



2026:DHC:1950



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

*Reserved on: February 20, 2026*

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*Pronounced on: March 10, 2026*

+ **CRL.REV.P. 559/2024 & CRL.M.A. 12559/2024**

**GOVIND BAHADUR THAPA @ RAVI SHARMA ....Petitioner**

Through: Mr. Abhishek Kumar and Ms.  
Deeksha Saggi, Advs.

Versus

**STATE**

**....Respondent**

Through: Mr. Satish Kumar, APP with Mr.  
Upasana Bakshi, Adv.  
Insp. Sandeep Tushin, NR-II, Crime  
Branch

**CORAM:**

**HON'BLE MR. JUSTICE SAURABH BANERJEE**

### **J U D G M E N T**

1. By way of the present petition under *Section 401* of the Code of Criminal Procedure<sup>1</sup>, the petitioner seeks setting aside of the order dated 05.04.2024 and 12.04.2024 passed by the learned Special Judge (NDPS), North-District, Rohini Courts, Delhi<sup>2</sup> in SC No. 519/2021 entitled '*State vs. Rajesh Kumar*' insofar as it directs framing of charges under *Sections 29/21* of the Narcotic Drugs and Psychotropic Substances Act, 1985 against the petitioner.

2. *Briefly stated*, it is the case of the prosecution that on 13.04.2021, a secret information to the effect that co-accused Rajesh would arrive at Service Road near the Garbage Pile towards Bhalswa Dairy in a golden

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<sup>1</sup> Hereinafter referred to as '*CrPC*'

<sup>2</sup> Hereinafter referred to as '*Trial Court*'



colour Honda City car for supplying *charas*. Acting upon the said information, the Police laid a trap and apprehended the co-accused Rajesh. Though nothing was recovered from the co-accused Rajesh in person, however, two packets weighing 1.560 kg and 1.600 kg of *charas* were recovered from his car. Thereafter, the co-accused Rajesh was arrested and, at his instance, the present petitioner and one Bhim Bahadur Budhathoki were also apprehended. During interrogation, they disclosed that they were working as drug peddler on commission basis for one Bahadur @ Dhai. Insofar as the petitioner is concerned, two mobile phones were recovered from him, one of which was used by Bahadur @ Dhai to contact co-accused Rajesh. During the course of investigation, Call Detail Records<sup>3</sup> of the accused persons were obtained which revealed that they were in touch with each other.

3. After filing of chargesheet, the charges against the petitioner were framed on 05.04.2024 by the learned Trial Court. The petitioner's application for discharge under *Section 227* of the CrPC was dismissed by the learned Trial Court on 12.04.2024 based on an earlier order dated 05.04.2024 passed on a similar application for discharge under *Section 227* of the CrPC of a co-accused, Bhim Bahadur.

4. Hence, the present petition seeking setting aside of the order dated 05.04.2024 and 12.04.2024 passed by the learned Trial Court.

5. Learned counsel for the petitioner, at the outset, submitted that as evident from the order dated 05.04.2024, the same has been mechanically passed by the learned Trial Court without according any hearing to the petitioner. This, as per the learned counsel, is against the scheme of

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<sup>3</sup> Hereinafter referred to as '*CDR*'



*Section(s)* 227 and 228 of the CrPC.

6. The learned counsel further submitted that the alleged recovery of the mobile phone used for communication with the co-accused Rajesh was shrouded in mystery inasmuch as a perusal of Personal Search Memo reveals that nothing ('*Nil*') was recovered from the petitioner during his personal search and though in stark contradistinction thereto, Seizure Memo records that mobile phones & SIM were recovered from the petitioner, yet the said Seizure Memo fails to disclose the place/ manner in which the same were recovered. Also, there is a mystery qua the time of recovery as well. Not only that, the said mobile phone was never sent for forensic analysis. In any event, the CDRs are not substantive evidence and can only be used to corroborate other evidence(s).

7. *Per contra*, learned APP for the State, relying upon the Status Report, submitted that the CDRs of the accused persons clearly revealed that the petitioner was in contact with the other co-accused persons as one of the mobile phone recovered from the petitioner reflects that there were 67 calls exchanged with the co-accused Rajesh. This was itself sufficient for the learned Trial Court to proceed with framing of the charges against the petitioner.

8. Heard learned counsel for the applicant as also the learned APP for the State and perused the documents as also the Status Report on record.

