC, is to be understood as the documents and the articles, if any, produced by the prosecution. The Code does not give any right to the accused to produce any document at the stage of framing of the charge. At the stage of framing of the charge, the submission of the accused is to be confined to the material produced by the Police (See ***State of Orissa v. Debendra Nath Padhi***⁴).

(9) Learned counsels for the petitioner also placed reliance upon the judgment of the Supreme Court in cases of ***Sheoraj Singh Ahlawat & others v. State of Uttar Pradesh & another***⁵ & ***Sajjan Kumar v. Central Bureau of Investigation***⁶, in which, the aforesaid principles are reiterated & followed by the Supreme Court while considering the case under Sections 227 & 228 of the Code.

(10) Learned counsels for the petitioner would also submit that alleged contraband is said to be seized from the accused persons namely Shreyansh Jhabak, Vikas Banchore & Abhishek Shukla but in a proceedings against them, mandatory provisions under Sections 42 & 50 of the NDPS Act has not been complied with and there are many improbabilities, contradictions and discrepancies apparent from the material placed by the police, which shows that documents have been falsely prepared and fabricated whereas in catena of judgments, Hon'ble Supreme Court has held that non-compliance of mandatory provisions of Sections 42 & 50 of the NDPS Act will *per se* amount to prejudice with the accused and he is entitled to get benefit of non-compliance of mandatory provisions in this regard. He also placed reliance upon the judgment of the Supreme Court in the matter of ***Sarju alias Ram v. State of UP***⁷, ***Kishan Chand v. State of Haryana***⁸, ***Vijaysinh***

3 (1995) 4 SCC181

4 (2005) 1 SCC 568

5 (2013) 11 SCC 476

6 (2010) 9 SCC 368

7 (2009) 13 SCC 698

8 (2013) 2 SCC 502

Chandubha Jadeja v. State of Gujrat⁹, State of Rajasthan v. Parmanand & another¹⁰ & Tofan Singh v. State of Tamil Nadu¹¹ in support of their submissions.

(11) *Per contra*, learned Counsel appearing for the State/respondent would submit that this is a case of illicit trade and trafficking including sell, transportation and possession as also consumption of cocaine and MDMA, in which, all the accused persons are part of drug cartel/mafia, petitioner is one of them. In the investigation, it was found that illicit drugs were brought to Raipur from Mumbai & Goa and consumed at drug parties organized by the accused persons and also sold to other intending customers. During investigation, mobile call details of several accused persons were obtained by the police, in which, it was found that present petitioner was in constant contact of co-accused Shreyansh Jhabak, Harshdeep Singh Juneja & Ashish Josh. Witness- Harkiran Kaur mentioned the name of petitioner in her statement as one of person who were frequently visiting the various drug parties. In this regard, witnesses namely Dashmit Chawla & Avinash Shukla have also named the petitioner in their statement recorded under Section 164 of the Code as one of those who regularly consumed drugs at drug parties. Since the police has filed charge-sheet against the accused persons including the present petitioner for criminal conspiracy under Section 29 of the NDPS Act, therefore, all the accused persons being part of bigger drug cartel their act cannot be examined in isolation, therefore, in this case non-seizure of contraband from the possession of the petitioner has no worth. Since, the petitioner had been arrested by the Police of Police Station Azad Chowk, Raipur earlier in

9 (2011) 1 SCC 609

10 (2014) 5 SCC 345

11 (2021) 4 SCC 1

connection with Crime No. 232/2020 and he was in custody in that case, therefore, there is no question arise for the same (seizure) in this case i.e. Crime No. 255/2020. He further submits that proposition of law with regard to framing of charges is well settled by the Supreme Court in catena of judgments that at the time of framing of charges, the Court is required only to see whether *prima-facie*, there is sufficient ground to proceed against the accused and the court shall frame the charges and in this regard, it is not required to record detailed reasons. He would next submit that the grounds raised by the petitioner in the present petition can not be considered at the stage of framing of charge because those grounds relate to the stage of trial where sufficient opportunities would be afforded to the petitioner to defend his case. He would also submit that compliance of mandatory provisions of the NDPS Act also could not be considered at this stage because meticulous or probative value of the material on record cannot be gone into. According to him, there are sufficient material available on record regarding involvement of the petitioner in commission of alleged offences, therefore, learned trial Court has not committed any error in rejecting the application under Section 227 of the Code filed by the petitioner and in framing of aforesaid charges against him. In this regard, he placed reliance on the judgment of the Supreme Court in case of **Kanti Bhadra Shah and another v. State of W.B.**¹², **State of Delhi v. Gyan Devi and others**¹³, **Amit Kapoor v. Ramesh Chander and another**¹⁴, **Bhawna Bai v. Ghanshyam and others**¹⁵. He would also refer the case of **In re: Chinta Devi & Ors. v. The**

