$~84

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

***Date of decision:* 11.03.2024**

\+ CRL.REV.P. 328/2024

DEV SINGH & ANR. ..... Petitioners

Through: Mr.Brij Lal Chaurasia, Mr.Dinesh Kumar, Advs.

versus

DIRECTORATE OF REVENUE INTELLIGENCE (DRI) ..... Respondent

Through: Nemo

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

CRL.M.A. 7488/2024 & CRL.M.A. 7489/2024

1. For the reasons stated in the applications, the delay in filing and re-filing the present petition are condoned.

2. The applications are disposed of.

CRL.REV.P. 328/2024

3. This petition has been filed under Section 397 of the Code of Criminal Procedure, 1973 (in short, 'Cr.P.C.') read with Sections 401 and 482 of the Cr.P.C., challenging the order dated 29.05.2023 passed by the learned Special Judge (NDPS Act), Saket, New Delhi in SC Case No.370/2022, titled ***Directorate of Revenue Intelligence (DRI) v. Nitish Kumar & Ors***., directing framing of charges under Sections 29/23 read with Section 28 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short, 'NDPS Act') against the petitioners

herein.

4. It is the case of the prosecution that on 16.02.2022 at 9:00 AM, an information was received that four containers containing goods declared to be Rock Salt Powder, were imported vide Bill of Lading JEA/NSA/7065 dated 01.01.2022 by a Delhi based importer and that the said containers were presently lying at ICD Tughlakabad, New Delhi. It was informed that these containers contained the contraband goods in a concealed manner. Based on the said information, the containers were physically examined and on inspection it was revealed that a total of 982 bags (1000 bags were declared in the Bill of Lading) were found containing heroin weighing 34.7 kgs in total. Out of the 4 containers examined, heroin was found in only one container, wherein two bags of off-white colour HDPE having mark A and B were found. It was further revealed on investigation that the said goods were sent under the consignment by one M/s Lotus Dariya Bandar Shipping Services Company Ltd. Iran in the name of M/s Hamid Karimi through one M/s RDS Shipping Company, Iran. The shipper was Hamid Karimi, Iran and the consignee was M/s Abetar Healthcare Pvt. Ltd. New Delhi.

5. The prosecution further alleges that one Mr. Nitish Kumar is the proprietor of M/s Goodlife Global Pvt. Ltd. In his voluntarily statement, he stated that he was earlier working as a freelance real estate agent and it was the petitioner no.2 who suggested him to try the import and export business. It was on the advice of the petitioner no.2 that he rented out the premises from the petitioner no.1 and opened proprietorship in the name of M/s Goodlife Global, on

08.12.2020. He further stated that the petitioner no.2 was working for the firm named M/s Abetar Healthcare Pvt. Ltd. which was owned by Mr.Lalit Singh and Mr.Dev Singh Bisht, that is, the petitioner no.1 herein. He further disclosed about the involvement of the petitioners in the offences.

6. A pre-alert email was sent by M/s RDS Shipping Company, Iran to M/s Abetar Healthcare Pvt. Ltd. through M/s Bilander Logistic Pvt. Ltd.. One of the directors of M/s Abetar Healthcare Pvt. Ltd., vide email dated 03.01.2022, informed M/s Bilander Logistic Pvt. Ltd. that the said consignment was not their purchase order. On this information, the booking agent initiated change of consignee from M/s Abetar Healthcare Pvt. Ltd. to M/s Goodlife Global New Delhi. The Bill of Lading was also revised and the consignee was changed to M/s Anglo Galleon International Shipping LLC Dubai. A new bill of lading was also prepared for the same consignment wherein the shipper was M/s Anglo Galleon International Shipping LLC Dubai and the consignee was M/s Goodlife Global New Delhi.

7. It is alleged that efforts were made by accused Mr.Nitish Kumar, Proprietor of M/s Goodlife Global, to get the consignment cleared, however, due to lack of proper documents, that is, the bill of entry not being submitted, the said shipment was intercepted.

8. The prosecution further alleges that the petitioner nos.1 and 2, in connivance with Abdul Nasir, had hatched a conspiracy to illegally smuggle heroin from Iran to India by disguising it as Rock Salt. It is alleged that the Import License held by M/s Abetar Healthcare Pvt. Ltd., of which the petitioner no.1 is a director, was used to facilitate

the same.

9. It is alleged that during the course of investigation, it was further revealed that the documents of Nitish Kumar's firm M/s Goodlife Global, New Delhi, were recovered from the residence of the petitioner no.2. There was also recovery of WhatsApp conversations between the petitioner no.2 and Lalit Singh, wherein Lalit Singh inquired about the consignment to which petitioner no.2 had stated that it was the same consignment as discussed before.

10. The learned counsel for the petitioners submits that the petitioners have been involved in the present case merely based on the alleged disclosure statement made by co-accused.

11. He submits that M/s Abetar Healthcare Pvt. Ltd. has not been made an accused and in absence of the company, the petitioner no.1 cannot be made an accused.

