

22.03.2023

**ORDER ON CHARGE / ORDER ON BAIL APPLICATIONS on behalf of
accused persons namely Saddam Hussain Ansari and Aasif Raza**

1. Vide this order, I shall decide the point on charge as well as the bail applications u/s 439 of Cr.P.C filed on behalf of accused persons namely Saddam Hussain Ansari and Aasif Raza.

2. Succinctly, the facts of the case are that on 09.08.2021 at about 12.30 am, a secret information was received by SI Sandeep Kumar that two persons who are residing in Khayala used to purchase and sell the drugs, will come towards Khyala from the side of Moti Nagar via Najafgarh Road by their scooty. Thereafter, SI Sandeep Kumar shared this information with SHO and SHO shared the said information with the ACP, Rajouri Garden and on his direction, the raiding team was constituted. It is further alleged that SI Sandeep Kumar alongwith other police officials and a secret informer reached at the spot i.e. near metro pillar no. 457, Rajouri Garden and started waiting for those persons. SI Sandeep tried to join the public persons but they left citing their personal problems. At about 01.25 am, secret informer pointed out towards two persons who used to supply the drugs on their brown colour scooty bearing no. DL 8SCB 3548 going towards Subhash Nagar Mor . Thereafter, secret informer left that spot. It is further alleged that SI Sandeep Kumar tried to stop the said persons. Upon seeing the police officials, both of them tried to escape from the spot. Thereafter, SI Sandeep Kumar with other police officials apprehended both the accused persons namely Saddam Hussain Ansari and Aasif Raza. The raiding party introduced themselves and thereafter, the inquiries were made from both the accused Saddam Hussain

and Aasif Raza. They were informed about the secret information and they were told about their legal right to be searched and to take search of the raiding party and vehicle being used by the raiding party/ accused persons in front of any Gazetted Officer or the Magistrate. A separate written notice u/s 50 of NDPS Act was also given to each of the accused, it was read over to them and the meaning of Gazetted officer was also explained. They told to be searched in the presence of Gazetted Officer or the Magistrate and their version were recorded and their signatures were obtained on the notice. Thereafter, SI Sandeep Kumar telephonically informed to the Duty Officer to send the SHO and the aCP on the spot.

3. It is further alleged that at about 02.15 am, SHO Rajouri Garden and ACP Rajouri Garden came on the spot. Upon search of the said accused persons in their presence, the accused Saddam Hussain Ansari @ Naved who was driving the scooty and the accused Aasif Raza who was sitting back to accused Saddam Hussain Anasari, both were found having a black colour polythene in the right side of their blue colour jeans pant. The said polythenes were got checked and were found containing one white polythene with dark brown substance which in field testing kit were found Smack. The entire contraband article containing both the polythene were measured and were found containing 500 gm Smack (250 gm Smack each from each of the accused). The recovered Smack were sealed in two clothes pullanda Mark S1 and Mark S2 with the seal of SK and counter seal of SHO with seal AKS. Seal was handed over after use to Ct. Subhash. Both the sealed pullandas were taken into possession vide seizure memo and SHO left the spot alongwith the case property and copy of seizure memo thereafter, SI Sandeep Kumar prepared a rukka and sent to the PS for the registration of the FIR.

4. Upon the complaint/rukka sent by SI Sandeep Kumar present FIR No.714/21 was got registered and the investigation of the present case was handed over to SI Prakash Kashyap. Matter was investigated. During the

investigation, name of both the accused were disclosed and SI Sandeep Kumar handed over the recovered scooty and both polythene alongwith the both the accused. The site plan was prepared at the instance of SI Sandeep Kumar and he was discharged from the investigation after recording of his statement.

5. Thereafter, both accused were arrested after their personal search and recording of their disclosure statement. The accused Saddam Hussain disclosed that he used to purchase the Heroin from one Salman Khan , R/o Bareilly. Thereafter, both the accused were produced before Ld MM. The accused Aasif Raza was sent to JC and 2 days PC remand of accused Saddam Hussain Anasari was obtained to trace out the co-accused Salman Khan and with the help of the accused Saddam, the co-accused Salman Khan was also got apprehended on 12.08.2021 after the call was made by the accused Saddam Hussain while he was in police remand to make available the Smack. During interrogation the accused Salman Khan disclosed that he has purchased the smack from the resident of village namely Chhota Pradhan and Ishrat and sold the same to the Saddam Hussain and received a sum of Rs 3.5 lakhs from him and he has promised to pay the remaining amount. Upon the said disclosure, accused Salmad was arrested and recorded his disclosure statement. Thereafter, the accused Salman and Saddam Hussain were produced before Ld Duty MM on 14.08.2022 and accused Saddam Hussain was sent to JC while two days PC remand was obtained of accused Salman Khan. However, during PC the accused Chhota Pradhan and Ishrat could not be traced out .

