

State Vs. Sajid Ali & Ors.
FIR No. 16/19
PS Special Cell

13.10.2020

ORDER

1. Vide this order, I shall pass the order on charge.
2. Brief facts as per the chargesheet filed is that on receiving the secret information dated 20.01.2019 at around 5:00 pm, on the directions of ACP Special cell raiding party consisting of SI Sanjeev Kumar, ASI Sanjay, ASI Hawa Singh, HC Ritu Raj, HC Akshay, Ct. Gurdeep alongwith informer was constituted. Thereafter the raiding team left for the spot in two private cars. On the way SI Sanjeev Kumar requested 3-4 passersby near Rithala Metro Station to join the raiding party, however, none agreed, thereafter also requested independent public persons to join but none agreed. However, only one person Ram Kumar disclosed his name and address despite refusal but none other even disclosed their name and addresses. At around 7:00 pm a truck bearing no. UP 25DT 0952 came from the Rithala side and a person holding a black colour pithoo bag came out from the conductor side and another from the driver side and both are talking to each other, thereafter at the pointing of secret informer, accused Sajid and Shakir were apprehended. The notice under section 50 was given to the accused and both refused to get them searched in present of Gazetted officer or Magistrate. On search of pithoo bag of Sajid Ali 5 Kg of Heroin was recovered. During the search of the truck a black colour bag was found behind the driver seat and one brown color bag was found behind the conductor seat. On search of the black colour bag and the brown colour bag 5 Kg of Heroin from each bag was recovered. Seizing and sampling proceedings were completed. Rukka was sent to the police station alongwith the case property and thereafter the investigation was handed over to SI Ravi Kumar. SI Sanjeev Kumar produced the apprehended accused before

the IO alongwith the documents.

3. On interrogation, accused persons also admitted the recovery of 15 Kg of Heroin from their possession. One black colour Samsung Galazy A 7 mobile having SIM no. 8868983843 and one black Tambo Mobile having SIM 9841844078 was also recovered from Sajid Ali, and from Shakir Ali one golden colour Samsung Mobile having SIM No. 9568844173 and 983726150 were recovered from his possession. Report under section 57 was prepared by SI Sanjeev Kumar. On 22.01.2019 at around 1:40 pm, IO alongwith Sajid and Staff reached Jeevan Nagar, Sohana Road, Ballabh Nagar and apprehended the accused Rashid. A written notice under section 50 NDPS Act was served upon him but nothing was recovered from his body. However, one Golden colour samsung Duos mobile having SIM 7351391678, one blue colour samsung Duos having mobile number 8972177239 and one Black colour Lava mobile having airtel SIM no. 8923945816 were recovered. During course of investigation the Exhibits of the seized Heroin were sent to FSL for examination. The result of the exhibits sent to FSL/Rohini, Delhi has been received as on chemical examination TLC and GS-MS Examination

- (i) Exhibit 'A-1' was found to contain 'Acetaminophen, 'Codeine', 'Acetylcodeine', & 'Trimetheprim'.
- (ii) Exhibit 'B-1' was found to contain "Acetaminophen, 'Codeine', Thebaine, 'Acetylcodeine', & 'Trimetheprim'.
- (iii) Exhibit 'C-1' was found to contain ' 'Acetylcodeine' & 'Trimetheprim'.

Hence section 18 of NDPS Act were added in the present case.

