

**IN THE COURT OF JITENDRA PRATAP SINGH
ADDL. SESSIONS JUDGE/SPECIAL JUDGE (NDPS)
NEW DELHI DISTRICT, PATIALA HOUSE COURTS
NEW DELHI**

SC 8666/2016

STATE Vs. MOHD. ASKER AHMED @ AKSER & ORS.

FIR No. 42/2013

PS SPECIAL CELL

18.07.2026

ORDER ON CHARGE

1. Vide this order, the question of framing of charge against accused persons namely Mohd. Asker Ahmed @ Akser @ Asker @ Ahmed, Mohd. Abdul Kalam @ Akhan, Dharminder Singh Bhatia. Ashok Kumar Mishra and Rajiv Kumar Pathak is being considered.
2. Stated briefly, the prosecution case is that FIR No. 42/2013, P.S. Special Cell, was registered for offences under Sections 22/25A and 29 of the NDPS Act against the accused Mohd. Asker Ahmed @ Akser @ Asker @ Ahmed.
3. As per the charge-sheet, on 01.10.2013, a secret information was received by SI Dalip Kumar that accused Mohd. Asker Ahmed would come near SDMC Primary Co-Ed School, Masihgarh, New Delhi, in a white Honda City car bearing No. DL-3CBA-3233 to deliver a consignment of Pseudoephedrine. The information was recorded and conveyed to senior officers under Section 42 NDPS Act. A raiding team was constituted and one public witness, Mohd. Zahid, was joined. At about 9:30 p.m.,

the said car reached the spot and accused Mohd. Asker Ahmed was apprehended.

4. After serving notice under Section 50 NDPS Act, the personal search of Mohd. Asker Ahmed and search of the vehicle were conducted. From his trouser pocket, 54 loose white tablets were recovered. From under the front left seat of the car, a black polythene bag containing 2 kg similar tablets was recovered. From the dickey (boot) of the car, five cardboard boxes containing strips of "Cold Shoot-C" tablets were recovered. The said tablets were stated to contain Pseudoephedrine.

5. During interrogation, accused Mohd. Asker Ahmed allegedly disclosed that he was involved in illegal trade of Pseudoephedrine along with his associates and that further stock was lying at a godown/flat at Johri Farm, Noor Nagar, New Delhi. Acting upon this disclosure, the police reached H.No. A-118, Gali No. 5, Johri Farm, where accused Mohd. Asker Hussain @ Shaker and Mohd. Abdul Kalam @ Akhan were found. They were allegedly handling/packing strips of tablets in the said premises. Notices under Section 50 NDPS Act were served upon them and search of the premises was conducted.

6. From the Johri Farm premises, the police allegedly recovered six boxes containing 30,000 strips of Cold Shoot-C tablets and six boxes containing 97,200 strips of Acar-T tablets, both containing Pseudoephedrine. Empty boxes, empty strips and

packing material were also recovered. The prosecution alleges that the premises was being used as a secret godown for removing strips from boxes, repacking them and sending them to Manipur/North-East. Accused Mohd. Asker Hussain @ Shaker and Mohd. Abdul Kalam @ Akhan were accordingly arrested.

7. The investigation thereafter proceeded to trace the supply chain. The Cold Shoot-C tablets were allegedly found to have been manufactured by M/s Unimark Healthcare Ltd., connected with accused Dharminder Singh Bhatia, and marketed through Shyama Healthcare & Pharmaceuticals, connected with accused Ashok Kumar Mishra. The prosecution alleges that Dharminder Singh Bhatia and Ashok Kumar Mishra dealt with the tablets containing Pseudoephedrine without the requisite Unique Registration Number and mandatory documents under the NDPS Act notification. Ashok Kumar Mishra allegedly supplied the tablets through documents prepared in the name of K.P. Drug Agency, though the alleged proprietor Imran Ahmed Khan denied actual purchase and stated that his signatures were forged.