9. Framing of charge in any criminal proceeding is not an empty formality but constitutes an important/ relevant/ consequential stage of the trial, and therefore is not to be taken lightly or mechanically. As held in



*State of Bihar v. Ramesh Singh*<sup>4</sup> and *Amit Kapoor v. Ramesh Chander*<sup>5</sup>, though at the stage of framing of charge, the Court is only required to satisfy itself of the sufficient ground(s), if any, existing for presumption of the accused committing an offence, however, such a satisfaction cannot be abstract and requires deliberation. The Court had to form an opinion on the basis of relevant material(s) placed on record, the investigation conducted therefor and accorded a reasonable opportunity of being heard to the petitioner, as per the mandate of *Section(s)* 227 and 228 of the CrPC. Thus, in essence, it is a mandate that nobody can be condemned unheard.

10. Bearing the aforesaid in mind, the relevant extract of the order dated 05.04.2024 passed by the learned Trial Court is reproduced as under:-

*“... ..Vide separate order of even date, application under section 91 CrPC moved on behalf of accused Rajesh Kumar stands dismissed.*

*Ld. Counsel for accused Rajesh submits that he has no objection, if charge is framed against accused Rajesh as he is conceding the same.*

*An application for discharge moved on behalf of accused Bheem Bahadur is pending disposal.*

*Arguments on application of discharge are heard. Record perused.*

*xxx*

*xxx*

*xxx*

*This application for discharge under section 227 CrPC has been filed on behalf of accused Bheem Bahadur on the pretext that nothing has been recovered from the possession of the accused and there is no connectivity through telephone on the basis of CDR with the co-accused persons.*

*It is a matter of record that accused Bheem Bahadur was found in possession of SIM No. 7827755720 at the time of his arrest. As per contents of supplementary charge sheet, the CDR of this number from 01.01.2021 till 16.04.2021*

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<sup>4</sup> (1977) 4 SCC 39

<sup>5</sup> (2012) 9 SCC 460



*reflects that accused Bheem Bahadur never contacted on number of co accused Rajesh i.e., 9650543833. As per FSL result no WhatsApp chat or WhatsApp call record could be retrieved which showed that accused Bheem Bahadur was in contact with co-accused Rajesh. Therefore, apart from disclosure statement of accused Bheem Bahadur himself and of co-accused Rajesh, there is no evidence on record to connect both of them with each other. It is the duty of the prosecution to prove the theory of criminal conspiracy under section 29 NDPS Act by proving the fact that accused persons were in touch at any point of time with the purpose to sell and purchase of contraband. As per the settled law, a person cannot be charged merely on the basis of disclosure statement, if no other connecting evidence is available on record. Therefore, considering the facts and circumstances of this case, there is no material on record to frame charge under section 29 NDPS Act read with section 21 NDPS Act against accused Bheem Bahadur and he accordingly stands discharged under section 29 r/w 21 NDPS Act. Application stands disposed off being allowed.*

*Accused Bheem Bahadur is directed to furnish bail bonds under section 437-A CrPC on next date.*

*As far as co-accused Govind Bahadur @ Ravi Sharma is concerned, he was found in contact with co-accused Rajesh on his mobile 67 times as per the GDR without any explanation. Therefore, there is enough material available on record to make a prima facie view against him and to frame charge under section 29 NDPS Act r/w section 21 NDPS Act.*

*Hence, on the basis of material available on record, FSL result and statements recorded under section 161 CrPC, prima facie case for framing of charge under section 20(c) read with section 25/29 NDPS Act is made out against accused Rajesh and charge under section 29/21 NDPS Act is made out against accused Govind Bahadur @ Ravi Sharma.”*

*[Emphasis Supplied]*



11. As per above, there is nothing recorded to reflect that the petitioner was given a due chance of being heard in terms of *Section(s) 227 and 228* of the CrPC.

12. *Ergo*, in view of the aforesaid, since the order dated 05.04.2024 is not sustainable to the extent the charges were framed against the petitioner, the same is accordingly set aside.

13. As a corollary, and since the subsequent order dated 12.04.2024 is based on the earlier order dated 05.04.2024, which, in view of the aforesaid, has already been set aside, the same is also not sustainable and is also set aside.

14. Accordingly, the application seeking discharge of the petitioner filed before the learned Trial Court, which was dismissed vide order dated 12.04.2024, is revived, and the proceedings are remanded back to the learned Trial Court for according an opportunity of hearing to the petitioner in accordance with law.

15. As such, the present petition along with the pending application is allowed and disposed of in the aforesaid terms.

16. Needless to say, the learned Trial Court shall proceed in accordance with law, uninfluenced by any observations/ findings made by this Court herein.

17. A copy of this judgment be forwarded to the Principal District & Sessions Judge, North-District, Rohini Courts, Delhi for information and compliance.

**SAURABH BANERJEE, J**

**MARCH 10, 2026/Ab/GA**