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

Judgment reserved on: 11.05.2023
Judgment pronounced on: 18 .09.2023

\+ **BAIL APPLN. 148/2022 & CRL.M.A. 3731/2022**

MOHD ASLAM CHICKO ..... Petitioner

Through: Mr. Amit Prasad, Mr. Rajeev Ranjan, Mr. Rishikesh Kumar, Mr. Ayodhya Prasad, Mr. Arpit Tripathi, Advs.

Versus

NARCOTICS CONTROL BUREAU THROUGH ITS DIRECTOR GENERAL ..... Respondent

Through: Mr Subhash Bansal, Sr. Standing Counsel for NCB with Mr Raghav Bansal, Adv.

CORAM:
HON'BLE MR. JUSTICE JASMEET SINGH

J U D G M E N T

: **JASMEET SINGH, (J)**

1. This is a bail application arising out of NCB case no. VIII/46/DZU/2021 registered by P.S. NCB-DZU, RK Puram, Delhi for the alleged commission of the offences punishable under Sections 8(c)/ 20/ 22 & 29 of the Narcotics Drugs and Psychotropic Substances Act, 1985 ("NDPS Act").
2. According to the prosecution, the brief facts of the case are :

A. An information dated 04.08.2021 was shared by NCB, Kolkata Zonal Unit and in reference thereto a person named Sarvothaman Guhan was intercepted at IGI Airport and was questioned/examined about the case registered at NCB, KZU, Kolkata. During the course of the investigation, the individual disclosed the presence of illegal narcotics contained in his personal luggage. Subsequent to a search operation there was discovery and confiscation of 30 grams of Ganja and 0.45 grams of Ecstasy tablets from Sarvothaman Guhan's travel bag. The aforementioned items were seized vide Panchnama dated 04.08.2021. Sarvothaman Guhan provided information that he acquired prohibited substances using a courier service, which were then dispatched to the residence of Rahul Mishra.

B. The NCB team proceeded to the residence of Rahul Mishra in Faridabad to conduct search which resulted in the discovery of 1.050 Kg of Ganja, which was seized vide Panchnama dated 05.08.2021 in the presence of independent witnesses.

C. Further investigations conducted on the same night involved a search of Sarvothaman Guhan's residence at Flat No. 104, Tower - D-14, Supertech Eco Village -3, Greater Noida West, U.P. This search led to recovery of 1 kg of Ganja and Rs. 15,52,300/- seized vide Panchnama dated 05.08.2021. Sarvothaman Guhan confessed to procuring narcotics using various addresses belonging to his acquaintances, which also resulted in an additional drug seizure.

D. During the course of the investigation, Sarvothaman Guhan provided a voluntary statement under Section 67 NDPS Act, wherein he admitted to his involvement in a narcotics drug operation. He acknowledged arranging the procurement of high-quality weed via his known contact, Ms. Tareena Bhatnagar, and confirmed making a payment of Rs. 6 lakh to Jasbir Singh for this purpose. Sarvothaman Guhan revealed that the payment was made using Bitcoins and that he communicated with Jasbir Singh through the Telegram App using the alias "Optimas Prime." He also confessed to directing the drug shipments to his friend Rahul Mishra's address, and he disclosed his modus operandi.

E. During the investigation, Jasbir Singh furnished his statement under Section 67 of the NDPS Act on 01.09.2021. The details shared by Jasbir Singh revealed the existence of a drug syndicate that operated through the Darknet and a group called 'Orient Express' on the Telegram App. This disclosure highlighted the active involvement of individuals including Aslam alias Chicko (the Applicant herein), Shraddha Surana, Parichay Arora, Naman Sharma, and Raghunath Kumar in the illicit drug trafficking enterprise which showed procurement of narcotic substances from various foreign locations and subsequently distributed them within the borders of India.

F. Shraddha Surana in her voluntary statement under Section 67 of the NDPS Act on 04.09.2021confessed her active involvement in the illicit drug trade conducted via the Telegram App, alongside Jasbir Singh and other co-accused individuals. Among the documents provided by Shraddha Surana in the course of the investigation were records of Paytm transactions received from Jasbir Singh, receipts of payments in a UPI account under the name of Balia Handsa, and various other financial transactions involving UPI payments, including those with Jasbir Singh.

G. Jasbir Singh's statement on 12.09.2021 unveiled that the mobile number 9537387776 had been used by Krunal Golwala and Dixita Golwala. He disclosed their respective pseudonyms with Dixita using the pseudonym 'Phoebe'. Consequently, based on Jasbir Singh's statement, investigations concerning Krunal Golwalkar and Dixita Golwala were conducted in Surat, their place of residence. On 24.09.2021, as part of the investigation, a search of the residence belonging to Krunal Golawala and Dixita Golwala resulted in the seizure of 1 kg and 30 grams of Ganja from B-304, Nakshatra, Pal Road, Near LP Savani School, Surat.

H. Co-accused Krunal Golwala tendered his voluntary statement under section 67 NDPS Act on 29.09.2021 and revealed about his involvement in the said illegal drug business with the Applicant who was part of telegram group 'Orient Express' as well as the Owner of the said group. He stated that he was associated with Jasbir Singh and was in the said drug business along with co-accused Dixita Golwala (his wife).

