

28.04.2023.

ORDER ON CHARGE / ORDER ON BAIL APPLICATION filed on behalf of accused Surender.

1. Vide this order, I shall decide the point on charge as well as the bail application u/s 439 of Cr.P.C filed on behalf of accused Surender.

2. Succinctly, the facts of the case unfolded from charge-sheet are that on 15.11.2022 at around 02:40:08 hrs vide DD no.4A, one secret information was received at around 04.30 pm to ASI Jitender Singh by a secret informer that one person namely Emmanuel, a Nigerian national will come with one girl towards MBBS Nagar, Keshopur Mandi, Tilak Nagar, Delhi at around 05-5.30 pm who deals in the supply of Heroin and Cocaine. The said secret information was shared with Inspector Lichhman and thereafter, the said information was shared with ACP/ER-1 Sh Rohitash Kumar who asked to form the raiding party and to take action immediately. Thereafter, raiding party was constituted and thereafter, the raiding party reached near spot at the road opposite Gali no.10, Santgarh, Tilak Nagar, Delhi. At about 05.55 pm, police officials saw one person wearing black T-shirt and grey black jeans carrying a black bag and started waiting for someone near the spot. The secret informer pointed out the said person as Emmanuel and left the spot. At around 05.55 pm, the accused Emmanuel was apprehended after a great effort, the black leather bag was taken into possession, he was interrogated. The public persons were also asked to join the investigation but

none agreed for the same. When the said black leather bag was checked, two transparent polythene was found kept in it. Upon checking the first transparent polythene, it was found containing a white coloured powder substance and in field testing kit, it was found 52 gms of Cocaine and in the second transparent polythene, 495 gms of Heroin was found after weighing and testing with the field testing kit. After giving notice u/s 50 of NDPS Act to the accused Emmanuel, who refused in writing for his search or to take search of the raiding party / vehicle in the presence of any Gazetted officer/ Magistrate. His personal search was conducted. Accused Emmanuel could not produce any valid documents of his staying in India. Accused Emmanuel was arrested and his disclosure statement was recorded in which he stated that he was doing the business of Heroin and Cocaine. Thereafter, a complaint was prepared and upon the said complaint, present FIR No.263/22 was got registered.

3. During investigation, police custody of accused Emmanuel was obtained and he was interrogated who disclosed that he got the Heroin delivered from Mozambique, South Africa at a price of Rs 1500/- per gm and used to sell the same @ Rs 3200/- per gm in India. It is further disclosed that he was also getting the delivery of cocaine from Africa @ Rs 3700/- per gram which he used to sell @ Rs 8500/-per gm.

4. During the further investigation, proceedings u/s 52 A of NDPS Act was got conducted before Ld MM for sampling and photographs were also taken of the proceedings. During the investigation, the statement of the witness namely Hanmeet Singh Khanna (owner of his tenanted house) was recorded who told that the said premises is in the name of his mother namely Jasvinder Kaur which was given on rent to the said person from 28.12.2021 to 27.12.2022.

5. During further investigation, raiding party alongwith accused Emmanuel went to the premises of accused Emmanuel bearing no. D7 and 8, II Floor, H No. WZ-I/1 situated at Sant Garh Extention, Tilak Nagar, Delhi where they recovered his mobile phone make Redmi black colour with dual SIM containing the details of the persons from whom he was getting supply of the drugs. During scrutiny of the mobile phone, Whats app of accused Emmanuel was checked in which one calling no.8798858775 was found saved as “Sur Bro 2” and another no. 9729049700 was found saved as “Sur Bro”. During further investigation, accused Emmanuel disclosed that both these numbers belong to one Surrender to whom he was supplying the contraband drugs.

