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

+ CRL.REV.P. 1089/2018 CRL.M.A. 49041/2018

VINAY SHARMAPetitioner

Through: Mr. Gulbaksh Singh, Advocate.

versus

STATERespondent

Through: Mr. Digam Singh Dagar, APP for the
State along with SI Manish Kumar,
PS: NR-I, Crime Branch.

+ CRL.REV.P. 60/2019 CRL.M.A. 870/2019

PIYUSH SRIVASTAVAPetitioner

Through: Mr. Gulbaksh Singh, Advocate.

versus

STATERespondent

Through: Mr. Digam Singh Dagar, APP for the
State along with SI Manish Kumar,
PS: NR-I, Crime Branch.

CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL

ORDER
27.11.2024

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1. Counsel for petitioner raises an issue in the challenge to the order on charge dated 23rd October 2018, contending that the substance, seized from the petitioner was *Norephedrine*. For this, he relies on FSL Report dated 28th April 2018, which is on record of this Court. He, therefore, states that as per



the Schedule under the NDPS (Regulation of Controlled Substances) 2013, in particular, Schedule B & C. The said substance is listed at serial No.11 and is prohibited for export from India and import into India.

2. However, he points out that the said substance is not part of Schedule A, which prohibits *possession, manufacture, distribution, sale, purchase, storage and consumption of the substance*. He, therefore, states that the question of export or import does not arise in the case of the prosecution. In this context, he relies upon the definition of “*to export from India*” in Section 2(XXVI) which involves “*means to take out of India to a place outside India*”. He, therefore, states that since no export was involved, the offence would not be made out.

3. In response, APP draws attention to the fact that there was a third accused, *Tinimo Efere*, who was a Nigerian national, was apprehended on 17th February, 2018 at the instance of accused Piyush Srivastava and 3.5kg. *pseudo ephedrine* and 15 gram *cocaine* were recovered from him.

4. During interrogation, *Tinimo Efere* disclosed that he purchased the controlled substance for the purpose of sending it to Nigeria. Disclosure statement of *Tinimo Efere* has also been placed before the Court, wherein he has stated that he came into contact with Piyush Srivastava, to whom he used to supply *cocaine*. Piyush Srivastava then mentioned the supply of *pseudoephedrine*, describing it as a profitable business, and stated that he could provide it at a cheap rate of Rs.15,000/- per kg.

5. *Tinimo Efere* stated that he “*analysed the scope of supply of pseudo ephedrine in Nigeria and came to know that by sending the same in Nigeria*”, he can earn handsome money. Accordingly, he went to Piyush Srivastava and asked him to arrange 3 kgs of *pseudo ephedrine*, which was



subsequently supplied and seized from him at the time of his arrest.

6. Considering this disclosure, the evidentiary value of the same will be tested during the trial. At this stage, the Court is not inclined to interfere with the order of charge, considering that the aspect of *export* of the controlled substance will depend upon the testimonies of the accused.

7. The definition under Section 2(XXVI) involves “*means to take out from India*”, and therefore, the possibility of this aspect being finally proved by the prosecution, after the trial, cannot be ruled out.

8. Accordingly, the petition is dismissed.

9. The trial shall accordingly continue.

10. Order be uploaded on the website of this Court.

ANISH DAYAL, J

NOVEMBER 27, 2024/ak/tk

Click here to check corrigendum, if any