

FIR No. 09/16  
PS Special Cell  
State Vs. Balkar Singh & Anr.

20.10.2016

Present: Sh. R.K. Bhati, Ld. APP for the State.

IO SI Rakesh Kumar.

Sh. Sermon Rawat, Ld. Counsel for both the accused persons.

The matter is listed for consideration of charge. Arguments on charge have been advanced.

As per the case of the prosecution, on or before 16.03.2016 both the accused persons entered into a criminal conspiracy to acquire, possess and indulge in illicit trafficking of heroin and in pursuance of the said conspiracy, on 16.03.2016 at about 05.15 PM at Tajpur Mor, National Highway-1, Delhi, both of them were found standing near white Swift car bearing no. PB 09AA 2696 and accused Gurcharan Singh was found in possession of 1 kg substance in a white polythene held by him in his hand and accused Balkar Singh tried to run away towards driving seat of the said car and on search one white polythene containing 2.5 kg of substance was recovered from beneath the said seat.

The samples of all the said packets were sent to FSL for chemical examination. Ex.A1 was found to contain diacetylmorphine, 6-monoacetylmorphine, caffeine and diazepam. Ex.B1 was found to contain diacetylmorphine, 6-monoacetylmorphine, acetaminophine, caffeine and diazepam. Ex.C1 was found to contain diacetylmorphine, acetaminophine, caffeine, phenobarbital, codeine, morphine and alprazolam. The percentage of diacetylmorphine found in all the said samples were also mentioned in the report.

It is argued by Ld. Counsel for the defence that since the samples in question had tested positive for a number of substances, the accused can be charged only for the respective percentage of those substances found in the material. It is further argued that as far as conspiracy is concerned, there is no material to show that there was any conspiracy between both the accused with respect to the contraband allegedly recovered from them. It is further stated that admittedly nothing was recovered from the personal search of accused Balkar and he cannot be said to be in conscious possession with regard to the substance which has been allegedly recovered beneath the driver seat of the said car.

Per contra, Ld. APP for the State has controverted the said contentions.

Section 2(xx) NDPS Act defines 'preparation' in relation to a narcotic drug or psychotropic substance, means any one or more such drugs or substances in dosage form or any solution or mixture, in whatever physical state, containing one or more such drugs or substances.

In the present case, since all the samples have tested positive for more than one narcotic drug and psychotropic substance, it is clear that the substances recovered from the accused are prima facie 'preparation' within the meaning of NDPS Act which is punishable u/s 21 of the said Act.

The interpretation that the accused can be charged only for the respective percentage of those substances found in the material has no material also because after the amendment through notification SO 2941(E) dated 18.11.2009 by the Central Government, the purity aspect of the drug has become immaterial and the court cannot go into the purity aspect.

As far as the issue of conspiracy is concerned, it is relevant here to state that the information was with regard to both the said accused

who were apprehended at the spot, recovery of contraband was effected in the manner described in the chargesheet and CDR connectivity of the mobile of both the accused show that they were in regular touch and hence there is sufficient ground which point out towards the conspiracy between them. The issue whether Balkar was in conscious possession or not can be seen by court only during trial.

In view of the above, there is prima facie material on record to proceed against both the accused u/s 29 NDPS Act and also u/s 21(c) in respect of each of the two recovery r/w section 29 NDPS Act.

Charge has accordingly been framed to which the accused persons plead not guilty and claim trial.

List this case now for PE on 14.12.2016. SI Sandeep and SI Dharamveer, SO to ACP be summoned for the said date.

IO SI Rakesh Kumar has filed certified copies of conviction record of both the accused persons. Be placed on record. Copies are supplied to both the accused. Let the names of Ahlmads of concerned courts of Kapurthala and Jalandhar, Punjab be added in the list of witnesses.

(Deepak Garg)  
Spl. Judge, NDPS/N. Delhi  
20.10.2016