12 (2000) 1 SCC 722

13 (2000) 8 SCC 239

14 (2012) 9 SCC 460

15 (2020) 2 SCC 217

State¹⁶, in which it has been held by Calcutta High Court that in a petition filed under Section 482 of the Code, this is not at all the proper stage for deciding that question of non-compliance or otherwise of the mandatory requirements of the Act (NDPS Act) in relation to the search & seizure that was effected in the instant case and even if search & seizure was effected in violation of mandatory requirements of the Act, the evidence collected pursuant to such search would not be inadmissible under the Evidence Act.

(12) I have heard learned counsel appearing for the parties and perused the material available on record including afore-stated judgments cited by counsel for the parties with utmost circumspection.

(13) Basic law as to whether charge is to be framed or not has been provided in Section 227 of the Code that if, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing. But if charge is framed as per provisions contained in Section 228 of the Code, then recording of reasons for so doing is not required .

(14) In the matter of **State of Delhi v. Gyan Devi** (Supra), Hon'ble Supreme Court has held in paragraph 7 that legal position is well settled that at the stage of framing of charge the trial Court is not to examine and assess in detail the materials placed on record by the prosecution nor it is for the court to consider the

16 1997 SCC OnLine Cal 32

sufficiency of the materials to establish the offence alleged against the accused persons. At this stage of charge the court is to examine the materials only with a view to be satisfied that a *prima facie* case of commission of offence alleged has been made out against the accused persons.

(15) In the case of **M.E. Shivalingamurthy** (*supra*), Hon'ble Supreme Court has held that while deciding a discharge petition, only materials brought on record by prosecution (both in form of oral statements and documents) have to be considered. Accused is entitled to discharge if evidence (i.e. statements recorded by police or documents concerned), which prosecution proposes to adduce to prove the guilt of accused, even if fully accepted, before it is challenged in cross-examination or rebutted by defence evidence, cannot show that accused committed the offence. It is also held that though it is open to accused to explain away the materials giving rise to grave suspicion, but his submissions must be confined only to materials produced by the prosecution. Defence of accused cannot be looked into at the stage of discharge. It is also held that Court must, without making a roving inquiry into the pros and cons, consider the broad probabilities, the total effect of the materials before it, any basic infirmities appearing in the case, etc. Probative value of material on record cannot be gone into. Materials brought on record by prosecution has to be accepted as true, existence of some material to entertain strong suspicion is essential to draw up a charge and refuse to discharge accused.

(16) The afore-stated principles of law have been reiterated and followed by their

“27. Having discussed the scope of jurisdiction under these two provisions, i.e., [Section 397](#) and [Section 482](#) of the Code and the fine line of jurisdictional distinction, now it will be appropriate for us to enlist the principles with reference to which the courts should exercise such jurisdiction. However, it is not only difficult but is inherently impossible to state with precision such principles. At best and upon objective analysis of various judgments of this Court, we are able to cull out some of the principles to be considered for proper exercise of jurisdiction, particularly, with regard to quashing of charge either in exercise of jurisdiction under [Section 397](#) or [Section 482](#) of the Code or together, as the case may be :

27.2. XXX XXX XXX

27.4. Where the exercise of such power is absolutely essential to prevent patent miscarriage of justice and for correcting some grave error that might be committed by the subordinate courts even in such

cases, the High Court should be loathe to interfere, at the threshold, to throttle the prosecution in exercise of its inherent powers.

27.5. Where there is an express legal bar enacted in any of the provisions [of the Code](#) or any specific law in force to the very initiation or institution and continuance of such criminal proceedings, such a bar is intended to provide specific protection to an accused.