8. Regarding Acar-T tablets, the investigation revealed that the tablets were manufactured by M/s Aran Pharmaceuticals and supplied to accused Rajiv Kumar Pathak, owner of Drug & Diagnostic India. Rajiv Kumar Pathak allegedly failed to produce valid documents for dealing with Pseudoephedrine and, at his instance, invoice documents showing sale to G.S. Medicare were

recovered. However, the owner of G.S. Medicare allegedly denied placing any order or receiving any such consignment.

9. The prosecution also relies upon seizure of mobile phones, analysis of call detail records, alleged intercepted conversations, recovery of documents, cheque books and handwritten diaries, and the alleged link between the accused persons to show that they were part of a syndicate dealing in Pseudoephedrine. On completion of investigation, the charge-sheet was filed alleging sufficient material against all the accused persons for offences under Sections 9A/22/25A/29 of the NDPS Act.

10. The supplementary charge-sheet filed in the case stated that the investigating agency obtained lawful interception of the mobile phones allegedly used by accused Mohd. Asker Ahmed and Mohd. Asker Hussain, prepared transcripts of the intercepted conversations and subsequently obtained their specimen voice samples pursuant to the permission of the Court. The intercepted conversations and specimen voice samples were examined by CFSL, CBI, New Delhi, and the forensic report dated 08.06.2016 opined that the questioned voice exhibits were probably those of Mohd. Asker Ahmed and Mohd. Asker Hussain. The supplementary charge-sheet also places on record the call detail records (CDRs) of several mobile numbers allegedly used by different accused persons, bank account statements of Mohd. Asker Ahmed and certain business entities, documents relating to

the release of the seized Honda City car on superdari, details regarding two PAN cards allegedly issued in the name of Mohd. Asker Ahmed, and the correspondence with the Income Tax Department concerning verification thereof. The supplementary investigation further relates to the verification conducted by the Narcotics Control Bureau regarding the Unique Registration Number (URN) allegedly obtained by M/s Unimark Health Care Ltd. It is alleged that although Dharminster Singh Bhatia had claimed to have applied for the URN on 21.09.2013, scrutiny of the NCB register disclosed that the relevant date had been intentionally altered from 21.10.2013 to 21.09.2013. The investigating agency also collected verification reports from the NCB and Drug Inspectors stating that certain firms, namely M/s Drug & Diagnostic India, M/s Shyam Health Care & Pharmaceutical and KP Drug Agency, had not applied for issuance of URNs.

Arguments of the State.

11. Learned Addl. PP for the State has argued that the material collected during investigation, if taken at its face value, clearly discloses grave suspicion against all the accused persons for offences punishable under Sections 9A/22/25A/29 of the NDPS Act. It is submitted that the recovery from accused Mohd. Asker Ahmed @ Akser @ Asker @ Ahmed was not an isolated recovery. 54 loose tablets were recovered from his personal

search, 2 kg similar tablets were recovered from under the front seat of his Honda City car and five boxes of Cold Shoot-C tablets containing Pseudoephedrine were recovered from the dicky of the said car. It is further submitted that the search was conducted after compliance of the statutory safeguards, samples were drawn and sealed and the disclosure of accused Mohd. Asker Ahmed led the investigating agency to the Johri Farm premises, where accused Mohd. Asker Hussain @ Shaker (since deceased) and Mohd. Abdul Kalam @ Akhan were found present and a huge quantity of Cold Shoot-C and Acar-T tablets containing Pseudoephedrine, along with packing material, empty boxes and strips, was recovered. The learned Addl. PP argued that the presence of these accused persons at the secret godown and the nature of the recovered material prima facie show conscious possession, active handling, storage, repacking and onward supply of controlled substance.

