

30.11.2019

Present: Sh. D.K. Singh, Ld. Sub. Addl. PP for the State.
Accused produced from JC.
LAC Sh. Lalit Yadav, Advocate for the accused.

IO/ASI Satish Chand is also present today.

Arguments on the point of charge heard. Record perused.

Ld. Sub. Addl. PP has submitted that there is recovery of 1100 gm. of ganja from the possession of accused and has referred to the relevant material including statements u/s 161 CrPC of recovery witnesses, seizure memo of ganja, etc. He also pointed out that notice u/s 50 NDPS Act is also served upon accused. Therefore, charge may be framed in this case.

On the other hand, counsel for accused has argued that there is non-compliance of Sec. 50 of NDPS Act and there are various contradictions in the prosecution story and the statements of witnesses relied by prosecution to prove its case during trial. Hence, no case is made out against the accused.

Law regarding considerations at the stage of charge is well-settled now. The Court has power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against accused has been made out. It is no more res-integra that when the material placed before the Court discloses grave suspicion against the accused which has not been properly explained, the Court will be justified in framing the charge. The judge should not make a roving inquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial. If on the basis of materials on record, Court could come to the conclusion that commission of the offence is a provable consequence, a case of framing of charge exists. To put it differently, if the Courts were to think that the accused might have committed the offence it can frame a charge, though for conviction the conclusion is required to be that the accused has committed the offence. At the stage of framing of a charge, probative value of the materials on record cannot be gone into, the material brought on record by the prosecution has to be accepted as true at that stage. The truth, veracity and

effect of the evidence which the prosecutor proposes to adduce, are not to be meticulously judged. Nor is any weigh to be attached to the probable defence of the accused. It is not obligatory for the Judge at that stage of the trial to consider in any detail and weigh in a sensitive balance whether the facts, if proved, would be incompatible with the innocence of the accused or not. The standard of test and judgment which is to be finally applied before recording a finding regarding the guilt or otherwise of the accused is not exactly to be applied at this stage of deciding the matter under S. 227 or S. 228 of the Code.

Now turning back to the facts of the present case. As per prosecution story, SI Vikram Singh and Ct. Vijay were on patrolling duty in the area of PS Shastri Park on 10.08.2019 when accused herein was apprehended on the basis of suspicion and he was found carrying one white colour polythene in his right hand. Said polythene was found containing 42 small pudiyas containing contraband i.e. ganja, whose total weight on being weighed with the help of weighing machine, came out to be 1100 gms.

After considering the facts and circumstances of the case including the material filed alongwith the chargesheet and in view of the aforesaid discussion, Court is of the opinion that there is sufficient material which raises grave suspicion against the accused in respect of offence punishable u/s 20(b)(ii) (B) NDPS Act. Consequently, charge in respect of said offence framed against him, to which he plead not guilty and claim trial.

At this stage, it is pointed out on behalf of accused that his bail application is also listed for hearing today.

Notice of bail application accepted by Ld. Sub. Addl. PP on behalf of State.

Arguments on the bail application heard. Record perused.

As per prosecution story, accused was found carrying one white polythene containing 1100 gms. of ganja in this case. He is not shown to be previously involved in any other case, as also conceded by IO in this regard. Accused is in custody since 08.07.2019. The alleged recovery is just above small

-3-

quantity and bar of Sec. 37 NDPS Act does not apply in this case. Trial is likely to take considerable time and thus, no useful purpose would be served by keeping the applicant/accused behind the jail.

Considering the overall facts and circumstances of the case including the period of incarceration of applicant/accused behind the jail, the applicant/accused namely Sumit @ Suraj is admitted to bail subject to his furnishing personal bond in the sum of Rs. 15,000/- with one surety of the like amount, subject to the following conditions:-

1. That he shall not come in contact with or try to influence any of the witnesses connected with the case either directly or indirectly;
2. That he shall not directly or indirectly make any inducement, threat or promise to any person so as to dissuade him/her from disclosing the facts before the court and he shall not tamper with the evidence in any manner;
3. That he shall regularly appear before the court on each and every date of hearing and shall not misuse the concession of bail granted to him; and
4. That he shall not change his address without prior intimation to the court and he shall not indulge himself into any such offence during the period of his bail.

The bail application stands disposed of in the aforesaid terms.

Copy of this order be sent to concerned Jail Superintendent for being delivered to the applicant/accused.

Put up on 25.02.2020, 26.02.2020 and 27.02.2020 for PE. PWs mentioned at Sl. No. 1 and 5 in the list of witnesses be summoned for 25.02.2020. PWs mentioned at Sl. No. 2, 4 and 6 in the list of witnesses be summoned for 26.02.2020. PWs mentioned at Sl. No. 3 and 7 in the list of witnesses be summoned for 27.02.2020. IO/ASI Satish Chand be summoned for all the three dates.

(VIDYA PRAKASH)
Special Judge (NDPS)/
NE/KKD/Delhi/30.11.2019