

In the Court of 1st Additional District & Sessions Judge-cum-Special Judge

(N.D.P.S.), Aurangabad.

Risiup P.S. Case No. - 50/2017

G.R. No. - 10/2017/14/2019

CIS No. 26/2017

State Vs. Bittu Singh

Date:- 01.02.2020

The record is put up for order on the petition dated 02.12.2019 filed on behalf of the accused/petitioner (Bittu Singh) praying therein to discharge him and the re-joinder thereof dated 30.12.2019 filed on behalf of prosecution.

ORDER

It is submitted on behalf of the petitioner that there is absolutely no material against him in the case diary to connect him with the instance case. No single witness during the investigation has stated even a single word against him. He is neither owner or driver of the vehicle nor the seized articles belongs to him. He was also not present in the vehicle. There is also no material in the case diary to show that he was giving instruction or direction to the driver and conductor of the vehicle. There is no material in the case diary to show that he was having conversation with driver and conductor of the alleged seized vehicle around the alleged period of crime. It is further submitted that taking cognizance of an offence and framing charges for the same are two different things. At the time of framing of charge the court has to disclose that what evidence is therein case diary against the accused/petitioner. No charge can be framed on probability or suspicion. Lastly, it has been prayed on behalf of the petitioner to discharge him from on the case.

Opposing the prayer of petitioner the learned Special P.P. Mr. Prawez Alam, Advocate has submitted that the petition filed by the petitioner is not maintainable either in eye of law or on facts. In fact there is sufficient material at para 8, 12, 13, 17, 18, 39, 40 and 98 of original case diary as well as para 30 of the supplementary case diary to show the active involvement of the petitioner in the alleged crime. Lastly, it has been prayed on behalf of the prosecution that there is sufficient material on record to frame charges against the accused/petitioner for which cognizance has been taken.

P.T.O.

Heard and perused the case record. This case has been registered as Risiup P.S. Case no. 50/2017 dated 30.07.2017 under Sections 8/20 (b) (ii) (C), 25/29 of N.D.P.S. Act-1989 for the recovery of 395 kg of GANJA in plastic packets kept secretly in special chamber made in vehicle bearing registration no. UP-50-BT-4817. At the time of recovery and seizure two accused persons namely Yogendra Singh and Upendra Pashi driver and conductor of the vehicle respectively were arrested. They have stated about involvement of other accused persons including the petitioner. After investigation police filed charge-sheet in two stages first charge-sheet was against arrested accused person Yogendra Singh and Upendra Pashi. Thus, the second charge-sheet is against that petitioner Bittu Singh. The investigation in respects of owners of the vehicle is still pending. Cognizance has been taken. Trial in respect of Yogendra Singh and Bittu Singh is going on whereas the supplementary case record of petitioner Bittu Singh is at the stage of framing of charges. On going through the case diary, it appears that the informant in his re-statement at para 8 and witnesses at paras 12, 13, 17 and 18 have supported the case of prosecution and stated about the involvement of the petitioner in the alleged crime. There is specific evidence against the petitioner in the supplementary case diary at para 30 that he was in contact with the co-accused Yugendra Singh and Upendra Pasi and was guiding them in transportation of the huge quantity of GANJA concealed in the body of the Truck. Accused Yogendra Singh and Upendra Pasi were arrested in the police party with the contraband. The police after completing investigation has found the case true against the petitioner and filed charge-sheet against him. It is well-settled that even the slight suspicion is sufficient for framing of charges but in the present case the materials available in the case diary makes a clear case of his involvement in the alleged crime which is sufficient for framing charges against him under Sections 8/20 (b) (ii) (C) / 29 of N.D.P.S. Act.

Under the above facts and circumstances, I do not find any force in the prayer made on behalf of the petitioner through the petition under consideration is hereby rejected. Put up on dated 11.02.2020 for framing of charges.

Dictated by

1st. Addl. Distt. & Sessions
Judge-cum-Special Judge
(NDPS), Aurangabad.

