



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.5427 OF 2018

Mamta Mukund Kulkarni] .. Petitioner
vs.
State of Maharashtra] .. Respondent

Mr.V.M. Thorat a/w Mr. M.V. Thorat and Amar Bodke for the Petitioner.
Dr.Ashvini Takalkar, APP for the State.

**CORAM : BHARATI DANGRE &
MANJUSHA DESHPANDE, JJ**

DATE : 22nd JULY, 2024.

JUDGMENT (PER BHARATI DANGRE, J) :

1] The present Writ Petition is filed by the Petitioner who is arraigned as accused No.17 in CR No.II3056/2016, registered with Vartak Nagar Police Station, Thane, invoking offence under Section 8(c) , 9(a), 22, 23, 24, 25(a), 27(a), 28 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985.

The Petition being filed under Article 226 of the Constitution of India, seek quashment of the above FIR on the ground that there is no material justifying impleadment of the Petitioner as an Accused and by no stretch of imagination can she be held vicariously liable for the act committed by the co-accused in the aforesaid crime.

The Petitioner assertively claim that even if the entire charge-sheet, which is filed on completion of investigation of the subject CR is

RAJSHREE
KISHOR
MORE

Digitally signed
by RAJSHREE
KISHOR MORE
Date:
2024.08.05
17:59:01
+0530

perused, there is no iota of evidence against her, prima facie indicating towards her guilt for the offences under the NDPS Act and, therefore, if the proceedings are continued against her, it would amount to grave injustice and would result in abuse of process of law.

2] We have heard the learned counsel Mr. V.M. Thorat for the Petitioner alongwith Mr.M.V. Thorat and Dr. Ashvini Takalkar, the learned APP for the State.

Since the charge-sheet is filed in the present case, we have also perused the same and though the charge sheet runs into numerous pages, we have been taken through relevant material in the charge-sheet, which pertain to the Petitioner.

3] The Petitioner hails from entertainment industry and claims to have worked as an actress in 50 Bollywood films and also claims to be part of various commercials.

At the outset the Petitioner has categorically admitted that she is acquainted with Vicky Goswami, one of the co-accused in the aforesaid NDPS case i.e. the subject FIR.

4] Perusal of the charge-sheet reveal that the subject complaint was filed by Mahadeo Chabukswar, Constable working with NDPS Department of Crime Branch, alleging that on 12.04.2016, a secret information received from Sr. PI of the Police Station was passed on to him regarding Sale and Purchase of Ephedrine, a controlled substance and the vehicle, number of which was also provided, was carrying Ephedrine powder on a particular route and the same was likely to be sold in the city of Thane.

Upon the information received, by following necessary procedure

in that regard, including the arrangement for two panchas and collection of necessary material for the purpose of sealing, labeling and endorsing alongwith the weighing machine and drug detection kit, the complainant alongwith whole squad approached the spot of detection.

The trap yielded success as accused one Sagar and Mayur were found in possession of 1 Kg crystal powder and a cash amount. The seized material was tested with the help of drug detection kit and it was confirmed that it was Ephedrine. The two accused persons Sagar and Mayur came to be arrested and pursuant to the registration of the crime, 10 more accused persons came to be arrested, whereas, 7 were shown to be absconding/wanted.

As far as involvement of the present Petitioner is concerned, the prosecution has alleged in the charge-sheet that Accused No.6 Manoj Jain, Accused No.10 Jay Mukhi and wanted accused Vicky Goswami with whom the Petitioner was acquainted and one Kishor Rathod and Dr.Abdulla alongwith two associates had a meeting in Hotel Bliss in Mubasa, Kenya in the month of January, 2016 and as per the prosecution conspiracy was hatched by the aforesaid accused, in pursuance of which the Ephedrine powder which was lying in Avon Life Science Company at Solapur, would transported to Kenya for the purpose of manufacturing Methamphetamine out of the Ephedrine powder, to be sold throughout the world by the accused Vicky Goswami and Dr. Abdulla, for their personal benefit.

