



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

% Reserved on: 22.01.2024
Pronounced on: 22.02.2024

+ **CRL.M.C. 6586/2023 & CRL.M.A. 24724/2023**

IN THE MATTER OF:

KUNWARPAL

..... Petitioner

Through: Mr. Sumit Sharma and Mr. Narender,
Advocates.

Versus

STATE THROUGH SHO, P.S. SPECIAL CELL

..... Respondent

Through: Mr. Aashneet Singh, APP for State
with SI Dharmender PS Special Cell
Rohini/NR & STF.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

1. The present petition has been filed under Section 482 Cr.P.C. against the order framing charge as well as quashing of proceedings in FIR No.11/2019 registered under Section 21/29 NDPS Act at P.S. Special Cell (SB) and all proceedings emanating thereunder against the petitioner.
2. Briefly stated, the facts relevant for adjudication of the present petition are as follows:-

i) On 18.01.2019, on the basis of alleged secret information, the officials of Special Cell, Delhi Police, apprehended co-accused namely Sanjay, Mausam Ali and Chhote Khan. Subsequently, bags containing 1.5 kg heroin each



were recovered from Mausam Ali and Chhote Khan. Thereafter on the search of the vehicle, 2 kgs of Heroin was also seized and recovered. In total, 5 kgs of Heroin was recovered from co-accused persons and from the car in which they were allegedly travelling bearing registration number UK 06 AG 0684 near Nirankari Sarovar, Delhi. Thereafter, on the basis of the alleged recovery, all three co-accused persons were arrested and an FIR was lodged. Subsequently, the disclosure statements of the three co-accused were recorded and the concerned IO also filed two reports u/s 57 NDPS Act with regard to the seizure and arrest of the said persons.

ii) Another co-accused namely Jalil Khan was apprehended on 19.01.2019 from 150 meters away from the Government School on a road leading towards Vijay Nangla Faatak to Village Bilsa, Badaun, U.P, however no recovery was made from him. The said co-accused gave a disclosure statement on the basis of which, the present petitioner Kunwar Pal was picked up from his house by the police on 24.01.2019. No recovery was however, affected from the petitioner and a disclosure statement was extracted.

iii) After relying upon certain letters written to the different Nodal Officers, Delhi by senior officers with regard to telephone interceptions of crucial numbers as well as few alleged conversations between the accused as well as with certain other persons, the prosecution after completion of the investigation filed the chargesheet under section 21(c) & 29 of NDPS Act against the accused persons namely Sanjay, Chhote Khan, Mausam Ali, Jalil Khan and Kunwarpal/petitioner.

iv) The Ld Trial Court vide order dated 03.09.2019, framed charges against the petitioner and the other co-accused under sections 21 and 29 of NDPS Act.

v) Thereafter, the petitioner was granted regular bail by the Ld Trial Court vide the order dated 17.12.2019. Petitioner's application seeking discharge came to be dismissed vide order dated 09.06.2022. The co-accused Jalil Khan and Kaisar Khan



were granted regular bail vide an order of this Court dated 18.11.2022.

3. Learned counsel appearing on behalf of the petitioner states that the learned Special Judge erred in framing the charge qua the petitioner under sections 21 and 29 NDPS Act inasmuch as nothing incriminating was recovered from his person/possession or at his instance. It is further stated that the petitioner was not present at the spot where the co-accused namely *Sanjay*, *Mausam Ali* and *Chhote Khan* were arrested and that he came to arrested subsequently, on the basis of the disclosure statement of co-accused *Jalil Khan*.

4. It is further argued that the disclosure statements of co-accused *Sanjay*, *Mausam Ali* and *Chhote Khan* are similar in material aspects and do not mention the name of the petitioner but in turn, mention a total number of 7 other persons including the other co-accused persons. Further, prosecution has not conducted any kind of investigation about the other persons namely *Mustakeem*, *Arshad*, *Saddam*, *Khurshid*, *Mammur*, *Wasim* and *Kasim*, whose names find mention in the statements. It is further argued that the prosecution has failed to mention the reasons for non-inclusion of the said persons as co-accused in the chargesheet.

5. Further, even the secret information which served as the basis for the initiation of the entire case including the apprehension of the above-mentioned co-accused persons does not mention the name of the petitioner. The secret information only mentions the name of co-accused persons namely *Sanjay*, *Chhote Khan* and *Mausam Ali* alongwith the facts relating to the vehicle and the timings, but is silent as regards the petitioner.



