

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

State Vs. Nand Kishore

SC no. 418/17

FIR no. 42/17

PS: Special Cell

12.07.2018

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

Accused produced from JC represented by learned
counsel Sh. Gurbaksh Singh.

ORDER ON BAIL APPLICATION OF ACCUSED:-

1. Arguments on bail application of accused Nand Kishore, heard.
2. In nutshell, case of prosecution against accused is that he was arrested with 5 kgs of heroine near Hanuman Mandir, Metcalf House, Outer Ringh Road. Prior to that a secret information was received that accused who is resident of Mandsore, Madhya Pradesh

and is involved in heroine smuggling was coming to deliver the heroine to one of his contact namely Munna at Hanuman Mandir, Near Metcalf house, Outer Ring Road.

3. As per charge-sheet, accused was working for one Haji, as courier of his drugs. He was supposed to deliver the drugs to one Munna and came at Metcalf house for the same purpose at 10.05 pm, waited for somebody for about 10 minutes and thereafter he started to walk, when he was apprehended by SI Raj Singh and his team.
4. Learned Addl. PP has vehemently opposed the bail application submitting that huge quantity of heroine i.e. 5 kg, has been recovered from accused and rigors of section 37 NDPS Act are applicable and accused cannot be released on bail and that he is involved in racket of large scale of heroine smuggling and other members i.e. co-associates are yet to be arrested. It is further argued by learned Addl. PP that learned defence counsel is using some typographical mistakes in the charge-sheet, and that at this stage the same cannot be considered any reasonable ground to believe that accused is not guilty of the offence alleged against him.
5. Learned Sh. Gurbaksh Singh, has drawn the

attention of the court to page no. 6 of the charge-sheet where it is mentioned *“I along with staff and both accused persons arrived in PS Special Cell, Lodhi Colony, Delhi”*. He further drew the attention of the court to the report of compliance of section 57 NDPS Act in the last lines it is stated *“I handed over documents of the case and both the accused persons to him who interrogated both of them and satisfied himself about the investigation already conducted”*.

6. Learned Sh. Singh has argued that there is one single accused in this case but the reference of two accused persons by writing “both accused persons” reflects that infact two persons were arrested by the police but the charge-sheet has been filed against his client. He argues that his client is innocent and both the actual culprits were let free by the police for the reasons best known to them and his client was falsely implicated after after lifting him from Agra.

7. Per contra learned Addl. PP has argued that use of words “both accused persons” at one place each in the charge-sheet and in the report of compliance u/s 57 NDPS Act is an inadvertent typographical mistake only, and if

charge-sheet or report u/s 57 NDPS Act is read as a whole in its entirety the same clarifies that there was single person i.e. accused Nand Kishore apprehended by SI Raj Singh and his team at the spot.

8. Learned Sh. Gurbaksh Singh, in addition to referring the charge-sheet and report u/s 57 NDPS Act also referred to the CDR of SIM Cards allegedly used by accused. As per the prosecution, accused was using two SIM cards with contact no. 9575020175 and 8349306076. He has argued that prosecution has neither produced the CDR of the raiding team members nor has informed even their mobile numbers. He submits that even the relevant CDR of mobile no. 8349306076 has not been collected.

9. Learned Addl. PP on the other hand has further argued that notice u/s 91 Cr.PC was issued to concerned service provider seeking CDR and location chart of mobile no. 8349306076 w.e.f. 01.05.2017 to 26.06.2017 but the concerned service provider provided the record for the period w.e.f. 01.05.2017 to 20.05.2017 only. By inadvertent mistake IO could not check the same before filing of the charge-sheet.

10. During the course of arguments, court has

interacted with accused also and he stated that he was lifted at about 2.00 pm from Agra and half an hour before being picked up, he had conversation with his wife from mobile no. 8349306076 to mobile no. 7354210742.

11. Learned Sh. Singh has relied upon judgments in the case of **Kashmir Singh Vs Narcotics Control Bureau, 2006 (3) JCC** and **Shiv Kumar Nagpal Vs State of Haryana, 2004 Cri. LJ 4682**, to submit that at this stage no final conclusion of the court is required that accused may be ultimately acquitted and it is sufficient that a reasonable doubt is created in the prosecution story which may make the court to reasonably believe that accused may be innocent.

12. Arguments considered.

13. As per prosecution case there was specific information that one person is going to deliver huge quantity of smack to another person at a specific place. Accused was allegedly arrested from the said place. He was carrying mobile phones. As per prosecution case, accused was acting as courier for another person namely Haji and was to supply drugs to still another person

namely Munna. He came for this purpose from MP.

14. Court is in agreement with the submissions of learned counsel for accused that the manner in which the accused is allegedly apprehended is seriously doubtful. When accused is resident of Madhya Pradesh and had come for delivery of drugs from Madhya Pradesh to Delhi at the instance of one Haji and he is carrying mobile phone with him with 2 SIM cards, if the person who is to receive the supply of drugs is not coming at the spot, reasonable behaviour of accused would be to call that person. In the FIR it is not reflected that accused even attempted to call some person or to search the same person at the spot. Furthermore, it is strange that none of the IO made any attempt to check the contact list or call logs of accused to verify to whom he called or from whom he received the call and when did he contacted either Munna or Hazi. It is important to mention here that from the charge-sheet it is reflected that accused and Munna did not belong to the same locality. In such circumstances telephone of accused and his call logs would have been very vital in furtherance of investigation in unearthing any conspiracy of supply of drugs.

15. Court is in agreement with the submissions of learned Sh. Gurbaksh Singh, that there is the missing link of supplier Haji and recipient Munna in the prosecution story. It appears from the charge-sheet that neither the efforts to trace Haji were made nor the efforts to arrest Munna, have been sufficiently made. This fact coupled with the further fact that relevant CDRs was not collected or kept on record and further words “both accused persons” are used by different IO in their respective reports, create further doubt in the prosecution story. At this stage it cannot be finally said that accused has not committed the alleged crime. However, there are reasonable grounds not to believe the prosecution and to presume that accused might not be guilty of the offence alleged against him or there is some other story which is deliberately kept under the carpet by the prosecution/IO.

16. Though it is submitted by learned Addl. PP that accused is a member of large syndicate of supply of drugs, however, there is no previous case against accused. It is not mentioned nor orally informed that accused was arrested in any case earlier.

17. Hence, in the facts and circumstances, in view of the ratio laid down by Hon'ble High Court in the case of Kashmir Singh Vs Narcotics Control Bureau (supra) and Shiv Kumar Nagpal Vs State of Haryana (supra), accused has been able to satisfy the conscience of the court that he has satisfied requirements to overcome rigors of section 37 NDPS Act and that he is not previously involved in any offence.

18. Accused is entitled to bail on following terms and conditions:-

- 1) He would furnish personal bond in the sum of Rs.50,000/- each with two sureties each in the like amount. One of the sureties would be local.
- 2) He would present himself on each and every date of hearing and would not be attempting to delay the case, if in exceptional circumstances he seeks his exemption he would duly instruct his counsel for proceeding further with the case.
- 3) He shall not call or visit or approach or intimidate directly or indirectly any of the prosecution witnesses except to call the IO of the case, if required.
- 4) He would surrender his passport, if any, in the

court and would not leave India except with the prior permission of the court.

19. Matter be put up for arguments on charge on 16.08.2018.

(Ajay Pandey)

Addl. Sessions Judge -04,
New Delhi District, Patiala House Courts,
New Delhi/12.07.2018