6. During further investigation on 02.09.2021, proceedings u/s 52 A of NDPS Act was got conducted before Ld MM for sampling and photographs of the proceedings were also taken. On 22.09.2021, case property was sent to the FSL. During further investigation, CDR of mobile phones being used by the accused persons Saddam Hussain and Salman Khan were obtained and

were analysed and they were found in regular touch with each other.

7. After completion of investigation, present charge sheet was filed before this Court on 02.02.2022 against accused persons Saddam Hussain Ansari @ Naved , Aasif Raza and Salman Khan for the offences punishable U/sec. 21/29 of NDPS Act.

8. Accused persons were summoned and were supplied the copy of chargesheet, documents and CD. During the pending proceedings, supplementary charge-sheet alongwith FSL Result was also filed and copy of the same alongwith FSL result were supplied to the accused persons.

9. Argument is heard on the point of charge/ discharge application filed on behalf of accused Salman u/s 227 of Cr.P.C as well as bail applications of accused Saddam Hussain and Aasif Raza filed u/s 439 of Cr.P.C. Record is perused.

10. It was argued on behalf of all the accused persons that the accused persons are innocent persons; that they have been falsely implicated in the present case; that nothing was recovered from their possession or at their instance but it was planted by the police in order to frame the accused persons. It has been further submitted that the accused persons were not aware about any contraband containing in the polythene but it was planted upon them. It has been further submitted that the accused persons can not be said to be in conspiracy with each other merely on the ground of CDR which is of the period after the arrest of two accused. It has been further submitted that the said CDR is dated 11.08.2021 and thus, it is clear that there was no conversation between accused Saddam Hussain and Salman prior to the arrest of accused Saddam and in absence of any such call details it cannot be said that accused Salman had any criminal conspiracy with other accused persons prior to the registration of the present FIR. It has been further

submitted that the said call was made on 11.08.2021 and 12.08.2021 when the accused Saddam was in police custody and even no recorded conversation has been placed on record to prima facie show that there was any talk between them for the purpose of any illegal trade of Heroin and Smack. It has been further submitted that the even from the personal search or otherwise nothing was recovered like Narcotic Drugs. It has been further submitted that to trap the accused Salman Khan, the calls were made on 11.08.2021 and 12.08.2021 and had it been to bring the smack, there the recovery of the smack would have been there but it was a simple call made and therefore, the prosecution story to that extent is false and accused Salman deserves acquittal.

11. It has been further submitted that the case property recovered allegedly from both the accused Saddam Hussain and Aasif Raza were found containing different Narcotic Drugs / psychotropic substance and even if it is assumed that both the accused were found in possession of Narcotics Drugs / psychotropic substance while travelling together but for the purposes of charge both the recovered materials cannot be clubbed together and that should be treated recovery from each individual accused and since the recovery is alleged to be of 250 gms each, they cannot be charged with the charge of having possession / control of contraband of the commercial quantity. It has been further submitted that the persons were never been involved previously in any other case and were not part of any conspiracy in the present case. It has been further submitted that there is no compliance of provision u/s 50 of NDPS Act as personal search was not conducted in the presence of Gazetted Officer as the ACP has left the spot prior to the personal search of accused persons. It has been further submitted that the entire story of prosecution regarding the recovery, notice, disclosure, arrest and separate information are false and frivolous. Thus, it has been prayed that in absence of any legally admissible evidence, no charge is made out against the accused persons and they may be discharged from this case.

12. With regard to the bail application filed on behalf of accused Saddam Hussain, apart from the aforesaid arguments it has been submitted that accused is falsely implicated in the present case. There is no bar applicable under Sec 37 of NDPS Act. It has been further submitted that accused is in JC since 09.08.2021 and that there is no legal evidence against him, that accused Saddam Hussain is the sole bread earner of his family and nobody is there to look after his wife and minor children. It has been further submitted that investigation is complete and the chargesheet as well as the FSL report have been filed and no useful purpose would be served by keeping him in JC. It has been further submitted that the accused is ready and willing to abide any terms and conditions imposed upon him and thus it has been prayed that he may kindly be released on bail.