I. Subsequently, vide his statement dated 29.09.2021, Krunal Golwala revealed about his chats on Telegram app as Krunal @ Rolling Paradise with Jasbir Singh @ the Optimas Prime showing as a deleted account and explained all the chats within his knowledge.

J. The Applicant in his statement dated 30.09.2021 under section 67 of the NDPS Act, acknowledged his participation in the unlawful drug trade. He revealed the illicit drug trafficking activities of co-accused persons, being part of the illegal group on Telegram App.

K. In pursuance to statements of the co-accused persons, it surfaced that the Applicant had formed the group 'Orient Express' on Telegram and was involved in trafficking of all kinds of drugs. He stated about purchasing drugs from Fluffy and Phoebe i.e. Krunal Golwala and Dixita Golwala respectively, among other accused persons.

L. The Applicant was connected to Accused No. 14/Parichay Arora and Accused No. 5/Shraddha Surana and had several bank transactions with them, among others, for buying and selling of contraband.

M. On 29.09.2021, the Applicant was arrested. On 01.10.2021, the Applicant was remanded to judicial custody.

N. On 01.11.2021 the Applicant retracted his statement under section 67 NDPS Act.

O. The learned Trial Court dismissed the Applicant's application seeking bail vide order dated 15.12.2021.

3. Mr. Ranjan, learned counsel for the Applicant has made the following submissions:

A. He states that the Applicant has retracted his statement made under section 67 NDPS Act on 01.11.2021 as the same was obtained under coercion. He also states that the Applicant, being 21 years old, is a student of BBA Civil Aviation, Bangalore.

B. It is submitted that no recoveries are attributable to the Applicant as nothing has been recovered from him, either in person or from his residence, involving small or commercial quantity.

C. He states that apart from section 67 statement, no evidence or material has been placed on record to show that the Applicant was the owner/member/admin of the Telegram Group 'Orient Express' which platform was used for buying and selling of narcotic substances. He further submits that section 67 statement is ex facie inadmissible in terms of ***Tofan Singh v. State of Tamil Nadu*** *(2021) 4 SCC 1* wherein the Apex Court held as under :

> *"**155**. Thus, to arrive at the conclusion that a confessional statement made before an officer designated under Section 42 or Section 53 can be the basis to convict a person under the NDPS Act, without any non obstante clause doing away with Section 25 of the Evidence Act, and without any safeguards, would be a direct infringement of the constitutional guarantees contained in Articles 14, 20(3) and 21 of the Constitution of India.*
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> .....
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> ***158**. We answer the reference by stating:*

158.1. *That the officers who are invested with powers under Section 53 of the NDPS Act are "police officers" within the meaning of Section 25 of the Evidence Act, as a result of which any confessional statement made to them would be barred under the provisions of Section 25 of the Evidence Act, and cannot be taken into account in order to convict an accused under the NDPS Act.*

158.2. *That a statement recorded under Section 67 of the NDPS Act cannot be used as a confessional statement in the trial of an offence under the NDPS Act."*

D. It is stated that the Applicant has been arrested based on the statement of co-accused persons recorded under section 67 NDPS Act and any confessional statement made in police custody is inadmissible in view of ***Tofan Singh (supra)***. Further, on comparing the statement of co-accused persons, it is seen that the role of the Applicant described by co-accused persons is inconsistent.

E. He also states that although no material has been presented to show that the Applicant was part of the 'Orient Express' Telegram group, in the worst case scenario, merely being a member does not implicate the Applicant under NDPS Act unless specific role is ascribed to him.

F. He further states that the statement of the Applicant under section 67 NDPS does not lead to discovery of 'fact' as per section 27 Indian Evidence Act, 1872 ("IEA"). The first statement of the Applicant dated 30.09.2021 does not include any information which is not already known to the respondent. The Applicant has disclosed about the Orient Express group and pseudonyms which information was already known and available to the respondent by virtue of disclosure statements of co-accused persons. Moreover, the Applicant has retracted his section 67 statement dated 30.09.2021 given to NCB Officers on 01.11.2021.

G. The disclosures regarding the Applicant being owner/admin of the Orient Express group and the manner in which the group operated was already disclosed by disclosure statement of other co-accused persons i.e., Shraddha Surana/Accused No. 5, Naman Sharma/Accused No. 6, Jasbir Singh/Accused No. 4, Krunal Golwala/Accused No. 9, Dixita Golwala/Accused No. 10 to the Respondent. Therefore, the Respondent having knowledge of facts already disclosed acts as a bar to invoke provisions of section 27 of IEA. Reliance in this regard is placed on the judgment of the Hon'ble Supreme Court in ***Jaffar Hussain Dastagir v. State of Maharashtra,*** *(1969) 2 SCC 872* wherein it was observed:

> *"**12.** In the result although the statement might otherwise have been admissible in evidence, there was no discovery of a fact connecting the appellant with the receipt of the diamonds which were stolen within the meaning of Section 27 of the Evidence Act because the police already knew that*

the third and/or the fourth accused had the diamonds. The appeal must be allowed and the appellant directed to be set at liberty."

