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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 31.01.2025

+ CRL.REV.P.(NDPS) 1/2025 & CRL.M.A. 3019/2025, CRL.M.A. 3020/2025

GULSHAN KUMARPetitioner
Through: Mr. Samrat Nigam, Sr. Adv. with Mr.
Archit Arora, Advs.
versus
STATE OF NCT OF DELHIPetitioner
Through: Mr. Aashneet Singh, APP
SI Rohit, PS Crime Branch

CORAM:
HON'BLE MR. JUSTICE JASMEET SINGH

: JASMEET SINGH, J (ORAL)

CRL.M.A. 3018/2025-EX.

Allowed subject to all just exceptions.

The application stands disposed of.

CRL.REV.P.(NDPS) 1/2025

1. This is a petition seeking setting aside of the order on charge dated 13.08.2024 and framing of charge dated 04.09.2024 against the petitioner passed by the learned Court of Special Judge, NDPS, Patiala House Courts, New Delhi.
2. As per the prosecution, on the basis of secret information, on 01.12.2021, the petitioner and Ranjeet Raina were apprehended with the vehicle no. HR78C0917, the petitioner was driver of the vehicle



and from possession of co-accused Ranjeet Raina, there is recovery of 9.577 kg of charas, from vehicle of the co-accused Ranjeet Raina one currency counting machine and electronic weighing machine were also recovered. Co-accused Ranjeet Raina used to share 10% of profit in narcotic business with the petitioner. On the disclosure statement of the co-accused Ranjeet Raina, co-accused Sanjay Negi was arrested who use to supply contraband to the co-accused Ranjeet Raina.

3. After completion of investigation, chargesheet was filed against all the aforesaid persons under section 20, 25 and 29 of NDPS Act.
4. Learned Trial Court framed the charges under section 20(b)(ii)(C) read with section 29 of NDPS Act. Hence the present petition.
5. Mr. Nigam, learned senior counsel appearing for the petitioner states that the petitioner is only a driver of the vehicle and there is no material against the petitioner except the statement of owner of the car/employer of the petitioner i.e. Co-accused Ranjeet Raina recorded under section 67 of NDPS Act. No recovery has been made from the petitioner and no notice under Section 50 of NDPS Act has been served upon the petitioner.
6. He states that since the petitioner was only a Driver and there was no possession of any contraband from the petitioner, the order of framing of charge needs to be set aside.
7. Mr. Nigam, learned senior counsel placed reliance on ***Karan Talwar v. The State of Tamil Nadu, SLP(CRL.) 10736/2022*** and more particularly paragraphs 10 and 12 which read as under:-

“10. As is evident from the said Section, the alleged offence is consumption of narcotic drug or psychotropic substance



*other than those specified in or under clause (a) of Section 27, NDPS Act, and therefore, the question is whether any material is available to charge the appellant thereunder. The contention of the appellant is that he has been arraigned as accused No.13 based on the confession statement of co-accused viz., accused No.1. Certainly, in the absence of any other material on record to connect the appellant with the crime, the confession statement of the co-accused by itself cannot be the reason for his implication in the crime. This view has been fortified by the law laid down in **Suresh Budharmal Kalani v. State of Maharashtra**, wherein it was stated that a co-accused's confession containing incriminating matter against a person would not by itself suffice to frame charge against him. The materials on record would reveal that the investigating agency had not subjected him to medical examination and instead, going by complaint Witness No.23, he smelt the accused. The less said the better and we do not think it necessary to comment upon adoption of such a course. We need only to say that even if he tendered such evidence, it would not help the prosecution in anyway. There is absolutely no case that any recovery of contraband was recovered from the appellant. As regards the confession statement of the appellant in view of Section 25 of the Indian Evidence Act, 1872 there can be no doubt with respect to the fact that it is inadmissible in evidence. In this context it is worthy to refer*



