



2024:DHC:4852



IN THE HIGH COURT OF DELHI AT NEW DELHI

%

Judgment delivered on:01.07.2024

+ **CRL.REV.P. 294/2023 & CRL.M.A. 7372/2023**

MAMTA SAPRA

..... Petitioner

versus

THE STATE GOVT OF NCT OF DELHI

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Sunil Mehta, Adv.

For the Respondent : Mr. Ajay Vikram Singh, APP for the State
with Mr. Surya Prateek Singh and Mr. Ankur
Tuli, Advs.
SI Sandeep Mathur, PS-Narcotics Cell/
Outer North Distt.

CORAM

HON'BLE MR JUSTICE AMIT MAHAJAN

JUDGMENT

1. The present petition is filed under Sections 397/401 read with Section 482 of the Code of Criminal Procedure, 1973 (**CrPC**), seeking setting aside of the order dated 30.01.2023 (hereafter '**impugned order**'), passed by the learned Additional Sessions Judge (**ASJ**)/ Special Judge (**NDPS**), North, Rohini Courts, Delhi in FIR No. 600/2021 dated 16.10.2021, registered at Police Station Shahbad

Signature Not Verified

Digitally Signed
By: HARMINDER KAUR
Signing Date: 02.07.2024
15:55:07

CRL.REV.P. 294/2023

Page 1 of 12



2024:DHC:4852



Dairy, for offences under Sections 21/25 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (**NDPS Act**). By the impugned order, the charges for offences under Sections 21/25/29 of the NDPS Act were framed against the petitioner.

2. Briefly stated, the facts relevant for adjudication of the present petition are as follows:

- i. On 16.10.2021, at about 12:00 p.m., Head Constable Pawan Kumar, Narcotics Cell (OND) received information that one Nitin, who is a resident of Rohini, Delhi, in association with one Kusum and the present petitioner is engaged in sale and supply of heroin and that he would deliver a consignment of heroin near Saint Xavier School, Shahbad Dairy to someone between 03:30 p.m. to 04:00 p.m.
- ii. On the basis of the said information, after complying with the mandatory provisions required under the NDPS Act, a raiding team was constituted which left for the spot at around 2:30 p.m. After reaching the spot, the raiding team asked the passersby to join the raid, however, all of them gave reasons and disagreed to join without disclosing their names and addresses.
- iii. Thereafter, at the instance of a secret informer, accused person namely Nitin, was apprehended and was served with a Notice under Section 50 of the NDPS Act and was informed of his



2024:DHC:4852



right to be searched in the presence of a Gazetted Officer or a Magistrate.

- iv. Thereafter, on search, one black polythene was recovered from the right side tool box of his motorcycle which contained another transparent polythene. The said transparent polythene was found to be containing some brown coloured substance, which was tested with a field testing kit, and was found to be heroin weighing 500 grams. The said contraband was sealed and seized.
- v. It is the case of the prosecution that the accused Nitin, during interrogation, revealed that he used to supply heroin to the customers of the petitioner and she used to give ₹30,000/- per month to him for the same.
- vi. He further disclosed that the petitioner and her sister Kusum, are in the business of supplying heroin and used to procure heroin from their brother namely, Dineshpal @ Danny, who resides in Bulandshahar, Uttar Pradesh.
- vii. During investigation, the house of the accused Dineshpal @ Danny at Bulandshahar, Uttar Pradesh, was searched after giving him the Notice under Section 50 of the NDPS Act and 500 grams of heroin was recovered from the almirah placed in the said accommodation. Subsequently, the accused Dineshpal



2024:DHC:4852



@ Danny was arrested and the said recovered heroin was sealed and seized.

- viii. During investigation, Dineshpal @ Danny disclosed that his sisters – the petitioner and Kusum used to take heroin from him for trafficking purpose. Thereafter, the petitioner was arrested.
 - ix. It is the prosecution's case that during the investigation, no incriminating evidence was found against Kusum. Hence, she was kept in Column No. 12 of the chargesheet.
 - x. Upon completion of investigation, the chargesheet in the present case was filed against accused Nitin, Dineshpal @ Danny and the petitioner for offences under Sections 21/25/29 of the NDPS Act.
 - xi. Thereafter, the learned ASJ passed the impugned order based on *prima facie* evidence on record and framed charges for offences under Sections 21/25/29 of the NDPS Act were framed *qua* the accused persons.
3. The learned counsel for the petitioner submitted that the learned ASJ has erroneously framed charges against the petitioner, as nothing incriminating was recovered at her instance or from her possession.
4. He submitted that the petitioner was not present at the spot, from where the other accused persons were apprehended. Petitioner was arrested only on the basis of a disclosure statement.



