



2024:DHC:9286



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

% *Date of Decision: 14th November, 2024*

+ CRL.REV.P. 1241/2023

MOIN KHAN

.....Petitioner

Through: Mr. Abhinav Kalia, Mr.
Ajit Kumar Kalia, Mr.
Praneet Kaur & Mr.
Shauray Bal, Advocates
(Through V.C.).

versus

THE STATE OF NCT OF DELHI THROUGH
ANTF CRIME BRANCH

.....Respondent

Through: Ms. Richa Dhawan, APP
for the State.
SI Vishan Kumar (P.S.
ANTF/Crime Branch).

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

AMIT MAHAJAN, J. (Oral)

1. The present petition is filed under Section 397 read with Section 482 of the Code of Criminal Procedure, 1973 ('CrPC'), seeking setting aside of the order dated 25.07.2023 (hereafter '**impugned order**'), passed by the learned Special Judge (NDPS), South West District, Dwarka Courts, New Delhi in SC No. 626/2022 arising out of FIR No. 19/2022, registered at Crime Branch.

2. By the impugned order, the learned Trial Court has charged the petitioner for the offence under Section 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('**NDPS Act**').

3. The brief facts of the present case are as follows:



3.1. On 24.02.2022, at around 1 PM, accused persons Rihan and Mohd. Gulrej were apprehended in the area of Om Vihar as they were acting suspiciously. On enquiry, they informed that they are residents of Bareilly, Uttar Pradesh and used to procure Heroin from Bareilly. During personal search, 50 g of Heroin was recovered from both the said accused persons respectively.

3.2. On further enquiry, the accused persons allegedly informed that their associate Akil Ahmed was present at their rented accommodation in Uttam Nagar. At their instance, a raid was conducted and co-accused Akil Ahmed was also apprehended. During personal search, 260 g of Heroin was recovered from him along with an electronic weighing machine.

3.3. During investigation, all the three accused persons allegedly disclosed that they used to procure Heroin from the petitioner. The petitioner was found to be connected with the other accused persons through CDRs.

3.4. On 29.08.2022, the petitioner surrendered and was formally arrested in the case. The petitioner was enlarged on bail on 23.11.2022.

3.5. Pursuant to the filing of supplementary charge sheet against the petitioner, the learned Trial Court in the impugned order dated 25.07.2023 observed that a *prima facie* case was made out against all the accused persons, including, the petitioner, for having entered into a criminal conspiracy to deal in or possess narcotic drugs illegally. Thus, charge for the offence under Section 29 of the NDPS Act was framed against all the accused persons. Further, charge under Section 21(b) of the NDPS Act was framed

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against the accused persons Rehan and Mohd. Gulrez for possessing intermediate quantity of Heroin. Charge under Section 21(c) of the NDPS Act was framed against the accused Akil Ahmed for possessing commercial quantity of Heroin as well.

4. The learned counsel for the petitioner submits that the learned Trial Court has erroneously framed charge for offence under Section 29 of the NDPS Act solely on the basis of the disclosure statements of the co-accused persons and CDR connectivity between the petitioner and other co-accused persons.

5. He submits that no recovery has been effectuated from the petitioner in the present case and the disclosure statements of the co-accused persons and CDR cannot be read against the petitioner without any corroboration.

6. He submits that the disclosure statements of the co-accused persons under Section 67 of the NDPS Act are inadmissible as evidence against the petitioner and the charge cannot be framed against the petitioner on the basis of the same.

7. *Per contra*, the learned Additional Public Prosecutor 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.

8. She submits that the petitioner is alleged to be the source of contraband, that is, 360g of Heroin, which was recovered from the possession of the accused persons. She emphasises that the petitioner was also found to be connected with all the accused persons through CDRs.



9. 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, advertent 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.

10. 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.

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."

11. 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) 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.

(emphasis supplied)

12. In a recent decision 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."

(emphasis supplied)

13. In view of the above, it is clear that this Court, at this stage, is not required to reevaluate 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.

14. It is the case of the prosecution that the co-accused persons used to get Heroin from the petitioner and he is allegedly the



source of the recovered contraband.

15. In the present case, it is undisputed that the petitioner has been implicated on the basis of the disclosure statements of the co-accused persons, from whom the recovery was effectuated. The prosecution has also relied upon the CDR connectivity between the petitioner and the co-accused persons to link him to the crime. No other material placed on record by the prosecution in the chargesheet to support the allegations *qua* the present petitioner with respect to his involvement with the contraband allegedly recovered from the co-accused persons. No recovery has been effectuated from the petitioner either.

16. 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. No recovery was effectuated at the instance of the petitioner 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 persons so as to link the petitioner to the crime.

17. Insofar as the CDR connectivity between the petitioner and other co-accused persons is concerned, in the absence of any material in the form of recordings or transcript of the conversations to show as to why they were in regular touch, it cannot be assumed that the petitioner was supplying the contraband to the other accused persons. The allegation is solely made on the basis of disclosure statement which is not admissible.

18. Although the allegations raise suspicion against the petitioner, however, they do not disclose 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.

19. It is also relevant to note that in the case of ***Shyam Gupta & Ors. v. State : 2023:DHC:1777***, where charges were framed against the petitioner therein by relying upon the CDR connectivity between him and the other accused persons, the Coordinate Bench of this Court had observed as under:

“15. Applying the aforesaid principle to the facts of the present case, it is clear that the only evidence against petitioner no. 3 is the CDR, which may create a suspicion but not a grave suspicion. If one examines the CDR sans disclosure statement then there is nothing on record to link the said calls to the recovery in question. There is no other material placed on record by the prosecution in the chargesheet to support the allegations qua the present petitioner with respect to her involvement with the contraband allegedly recovered from the co-accused persons. No recovery was effected from the petitioner no. 3 or at her instance.

16. In view of the above, this Court is of the opinion that the impugned order on charge and order framing charge against petitioner no. 3 be set aside...”

(emphasis supplied)

20. This Court in the case of ***Mamta Sapra v. The State Govt of NCT of Delhi : 2024:DHC:4852***, had placed reliance on the judgment in the case of ***Shyam Gupta & Ors. v. State (supra)*** and discharged the petitioner therein in similar circumstances.

21. In view of the above, this Court is of the opinion that the impugned order cannot be sustained *qua* the petitioner. Consequently, the petitioner is discharged in FIR No. 19/2022.



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22. The present petition is accordingly allowed.
23. 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 persons.

AMIT MAHAJAN, J

NOVEMBER 14, 2024

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