

**IN THE COURT OF ASJ/SPECIAL JUDGE/NDPS
PATIALA HOUSE COURTS, NEW DELHI**

Presided by: Sudhir Kumar Sirohi, DHJS

SC No. 214/2021

FIR No. 69/2021

PS Special Cell

State Vs. Uday Patel & Ors.

04.05.2024

ORDER ON CHARGE

Present: Mr. Ravindra Kumar, Ld. Addl. PP for State.

Mr. Amit Gupta, Ld. counsel for all accused except
Partap Singh.

Mr. Aditya Dahiya, Ld. counsel for accused Partap
Singh.

All accused on bail in person.

IO/Insp. Surender in person.

Brief facts of the case are that, on 08/03/2021, on receipt of a secret information by ASI Sanjeev Kumar that one Uday resident of Bihar, indulged in drug supplying in connivance with Jamir, Mohd. Furkan and Kallu, all lodged in Patna Jail. Uday would come near Gokalpuri Flyover, Delhi between 07:00 AM to 08:00 AM to supply huge consignment of drugs to one Kapil @ Vivek after procuring the same from carriers of Mohd. Furkan and Kallu on the directions of Jamir from Guwahati. The said information was immediately lodged on a separate piece of paper by ASI Sanjeev Kumar and subsequently, ASI Sanjeev Kumar informed Insp. Vivekanand Pathak through telephone, who after his satisfaction conveyed the said information to Sh. Jasbir Singh, ACP/Spl.Cell/NR through telephone who directed

to take necessary action as per law and also authorized ASI Sanjeev Kumar to conduct raid, search and seizure and proper legal action. DD No.02 A dated 08/03/2021 PS- Special Cell, Delhi was lodged in this regard at 06:02A.M. Copy of DD No. 02A and information recorded on a separate piece of paper was put up before Inspr. Vivekanand Pathak in compliance of Section 42 of NDPS Act, who forwarded these documents to ACP/Spl.Cell/NR through SO/ACP/Spl. Cell/NR. A raiding party led by ASI Sanjeev Kumar and consisting of other members of team was organized and a trap was laid near Gokalpuri Flyover, Road towards Maoujpur, Delhi where Uday Patel came at about 07:20 AM and Kapil @ Vivek and Ram Naresh arrived at spot at about 07:25 AM in their Maruti Brezza Car No. UP32KV0620. When Uday Patel gave one thaila to Kapil Kumar, all above three were apprehended at about 07:30AM on 08/03/2021. After giving introduction of police party and after telling them about secret information, accused Kapil Kumar @ Vivek, Uday Patel and Ram Naresh were served notices u/s 50 NDPS Act. Shri Jasbir Singh, ACP/NR was called on the spot. In presence of ACP/NR, search of thaila of Kapil Kumar @ Vivek, which was given to him by Uday Patel, was conducted and during search 03 kgs heroin was recovered. Thereafter search of bag of Uday Patel was conducted and during search, 07 kgs of heroin was recovered from him. Accused Uday Patel disclosed that he used to indulge in supply of heroin in connivance with Jameer, Mohd. Furkan and Kallu, all lodged in Beur Jail, Patna, Bihar. He also disclosed that he used to procure heroin from carriers of Jameer, Mohd. Furkan and Kallu from Guwahati and Manipur on the directions of Jameer, Mohd. Furkan and Kallu and further supply the same

to various persons of UP and Delhi/NCR including Kapil Kumar @ Vivek and other persons in Haryana. He also disclosed that he can get arrest above mentioned persons from Manipur, Haryana and can get recover heroin from them. During investigation, complete name and addresses of Jamir Alam Ali, Mohd. Furkhan and Mohd. Khalik @ Kallu were revealed and all three accused persons were serving their punishment in NDPS Case No. 15/2014 Dated 20/02/2014 of DRI, Patna (Bihar) at Beur Jail, Patna, Bihar. Hon'ble court issued production warrant of accused persons namely Jamir Alam Ali, Mohd. Furkhan and Mohd. Khalik in above said case. On 16/07/2021 Jail officials produced the above said accused persons at Patiala House Court, Delhi.

Thereafter, the application was moved for interrogation of accused Jamir Ali, Mohd. Mohd. Furkan, Mohd. Khali @ Kallu who were already lodged in JC in Beur Jail Patna, after interrogation they were arrested, mobile phone of accused persons Jamir Ali, Mohd. Furkan, Mohd. Khalik @ Kallu were on interception and their voice was matched from incriminating voice calls after taking voice sample. After completion of investigation, chargesheet was filed.

Arguments on charge already heard.

