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

Judgement reserved on: 02.03.2022
Judgement pronounced on: 16.03.2022

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+ **CRL.REV.P. 385/2021**

RIDHM RANA

..... Petitioner

Through: Mr. S.S. Das, Ms. Ria Das & Ms. Sia
Das, Advs.

versus

STATE (NCT OF DELHI)

..... Respondent

Through: Mr. Amit Chadha, APP for the State
with SI Arvind, AGS/Crime Branch.

CORAM:

HON'BLE MR. JUSTICE TALWANT SINGH

TALWANT SINGH, J.:

1. The present petition has been filed for setting aside the order on charge dated 23.10.2021 in SC No.200/2021, FIR No.104/2021, PS: Crime Branch, whereby the Ld. Special Judge ordered for framing of charges against the Revisionist u/s 20(c) r/w 29 of The Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act). The petitioner is one of the accused in the above matter.
2. The case of the prosecution is that on 12.06.2021 at about 4:30 AM, secret information was received that one Shanta Kumar was engaged in supply of Charas through his trustworthy driver and he would be sending one



consignment of Charas through him to Delhi to the petitioner to be delivered near Fortis Hospital, Vasant Kunj.

2.1. On the basis of this secret information, when the raiding party reached at the spot at around 6:10 AM, they found two vehicles i.e., one truck and one car parked on the Vasant Kunj Road and three persons were talking to each other, later on identified as Rakesh, Ridhm and Sarvesh.

2.2. Driver Rakesh took out two polythene bags, one of black colour and the other one of white colour from the cabin of the truck and handed over the black polythene bag to the present petitioner and the white polythene bag to Sarvesh. After checking the substance, both of them paid Rs.10,000/- each to Rakesh for the said contraband. They were apprehended red handed. On weighing, 750 grams of *Charas* was found in the polythene bag of the petitioner/revisionist and the weight of the *Charas* was 456 grams in the polythene bag recovered from co-accused Sarvesh.

2.3. Investigation was completed, challan was filed and after hearing arguments on charge, the learned Special Judge ordered for framing of charges against the revisionist under Section 20(c) r/w Section 29 of the NDPS Act.

3. Being aggrieved, of the said order, the revisionist has preferred the present revision petition on the ground that there is no admissible evidence or documentary proof against the present revisionist; the revisionist has no role whatsoever regarding alleged recovery of contraband; 750 grams of *Charas* alleged to have been recovered from the possession of the revisionist falls under the category of intermediate quantity/lesser commercial quantity. There is no absolute evidence of there being any criminal conspiracy so as to add 456



grams *Charas* alleged to have been recovered from co-accused Sarvesh; the revisionist and Sarvesh had paid Rs. 10,000/- each to truck driver Rakesh Kumar separately. Even, as per the story of the prosecution, they had collected the contraband separately so neither in respect of payment nor in respect of goods, there is any collective action; so combining both alleged recoveries against the revisionist is illegal and arbitrary and without any merit.

3.1 It has been further submitted that the alleged recovery from the petitioner is of 750 grams of *Charas* but the revisionist has been ordered to be charged for total recovery of 1.206 Kgs of *Charas*; the revisionist is not shown to have any knowledge regarding the quantity of contraband alleged to have been recovered from Sarvesh and at what price. So, the mischief of Section 29 of NDPS Act is not at all attracted and the order of charge deserves to be set aside/modified.

3.2. It is also the case of the revisionist that there is nothing on record to show that he had entered into criminal conspiracy with any of his co-accused or with any other person regarding offence of illegal possession of contraband. No substantive material has been shown, *prima facie*, against the revisionist *qua* alleged recovery of total quantity of contraband. The order of the learned judge is against the judgment of Apex Court and other High Courts and the same is liable to be set aside.

4. Notice of the petition was issued. The detailed status report has been filed by the respondent/State. The first objection taken by the respondent/State is that there is no challenge by the petitioner to the order dated 27.10.2021, by which charges were framed against him, so the present petition deserves to be



dismissed outrightly. In my view, it's a mere technical objection. If the order on charge is set-aside, the charges are also set aside as a consequence thereof.