2024:DHC:4852



5. He argued that the disclosure statement *per se* is inadmissible in law under Section 67 of the NDPS Act. He submitted that the disclosure statements of the co-accused persons recorded under Section 67 of the NDPS Act are not admissible as evidence against the petitioner. In support of his contentions, he placed reliance on the following judgments:

- i. ***Kashmira Singh v. State of Madhya Pradesh : AIR 1952 SC 159***
- ii. ***Tofan Singh v. State of Tamil Nadu : (2021) 4 SCC 1***

6. *Per contra*, the learned Additional Public Prosecutor (**APP**) for the State submitted that there is sufficient evidence against the petitioner to suspect the commission of the alleged offence, and only after examining the charge sheet and other material available on record, the charges were framed by the learned ASJ and in the given facts and circumstances, there is no error committed by the learned ASJ while framing charges against the petitioner.

7. The learned APP for the State submitted that during interrogation, accused Nitin was found to be carrying the original PAN Card of the petitioner. It was further revealed that the accused Nitin and the petitioner were in regular touch with each other after the CDR for mobile numbers of the accused persons was obtained from the concerned service providers. Therefore, he submitted that the



petitioner was also the part of criminal conspiracy and was involved in abetting trafficking of the contraband.

8. The learned APP for the State further submitted that when a *prima facie* case is made out against an accused, a detailed enquiry into the merits of the case cannot be conducted at the stage of framing of charges. It is, thus, contended that the present petition be dismissed.

ANALYSIS

9. Heard the learned counsel for parties and perused the record.

10. The scope of interference by High Courts while exercising revisional jurisdiction in a challenge to order framing charge is well settled. The power ought to be exercised sparingly, in the interest of justice, so as to not impede the trial unnecessarily. In the case of ***Amit Kapoor v. Ramesh Chander : (2012) 9 SCC 460***, the Hon'ble Supreme Court, advertent to a catena of precedents, has noted that the test is whether the allegations, as made from the record of the case, taken at their highest, constitute the offence or not. The Hon'ble Supreme Court also noted that the Court may interfere if the allegations are patently absurd and the basic ingredients of the offence, for which the charge is framed, are not made out.

11. It is trite law that the learned Trial Court while framing charges under Section 228 of the CrPC, is not required to conduct a mini-trial and has to merely weigh the material on record to ascertain whether the ingredients constituting the alleged offence are *prima facie* made



out against the accused persons. The Hon'ble Apex Court, in the case of ***Sajjan Kumar v. CBI : (2010) 9 SCC 368***, has culled out the following principles in regard to the scope of Sections 227 and 228 of the CrPC:

“21. On consideration of the authorities about the scope of Sections 227 and 228 of the Code, the following principles emerge:

(i) The Judge while considering the question of framing the charges under Section 227 CrPC has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima facie case would depend upon the facts of each case.

(ii) Where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained, the court will be fully justified in framing a charge and proceeding with the trial.

(iii) The court cannot act merely as a post office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court, any basic infirmities, etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

(iv) If on the basis of the material on record, the court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.

(v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.



(vi) *At the stage of Sections 227 and 228, the court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.*

(vii) *If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal.”*

(emphasis supplied)

12. The Hon’ble Apex Court, in ***Bhawna Bai v. Ghanshyam*** : (2020) 2 SCC 217, held as under :

“13. Though the circumstances alleged in the charge-sheet are to be established during the trial by adducing the evidence, the allegations in the charge-sheet show a prima facie case against the accused-Respondents 1 and 2. The circumstances alleged by the prosecution indicate that there are sufficient grounds for proceeding against the accused. At the time of framing the charges, only prima facie case is to be seen; whether case is beyond reasonable doubt, is not to be seen at this stage. At the stage of framing the charge, the court has to see if there is sufficient ground for proceeding against the accused. While evaluating the materials, strict standard of proof is not required; only prima facie case against the accused is to be seen.”

13. The Court at the stage of framing of charge is to evaluate the material only for the purpose of finding out if the facts emerging when taken at their face value, disclose the existence of ingredients constituting the offence. The Court only has to form an opinion based



on the material placed before it that the accused might have committed the alleged offence. Though, for the purpose of conviction, the same has to be proved beyond reasonable doubt.