H. It is submitted that no incriminating chats or conversations have been placed on record qua the Applicant with respect to other co-accused persons establishing a link between them in relation to trafficking of contraband. He submits that the chats attached to the chargesheet are devoid of context and content qua the Applicant as they relate to random conversations between two alleged co-accused persons.

I. He submits that there was a love triangle between Accused No. 14/Parichay Arora, Accused No. 5/Shraddha Surana and Accused No. 4/Jasbir Singh wherein Jasbir Singh was the ex-boyfriend of Shraddha Surana and Parichay Arora is the present boyfriend of Shraddha Surana. Parichay Arora has already stated in his section 67 statement that he met the Applicant in a stock market trading platform and hence, joined Orient Express. The Applicant used to send and take money from Accused No. 14/Parichay Arora for routine transactional purposes in the stock market.

J. He states that the Applicant knew Accused No. 14/Parichay Arora from stock market trading group. Since Parichay Arora was in a relationship with Accused No.5/Shraddha Surana and therefore, the Applicant knew and transacted with Accused No.5/Shraddha Surana and her cousin, Neil Singhvi. Accused

No.4/Jasbir Singh was irked with Accused No. 14/Parichay Arora as he was the former boyfriend of Accused No.5/Shraddha Surana. The present Applicant knew Accused No. 14/ Parichay Arora and sided with him which irked Accused No.4/Jasbir Singh. Hence, Accused No.4/Jasbir Singh shared the Applicant's address out of animosity. The monetary transactions with Accused No.5/Shraddha Surana and Neil Singhvi of Rs. 1 and Rs 1199, for meagre sums, has to be read in light of the transactional relationship between the Applicant and Accused No.14/Parichay Arora.

K. He submits that the bank account statements do not make out a case against the Applicant. It is stated that in light of accused no. 14's section 67 statement and the frequency of UPI transactions from Applicant's account to Accused No.14's account and vice-versa especially when the difference between the credit and debit is to the tune of Rs. 3,500/- is not suggestive of a drug syndicate from any angle.

L. Reliance is placed on ***Amit Ranjan v. Narcotics Control Bureau, Delhi, 2022 SCC OnLine Del 1532*** to state that copies of bank transactions qua the Applicant alleging the same to be in connection with drug trafficking cannot be relied upon especially when nothing has been placed to record to substantiate the same. The relevant para of ***Amit Ranjan (supra)*** read as under:

*"**48.** In the instant case, the Narcotics Control Bureau has not placed on record further incriminating evidence through the initial complaint dated 12.02.2019 nor through the supplementary complaint dated 08.01.2020 filed against the applicant in relation to any recovery having been effected pursuant to the stated voluntary statement made by the applicant under Section 67 of the NDPS Act, 1985. CDRs between the applicant and the co-accused persons per se at this stage do not suffice to establish the existence of a conspiracy between the applicant and the co-accused in illicit trafficking of psychotropic substances nor is there any document placed on the record by the Narcotics Control Bureau during the course of consideration of the present bail application to bring forth the transportation of any narcotic or psychotropic substance from the applicant to the co-accused persons through K.K. Pharma to Vinay Pharmaceuticals nor has the Narcotics Control Bureau placed on record any document to show the connection of the applicant with K.K. Pharma Solutions through whom allegedly the psychotropic substances were sent to Vinay Pharmaceuticals i.e. to the co-accused Manish Mohan. That there were monetary transactions between the co-accused Pulkit Kumar and the applicant, per se, also do not indicate that the said monetary transaction was in relation to any illicit trafficking of narcotic or psychotropic substances.*

... ...

__50.__ It is essential to observe that the aspects of the CDR details and alleged connection between K.K. Pharma Solutions and Vinay Pharmaceuticals and the applicant and the co-accused persons and monetary transactions between them being in relation to illicit trafficking of narcotic or psychotropic substances can only be gauged at trial. In view thereof, there having been no recovery of any alleged narcotic or psychotropic substances of a commercial quantity having been effected from the applicant and apart from the confessional statements made by the applicant and the co-accused which confessional statement made by the applicant has already been retracted, presently, this Court is satisfied that there are reasonable grounds for believing that the applicant is not guilty of the commission of the said offences and in view of his clean antecedents that he is not likely to commit any offence whilst on bail,- the applicant in the instant case is allowed to be released on bail on filing a bail bond in the sum of Rs. 2,00,000/- (Rupees Two Lakhs) with two sureties of the like amount to the satisfaction of the learned Trial Court with directions to the applicant to the effect that:— ...".

M. Regarding the transaction of Rs.11,000/- received by the Applicant annexed by the Respondent, it is submitted that the same is a mere Google pay screenshot and cannot be termed illegal unless and until corroborating material is placed on record which is missing in the present case.

N. Regarding other bank transactions and their screenshots, it is submitted that co-accused, Naman Sharma was given access to his own mobile phone and he took out his Google pay history and showed the transaction details with co-accused persons including Jasbir Singh to NCB and subsequently, a photocopy of the same was obtained. However, no corroborating material has been presented to substantiate the illegality of the said transactions.

