

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR-1042-2019 (O&M)

Decided on 09.01.2025

Tej Partap Singh

... Petitioner

VS.

State of Punjab

... Respondent

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. Satnam Singh Gill, Advocate for the petitioner

Mr. Jaspal Singh Guru, AAG Punjab

Sandeep Moudgil, J.

(1). This petition under Section 401 CrPC has been filed by the petitioner seeking to quash the impugned order dated 28.03.2019 passed by Special Judge, NDPS Act, Patiala vide which the application under Section 227 CrPC for discharge of the present petitioner in case FIR No.98 dated 17.06.2013 under Sections 21/29/61/85 of the Narcotic Drugs and Psychotropic Substance Act, 1985 (in short, the NDPS Act), registered at Police Station Urban Estate, Patiala has been dismissed.

(2). As per the prosecution case, on 17.6.2013, accused Jasdeep Singh and Taljinder Singh were intercepted by the police on the basis of secret information and 260 gm smack was recovered from their possession. Accused Taljinder Singh confessed qua the involvement of present petitioner and he was arrayed as an accused under Section 29 of NDPS Act. However, subsequently, challan was presented only against Taljinder Singh and Jasdeep Singh who were convicted and sentenced by the trial Court at Patiala. A separate challan against the present petitioner was presented wherein the only allegation levelled

against him was that he had given the said 260 gms of smack to the above said convicts.

(3). Learned counsel for the petitioner contends that the co-accused Taljinder Singh and Jasdeep Singh had been arrested at the spot and were found in possession of 260 gms of contraband and that the petitioner was neither present at the spot nor arrested but was nominated on the basis of a disclosure statement made by them. He further submits that in fact initially the police had filed challan only against the above said two co-accused and it was at a much later stage that a supplementary challan was filed against the present petitioner segregating him from the trial of the said co-accused on the ground that the trial of the co-accused was at the fag end.

(4). It is argued that since the only evidence against the petitioner is in the nature of the disclosure statement of the co-accused/convicts, the same is unreliable and cannot be used against him as per provisions contained in Section 30 of the Indian Evidence Act which specifically lays down that such confessional statements can only be used against a co-accused if such co-accused are tried together and in the present case, since the trial of the co-accused/convicts already stood concluded, the prosecution is virtually left with no evidence against the petitioner. Reliance has been placed on **Suresh Budharmal Kalani @ Pappu Kalani vs. State of Maharashtra 1998 (4) RCR CrL 433.**

(5). Learned counsel then pleaded *alibi* on the ground that the petitioner was not present in Punjab or Haryana on 17.6.2013, rather he was in village Mahua, District Lakhimpur Khiri (UP) and at the relevant time, the petitioner was ailing and was being treated at CHC, Motipur, Bahraich and was

advised bed rest. Learned counsel pointed out that the copy of medical certificate has not been considered by the trial court and as such, the petitioner deserves to be discharged under Section 227 CrPC.

(6). In the status report dated 30.09.2024 filed by Manoj Gors, PPS, Dy.SP City-II, District Patiala, while detailing the facts, it has been averred that during the course of interrogation, Taljinder Singh made a disclosure statement that he had procured the recovered smack from Tej Partap Singh alias Tappu (the petitioner) and Kuldeep Singh and after completion of the investigation qua Taljinder Singh and Jasdeep Singh @ Smarty, final report under Section 173 CrPC was presented on 11.09.2013 and thereafter petitioner was joined in the investigation on 20.11.2013 and accused Kuldeep Singh on 02.09.2014 purportedly in compliance with the orders of this and in the meantime, Kuldeep Singh passed away. However, during the pendency of the trial, supplementary final report under Section 173(8) CrPC was presented against the petitioner on 16.01.2018 whereas Taljinder Singh and Jasdeep Singh @ Smarty were convicted by the trial court vide judgment dated 25.01.2018.