Ld. Addl. PP for State argued that on basis of secret information on 08.03.2021, accused Uday Patel, Kapil and Ram Naresh were apprehended, from accused Kapil there is recovery of 3 kg of heroin and from accused Uday Patel of 7 kg of heroin. It is further argued by State that accused Ram Naresh had disclosed about the knowledge of contraband and he came with the accused Kapil in vehicle bearing no. UP32KV0620. It is further argued by Ld. Addl. PP for State that accused Kapil in his

disclosure disclosed about accused Pratap Singh and there is transcription of accused Pratap Singh with accused Kapil in which they are stating about *khaad*. It is further mentioned that in the transcription it has been mentioned that the accused Patap would sell the Khad for 13 rupees and this khaad word has been used to represent contraband and 13 rupees is used for lakhs as no name of khaad or its quantity has been mentioned in the chat. It is further argued by Ld. Addl. PP for State that accused Jamil Alam, Mohd. Furkan and Mohd. Khalik were operating the syndicate from jail, there is transcription of the accused persons Mohd. Furkan, Jamil and Mohd. Khalik with Kapil, Ram Vikas and they are talking about contraband. It is also argued on part of State that accused Ram Vikas is also a part of narcotic syndicate and there is transcription voice calls of accused Ram Vikas with co-accused Kapil and Mohd. Furkan and in transcription, accused Ram Vikas is talking about Rs. 10 lakh, samaan, choclatiwala and these amounts to referring contraband and cost of contraband, therefore, Ld. Addl. PP for State submitted that charge may be framed u/s 21 (c) against accused Uday Patel and Kapil and u/s 21(c) r/w 29 NDPS Act against all the accused persons.

Ld. counsel for accused Uday and Kapil conceded the charge.

Ld. counsel for accused Ram Naresh submitted that accused Ram Naresh was the driver of the vehicle bearing No. UP32KV0620 of accused Kapil @ Vivek and accused was not in conspicuous or physical possession of any contraband and the accused was employee of co-accused Kapil, there is no CDR connectivity of accused Ram Naresh with any of co-accused nor

his name has been mentioned in any of the disclosure of any co-accused, therefore, accused Ram Naresh may be discharged.

Ld. counsel for accused Pratap Singh argued that accused Pratap Singh @ Chacha was named in the disclosure statement of co-accused Kapil. It is further argued that no recovery has been effected from the accused Pratap Singh Singh, there is alleged disclosure statement of accused Pratap Singh @ Chacha but on the basis of said disclosure statement, there is no discovery of new fact and there is also alleged intercepted voice calls of accused Pratap Singh with co-accused Kapil in which they are talking about *khaad*, accused Pratap Singh is also dealing business of fertilizer and bail was granted to accused Pratap Singh @ Chacha by Hon'ble High Court of Delhi on same ground that use of word *khaad* can not be solely interpreted to mean drug/contraband, therefore, accused Pratap Singh may be discharged.

Ld. counsel for accused Jamir Alam, Mohd. Furkan and Mohd. Khalik has argued that no recovery of alleged contraband has been effected from any of these accused persons, allegations against the accused persons are of that they were alleged supplier of contraband and running a racket from Beur Jail Patna through phone there is no recovery of any phone or SIM Card from any of these accused nor State has filed location of alleged phone numbers attributed to accused Jamir Alam Ali (7085392038), 7493003817 used by Mohd. Furkan and no location of these phone numbers have been placed on record by prosecution to show that these phones were working in Beur Jail Patna nor any official of Beur Jail was examined regarding the use of mobile phones in the Jail and in the era of artificial

intelligence the voice can easily be manipulated moreover, the intercepted voice calls transcription relied upon by prosecution was not authorized as per Section 5 (2) of Indian Telegram Act as there is only letter of worthy DCP Special Cell to Nodal Officer for interception but there is no letter of authorization to worthy DCP by the Union Home Secretary as per Section 5 (2) of Indian Telegram Act, therefore prays for discharge of accused Jamir Alam, Mohd. Furkan and Mohd. Khalik.

It is argued on behalf of accused Ram Vikas that no phone has been recovered from applicant and the transcription relied upon by the prosecution is illegal due to non authorization from Worthy Union Secretary as per section 5(2) of Indian Telegram Act, therefore, prays for discharge of accused Ram Vikas.

Submissions of all the parties heard.

There is recovery of 3 kg of heroin from the *thela* of accused Kapil Kumar @ Vivek while there is recovery of 7 kg of heroin from accused Uday Patel, therefore, there is prima facie material on record to frame charge u/s 21(c) NDPS Act against accused Kapil & Uday Patel.

Accused Ram Naresh Yadav has argued that he was driver of the accused Kapil @ Vivek and there is no CDR connectivity of accused Ram Naresh Yadav with any of co accused and was working on the monthly salary of Rs. 10,000/-. There is disclosure of accused Ram Naresh Yadav about knowledge of drug, he was present alongwith the accused Vivek Kapil at that time when contraband was exchanged between accused Uday Patel and Kapil, therefore, there is sufficient material on record to frame charge of conspiracy of sale of

heroin, hence, prima facie charge u/s 21(c) r/w Section 29 NDPS Act is made out against accused Ram Naresh Yadav as well as accused Uday Patel and Kapil @ Vivek.