12. Learned Addl. PP has further argued that the investigation has also established a prima facie supply chain connecting the remaining accused persons. It is submitted that accused Dharminder Singh Bhatia, being connected with Unimark Healthcare Ltd., was linked with manufacture/supply of Cold Shoot-C tablets; accused Ashok Kumar Mishra, proprietor of Shyama Health Care & Pharmaceuticals, was linked with marketing and further supply of the said tablets and the accused

Rajiv Kumar Pathak, proprietor of Drug & Diagnostic India, was linked with the Acar-T tablets. It is contended that these accused persons failed to produce the requisite Unique Registration Number and valid documents required for dealing in Pseudoephedrine, a controlled substance. The learned Addl. PP has also relied upon the CDRs, intercepted conversations, CFSL voice comparison report, bank account details, invoices, statements of witnesses and verification reports regarding non-issuance/non-application of URN by certain firms, to submit that the accused persons were not acting independently but were part of a larger syndicate engaged in illegal trade of Pseudoephedrine. It is therefore submitted the material on record is sufficient to frame charges against all accused persons.

Arguments on behalf of the accused persons.

13. On behalf of accused no. 1 Mohd. Asker Ahmad @ Asker, it has been argued that no charge is made out against him as the articles allegedly recovered at the instance or from him were medicinal tablets, namely SP Cold Shoot-C and Acar-T, and not narcotic drugs or psychotropic substances. It is submitted that the said tablets contained Pseudoephedrine along with other ingredients such as Cetrizine Dihydrochloride/Triprolidine and, therefore, were medicinal preparations covered under Section 3(b) of the Drugs and Cosmetics Act, 1940. Learned counsel for the said accused has argued that the Central Government

notification declared Pseudoephedrine and its salts as controlled substances, but did not regulate, for domestic purposes, preparations containing Pseudoephedrine as one of the ingredients. It is further submitted that Schedules A, B and C of the NDPS (Regulation of Controlled Substances) Order, 2013 make a distinction between Pseudoephedrine and its salts on one hand and preparations thereof on the other, and that preparations are relevant only in the context of import/export under Schedules B and C. It is, therefore, submitted that in the absence of material showing import/export or any act punishable under the NDPS Act, accused no. 1 deserves to be discharged.

14. Proceedings qua accused no. 2 Mohd. Asker Hussain @ Shaker already stood abated vide order dated 26.05.2015 on account of report of his death.

15. On behalf of accused no. 3 Mohd. Abdul Kalam @ Akhan, it has been argued that he has been falsely implicated merely because he was allegedly found present at the Johri Farm premises along with accused no. 2. It is submitted that the said premises did not belong to accused no. 3 and there is no recovery from his conscious possession. Learned counsel for this accused has further argued that the only allegation against him is that he was taking out strips from packed boxes and preparing bunches, which by itself does not constitute any offence under the NDPS Act. It is also submitted that the tablets in question were

medicinal tablets used for cold and cough and the prosecution has not placed any independent material to show that accused no. 3 was owner, tenant or person in control of the premises or that he had conscious possession of any controlled substance. On these grounds, discharge has been prayed for.

16. On behalf of accused Dharminder Singh Bhatia, it has been argued that he is a director of Unimarck Healthcare Ltd., a pharmaceutical company engaged in manufacture and sale of medicines. That the only alleged link between him and the case is that Cold Shoot-C tablets manufactured by the company were recovered from co-accused persons. It is submitted that Cold Shoot-C is a medicinal preparation used for cold and cough and contains Pseudoephedrine Hydrochloride along with Cetirizine Dihydrochloride and other formulations. Ld. Senior Advocate representing this accused has argued that such preparation cannot be equated with Pseudoephedrine simpliciter so as to attract Schedule A of the NDPS (Regulation of Controlled Substances) Order, 2013. It is also submitted that the company had valid product permission and licence for manufacturing the said tablets and had legally purchased Pseudoephedrine Hydrochloride from Cekem Corporation through invoices which form part of the charge-sheet.