It is further alleged that, as per the conspiracy, Accused No.5 Punit Shringi and Accused No.10 Jay Mukhi smuggled 100 kg. Ephedrine powder from Avon Life Science Company at Solapur and it was forwarded through Accused Kishor Rathod to Accused No.8 Narendra Kacha, for processing. After processing, 70 kg. processed

Ephedrine powder was sent through Accused Kishor Rathod and Jay Mukhi to Mohd. Ali Road in Mumbai to an associate of accused Vicky Goswami in Kenya. The processed Ephedrine powder, was, thereafter, delivered to Vicky Goswami in Kenya, who sent crores of rupees from Kenya to Gujarat and from Gujarat to Mumbai via Havala, the end receiver of which, was accused Manoj Jain.

It is also the further case of the prosecution in the charge sheet that in furtherance of the conspiracy, Accused Punit Shringi, upon instructions of accused Manoj Jain, smuggled out 1300 Kg. Ephedrine powder from Avon Life Science Company at Solapur and the contraband was passed to Kenya for the purpose of manufacturing Methamphetamine from Ephedrine powder.

5] The charge-sheet has compiled the material as regards several other accused persons including accused No.3 Rajendra Dimri and Accused No.4 Dhaneshwar Swami and it is alleged that by following the aforesaid modus operandi, accused persons engaged in illegal sale of Ephedrine powder and processed Ephedrine and profited themselves by earning crores of rupees.

As far as the present Petitioner is concerned, she came to be arraigned as Accused No.17 through the supplementary charge-sheet, where she is accused for hatching a conspiracy by which Ephedrine powder lying in Avon Life Science Company at Solapur, is transported to Kenya and for establishing these accusations, reliance is placed on two statements of co-accused, Kishor Rathod and Bharat Kathiya, who have described her as a conspirator, as she is informed to be present in the meeting in Mubasa, Kenya, which was held in January, 2016. Amongst the two statements, the statement of accused Kishor Rathod is recorded by the Police Officer and admittedly this statement, is not

acceptable, except for the purpose as set out in Section 162 of the Code.

Turning to the statement of Bharat Kathiya, it is submitted on behalf of the Petitioner that the statement is based on hearsay evidence.

6] It is argued by Mr.Thorat that even if the statements are accepted as it is, there is no role attributed to the Petitioner except her presence and for the act of other accused persons and specifically Vicky Goswami, she cannot be vicariously held liable and trial cannot be fastened upon her only on the basis of the statement of the accused persons, which is not admissible in law.

7] In the wake of the argument, we have perused the material in the charge-sheet, which include the statement of various witnesses. The statement of Jay Mukhi recorded under Section 164 of the Cr.P.C. by the Magistrate, refer to a meeting dated 08.01.2016 held in Hotel Bliss, Mubasa, Kenya, in which Vicky Goswami and his two partners Manoj Jain and Kishor Rathod were present and a reference is also found of the present Petitioner.

Mr.Mukhi has specifically stated that all the persons had assembled in the dining hall and the present Petitioner was sitting in the Sofa, placed next to the dining table.

According to the said witness, the accused Manoj Jain made reference to 1300 Kg. of Ephedrine and he was suggested by Kishor Rathod that the contraband shall be sent to Ahmedabad for polishing and thereafter the plan was also revealed that Vicky Goswami would sell this contraband at the rate of 50,000 dollar per kg. and the manner in which the profits would be shared and at the relevant time, Vicky

disclosed that he was not interested in his share in the profit, but he wanted his one and half crores and the amount given by him to Kishor Rathod.

He also make reference to the statement of Manoj Jain who disclosed that the financial condition of his company was not good and, therefore, he offered the shares of his company, which were slated at Rs.35.40 per share, but he offered them at the rate of Rs.26/- and disclosed that since he was promoter, the shares were in the name of his relative and friends in an LLP, but if they could be transferred.

At his instance, according to this witness, the Petitioner is alleged to have stated that she will consult the Chartered Accountant and take a decision upon the said proposal. Mr.Manoj Jain is also alleged to have stated that, if more than 11,00,000 shares are transferred, Mamta Kulkarni can be made the Director of the Company and the business then shall continue as per her say. This statement is recorded under Section 164 of the Cr.P.C.