O. He further submits that no evidence has been placed on record to show that the Applicant was in conspiracy with other co-accused persons and therefore, liable to be charged under section 29 NDPS Act. As seen in ***Kishan Singh v. State of Rajasthan*** [1995 Cri LJ 3947] the Hon'ble High Court of Rajasthan held that in order to establish the charge of abetment or conspiracy under section 29 of the Act, the prosecution must adduce independent, corroborative or affirmative legal evidence. The relevant paras read as under:

> *"**5.** I have given my most anxious and thoughtful consideration to the rival submissions. Section 29 of the Act proclaims that whoever abets, or is a party to a criminal conspiracy to commit, an offence punishable under the Act shall, whether such offence be or be not committed in consequence of such abetment or in pursuance of such criminal conspiracy, and not with standing anything contained in Sec. 116 of the IPC, be punishable with the*

punishment provided for the offence. Thus, the abetment may take place either by instigation or conspiracy or by intentional act. But for the proof of abetment or conspiracy, there must be joining together two or more persons in the conspiracy and an act of illegal omission or commission of an offence must take place in pursuance thereof. Therefore, the actual complicity which precedes the actual commission of an offence by the principal offender either through substantial assistance for the commission of the offence or through some word or conduct which instigated the commission of the offence should be prima facie shown. It is true that formation of conspiracy can be inferred from circumstantial evidence or by conduct and act of parties because affirmative evidence is not always possible. But for establishing the charge for abetment and criminal conspiracy u/S. 29 of the Act, the prosecution must adduce some independent, corroborative or affirmative legal evidence."

P. It is submitted that the actual complicity of the Applicant has neither been shown from his words nor conduct in as much as there is no independent or corroborative evidence to establish prima facie involvement of the Applicant in the alleged offences let alone conspiracy and abetment. No recovery has been made from the present Applicant. No material such as WhatsApp chat as well as the call detail record etc. has been placed on record by the Respondent to establish that the Applicant was in contact with the other co-accused. Even the FSL of the mobile data documents filed by the Respondents do not show involvement of the present Applicant.

Q. He further states that Section 37 of the NDPS Act has no applicability qua the Applicant and this Court ought to consider the present bail Application without applying the rigours thereof as nothing has been recovered from the Applicant (in person or from his house) and the Respondent has failed to link the Applicant to recoveries from other co-accused persons.

R. It is submitted that on the grounds of parity, the Applicant should be granted bail. Several other co-accused persons being Accused No. 3/Aashray Pandey, Accused No. 11/Devesh Vasa, Accused No. 2/ Rahul Mishra and Accused No. 4/Jasbir Singh have been released on bail.

S. Lastly, he submits that the order granting bail to Accused No. 6/Naman Sharma (vide Bail Appln. No. 3673 of 2021) by this Hon'ble Court on 04.03.2022 would show that the Applicant stands on a better footing, as Naman Sharma who was alleged to be one of the admins of the 'Orient Express' group and had bank transactions with Parichay Arora and Neil Singhvi, was granted bail by this Hon'ble Court.

T. In conclusion, he states that there are no CDRs of the Applicant connecting him to any of the co-accused persons. Additionally, the allegation of conspiracy against the Applicant is baseless, and is not supported by any allegation apart from statements recorded under Section 67 NDPS Act. The same cannot be relied upon to constitute a prima-facie case against the Applicant.

U. It is also stated there are no bank account statements between the Applicant and any other co-accused except for Accused No. 14/Parichay Arora, Accused No. 5/ Shraddha Surana, Neil Singhvi and Accused No. 6/Naman Sharma. The Applicant met Accused No.14/ Parichay Arora in a stock market trading platform on Telegram and Accused No. 5/ Shraddha Surana is Parichay Arora's girlfriend while Neil Singhvi is cousin brother of Accused No. 5/ Shraddha Surana. Accused No. 6/Naman Sharma has already been granted bail by this court.

V. It is submitted that the Applicant was not running the Telegram group 'Orient Express' as admin/owner. The Respondent has only relied on the disclosure statement of co-accused which is ex-facie inadmissible. No material has been produced regarding authenticity of the chats relied upon and no specific role of the Applicant is highlighted by the Respondent. In arguendo, mere membership or ownership of a group, when no proof regarding existence of such group apart from the statements under section 67 is placed on record, does not implicate the Applicant in a prima facie case.

W. Lastly, it is stated the Applicant cannot be linked to any of the recoveries involving commercial quantity and as such, the bar under Section 37 NDPS Act cannot be said to apply to the Applicant.

4. *Per contra*, Mr. Bansal, learned senior standing counsel for the Respondent has made the following contentions:

A. It is stated that the name of the Applicant surfaced from the section 67 statement of co-accused persons namely, Jasbir Singh, Naman Sharma, Suvashish Roy, Krunal Golwala and Dixita Golwala stating that the Applicant was an admin as well as member of the 'Orient Express' telegram group and was an active participant of the drug syndicate. It is submitted that the Applicant accepted his involvement in drug trafficking and corroborative evidence has been found in his phone regarding the same.

B. It is stated that there are financial transactions of the Applicant with co-accused persons viz., Jasbir Singh, Naman Sharma, Shraddha Surana, Krunal Golwala and Parichay Arora. The account of Neil Singhvi was used by the Applicant for making payments to Shraddha Surana and Jasbir Singh. Neil Singhvi is the cousin brother of Shradhha Surana and his statement recorded under section 164 of the Code of Criminal Procedure, 1973 ("CrPC") corroborates the same and is admissible evidence in a court of law.