4.1. As per State, the order of the learned Trial Judge is a well-reasoned one, legal and correct, both on facts and law applicable to the issue in question. The Trial Court, at the stage of framing of charges, does not have to conduct a roving inquiry; it does not have to go into the depth of the evidence collected by the prosecuting agency and only a *prima facie* opinion has to be formed on the basis of material/evidence put up by the prosecuting agency and here a case is made out under relevant provisions of law. It has been further submitted that all the three accused persons, namely, Rakesh Kumar, Ridhm Rana (petitioner/accused) and Sarvesh were charged with criminal conspiracy and abetment to commit the crime. The scrutiny of Call Detail Records (CDRs) of mobile numbers of accused/petitioner revealed that he was in regular touch with the co-accused persons, namely, Shanta Kumar (*Source*) and Rakesh Kumar (driver of the truck/*Supplier*). The accused persons were found in conscious possession of total 1206 grams of *Charas* and hence charges under Section 20(c) r/w Section 29 of NDPS Act were rightly framed against the accused, as the said total quantity qualifies as 'Commercial Quantity'.

4.2. It is also submitted that in view of the conspiracy hatched by the accused persons, the order under challenge dated 23.10.2022 and order framing charge dated 27.10.2021 are reasoned and correct in law and the petition is liable to be outrightly dismissed.



4.3. The disclosure statements of accused Rakesh Kumar, Ridhm Rana (Revisionist) and of accused Sarvesh, have been filed on record. Apart from this, the CDRs analysis report is also annexed.

5. I have heard the arguments. The facts are not in dispute in this case. The legal question to be decided is as to *‘whether the quantity of contraband recovered from the two accused persons, namely, Ridhm Rana (present revisionist) and Sarvesh can be combined under the present circumstances on the basis of applicability of Section 29 of the NDPS Act or not’*.

6. Mr. S.S. Das, learned counsel appearing on behalf of the revisionist has relied upon the judgment of the Hon’ble Supreme Court in the matter of ***Amar Singh Ramji Bhai Barot v. State of Gujrat*** (2005) 7 SCC 550. Reference is made to the following paragraphs:

“The learned counsel appearing for the appellant urged only one contention in support of the present appeal. He contended that the High Court fell into an error in taking the total quantity of the offending substance recovered from the two accused jointly and holding that the said quantity was more than the commercial quantity, warranting punishment under Section 21(c) of the NDPS Act. He contended that as far as the appellant is concerned, the High Court erred by assuming that there was criminal conspiracy within the meaning of Section 29 of the NDPS Act, and erroneously proceeded under the said section. The High Court fell into a further error of assuming that because Section 29 was applicable, the total quantity of opium recovered was 920 grams plus 4.250 kgs. The counsel urged that because of the error the High Court took the wrong view that the total recovered opium was of ‘commercial quantity’ and, therefore, attracted Section 21(c) of the NDPS Act.



Although, at first blush, the argument of the learned counsel appeared attractive, on careful appreciation of the facts on record we are satisfied that the High Court judgment is fully justified and needs to be upheld. It is true that the High Court proceeded on the footing that there was a criminal conspiracy between the appellant and the deceased, Dana bhai Virabhai Rabari. In our view, however, there was no warrant for the conclusion at all as there is no evidence to suggest that there was any such abetment and/or criminal conspiracy within the meaning of section 29 of the NDPS Act. The appellant and Danabhai Virabhai Rabari were found together, but individually carrying the recovered substances. Hence, it was not possible for the High Court to take the view that Section 29 was attracted.”

6.1. He has further relied upon the judgment of Jammu and Kashmir High Court in the matter of **Hardeep Singh v. Union Territory of J&K** CrI. M. No. 98/2021 decided on 13.08.2021, wherein the Hon’ble Judge has relied upon the judgment of the Supreme Court in the matter of *Amar Singh Ramji Bhai (supra)* and had held as under:

“7. Per contra, learned counsel for the respondent has also reiterated the facts those have been taken in the challan and has further submitted that the response filed by the respondent may also be considered as response to the bail application. He argued that the petitioner is involved in the heinous offence and as such is not entitled to bail.