8] Another statement in the charge-sheet which has assigned a somehow similar role to the Petitioner is the statement of Kishorsinh Bhavsinh Rathod , recorded under Section 161 of the Cr.P.C. by the police and he also speak of the involvement of the present Petitioner in a similar way, which Mr. Mukhi had narrated. He state that after the arrangement was worked out in the meeting, it was decided that Mamta Kulkarni would be made Direcetor of Avon Life Science Company and the contraband Ephedrine shall be transferred to Kenya and since Manoj Jain, was the Promotor of the Company and the shares could not be purchased by him, they would be purchased in her name.

9] The charge-sheet also consist of the statement of one Sanjay

Sharma, who was contacted by Mamta Kulkarni from Dubai in the year 2002 for opening of SB-NRI and NRO Accounts and while he was in UTI Bank, Lokhandwala Branch, she was having an account in the branch and therefore she was acquainted to him.

Mr. Sharma has given the details of her family and has offered details as to how after the death of her father, who had an account in Indian Overseas Bank and how the amounts were invested as per her directions and even he was introduced to Vicky Goswami by her, and was subsequently informed that she was engaged to him. Mr. Sharma has offered the details the FDs in her account and he has also stated that he was contacted by both i.e. Mamta Kulkarni and Vicky Goswami as regards opening of some accounts, but he was unaware about her whereabouts. This witness in his supplementary statement has offered details of the amounts in her various bank accounts including the fixed deposits and also the amount in Indian currency in the Axis Bank.

10] The statement of one Mamta Malhotra, treasurer of a Co-operative Housing Society, of which the present Petitioner was a member, is also recorded, where she has stated that after 2009, Mamta Kulkarni had nominated her sister and one Vijay Goswami, relative of Vicky Goswami in 50% share as nominees.

11] On perusal of the entire material contained in the charge-sheet, we are of the view that this material is not sufficient to sustain a charge against her under the NDPS Act and specifically under Section 8(c) as well as 9(a).

In addition, the material collected and presented in the charge-sheet is also insufficient for framing of charge under Section 27A, which prescribe punishment for financing illicit trafficking and harbouring

offenders. Mere presence of the Petitioner in one of the meetings, even by accepting the material as what is reflected in the charge-sheet would definitely not be sufficient for sustaining conviction under the provisions which are invoked in the charge-sheet.

12] It being a trite position of law that the power of this Court, which is inherently saved under Section 482 of the Criminal Procedure Code, can be exercised, when it is found that there is abuse of process and its exercise is to secure justice. In **State of Haryana and Ors. vs. Bhajanlal & Ors.**¹, the Apex Court has set out broad categories of cases in which the inherent power under Section 482 Cr.P.C. could be exercised and Para 102 of the said decision, reads thus :-

“ 102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

¹ 1992 Supp(1) SCC 335

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused. in any of the

(6) Where there is an express legal bar engrafted provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

13] Applying the aforesaid edicts to the case before us, in absence of any material establishing the charge under NDPS Act and even accepting the material in the charge-sheet in its entirety, at the most her presence has been established in the meeting. In the charge-sheet there is no material to demonstrate that the discussion that took place in the meeting about transfer/purchase of shares in her name and making Director of the Company, was ever given effect to.

14] On the basis of the material in the charge-sheet, we are of the clear opinion that the material collected even on being accepted in entirety, do not prima facie constitute any offence against the Petitioner. Therefore, in wake of contingency specified in Bhajanlal (*supra*) in clause (1), we are satisfied that continuation of the prosecution against the Petitioner would be nothing short of abuse of process of Court and despite filing of charge-sheet, we do not deem it appropriate to direct the Petitioner to seek discharge, but on being satisfied that this is a fit case where we should exercise our inherent powers, since the

proceedings are manifestly frivolous and vexacious.

By following the principle of law laid down by the Apex Court in the case of *Mahmood Ali vs. State of U.P.*², we deem it appropriate to quash and set aside FIR No.II 3056/16 alongwith NDPS Case No.28/2016, pending before the NDPS Court, Thane, qua the Petitioner.

Writ Petition is allowed in the aforesaid terms.

[MANJUSHA DESHPANDE, J.]

[BHARATI DANGRE, J.]

² 2023 SCC OnLine SC 950,