13. Further, on the bail application filed on behalf of accused Aasif Raza, apart from the aforesaid arguments it has been submitted that accused is falsely implicated in the present case and since the provision u/s 50 of NDPS Act was not applied in letter and speed, the entire proceeding got vitiated and moreso, since the recovery is of intermediary quantity, no bar under Sec 37 of NDPS Act is applicable. It has been further submitted that investigation is complete and the chargesheet as well as the FSL report have been filed and no useful purpose would be served by keeping him in JC. It has been further submitted that the accused is ready and willing to abide any terms and conditions imposed upon him and thus it has been prayed that he may kindly be released on bail.

14. Ld Counsel for parties have relied upon the following judgments which are as under:-

- a. Ramji Bhai Barot vs State of Gujarat
- b. Muthu Kumar and ors vs Station House office Kottakkal
- c. Smt Sachala Nayak vs State of NCT of Delhi in Bail application no.

3351/21

- d. Mohd Aslam vs The State, 2005 2JCC Narcotics 154.
- e. Anita vs The State, Delhi High Court in Bail application no. 1538/22
- f. State of Punjab vs Balbir Singh decided on 01.03.1994
- g. Roy V D vs State of Kerala
- h. Hiran Singh and anr vs UOI and anr, Cr. Appeal no. 722/17
- I. Sunil vs The State NCT of Delhi in bail application no. 495/22
- j. Iqbal and anr vs State of Kerala, 2021 SCC Online Ker 4711, decided on 01.12.2021
- k. Laxman Ankush Jadhav vs State of Maharashtra, Cr. Bail application no. 2707/19, decided on 20.01.2021
- l. Kumar Khanna vs Intelligence Officer (2018)8SCC 171 passed by Hon'ble Supreme Court
- m. Rajesh Sharma vs Directorate of Revenue Intelligence 2018(4) JCC 221
- n. State of Orissa vs Mahimananda Mishra (2018)10SCC516
- o. Narottam Pardhan vs State of Delhi reported in 257(2019) DLT.
- p. Satish Mehra vs The State (NCT of Delhi) 2012 13SCC 614
- q. P Vijayan vs State of Kerala and anr (2010) 2 SCC308
- r. Mohan Lal vs State of Punjab 2019 Cr.L.J 420
- s. UOI vs Mohan Lal (2016) 3SCC 379

15. On the other hand, it has been argued on behalf of the State that prima facie, there is sufficient material available on record to frame charge against accused persons Saddam Hussain and Aasif Raza for having found in possession of Smack to the tune of total 500 gm which is commercial quantity (250 gms of Smack each). Therefore, it has been prayed that the charges may kindly be framed against the accused persons Saddam Hussain and Aasif Raza for the alleged offence u/s 21(c) of NDPS Act and placed reliance upon the judgment in **Bail application 371/21 titled as Ishika vs State decided on 03.03.2021 by the Hon'ble High Court of Delhi**. Apart from the said arguments, it has been argued that Smack has been recovered from the

possession of accused persons and is a part of syndicate involved in the trafficking of illegal contraband, therefore, bail applications filed on behalf of accused persons Saddam Hussain and Aasif Raza may kindly be dismissed as they may flee away from the jurisdiction of this Court or may tamper with the evidence.

16. Having heard the rival submissions of parties and after perusal of record, it is clear from the statement of the witnesses including the complaint, documents and other material available on record that on 09.08.2021, accused persons Saddam Hussain and Aasif Raza were found in possession of 250 gm of contraband but it is clear from the FSL report that the contraband recovered from the accused Saddam Hussain Ansari was not the Heroin and the contraband recovered from the accused Aasif Raza was found Heroin. Though it has been argued on behalf of State that the morphine containing in contraband recovered from accused Saddam Hussain is a derivative of Opium and Heroin is also a derivative / chemical substance of opium but this argument has no leg to stand. Ofcourse, the Heroin at entry no.56 in notification regarding small quantity and commercial quantity of the contraband /drugs with their chemical name merely shows that the chemical name of Heroin is diacetylmorphine and entry no.77 is for morphine and No. 93 is for other opium derivatives consisting of other than diacetylmorphine and morphine. Though, both the recovered articles are prohibited under the NDPS Act but their chemical composition are different and therefore, for the purposes of charge both the recovery can not be clubbed together being of different chemical composition and therefore, this Court is of the opinion that prima facie no charge for the possession of commercial quantity of the contraband/ Heroin/ Morphine is made out. However, the contraband recovered from Aasif Raza was found Heroin and recovered from the accused Saddam Hussain is Morphine which are scheduled prohibited Narcotic drugs under Sec 2(xvi) of the NDPS Act and is more than small quantity and therefore, prima facie their possession is punishable under Sec 21(b) of

NDPS Act. Further, the contraband seized from them is confirmed to be Heroin and Morphine in the FSL result. As per record, the notice u/s 50 of NDPS Act was given to both the accused Saddam Hussain and Aasif Raza.