6. During further investigation, CAF of the mobile numbers of 9205318693 (Emmanuel) and 8798858775/ 9729049700 (Surrender) have been obtained from the service provider. On scrutiny, it came to be known that mobile no. 9205318693 belongs to one Lakhinder Kumar. During further investigation, police officials with accused Emmanuel reached at the address of accused Surrender mentioned on the CAF where he was arrested. A notice u/s 50 of NDPS Act to the accused Surrender was given, who refused for his search or to take search of the raiding party in the presence of any Gazetted officer/ Magistrate, his personal search was conducted and a mobile with Dual SIM mobile phone make VIVO 2015 color green and black having IMEI no. 861326051863030 and 861326051863022 with 2 SIMs inserted in phone bearing no. 7206846370 and 7206829743 was taken into possession and seized through seizure memo.

7. During further investigation, accused Surrender disclosed that accused Emmanuel was trading contraband drugs from whom he was purchasing 30-40 gms of Heroin in the beginning which he used to sell further in Patra and Tohana (Haryana) at a profit of INR 500 per gram to

different addicts. Further, accused Surender was found in contact with accused Emmanuel from whom he is found only connected through Whats App and saved the number of accused Emmanuel as “Ravi” .

8. After completion of investigation, present charge sheet was filed before this Court on 27.02.2023 against both the accused persons for the offences punishable U/sec. 21/29 of NDPS Act and 14 of The Foreigners Act.

9. Both the accused were summoned and were supplied the copy of chargesheet and documents on 27.02.2023.

10. Argument is heard. Record is perused.

11. It is argued on behalf of accused that the accused persons are innocent; 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 is further submitted that the accused persons were not carrying any contraband and were not aware of any contraband. It is further submitted that the accused persons have never been involved previously in any other case. It has been further submitted that there is no compliance of provision u/s 50 of NDPS Act. It is further submitted that the except disclosure statement there is no evidence on record to connect each accused in criminal conspiracy with other accused and on the ground of mere disclosure statement of co accused, no charge can be framed qua the conspiracy u/s 29 of NDPS Act. It is 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 apart from the aforesaid arguments it has been submitted on behalf of accused Surender that he belongs to a respectable family and he has a clean antecedent. It has been further submitted that applicant/ accused was lifted by police officials from his village on 18.11.2022. It has been further submitted that he has been falsely implicated on the basis of disclosure statement of co accused. It has been further submitted that he is the only bread earner in his family consisting of his old aged parents and wife. It has been further submitted that investigation has been completed and charge-sheet has already been filed and no further custodial interrogation of accused is required. It has been further submitted that prosecution has failed to site even a single public witness. It has been further submitted that earlier applicant/ accused was granted 10 days interim bail and after completion of the same, applicant/ accused had surrendered himself before the Jail Authority. It has been further submitted that accused applicant is ready to abide by all the terms and conditions if he is released on bail. Thus, it has been prayed that the accused /applicant may kindly be released on bail.

13. On the other hand, Addl. Public Prosecutor has opposed the bail application submitting that applicant/ accused is involved in the present case which is serious in nature. It has been further submitted that applicant/ accused had deleted all the Whats App chat between him and co accused Emmanuel. It has been further submitted that co accused Emmanuel has identified the present applicant/ accused to whom he was selling the contrabands. It has been further submitted that accused / applicant may misuse the liberty of bail if granted as he is involved in the supplying of contraband with other co- accused Emmanuel. It has been further submitted that there is likelihood that accused may flee away from the jurisdiction of this Court or may tamper with the evidence or may repeat the similar kind of offence. Thus, it is prayed that present bail application of accused Surender

may kindly be dismissed.

14. Apart from the aforesaid arguments, it was also argued on behalf of the State that prima facie, there is sufficient material available on record to frame charge against both the accused persons for criminal conspiracy to run the illegal trade of Heroin and cocaine and since the accused Emmanuel was found in possession of Heroin to the tune of commercial quantity and of cocaine to the tune of intermediate quality which he procured with the help of other accused i.e. Surender and accused Emmanuel was found residing in India without any valid documents for stay, therefore, it has been prayed that the charges may kindly be framed against the accused Emmanuel and Surender for the alleged offences punishable u/s 21 r/w 29 of NDPS Act and against the accused Emmanuel for the alleged offences punishable u/s 14 of The Foreigners Act and Section 201 of IPC.