*to the decision of this Court in **Ram Singh v. Central Bureau of Narcotics**. In the said decision, this Court held that Section 25 of the Indian Evidence Act would make confessional statement of accused before police inadmissible in evidence and it could not be brought on record by prosecution to obtain conviction. Shortly stated, except the confessional statement of co-accused No.1 there is absolutely no material available on record against the appellant.*

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12. As noted hereinbefore, the sole material available against the appellant is the confession statement of the co-accused viz., accused No.1, which undoubtedly cannot translate into admissible evidence at the stage of trial and against the appellant. When that be the position, how can it be said that a prima facie case is made out to make the appellant to stand the trial. There can be no doubt with respect to the position that standing the trial is an ordeal and, therefore, in a case where there is no material at all which could be translated into evidence at the trial stage it would be a miscarriage of justice to make the person concerned to stand the trial.”

8. Additionally, he also placed reliance on **Surinder Kumar Khanna v. Directorate of Revenue Intelligence, (2018) 8 SCC 271** and more particularly on paragraph 11 which reads as under:-

“11.



. . . .

It would be noticed that as a result of the provisions contained in Section 30, the confession has no doubt to be regarded as amounting to evidence in a general way, because whatever is considered by the court is evidence; circumstances which are considered by the court as well as probabilities do amount to evidence in that generic sense. Thus, though confession may be regarded as evidence in that generic sense because of the provisions of Section 30, the fact remains that it is not evidence as defined by Section 3 of the Act. The result, therefore, is that in dealing with a case against an accused person, the court cannot start with the confession of a co-accused person; it must begin with other evidence adduced by the prosecution and after it has formed its opinion with regard to the quality and effect of the said evidence, then it is permissible to turn to the confession in order to receive assurance to the conclusion of guilt which the judicial mind is about to reach on the said other evidence. That, briefly stated, is the effect of the provisions contained in Section 30. The same view has been expressed by this Court in Kashmira Singh v. State of M.P. [Kashmira Singh v. State of M.P., (1952) 1 SCC 275 : 1952 SCR 526 : AIR 1952 SC 159 : 1952 Cri LJ 839] where the decision of the Privy Council in Bhuboni Sahu case [Bhuboni Sahu v. R., 1949 SCC OnLine PC 12 : (1948-49) 76 IA 147 at p. 155.] has been cited with approval.”



9. Lastly, he placed reliance on the order dated 28.11.2022 passed by this Court while granting bail to the petitioner to submit that the petitioner is not the owner of the vehicle in which the contraband was found and admittedly, co-accused Ranjit Raina is the owner and the petitioner is only an employee and except the disclosure statement, there is no corroborative evidence which links the petitioner with the crime.
10. *Per Contra*, learned APP states that apart from the statement of the co-accused, there is CDR analysis which shows the same location of the petitioner along with the co-accused Ranjeet Raina and Sanjay Negi on 25.11.2021. Further, as per the chargesheet filed by the prosecution, the petitioner was driving the vehicle in which the contraband was found and was present at the time of recovery.
11. I have learned counsel for the parties and perused the material available on record.
12. Time and again, the Hon'ble Supreme Court has held that the Trial Court at the time of framing of charge, is not expected to conduct a mini trial. The Trial Court has to apply its judicial mind to the facts of the case placed on record in the form of a chargesheet to determine whether a *prima facie* case has been made out against the accused person. *Prima facie* test depends on the facts of the each case, no straight-jacket formula can be laid down to apply. Further, the Trial Court has to consider the broad probabilities of the case.
13. Recently, the Hon'ble Supreme Court in ***Ram Prakash Chadha v. State of U.P., (2024) 10 SCC 651*** has observed as under:-

“17. *The decision in Yogesh v. State of Maharashtra [Yogesh v. State of Maharashtra, (2008) 10 SCC 394 :*



(2009) 1 SCC (Cri) 51 : AIR 2008 SC 2991] this Court held that the words “not sufficient ground for proceeding against the accused” appearing in Section 227CrPC, postulate exercise of judicial mind on the part of the Judge to the facts of the case revealed from the materials brought on record by the prosecution in order to determine whether a case for trial has been made out.

