

NDPS-1/24

S.C-2(7)2024.

11.3.2025

Today is fixed for passing order in respect of the petition dtd 17.12.24 praying for an order of discharging the accd Mahadeb Nayaban from this case and also for appearance and production of the accd.

Out of four accd persons accd Mahadeb Nayaban on C.B is present by filing hazira and accd Jahangir Ali Mondal, Md. Dilnawaz are absent by petition and custody accd Imran Sk @ Raja is produced from J.C virtually.

Now the petition dtd 17.12.24 praying for an order of discharging the accd Mahadeb Nayaban is taken up for passing necessary order.

Ld. Counsel representing the accd Mahadeb Nayaban, in course of hearing submits that this accd is neither named in FIR nor any contraband substance was recovered from the possession of this accd and this accd has been implicated in this case only on the basis of a statement of a co-accd namely Imran Sk recorded U/s. 164 Cr.P.C. It is further submitted by ld. Defence counsel that no sufficient prima facie materials suggesting that this accd might have committed the crime has been disclosed against this particular accd person and in this facts & circumstances he prays for discharging the accd.

Countering the contention of Ld. Defene counsel, Ld. P.P in-charge submits that sufficient prima facie materials showing involvement of this accd in the alleged commission of offence has been reflected and in view of this the instant discharge petition, being without any substance is liable to be rejected.

Before passing necessary order, this Court intends to put here the brief facts of the case of the prosecution. According to the prosecution on 30.12.23 in between 15.40 hrs and 16.45 hrs, S.I Gourab Bhattacharya of Kasba P.S seized 1.980 kgs of contraband substance (Charas) at Sarat Ghosh Garden Rd opposite of Suresh Manna Mistanna Bhandar, Kol-700031 which was found to be hanging from the handle of a motorcycle bearing Regn. No-WB-06N/5083 and the said motorcycle was parked at Sarat Ghosh Garden Rd opposite of Suresh Manna Mistanna Bhandar, Kol-700031 and subsequently on 30.12.23 a nearby CCTV footage discloses that some unknown persons were seen to leave a bag containing seized contraband drugs in hanging condition in the said motorcycle. It is further case of the prosecution that during investigation it was found that the said motorcycle bearing Regn. No-WB-06N/5083 is in the name of one Avijit Das (34) S/o Mukul Das of 1/41, Johura Bazar Lane, P.S Kasba, Kol-700042 and he parked his motorcycle at Sarat Ghosh Garden Rd opposite of Suresh Manna Mistanna Bhandar, Kol-700031 on the day of alleged incident. From the statement of said Avijit Das it was found that some personnel of RPF namely Inspector Rabi Yadav and Constable Nurul Huda apprehended said Avijit Das on the allegation of carrying and possessing contraband drugs with him as they had source information that Avijit Das was carrying some contraband substance with him. From the statement of RPF personnel it was found that they got an information from a source namely Jahangir Ali Mondal, one of the accd of this case that said Avijit Das was carrying drugs with him and on the basis of the said information and after observing all formalities the RPF personnel proceeded to the P.O for working out the said information and after arrival at the P.O the source i.e accd Jahangir Ali

Mondal pointed towards one person namely Avijit Das (34) S/o Mukul Das of 1/41, Johura Bazar Lane, P.S Kasba, Kol-700042 as contraband drugs dealer and as per version of the said source the RPF personnel apprehended Avijit Das and during such apprehension Avijit Das became violent and so RPF personnel had to use minor force. In the mean time local police arrived and from the local CCTV footage it was seen that some other unknown persons have conspired against Avijit Das and kept a bag with contraband substance hanging in his motorcycle. Thereafter S.I Gourab Das of Kasba P.S lodged a written complaint with O.C Kasba P.S to start a case U/s. 20(b)(ii)(C)/58(2)/29 NDPS Act and police after completion of investigation submitted C.S U/s. 20(b)(ii)(C)/58(2)/29 NDPS Act against the accd persons namely Jahangir Ali Mondal, Imran Sk @ Raja, Md. Dilnawaz and Mahadeb Nayaban.

Now after submission of charge sheet, copies have been supplied to the accd persons and at the time of framing charge, the instant petition has been filed on behalf of accd Mahadeb Nayaban praying for an order of discharging him from this case.

Section 228 of Code of Criminal Procedure deals with the provision of framing of charge by a Court of Sessions. Section 228 of Cr.P.C is reproduced as below :-

If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which -

(a) is not exclusively triable by the Court of Session, he may, frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate, [or any other Judicial Magistrate of the first class and direct the accused to appear before the Chief Judicial Magistrate, or, as the case may be, the Judicial Magistrate of the first class, on such date as he deems fit, and thereupon such Magistrate] [Substituted by Act 25 of 2005, Section 22 for "and thereupon the Chief Judicial Magistrate" (w.e.f. 23-6-2006).] shall try the offence in accordance with the procedure for the trial of warrant-cases instituted on a police report;

(b) is exclusively triable by the Court, he shall frame in writing a charge against the accused.

(2) Where the Judge frames any charge under clause (b) of sub-section (1), the charge shall be read and explained to accused, and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried.

Thus from plain reading of Section 228 Cr.P.C it appears that a Judge shall frame a charge against the accd when the Judge is of opinion that there is ground for presuming that the accd has committed an offence. Furthermore, it has been settled by our Hon'ble Apex Court in catena of decisions that at the stage of framing of charge the court should not enter upon a process of evaluating the evidence by deciding its worth or credibility. At the stage of framing charge the court is to find out whether the materials offered by the prosecution to be adduced as evidence are sufficient for the court to proceed further.

This Court has meticulously considered all the materials on record as well as materials on C.D wherefrom this Court finds sufficient materials for framing charge against this accd person i.e Mahadeb Nayaban.

Thus in view of above and also keeping in mind the very principles of framing of charge by a trial Court as decided by our Apex Court in different judgments, this court is not inclined to allow the prayer for discharging the accused Mahadeb Nayaban.

Hence, the petition petition dtd 17.12.24 praying for an order of discharging the accused Mahadeb Nayaban from this case stands rejected on contest.

Fix 10.4.2025 for framing of charge, production and appearance.

D/corr by me,

4th ASJ, Alipore.

(J.O.Code-WB00705).