Sr. No. 381

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH**
**AT JAMMU**

**Case No. :CRM(M) No. 729/2024**

**Gurpartap Singh, Aged 60 years,** ….Petitioner(s)
**S/o Late Satara Singh, R/o Village Sarai**
**Amanat Khan, District Taran, Punjab**
**At present lodged in District Jail, Rajouri.**

Through :- Mr.Akeel Wani, Advocate vice
Mr. I.H. Bhat,Advocate.

V/s

**National Investigation Agency** ….Respondent(s)

Through :-

**Coram: HON'BLE MR. JUSTICE WASIM SADIQ NARGAL, JUDGE**

**ORDER**
25.09.2024

**1.** In the instant petition filed under Section 528 of the BNSS, the petitioner seeks quashment of the charge order dated 23.08.2022 (*in short,* ***"impugned order"***) passed by the Court of learned 3rd Additional Sessions Judge, NIA Court, Jammu (*hereinafter referred to as the,* ***"trial Court"***), whereby the petitioner has been charge-sheeted for commission of offences punishable under Section 120-B of the IPC read with Sections 8, 29, 21, 23 and 27-A of the Narcotic Drugs and Psychotropic Substances Act (*hereinafter referred to as the,* ***" NDPS Act"***)and Sections 13, 17 & 18 of the Unlawful Activities Prevention Act, 1967 (*in short,* "**Act of 1967**").

**FACTUAL MATRIX**

**2.** That an FIR bearing No. 65/2020 dated 20.09.2020 (*in short, "****impugned FIR***") was registered at Police Station, Arnia under Sections 307,120-B and 121 of the IPC and Section 7/25 of the Arms Act relating to unprovoked firing from Pakistan side of the border near Bulleychak at a local police party led by SHO Police Station Arnia, District Jammu. In the said FIR, it

has been mentioned that unknown persons fired upon the police patrolling party of Arnia Police Station with an intention to kill the police personnel and during search in the intervening night of 19th&20th September, 2021, conducted by BSF deployed there, heroin weighing 61 kg 420 gram and opium weighing 1.245 Kg alongwith two pistols, three magazines and 100 live cartridges were recovered from the spot.

**3.** During the investigation in the said FIR, the police arrested 07 persons and 500 gram of heroin was recovered and seized from the possession of arrested person (Ajeet Kumar) (A-3) and subsequent to the disclosure statement of accused Sham Lal (A-2) one pistol, one live cartridge was recovered and during the investigation, the investigating officer added Sections 8, 21, 29 ofthe NDPS Act and Sections 13, 17& 18 of the Act of 1967. That keeping in view the gravity of offences, the investigation of the impugned FIR was, accordingly, handed over to the respondent (National investigating Agency) and the case was re-registered as RC No. 05/2020/NlA/ Jammu dated 26.11.2020 under Sections 307, 120-B and 121 of IPC, Sections 7/25 of the Arms Act, Sections 8, 21 and 29 of the NDPS Act and Sections 13, 17 & 18 of the Act of 1967.

**4.** That during the course of investigation, 9 mm pistol and 7 liverounds were recovered and seized from the residential house of one accused, namely, Sham Lal and on the disclosure statement made by another accused Ajeet Kumar (A-3), 500 gram of heroin was recovered from the house of Ajeet Kumar and cash amounting to Rs. 9,06,300/- (Rupees Nine Lac, Six Thousand and Three Hundred) was recovered. The allegation against the petitioner herein is that on the disclosure of accused-Sham Lal, one black colour bag having text adidas on the front and Kalsi sports and trophies Gharyala besides the image of tiger was recovered from the bedroom of accused Sham Lal.

**5.** That the said Sham Lal has stated in his disclosure statement that this bag was purchased by accused-Gurpartap Singh (petitioner herein) and was given to him containing Rs. 20 lakh (Rupees Twenty Lacs), which were distributed by the said Sham Lal to the other members of Jammu modules. That a final charge-sheet was produced before the trial Court and vide order dated 23.08.2022, charges were framed against the petitioner under Section 120-B of the IPC read with Sections 8, 29, 21, 23& 27-A of the NDPS Act and Sections 17, 18, 38, 39 & 40 of the Act of 1967.

**ARGUMENTS ON BEHALF ON THE PETITONER**

**6.** Learned counsel for the petitioner has vehemently argued that on perusal of the charge-sheet, it is apparent that there is no direct evidence or circumstantial evidence against the petitioner except the disclosure statement of the said Sham Lal and it is well settled law that the disclosure statement can even not be placed in the charge-sheet. The disclosure statement is only for the purpose of the Investigating Officer to lead the investigation and collect the evidence against the petitioner. However, no evidence, no recovery and no cash has been recovered from the petitioner and only on the basis of the disclosure statement of the co-accused, charges under Section 120-B of the IPC read with Sections 8, 29, 21, 23 & 27-A of the NDPS Act and Sections 17, 18, 38, 39 & 40 of the Act of 1967 has been framed against the petitioner.