C. The Applicant has various financial transactions with co-accused Parichay Arora which runs into lakhs of rupees. He further states that there are monetary transactions with other co-accused persons where the Applicant has transferred an amount of Rs. 5000/- to Krunal Golwala and Rs. 11,000/- to Naman Sharma thereby, creating suspicion as well as proof of Applicant's involvement in buying and selling of narcotic substances.

D. It is submitted that the Applicant was an administrator/founder as well as member of the Telegram group 'Orient Express' where he was known by the name Chicko. Further, the Applicant is also known by the pseudonym 'RAFA 639' on Wickr App.

E. It is submitted that in order to hide his identity, the Applicant reset his number and left the Orient Express group on coming to know that some members of the group have been arrested by the Respondent – NCB.

F. The name of co-accused Parichay Arora came up in the section 67 statement of almost all accused persons as a co-founder along with the name of the Applicant and Naman Sharma who were also co-founders/admins of the said group. Therefore, it is submitted that these accused persons (including the Applicant) are the main conspirators and liable for punishment under section 29 NDPS Act.

G. It is stated that statements made to police officer empowered under section 53 NDPS Act are termed 'relevant' so as to prove the truth of any fact contained in such statement. Further, the presumption of committing the offence as per 35 and 54 NDPS Act can only be rebutted at the stage of trial, therefore, the Applicant cannot take any advantage at this stage.

H. It is submitted that at the stage of bail, the Complainant has to prima facie establish the offence committed by the accused persons and the same has been done in the present case as prima facie link between the Applicant and other co-accused persons is made out regarding their involvement in illicit drug trafficking.

I. Reliance is placed on ***Sambhav Parakh vs State of Chhattisgarh***, *2021 SCC OnLine Chh 469* wherein the Court observed that when commercial quantity of illicit psychotropic substance is recovered from one accused, in view of section 29 of the NDPS Act, such other accused from whom no recovery has been made are also not entitled for bail as they have major link in the entire operation. The quantity of contraband recovered from co-accused in the instant case is of commercial quantity and as such the rigors of Section 37 of the NDPS Act shall apply in the present case. The relevant para of ***Sambhav Parakh (supra)*** reads as under:

> *"**24.** It is also to be seen that statements of two accused person have been recorded under Section 67 of the Act and they have named other accused persons as part of the entire operation. It is also to be kept in mind that the prosecution has filed the charge sheet for criminal conspiracy under Section 29 of the Act. Thus, all the accused persons being part of a bigger drug cartel/mafia their act cannot be examined in isolation and on stand alone basis, but the whole case has to be treated as one of peddling of commercial quantity of illicit contraband."*

J. The learned Senior Standing Counsel further states that the role of one accused cannot be segregated from other co-accused as all the accused belong to the same group within a larger drug network.

K. Support is sought from the Hon'ble Supreme Court in the case of ***Union of India through Narcotics Control Bureau, Lucknow v. Md. Nawaz Khan, Criminal Appeal No. 1043/2021*** held:

> *"25. In line with the decision of this Court in Rattan Mallik (supra), we are of the view that a finding of the absence of possession of the contraband on the person of the respondent by the High Court in the impugned order does not absolve it of the level of scrutiny required under Section 37(1)(b)(ii) of the NDPS Act."*

L. Lastly, it is stated that the rigors of section 37 NDPS Act are attracted qua the Applicant and therefore, his bail application is liable to be dismissed.

ANALYSIS

5. I have heard learned counsel for the parties.

I. Nothing Recovered from the Applicant

6. In the present case, there have been no recoveries of any drugs/contraband and psychotropic substances from the Applicant, in person or from his house.

7. It is stated by the Respondent that there are recoveries of commercial quantity from other co-accused persons and since there are allegations of criminal conspiracy under 29 NDPS Act, the same are attributable to the Applicant.
8. NCB has contended that according to the dicta in ***Sambhav Parakh (supra),*** the recoveries from co-accused persons are attributable to the Applicant by virtue of section 29 NDPS Act as the Applicant is intrinsically linked to the co-accused persons.
9. In my view, the contention of the Respondent – NCB in this regard is misplaced in so far as the Respondent – NCB has not established the offence of criminal conspiracy under section 29 NDPS Act qua the Applicant.

II. Complicity Of The Applicant Under Section 29 Is Without Basis Of Any Evidence:

10.The Apex court in ***Mohd. Husain Umar Kochra Etc. v. K.S. Dalipsinghji and Anr. Etc***., *(1969) 3 SCC 429)* held that the pre-requisites of conspiracy require a common design and integrated effort by all members. The relevant paras read as under:

> *"**15**. As to the second question the contention was that the evidence disclosed a number of separate conspiracies and that the charge of general conspiracy was not proved. Criminal conspiracy as defined in Section 120-A of the IPC is an agreement by two or more persons to do or cause to be done an*

illegal act or an act which is not done by illegal means. The agreement is the gist of the offence. In order to constitute a single general conspiracy there must be a common design and a common intention of all to work in furtherance of the common design. Each conspirator plays his separate part in one integrated and united effort to achieve the common purpose. Each one is aware that he has a part to play in a general conspiracy though he may not know all its secrets or the means by which the common purpose is to be accomplished. The evil scheme may be promoted by a few, some may drop out and some may join at a later stage, but the conspiracy continues until it is broken up. The conspiracy may develop in successive stages. There may be a general plan to accomplish the common design by such means as may from time to time be found expedient. New techniques may be invented and new means may be devised for advancement of the common plan. A general conspiracy must be distinguished from a number of separate conspiracies having a similar general purpose. Where different groups of persons cooperate towards their separate ends without any privity with each other, each combination constitutes a separate conspiracy. The common intention of the conspirators then is to work for the furtherance of the common design of his group only. The cases illustrate the distinction between a single general conspiracy and a number of unrelated conspiracies. In S.K. Khetwani v. State of Maharashtra [(1967) 1 SCR 595] and S. Swaminathan v. State of Madras [AIR 1957

SC 340] the Court found a single general conspiracy while in R. v. Griffiths [(1962) 2 All ER 448] the Court found a number of unrelated, separate, conspiracies."

11. In order to establish the charge of abetment or conspiracy under section 29 of the Act, the prosecution must adduce independent, corroborative and affirmative legal evidence.
12. In the present case, no recovery has been made from the Applicant. No material such as mobile chats, the call detail records (CDRs) etc. have been placed by the Respondent to establish that the Applicant was in contact with the other co-accused persons and active part of the drug chain. The Applicant has furnished satisfactory explanation for the bank transactions between the Applicant and co-accused persons. Therefore, no prima facie material of abetment or conspiracy has been furnished by the Respondent to show that the applicant was part of criminal conspiracy.
13. The judgment of ***Sambhav Parakh (supra)*** is distinguishable as in the present case, except for disclosure statement of co-accused persons, nothing has been placed on record linking the Applicant to be the admin/owner of the 'Orient Express' Telegram group. Therefore, the ingredient of common design or integrated effort qua the Applicant to establish the offence of criminal conspiracy under section 29 NDPS Act is not made out.
14. Reliance on ***Md. Nawaz (supra)*** is also misplaced in so far as the applicant therein was apprehended in the car with the contraband. However, in the case at hand, all co-accused are separate and have

isolated instances of recovery therefore, the level of scrutiny under section 37 NDPS Act is not attracted qua the Applicant.

III. No Incriminating Material to Show that the Applicant was Admin/Owner/Member of 'Orient Express' Telegram Group

15. There is no material placed on record to show that the Applicant had the role of owner/admin in the 'Orient Express' Telegram Group except the section 67 statement of the Applicant and co-accused persons which is inadmissible by virtue of ***Tofan Singh (supra)***.

16. Even the Applicant's arrest was based on the section 67 statement of co-accused persons. The case of the Respondent – NCB against the Applicant is:

> *"**18**. That in pursuance to statements of the accused persons it surfaced that the accused Mohd. Aslam @ Chico had formed the group Orient Express and was involved in trafficking of all kinds of drugs. He has accepted his involvement in the trafficking and has accepted that in his voluntary statement. The material evidence was also found in his phone which he has tendered during his statement. He was then arrested on 01.10.2021."*

17. The alleged chats of the Applicant annexed by the Respondent from the Telegram app do not show material regarding the Applicant's involvement in the drug trafficking racket. The Respondent – NCB has failed to establish the link between the Applicant and co-accused

persons regarding buying and selling of narcotic and psychotropic substances.

18. These alleged chats/conversations, in absence of recovery of contraband from the Applicant, are not sufficient material to link the Applicant to trafficking of contraband. Support in this regard is sought from the Apex Court case of ***Bharat Chaudhary v. Union of India***, *2021 SCC OnLine SC 1235* wherein it was held:

> *"**10**. ....Reliance on printouts of Whatsapp messages downloaded from the mobile phone and devices seized from the office premises of A-4 cannot be treated at this stage as sufficient material to establish a live link between him and A-1 to A-3, when even as per the prosecution, scientific reports in respect of the said devices is still awaited.*
>
> ***11**. In the absence of any psychotropic substance found in the conscious possession of A-4, we are of the opinion that mere reliance on the statement made by A-1 to A-3 under Section 67 of the NDPS Act is too tenuous a ground to sustain the impugned order dated 15th July, 2021. This is all the more so when such a reliance runs contrary to the ruling in Tofan Singh (supra). The impugned order qua A-4 is, accordingly, quashed and set aside and the order dated 2nd November, 2020 passed by the learned Special Judge, EC & NDPS Cases, is restored. As for Raja Chandrasekharan [A-1], since the charge sheet has already been filed and by now the said accused has remained in custody for*

over a period of two years, it is deemed appropriate to release him on bail, subject to the satisfaction of the trial Court."

19. Though in the present case the FSL report of mobile phone is annexed, these chats annexed are not from the Telegram group 'Orient Express'. The reliance on these chats by the Respondent – NCB is misplaced in the absence of recovery of contraband from the Applicant.
20. The only role ascribed to the Applicant is of forming the group on Telegram App with the name of 'Orient Express' which is also based on the alleged confessional statement of the Applicant and disclosure statements of co-accused persons under section 67 of the NDPS Act, which in itself is an inadmissible piece of evidence.
21. As far as Applicant's address in the chats is concerned, it is with a deleted account identified by co-accused, Jasbir Singh thus, the chats are not reliable.
22. In view of the above, the allegations under section 29 NDPS Act are not made out against the Applicant.