17. It has further been argued by the Ld. Senior Advocate for accused Dharminder Singh Bhatia that Unimarck Healthcare Ltd.

had applied for Unique Registration Number within the permissible period and was in possession of Unique Registration No. DLCN0500054, issued by NCB, Delhi Zonal Unit, on 23.10.2013. It is submitted that the sale of Cold Shoot-C tablets to Shyama Healthcare & Pharmaceuticals was made on 11.09.2013, i.e. within the grace period of 180 days contemplated under the NDPS (Regulation of Controlled Substances) Order, 2013, which came into force on 26.03.2013. The defence has also relied upon the verification of the registration by NCB and submitted that mere inability to produce the Unique Registration Number at the time of questioning cannot constitute an offence. It is further submitted that the prosecution case is based only on circumstantial allegations, without legally admissible evidence to show that this accused was part of any conspiracy or had knowledge of any alleged illegal diversion by subsequent purchasers.

18. On behalf of accused Ashok Kumar Mishra, it has been argued that he was running a pharmaceutical concern, namely Shyama Healthcare & Pharmaceuticals, and the alleged transaction with Unimarck Healthcare Ltd. was a commercial transaction relating to medicinal tablets. It is submitted that he had produced drug licence and documents relating to the sale/purchase of Cold Shoot-C tablets and that the prosecution has failed to show that he was involved in any illicit trafficking

or diversion of controlled substance. It is further argued that even if invoices were prepared in the name of K.P. Drug Agency, the dispute regarding genuineness of documents or signatures, at best, may raise suspicion regarding business documentation, but does not by itself establish commission of offences under Sections 9A/25A/29 of the NDPS Act. It is also submitted that no recovery was effected from his personal possession and that there is no admissible material to show conscious participation in any conspiracy with the other accused.

19. On behalf of accused Rajiv Kumar Pathak, it has been argued that the prosecution has attempted to connect him only on the basis of alleged supply of Acar-T tablets through his firm Drug & Diagnostic India. It is submitted that no contraband or controlled substance was recovered from his possession and the alleged recovery from Johri Farm was not from any premises owned, occupied or controlled by him. Learned counsel has further submitted that the alleged invoice showing sale of Acar-T tablets to G.S. Medicare is insufficient to frame charge, particularly when the owner of G.S. Medicare has disputed the relevant invoice and denied receipt of the alleged consignment. It is argued that the material, even if accepted at its highest, does not establish conscious possession, illegal dealing or conspiracy on his part, and therefore he is entitled to discharge.

Discussion and analysis

20. I have heard the submissions and have also perused the record.

21. At the stage of charge, the Court is not required to conduct a meticulous appreciation of evidence. However, the Court is also required to see whether the material, if taken at face value, discloses the legal ingredients of the offences alleged. Where the admitted prosecution material does not constitute the offence alleged, the accused cannot be put to trial merely because the allegations appear suspicious or because the quantity involved is large.

22. Section 9A of the NDPS Act empowers the Central Government to regulate controlled substances. Section 25A punishes contravention of orders made under Section 9A. Thus, Section 25A is not attracted merely because a substance is alleged to have some remote connection with the manufacture of narcotic drugs or psychotropic substances. The prosecution must show that there was contravention of a specific order regulating the particular controlled substance or category of substance in question.

23. The Narcotic Drugs and Psychotropic Substances (Regulation of Controlled Substances) Order, 2013, notified vide G.S.R. 191(E) dated 26.03.2013, was issued under Section 9A of the NDPS Act. Schedule A of the said Order deals with controlled substances whose manufacture, distribution, sale,

purchase, possession, storage and consumption within India are regulated. Schedule B deals with export and Schedule C deals with import. Clause 4 provides that no person shall manufacture, distribute, sell, purchase, possess, store, consume or otherwise deal with any controlled substance included in Schedule A without obtaining a Unique Registration Number from the Zonal Director, NCB. The first proviso to Clause 4 granted 180 days from the coming into force of the Order for compliance with the requirement of registration.