8. Heard and perused the scanned record.

9. While considering the issue of framing charge/discharge of the accused, the trial court has to form opinion on the basis of material placed on record by the Investigating Officer as to



whether there is sufficient ground for presuming that the accused has committed an offence or not. At this stage, the trial court cannot indulge in critical evaluation of the evidence, as can be done at the time of final appreciation of evidence after the conclusion of trial but the charge can be framed against the accused even when there is strong suspicion about the commission of offence by the accused. At the same time the trial court is not expected to merely act as post office and frame the charge just because challan for the commission of a particular offence has been filed against the accused. The trial court can sift the evidence brought on record by the prosecution so as to find out whether the un-rebutted evidence placed on record fulfills the ingredients of offence or not. If the ingredients of any offence are lacking, then the Court has no option but to discharge. The Hon'ble Apex Court in Dipakbhai Jagdish chandra Patel v. State of Gujarat, reported in (2019) 16 SCC 547 has held as under:

"23. At the stage of framing the charge in accordance with the principles which have been laid down by this Court, what the court is expected to do is, it does not act as a mere post office. The court must indeed sift the material before it. The material to be sifted would be the material which is produced and relied upon by the prosecution. The sifting is not to be meticulous in the sense that the court dons the mantle of the trial Judge hearing arguments after the entire evidence has been adduced after a full-fledged trial and the question is not whether the prosecution has made out the case for the conviction of the accused. All that is required is, the court must be satisfied that with the materials available, a case is made out for the accused to stand trial. A strong suspicion suffices. However, a strong suspicion must be founded on some material. The material must be



such as can be translated into evidence at the stage of trial. The strong suspicion cannot be the pure subjective satisfaction based on the moral notions of the Judge that here is a case where it is possible that the accused has committed the offence. Strong suspicion must be the suspicion which is premised on some material which commends itself to the court as sufficient to entertain the prima facie view that the accused has committed the offence."

10. The allegation against the petitioner is that he was seated at the seat of the conductor along with co-accused who was seated on the seat of the driver and when they found the police party, they got frightened and driver started the truck and subsequently, during checking, 143 grams Heroin was found from the possession of the petitioner and 257 grams Heroin from the other co-accused.

11. A perusal of the order impugned reveals that the learned trial court has observed that none of the prosecution witness has stated that they hatched a criminal conspiracy between them and abetted each other or invested money in furtherance of common intention together to do this illegal act. More so it is not the case of the prosecution that there was joint possession of the contraband. It seems that the learned trial court framed the charges under sec 29 of the Act just because FIR has been registered under sec 29 of the Act but there is no material on record so as to justify the framing of charge under sec 29 of the Act. Recovery has been effected from both the accused individually. So in view of the positive finding returned by the learned trial court with regard to lack of any evidence with regard to the conspiracy, the trial court could not have charged the petitioner for commission of offence under section 29 of the Act. This court too has found that there is nothing on record to show that the petitioner along with other co-accused had



hatched any conspiracy for commission of offence under the Act. In Amarsingh Ramjibhai Barot v. State of Gujarat, reported in (2005) 7 SCC 550, two persons Amar singh and Danabhai were found together and narcotic substances were recovered from them separately. The Apex court held that although they were found together, they cannot be implicated by virtue of sec 29 of the NDPS Act as in that case there was no evidence to suggest that there was any criminal conspiracy among the two”.

6.2. Another judgment relied upon by the learned counsel for the appellant is ***Muthu Kumar & Others v. Station House Officer*** 2008 SCC Online Ker 100 of the Kerala High Court, wherein it is held that:

“6. As far as this application is concerned, we are of the opinion that the question is mere academic. The applicants herein were charge-sheeted for offences punishable under section 20 (b) (ii)(C). The allegations in the charge-sheet prima facie show that out of the total quantity of 31.150 kilograms. of ganja, the 1st accused was found carrying 15 kg. and 50 grams folded in his waste, the 2nd accused was found in carrying 6 kgms. in a bag and 5 kgm. in a suit case and 50 grams in his waste and 3rd accused was carrying 5 kg. in a bag and 50 grams in his waste. If that be so, even though total quantity as above is a commercial quantity, each of the accused was in possession of only a lesser than the commercial quantity. If the accused were not in possession of the commercial quantity, section 20(b)(ii)(C) of the Narcotic Drugs and Psychotropic Substances Act will not apply. It is reported that the accused were in prison from 26-10-2007 and they had undergone 167 days imprisonment and the charge-sheet was already filed. Considering the facts and circumstances of the case, we are of the opinion that this is a fit case for granting bail on stringent conditions.”



