NCB Vs. Ikechukwu Stanley & Ors.
Case No. SC/225/17

11.09.2018

Present: Sh. P.C. Aggarwal, SPP for NCB.

Accused Anand Kumar Thakur present on bail.

Other accused produced from JC.

Defence counsels Sh. R.K. Goel for accused Anand Kumar Thakur.

Sh. Vikas Gautam, ld. counsel for accused Ikechukwu Stanley.

Ld. counsel for accused Edwin Emeka Igbokwe is not available.

Case is today listed for order on charge.

Brief facts of the case are that on the basis of information one parcel booked under airway bill no. 5112788656 destined for Spain was intercepted at DHL Express Courier Company, Rama Road, New Delhi, being suspicious. On examination, the said parcel was found containing 575 gm of heroin concealed in shock absorbers (auto parts). During inquiry, ID documents were looked into and it was found that the courier company was owned by the accused Anand Kumar Thakur who disclosed that the parcel in question was booked by co accused Ikechukwu Chukwubuikem Stanley on the basis of aadhar card of one Munna Ansari and his ID document which was affixed with the parcel in question on his

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instructions by his employee Rashmi. Thereafter, accused Ikechukwu was intercepted and questioned. He disclosed that the parcel was given to him by accused Edwin Emeka Igbokwe whereafter accused Edwin was also intercepted and voluntary statements U/s 67 of NDPS Act of both the accused were recorded. Accused Ikechukwu specifically disclosed that the parcel in question was handed over to him by accused Edwin and then he had booked the same. Accused Edwin Emeka also disclosed that parcel in question was packed by him and handed over to accused Ikechukwu for booking.

During course of arguments, Ld. Counsel for accused Ikechukwu submitted that the accused is not concerned with the parcel in question and he was not having conscious possession of recovered contraband. Counsel for accused Edwin Emeka submitted that his client is noway concerned with the parcel in question because same was booked by accused Ikechukwu. Counsel for accused Anand Kumar Thakur averred that he is running a courier company and he had just booked the parcel and he has no concern with the recovered drug.

On the other hand, Ld. SPP for NCB contended that accused Ikechukwu Stanley had brought the parcel in question to the office of accused Anand Kumar Thakur for booking and as per instructions of Anand Kumar Thakur, his employee/booking clerk namely Ms. Rashmi replaced the original booking documents with the ID documents of Anand Kumar Thakur and she had done this on the

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instructions of accused Anand Kumar Thakur. Ld. SPP for NCB further submitted that accused Edwin packed the parcel and handed over the same to accused Ikechukwu for booking who had booked the same on the instructions of accused Edwin. He also contended that it is a case where all accused persons entered into criminal conspiracy for the purpose of export of recovered heroin. Ld. SPP further stated that prima facie all of the accused persons were in possession of the recovered contraband because as per their pre planned conspiracy, they managed the parcel, contraband and booked the same after replacing the ID documents, therefore, there is sufficient material available on record to proceed against all the accused persons u/s 21, 23 and 29 NDPS Act.

Submissions heard. Record perused.

In an application for grant of bail filed on behalf of accused Anand Kumar Thakur and Ikechukwu Chukwubuiken Stanley the Hon'ble High Court in order dated 20.08.2018 observed as under:-

> *"7. The plea of learned counsel for petitioner Ikechukwu Chukwubuiken Stanley that the petitioner was not in conscious possession of the contraband cannot be accepted for the reason Edwin who gave the parcel to petitioner Ikechukwu Chukwubuiken Stanley was in Delhi only and was thus not required to use Ikechukwu Chukwubuiken Stanley for the purposes of sending the parcel. Even as per his statement on 24th January, 2017 when the booking of the parcel was not showing on the DTDC Website and*

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Edwin having called petitioner Ikechukwu Chukwubuiken Stanley, he went to the DTDC office to know why the parcel was not showing on its website where he was told that he will have to pay more money as the parcel was heavy."

It was further observed by the Hon'ble High Court that

"9. The Supreme Court thus held that there should be animus and the mental intent to show and establish possession. In the present case, petitioner – Ikechukwu Chukwubuiken Stanley brought the articles and sought to book the same on the ID of one Munna Ansari knowing fully that the articles belonged to Edwin. It is thus evidence that the petitioner was conscious that a non-genuine ID was required to send the courier. At this stage, from the evidence on record, this Court cannot infer that the petitioner - Ikechukwu Chukwubuiken Stanley had no conscious possession of the contraband.

