



2025:DHC:3134



\$~66

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% ***Date of decision: 28.04.2025***+ **CRL.REV.P.(NDPS) 4/2025****YUMNAM SUDHIR SINGH**

.....Petitioner

Through: **Mr. Chander Kant Tyagi, Adv.**

versus

STATE (GOVT. OF NCT OF DELHI) & ANR.RespondentsThrough: **Mr. Tarang Srivastava, APP for
State.****CORAM:****HON'BLE MS. JUSTICE SHALINDER KAUR****SHALINDER KAUR, J. (ORAL)****CRL.M.A. 12739/2025 (Exemption)**

1. Allowed, subject to all just exceptions.
2. Application stands disposed of.

CRL.REV.P.(NDPS) 4/2025, CRL.M.A. 12740/2025

3. The present petition has been filed by the petitioner under Section 438 read with Section 442 and Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), assailing the Order dated 27.02.2025 passed by the learned Special Judge, NDPS-01, District Central, Tis Hazari Courts, Delhi ("Trial Court"), whereby the petitioner's application seeking discharge was dismissed, and the subsequent framing of Charge, under Section 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ("NDPS Act") dated 29.02.2025, in FIR No. 29/2024 ("subject FIR"), for offences



2025:DHC:3134



punishable under Sections 20, 61, and 85 of the NDPS Act, registered at Police Station New Delhi Railway Station (NDRS), Delhi.

4. At the outset, the learned counsel for the petitioner submits that principal plank of the case of the prosecution rests solely on the disclosure statement of co-accused Sanjiv Kumar, on the basis of which the petitioner was arrested, however, in view of no recovery of any contraband made from him. Apart from the said disclosure statement, there exists no evidence against the petitioner. Moreso, there is no direct or circumstantial evidence on record establishing any prior meeting of minds, thereby leading to any kind of conspiracy between the petitioner and co-accused Sanjiv Kumar, involving the petitioner regarding the possession of 12.250 kg of *Ganja*, that too an intermediate quantity of the contraband.

5. He submits that the alleged transfer of Rs. 4500/- for the transportation of *Ganja* is equally vague as the said transaction was made merely for payment of labour charge to the co-accused Sanjiv Kumar for the daily labour work, which he had undertaken at the petitioner's shop and not as consideration for any unlawful activity, as alleged by the prosecution.

6. He further submits that there is no merit in the prosecution case to allege that the co-accused Sanjiv Kumar has purchased Railway Ticket with the said amount and had travelled with the alleged *Ganja*.

7. The learned counsel submits that the CCTV footage, as procured from the Dimapur Railway Station, which stands duly preserved and analyzed, conclusively demonstrates the absence of the



2025:DHC:3134



petitioner at the relevant place and time. He emphasized that even otherwise a single transaction cannot be made a ground to frame charges against the petitioner under Section 29 of the NDPS Act.

8. The learned counsel submits that the non-presence of the petitioner, coupled with the absence of any incriminating material connecting him with the recovery, completely demolishes the prosecution's speculative edifice.

9. *Per contra*, the learned Additional Public Prosecutor (APP), who appears on advance notice, in support of prosecution case, submits that in pursuance of the disclosure statement of the co-accused Sanjiv Kumar, the petitioner was implicated as an accused in the present case. He submits that there exists a clear nexus between the amount transferred by the petitioner to the co-accused Sanjiv Kumar and the subsequent recovery of contraband. It is contended that the amount of ₹4,500/- was transferred merely three days prior to the recovery, which, constitutes sufficient material to frame charges against the petitioner under Section 29 of the NDPS Act.

10. The learned APP further submits that, in cases involving the trafficking of narcotic substances, it is a common *modus operandi* for the principal conspirators to offer monetary incentives to the carriers, thereby shielding themselves from direct involvement. He further submits that the Charges have been rightly framed against the petitioner and that no interference with the impugned orders is warranted.

11. The charge framed against the petitioner is under Section 29 of



the NDPS Act for being the principal conspirator for the transportation of contraband. Section 29 of the NDPS Act reads as under:

29. Punishment for abetment and criminal conspiracy:

(1) Whoever abets, or is a party to a criminal conspiracy to commit, an offence punishable under this Chapter, shall, whether such offence be or be not committed in consequence of such abetment or in pursuance of such criminal conspiracy, and notwithstanding anything contained in section 116 of the Penal Code, 1860 (45 of 1860), be punishable with the punishment provided for the offence.