6.3. On the basis of the above-mentioned judgments, learned counsel for the revisionist has submitted that there is no evidence on record to show that there was any criminal conspiracy amongst the accused persons; the price of the contraband was allegedly paid by the revisionist and Sarvesh separately to Rakesh Kumar and delivery of the contraband alleged to have been received by the present revisionist from the *Supplier* was only 750 grams. The quantity alleged to have been recovered from the co-accused Sarvesh was 456 grams and if these two quantities are not combined altogether, the quantity recovered allegedly from the present revisionist falls in the intermediate range and is not covered under the “Commercial Quantity” as per the notification.

7. On the other hand, Mr. Amit Chadha, learned APP for the State has submitted that all the accused persons were in active connivance with each other, including Shanta Kumar (*Source*), the driver/*Supplier* Rakesh and present revisionist as well as his friend Sarvesh. The present revisionist and Sarvesh came in one car to the spot and had purchased contraband from Rakesh. The call detail records show that the source Shanta Kumar, through his mobile number 9816367012, was in touch with present revisionist between 01.05.2021 to 12.06.2021 and they had four calls between them. The present revisionist, through his mobile number 9599802472, was in touch with Shanta Kumar (*source*); there are four calls between them and further with the same *Source* on his other mobile number 9971901359 and 18 calls were recorded between them. Petitioner was further in touch with the *Supplier*/driver Rakesh Kumar on his mobile number 7832881425 and there were 24 calls between the



two and side by side he was also in touch with the co-accuse Sarvesh on his mobile number 9818924648 during the period from 01.05.2021 to 12.06.2021 and in between them they had 67 calls.

7.1. Learned APP for the State has submitted that the CDR analysis as detailed above, clearly points out that there was a criminal conspiracy amongst all the accused persons and in furtherance thereto they had committed the crime which is the subject matter of FIR No. 104/2021 and charges against them have been rightly ordered to be framed u/s 20(c) r/w 29 of NDPS Act.

7.2. Learned APP has further relied upon the judgment in *Ishika v. State*, Bail Appl. No. 371/2021 decided on 03.03.2021. In the said case 112 grams of heroin was recovered from the petitioner and 152 grams from the co-accused Ravi Kiran. It was pleaded on behalf of the petitioner that the quantity recovered from the petitioner was intermediate and there was no element of abetment of criminal conspiracy between the petitioner and the co-accused to commit the offence. Reliance was placed on judgment of Supreme Court in *Amar Singh Ramji Bhai (supra)*. The case of the prosecution was that both the accused persons had come from Punjab to Delhi to buy drugs, which they procured from a supplier at Dwarka Mor. They were apprehended while going back to Punjab and CDRs shows that they came to Delhi in active connivance to purchase the contraband and they were in regular touch with each other through their mobile phones and their locations also corroborated that they travelled together from Punjab to Delhi. The learned Judge in the said matter relied upon the judgment of Supreme Court in the matter of *Saju v. State of Kerala 2001 (1) SCC 378* and other relevant judgments to the effect that the



Court must have reasonable ground to believe that two or more persons conspired together for committing the offence. Further reliance was placed on ***Mir Nagvi Askari v. Central Bureau of Investigation (2009) 15 SCC 643*** wherein it was observed that it must always be kept in mind that a conspiracy is always hatched in secrecy and it is difficult to obtain direct evidence to establish the same and on the said basis the learned Judge held that judgment relied upon by the petitioner of Hon'ble Supreme Court in the matter of ***Amar Singh Ramji Bhai (supra)*** was not helpful in the facts and circumstances of the said case. In the judgment reliance was also placed upon an earlier judgment of this Court in the matter of ***Amit Ranjan v. Narcotic Control Bureau, Delhi*** dated 05.07.2019 in Bail Appl. 1102/2019, wherein similar views were expressed. The Court was of the view that on the basis of the investigation, respective statements of the accused as well as the recoveries made, it was, *prima facie*, evident that all the accused persons were part of a conspiracy and they were connected with each other. In the said case, the contraband was recovered from two different locations from the possession of two persons on the basis of the disclosure statements of the accused persons, but the Court was of the view that there was an organized network working behind the sale of Narcotic Drugs, which involved commercial quantity and the Court had declined to grant the anticipatory bail to the accused/petitioner.

7.3. Further reliance had been placed on the judgment in the matter of ***Anil Sharma v. State***, Bail Appl. No. 127/2019 decided on 08.11.2019. In the said order also it was noticed that the conspiracy is always hatched in secrecy and it is difficult to obtain direct evidence to establish the same and the acts of



various parties to the conspiracy will infer that they were done with reference to common intention and it will only be proved by indirect circumstantial evidence of an impeccable nature. Relying upon the respective documents, statements and recovery, the Court came to a *prima facie*, opinion that all the accused persons were part of the conspiracy and they were connected with each other.

