

SC 511/2024
STATE Vs. CHANDERKALA etc.
FIR No.26/2024
PS Crime Branch-Central Delhi
06.05.2025

Present: Sh. Alok Saxena, Ld. CPP for State.
All three accused produced from JC.
Ms. Pallavi Vashisht, Counsel for accused
Chanderkala and Virender.
Sh.Saurabh Srivastava, Ld. Counsel for accused
Jairam @ Raja.
IO SI Rohit in person.

Arguments on the point of charge heard and the file perused.

Ld. Counsel for accused Chanderkala and Virender has strongly contended that the charge is not made out against accused Chanderkala because it is a case of planted recovery and there is violation of Section 50 NDPS Act as no notice has been given prior to recovery. Ld. Counsel for accused Chanderkala and Virender also contended that there was no independent public witness to the said recovery and therefore, it is a case of planted recovery. Ld. Counsel for accused Virender has contended that accused Virender was not in the conscious possession of the said contraband and he has no role and therefore, accused Virender should be discharged.

Ld. Counsel for accused Jairam @ Raja has requested that accused Raja may kindly be discharged because apart from the disclosure and CDR, there is no evidence against accused Jairam @ Raja. Ld. Counsel for accused Jairam @ Raja contended that accused Jairam @ Raja remained as a tenant of accused Chanderkala and therefore, they were on talking terms.

On the other hand, Ld. CPP for the State has contended that charge is made out against accused Chanderkala because in the present case there is recovery of 400 grams of heroin from accused Chanderkala from her bag held by her and her son accused Virender was present along with her in the same car and accused Virender has gone along with his mother accused Chanderkala on a taxi hired from taxi driver Bhupender for going to Bareilly for purchasing the said contraband. Ld. CPP for the State further contended that taxi driver Bhupender is an independent public witness but not made as a witness to the recovery as raiding party was having suspicion about said Bhupender also. Ld. CPP for the State contended that the said defence taken by the accused of independent witness could only be considered at the merits of the case and not at the stage of charge. Ld. CPP for the State contended that prima facie case u/s 21 NDPS Act is made out against accused Chanderkala. Ld. CPP for the State contended that it was actually in the knowledge of accused Virender that his mother was having the possession of said contraband purchased by her mother from Bareilly, UP and therefore, prima facie case u/s 29 NDPS Act is made out against accused Virender. Ld. CPP for the State contended that accused Chanderkala and accused Virender were in conspiracy to bring the said contraband from Bareilly, UP and so, prima facie case u/s 29 NDPS is also attracted against accused Chanderkala and accused Virender. Ld. CPP for the State contended that since 09.02.2023 till 04.02.2024 for around one year, there was 722 calls between accused Chanderkala and accused Jairam @ Raja

and accused Chanderkala has disclosed that accused Jairam @ Raja is proposed purchaser of said contraband from accused Chanderkala. Ld. CPP for the State also contended that not only the disclosure and the CDR details but also accused Jairam @ Raja has pointed out the house of accused Chanderkala and even on the date of arrest in the intervening night of 4.2.24 and 5.2.24 but before the arrest of accused Chanderkala, many calls were received by accused Chanderkala from accused Jairam @ Raja on 04.02.2024 itself and this additionally shows the conspiracy for purchase of said contraband between accused Chanderkala and accused Jairam @ Raja. Ld. CPP for the State also contended that no rent agreement has been placed on record by accused Jairam @ Raja to show his genuineness and this defence taken by the accused could be considered only on the merits of the case and not at the stage of charge. So, prima facie case u/s 29 NDPS Act is attracted against accused Jairam @ Raja as well as accused Chanderkala. Ld. CPP for the State also contended that there is no violation of Section 50 NDPS Act because recovery has been made from the bag of accused Chanderkala held by accused Chanderkala and not from the personal search of accused Chanderkala.

IO has verbally stated that FSL Report of contraband is positive.

Arguments on the point of charge heard and chargesheet and supplementary chargesheet and FSL report perused.

It is well settled proposition of law that at this stage,

the court is not required to dwell deep into the merits of the Case. The probative value of the prosecution evidence is required to be tested at the stage of trial.

It is apt here to refer the judgment in case titled as *Sheoraj Singh Ahlawat v. State of U.P., reported in (2013) 11 SCC 476.* At this stage, the court is merely required to formulate a prima facie opinion regarding the commission of the alleged offence on the basis of material available on record.

At this stage, even strong suspicion founded on material which leads the court to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged would justify the framing of charge against the accused in respect of the commission of that offence. Apart from the above discussion, the contentions raised on behalf of the accused are matter of trial and could be dealt with after appreciation of evidences of the witnesses at the appropriate stage.

It is an admitted fact that recovery of 400 grams of heroin has been effected from the conscious possession of accused Chanderkala in the bag held by her in her hand and so, prima facie case u/s 21 NDPS Act is made out against accused Chanderkala. Also, accused Virender was present along with accused Chanderkala at the time of said recovery and he in conspiracy with his mother has gone along with accused Chanderkala, who is his mother to bring said contraband from Bareilly, UP and so, prima facie case u/s 29 NDPS Act is made out against accused Virender and accused Chanderkala.

As far as accused Jairam @ Raja is concerned, although

there is disclosure of co-accused Chanderkala that accused Jairam @ Raja is the proposed purchaser of the said contraband from her and coupled with CDR details showing their regular communication between them. But, it is also observed that from 09.02.2023 till 04.02.2024, there were more than 722 calls between accused Chanderkala and accused Jairam @ Raja and even, on 04.02.2024 before the arrest of accused Chanderkala, many calls were made between them to throw grave suspicion on the role of accused Jairam @ Raja for purchase of said contraband. Even, an additional fact that accused Jairam @ Raja pointed out the place of residence of accused Chanderkala further aggravating the prima facie case against accused Jairam @ Raja. So, prima facie case u/s 29 NDPS Act is also made out against accused Jairam @ Raja as well as against accused Chanderkala. Hence, **finding a prima facie case u/s 21/29 NDPS Act against accused Chanderkala and finding a prima facie case u/s 29 NDPS Act against accused Virender and accused Jairam @ Raja. So, accused Chanderkala be charged u/s 21/29 NDPS Act and accused Virender and accused Jairam @ Raja be charged u/s 29 NDPS Act.**

Ordered accordingly.

Put up for framing of formal charge against all the accused on **07.05.2025.**

On request, Bail application of applicant / accused Jairam @ Raja be also put up for consideration on said date.

(Ekta Gauba Mann)
Special Judge (NDPS-01)
(Central) Tis Hazari Courts
Delhi/06.05.2025