



2024:DHC:3058



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI*****Date of decision: 15.04.2024***

+ CRL.REV.P. 495/2024

ARUN KUMAR @ VARUN

..... Petitioner

Through: Mr.Yogesh Saxena & Ms.Priya
Saxena, Advs.

versus

NARCOTICS CONTROL BUREAU

..... Respondent

Through: Mr.Utsav Singh Bains, SPP
NCB.**CORAM:****HON'BLE MR. JUSTICE NAVIN CHAWLA****NAVIN CHAWLA, J. (ORAL)****CRL.M.A. 11167/2024 (Exemption)**

1. Allowed, subject to all just exceptions.

CRL.REV.P. 495/2024 & CRL.M.A. 11166/2024

2. This petition has been filed under Section 397 of the Code of Criminal Procedure, 1973 (in short, 'Cr.P.C.') challenging the order dated 06.01.2024 passed by the learned ASJ/Special Judge, NDPS Court, New Delhi (hereinafter referred to as the 'Trial Court'), in SC No. 156/2021, titled *NCB v. Bhanu Pratap Singh & Ors.*, framing charges against the petitioner herein under Section 22(c) read with Section 29 of the Narcotics Drugs and Psychotropic Substances Act (in short 'NDPS Act') and Section 23(c) read with Section 29 of the NDPS Act, and the charges that were framed vide order dated 11.01.2024 by the learned Trial Court.

3. Issue notice

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4. Notice is accepted by Mr. Utsav Singh Bains, learned Special Public Prosecutor for the NCB.

5. The learned counsel for the petitioner submits that the entire case of the prosecution against the petitioner is based on the alleged disclosure statement made by the co-accused Som Dutt on 08.04.2021, 10.04.2021, and 12.04.2021. He submits that the disclosure statement is not admissible in evidence. He places reliance on the judgment of the Supreme Court in *State of Tamil Nadu v. Tofan Singh* (2021) 4 SCC 1, in support of his submission. He further submits that as far as the mobile recovered from the petitioner is concerned, in the Mobile Data Extraction Report dated 11.06.2021, there is no finding of any data being deleted or any incriminating data being recovered from the said mobile phone.

6. He places reliance on the judgment of this court in *Arun Kumar @ Varun v. Narcotics Control Bureau* 2023:DHC:2752, wherein this Court, while releasing the applicant on bail, has observed as under:

“16. Pursuant to an assessment of the respective contention of the parties and perusal of documents on record, this Court notes that there was no recovery from the petitioner and his name cropped up, as per the State, in disclosure statements of Somdutt, which in any event are not admissible. However, even despite Somdutt disclosing the involvement of the petitioner, there was no recovery from the petitioner and the allegation was, even as per Somdutt, that the petitioner used to provide fake ID's of different persons for courier of parcels containing these medicines to different countries. Recoveries were from Somdutt instead. The CDR assessment by the State would at best show that the petitioner was in touch with Somdutt,



Even as per the screenshots relied upon by the State of the mobile messages, it does not reveal that there were discussions regarding contraband. The bank accounts statements which the State relies upon are merely a typed copy showing the list of amounts and dates but there are no details provided regarding whom these amounts were received from or sent to. As regards the statement of Preeti in the other complaint case (SC No. 156/2021), it is noted that the IO had withdrawn the application to rely upon her statement in this matter. The petitioner was accused in this other case, in which he is already on bail since 28th May, 2022. The tracking bar codes relied upon by the State as also the tracking details of the courier parcels only serve to show that there were packages sent to certain named persons abroad but there is nothing placed on record to show their connection with the petitioner. It seems prima facie evident that the role of the petitioner, ever as per the prosecution case, is different from the other accused and is being considered in light of the specific allegations in relation to the petitioner,

17. The Hon'ble Supreme Court in Mohd. Muslim @ Hussain v. State (2023) SCC OnLine 352 has held that the standard to be considered by the Court regarding conditions under Section 37 NDPS is of a reasonable satisfaction on a prima facie look at the material on record, that the accused may not be guilty. It does not call for meticulous examination of material collected during investigation. Based on these facts and circumstances, therefore, this Court is satisfied that there are reasonable grounds for a prima facie belief that he is not guilty for such offence for which he is being implicated, and there is no material on record to reach any conclusion that he is likely to commit any offence while on bail."

7. I have considered the submissions made by the learned counsel



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for the petitioner, however, I find no merit in the same.

8. It must be remembered that at the stage of framing of charges, the prosecution is not to establish the guilt of the accused beyond reasonable doubt, but only on the touchstone that there being a *prima facie* case to proceed against the petitioner. Reference in this regard may be made to the judgment of the Supreme Court in ***State of Rajasthan v. Ashok Kumar Kashyap*** (2021) 11 SCC 191, wherein it was held that:

“11.1. In P. Vijayan v. State of Kerala, (2010) 2 SCC 398, this Court had an occasion to consider Section 227 CrPC. What is required to be considered at the time of framing of the charge and/or considering the discharge application has been considered elaborately in the said decision. It is observed and held that at the stage of Section 227, the Judge has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding against the accused. It is observed that in other words, the sufficiency of grounds would take within its fold the nature of the evidence recorded by the police or the documents produced before the court which ex facie disclose that there are suspicious circumstances against the accused so as to frame a charge against him. It is further observed that if the Judge comes to a conclusion that there is sufficient ground to proceed, he will frame a charge under Section 228 CrPC, if not, he will discharge the accused. It is further observed that while exercising its judicial mind to the facts of the case in order to determine whether a case for trial has been made out by the prosecution, it is not necessary for the court to enter into the pros and cons of the matter or into a weighing and balancing of evidence and probabilities



which is really the function of the court, after the trial starts.