12. He further submits that as far as the petitioner no.2 is concerned, he is neither an employee nor the director of M/s Abetar Healthcare Pvt. Ltd. and has no concern with the said company. Mere alleged recovery of the documents belonging to M/s Abetar Heathcare Pvt. Ltd. and of M/s Goodlife Global from his residence cannot be held as a sufficient ground to charge the petitioner no.2 of the offence.

13. I have considered the submission made by the learned counsel for the petitioners.

14. At the stage of framing of charge, the test that is to be applied by the learned Trial Court is well settled. I may refer to the judgement of the Supreme Court in ***State of Delhi v. Gyan Devi & Ors.,*** (2000) 8 SCC 239, wherein it was held as under:-

*"**7.** In the backdrop of the factual position discussed above, the question formulated earlier arises for our consideration. The legal position is well settled that at the stage of framing of charge the trial court is not to examine and assess in detail the materials placed on record by the prosecution nor is it for the court to consider the sufficiency of the materials to establish the offence alleged against the accused persons. At the stage of charge the court is to examine the materials only with a view to be satisfied that a prima facie case of commission of offence alleged has been made out against the accused persons. It is also well settled that when the petition is filed by the accused under Section 482 CrPC seeking for the quashing of charge framed against them the court should not interfere with the order unless there are strong reasons to hold that in the interest of justice and to avoid abuse of the process of the court a charge framed against the accused needs to be quashed. Such an order can be passed only in exceptional cases and on rare occasions. It is to be kept in mind that once the trial court has framed a charge against an accused the trial must proceed without unnecessary interference by a superior court and the entire evidence from the prosecution side should be placed on record. Any attempt by an accused for quashing of a charge before the entire prosecution evidence has come on record should not be entertained sans exceptional cases."*

15. In ***State (NCT of Delhi) v. Shiv Charan Bansal & Ors.,*** (2020) 2 SCC 290, the Supreme Court reiterated as under:-

*"**I. Scope of Sections 227 and 228 CrPC***

39. *The court while considering the question of framing charges under Section 227 CrPC has the power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case has been made out against the accused. The test to determine prima facie case would depend upon the facts of each case. If the material placed before the court discloses grave suspicion against the accused, which has not been properly explained, the court will be fully justified in framing charges and proceeding with the trial. The probative value of the* *evidence brought on record cannot be gone into at the stage of framing charges. 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 ingredients constituting the alleged offence. At this stage, there cannot be a roving enquiry into the pros and cons of the matter, the evidence is not to be weighed as if a trial is being conducted. Reliance is placed on the judgment of this Court in State of Bihar v. Ramesh Singh [State of Bihar v. Ramesh Singh, (1977) 4 SCC 39 : 1977 SCC (Cri) 533] where it has been held that at the stage of framing charges under Sections 227 or 228 CrPC, if there is a strong suspicion which leads the court to think that there is ground for presuming that the accused had committed the offence, then the court should proceed with the trial.*

***40.** In a recent judgment delivered in Dipakbhai Jagdishchandra Patel v. State of Gujarat (2019) 16 SCC 547, decided on 24-4-2019, this Court has laid down the law relating to framing of charges and discharge, and held that all that is required is that the court must be satisfied with the material available, that a case is made out for the accused to stand trial. A strong suspicion is sufficient for framing charges, which must be founded on some material. The material must be such which can be translated into evidence at the stage of trial. The veracity and effect of the evidence which the prosecutor proposes to adduce are not to be meticulously judged at this stage, nor is any weight to be attached to the probable defence of the accused at the stage of framing charges. The court is not to consider whether there is sufficient ground for conviction of the accused, or whether the trial is sure to end in the conviction."*

(emphasis supplied)

16. In the present case, the prosecution has alleged that as far as the petitioner no.1 is concerned, the petitioner no.1 is one of the directors of M/s Abetar Healthcare Pvt. Ltd., the original consignee of the containers. It is further alleged that while the other director, Mr.Lalit Singh, refused to accept the consignment, the petitioner no.1 did not do so. It is further alleged that the petitioner no.1 entered into the conspiracy with other co-accused persons to ensure that the contraband is still imported into India.

17. As far as the petitioner no.2 is concerned, the documents relating to M/s Goodlife Global were recovered from his premises. The prosecution alleges that there are also WhatsApp conversations recorded, as per which, the petitioner no.2 has discussed about the consignment with Mr.Lalit Singh, the director of M/s Abetor Healthcare Pvt. Ltd., as has been noted hereinabove.

18. In my view, therefore, based on the above circumstances, the learned Trial Court has rightly proceeded to frame the charges against the petitioners.

19. I, therefore, find no merits in the present petition. The same is accordingly dismissed.

20. It is however, made clear that any observation made in the present judgment, shall in no manner influence the learned Trial Court in the course of the trial.

NAVIN CHAWLA, J

MARCH 11, 2024/Arya/RP

Click here to check corrigendum, if any