6. It is also argued that the CDRs and transcriptions on which reliance is placed are of no assistance whatsoever as there are no conversations between the petitioner and the co-accused persons namely *Sanjay*, *Chhote Khan* and *Mausam Ali* at any point of time. Even the alleged transcripts between the co-accused persons do not carry any incriminating evidence against the petitioner and the name of the petitioner also does not find any mention in the report u/s 57 of the NDPS Act filed w.r.t arrest of the said co-accused persons.

7. Learned APP for the State has opposed the said petition. He has placed on record a status report, wherein it has been stated that during his interrogation, co-accused *Jalil Khan* revealed that he was involved in an illegal heroin trafficking racket and further disclosed that he used to take his supply from the present petitioner.

8. Reliance has been further placed upon CDR connectivity and two incriminating intercepted voice calls between the accused *Jalil Khan* and the petitioner. It is stated that the petitioner was using the number 9761404555, and upon enquiry, the subscribership of the said number was attributed to the petitioner. It is further stated that during the course of investigation voice samples of the petitioner were recorded at FSL and upon analysis, the same matched with the voice sample from intercepted calls. The petitioner is also found involved in another case being FIR No.304/17 registered under Section 18 NDPS Act at PS-Siroli, Bareilly, UP.

9. I have heard the learned counsels for the parties and also perused the material placed on record.



10. The learned Special Judge has framed charges against the petitioner for the offence under Sections 21 and 29 of the NDPS Act by giving the following reason:-

“That on or before 18.01.2019, you entered into a criminal conspiracy for possession / sale purchase and dealing with the narcotic substance. On 18.01.2019 your co accused Mausam Ali, Chote Khan and Sanjay were found driving a car no. UK 06 AG 0684 and during search, total 05 kg of Heroin was recovered from them and your co accused Jalil Khan disclosed about your involvement and thereby you committed an offence punishable u/s 29 r/w Section 21 of NDPS Act and within my cognizance.”

11. It is apparent that the learned Special Judge proceeded to frame charge qua the petitioner on the basis of the disclosure statement of co-accused *Jalil Khan* and the CDR, which reflected that there were 2 voice calls between *Jalil Khan* and the petitioner. A perusal of the chargesheet reflects that reliance on the CDR was placed in the backdrop of the disclosure statement of co-accused *Jalil Khan*, which is inadmissible in nature.

12. The Hon’ble Supreme Court in Dilawar Balu Kurane v. State of Maharashtra¹ has observed that while framing charges, the Judge has the power to ascertain whether the materials on record disclose ‘grave suspicion’ against the accused. It has been held as under:-

“12. Now the next question is whether a prima facie case has been made out against the appellant. In exercising powers under Section 227 of the Code of Criminal Procedure, the settled position of law is that the Judge while considering the question of framing the charges under the said section has the undoubted power to sift and weigh the evidence for the limited

¹ (2002) 2 SCC 135



purpose of finding out whether or not a prima facie case against the accused has been made out; 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; by and large if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully justified to discharge the accused, and in exercising jurisdiction under Section 227 of the Code of Criminal Procedure, the Judge 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 but should not make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial [See Union of India versus Prafulla Kumar Samal & Another (1979 3 SCC 5)].”

13. Applying the aforementioned principles to the case at hand, it is clear that the only evidence against the petitioner is the CDR which creates a suspicion but not a grave suspicion. If the CDR is considered *sans* the disclosure statement, there is nothing on record to link the said intercepted calls to the recovery in question. Mere CDR connectivity, without there being any conversation containing incriminating material against the petitioner, would not bring the case within the net of ‘grave suspicion’. No other material has been placed on record to support to show that the petitioner was in any way involved with the contraband allegedly recovered from the three co-accused persons namely *Sanjay, Mausam Ali and Chhote Khan*. The disclosure statements of said co-accused persons as well as the secret information received by the police do not mention the name of the



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petitioner. Also, no recovery has been made from the petitioner at the time of his apprehension.

14. The Court also draws support from the decision of Coordinate Bench of this Court in Shyam Gupta & Ors. v. State² wherein mere CDR connectivity between the accused persons was found not enough to bring the case under grave suspicion.

15. In view of the above, this Court is of the considered opinion that the proceedings against petitioner would be an abuse of law and thus, are liable to be set aside. Consequently, the petition is allowed and the proceedings qua the petitioner are quashed. Pending application is disposed of as infructuous.

MANOJ KUMAR OHRI
(JUDGE)

FEBRUARY 22, 2024

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² 2023 SCC OnLine Del 1490