

**IN THE COURT OF SH. AJAY PANDEY
ADDITIONAL SESSIONS JUDGE 04
PATIALA HOUSE COURTS: NEW DELHI.**

State Vs Darbara Singh @ Billa and ors
SC No. 366/17
FIR No. 32/17
PS – Special Cell

ORDER ON CHARGE:-

Present: Sh. S. K. Kain, learned Addl. PP for the State along
with IO SI Bijender Kumar

Accused Darbara Singh and Ajay produced from JC
represented by Amaicus Curiae Sh. Brijesh Oberoi,
Advocate.

Accused Buta Singh, produced from JC represented
by learned counsel Sh. Yogesh Saxena.

1. Arguments on the point of charge heard on behalf of
all accused persons.
2. It is submitted by learned Sh. Yogesh Saxena, that
his client Buta Singh is entitled for discharge because

there is no admissible material against him, which even if taken on its face value, may lead to conviction of accused Buta Singh without any defence being led or without the cross-examination of prosecution witnesses. Learned Sh. Saxena has submitted that best possible evidence available with the police against accused Buta Singh is the transcript which has already been filed with the charge-sheet. He argues that even if call transcript is read as it is, it is not sufficient to infer that accused Buta Singh in anyway was involved in the conspiracy for transportation of the contraband recovered from accused Darbara Singh and Ajay.

3. Sh. Saxena has relied upon the judgment in the case of **CBI Vs Dr. Anup Kumar Srivastava, 2017 (4) JCC 2383**, to submit that transcript cannot be read in between the lines and IO is not at liberty to supply any meaning to the conversation which may not otherwise be inferred by the court or any layman.
4. It is further submitted that except call records and transcript there is only disclosure statement of co-accused Darbara Singh against accused Buta Singh, which is not admissible under law. Sh. Saxena, therefore

submits that trial of accused Buta Singh would be a futile exercise and the court should apply its mind at this stage, considering the totality of facts and circumstances and discharge accused Buta Singh.

5. On the other hand it is submitted by Sh. Kain, learned Addl. PP that there is sufficient material against accused Darbara Singh and Ajay to frame charge u/s 21, 22 and 29 NDPS Act, and u/s 29 NDPS Act against accused Buta Singh.

6. Arguments considered.

7. It is rightly submitted by learned Sh. Saxena that court or the IO is not supposed to read in between the lines in the conversation between the accused persons. However, it is to be kept in mind that court must consider facts in totality and may draw natural inferences. It has also to be considered at this stage that court is not supposed to make detailed scrutiny of evidence and material which could be brought by the prosecution during trial. At this stage, grave suspicion against the accused for involvement in crime would be sufficient to frame charge against him.

8. Court has carefully perused the transcripts as well as

the call detail record between the accused Darbara Singh and Buta Singh. As per the prosecution story accused Darbara Singh and Ajay were arrested from Uttam Nagar on 01.05.2017 when they were waiting in Alto car. 1.5 kg of heroine was recovered from the possession of accused Darbara Singh. 1 kg of heroine was recovered from the vehicle which was registered in the name of wife of accused Darbara Singh. On FSL examination of the substance recovered from accused persons, it also contained Psychotropic substance i.e. Phenobarbital, Alprazolam and Diazepam.

9. Hence, there is sufficient material to frame charge u/s 21, 22 and 29 NDPS Act against accused Darbara Singh and Ajay.
10. So far as, case of accused Buta Singh is concerned, it is rightly submitted by learned Sh. Saxena that court or the IO is not supposed to read between the lines in the transcription of the call records of accused persons. However, court has to draw the natural inference possible in the case or the incriminating inference which could be brought in evidence.
11. Perusal of transcript of communications between

accused Darbara Singh and accused Buta Singh dated 08.04.2017 at page no. 181, 10.02.2017 at page no. 202 and 06.03.2017 at page no. 204 of charge-sheet, reflects that accused Buta Singh is continuously asking accused Darbara Singh to visit Delhi. Both accused persons are apprehensive about the police checking of the vehicle in which accused Darbara Singh may visit Delhi. They are discussing about the kind of vehicle for which there may be lesser checking by the police; they are discussing the methods and plans by which police checking can be minimized or avoided.

12. In the facts and circumstances, it is rightly submitted by learned Sh. Kain that it is clear that accused are entering into some conspiracy to do some illegal act or any legal act in illegal manner.

13. So far as, the arguments of Sh. Saxena that there is nothing in the transcript to connect the accused persons with the alleged recovery, effected in this case is concerned, it is rightly submitted by learned Addl. PP that from the transcript it is clear that accused are talking about the delivery of drugs.

14. At this stage, court has to consider the submissions of

the IO made through the learned Addl. PP that due to some technical problem or improper functioning of the Call Interceptor Machine, some of the conversation could not be recorded. Last conversation between accused Darbara Singh and Buta Singh as per transcript is dated 08.04.2017. CDR reflects that even after 08.04.2017, both accused persons were in continuous communication till 29.04.2017.

15. There are repeated directions of accused Buta Singh to accused Darbara Singh to visit Delhi from February 2017. There is fear of both accused persons of being caught during police checking in Delhi and they are in continuous touch with each other till 29.04.2017 i.e. 02 days prior to apprehension of accused Darbara Singh. Apart from this there is a conversation transcript dated 02.05.2017 of accused Buta Singh with one Deepa from a number other than the one used by him for communicating with accused Darbara Singh till 29.04.2017, at page no. 165 of the charge-sheet, in which accused Buta Singh is informing said Deepa about apprehension of accused Darbara @ Billa and is further informing that he had closed the earlier number used by

him. It has further come in the charge-sheet that though accused Darbara @ Billa was lodged in Nabha Jail but one mobile and SIM card was recovered from his cell. He had broken the said mobile and had chewed the SIM card which has been sent to FSL. Hence, in the opinion of the court there is sufficient material to draw inference of conspiracy at this stage.

16. In the facts and circumstances, accused Buta Singh is liable to be charged u/s 29 NDPS Act for transportation and/or possession and/or recovery of manufactured drug as well as psychotropic substance from his co-accused persons i.e. accused Darbara Singh and Ajay.
17. Separate charges would be framed accordingly against the accused persons.
18. Matter be put up for framing of charge on 03.02.2018.

(Ajay Pandey)
Addl. Sessions Judge -04,
New Delhi District, Patiala House Courts,
New Delhi