11.2. In the recent decision of this Court in *State of Karnataka v. M.R. Hiremath*, (2019) 7 SCC, one of us (D.Y. Chandrachud, J.) speaking for the Bench has observed and held in para 25 as under :

“25. The High Court ought to have been cognizant of the fact that the trial court was dealing with an application for discharge under the provisions of Section 239 CrPC. The parameters which govern the exercise of this jurisdiction have found expression in several decisions of this Court. It is a settled principle of law that at the stage of considering an application for discharge the court must proceed on the assumption that the material which has been brought on the record by the prosecution is true and evaluate the material in order to determine whether the facts emerging from the material, taken on its face value, disclose the existence of the ingredients necessary to constitute the offence. In *State of T.N. v. N. Suresh Rajan* (2014) 11 SCC advertent to the earlier decisions on the subject, this Court held :

‘ 29. ... At this stage, probative value of the materials has to be gone into and the court is not expected to go deep into the matter and hold that the materials would not warrant a conviction. In our opinion, what needs to be considered is whether there is a ground for presuming that the offence has been committed and not whether a ground for convicting the accused has been made out. To put it differently, if the court thinks that the accused might have committed the offence on the basis of the materials on record on its probative value, it can frame the charge; though for conviction, the court has to come to the conclusion that the accused has committed the offence. The



law does not permit a mini trial at this stage.”

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14. As rightly observed and held by the learned Special Judge at the stage of framing of the charge, it has to be seen whether or not a prima facie case is made out and the defence of the accused is not to be considered. After considering the material on record including the transcript of the conversation between the complainant and the accused, the learned Special Judge having found that there is a prima facie case of the alleged offence under Section 7 of the PC Act, framed the charge against the accused for the said offence. The High Court materially erred in negating the exercise of considering the transcript in detail and in considering whether on the basis of the material on record the accused is likely to be convicted for the offence under Section 7 of the PC Act or not.

15. As observed hereinabove, the High Court was required to consider whether a prima facie case has been made out or not and whether the accused is required to be further tried or not. At the stage of framing of the charge and/or considering the discharge application, the mini trial is not permissible. At this stage, it is to be noted that even as per Section 7 of the PC Act, even an attempt constitutes an offence. Therefore, the High Court has erred and/or exceeded in virtually holding a mini trial at the stage of discharge application.”

9. Recently, the Supreme Court in ***State of Gujarat v. Dilipsinh Kishorsinh Rao*** 2023 SCC OnLine SC 1294, has held as under:

“7. It is trite law that application of judicial mind being necessary to determine whether a case has been made out by the prosecution for proceeding with trial and it would not be necessary to dwell into the pros and cons of the matter by examining the defence of the



accused when an application for discharge is filed. At that stage, the trial judge has to merely examine the evidence placed by the prosecution in order to determine whether or not the grounds are sufficient to proceed against the accused on basis of charge sheet material. The nature of the evidence recorded or collected by the investigating agency or the documents produced in which prima facie it reveals that there are suspicious circumstances against the accused, so as to frame a charge would suffice and such material would be taken into account for the purposes of framing the charge. If there is no sufficient ground for proceeding against the accused necessarily, the accused would be discharged, but if the court is of the opinion, after such consideration of the material there are grounds for presuming that accused has committed the offence which is triable, then necessarily charge has to be framed.

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12. The primary consideration at the stage of framing of charge is the test of existence of a prima-facie case, and at this stage, the probative value of materials on record need not be gone into. This Court by referring to its earlier decisions in the State of Maharashtra v. Som Nath Thapa, (1996) 4 SCC 659 and the State of MP v. Mohan Lal Soni, (2000) 6 SCC 338 has held the nature of evaluation to be made by the court at the stage of framing of the charge is to test the existence of prima-facie case. It is also held at the stage of framing of charge, the court has to form a presumptive opinion to the existence of factual ingredients constituting the offence alleged and it is not expected to go deep into probative value of the material on record and to check whether the material on record would certainly lead to conviction at the conclusion of trial.”

10. In the present case, there is a recovery of contraband from the



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co-accused. The prosecution also alleges contact between the co-accused and the petitioner herein. There is also a money transaction reflected in the bank account of the petitioner from the co-accused. It is alleged that there is incriminating material found in the mobile phone of the petitioner in form of photographs of NRX tablets and details of parcels sent to foreign countries. It may be true that the applicant has been released on bail on a finding that there is reasonable ground for believing that he is not guilty of the offence charged, however, the test to be applied at the stage of framing of the charge would be a little different, and as noted hereinabove, of existence of a *prima facie* case against the petitioner to proceed with the trial. Merely because the petitioner has been released on bail, would not mean that he must also be discharged in the trial.

11. In my view, therefore, there is sufficient material at present to proceed against the petitioner herein. No fault can be found in the impugned order.

12. The petition is accordingly dismissed.

13. It is made clear that any observations made hereinabove in the present order shall in no manner influence the learned Trial Court during the adjudication of the proceedings before it.

NAVIN CHAWLA, J

APRIL 15, 2024/rv/am

Click here to check corrigendum, if any