(2) A person abets, or is a party to a criminal conspiracy to commit, an offence, within the meaning of this section, who, in India, abets or is a party to the criminal conspiracy to the commission of any act in a place without and beyond India which—

(a) would constitute an offence if committed within India; or

(b) under the laws of such place, is an offence relating to narcotic drugs or psychotropic substances having all the legal conditions required to constitute it such an offence the same as or analogous to the legal conditions required to constitute it an offence punishable under this Chapter, if committed within India.”

12. From reading of the aforesaid provision, it is clear that an individual can be prosecuted and convicted even if no recovery of contraband is made from him. The law makes it clear that what is relevant is the role played by the accused in abetting or conspiring to commit an offence under the Act. Actual possession is not a necessary condition for establishing guilt under this provision. If the prosecution is able to prove that the accused was involved in the planning or facilitation of the offence, such evidence would be sufficient to



constitute offence under the NDPS Act.

13. In the present case, the prosecution has alleged that the petitioner is the main conspirator with the Co-accused Sanjiv Kumar, as he made the Co-accused Sanjiv Kumar, a medium for delivery of the contraband to one Amarjeet in New Delhi and for the said purpose he has transferred Rs. 4,500/- to him. Further, the quantity weighing to 12.250 kgs of *Ganja*, was recovered from the possession of the Co-accused Sanjiv Kumar.

14. Insofar as the submission of the petitioner that the alleged amount was transferred to the Co-accused Sanjiv Kumar as a remuneration for the labour work, he had undertaken for the petitioner is concerned, the petitioner has failed to place on record any document to substantiate the said submission. Furthermore, the petitioner has failed to join the investigation and in order to secure his presence, the Investigating Agency was compelled to get the Non-Bailable Warrant issued by the learned Trial Court.

15. In view of the facts and circumstances of the case, we may refer to the decision of the Supreme Court in ***Umar Abdul Sakoor Sorathia vs Intelligence Officer, Narcotic Control Bureau***, (2000) 1 SCC 138, wherein, it has held as under:

“15. It is well settled that at the stage of framing charge the court is not expected to go deep into the probative value of the materials on record. If on the basis of materials on record the court could come to the conclusion that the accused would have committed the offence the court is obliged to frame the charge and proceed to the trial.”

16. The Supreme Court in the decision in case of ***State of Gujarat***



vs Dilipsinh Kishorsinh Rao, (2023) 17 SCC 688, while considering the case where an application for discharge has been moved on behalf of the petition, has held as under:

“10. It is settled principle of law that at the stage of considering an application for discharge the court must proceed on an assumption that the material which has been brought on record by the prosecution is true and evaluate said material in order to determine whether the facts emerging from the material taken on its face value, disclose the existence of the ingredients necessary of the offence alleged.

11. *This Court 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] adverting to the earlier propositions of law laid down on this subject has held: (SCC pp. 721-22, para 29)*

“29. 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. The defence of the accused is not to be looked into at the stage when the accused seeks to be discharged. The expression “the record of the case” used in Section 227CrPC is to be understood as the documents and articles, if any, produced by the prosecution. The Code does not give any right to the accused to produce any document at the stage of framing of the charge. The submission of the accused is to be confined to the material produced by the investigating agency.

13. 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 *State of Maharashtra v. Som Nath Thapa* [State of Maharashtra v. Som Nath Thapa, (1996) 4 SCC 659 : 1996 SCC (Cri) 820] and *State of M.P. v. Mohanlal Soni* [State of M.P. v. Mohanlal Soni, (2000) 6 SCC 338 : 2000 SCC (Cri) 1110] 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.”



17. A perusal of the aforesaid judgments makes it evident that at the stage of framing of charges and at the stage of considering an application for discharge, the Court is not required to undertake a detailed analysis of the probative value of the materials on record. The exercise at this stage is not akin to a trial, and the Court is not to weigh the evidence as it would at the stage of final adjudication. If, upon consideration of the material placed by the prosecution, the Court is of the view that the allegations, taken at face value, disclose the ingredients of the alleged offence and lead to a *prima facie* inference that the accused may have committed the offence and such material discloses the existence of the necessary ingredients of the alleged offence, the Court is duty-bound to frame a charge and allow the matter to proceed to trial.

18. Having regard to totality of facts and circumstances, there is nothing on record to indicate that the petitioner is *prima facie* not guilty of the alleged offence. Thus, the learned Trial Court has rightly framed the Charge against the petitioner under Section 29 of the NDPS Act, and no interference with the Order of the learned Trial Court is warranted

19. Consequently, the present revision petition stands dismissed.

SHALINDER KAUR, J

APRIL 28, 2025/KP

[Click here to check corrigendum, if any](#)