The allegations against the accused Pratap Singh @ Chacha that is part of narcotics syndicate and there is transcription between accused Kapil (phone no. 8052622069) and Pratap Singh @ Chacha (7521035940), in the transcription it has been mentioned that the accused Kapil is asking for the rate and accused Pratap Singh replied that rate is Rs. 13. The defence taken by the accused is that he owns a shop of *khaad* but ironically in the whole transcription between accused Pratap Singh and kapil @ Vivek, the name of any *khaad*/fertilizer has not been mentioned whose rate the accused Pratap Singh was telling. The prosecution has alleged that Rs. 13 is Rs. 13,00,000/- for 1 kg of heroin. Accused Kapil @ Vivek has stated in transcription that “*14 rupey ka bazar hai 13 rupey ki to hamari kharidari hai*”, therefore, if the accused Pratap Singh is talking about buying fertilizer from Pratap then how accused Kapil can say that “*14 rupey ka bazar hai 13 rupey ki to hamari kharidari hai*”, it means that the accused Kapil @ vivek is also selling something whose rate is 14 in market and he is purchasing for Rs. 13, and there is no shop of fertilizer belonging to accused Kapil, accused Kapil is also saying in chat dated 07.03.2021 that he is having 50 gm. Therefore, at this stage, there is prima facie sufficient material to show that there are talking about contraband as the accused Kapil is not a farmer nor a dealer for *khaad* and even they are talking about 50 gram, accordingly, there is sufficient material on record to frame charge u/s 21(c) r/w Section 29 NDPS Act against accused Pratap Singh.

The allegations against accused Jamir Alam, Md. Furkan and Khalik @ Kallu are that they supplied the contraband recovered in this matter through career and operated from jail. All these three accused Jamir Alam, Md. Furkan and Khalik @ Kallu were lodged in Beur Jail Patna in case No. 15/2014 of DRI when alleged recovery effected and State has alleged that they were running the narcotics syndicate on phone bearing no. 7085392038 & 7493003817, there is voice recording of all these three accused. Ironically, no phone has been recovered from these accused persons nor the location of the said mobile number 7085392038, 7493003817 has been placed on record with address by the investigating agency to show that these two numbers were working within Beur Jail Patna, even the statement of any of the Jail officials of Beur jail or any inmate in prison of these accused persons has not been recorded qua use of mobile phone by these accused persons. There is no explanation how accused persons have used phone in the jail and if a person is lodged in jail then he can not be presumed to use mobile phone therefore, in the absence of recovery of any mobile phone/SIM Card, absence of address of location of these two phone numbers allegedly working in Jail, there is nothing on record to show that accused were using phone from jail so transcription also become irrelevant, moreover, in the absence of any monetary transaction of any of these accused Jamir Alam, Md. Furkan and Khalik @ Kallu with any of co-accused, it can not be said the accused persons Jamir Alam, Md. Furkan and Mohd. Khalik @ Kallu are involved in the conspiracy of the contraband recovered in this matter and on the same ground accused Jamir Alam Ali was granted bail by Hon'ble High Court of Delhi, therefore, accused

Jamir Alam Ali, Md. Furkan and Mohd. Khalik @ Kallu are discharged in this matter.

The allegations against accused Ram Vikas Yadav that he is part of narcotic syndicate and contra-band recovered in this matter is also to be supplied to accused Ram Vikas Yadav, there is intercepted voice calls of accused Ram Vikas with co-accused Uday Patel & Mohd. Furkan. In the transcription dated 02.02.2021, accused Ram Vikas and Uday Patel are talking about Rs. 10,00,000/-, samaan, chocolatiwala and plea of accused that the transcription can not be replied upon due to absence of authorization u/s 5 (2) of Indian Telegraph Act is a matter of trial and the accused has taken plea that he is running a cosmetic shop therefore he was taking about cosmetic items is also a matter of trial, accordingly, there is sufficient material on record to frame charge u/s 21(c) r/w Section 29 NDPS Act against accused Ram Vikas Yadav.

Mr. Jamir Alam Ali, Md. Furkan and Mr. Mohd. Khalik @ Kallu are directed to furnish bail bond u/s 437-A CrPC in the sum of Rs. 50,000/- with one surety of like amount on 21.05.2024.

List for framing formal charge against accused persons Uday Patel, Kapil Kumar @ Vivek, Ram Naresh Yadav, Pratap Singh @ Chacha & Ram Vikas Yadav on **01.06.2024**.

(Sudhir Kumar Sirohi)
ASJ/Spl. Judge, NDPS/N. Delhi
04.05.2024