15. Having heard the rival submissions of parties and after perusal of record and the documents and other material available on record, prima facie it is clear that on 15.11.2022 at around 05.55 pm the accused Emmanuel was found in possession of 52 gms of Cocaine and 495 gms of Heroin at the road opposite to Gali no.10, Santgarh, Tilak Nagar, Delhi which after testing through field testing kit was confirmed to be Cocaine and Heroin. Further, accused Surender was apprehended upon the disclosure statement of accused Emmanuel. As per record, the notice u/s 50 of NDPS Act was given to both the accused persons.

16. From the perusal of record, it is clear that the manner in which the investigation was conducted leaves no doubt of having conspiracy among the accused persons and conduct of accused persons demonstrate that they were in close contact with each other and were apprehended after the disclosure of accused persons and to complete the chain of conspiracy, the

role of the each accused appears to be vital. This fact is prima facie corroborated from the CDR of accused persons as well as they were found talking with each other on Whats App call and they have saved the number of each other with code name.

17. Further, it has been found that both the accused have deleted their chats when their mobile phones were scrutinized and this was done in collusion/ connivance and consultation with each other so as to cause the evidence disappear. The accused Emmanuel has identified the accused Surender not only from his photographs affixed on CAF but also identified him at the time of arrest leaving no doubt about their previous acquaintance. As per prosecution story, the accused Surender used to purchase 30-40 gm Heroin so as to sell as retailer. Both the accused were found to have activated their mobile chat box with disappearing messages feature so as to conceal the material evidence against them.

18. The accused Emmanuel failed to produce any document of his stay in India like valid visa and he was found staying in India after the expiry of his visa and thus, he has violated the provisions of Foreigners Act. 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 has no leg to stand at this stage of prima facie case. Otherwise, also the accused persons will have full opportunity to rebut the veracity of the facts after full fledged trial.

19. 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*”.

ORDER ON THE POINT OF CHARGE

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 Emmanuel for the offences punishable u/s 21/29 of NDPS Act, under Sec 14 of Foreigners Act and u/s 201 of IPC and against the accused Surender u/s 29 r/w Sec 21 of NDPS Act and u/s 201 of IPC .

ORDER ON THE BAIL APPLICATION

21. In view of the aforesaid settled principles of law and having heard the rival submissions on behalf of the parties and perusal of the record and report of the I.O, that the chargesheet has already been filed, that the investigation qua the present applicant Surender is complete, nothing incriminating was recovered from the possession of applicant/ accused, though the present applicant/ accused was found in touch with co accused Emmanuel through Whats App, it cannot be held to be sole ground to put the accused in incarceration as pre trial punishment, that no further custodial interrogation is required and trial will take its own time, and therefore, taking into consideration the totality of the facts and circumstances of the present case and without commenting upon merits of the case, the **bail application filed on behalf of applicant/accused namely Surender is allowed.** The applicant/accused is admitted to bail subject to furnishing a personal bond in the sum of Rs.25,000/- each and a surety of like amount by applicant/accused Surender subject to the following conditions : -

- I. That accused shall not come in contact with or try to influence any of the witnesses connected with the case either directly or indirectly;
- II. That accused 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 accused shall not tamper with the evidence in any manner;

22. Nothing discussed here-in-above shall tantamount to be an expression of opinion on the merits of the case. Bail application is disposed

off accordingly.

A copy of order be sent to the concerned Jail Superintendent for intimation and due compliance.

Copy of the order be given dasti to the parties including the I.O..

Be put up for date already fixed i.e.26.05.2023 for framing of formal charge .

(Devendra Kumar Sharma)
ASJ/Special Judge (NDPS)
West District, THC
Delhi/28.04.2023.