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

Date of decision: 12.07.2022

+ W.P.(CRL) 2375/2021 & CRL.M.A. 19207/2021

UDIP PRADHAN

..... Petitioner

Through: Mr Kapil Madan and Mr Gurmukh
Singh Arora, Advs.

versus

STATE (NCT OF DELHI)

..... Respondent

Through: Mr Ranbir Singh Kundu, ASC for
State with Mr Agniwesh Singh and
Mr Mukul Dagar, Advs.
SI Rajiv Singh, Narcotics Squad
South

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

: **JASMEET SINGH, J (ORAL)**

1. This is a petition seeking writ in the nature of certiorari quashing FIR No. 217/2021 dated 07.07.2021 registered at Police Station – Greater Kailash. The petitioner also seeks a writ in the nature of quo warranto directing respondents to conduct an inquiry into illegal procedure followed during arrest of the petitioner.

2. The petitioner along with the petition has placed video coverage showing that at 04:20 p.m. on 07.07.2021, the petitioner was in the custody of the police. In the FIR, it is stated that at 06:20 p.m. Narcotics Squad received information that there would be transportation of drugs. Based on the said informed, the narcotics squad constituted a raiding team and went in a in a Silver colour car make Hyundai I-20 around 6:45 pm. At around 8:00



p.m. a person aged about 35-36 years wearing blue jeans and sky blue color t-shirt, who had a red color shoulder bag was spotted on footpath at roadside outside G.K. apparently waiting for someone. The said person was apprehended and revealed that his name is Udip Pradhan S/o Vira Pradhan R/o - H.No. 237, Lower Ground Floor, Sant Nagar, East of Kailash, New Delhi, age 36 years, who is the petitioner herein. During the search, the total of 1360 grams Charas (*hashish*) was recovered from his bag.

3. The accused person was produced before the Ld.MM where the Petitioner raised the plea CCTV footage showing that he was in custody of the officials of the narcotics squad at around 4:20 pm on 07.07.2021, and was not apprehended at around 08.:00pm as allegedly stated in the captioned FIR. The said pleas were not taken.

4. Pursuant to the order dated 10.01.2022, the respondents filed a status report wherein they stated that the video footage in the DVR has been deleted and the respondents are unable to authenticate the video footage. The said arguments were raised before the Sessions Court. Vide order 06.09.2021, the Sessions Court rejected the bail application of the petitioner, noting the following:

“11. In my considered opinion in so far as present application is concerned, nothing whatsoever has been stated qua the aspect of CCTV Footage and enquiry qua the same cannot be done as sought by Ld. Counsel for the accused without even pleading these facts in the bail application.”

5. A writ petition seeking quashing of an FIR purely based on a video clip cannot be entertained at this stage. In **Jagmohan Singh v. Vimlesh Kumar & Ors.** Criminal Appeal No. 741 OF 2022, the Hon'ble Supreme



Court observed:

*“We are not inclined to look into the correctness of the allegations made in the FIR. Ex-facie, the allegations in the FIR disclose an offence. Whether the persons named in the FIR have committed the offence or not, has to be decided upon trial, in the criminal proceedings. **The Court interferes in criminal proceedings, in exercise of the power under Section 482 of the Cr.P.C., in rare and exceptional cases, to give effect to the provisions of the Cr.P.C. or to prevent abuse of the process of any Court or otherwise to secure the ends of justice. While exercising jurisdiction under Section 482 of the Cr.P.C., the High Court should not ordinarily embark upon an enquiry into whether there is reliable evidence or not. The jurisdiction has to be exercised sparingly, carefully and with caution only when such exercise is justified by the specific provisions of Section 482 of the Cr.P.C. itself.**”*

6. In State of A.P. v. Golconda Linga Swamy (2004) 6 SCC 522, the Supreme Court stated:

*“7. In dealing with the last category, it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is clearly inconsistent with the accusations made, and a case where there is legal evidence which, on appreciation, may or may not support the accusations. **When exercising jurisdiction under Section 482 of the Code, the High Court would not***



ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge. Judicial process, no doubt should not be an instrument of oppression, or, needless harassment. Court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, lest it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time the section is not an instrument handed over to an accused to short-circuit a prosecution and bring about its sudden death.

(emphasis added)

7. I am of the view that in the absence of there being any original record, the authenticity of the footage produced needs to be determined by trial court. In this view of the matter, I am unable to agree with the contention of learned counsel for the petitioner.

8. The writ petition is dismissed. However, I direct that the trial Court shall conclude the trial in the present case as expeditiously as possible and not later than 18 months from today.

A copy of this order be sent to the concerned trial Court.

JASMEET SINGH, J

JULY 12, 2022/sr

[Click here to check corrigendum, if any](#)