4. On 23.01.2019 in presence of accused Rashid accused Ansar Khan was apprehended. However, no incriminating substance was recovered from accused Ansar Khan. One black colour Samsung Duos bearing SIM no. 9759104074 was also recovered from his possession. During investigation sincere efforts were made to trace out the hides out / whereabouts of the remaining accused persons. However, could not be traced as accused

persons not disclosed the complete name and addresses of the accused. The truck from which the contraband was recovered was found in the name of accused Rashid. The voice calls of the present accused and the other untraced accused were intercepted and recorded in the DVR, and the said intercepted voice calls suggest that they were talking about the drug trafficking activities and there were sufficient evidence against all the four accused to prove their conspiracy in the drug trafficking activities. Accused Sajid Ali and accused Shakir were charge sheeted under section 18/29 NDPS Act as recovery was effected from them and there were intercepted calls and CDRs to prove their role as a conspirators. Accused Rashid and Ansar Khan were charge sheeted under section 29 NDPS as there is no recovery but the intercepted calls between them and the other accused and association to prove their role as a conspirator of Narcotics syndicate. On completion of investigation charge sheet was filed.

5. Ld. Addl. PP for the state submits there is a total recovery of 15 kg of Heroin from the accused Sajid and Shakir and all the accused in their disclosure statement disclosed about their syndicate and were indulging in the activity. Though nothing was recovered from accused Rashid and Ansar Khan, however accused Rashid was found to be the owner of the truck in which the contraband was found and both the accused were travelling. Ld. APP submits that the incriminating voice call recovered on legal interception showing their involvement in drug trafficking and accused Rashid, Sajid and Ansar Khan refused to give the voice samples and therefore adverse inference be drawn against them.

6. Ld. Addl. PP further argued that mobile phone bearing no. 8159966570, 7251872038, 8923945816 and 8972212348 were kept on legalized interceptions and the conversation amongst these numbers were recorded in the computer system installed in the office of Spl Cell, NR. During the course of investigation, voice samples of accused Sajid Ali, Rashid and Ansar Khan were taken by the order of this court. The sample

voices were sent to FSL for comparison with questioned i.e. the voices of accused persons recorded in the computer system of office of Spl Cell, NR.

7. Ld. Addl. PP further argued that 8564807241, 8896558312, 8942856085, 7451872038 being used by Rashid and subscribership of these numbers were obtained and subscribership of 8564807241 was found on the name of Vishal Pal S/o Natthu Singh R/o Pepal Bisauli, Badaun, UP. Subscribership of 8896558312 was found in the name of Permanand S/o Medai Lal R/o Shahi Meer Ganj, Bhamora, Bareilly, UP. Subscribership of 8942856085 was found in the name of Mujibul SK S/o Abdul R/o Yeakub Tola, Alinagar, Malda, West Bengal. Subscribership of 7451872038 was found in the name of Tej Prakash S/o Shyama Charan R/o VPO-Piparthara, Bareilly, UP, said address is incomplete and could not be traced. All the addresses are not specific and could not be traced. Mobile no. 7351391678, 8972177239, 8923945816 being used by Rashid and recovered from Rashid. Subscribership of these numbers were obtained and subscribership of 7351391678 was found in the name of Kayamudeen S/o Kifayat R/o 335GA, Manauna, Bareilly, UP. Subscribership of 8972177239 was found in the name of Pinki Mandal Singh S/o Sanjoy Mandal R/o Jot Ananta, Village Akandobaria, PO Bangitola, PS Kaliyachak, Malda, West Bengal. Subscribership of 8923945816 was found in the name of Peshkar S/o Hira Lal R/o Rajpur, Sandulla Ganj, Bndaun, UP. All the addresses are not specific and could not be traced. Mobile no. 9759104074 being used and recovered from Ansar Khan, subscribership of the numbers were obtained and subscriber ship of 9759104074 was found in the name of Pyaari W/o Chhange R/o Sadulla Ganj, Badayun, UP. 7451900744 being used by Ansar Khan and subscribership of 7451900744 was found in the name of Tejpal S/o Choke Lal R/o Raja Ram Muneem ji ke pass Mo. Mir Dhan, Faridpur, Bareilly, UP. All the addresses are not specific and could not be traced. Mobile no. 8868983843, 8941844078 being used by Sajid Ali and recovered from Sajid Ali, subscribership of the numbers were obtained. Subscribership