27.6. The Court has a duty to balance the freedom of a person and the right of the complainant or prosecution to investigate and prosecute the offender.

27.7. xxx xxx xxx

27.8 xxx xxx xxx

27.9 Another very significant caution that the courts have to observe is that it cannot examine the facts, evidence and materials on record to determine whether there is sufficient material on the basis of which the case would end in a conviction, the Court is concerned primarily with the allegations taken as a whole whether they will constitute an offence and, if so, is it an abuse of the process of court leading to injustice.

27.10 It is neither necessary nor is the court called upon to hold a full- fledged enquiry or to appreciate evidence collected by the investigating agencies to find out whether it is a case of acquittal or conviction.

27.11. xxx xxx xxx

27.12 xxx xxx xxx

27.13. Quashing of a charge is an exception to the rule of continuous prosecution. Where the offence is even broadly satisfied, the Court should be more inclined to permit continuation of prosecution rather than its quashing at that initial stage. The Court is not expected to marshal the records with a view to decide admissibility and reliability of the documents or records but is an opinion formed prima facie.

27.14 xxx xxx xxx

27.15 xxx xxx xxx

(18) A perusal of the principles of law laid down by the Supreme Court in afore-stated judgments shows that, it is settled law that at the stage of framing of charge the trial

Court is not to examine meticulously and assess in detail the materials placed on record by the prosecution nor it is for the court to see probative value of the material or to consider its sufficiency to establish the offence alleged against the accused persons. At this stage of charge the court is to examine the materials only with a view to be satisfied that a *prima facie* case of commission of offence alleged has been made out against the accused persons. The accused can only rely on the materials which are produced by the prosecution at this stage. No doubt grave suspicion or strong suspicion available on the record could be explained away by the accused but if it is not properly explained and the judge considers that accused might have committed offence and there is sufficient ground for proceedings against him, then framing of charges against the accused is justified.

(19) During the course of arguments, learned counsel for the petitioner would draw attention of this court mentioning various discrepancies, contradictions and improbabilities made by the police in respect of timings and other facts but these are factual aspect of the case, which could be considered and decided after recording of evidence. At this stage, only on the basis of alleged discrepancies or improbabilities, neither it can be said that evidence collected by the Police are not reliable nor can be said that those are inadmissible in evidence under the Evidence Act.

(20) In case of **Amit Kapoor** (Supra), their Lordships of the Supreme Court has held that quashing of a charge is an exception to the rule of continuous prosecution and where the offence is even broadly satisfied, the Court should be more inclined to permit continuation of prosecution rather than its quashing at that initial stage. The Court is not

expected to marshal the records with a view to decide admissibility and reliability of the documents or records but is an opinion formed *prima facie*. Therefore, alleged contradictions, irregularities or improbabilities with regard to proceedings made by investigating agency cannot be taken into consideration at this stage.

(21) So far as non-compliance of mandatory provisions of Sections 42 & 50 of the NDPS Act is concerned, copy of charge-sheet *prima facie* shows that mandatory provision of NDPS Act has been complied with, not only this but compliance of mandatory provisions of the NDPS Act are the matter of facts because whether it has been complied with or not as per provisions of the NDPS Act can be considered/decided only after affording due opportunity of hearing to the parties concerned by adducing evidence, before that it could not be considered/decided conclusively.

(22) This is a case of illicit trade and trafficking including sell, transportation and possession as also consumption of cocaine and MDMA in drug parties by fetching conspiracy by drug cartel from Mumbai & Goa to Raipur. Alleged contraband articles seized in this case from the possession of accused persons are more than the commercial quantity i.e. 110.610 gms. Material collected by the Police *prima facie* shows involvement of the petitioner – with drug cartel/mafia, who are engaged in the illicit trade and trafficking of cocaine and MDMA throughout the country including in several districts of Chhattisgarh State. Thus, I do not find any infirmity or illegality in the impugned order framing the alleged charges against the petitioner.

(23) As a fallout and consequence of the aforesaid discussion, criminal revision, being devoid of substance, is liable to be and is hereby dismissed.

(24) It is made clear that the trial Court shall proceed with the trial in accordance with law and decide the same without being influenced by any of the observations made by this Court in this order.

Sd/-

N.K. Chandravanshi
Judge

D/-