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

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Decided on: 02.08.2023

+ **CRL.M.C. 1651/2023**

NAMIT

..... Petitioner

Through: Mr. Anupam Kumar Mishra &
Ms. Kaya Rawat, Advocates
alongwith petitioner-in-person

versus

STATE

..... Respondent

Through: Mr. Satish Kumar, APP for
State with ASI Jaswant PS
Sultanpuri

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J. (ORAL)

1. The present petition has been filed on behalf of the petitioner under Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C.') for quashing of FIR bearing no. 1032/2019 arising out of Criminal Case No. 4545/2020, registered at Police Station Sultanpuri for offence punishable under Section 27 of Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS Act').



2. Brief facts of the case are that complainant had filed the present FIR dated 15.10.2019 alleging that he had found the petitioner/accused allegedly consuming drugs. Thereafter, a notice under Section 50 of NDPS Act was issued against petitioner/accused. Subsequently, the petitioner/accused was arrested on 16.10.2019. The learned Trial Court had granted bail to petitioner/accused vide order dated 02.12.2019. The chargesheet was filed on 10.02.2023.

3. Learned Counsel for the petitioner states that there is no evidence against the present petitioner to link him with these alleged offences. It is also stated that nothing was recovered at the instance of applicant which is clear from the fact that he was not medically examined on the same date. It is further stated that since there is no material on record, therefore, no useful purpose would be served by proceedings in the present case and the accused may face trial.

4. Learned APP on behalf of the State argues that the charges are yet to be framed in the present case. Further, FSL report in this case has supported the prosecution case.

5. I have heard arguments advanced on behalf of both sides and perused the material on record.

6. This court will refer to law laid down by the Hon'ble Supreme Court regarding quashing of FIR.

7. The Hon'ble Supreme Court has laid down the guidelines for quashing of FIR in the *State of Haryana & Ors v. Ch. Bhajan Lal & Ors*. 1992 SCC (Cri) 426, which reads as under:

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the



principles of law enunciated by this Court in a series of decisions relating to the exercise of the extra-ordinary power under Article 226 or the inherent powers Under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

1. Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima- facie constitute any offence or make out a case against the accused.
2. Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers Under Section 156 (1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.
3. Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.
4. Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155 (2) of the Code.
5. Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.
6. Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.



7. Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

8. The Hon'ble Supreme Court in its recent decision of *Neeharika Infrastructure v. State of Maharashtra* 2021 SCC OnLine 315, has analyzed the precedents and culled out the relevant principles that govern the law on quashing of a First Information Report under Section 482 of the Cr.P.C. The Court has held as under:

"57. From the aforesaid decisions of this Court, right from the decision of the Privy Council in the case of Khawaja Nazir Ahmad (supra), the following principles of law emerge:

- i) Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code to investigate into cognizable offences;
- ii) Courts would not thwart any investigation into the cognizable offences;
- iii) However, in cases where no cognizable offence or offence of any kind is disclosed in the first information report the Court will not permit an investigation to go on;
- iv) The power of quashing should be exercised sparingly with circumspection, in the 'rarest of rare cases'. (The rarest of rare cases standard in its application for quashing under Section 482 Cr.P.C. is not to be confused with the norm which has been formulated in the context of the death penalty, as explained previously by this Court);
- v) While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;
- vi) Criminal proceedings ought not to be scuttled at the initial stage;



vii) Quashing of a complaint/FIR should be an exception and a rarity than an ordinary rule;

viii) Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities. The inherent power of the court is, however, recognised to secure the ends of justice or prevent the abuse of the process by Section 482 Cr.P.C.

ix) The functions of the judiciary and the police are complementary, not overlapping;

x) Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences;

xi) Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;

xii) The first information report is not an encyclopedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. During or after investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure;

xiii) The power under Section 482 Cr.P.C. is very wide, but conferment of wide power requires the court to be cautious. It casts an onerous and more diligent duty on the court;

xiv) However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in the cases of R.P. Kapur (supra) and Bhajan Lal (supra), has the jurisdiction to quash the FIR/complaint; and



xv) When a prayer for quashing the FIR is made by the alleged accused, the court when it exercises the power under Section 482 Cr.P.C., only has to consider whether or not the allegations in the FIR disclose the commission of a cognizable offence and is not required to consider on merits whether the allegations make out a cognizable offence or not and the court has to permit the investigating agency/police to investigate the allegations in the FIR."

ANALYSIS AND FINDINGS

9. As per the facts of the case, on 15.10.2019, the complainant who was on patrolling duty had apprehended the petitioner consuming psychotropic substance at Tikona Park, C-8, Block, Sultan Puri, Delhi and duty officer was called at the spot. The petitioner was informed about his legal rights which he had refused. The petitioner was then served with a notice under Section 50 NDPS Act. During investigation, the exhibits recovered on the petitioner were seized and contained. The exhibits were sent to FSL. The relevant portion of the FSL report reads as under:

- “(i) Exhibit ‘1A was found to contain Diacetyl/morphine’
- (ii) ‘Diacetyl/morphine could not be detected in examination ‘1B’”

10. A perusal of FSL report reveals that recovery of psychotropic substance was allegedly affected from the accused. The petitioner had alleged that the chargesheet is not accompanied by medical examination report, however, the fact that the petitioner was not medically examined cannot be a ground for quashing of the present FIR, especially when chargesheet already stands filed and the case is listed for framing of charges.



11. It is to be noted that in the judgment of *Bhajan Lal (Supra)* and *Neeharika Infrastructure (Supra)*, the Hon'ble Supreme Court has cautioned that High Court, in exercise of powers under Section 482 Cr.P.C may interfere in proceedings relating to cognizable offences to prevent abuse of the process of any court or otherwise to secure the ends of justice, but such power should be exercised sparingly and that too in the rarest of rare cases.

12. In the present case, since recovery has been affected from accused which has been found to be a psychotropic substance and it needs trial to prove recovery or non-recovery from accused, no ground for quashing is made out in the present FIR.

13. Considering the overall facts and circumstances of the case and the allegations and material available on record, this Court finds no reason to quash the present FIR at the present stage of investigation.

14. Accordingly, the present petition stands dismissed.

15. It is however, clarified that the observations made by this Court are only for the purpose of deciding the present petition and shall have no bearing on the merits of the case during the trial.

16. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

AUGUST 2, 2023/dk