24. Schedule A of the order includes **“Pseudoephedrine and its salts”**, but does not include the expression **“preparations thereof”**. This is significant because Schedules B and C specifically use the expression **“Pseudoephedrine, its salts and preparations thereof”**. Therefore, the Order itself makes a clear distinction between Pseudoephedrine/salts on one hand and preparations thereof on the other. Wherever the Central Government intended to regulate preparations, it expressly said so. The absence of the words “preparations thereof” in Schedule A cannot be ignored or supplied by the Court by implication.

25. Penal statutes must be construed strictly. If the notification forming the basis of the prosecution case covers Pseudoephedrine and its salts in Schedule A, but does not expressly cover preparations thereof, medicinal tablets containing Pseudoephedrine Hydrochloride along with other ingredients

cannot automatically be treated as Schedule A controlled substances for domestic possession, sale, storage or transport. To hold otherwise would amount to enlarging penal liability by analogy, which is impermissible.

26. The charge-sheet repeatedly describes the recovered articles as tablets/strips of Cold Shoot-C and Acar-T. These were not pure Pseudoephedrine or Pseudoephedrine salt. Cold Shoot-C, even as per the prosecution, contained Pseudoephedrine HCl I.P. 60 mg, Cetirizine Dihydrochloride I.P. 5 mg and excipients q.s. It was, therefore, a medicinal preparation/formulation. Similarly, Acar-T was also a tablet preparation. It is not conclusively stated by the prosecution, that this tablet had pseudoephedrine as its only constituent. In these circumstances, the very foundation of invoking Section 25A read with Section 9A becomes doubtful, as the prosecution has not shown that such medicinal preparations were covered under Schedule A for domestic dealings.

27. The distinction becomes more material because the prosecution has not placed any convincing material to show actual export or import of the recovered tablets so as to bring the case within Schedules B or C. The allegation that the consignment was to be further sent to Manipur and thereafter to China/Myanmar is based essentially on disclosure statements and suspicion. There is no completed act of export/import and no

legally sufficient material showing that the accused persons had crossed the threshold required for prosecution under the import/export schedules. Therefore, the entries in Schedules B and C cannot be used to fill the omission in Schedule A.

28. The position qua accused Dharminder Singh Bhatia is even weaker. His firm, Unimark Healthcare Ltd., is alleged to have manufactured Cold Shoot-C tablets. It has been argued on his behalf that the firm had applied for a valid Unique Registration Number on 11.09.2013, which was within the 180-day period granted under the 2013 Order. The supplementary charge-sheet itself records that verification from NCB showed that Unimark Healthcare Ltd. had applied for issuance of Unique Registration Number within the relevant period, though the prosecution has alleged that there was correction/tampering in the NCB register and therefore, it prima facie showed fabrication on behalf of this accused.

29. However, perusal of the record would reveal that except making such an allegation regarding correction in the register, the charge-sheet does not disclose any material to support the allegation that the application for Unique Registration Number was ante-dated or that any record was tampered with at the instance of accused Dharminder Singh Bhatia. Significantly, no action appears to have been taken against any official of NCB or any other department in respect of the alleged tampering or ante-

timing of the record. In the absence of such supporting material, the Court cannot proceed on an assumption that the official record relating to application for Unique Registration Number was manipulated. Suspicion regarding correction in a register cannot substitute legally admissible material at the stage of charge.

30. As regards accused Ashok Kumar Mishra and Rajiv Kumar Pathak, the prosecution seeks to rely upon alleged invoices, business documents and statements of witnesses to show movement of Cold Shoot-C and Acar-T tablets through their firms. However, even if the said material is accepted at its highest, it would only show dealing in medicinal tablet preparations. Once such preparations are not shown to be covered under Schedule A for domestic manufacture, possession, sale or storage, the alleged business dealings, without more, cannot attract Section 25A of the NDPS Act.

