

FIR No. 11/19
PS Special Cell
State Vs. Mausam Ali & Ors.
U/s 21/29 NDPS Act

09.06.2022

Vide this order, I shall decide the order on charge of accused Kaiser Khan and also dispose of the application of accused Kunwar Pal for discharge u/s 227 CrPC.

Brief facts of case is that on receipt of secret information at around 01.20 AM on 18.01.2019 by SI Surender Singh regarding the persons namely Sanjay, Chhote Khan, Mausam Ali r/o Bareilly and Badayun indulging in drug trafficking activity in Delhi, Punjab and UP would come to Nirankari Sarovar, Delhi in Ertiga car to deliver huge quantity of heroin. A raiding party led by SI Surender Singh laid the trap and accused Mausam Ali, Chhote Khan and Sanjay were apprehended. Notices u/s 50 NDPS Act were given and ACP was present at the spot at the time of search and recovery. Total 5 kg out of which 1.5 kg of heroin from Mausam Ali, 1.5 kg from Chhote Khan and 2 kg from secret cavity made in hand rest of Ertiga was recovered. The formal investigation was handed over by SI Anukul and accused during interrogation disclosed that they used to supply the heroin to various persons in Punjab, UP and Delhi/NCR on the directions of Jalil, Mustakim r/o of Bareilly. They also disclosed that they brought the consignment of heroin from Jalil and Mustakim and further disclosed that they used to supply heroin to the contacts of Jalil, Mustakim i.e. Qasim, Vikas, Sanju. All accused also disclosed that they used to supply heroin to contacts of Jalil in Delhi namely Wasim after communicating on his mobile. On 19.01.2019 accused Jalil Khan was arrested who disclosed that he is involved in illegal heroin trafficking racket alongwith his associates Mulla, Saddam, Mustakim of Bareilly. Nothing was recovered from accused Jalil Khan. On 23.01.2019 team led by SI Anukul took accused Jalil to Bareilly in

PC and on 24.01.2019 arrested accused Kunwar Pal from his village, mobile conversations between the accused persons were analysed and after completion of investigation, chargesheet against all the accused persons except present accused Kaiser Khan was filed. The present accused Kaiser Khan earlier did not join the investigation and was evading arrest and later on declared PO by this court. Supplementary chargesheet regarding this accused was filed later on after his arrest.

Ld. Counsel for accused Kaiser Khan submitted that there is no evidence on record against this accused except the disclosure statement of this accused or co-accused. Admittedly there is no recovery from the present accused. The prosecution has relied upon the conversation between accused Kaisar Khan and Jalil Khan dated 03.01.2019 which is 15 days prior to incident and not related to present transaction. The voice sample report received also not definite and only stated that it is only possible. Therefore, there is no concrete corroborating evidence against this accused. Ld. Counsel submits that as per the CDR there are two calls on 03.01.2019 which is for 15 seconds and 50 seconds thus not matching with the transcript filed on record which suggests that the duration is of 62 seconds. Ld. Counsel submits that the proceedings u/s 82 Cr.PC are not conducted properly. Ld. Counsel submits that Apex Court in case titled State of Odhisa Vs. Bana Bihari Mohapatra & Anr. SLP (Crl.) No. 1156/2021 dated 12.02.2021 held that the suspicion however strong cannot take place of proof. Ld. Counsel submits that there is no material to frame charge against this accused. Hence this accused Kaiser Khan is entitled to be discharged.

Ld. counsel for accused Kunwar Pal in discharge application u/s 227 CrPC submitted that there is nothing incriminating recovered from present accused and this accused is also not concerned with recovery in this case. This accused figured only in the disclosure statement of accused Jalil Khan. Accused Jalil Khan has named 19 different persons from UP & Punjab and however police able to pick up the present accused only that too from

his house. The call detail between present accused with co accused is of 11.12.2018 more than one month old from the date of recovery. Hence, no dealing with the present recovery, therefore, this accused be stands discharged from the case.

Ld. Additional PP submits that there is a heavy recovery of heroin from co-accused persons and present accused Kaiser Khan is having conversation regarding drug dealing with kingpin accused Jalil Khan. The conversation depicts that the talks are regarding the drugs like “final wala 50gm”, “mil na paye, bole hum jugad kar ke laa denge”, “hum leke na ate ho to wahi se aa rahe hain”. Ld. Addl. PP submits that this conversation points towards the fact that present accused is actively involved in drug dealing with co-accused persons. Ld. Addl. PP submits that this accused has absconded and declared PO in this case however later on arrested on 03.12.2020 and monitoring of interception revealed that all the members of this syndicate were communicating with each and other and their associates regarding drugs in code words. The incriminating voice calls among the members of narcotic syndicate are stored in computer system and the voice sample report of present accused has been received which suggests that there is a possible voice matching which in itself is a positive report connecting this accused with the present crime. Accused Kaiser Khan is found to be using mobile no. 6397065151 to talk with kingpin co-accused Jalil Khan which was also found in the name of Kaiser Khan himself. Ld. Addl. PP further submits that this accused is part of larger conspiracy and prima facie case u/s 29 r/w section 21 (c) NDPS Act is made out against accused Kaiser Khan.

Ld Addl. PP submits that as far as application for discharge u/s 227 CrPC of accused Kunwar Pal is concerned, the same is liable to be dismissed as charge have already been framed against this accused along with other accused vide order dated 03.09.2019 and said order is not at all challenged.

Heard. Record perused.

In present case, on the directions of accused Jalil Khan, three co-accused were apprehended with recovery of 5 kg of heroin, thereafter, the accused Jalil under whose guidance they were distributing the drugs was arrested. Accused Jalil is found to be connected with the co-accused persons through number of mobile phone calls. The CDR details categorically showing the long conversations between the accused number of times. The transcripts of calls between accused Jalil Khan and the present accused Kaiser Khan also suggests their involvement in drug trafficking. The charges have already been framed against co-accused persons however as accused Kaiser Khan was arrested later on after being declared PO, supplementary chargesheet was filed and as per voice sample report the voice recorded is possible which itself suggests that the voice matched. Though the mobile phone of accused could not be recovered however the connection was in his name and found to be connected with other accused. The call duration of 50 seconds in the CDR do not create any doubt about the conversation recorded which only suggests that the call duration of 62 second because it also includes the timing of the ring and this is a matter of trial. The transactions of drugs in present case are heavy and the entire syndicate is involved and the present accused Kaiser Khan is found to be part of it. At this stage of framing of charge, the court has to see only prima facie case and not the probative value of material on record. Prima facie offence u/s 29 r/w section 21 (c) NDPS Act is made out against present accused.

As far as the discharge application of accused Kunwar Pal is concerned, the same is not maintainable at this stage. The charge has already been framed against this accused vide order dated 03.09.2019. Accordingly, the application for discharge of accused Kunwar Pal stands dismissed.

Application disposed of accordingly.

List this matter for framing of charge of accused Kaiser Khan
for 04.07.2022 (after vacations from 11.06.2022 to 30.06.2022).

(Ajay Kumar Jain)
ASJ/Spl. Judge, NDPS/N. Delhi
09.06.2022