

NDPS Case No.25 of 2022.
JO CODE No.WB00575
CNR No.WBUD01-000216-2022

Order No.27
29.05.2023

Out of two charge sheeted accused persons namely, Tilak Bhuiya in J/C is produced from J/C and remanded to J/C.

Another accused Hussain Ali on court bail is present by filing hazira.

Ld. Lawyer for both the accused persons is present.

Ld. PP in charge is also present.

The CD is available with case record.

Today is fixed for hearing on the point of charge against both the accused persons.

Ld. Lawyer for the accused Hussain Ali submits that Hussain Ali was not named in FIR. In CS his name has been transpired. He is innocent in this case and nothing has been recovered from his possession and from the statement of the co-accused his name has been transpired and he has been falsely implicated in this case.

It is further submitted that in original complaint the BSF personnel mentioned the name of the associate of principal accused Tilak Bhuiya is Md. Soleman from whom the Tilak Bhuiya allegedly collected recovered Phensedyl syrup for smuggling. But police did not submit CS against Md. Soleman, rather CS has been submitted against accused Tilak Bhuiya as well as this Hussain Ali who is innocent in this case and prays for discharging him from this case.

Ld. PP in charge submits that charge against both the accused persons to be framed.

Having heard both sides, having perused the case record and case diary.

It transpires that the case has been initiated on the basis of original complaint lodged by HC-Kalyan Singh, B. Coy. 135 Bn. BSF of Moraghati BOP with PS Islampur.

In original complaint it is clearly alleged that when BSF personnel was in Indo-Bangladesh Border duty then accused Tilak Bhuiya of same village, Moraghati, was carrying diesel engine power tiller with local khad for unloading the same to his land situated after border fencing towards Bangladesh side then this complainant HC-Kalyan Singh in his supervision and in his presence allowed accused Tilak Bhuiya to unload the khad kept in power tiller in the agricultural land of accused Tilak Bhuiya situated near the fencing of Indo-Bangladesh Border. Then HC-Kalyan Singh found and recovered five bags of Phensedyl cough syrup kept in concealed manner with khad and after checking five bags, 1400 of Phensedyl bottles were recovered for which the Tilak Bhuiya failed to account for. Then these were seized along with power tiller, spray machine and one Samsung key pad mobile from his possession.

On further interrogation by BSF personnel, Tilak Bhuiya disclosed that one Md. Soleman S/o Late Mansur Ali of village Dighirpar, Moraghati, PO Patagara under PS Islampur was involved with Tilak Bhuiya for smuggling Phensedyl and that consignment belonged to Md. Soleman.

Accordingly, that BSF personnel visited the Islampur PS lodged written complaint and handed over the accused person along with seized alamsats to the police officer of Islampur PS with a complaint against Tilak Bhuiya and Md. Soleman.

It is astonished to state that on the basis of said original complaint disclosing the name of principal accused Tilak Bhuiya along with the name of his associate Md. Soleman, started and registered Islampur PS Case No.181/2022 dt.13.03.22 u/s.21(C)/23(C) of NDPS Act. But in formal FIR in a col. no.7 name of suspects only the name of Tilak Bhuiya has been mentioned. Name of Md. Soleman has not been mentioned. Why the name of co-accused Md. Soleman has not been mentioned in formal FIR, the reason is best known to the police officer of Islampur PS.

It is surprised enough to say that IO SI Atanu Ckakraorty after taking charge of investigation on 13.03.22 around 8.15 hrs, examined complainant HC-Kalyan Singh whose statement was fully corroborated with the fact of the FIR so he did not record his statement separately.

It can be clearly said that IO of this case has got the name of co-accused Md. Soleman from the statement of complainant HC- Kalyan Singh as well as from the original complaint.

Apart from it, the HC-Kalyan Singh disclosed the name of principal accused Tilak Bhuiya along with co-accused Md. Soleman to whom allegedly the seized Phensedyl bottles belonged.

In spite of that IO did not mention the name of Md. Soleman. Though on the same day he recorded the statements of other raiding party members u/s.161 statements.

On the contrary, during PC of Tilak Bhuiya, on 13.03.22 the IO recorded the statement of Tilak Bhuiya but on that day the name of Hussain Ali did not come out from the mouth of accused Tilak Bhuiya. Subsequently after thought, during PC the name of accused Hussain Ali has been transpired from the mouth of principal accused Tilak Bhuiya and IO has recorded the statement of some local peoples those who have given a vague statement that Hussain Ali was having criminal background, nothing more nothing less. Though during the police remand period of three days, neither Hussain Ali was arrested nor any recovery was made from the house or possession of the Hussain Ali.

It is pertinent to mention that in a case diary there is no whisper as well as no investigation with regard to the Md. Soleman. On the contrary, IO incorporated the name of Hussain Ali from the statement of co-accused during PC and vague statement of some local peoples.

It is relevant to state that why name of Md. Soleman was not mentioned in formal FIR, why there is no investigation against the Md. Soleman. The reason of it is best known to the IO or police officer of Islampur PS. On the contrary, I find there is no prima facie case against Hussain Ali for framing any charge rather it is a fit case for discharging the accused Hussain Ali.

At the same time there is a sufficient ground for presuming that there is prima facie case u/s.21(C) of NDPS Act against accused Tilak Bhuiya for which the charge u/s.21(C) of NDPS Act against accused Tilak Bhuiya is to be framed.

Therefore, in view of above reason, I find no prima facie materials against the accused Hussain Ali for framing any charge.

As such, the accused Hussain Ali is hereby discharged u/s. 227 r/w Sec.239 of Cr.P.C.

Surety of accused Hussain Ali is discharged from the bail bond accordingly.

At the same time there is a sufficient ground for presuming that accused Tilak Bhuiya has committed an offence u/s.21(C) of NDPS Act and the same is framed in prescribed format to which accused Tilak Bhuiya pleads not guilty by saying 'Ami Nirdosh'and claims to be tried when the charge is read over and explained to him.

To 17.10.2023 for evidence of CSW Nos.1 & 2,

To 18.10.2023 for evidence of CSW Nos.3 & 4,

To 17.11.2023 for evidence of CSW Nos.5 & 6,

To 22.11.2023 for evidence of CSW Nos.7 & 8,

To 23.11.2023 for evidence of CSW Nos.9 & 10.

Prosecution is directed to file written up process for issuance of summons upon the witnesses and to produce the alamsats of the case on the dates fixed as per above schedule.

Spl.Judge(NDPS)

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