31. The prosecution case also suffers from a material gap regarding Gulab Khan. The charge-sheet repeatedly refers to Gulab Khan as the person who allegedly contacted Ashok Kumar Mishra for bulk Pseudoephedrine tablets, asked for invoices to be prepared in the name of K.P. Drug Agency, collected the consignment from Shyama Health Care & Pharmaceuticals and was allegedly one of the important links in the supply chain. Despite this, the charge-sheet is conspicuously silent as to why

Gulab Khan was not charge-sheeted, why he was not shown as an absconding accused or suspect and what effective steps were taken to trace him.

32. This is significant because the prosecution's own case seeks to connect the pharmaceutical suppliers/manufacturers with the alleged illicit chain through Gulab Khan. If Gulab Khan was the alleged intermediary and principal procurer/collector of the consignment, absence of any clear investigation outcome qua him breaks an important link in the alleged conspiracy. At the stage of charge, this Court cannot ignore such a gap, particularly when the remaining material is otherwise insufficient to show that the medicinal preparations recovered were covered by the penal provision invoked.

33. The reliance placed upon CDRs, intercepted conversations and CFSL voice comparison report also does not improve the prosecution case in the absence of the basic legal ingredient constituting the alleged offence under Section 25A. Such material may show contact between certain accused persons or may be relied upon to allege association. However, association or conversation cannot convert medicinal preparations into Schedule A controlled substances, nor can it create penal liability where the statutory notification does not expressly include the recovered category of articles.

34. In the facts of the case, Section 22 NDPS Act is also not attracted. Section 22 deals with offences in relation to psychotropic substances. The recovered articles in the present case are not alleged to be psychotropic substances. The prosecution case itself is that the tablets contained Pseudoephedrine, which is alleged to be treated as a controlled substance under Section 9A. Therefore, the invocation of Section 22 is legally unsustainable.

35. Section 29 NDPS Act, relating to abetment and criminal conspiracy, also cannot survive independently in the facts of the present case. A charge for conspiracy under Section 29 must relate to commission of an offence under the NDPS Act. If the foundational allegations regarding possession, storage, sale or movement of the recovered medicinal tablets do not disclose an offence under Sections 9A read with 25A or Section 22, then Section 29 cannot be invoked merely on the basis of alleged association, disclosure statements, invoices or telephone calls.

36. In view of the above discussion, this Court is of the considered opinion that the material placed on record, even if taken at its face value, does not disclose the commission of offences under Sections 9A/22/25A/29 of the NDPS Act against the accused persons. The prosecution has failed to show that the recovered medicinal preparations/tablets, namely Cold Shoot-C and Acar-T, were covered under Schedule A of the NDPS

(Regulation of Controlled Substances Order, 2013) for domestic manufacture, possession, sale, purchase, storage or transport.

37. Accordingly, accused Mohd. Asker Ahmad @ Asker, Mohd. Abdul Kalam @ Akhan, Dharminder Singh Bhatia, Ashok Kumar Mishra and Rajiv Kumar Pathak are hereby discharged for offences punishable under Sections 9A/22/25A/29 of the NDPS Act.

38. Proceedings qua accused no. 2 Mohd. Asker Hussain @ Shaker already stand abated vide order dated 26.05.2015.

39. All the pending applications including the IA no. 1/26 of accused Dharminder Singh Bhatia seeking modification of the bail conditions stand disposed off.

40. Original bail bonds and surety bonds of the discharged accused persons stand cancelled subject to the accused persons furnishing fresh bail bonds and surety bonds, of the same sum as directed in their existing bail orders, within 7 days from today as per Section 437-A CrPC. Thereafter, original documents earlier furnished on behalf of the sureties be returned to the rightful claimants after cancellation of endorsements, as per rules.

41. File thereafter be consigned to record room.

(Jitendra Pratap Singh)
ASJ/Spl. Judge, NDPS/N Delhi
18.07.2026/r