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

\+ **<u>CRL.REV.P. 548/2023</u>**

SUNIL @ RAHUL @ SUNIL SANSI .....Petitioner

Through: Mr. Kundan Kumar, Adv.

versus

STATE NCT OF DELHI .....Respondent

Through: Mr. Amol Sinha, ASC for the State
SI Udit, PS- Anti-Narcotics

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

<u>O R D E R</u>

% 11.09.2025

1. The present petition is filed challenging the orders dated 23.01.2023 and 10.02.2023 (hereafter '**impugned orders**'), passed by the learned Trial Court, in SC No. 229/2022 arising out of FIR No. 405/2022 ('**FIR**'), registered at Police Station Nihal Vihar.

2. By the impugned order on charge dated 13.01.2023, the learned Trial Court listed the matter for framing of formal charge and found that *prima facie* there is sufficient material on record for framing charges against accused Fredrick Chidiebere Ugwu *alias* Jojo for the offences under Sections 21/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('**IPC**') and Section 14 of the Foreigners Act, 1946 and against the petitioner for the offence under Section 29 of the NDPS Act.

3. By the impugned order dated 10.02.203, charge was framed against the petitioner for the offence under Section 29 of the NDPS Act.

4. The brief facts of the case are as follows:

4.1. On 17.02.2022, on the basis of secret information, the accused Fredrick, who is a Nigerian national, was apprehended when he was going towards Uday Vihar/ Nihal Vihar. It is alleged that the accused Fredrick was carrying a white polythene bag and a recovery of 50g of Heroin was effected from the same. On the same day, the FIR was registered at Police Station Nihal Vihar for the offence under Section 21 of the NDPS Act.

4.2. During interrogation, the accused Fredrick disclosed that he was working at a shop near his residence with one other person named John, and they used to purchase Heroin from a local person at Sirmor, Himachal Pradesh, who had a big white color car. A raid was conducted at the shop and a recovery of 60g of Ganja and cash of ₹16,905/- was made from there, however, John and two other persons of African origin managed to flee from the shop despite the best efforts of the raiding team.

4.3. The accused Fredrick was taken to Sirmor where he identified a car as the one used by the local person for supplying Heroin, and he also pointed out the petitioner, who was present there as a pedestrian, as the person who used to supply Heroin to him and John. The petitioner allegedly fled from the spot on noticing the police team, however, it was later found that he had been arrested formally in another case.

4.4. Pursuant to filing of the chargesheet, by way of impugned order on charge dated 23.01.2023, the learned Trial Court found that the statement of the witnesses coupled with disclosure of the accused Fredrick and his consequent identification of the car as well as the petitioner make out a *prima facie* case against the accused persons, including the petitioner. Thereafter, by order dated 10.02.2023, formal charge was framed against the petitioner for the offence under Section 29 of the NDPS Act.

4.5. Aggrieved by the same, the petitioner has filed the present petition.

5. The learned counsel for the petitioner submits that the petitioner has been falsely implicated in the present case. He submits that the only evidence collected by the prosecution against the petitioner is the disclosure of accused Fredrick, who allegedly identified the petitioner when he was taken to Sirmor to identify the local person from whom he used to procure Heroin.

6. He submits that the accused Fredrick did not name the petitioner in his disclosure statements under Section 67 of the NDPS Act, and even otherwise, the same are inadmissible as evidence in the absence of any other cogent material to substantiate the same.

7. He submits that no recovery was effected against the petitioner and there is no admissible evidence against the petitioner and thus, no charge can be framed against him.

8. *Per contra*, the learned Additional Standing Counsel for the State submits that the learned Trial Court has rightly framed the charge for the offence under Section 29 of the NDPS Act against the petitioner after sifting through the material on record.

9. He states that the petitioner was identified by the accused Fredrick from whom recovery has been effected in the present case, and the petitioner ought not to be discharged at this stage before the prosecution has had an opportunity to lead evidence.