14. The learned ASJ has framed charges against the petitioner under Sections 21/25/29 of the NDPS Act by giving following reasons:

“6. As far as accused Mamta is concerned, there is a CDR proving the connectivity between main accused Nitin and accused Mamta. There are multiple calls prior to the apprehension of accused Nitin with accused Mamta. Apart from the said CDR connectivity, at the time of apprehension of accused Nitin, he was also carrying the original PAN Card of accused Mamta which shows the active connivance between them. Therefore, at this stage, there is prima facie material to prove the fact that accused Mamta being also the part of criminal conspiracy.

xxxx

xxxx

xxxx

12. Hence, keeping in view the afore-mentioned submissions and the material available on record, prima facie case is made out against the accused Dinesh Pal @ Daini to frame charge under Section 21 NDPS Act. Separate charge is framed against him to which he pleaded not guilty and claim trial.

Prima facie case is also made out against accused Nitin, Dinesh Pal @ Daini and Mamta Spru to frame charge under section 21/25/29 NDPS Act. Separate charge is framed against them to which they pleaded not guilty and claim trial.”

15. It is not disputed that the petitioner was named as an accused by the co-accused persons namely, Nitin and Dineshpal @ Danny in the disclosure statement. It is apparent that the learned ASJ has framed charges against the petitioner on the basis of CDR which reflected that the accused persons were in regular contact with each other. The learned ASJ further observed that the petitioner played an active role



2024:DHC:4852



in the commission of the alleged offence as the original PAN Card of the petitioner was found with the accused Nitin at the time of apprehension.

16. No evidence has been collected to establish that the petitioner used to take contraband 'heroin' for trafficking purpose from the accused Dinesh Pal @ Danny or that the accused Nitin used to supply 'heroin' to the customers of the petitioner for which he received ₹30,000/- per month. Undoubtedly, at the time of framing of charges, roving inquiry and meticulous appreciation of the evidence available on record is not required. But at the same time, while exercising the revisionary jurisdiction if it is found that the charges framed by the learned Trial Court are grossly erroneous or have been made without any material on record, are based on no evidence, or have been arbitrarily or perversely exercised, then revisionary jurisdiction can be exercised.

17. The case of the prosecution is essentially based upon the disclosure statement of the co-accused persons and the applicant. It is trite law that unless a fact is discovered on the basis of statement made by the accused, the same is legally inadmissible under Section 27 of the Indian Evidence Act, 1872 (**IE Act**).

18. In the present case, there is no other material placed on record by the prosecution in the chargesheet to support the allegations *qua* the present petitioner with respect to her involvement with the contraband allegedly recovered from the co-accused persons. No



2024:DHC:4852



recovery was effectuated from the present petitioner.

19. Even though reliance is placed on the CDR in order to contend that the accused persons from whom the recovery of contraband was made, was in regular touch with the petitioner and the petitioner was also involved, no recorded conversation has been relied upon to support the said allegation. The allegation is solely made on the basis of disclosure statement which is not admissible.

20. The allegations, as made, though raise suspicion but does not disclose grave suspicion, so as to justify framing of charges against the petitioner. It is a settled law that the Court is not to act as a post-office or as a mouthpiece of the prosecution but has to consider the broad probabilities of the case and, to take into consideration, the total effect of the evidence, in the documents produced before the Court.

21. It is also a settled law that if two views are possible, one of them only gave rise to suspicion and not to a grave suspicion, the Court shall discharge the accused. In somewhat similar circumstances, a coordinate Bench of this Court in ***Shyam Gupta & Ors. v. State : 2023/DHC/001777***, where the charges were framed, relying upon the CDR and the disclosure statement of the accused, held as under:

“15. Applying the aforesaid principle to the facts of the present case, it is clear that the only evidence against petitioner no. 3 is the CDR, which may create a suspicion but not a grave suspicion. If one examines the CDR sans disclosure statement then there is nothing on record to link the said calls to the recovery in question. There is no other



2024:DHC:4852



material placed on record by the prosecution in the chargesheet to support the allegations qua the present petitioner with respect to her involvement with the contraband allegedly recovered from the co-accused persons. No recovery was effected from the petitioner no. 3 or at her instance.”

22. In view of the above, this Court is of the opinion that the impugned order cannot be sustained and is hereby set aside and petitioner is discharged in FIR No. 600/2021.

23. The present petition is accordingly allowed. Pending application(s) stand disposed of.

AMIT MAHAJAN, J

JULY 01, 2024

Signature Not Verified

Digitally Signed
By: HARMINDER KAUR
Signing Date: 02.07.2024
15:55:07