18. In the decision in State of T.N. v. N. Suresh Rajan [State of T.N. v. N. Suresh Rajan, (2014) 11 SCC 709 : (2014) 3 SCC (Cri) 529 : (2014) 2 SCC (L&S) 721] this Court held that at a 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 materials to find out whether the facts taken at their face value disclose the existence of the ingredients constituting the offence. At this stage, only the probative value of the materials has to be gone into and the court is not expected to go deep into the matter to hold a mini-trial.

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21. In the decision in Stree Atyachar Virodhi Parishad v. Dilip Nathumal Chordia [Stree Atyachar Virodhi Parishad v. Dilip Nathumal Chordia, (1989) 1 SCC 715 : 1989 SCC (Cri) 285] , this Court held that the word “ground” in Section 227CrPC, did not mean a ground for conviction, but a ground for putting the accused on trial.



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23. In para 13 in *P. Vijayan case* [*P. Vijayan v. State of Kerala*, (2010) 2 SCC 398 : (2010) 1 SCC (Cri) 1488] , this Court took note of the principles enunciated earlier by this Court in *Union of India v. Prafulla Kumar Samal* [*Union of India v. Prafulla Kumar Samal*, (1979) 3 SCC 4 : 1979 SCC (Cri) 609] which reads thus: (*Prafulla Kumar Samal case* [*Union of India v. Prafulla Kumar Samal*, (1979) 3 SCC 4 : 1979 SCC (Cri) 609] , SCC p. 9, para 10)

“10. ... (1) That the Judge while considering the question of framing the charges under Section 227 of the Code 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.

(2) 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.

(3) The test to determine a *prima facie* case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however 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 within his right to discharge the accused.

(4) That in exercising his jurisdiction under Section 227 of



the Code the Judge which under the present Code is a senior and experienced court 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, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.”

24. In the light of the decisions referred supra, it is thus obvious that it will be within the jurisdiction of the Court concerned to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused concerned has been made out.....”

- 14.** In the present case in hand, there is no dispute to the fact that the petitioner was the driver of the co-accused Ranjeet Raina. Further, when the alleged contraband was recovered from the vehicle bearing Registration No. HR 78C 0917, the petitioner was driving the said vehicle. Additionally, currency counting machine and electronic weighing machine were also recovered.
- 15.** Co-accused Ranjit Raina in his statement recorded under section 67 of NDPS Act has categorically stated that he used to share 10% profit in the narcotics business with the petitioner. Furthermore, the location of the petitioner with Ranjit Raina from 23.11.2021 to 26.11.2021 at Himachal Pradesh and Punjab has also been verified. Also, the location of the petitioner with co-accused Ranjeet Raina and Sanjay Negi on



25.11.2021 was found same at the time of receiving the contraband.

16. It is not the case of the petitioner that the petitioner was arrested on the basis of the statement of the co-accused, in fact, when the alleged contraband was recovered, the petitioner was present at the time of recovery and was the driver of the said vehicle.
17. The fact whether the petitioner was only a Driver or 10% partner in the contraband business can only be proved during trial after leading evidence. *Prima facie*, a case has been made out against the petitioner.
18. The judgments relied upon by the learned senior counsel for the petitioner are distinguishable as in ***Karan Talwar (supra)***, except the confessional statement of co-accused No. 1, there was no evidence against the petitioner therein. The same is also the case in ***Surinder Kumar Khanna (supra)***.
19. For the said reasons, I am of the view that the order framing charge against the petitioner is in accordance with law and requires no interference. Hence, the present petition is dismissed as devoid of merits.
20. Needless to add, observations made hereinabove shall not influence the case pending before the learned Trial Court which shall be decided on its own merits.

JASMEET SINGH, J

JANUARY 31, 2025 / (MS)

Click here to check corrigendum, if any