17. There can be no direct evidence in the matter of conspiracy but it is to be seen from the circumstances as to whether there was any scope of conspiracy between the accused persons. In the present matter, the accused persons Saddam Hussain and Aasif Raza were found in possession of contraband item i.e. Smack and therefore, the disclosure statement made by accused persons Saddam Hussain regarding the involvement of accused Salman Khan in reference to common design would have become relevant, had there been any recovery of contraband or they would have been found in touch prior to the registration of the present case. There is nothing on record to show that they were in touch with each prior to registration of present case and the call is after the arrest of the accused Saddam Hussain. Despite having opportunity no recorded call has been placed nor transcript of the conversation has been placed on record. Even they were not found in company of each other. However, accused Saddam and Aasif Raza were travelling together when they were apprehended alongwith the contraband articles and thus prima facie they were in regular touch with each other and for the purposes of conspiracy the recovery of the contraband articles from them prima facie corroborates the prosecution story. It is well settled law that the arguments pertaining to the facts are matter of trial. Thus, the arguments that no offence is made out against any of the accused has no leg to stand at this stage of prima facie case. Otherwise, also the accused persons Saddam and Aasif Raza will have full opportunity to rebut the veracity of the facts after full fledged trial.

18. Moresoever, at the stage of framing of a charge probative value of the materials on records 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 has prosecutor proposes to adduce are not to be meticulously judged. Nor is any weight to be attached to the provable defence of the accused. It is not obligatory for the judge at that stage of the trial to consider in any detail and weight 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 u/s 227 or u/s 228 of the Code. At that stage the court is not to see whether there is sufficient ground for conviction of the accused or whether the trial is sure to end in his conviction. But at the initial stage, if there is a strong suspicion which leads the court to think that there is ground for presuming that the accused has committed an offence, then it is not open to the court to say that there is no sufficient ground for proceeding against the accused. While deciding the question of framing of charge in a criminal case, the court is not to apply exactly the standard and test which it finally applies for determining the Guilt or otherwise. This being the initial stage of the trial, the court is not supposed to decide whether the materials collected by the Investigating Agency provides sufficient ground for conviction of the accused or whether the trial is sure to culminate in his conviction. What is required to be seen is whether there is strong suspicion which may lead to the court to think that there is ground for presuming that the accused has committed an offence. In this regard this court is supported with law laid down by the Hon'ble Apex Court and Hon'ble High Court reported as *“UOI vs Prafulla Kumar, AIR 1979 SC 366, State of Maharashtra and others vs Som Nath Thapa and other JT 1996 (4) SC 615, State of Bihar vs Ramesh Singh, AIR 1997 SC 2018: (1997 CRI LJ 1606), Umar Abdula Sakoor Sorathia vs. Intelligence Officer Narcotic Control Bureau JT 1999 (5) SC 394, Kalu Mal Gupta vs. State 2000 I AD Delhi 107”*.

evidence available on record except disclosure statements, **accused Salman Khan stands discharged.** Bail bond , if any of the accused stands cancelled. Surety, if any stands discharged. Original documents, if any furnished on behalf of surety be returned after cancellation of endorsement upon it. The accused Salman is directed to file fresh bail bond in the sum of Rs 10,000/- with a surety of like amount in terms of Sec 437-A of Cr.P.C.

20. In view of the aforesaid discussions, law laid down in the aforesaid cases and in view of the statement of complainant and other witnesses, prima facie, **there are sufficient materials available on record to frame charges against accused persons Saddam Hussain and Aasif Raza for the contradiction of provision under Sec 8(c) of NDPS Act which is the offence punishable under Section 21(b) of NDPS Act and Sec 29 of NDPS Act.**

21. So far as bail application are concerned, in the present case, no doubt the accused Saddam Hussain and Aasif Raza are held prima facie found in possession of 250 gms each of Morphine/Heroin which is not a commercial quantity. However, it is also a huge quantity and just below the commercial quantity and therefore, taking into consideration the overall facts and circumstances, without making any comment upon the merit of the case, ***the bail application filed on behalf of accused Saddam and Aasif Raza are dismissed at this stage.***

22. Be put up for framing of charge against accused Saddam Hussain and Aasif Raza on date already fixed i.e. 28.04.2023.

Copy of the order be given dasti to the parties.

A copy of the order be sent to the Concerned Jail Superintendent.

(Devendra Kumar Sharma)
ASJ/Special Judge (NDPS)West
THC/Delhi/22.03.2023