IV. <u>Bank Account Statements Do No Make Out A Case Against the Applicant</u>

23. A perusal of the bank transactions placed on record by the Respondent – NCB show that the same were in ordinary course since the Applicant used to invest money in the Stock Market. The Respondent – NCB has not shown any recovery of contraband

pursuant to the bank transactions qua the Applicant and hence, failed to establish a link between the Applicant and Accused No. 14/Parichay Arora regarding buying and selling of narcotic substances.

24. The Applicant had business relations with Accused No. 14/Parichay Arora for the last 3-4 years and hence, had bank transactions for stock market and bitcoins as well as telephone conversations with Accused No. 14/Parichay Arora.

25. The frequency of UPI transaction which includes regular transfer from the Applicant's account to Accused No. 14/Parichay Arora's account and sporadic transfer of money from the account of Accused No. 14 to Applicant's account, especially when the difference between the credit and debit is to the tune of Rs. 3,500/-, are not suggestive of a drug related transaction as both of them shared a business relationship.

26. Accused No.5/Shraddha Surana was the girlfriend of Accused No. 14/Parichay Arora and ex-girlfriend of Accused No.4/Jasbir Singh and hence, it is plausible that the Applicant got to know Accused No.5/Shraddha Surana and her cousin, Neil Singhvi through Accused No. 14/Parichay Arora.

27. Regarding bank transactions with other co-accused persons, it is observed that the Applicant transferred sums of Rs. 1 and Rs. 1199 in ordinary course to Accused No.5/ Shraddha Surana as he knew Accused No.14/ Parichay Arora for the last 3-4 years.

28. Hence, it is plausible that the money transactions between the Applicant and co-accused persons described above were in connection

with stock market or friendly relationships. Following table shows the bank transactions between the Applicant and Parichay Arora/Accused No.14 : –

Date	Narration	Cheq./ref no	Withdrawal	Deposit
26.10.2020	UPI/Aslam-Parichay	UPI-30015843151		1300.00
27.10.2020	UPI/Aslam-Parichay	UPI-030115380957		1300.00
28.10.2020	UPI/Aslam-Parichay	UPI-030209871766		1000.00
28.10.2020	UPI/Aslam-Parichay	UPI-030211654867		7000.00
12.11.2020	UPI/Aslam-Parichay	UPI-031712706918		3500.00
13.11.2020	UPI/Aslam-Parichay	UPI-031812553805		500.00
16.11.2020	UPI/Aslam-Parichay	UPI-032111215006		25000.00
16.11.2020		UPI-032113444217	25000.00	
16.11.2020	UPI/Aslam-Parichay	UPI-032116122262		6000.00
18.11.2020	UPI/Aslam-Parichay	UPI-032322248791		2100.00
25.11.2020	UPI/Aslam-Parichay	UPI-033013875293		800.00
27.11.2020	UPI/Aslam-Parichay	UPI-033213273494		2700.00
17.12.2020	UPI/Parichay	UPI-035217822672	2200.00	

	-Aslam			
15.01.2021	UPI/Aslam-Parichay	UPI-101600583025		15000.00
23.01.2021	UPI/Parichay-Aslam	UPI-102314471631	15000.00	
23.01.2021	UPI/Parichay-Aslam	UPI-102314476042	14499.00	
23.01.2021	UPI/Parichay-Aslam	UPI-102314480221	2000.00	
16.04.2021	UPI/Parichay-Aslam	UPI-110602543274	20001.00	
25.05.2021	UPI/Aslam-Parichay	UPI-114558188986		9500.00
	Total		79,200.00	75,700.00

29. The Applicant transferred Rs. 75,700/- to Parichay Arora's Account towards stock market investment. Parichay Arora transferred Rs. 79,200/- to Applicant's Account as investment money. The total difference between withdrawal and deposit (in Rupees) is: 79,200.00 - 75,700.00 = 3,500/-. The meagre difference in the closing balance of the account of the Applicant and Parichay Arora lends credence to the fact that the same could be in the course of stock market investments.

30. Another transaction which has been annexed by the Respondent is a Google pay screenshot of payment of amount Rs. 11,000/- between the Applicant and co-accused Naman Sharma. However, mere screenshot devoid of any corroborative material placed on record does not render the transaction illegal. Co-accused Naman Sharma was allowed to access his mobile phone when in custody of NCB and

screenshots of his transactions with other co-accused persons was taken from his mobile phone but there is no further corroborating material linking the transaction to the drug syndicate. This transaction only draws support from section 67 statement of Naman Sharma without any corroborative material. Hence, this bank transaction does not indicate any link with the drug syndicate.