**7.** Learned counsel for the petitioner has further argued that the charge-sheet also transpires that there is no evidence or any witnesses against the petitioner, which proves involvement of the petitioner in the said charge-sheet. He further submits that there are witnesses against the other accused, however, none of the witnesses have stated anything against the petitioner and since the charges framed against the petitioner are against law and evidence and the trial Court has not taken into account the evidence produced by the prosecution,

therefore, the same are required to be quashed and the petitioner may be discharged from the aforesaid offences.

**LEGAL ANALYSIS**

**8.** Heard learned counsel for the petitioner at length.

**9.** The law has been settled that parameters for invoking the inherent jurisdiction of the Court to quash the criminal proceedings under Section 528 of the BNSS *(corresponding to Section 482 CrPC)* are limited and the same has to be exercised in rarest of rare cases and not in casual manner. The aforesaid proposition of law is well settled by Apex Court in "***State of Haryana vs Bhajan Lal"*** reported in ***AIR 1992 SC 604,*** wherein a caution has been given to the constitutional courts exercising the powers given under Section 482 of Criminal Procedure Code. The relevant para is reproduced as follows:

> ***"103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice."***

**10.** This Court also takes note of the judgment of Hon'ble Apex Court in ***Prashant Bharti vs State (NCT of Delhi)*** reported in ***2013 9 SCC 293,*** wherein following has been held:

> ***22. The proposition of law, pertaining to quashing of criminal proceedings, initiated against an accused by a High Court under Section 482 of the Code of Criminal Procedure (hereinafter referred to as "CrPC") has been dealt with by this Court in Rajiv Thapar v. Madan Lal Kapoor [Rajiv Thapar v. Madan Lal Kapoor, (2013) 3 SCC 330 : (2013) 3 SCC (Cri) 158] wherein this Court inter alia held as under: (SCC pp. 347-49, paras 29-30)***
>
> > ***"29. The issue being examined in the instant case is the jurisdiction of the High Court under Section 482 CrPC, if it chooses to quash the initiation of the prosecution against an accused at the stage of issuing process, or at the stage of committal, or even at the stage of framing of charges.***

***These are all stages before the commencement of the actual trial. The same parameters would naturally be available for later stages as well. The power vested in the High Court under Section 482 CrPC, at the stages referred to hereinabove, would have far-reaching consequences, inasmuch as it would negate the prosecution's/complainant's case without allowing the prosecution/complainant to lead evidence. Such a determination must always be rendered with caution, care and circumspection. To invoke its inherent jurisdiction under Section 482 CrPC the High Court has to be fully satisfied that the material produced by the accused is such that would lead to the conclusion that his/their defence is based on sound, reasonable, and indubitable facts; the material produced is such as would rule out and displace the assertions contained in the charges levelled against the accused; and the material produced is such as would clearly reject and overrule the veracity of the allegations contained in the accusations levelled by the prosecution/complainant. It should be sufficient to rule out, reject and discard the accusations levelled by the prosecution/complainant, without the necessity of recording any evidence. For this the material relied upon by the defence should not have been refuted, or alternatively, cannot be justifiably refuted, being material of sterling and impeccable quality. The material relied upon by the accused should be such as would persuade a reasonable person to dismiss and condemn the actual basis of the accusations as false. In such a situation, the judicial conscience of the High Court would persuade it to exercise its power under Section 482 CrPC to quash such criminal proceedings, for that would prevent abuse of process of the court, and secure the ends of justice.***

***30. Based on the factors canvassed in the foregoing paragraphs, we would delineate the following steps to determine the veracity of a prayer for quashing raised by an accused by invoking the power vested in the High Court under Section 482 CrPC:***

> ***30.1. Step one: whether the material relied upon by the accused is sound, reasonable, and indubitable i.e. the material is of sterling and impeccable quality?***
>
> ***30.2. Step two: whether the material relied upon by the accused would rule out the assertions contained in the charges levelled against the accused i.e. the material is sufficient to reject and overrule the factual assertions contained in the complaint i.e. the material is such as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false?***
>
> ***30.3. Step three: whether the material relied upon by the accused has not been refuted by the prosecution/complainant; and/or the material is such that it cannot be justifiably refuted by the prosecution/complainant?***