10. Further Section 37 of the NDPC Act reads as under:-

> *"37. Offences to be cognizable and non-bailable – (1) notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974).*
>
> *(a) every offence punishable under this Act shall be cognizable.*
>
> *(b) no person accused of an offence punishable for offences under Section 19 or Section 24 or Section 27A and also for offences involving commercial quantity shall be released on bail or on his own bond unless*

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(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force, on granting of bail.

11. Petitioner Ikechukwu Chukwubuiken Stanley having already been convicted and deported thereafter for an earlier offence under Section 21 and 29 of the NDPS Act, this Court cannot arrive at a satisfaction that there is no likelihood of the petitioner in not indulging in this activity again or in view of the facts noted above that he is not guilty of the offence. Hence, this Court finds no ground to grant bail to Ikechukwu Chukwubuiken Stanley.

12. As regards petitioner Anand Kumar Thakur is concerned, even as per the case of the prosecution, the petitioner is running a courier agency and petitioner's company received pre-packed goods purportedly shock absorbers. Both the cartons contained similar type of shock absorbers and on cutting open only concealed contraband therein was

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> *found. In order to increase the business, Anand Kumar Thakur also offered to lend the ID of a staff which he would not have done, if he had known that it contained contraband. Prime facie, thus from the manner of concealment it cannot be said that Anand Kumar Thakur had conscious possession of the contraband in terms of the law laid down by the Supreme Court in Mohan lal (supra). Further the rate charged by Anand Kumar Thakur for sending the courier also does not show that he was conscious that a contraband was being sent and that he charged enhanced fee."*

Accordingly accused Anand Kumar Thakur was admitted to bail by the Hon'ble High Court. In view of the order passed by the Hon'ble High Court, Ld. Counsel for the accused Anand Kumar Thakur has contended that the accused was never in conscious possession of the contraband and hence no offence was ever committed by him as alleged.

It is well settled that at the stage of consideration of bail, when the liberty of an accused is at stake, strict interpretation of penal statues should be adopted and that considerations for grant of bail and for framing of charges are different. For consideration on charge only a *prima facie* view has to be taken as also observed in various judgments passed by the Higher Courts.

After considering the rival contentions of both Ld. APP for the State and the counsels, I have gone through the evidences present on the record, the statements of the accused and the witnesses

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u/s 67 NDPS Act and the settled law that at the time of framing of charge the court is to see whether there was sufficient evidence coming on record which raises grave suspicion against the accused persons making it desirable to go for trial. The law on this point has been summed up by the Hon'ble Supreme Court. In two of the recent judgments pronounced in the cases titled and reported as Amit Kapur Vs. Ramesh Chand (2012) 9 SCC 460 and Vinay Tyagi Vs. Irshad Ali 2012 (12) SCALE 343 the Hon'ble Supreme Court has clearly laid down the principles that govern the framing of charge. In para 10 of its judgment delivered in Amit's Case it has been observed by the Hon'ble Apex Court,

> *"Framing of a charge is an exercise of jurisdiction by the trial court in terms of Section 228 of the Code unless the accused is discharged under 227 of the Code. Under both these provisions the Court is required to consider the record of the case and documents submitted therewith and after hearing of the parties may either discharge the accused or where it appears to the Court and in its opinion there is ground for presuming that the accused has committed an offence it shall frame the charge. Once the facts and ingredients of the section exist then the Court would be right in presuming that there is ground to proceed against the accused and frame the charge accordingly. This presumption is not a presumption of law as such. The satisfaction of the Court in relation to the existence of constituents of an offence and the facts leading to that offence is a sine qua non exercise of such jurisdiction. It may even be weaker than a prima facie case. There is a*

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fine distinction between the language of Section 227 and 228 of the Code. Section 227 is expression of a definite opinion and judgment of the Court while Section 228 is tentative. Thus to say that at the stage of framing of charge, the Court should form an opinion that the accused is certainly guilty of committing an offence is an approach which is impermissible in terms of Section 228 of the Code.

In para 12 of its judgment delivered in Vinay Tyagi's case the Hon'ble Supreme Court has further explained the nature of the presumption to be made by a court at the stage of framing of charge. It has been inter alia observed that:

"On the analysis of the above discussion it can safely be concluded that 'presuming' is an expression of relevancy and places some weightage on the consideration of the record before the Court. <u>The prosecution's record at this stage has to be examined on the plea of demur. Presumption is of a very weak and mild nature.</u> It would cover the cases where some lacuna has been left out and is capable of being supplied and proved during the course of the trial. For instance it is not necessary that at that stage each ingredient of an offence should be linguistically reproduced in the report and backed with meticulous facts. Suffice would be substantial compliance to the requirements of the provisions."

