

NDPS Case No.15 of 2020
JO CODE No.WB00575
CNR No.WBUD01-00915-2020

Order No.39
05.07.2023

Accused persons namely, 1. Sk Dalim, 2. Khurshed Alam and 3. Abul Kalam @ Abdul Kalam in J/C are produced from J.C and remanded to J/C.

Today is fixed for 3rd day of evidence as per four days schedule starts from 03.07.23.

Today is also fixed for hearing on the point of framing of charge against Abdul Kalam that to be taken up first and disposed of.

Ld. Lawyers for all three accused persons are present.

Ld. PP is present.

On behalf of accused Abdul Kalam one petition is filed with a prayer for discharging him from this case on the grounds stated therein.

The copy is seen to Ld. PP.

The record is taken up for hearing on the prayer of discharge of accused Abdul Kalam.

Ld. Lawyer of the petitioner submits that his client Abdul Kalam was named in FIR. In charge sheet only in accused col.no.12 his name has been inserted but there is no any description in entire body of the charge sheet how and in what way the petitioner Abdul Kalam has been implicated in this case. Even there is no any materials in the copies supplied to the accused Abdul Kalam u/s.207 Cr.P.C for framing of charge against him. Petitioner Abdul Kalam prays for discharging him.

Ld. PP on his turn says that court may pass necessary order on considering the CD.

Heard both sides. Perused the case record and case diary.

Having perused the entire case record and case diary closely, it appears that in suo motu descriptive complaint of the complainant as a police personnel there was no whisper against the accused Abdul Kalam. On the contrary the complaint was lodged for taking action against two custodial accused 1. Sk. Dalim, 2. Khursed Alam and 3. Hajrat Ali @ Hoja who is allegedly mastermind and under whom these two accused persons are functioning as career.

No single word was made within the four corners of the complaint against accused Abdul Kalam.

From the case diaries, it is revealed that police has recorded the statements of as many as 13 witnesses including two independent witnesses and police personnel as member of the raid team lying in page mark 20 to 34 in CD, I find not a single witness has whispered any involvement of this accused Abdul Kalam for committing alleged offence.

It further reveals from the statement of two accused persons dated 30.05.20 lying in page no.38 & 39 of the CD that they disclosed the name of the accused Abdul Kalam as supplier of alleged drugs with whom these custodial accused persons are dealing drug business.

It is pertinent to mention that on 30.05.2020 both the accused persons Sk. Dalim and Khursed were in police custody. It is settled by law that the statements made by accused in police custody are having no evidentiary value.

It is relevant to state that on 30.05.2020 during police custody, another two statements of Sk. Dalim and Khursed Alam recorded by IO, lying in page no.42 & 43 of case diary, did not whisper or implicate accused Abdul Kalam.

In entire case diaries there is no materials available against the accused Abdul Kalam, either recovery from his possession direct as well as conscious, any statements of the witnesses implicating Abdul Kalam. Nothing materials are found in case diary for which the charge can be framed.

In view of the foregoing reasons and discussions I find that there is no sufficient materials against the accused Abdul Kalam to presume him that he has committed any offence.

On the other way it can be said that there is no sufficient materials in case record as well as case diary to frame any charge against the accused Abdul Kalam.

It is a fit case for discharging the accused Abdul Kalam by allowing his prayer u/s.227 r/w sec.239 of Cr.P.C.

Hence,

the accused Abdul Kalam is hereby discharged from this case at once u/s.227 r/w sec.239 of Cr.P.C.

One witness CSW-6 is present as per scheduled date of evidence.

Accordingly, he is examined and cross-examined in full as PW-2 in respect of two custodial accused persons Khursed Alam and Sk. Dalim. No other witness of the prosecution is present. The case is adjourned today already date fixed tomorrow for further evidence.

To-date (**06.07.2023**) for further evidence against two custodial accused persons Sk. Dalim and Khursed Alam.

CD be returned.

Spl.Judge(NDPS)

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