> ***30.4. Step four: whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?***
>
> ***30.5. If the answer to all the steps is in the affirmative, judicial conscience of the High Court should persuade it to quash such criminal proceedings in exercise of power vested in it under Section 482 CrPC. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial (as well as proceedings arising therefrom) specially when it is clear that the same would not conclude in the conviction of the accused."***

**11.** However, the instant petition does not fall within the aforesaid parameters laid down by the Apex Court, as there was sufficient material on record to frame charges against the petitioner as has been discussed by the trial court in the order impugned, wherein the trial court was to consider the broad probabilities of the case and the total effect of the evidence produced by the prosecution at the stage of framing of charges. Even otherwise, this Court while exercising the powers under Section 528 of the BNSS also cannot go into the question or issue whether recovery, evidence and cash has been recovered from the petitioner or not. All these issues/questions are to be dealt with by the trial Court, where the trial is pending adjudication. On this count also, the instant petition deserves dismissal.

**12.** Another aspect of the matter which is paramount that the impugned order of framing of charges was passed by the trial Court on 23.08.2022 and the petitioner has approached this Court by way of instant petition filed under Section 528 of the BNSS in the year 2024, i.e., after a delay of two years, thus, the instant petition suffers from delay and laches and is required to be dismissed on this ground alone, when the said order was gladly and voluntarily accepted by the petitioner for almost two years.

**13.** The petition under 528 of the BNSS (***earlier Section 482 CrPC)*** shall not to be entertained where there is inordinate delay and laches. This court places reliance on the judgement of Hon'ble Delhi High Court in ***Vipin Kr. Gupta vs***

***Sarvesh Mahajan*** reported in ***2019 SCC OnLine Del 12349***, wherein following has been held:

> ***11. Now, this Court would like to deal with firstly, the order dated 17.11.2014. The order dated 17.11.2014 has been assailed now, after more than four years of the passing of the said impugned order. There is neither any plausible explanation nor any sufficient cause in the petition to approach this Court after such an inordinate delay. I have no hesitation to hold that if the Court fails to take into consideration delay and laches, while invoking the powers of the High Court under Section 482 of the Cr. P.C., without any reasonable ground, there would be no end to the litigation, as a consequence whereof, neither any trial would be proceeded nor any trial would be concluded before the Trial Court. The impugned order dated 17.11.2014 is barred by the principle of delay and laches, to invoke the powers of the High Court under Section 482 of the Cr. P.C., hence, challenge to the impugned order dated 17.11.2014 cannot be entertained at this stage after such a long, inordinate delay and laches, hence is not liable to be set aside on this ground alone. In this regard, see Rajesh Chetwal v. State, in Crl.M.C.1656/2011, decided by this Court on 24.8.2011, Inder Mohan v. The State, 1972 Cri LJ 1569, Gopal Chauhan v. Smt. Satya, 1979 Cri LJ 446 and Bata v. Anama Behera, 1990 Cri LJ 1110.***

**14.** The law is well settled that at the stage of framing of charge, the trial court is not to examine and determine in detail the material placed on record by the prosecution, nor it is for the court to consider the sufficiency of the material to establish the offence alleged against the petitioner. At the stage of charge, the trial court is to examine the material only with the view to satisfy itself that a *prima facie* case for commission of offence alleged has been made against the accused persons. The trial court should not make a roving enquiry into pros and cons of the matter and weigh the evidence as if the trial court is conducting a trial. The trial judge at that stage may sift the evidence for limited purpose but he is not required to marshal the evidence with a view to separate the grain from the chaff. It is a settled position of law that admissibility or inadmissibility of the disclosure statement cannot be taken into consideration at the stage of framing of charge. Thus, if the allegation leveled in the police report under

Section 173(2) Cr.PC, the statement of witnesses of the prosecution, the disclosure statement of accused person and seizure cum recovery memo are to be taken on consideration, *prima facie* there was sufficient material as per the order passed by the trail court to charge-sheet the petitioner for commission of offences. Accordingly, the reasoned order passed by the trial court, whereby the charges have been framed against the petitioner and other accused persons cannot be interfered with by this Court.

**15.** Keeping in view the aforesaid enunciation of law and after perusing the order impugned, this Court is of the considered opinion that the instant petition is not maintainable and deserves dismissal.

**CONCLUSION**

**16.** In view of aforesaid observations, this court is not inclined to invoke the inherent jurisdiction under Section 528 BNSS in the instant case with a view to quash the impugned order dated 13.08.2022 passed by the learned 3rd Additional Sessions Judge, NIA Court, Jammu and accordingly, the instant petition is ***dismissed in limine*** along with all connected application(s).

**(Wasim Sadiq Nargal)**
**Judge**

JAMMU
25.09.2024
**Ram Krishan**

Ram Krishan
2024.10.03 13:11
I attest to the accuracy and
integrity of this document