

In the Court of Special Judge (under NDPS ACT)-cum-Additional District & Sessions Judge 3rd Court, Dakshin Dinajpur at Balurghat.

Special Case No. 99 of 2022 (CIS No. 182/22), CNR Number : WBDD01-002853-2022

Present: Shri. Manoj Kumar Prasad, Special Judge (under NDPS ACT)-cum-Additional District & Sessions Judge 3rd Court, Dakshin Dinajpur at Balurghat. (JO Code : WB00779)

ORDER NO. 46

04.09.2024

The case record is taken up for passing order in respect of the petition filed by the petitioner/accused Devendra Ahuja under section 227 of Cr.P.C. with prayer for discharge from this case.

Accused persons namely Kaimuddin Mia and Aminul Islam are present by filing hazira.

Another accused Devendra Ahuja on Court bail is absent by filing time petition.

Ld. Lawyer for the accused/petitioner Devendra Ahuja has filed hazira.

Ld. P.P. is also present by filing hazira.

Ld. Lawyer for accused/petitioner submitted that in this case initially charge sheet was filed against accused Kaimuddin Miah under section 21(c)/22(c)/23(c)/27A/28/29 of NDPS Act with a prayer to submit supplementary charge sheet against FIR named accused Aminul Islam and other involved in this racket as per provision under section 173(8) of Cr.P.C.

Ld. Lawyer for accused/petitioner submitted that subsequently further investigation conducted by the CID and charge sheet has been filed against accused Devendra Ahuja @ Chintu Ahuja and Aminul Islam under section 21(c)/29 of NDPS Act. There is no material in the record against accused Devendra Ahuja @ Chintu Ahuja to frame a charge under section 21(c)/29 of NDPS Act. Nothing was recovered from the possession of this accused person. The prosecution could not collect any document to prima facie establish nexus of these accused person with that of alleged recovered contraband from the possession of Kaimuddin Miah. The document of bank account regarding transaction of the accused and the document of Income tax showing payment of income tax by the accused is no way connected with the alleged offence. There was no evidence of transaction of money in between this accused and other co-accused persons. There is nothing to show that this accused related to supply of the phensedyl allegedly seized from accused Kaimuddin Miah. Therefore Ld. Lawyer prays for discharge of the accused from this case as no prima facie material found in the record to frame charge against this accused u/s. 21(c)/29 of NDPS Act.

On the other hand Ld. P.P. in-charge raised vehement objection and submit that this accused is arrested in connection of Kaliachak PS case no. 875/2022 dated 12.08.2022 for offence under NDPS Act. In that case there is allegation that the petitioner dealing as supplier of expectorants from Agra to Gangarampur through co-accused intermediates in furtherance of smuggling exercises. It is further argued that petitioner has a distributorship business at

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Agra under the name and style “Jai Ram Ji Ki Medical Agency” and under the garb of the business the accused person clandestinely doing such illegal business of smuggling of phensedyl by financing illicit trafficking of the contraband. It is further argued that at one witness Ismail Sarkar in his 161 statement stated about involvement of this accused person. It is further argued that this stage there is sufficient prima facie material against the accused person under section 29 of NDPS Act to frame charge.

Heard Ld. Lawyer of both sides.

Perused the material on record and CD.

On the basis of credible source information received by the defacto complainant SI Krishna Bera that some smugglers of Narcotic Drugs of Sultanpur village area going to smuggle contraband substances from Gangarampur to Hamzapur border (Indo Bangladesh Border) and to work out the information. They stopped the bike and after maintaining all formalities in presence of SDPO being the gazetted officer they recovered contraband articles from the bike which was driven by accused Kaimuddin Mia.