of 8868983843 was found in the name of Sajid Ali himself. Subscribership of 8941844078 was found in the name of Ramshri W/o Prempal R/o Gram Manuna, Aawala, Bareilly, UP. Mobile no. 9568844173, 9837226150 being used and recovered from Shakir and subscribership of the number was obtained and same was found in the name of Shakir himself. Mobile no. 7432088609 being used by Nasir, subscribership of the number was obtained and found in the name of Mst. Nastra Khatoon W/o Majil SK R/o Uttar Lakshmipur, PS Kaliya Chak, Distt., Malda, West Bengal. Said address is incomplete and could not be traced. Mobile no. 8972212348 being used by Razzak, subscribership of the number was obtained and found in the name of Shahara bibi W/o Akidul R/o Kagmari, Sadipur, Malda, West Bengal, said address is incomplete and could not be traced. Mobile no. 8159966570 being used by Khan, subscribership of the number was obtained and found in the name of Tumpa Mandal W/o Sasanka Mandal R/o Chakhahadurpur, Malda, West Bengal. The said address is incomplete and could not be traced.

8. Ld. Addl. PP further argued that the aforesaid communication amongst the aforesaid numbers are attached with the charge-sheet from page no. 254 to 263. Ld. Addl. PP further argued that in the intercepted calls, all the accused persons were talking about drug trafficking activities. Ld. Addl. PP further submits that there are conversation between one Khan and Rashid in which they were talking about a case and its remand. Ld. Addl. PP further argued that there were conversation between Rashid and Ansar in which Rashid was saying to Ansar “haan haan tumhara aa gaya, ham rasta mein, chalo theek hai, meh keh raha hu, 9000 rupay toh yu ” and Ansar was saying to “subha mil lo thodi der ke liye”. It is further argued that in conversation dated 24.12.2018, Ansar was saying “yaa allah, 50 pede kisi ko de diye” on which Rashid was saying “acha acha, chalo koi baat na hai”. In the aforesaid conversation, Ansar was saying “ who shishi bhejta hai achi vali” and Rashid was saying “chalo theek hai, ham ja rahe hain, ek do teen

mein jugaad karva layenge, mil jayegi toh acha". Ld. Addl. PP argued that the aforesaid conversation is with regard to drug trafficking activities between Ansar and Rashid. Ld. Addl. PP further argued that there is one another call dated 18.01.2019 between Rashid and Ansar in which Rashid was saying "vo us din tumhe thaila diya, sabji ke liye, baad mein sabse baad mein lal vala". Ansar is answering in affirmative. In aforesaid conversation, Rashid saying "vahi thaila pahunchao hamare yahan" on which Ansar replied "chalo bhej raja". Ld. Addl. PP argued that the aforesaid conversation is with regard to drug trafficking activities between Ansar and Rashid. Ld. Addl. PP further argued that there is one another intercepted call between one Razzak and accused Rashid in which Rashid was saying "acha theek hai, theek hai, tum naye vale phone se phone kar dete". Razzak was saying "subha keh riya nikalne ko". Rashid was saying to Razzak "acha acha sahi hai toh aisa hai, gadi kahan lagvai hai". In the aforesaid conversation, Rashid was saying to Razzak "ek jane ko gadi mein chhod do baki tum dono gadi mein late jao, subha khan bhai milke, tab nikalna". In the aforesaid conversation, Rashid was saying to Razzak "aur kya kehte hai gadi badi ki idhar ko kahe, toh mana kar diyo, gadi aisa hai, yahan mat bulao, kai baar gadi yahan sab logo ne dekhi hai". Ld. Addl. PP argued that Rashid was giving instructions to Razzak with regard to the delivery of drugs in the truck. There is another conversation between Razzak and Rashid dated 18.01.2019 in which Razzak was saying "ham idhar aa gaya, khan bhai se baat ho gaya hai, kaam ho jayega, gadi milte he kaam ho jayega". In the aforesaid conversation, Razzak was saying "vo jo ham log ek gadi di, uske bare mein khan bhai ko mat batana" on which Rashid was replying "theek theek vo toh khan ko matlab he nai, us baad mein, tum toh alag de raha hai na wo". Razzak was saying "haan usko bhul kar bhi mat batana, dikkat ho jayega". In the aforesaid conversation, Rashid was saying to Razzak "gadi pe tum aise he de deta hai sabke samne yaar". There is another conversation between Razzak and Rashid on which Razzak was