(7). Learned State counsel submits that there are sufficient evidence with the prosecution to proceed against the petitioner for the purpose of framing of charge and as per law, at the time of framing of charges, only prima facie case is made out or not is to be seen and the trial court is not to delve into the details of the facts or evidence. He then submits that this Court, while considering this revision petition, should be confined to the legality of the order passed by the court below in the application for discharge submitted by the petitioner. He argued that for prosecution there are other materials available and such materials can be tested only during the trial and therefore, the

petitioner herein is not entitled to be discharged from the offence, at the very threshold.

(8). Heard learned counsel for the parties.

(9). A perusal of the order passed by the trial court would reveal that the discharge application filed by the petitioner was rejected observing that the Court will have to look into whether there are sufficient materials to presume that the accused has committed the offence as alleged and as such, the trial court cannot look into the documents produced by the accused or any other circumstances, which are projected by the accused. The trial court did not find force in the argument of the petitioner that the confession of the co-accused cannot be read against the petitioner since he was not tried together with the co-accused convicts by observed that the trial qua them had already been concluded and the challan against the petitioner and Kuldeep Singh (since deceased) could not have been presented in their absence and even proclamation were also initiated against them coupled with the fact that the petitioner was granted anticipatory bail by this Court, therefore, challan against him was presented subsequently.

(10). In *State of Karnataka v. M.R.Hiremath (2019) 7 SCC 515*, the Apex Court held that at the stage of considering an application for discharge, the Court must proceed on the assumption that the materials which have been brought on record by the prosecution are true and evaluate the materials in order to determine whether the facts emerging from the materials, taken on its face value, disclose the existence of the ingredients necessary to constitute the offence.

(11). When exercising powers under Section 227 of the Code of Criminal Procedure, the court's role is to assess whether a prima facie case exists against the accused. To do so, the court can evaluate the evidence to determine if it reveals a grave suspicion that has not been adequately explained. If two plausible interpretations of the evidence exist, the court may discharge the accused if the evidence only raises some suspicion, but not grave suspicion. In this context, the court must consider the broader probabilities of the case, the cumulative effect of the evidence and the documents presented. However, the court should not conduct a thorough investigation or weigh the evidence as if it were conducting a trial. Rather, it must strike a balance, avoiding a superficial assessment that merely rubber-stamps the prosecution's case. When considering a discharge application, the court must assume the truth of the prosecution evidence and assess whether, at face value, the facts presented meet all the essential elements of the alleged offense. At this stage, the court evaluates the evidentiary value of the materials, without delving too deeply or predicting the likelihood of conviction. Reliance can be safely placed on the following observations made by the Apex Court in **Dilawar Balu Kurane v. State of Maharashtra, (2002) 2 SCC 135:**

“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 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.” We have bestowed our consideration to the rival submissions and the submissions made by Mr. Ranjit Kumar commend us. True it is that at the time of consideration of the applications for discharge, the court cannot act as a mouthpiece of the prosecution or act as a post-office and may sift evidence in order to find out whether or not the allegations made are groundless so as to pass an order of discharge. It is trite that at the stage of consideration of an application for discharge, the court has to proceed with an assumption that the materials brought on record by the prosecution are true and evaluate the said materials and documents with a view to find out whether the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. 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...”

(12). Applying the above principle in the facts of the present case, it emerges that 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 and the view taken by the trial court that the accused might have committed the offence on the basis of the materials on record on its probative value, cannot be faulted with inasmuch as it can frame the charge though for conviction, the trial court has to come to the conclusion that the accused has committed the offence. Moreso, the fact that the co-accused, who named the petitioner, have already been convicted by the trial court must attach some bearing on the judicial mind of the trial court and significantly affect the discharge application of subsequent co-accused/petitioner in the same case, particularly in terms of the evidentiary implications and legal principles involved.

(13). In view of the above discussion, there is no legal infirmity and perversity in the order passed by the trial court. Hence the present revision petition is dismissed.

09.01.2025

V.Vishal

1. Whether speaking/reasoned?
2. Whether reportable?

(Sandeep Moudgil)
Judge

Yes/No
Yes/No