After completion of investigation IO of this case submitted charge sheet no. 201/2023 dated 29.05.2023 against Kaimuddin Mia. The instant case was initially initiated against namely Kaimuddin Mia and Aminul Islam. The IO had submitted charge only against Kaimuddin Mia and has not pray for discharg of the other accused Aminul Islam rather mentioned in the CS that the IO could not gather sufficient materials against Aminul Islam. It is further mention in the charge sheet by the IO has informed the Court that he is trying to collect further evidence against Aminul Islam and may submit charge sheet against him in future. This Court with observation on 29.05.2023 that in the investigation involvement of Aminul Islam did not reveal and IO did not believe the disclosure statement in respect of name of other co-accused by Kaimuddin Mia and the recitals of the written complaint in this regard. It is further reveals from the statement of the IO in the charge sheet that the investigation of the case has not completed and the IO submitted the C.S. without completing the investigation. It is further observed by this Court that sole purpose of the IO in filing charge sheet in such a manner is only to give an impression that the investigation has been completed and thereby prevent the accused Kaimuddin Mia from obtaining the benefit of statutory bail. On such observation this Court did not accept the charge sheet on 29.05.2023. Again rectified charge sheet being charge sheet no., 201/2023 dated 29.05.2023 has been submitted on 03.06.2023 against sole accused Kaimuddin Mia and since no evidence could be collected against accused Aminul Islam and accordingly he is not sent up in charge sheet. This Court excepted the rectified charge sheet on 03.06.2023.

Subsequently on 16.06.2023 Inspector Chandra Nath Chakraborty O.C.

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Narcotic Cell CID WB prays for shown arrest of accused Devendra Ahuja @ Chintu Ahuja who is in custody in connection of another case being Kaliachak PS case no, 875/2022 dated 12.08.2022, on the basis of statement of the accused on jail interrogation in connection of this case. The prayer was allowed and on 23.06.2023 this accused shown arrested. The IO started further investigation of the case taking the accused on three days PC and after completion of investigation submitted supplementary charge sheet against Devendra Ahuja and one Aminul Islam under section 21(c)/29 of NDPS Act vide charge sheet no. 512/2023 dated 17.11.2023 on 22.11.2023.

The accused petitioner Devendra Ahuja @ Chintu Ahuja was in custody at Malda Correctional Home in connection of Kaliachak PS case no. 875/2022 dated 12.08.2022. The subsequent IO Chandra Nath Chakraborty, O.C. Narcotic Cell, CID West Bengal of this case started further investigation as per provisions under section 173(8) of Cr.P.C.

The charge sheet being no. 201 of 2023 dated 29.05.2023 accepted by this court on 03.06.2023. On 14.06.2023 this Court allowed the prayer of the IO for jail interrogation of the accused Devendra Ahuja. On the basis of the statement of the Devendra Ahuja on jail interrogation prayer was made to shown arrest of the accused. Accordingly vide order 23.06.2023 the accused shown arrest in this case. Admittedly at the time of submitting charge sheet being 201/2023 dated 29.05.2023 there was no material against the accused Devendra Ahuja in the CD or in the record.

So for the first time he was shown arrest on the basis of his own statement on jail interrogation. During further investigation IO of this case sent mail to Abbott Health Care Private Ltd. to provide the supplier details where codeine base cough syrup (phensedyl) batch number PHC22075, PHC22127 and PHC22128 supplied. From the reply of Abbott Health Care Pvt. Ltd. found that batch no. PHC22075 supplied to GD trading company other distributors of UP. He again sent mail to GR trading company, GR trading company replied that they supplied phensedyl of that batch number to Manu Pharma, AP Pharma and other distributors. As per reply of Abbott Health Pvt. Ltd. batch no. PHC22127 and PHC 22128 supplied to Yash Pharma and other distributors of UP.

Now in this case the seized contraband phensedyl is in respect of batch no. PHC22127, 22128 and 22075. The name of the concern of the accused "Jai Ram Ji Ki Medical Agency". There is no evidence that phensedyl of above said batch number supplied to the Agency of the accused. There is nothing in the CD or in the record that how the accused related to the above said distributors to whom the phensedyl of the above said batch number supplied.