saying to Rashid “suno chaar gadi khan bhai ko de diya tha, ek gadi mera dediya tha, panch gadi deke nikal diya. In the aforesaid conversation, Rashid was asking Razaak “theek theek hai, koi tension toh nai hai tumhare idhar” on which Razzak was replying “nai nai koi tension nai hai”. There is another conversation dated 18.01.2019 between Razzak and Sajid on which Sajid was saying " bhai gadi aa gai hai, load karva dena, fatafat theek hai" on which Razzak was replying 'hain'. Ld. Addl. PP further argued that the aforesaid conversation amongst accused persons clearly shows that they were talking with regard to drug trafficking activities and there are sufficient evidences against all the aforesaid four accused persons to prove their conspiracy in drug trafficking activities. Ld. Addl. PP further submits that the accused refused to provide voice sample and therefore, adverse inference be drawn against them.

9. Ld. Addl. PP submits that when the Exhibits A1, B1 and C1 were sent to FSL and as per the FSL report Exhibit A- 1 which was drawn from the pullanda Mark A, it was found to contain 'Acetaminophen, 'Codeine', 'Acetylcodeine', & 'Trimetheprim', Exhibit 'B-1' which was drawn from the pullanda Mark B was found to contain "Acetaminophen, 'Codeine', Thebaine, 'Acetylcodeine', & 'Trimetheprim' and Exhibit 'C-1' which was drawn from the pullanda Mark C was found to contain 'Acetylcodeine' & 'Trimetheprim'. Ld. Addl. PP further argued that Codeine and Thebaine are the natural contents of Opium and as per notifications dated 14.11.1985, 29.01.1993 & 21.06.2011, Thebaine and Codeine are mentioned as manufactured narcotic drugs and in these circumstances section 21/29 NDPS is attracted against the accused persons. Ld. Addl. PP further submits that there are sufficient evidence against accused persons for framing of charge u/s. 21/29 NDPS Act.

10. Ld. Counsel for the accused Sajid, Shakir and Rashid submitted that the entire recovery upon the accused Sajid and Shakir is false and fabricated and nothing was recovered from them or at their instance. Ld. Counsel

submits that the accused Sajid Ali and Rashid refused to give the voice samples because they were beaten in the police station and they forced to call different persons. Ld. Counsel submits that there is not even an iota of evidence against accused Rasid. Ld. Counsel submits that mere disclosure statement of the accused and co accused is no ground to frame charge against the accused [relied upon *Satish Mehra Vs. Delhi Administration and Anr.* 1996 JCC 507(SC), *Dhananjay @ Dhananjay Kr Singh. Vs State of Bhiar*, Crl. Appeal no. 149/2007 dated 02.02.2007 (Supreme Court) and *Aruna Chaddha Vs. State of Delhi* Crl. Revision no. 305/2013 dated 25.07.2013 (DHC)], therefore, accused Sajid, Shakir and Rashid are liable to be discharged.

11. Ld. Counsel for the accused Ansar submitted that the accused Ansar Khan is falsely implicated and there is no evidence against the present accused. Ld. Counsel submits that on the basis of 3rd degree police recorded the statement of Sajid Ali in which the name of Accused Rashid Ali was found mentioned and on the basis of 3rd degree disclosure statement of accused Rashid was recorded in which he named Ansar Khan. Ld counsel submits that mainly on the basis of disclosure statement, no charge can be framed against the accused. Ld counsel submits that accused refused to give the voice samples he was beaten in the police station and forced to call different persons.