V No Recovery Under Section 27 IEA

31. The statements recorded under section 67 NDPS Act are inadmissible being hit by section 25 of the IEA and the only way to make such statements admissible is by way of exception under section 27 of IEA.
32. In the present case, none of the statements of the Applicant lead to any discovery of a 'fact', and hence, the statutory bar to their admissibility and reliability.
33. Iterating the ingredients of section 27 IEA, this Court in ***Jasbir Singh v. Narcotics Control Bureau*** BAIL APLLN 1120/2022 (2023:DHC:261) has already held that:

*"**67**. With regards to applicability of Section 27 IEA, the fact so discovered is admissible when accompanied by the recovery of a material object and does not include purely mental or psychological facts. It is relevant to not the observations of this Hon'ble Court in State v. Navjot Sandhu @ Afsan Guru Crl. A. No. 80/2003 wherein this Hon'ble Court, after placing reliance on Pulukuri Kottaya and Ors v. The King-Emperor 1946 SCC*

OnLine PC 49, and several other judgments of the Hon'ble Supreme Court and other courts, summarized the law governing Section 27 IEA as follows:

"396. We, therefore, hold that in order that Section 27 may be brought in aid, the prosecution must establish:—

1. That consequent to the information given by the accused, it led to the discovery of some fact stated by him.

2. The fact discovered must be one which was not within the knowledge of the police and the knowledge of the fact was for the first time derived from the information given by the accused.

3. Information given by the accused must lead to the discovery of a fact which is the direct outcome of such information.

4. The discovery of the fact must be in relation to a material object and of course would then embrace within its fold the mental condition i.e. the knowledge of the accused of the place from where the object was produced and the knowledge that it was there.

5. Only such portion of the information as is distinctly connected with the said discovery is admissible.

6. The discovery of the fact must relate to the commission of some offence." "

34. A 'fact' once discovered cannot be discovered again. The first statement of the Applicant dated 30.09.2021 does not include any information which is not already known to the Respondent. In his disclosure, the Applicant has disclosed about the 'Orient Express'

group and the pseudonyms which fact was already known to the Respondent by virtue of the disclosure statements of co-accused persons which were recorded prior to 30.09.2021.

35. The disclosures regarding the Applicant 'Chicko' being owner/admin of the Telegram group 'Orient Express' and the manner in which the group operated was already disclosed to the Respondent, prior to 30.09.2021, by disclosure statements of other co-accused namely, Shraddha Surana @Accused No. 5, Naman Sharma@ Accused No. 6, Jasbir Singh @ Accused No. 4, Krunal Golwala @Accused No. 9, Dixita Golwala @ Accused No. 10. Hence, the respondent having prior knowledge of such details from the disclosure of above co-accused persons, acts as a bar to attract the provisions of Section 27 of the IEA. In addition, the Applicant has already retracted his statement under section 67 of the NDPS Act dated 30.09.2021 given to NCB Officers on 01.11.2021.

36. Therefore, no discovery of 'fact' in terms of section 27 of the IEA was unearthed pursuant to section 67 statement of the Applicant.

VI. <u>Grounds of Parity</u>

37. The co-accused persons who named the Applicant namely, Accused No. 2/ Rahul Mishra, Accused No. 3/ Aashray Panday and Accused No. 4/ Jasbir Singh, Accused No. 6/ Naman Sharma and Accused No. 11/ Devesh Vasa have been granted bail.

38. A perusal of the order granting bail to Accused No. 6/Naman Sharma (*Bail Appln. No. 3673 of 2021*) by this Hon'ble Court on 04.03.2022

(2022:DHC:806) would show that the Applicant stands on a similar footing. Accused No.6/Naman Sharma was alleged to be one of the 'admins' of the 'Orient Express' group, was named in section 67 statements of co-accused persons and had bank account transactions between him and co-accused, Accused No. 14/Parichay Arora and Neil Singhvi. Despite the same, the Accused No.6/Naman Sharma was granted bail by this Court.

39. The Applicant has been in custody since 01.10.2021 (almost two years). No recovery was made from the Applicant and he is not required for further investigation. The Applicant is only 22 years' old and is a student. The complaint is at the stage of arguments on charge and the trial is likely to take a considerably long time.

40. In my view, the triple test i.e., a) flight risk; b) tampering with evidence and c) influencing of witnesses can be taken care of by imposing stringent bail conditions.

41. For the aforesaid reasons, the application is allowed and the Applicant is granted bail in case no. VIII/46/DZU/2021 on the following terms and conditions:

    i. The Applicant shall furnish a personal bond and a surety bond in the sum of Rs. 50,000/- each, to the satisfaction of the Trial Court;

    ii. The Applicant shall appear before the Court as and when the matter is taken up for hearing;

    iii. The Applicant shall provide his mobile number to the Investigating Officer (IO) concerned, which shall be kept in working condition at all times. The Applicant shall not switch off, or change the same without prior intimation to the I.O. concerned, during the period of bail;

iv. The Applicant shall join investigation as and when called by the I.O. concerned;

v. In case the Applicant changes his address, he will inform the I.O. concerned and this Court also;

vi. The Applicant shall not leave the country during the bail period and surrender his passport, if any, at the time of release before the Trial Court;

vii. The Applicant shall not indulge in any criminal activity during the bail period;

viii. The Applicant shall not communicate with or come into contact with any of the prosecution witnesses or tamper with the evidence of the case.

42. The observations made hereinabove are only for the purposes of the deciding the present bail application. They shall not have any bearing in deciding the merits of the case.

43. The application is allowed and disposed of in the aforesaid terms.

JASMEET SINGH, J

SEPTEMBER 18, 2023/*jv*