10. I have heard the counsel and perused the record.

11. At the outset, it is relevant to note that the scope of interference by High Courts while exercising revisional jurisdiction in a challenge to order framing charge is well settled. The power ought to be exercised sparingly, in the interest of justice, so as to not impede the trial unnecessarily. It is not open to the Court to misconstrue the revisional proceedings as an appeal and reappreciate the evidence unless any glaring perversity is brought to its notice. In the case of ***Amit Kapoor v. Ramesh Chander*** **: (2012) 9 SCC 460**, the Hon'ble Supreme Court, adverting to a catena of precedents, has noted that the test is whether the allegations, as made from the record of the case, taken at their highest, constitute the offence or not. The Hon'ble Supreme Court also noted that the Court may interfere if the allegations are patently absurd and the basic ingredients of the offence, for which the charge is framed, are not made out.

12. Since the petitioner has assailed the impugned order wherein charge for the offence under Section 29 of the NDPS Act has been framed him, it will be apposite to succinctly discuss the statutory law with respect to framing of charge and discharge as provided under Sections 227 and 228 of the Code of Criminal Procedure, 1973 ('**CrPC**'). The same is set out below:

> ***"227. Discharge***
> *If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.*
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> ***228. Framing of Charge***
> *(1) If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which-*

(a) is not exclusively triable by the Court of Session, he may, frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate, or any other Judicial Magistrate of the first class and direct the accused to appear before the Chief Judicial Magistrate, or, as the case may be, the Judicial Magistrate of the first class, on such date as he deems fit, and thereupon such Magistrate shall try the offence in accordance with the procedure for the trial of warrant cases instituted on a police report;

(b) is exclusively triable by the Court, he shall frame in writing a charge against the accused.

(2) Where the Judge frames any charge under clause (b) of subsection (1), the charge shall be read and explained to the accused and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried."

13. It is trite law that the learned Trial Court while framing charges is not required to conduct a mini-trial and has to merely weigh the material on record to ascertain whether the ingredients constituting the alleged offence are prima facie made out against the accused persons. The Hon'ble Apex Court, in the case of ***Sajjan Kumar v. CBI* : (2010) 9 SCC 368**, has culled out the following principles in regards to the scope of Sections 227 and 228 of the CrPC:

"21. On consideration of the authorities about the scope of Sections 227 and 228 of the Code, the following principles emerge: (i) The Judge while considering the question of framing the charges under Section 227 CrPC 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. The test to determine prima facie case would depend upon the facts of each case.
(ii) ***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.***
(iii) ***The 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, etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

(iv) ***If on the basis of the material on record, the court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.***

(v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.

(vi) ***At the stage of Sections 227 and 228, 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 existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.***

(vii) <u>***If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal.***</u>*"*

(emphasis supplied)

14. In ***State of Gujarat v. Dilipsinh Kishorsinh Rao*** **: 2023 SCC OnLine SC 1294**, the Hon'ble Apex Court has discussed the parameters that would be appropriate to keep in mind at the stage of framing of charge/discharge, as under:

*"7. It is trite law that application of judicial mind being necessary to determine whether a case has been made out by the prosecution for proceeding with trial and it would not be necessary to dwell into the pros and cons of the matter by examining the defence of the accused when an application for discharge is filed. At that stage, the trial judge has to merely examine the evidence placed by the prosecution in order to determine whether or not the grounds are sufficient to proceed against the accused on basis of charge sheet material****. The nature of the evidence recorded or collected by the investigating agency or the documents produced in which prima facie it reveals that there are suspicious***

> ***circumstances against the accused, so as to frame a charge would suffice and such material would be taken into account for the purposes of framing the charge. If there is no sufficient ground for proceeding against the accused necessarily, the accused would be discharged, but if the court is of the opinion, after such consideration of the material there are grounds for presuming that accused has committed the offence which is triable, then necessarily charge has to be framed.***
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> *12.* ***The primary consideration at the stage of framing of charge is the test of existence of a prima-facie case, and at this stage, the probative value of materials on record need not be gone into****. This Court by referring to its earlier decisions in the State of Maharashtra v. Som Nath Thapa, (1996) 4 SCC 659 and the State of MP v. Mohan Lal Soni, (2000) 6 SCC 338 has held the nature of evaluation to be made by the court at the stage of framing of the charge is to test the existence of prima-facie case. It is also held at the stage of framing of charge, the court has to form a presumptive opinion to the existence of factual ingredients constituting the offence alleged and it is not expected to go deep into probative value of the material on record and to check whether the material on record would certainly lead to conviction at the conclusion of trial."*
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> (emphasis supplied)

