

DRI vs Paramjit Singh Gulati & anr.
SC NO. 7396/2016

29.10.2018

Present: Ms. Mala Sharma, Ld. SPP for the DRI.

Sh. Pradeep Virk, Ms. Akshita Goyal and Sh. Saurabh Verma Ld.
Counsel for accused Paramjit Singh Gulati.

Sh. Ajay Kumar Ld proxy counsel for Sh. K. Singhal Ld. Counsel
for accused Atul Kumar Aggarwal.

Both accused produced from JC.

Ms.Aksa Ld. Proxy counsel for sh. Bhavneesh Ld. Counsel for
PW-Anoop Singh.

Ld. Counsel for the witness Anoop Singh submits that he is a senior citizen and he is suffering with problem of collection of water in lungs. Ld. Counsel submits that she will produce the medical certificate and in case he is not in a position to appear before the court, appropriate application will be moved seeking his exemption. In view of submission made by Ld. Counsel, PW-Anoop Singh is exempted for today.

No other PW is present.

Ld. SPP submits that in view of pendency of the application of the accused Paramjit Singh Gulati for treating complaint no. 341/2018 as a supplementary complaint in this case itself, she has not called the witnesses for the next dates in the present series of dates.

The accused Paramjit Singh Gulati filed an application dated 16.10.2018 praying that proceedings in this case be stayed till this Court decides his prayer for treating complaint no. 341/2018 as a supplementary complaint in the present case itself and not as a separate case. Similar application was moved in complaint no. 341/2018 also.

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Brief facts are that seizures were made in this case vide panchanama dated 18-19.07.2012. The accused Paramjit Singh Gulati was called for inquiry u/s 67 of NDPS Act and he tendered his statement dated 20.07.2012. The co-accused Atul Kumar Aggarwal also tendered his statement u/s 67 of NDPS Act on the same day. It was disclosed by them that they had shipped a consignment of Ketamine from India to Canada in container no TGHU-2248673 which was covered under shipping bill no. 9245206 dated 05.06.2012 in the name of M/s Shiv Jyoti Sales Corporation. This fact was confirmed by them vide e-mail dated 03.08.2012. This consignment was intercepted by the Canadian Authorities and the investigation regarding the said consignment was pending when the present complaint SC no. 7396/2016 (Old No. 47A/2012) was filed. At the time of framing of charge, the issue regarding pendency of the investigation in respect of the consignment dated 05.06.2012 was considered by my Ld. Predecessor. In the order dated 23.09.2013, it was held that considering the period of custody of the accused persons, it would not be appropriate to wait for the documents from Canada and arguments on charge could be heard in SC no. 7396/2016 (old No. 47A/12). It was also held that on receipt of the documents from Canada, DRI could pray for amendment of charge.

On receipt of the documents pertaining to the said consignment, DRI filed a complaint regarding the above-said consignment to Canada which was registered as a separate complaint before this Court on 03.10.2017. The accused Paramjit Singh Gulati states that the subsequent complaint for the consignment to Canada should be treated as a supplementary complaint in this case only.

I have considered the arguments of Ld. SPP for DRI and the arguments of Ld. Counsel for the accused Paramjit Singh Gulati. Ld. Counsel for the

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accused Atul Kumar Aggarwal has also supported the application. I have also considered his arguments and I have perused the record. Ld. SPP for DRI has also submitted that she has sent the application to DRI, DZU but the comments are awaited. Ld. SPP has opposed the application .

Each export of the contraband would amount to a separate offence. U/s 219 Cr. PC there is also provision for joint trial of three offences of same kind within the same year. For the live consignment and the recoveries from other premises which was seized and for which charge has already been framed in the present case as well as for the consignment to Canada, joint trial can be held by framing the additional charge with the aid of Section 219 Cr. PC, however, there are some issues which need to be considered before treating complaint no. 341/18 as a separate complaint. When the accused was arrested and produced before this Court, DRI did not state that he had been arrested only in respect of live consignment and the recoveries from other premises seized vide panchnama dated 18-19.07.2012 and that he would be arrested for the other consignments as and when they have the documents. Once the accused was arrested and produced before the Court, the time for filing the charge-sheet started to run. In case, the consignment for Canada was to be treated as a separate case, the accused would have been entitled to a statutory bail u/s 167 (2) Cr. PC as the complaint no. 341/18 was filed in the year 2017. The accused was never told that separate complaint would be filed for the consignment to Canada and he was under the impression that the allegations regarding the consignment to Canada are part of the present complaint only. Secondly issue of benefit u/s 428 Cr. PC would also arise. Cognizance was taken in Ct Case no. 341/18 on 26.04.2018. Both accused were summoned and separate custody warrants were prepared for complaint case no. 341/18 in pursuance of order dated 20.07.2018. The accused will also be prejudiced if trial of the two cases

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are conducted separately. The prosecution will also have to examine most of the witnesses in the second case also. In case charge is framed against the accused persons for the subsequent complaint and in case the same results into conviction after trial, prosecution can pray for separate running of sentences and this aspect will be considered at the appropriate stage after giving opportunity to the prosecution as well as the defence to be heard.

Taking into consideration the facts mentioned above, I am of the view that it would be appropriate **to treat Complaint Case no. 341/18 as a supplementary complaint in SC no. 7396/16 (old no. 47A-12) rather than treating the same as a separate complaint.**

The dates of 30.10.2018 and 31.10.2018 stand cancelled. The accused Paramjit Singh Gulati has deposited amount of Rs. 20,000/- vide receipt No. 000265232 in pursuance of order 06.09.2017 and he has withdrawn the application dated 22.03.2018 for waiver of the cost. The matter regarding the course to be adopted in respect of the accused Atul Kumar Aggarwal for filing of false medical certificate to seek interim bail will also be considered on the next date.

Ld. Counsel for accused Paramjit Singh Gulati submits that he is going to apply certified copy of entire file and matter may be taken up in first week of December for arguments on the point of for framing of additional charge in respect of the supplementary complaint.

Matter be listed on 04.12.2018 and 05.12.2018 for arguments for framing of additional charge in respect of the supplementary complaint.

(Rajesh Kumar Singh)
Special Judge (NDPS Act)
South District, Saket/29.10.2018_{AR}