IO of this case during investigation analysed call details of accused persons being mobile number 9735045937 which belongs to Kaimuddin Mia

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and mobile number 7478726257 belongs to Aminul Islam. As per authentic CDR several contact in between above said two mobile numbers. Fact remains that there is no link found from the CDR with this accused Devendra Ahuja. There is nothing to show in the CDR or in the record that this accused has any contact over mobile phone with the co-accused persons.

IO collected total six numbers of bank account of three different bank in respect of Devendra Ahuja and his business concern named as “Jai Ram Ji Ki Medical Agency”. It is stated by the IO that from the transaction of the bank account he noticed that there were huge turn over approximate 63 crore as (as on 19.05.2015 to 12.08.2022) and huge bank transaction link with GR trading company, Manu Pharma, Yash Pharma and AP Pharma which creates reasonable suspicion. It is also submitted by the IO that on analysing the bank transaction they found some suspicious transaction report of Devendra Ahuja and “Jai Ram Ji Ki Medical Agency”. The IO also collected Income Tax Return details since 2014-2015 to 2022-2023 wherein total income and total tax paid by the accused are revealed and it found that in the year 2021-2022 total income abruptly increases which creates reasonable suspicions so far his role in this crime transpired a lot.

Fact remains that the accused disclosed his income in the Income Tax Return and obviously had paid tax shown in the income tax return. No document so far has been collected by the investigation agency to show that the income shown in the tax return not tallied with the business transaction of the accused.

IO had every scope to investigate that the transaction in the bank account not related to the business of the accused maintain in the different register in respect of his business. Only on the basis of suspicion no presumption can be drawn against the accused person.

In the supplementary charge sheet there is six witnesses cited. Among them SI Krishna Bera of police is defacto complainant and there is no hint in the FIR in respect of this accused.

Other witnesses i.e. Nodal Officer M/s. Reliance Jio, Infocom Ltd. and Nodal Officer Vodafone-Idea Telecom Ltd. they have nothing to depose other than in respect of the CDR corrected by the IO. Witness no. 5 and 6 are the IO in this case. Now Let see CSW no. 4 Ismail Sarkar what stated in his 161 statement against this accused. It appears from his statement that he stated that “Kaliachak police arrested one Devendra Ahuja a businessman of phensedyl of UP and now he is languishing in Malda jail. He further stated that the phensedyl illegally supplied from Uttar Pradesh in the border area and smuggled to Bangladesh. If you interrogate him than you can get material about it”.

So the statement of Ismail Sarkar, witness is not sufficient to make out a

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prima facie against the accused to frame charge under NDPS Act.

No contraband articles or phensedyl seized from the possession of the accused person and no document in respect of his business deal seized by the IO to show that his monetary transaction and income is not matched with that of his business transaction or there is any other illegal supply or transaction of money by the accused.

If the material available against the accused person is proved on trial as it is found in the CD and record there is no chance of conviction of the accused/petitioner. It is to be mentioned here that disclosure statement of the accused person against himself may be the basis for the arrest of the accused person and but fact remains that the self incriminating statement of the accused and confession before the prosecution agency by the petitioner/accused are not inadmissible in law.

In view there having been no recovery of any alleged Narcotic or Psychotropic substance having been effected from the petitioner and apart from the self incriminating statement made by the petitioner and the statement of one of the witness Ismail Sarkar and CDR which is not connected with this petitioner and further mere suspicion over transaction through bank account and the income shown in the income tax return are not sufficient to frame a charge under section 29 of NDPS Act against the accused/petitioner.

In the absence of there being any other material available with the prosecution connecting the petitioner with the commission of offence alleged against him, in my view no case is made out against this petitioner/accused to frame charge and therefore the accused is entitled to be discharged.

The petitioner under section 227 of Cr.P.C filed by petitioner/accused is allowed on contest and accordingly the accused/petitioner Devendra Ahuja is discharged from this case.

To 08.11.2024 for Consideration of charge.

Dic & Corr by me.

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cum-ADJ, 3rd Court,
Balurghat,Dakshin Dinajpur.**

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