

19.12.2022

ORDER ON CHARGE / ORDER ON BAIL APPLICATIONS filed on behalf of Chaman.

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 Chaman.

2. Succinctly, the facts of the case unfolded from charge-sheet are that on 05.10.2022 at about 07.25 am, a secret information was received to HC Abhay that one woman namely Chaman residing at H No. F-720, Raghbir Nagar, New Delhi is dealing in the purchase/ sale of the Smack. Upon receiving the information, at about 07.32pm police officials shared this information with ACP Arvind Kumar and on his directions, a raiding team was constituted. Further prosecution story is that at about 08.15 pm, police officials reached at the spot and the secret informer pointed out the woman namely Chaman who was sitting outside her house carrying a polythene in her hand. Thereafter, secret informer left the said spot and went towards Tagore Garden. The raiding party requested public persons to join proceedings but no one agreed. Further prosecution story is that the police officials moved towards the said woman to apprehend her but upon seeing the police officials, she tried to go inside the house but W/HC Bharti overpowered her at the gate and accused Chaman threw the white polythene inside the house. Further prosecution story is that accused was apprehended after informing her the secret information and the abovesaid contraband was recovered and in the meantime, she was informed about her legal right that she can ask to be searched in the presence of any Gazetted officer or Magistrate but she refused for the same. A separate written notice u/s 50 of

NDPS Act was also given to the accused, it was read over to her and the meaning of Gazetted officer was also explained. However, she refused to be searched in the presence of Gazetted Officer or the Magistrate and her version that her personal search should be made by the Lady Police and the signature was obtained on the notice.

3. Further prosecution story is that the accused Chaman was got searched but nothing was recovered from the personal search of the accused. However, 59 pudiya in thrown polythene by the accused in her house were recovered and after mixing all the pudiyas same were found 8.94 gms Heroin and Rs 3300/- in the said white polythene . The accused told that the said Rs 3300/- is the sale proceed of 11 pudiya sold by her. The said case property was sealed. Thereafter, from the search of her house from one iron almirah, one polythene was recovered and on checking with the filled testing kit, it was found containing Smack weighing 94.84gms and Rs 31500/- cash. Thereafter, the case property and samples were seized and sealed after filling the FSL form. The entire contraband article were measured and found containing 103.78 gms Heroin and cash of Rs 34800/- . Thereafter, the complaint, case property in sealed condition , carbon copy of seizure memo were sent for the registration of the FIR and for proceedings u/s 55 of NDPS Act by the SHO PS Rajouri Garden.

4. Upon the said complaint, present FIR No.584/22 was got registered and the further investigation was marked to ASI Karan Singh. Matter was further investigated and during the investigation, accused was arrested after her personal search and recording of her disclosure statement. In her disclosure statement, accused has disclosed that previously her mother in law used to sell smack and she started selling the smack for the said reason and once she has already sent to jail. During further investigation, statement of witnesses were recorded. PC remand of accused was obtained to trace out the co-accused persons. 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.

5. During further investigation, the son in law Sh Arjun Singh @ Omkar and Mrs Kajal d/o accused were interrogated but nothing incriminating has come on record. The seized case property was sent to the FSL.

6. After completion of investigation, present charge sheet was filed before this Court on 01.12.2022 against accused for the offence punishable U/sec. 21 of NDPS Act.

7. Accused was summoned for today and was supplied the copy of chargesheet and documents alongwith the CD.

8. Argument is heard. Record is perused.

9. It is argued on behalf of accused that the accused is innocent; that she has been falsely implicated in the present case; that nothing was recovered from her possession or at her instance but the entire case property was planted by the police in order to frame the accused. It is further submitted that the alleged recovery of contraband is shown from 2 places inside the house of accused but despite having ample time and opportunity after receiving the secret information, no public witness had joined the raid/ investigation which itself creates doubt about the fairness of the proceedings. It is further submitted that even the procedure to mix the alleged recovered 59 pudiya Smack is against the rules which itself vitiates the entire alleged recovery proceedings of the contraband. It is further submitted that the accused was not carrying any contraband and was not aware of any contraband. 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 the present accused with the alleged recovery of contraband. 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 and she may be discharged from this case.