Furthermore, it is submitted by the Ld. SPP for NCB that the intension/conspiracy can rarely be established by direct proof and have to be inferred/gathered from the circumstances and the cooperation between the conspirators.

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Generally, a conspiracy is hatched in secrecy and it may be difficult to adduce direct evidence for the same. Acts of various parties to the conspiracy will infer that they were done in reference to their common intention. The conspiracy can be proved by circumstantial evidence. In the case of **Eran Eliav V. State 2008 Drugs Cases (Narcotics) 98** it was observed – Both abetment and criminal conspiracy are fiendishly difficult to establish by virtue of direct evidence, it can be established by indirect or circumstantial evidence which is of an impeccable nature.

> *In the case of **Saju Vs. State of Kerala 2001(1) SCC 378**, the Supreme Court observed as under: It is a settled position of law that act or action of one of the accused cannot be used as evidence against another. However, an exception has been carved out under Section 10 of the Evidence Act in the case of conspiracy. To attract the appreciation of Section 10 of the Evidence Act, the Court must have reasonable ground to believe that two or more persons had conspired together for committing an offence. It is only then that the evidence of action or statement made by one of the accused could be used as evidence against the other.*

In CRIMINAL APPEAL NO. 2539 OF 2014 titled HARPAL SINGH @ CHHOTA VERSUSSTATE OF PUNJAB Hon'ble supreme court of India held that:

> "13. As it is, as has been exposited by this Court on umpteen occasions, conspiracy requires an act i.e. actus reus and an accompanying mental state i.e. mens rea. Whereas the agreement constitutes the act, the intention to achieve the unlawful objectives of the agreement comprises the required mental state. This Court in ***Ferozuddin Basheeruddin and Others vs. State of Kerala*** (2001)7 SCC 596 held that

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conspiracy is a clandestine activity and by the sheer nature thereof, an agreement to that effect can rarely be established by direct proof and must be inferred from circumstantial evidence of cooperation between the conspirators. It has been enunciated that conspiracy is not only a substantive crime but also serves as a basis for holding one person liable for the crime of others where application of the usual doctrines of complicity would not render that person liable and thus the test of the role of a co-conspirator would be decisively significant in determining the liability of the others in the face of the supervening fact that the crime was performed as a part of a larger division of labour to which the accused had also contributed his efforts. Qua the admissibility of evidence, it was proclaimed that loosened standards prevail in a conspiracy trial and contrary to the usual role, in conspiracy prosecutions, any declaration by one conspirator made in furtherance of a conspiracy and during its pendency, is admissible against each co-conspirator. It was thus ruled that conspirators are liable on an agency theory by the statements of co-conspirators, just as they are for the overt acts and crimes committed by their confreres.

As would be patent from the above excerpt that qua a charge of conspiracy, it is not necessary that all the conspirators should know each and every detail of the plot so long as they are co-participators in the main object thereof and it is also not necessary that all of them should participate from the inception of the stratagem till the end, the determinative factor, being unity of object or purpose and their participation at different stages. Such is therefore the encompassing sweep of culpability of an offence of conspiracy, if proved, even from the established attendant circumstances**.**"

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It has come up on record that CDR of all the accused have been placed on record and as per same, they were in constant touch with each other before date of apprehension. It is well settled that consideration for grant of bail and framing of charge are different. Perusal of record also reveals that in her statement, Ms. Rashmi, employee of accused Anand Kumar Thakur specifically disclosed that she had attached ID of accused Anand Kumar Thakur on his instructions. During investigation about mobile phones carried out, it was revealed that accused persons were using their mobile phones issued in the name of other persons which suggest that they were using said phones in order to hide their identities which can be another circumstance for the part of conspiracy occurred between the accused persons.

On perusal of the record, it is alleged that accused Edwin Emeka handed over the parcel in question for booking and export of the same to accused Ikechukwu and he had booked the same and accused Anand Kumar Thakur entered into conspiracy for the purpose of dealing and export of the parcel in question which contained recovered heroin. Therefore, *prima facie* at this stage there is sufficient material available on record which suggests that all the accused were members of the conspiracy, had contravened the provision of Section 8 of NDPS Act and were trying to export the recovered contraband. Therefore, in my view, there is sufficient material available on record to proceed against the accused persons u/s 21, 23 and 29 NDPS Act.

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Accordingly, charges be framed against them.

Copy of this order be given dasti to Sh. Vikas Gautam, ld. counsel for accused Ikechukwu Stanley, as requested.

(Sudesh Kumar II)
Spl. Judge, NDPS/N. Delhi
11.09.2018