7.4. As far as the judgment relied upon by the learned counsel for the petitioner are concerned, learned APP has submitted that in the matter of **Amar Singh Ramji Bhai (supra)**, the case was pending before Supreme Court after the trial was over and there was no evidence brought on record to prove that there was any abetment and/or a criminal conspiracy within the meaning of Section 29 of the NDPS Act. In the present case, trial is at the nascent stage and specific allegations of criminal conspiracy have been made, hence the ratio of the said judgment is not applicable to the facts of the present case and similarly the judgments in the matter of **Hardeep Singh (supra)** and **Muthu Kumar (supra)** are not applicable to facts of the present case.

7.5. It is reiterated that the criminal conspiracy amongst the accused persons, *prima facie*, established on the basis of the call detail records and the statements of the accused persons recorded during investigation.

8. This Court is of the considered view that in the matter of **Amar Singh Ramji Bhai (supra)**, Hon'ble Supreme Court has clearly held that the prosecution could not provide any evidence which supports their contentions of criminal conspiracy and/or abetment of the crime, which was covered in the ambit of Section 29 NDPS Act, (which is somewhat equivalent to Section 120B



of the IPC). Once, there is no evidence to connect both the accused persons and no criminal conspiracy joining the accused persons together is proved, there is no question of combining the quantity of the contraband recovered from the said accused persons. In that case, the accused persons were apprehended when they had got down from the jeep and were walking towards a hotel. Their search was conducted. The appellant was found to be carrying a specific packet containing cocaine weighing 920 grams. From the other accused cocaine weighing 4.250 Kgs was recovered. They were charged under Section 15, 17, 18 r/w Section 29 of NDPS Act and put up for trial and they were punished under Section 17,18 read with Section 29 of NDPS Act. Both of them filed separate appeals in the High Court, where it was held that the appellant was liable to be convicted under Section 21(c) r/w Section 29 of the NDPS Act as the total amount of prohibited substance recovered was more than commercial quantity. In the Hon'ble Supreme Court, the only contention of petitioner was that the High Court fell into error by taking the total quantity of the offending substances recovered from the two accused jointly and declaring it to be commercial quantity and further, the High Court erred by assuming that there was criminal conspiracy within the meaning of Section 29 of the NDPS Act. As mentioned earlier, in the said case, there was no evidence on record to prove the criminal conspiracy. Whereas in the present case, the CDRs mentioned above, and the CDR analysis, are sufficient at this stage to point out towards the criminal conspiracy angle. As detailed earlier, all the accused persons were in regular touch with each other during the period 01.05.2021 to 12.06.2021.



8.1. It is nobody's case that the present revisionist and Sarvesh were not known to each other as there were 67 calls between them during the relevant period. Similarly, the source, namely, Shanta Kumar was in regular touch with the present revisionist and they had talked to each other on 22 occasions during this period. Moreover, the present revisionist was also in regular touch with the supplier/driver Rakesh Kumar and they had talked to each other 24 times.

8.2. There cannot be any direct and clear-cut evidence of criminal conspiracy and Court has to only infer the same from prevailing circumstances, incidences and other related material, which is outcome of the investigation carried out by the prosecuting agency. In the present case, the available material, at the stage of framing of charge, is, *prima facie*, sufficient to support the submissions of the prosecution that there was criminal conspiracy amongst all the accused persons and as a result Section 29 and Section 20 (c) of the NDPS Act were rightly invoked by the learned Trial Court while ordering for framing of charge vide order dated 23.10.2021. The revisionist as well as other accused persons will get sufficient chance during trial to rebut the contentions of the prosecution of being part of the criminal conspiracy and to present their defense to the charges ordered to be framed vide order dated 23.10.2021.

8.3. Hence, I am of the considered view that learned ASJ has not committed any illegality while passing the impugned order and same does not suffer from any legal infirmity. In view of the above, the present revision petition filed by the revisionist Ridhm Rana is liable to be dismissed and the same is hereby dismissed.

9. Copy of this order be also sent to the learned Trial Court for information.



10. The petition is disposed of accordingly.

TALWANT SINGH, J

MARCH 16, 2022/mr

Click here to check corrigendum, if any