15. In view of the above, it is clear that this Court, at this stage, is not required to revaluate the evidence or hold a mini trial as the same would tantamount to this Court assuming appellate jurisdiction. Thus, all that has to be seen is whether the learned Trial Court has adequately appreciated the material on record and whether, given the material placed before it, there is grave suspicion against the accused which is not properly explained.

16. It is the case of the prosecution that the accused Fredrick, from whom recovery has been effected in the present case, had identified the petitioner as the person from whom he used to procure Heroin as well as the alleged Fortuner car being used by the petitioner in transporting/ supplying the contraband. It is

alleged that the accused persons had hatched a conspiracy to sell drugs. It is alleged that the Fortuner car was found to be in the name of the petitioner.

17. Undisputably, in the present case, the only material available against the petitioner is the disclosure of the accused Fredrick. In the impugned order dated 23.01.2023, it has been observed by the learned Trial Court that while there cannot be any direct evidence to conspiracy, the petitioner was identified by the accused Fredrick and he even identified the vehicle of the petitioner, due to which, the disclosure of the accused Fredrick in relation to the involvement of the petitioner becomes relevant in the present case.

18. It is trite law that unless a fact is discovered on the basis of statement made by the accused, the same is legally inadmissible under Section 27 of the Indian Evidence Act, 1872.

19. A bare perusal of the disclosure statements of the accused Fredrick shows that he has not named the petitioner in his disclosure and merely stated that he used to procure the contraband from a person in Sirmur, Himachal Pradesh, who sometimes used a big white color car. It is pertinent to note that no recovery was effectuated at the instance of the petitioner or from the said car in the present case and it is not contended that any new fact had been discovered pursuant to the disclosure statements of the co-accused so as to link the petitioner to the crime.

20. Although the accused Fredrick is said to have identified the petitioner and his car while being in custody, in the absence of any independent witness to corroborate the allegation of the

petitioner being identified and then fleeing away, the said aspects merely raise suspicion, and they do not cast such grave suspicion so as to justify framing of charges against the petitioner. As opined in the case of ***Sajjan Kumar v. CBI*** (*supra*), if two views are possible, where one of them only gives rise to only suspicion and not grave suspicion, the Court is empowered to discharge the accused person.

21. If the argument advanced by the prosecution is accepted then the trial shall proceed against every person named by an accused to be an accomplice, even if there is no corroborative evidence against him except the disclosure statement, which is not admissible as evidence. The disclosure at initial stage can warrant investigation but not framing of charge.

22. This Court in the cases of ***Mamta Sapra v. The State Govt of NCT of Delhi*** **: 2024:DHC:4852** and ***Moin Khan v. The State of NCT of Delhi through ANTF Crime Branch*** **: 2024:DHC:9286**, where charges had been framed against the respective accused therein on the basis of disclosure of co-accused and CDR connectivity, had discharged the concerned accused persons by observing that the said material was insufficient to attract grave suspicion and frame charges. In the present case, the case of the petitioner stands at an even better footing in this regard as there is no such CDR connectivity between the petitioner and accused Fredrick to even show prior interaction between them so as to lend credence to allegations.

23. In view of the above, this Court is of the opinion that the impugned order cannot be sustained *qua* the petitioner. Consequently, the impugned orders are set aside *qua* the

petitioner and he is discharged in FIR No. 405/2022, registered at Police Station Nihal Vihar.

24. The present petition is accordingly allowed.

25. It is clarified that the observations made in this order are only for the purpose of deciding the present petition and shall not influence the outcome of trial *qua* the other accused person.

AMIT MAHAJAN, J

SEPTEMBER 11, 2025