10. With regard to the bail application apart from the aforesaid arguments it has been submitted on behalf of accused that she is in JC from 06.10.2022 and applicant/ accused was lifted from her house by the police officials. It has been further submitted that accused is falsely implicated in the present case and nothing has been recovered from her possession. It has been further submitted that family of applicant/ accused is facing various financial and mental difficulties. It has been further submitted that previously also she was implicated in a false case and was later on acquitted . It has been further submitted that charge-sheet has already been filed, no further custodial interrogation is required, FSL result has not been filed yet and therefore, trial will takes it own time. It has been further submitted that accused / applicant is ready to abide by all the terms and conditions if she is released on bail as she is the permanent resident of Delhi. Thus, it has been prayed that the accused may kindly be released on bail. In support of the arguments, reliance has been placed in the case titled which are as under:-

a. Ram Bharose vs State (Govt of NCT of Delhi) Bail app. no. 1623/2022 decided on 05.08.2022.

b. Smt Sachala Nayak vs (Govt of NCT of Delhi) Bail app. no.3351/21 decided on 30.09.2021.

c. Atik @ Tilo vs State reported in 2006(3) JCC (Narcotic)207 passed by the Hon'ble High Court of Delhi

d. Mohd Aslam vs State reported in 2005 Law suit (Del) 556 passed by the Hon'ble High Court of Delhi

e. Bimla vs State in bail application no. 446/08 passed by the Hon'ble High

Court of Delhi

f. Mohan Lal vs State of Punjab; Manu/SC/0857/2018.

11. It has been submitted on behalf of the State that prima facie, there is sufficient material available on record to frame charge against accused Chaman who was found in possession of 8.94 gm and 94.84 gms of Smack which is to the tune of intermediate quantity and on checking it with field testing kit prima facie it was found to be smack and therefore, it has been prayed that the charge may kindly be framed against the accused Chaman for the offence punishable u/s 21 of NDPS Act.

12. Apart from that, bail application is opposed on behalf of State submitting that in the present case the accused was found in possession of 94.84 gms of Heroin from the locker of almirah and total 59 pudia made by small polythenes which were containing 8.94 gms of Heroin which is an intermediate quantity . It is further submitted that the efforts are being made to trace the source of the recovered contraband. It is further submitted that applicant/ accused is a habitual offender and has been previously involved in one case of similar nature and thus, there is every likelihood that applicant/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 may kindly be dismissed.

13. 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 05.10.2022, accused was found in possession of total 103.78 gms Heroin (smack)(8.94 + 94.84) and a total cash of Rs 34800/- at H No. F-720, Raghubir Nagar, New Delhi belonging to her. Further, the contraband seized from her found to be Heroin (smack) in the field testing kit and thus, prima facie the recovered contraband is scheduled and band contraband under the

NDPS Act. As per record, the notice u/s 50 of NDPS Act was given to the accused. 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 will have full opportunity to rebut the veracity of the facts after full fledged trial.

14. Moreover, 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

In view of the aforesaid discussions, law laid down in the aforesaid cases and in view of the statement of other witnesses, prima facie, there are sufficient materials available on record to frame charge against accused for the offence punishable u/s 21 of NDPS Act.

ORDER ON THE BAIL APPLICATION

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 is complete, the alleged recovery of contraband is of intermediate quantity and therefore, prima facie it cannot be said that the bar u/s 37 of NDPS Act has any application qua the case of the present applicant, that though there has been previous involvement but it cannot be held to be sole ground to put the accused in incarceration as pre trial punishment and moreso, in the present case, the accused has already been acquitted as per her submission, the FSL result has not been filed yet 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 is allowed.** The applicant/accused is admitted to bail subject to furnishing a personal

bond in the sum of Rs.25,000/- and a surety of like amount by the applicant/accused 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;
- III. That accused shall not change address without prior intimation to the I.O./SHO concerned and shall handover his mobile no. to the concerned IO/SHO within a week of his release from the custody.
- IV. The applicant shall drop a Google pin location from his mobile phone to the IO concerned so as to show his whereabouts everyday;

15. 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 sent through the electronic mode.

(Devendra Kumar Sharma)
ASJ/Special Judge (NDPS)
West District, THC
Delhi/19.12.2022