12. Arguments heard. Record perused.

13. It is settled law that at this stage, court cannot look into the probative value of material on record, only has to see whether prima facie case is made out and whether grave suspicion exists for trial of accused. There is an incriminating recovery of in total 15 Kg of contraband from the accused Sajid Ali and Shakir. Accused Sajid Ali disclosed that he is working with his brother Rashid and the accused Shakir has been deputed as a truck driver by his brother Rashid who also knows about the said dealings and used to get Rs.30,000/- and previously also brought the Heroin from West Bengal.

On 20.01.2019, they were coming to supply the heroin from helipad, Rohini and 15 Kg heroin was recovered from them which they brought to supply one Rajender at Delhi. He also disclosed that he can apprehend the accused Rashid, Mukesh Gupta, Rajeev, Raja, Ansar and Rajender by contacting them on telephone. Accused Shakir disclosed that they were apprehended while delivering the drugs at Delhi and accused Rashid and other persons involved in the said business. Accused Rashid during interrogation disclosed that his brother Sajid was arrested in Delhi in June 2018 in drugs case and used to supply the heroin and this time he in his truck sent Shakir and Sajid to Malda for taking the delivery of heroin however, they were apprehended at Delhi. Accused Ansar Khan disclosed that he has taken the delivery of heroin 10-12 times from Rashid and this time also he was going to take the heroin from him and when he is trying to abscond, he was apprehended and he can apprehend the accused Gattu and Asif also with whom he was dealing and having contact on phone.

14. There is a recovery of contraband at the instance of accused Shair and Sajid Ali. Thus there is a presumption against them under section 35 and 54 NDPS Act. As far as accused Rashid is concerned he was found contacted with the mobile call record and the voice call records, and further the owner of the truck from which the alleged contraband was also recovered. Accused Ansar Khan is also dealing with the accused Rashid and this fact is also corroborated through the voice call recordings and the conversation disclose about their involvement in drug trafficking through cryptic language. The accused refused to give the voice sample therefore, at this stage adverse inference to be drawn.

15. There is an incriminating recovery of contraband from accused Sajid Ali and Shakir Ali which as per FSL report is found to be manufactured drugs as per notification of Govt of India dated 14.11.1985, 29.01.1993 & 21.06.2011, therefore prima facie offence under section 21(c) NDPS Act is made out against accused Sajid Ali and Shakir Ali. Furthermore, prima facie

offence of conspiracy is disclosed against the accused Shakir Ali, Sajid Ali, Rashid and Ansar Khan for commission of offence under section 29 r/w section 21 (c) NDPS Act. Charge be framed according.

(Ajay Kumar Jain)
Special Judge/NDPS
New Delhi/05.10.2020

SC No. 334/19
FIR No. 16/19
PS Spl Cell
State Vs Sajid Ali & Ors.

13.10.2020

Matter heard through video conferencing.

Present: Sh. Ravindra Kumar, Ld. Additional PP for the State through VC.

All accused produced from JC through VC.

Sh Sayed Salman Haider, Ld. counsel for accused Sajid Ali, Shakir and Rashid through VC.

Sh R K Giri, Ld. counsel for accused Ansar Khan through VC.

Vide separate order, order on charge passed. Accordingly, Charges framed separately. Accused persons pleaded not guilty and claimed trial.

Charges be sent to jail for their signatures. Jail superintendent is directed to obtain the signatures of accused persons in his presence or the authorized official by duly attesting the same and return the charges before this court on or before NDOH i.e. **20.10.2020**. Jail superintendent is directed to produce the accused persons through VC on the next date of hearing at 11am.

Copy of the order be sent to accused persons in jail as well as sent to jail superintendent for compliance.

(Ajay Kumar Jain)
Spl. Judge, NDPS/N. Delhi
13.10.2020