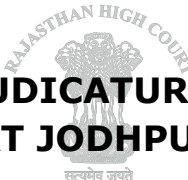




**HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR**



S.B. Criminal Revision Petition No. 284/2024
CNR: RJHC010105192024 | URN: CRLR / 623U / 2024

Bheru Lal S/o Shankar Lal Aheer, Aged About 30 Years, R/o
Chaktiya Ps Mangalwad, Teh Dungla, Dist Chittorgarh, Raj.

-----Petitioner

Versus

Union Of India, Through Ncb

-----Respondent

For Petitioner(s)	:	Mr. Muktesh Maheshwari Mr. Aidan Chaudhary Mr.Gaurav Chaudhary
For Respondent(s)	:	Mr.Thana Ram Bishnoi Mr.Gopal Singh for CBN

HON'BLE MR. JUSTICE FARJAND ALI

Order

Reportable-
28/09/2026

- 1.By way of filing the instant criminal revision petition under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973, the petitioner has assailed the order dated 06.12.2023 passed by the learned Special Judge, NDPS Cases No.1, Chittorgarh in Sessions Case No.153/2023, whereby charge for the offence punishable under Section 8/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter, 'the NDPS Act') has been framed against the petitioner.
- 2.The grievance of the petitioner, in substance, is that his implication in the case rests essentially upon the statements



allegedly made by co-accused Rameshwar and Kalu under Section 67 of the NDPS Act and the statement thereafter attributed to the petitioner himself under the said provision. It is contended that neither was the petitioner present at the place of search and seizure nor was any contraband recovered from his possession; further, the record does not disclose any specific overt act constituting abetment or conspiracy within the meaning of Section 29 of the NDPS Act. It is also contended that the alleged explanation furnished by the petitioner regarding possession of ₹68,500/- is, by itself, wholly insufficient to constitute the offence alleged against him.

3. Briefly stated, the prosecution case is that on 15.02.2023, on the basis of source information, a team of the Central Narcotics Bureau proceeded to village Chaktiya, District Chittorgarh, where searches were conducted at the premises allegedly connected with accused Rameshwar, Kalu and their other brothers and substantial quantities of opium, poppy husk and certain tablets were allegedly recovered. Rameshwar and Kalu were thereafter taken to the office of the Deputy Narcotics Commissioner, Neemuch, where their statements were recorded and they were arrested. Subsequently, the petitioner Bheru Lal, who is stated to be a distant brother-in-law of Rameshwar, came to meet the arrested accused persons. According to the prosecution, on the basis of the statements of Rameshwar and Kalu,



summon under Section 67 of the NDPS Act was issued to the petitioner and his statement was recorded, wherein he allegedly admitted having assisted the accused persons in their illegal narcotic trade. The petitioner was thereafter arrested for the offence punishable under Sections 8/18(B), 15(C), 22(C) and 29 of the NDPS Act. Upon his personal search, cash amounting to ₹68,500/- and an identity card relating to service as a constable in the Rajasthan Police were allegedly recovered. The prosecution further alleges that, upon being questioned regarding the cash, the petitioner stated that he had brought the amount with an intention to pay it to the narcotics officials so as to secure some relaxation for his distant brother-in-law Rameshwar in relation to his statement. The charge-sheet was subsequently filed and the learned trial Court, vide order dated 06.12.2023, framed charge against the petitioner under Section 8/29 of the NDPS Act.

4. Having heard learned counsel for the parties and having carefully scrutinized the material placed on record, this Court finds that the controversy requires examination within the limited, yet significant, parameters governing exercise of jurisdiction at the stage of framing of charge. It is well settled that although the Court is not required to conduct a roving appreciation of evidence or determine the ultimate probative worth of the prosecution case at this stage, it is equally impermissible to mechanically frame a charge merely



because an allegation has been made. The Court is required to ascertain whether the material on record discloses the ingredients of the offence alleged and whether the material gives rise to the requisite degree of suspicion against the accused. The principles governing Sections 227 and 228 Cr.P.C. recognise the power and duty of the Court to sift the material for the limited purpose of determining whether a prima facie case exists. *Union of India v. Prafulla Kumar Samal*, (1979) 3 SCC 4, remains the governing exposition in this regard.

5. In the present matter, the charge framed against the petitioner is under Section 8 read with Section 29 of the NDPS Act. Section 29 is not attracted merely by reason of an association, relationship or acquaintance with a person allegedly involved in an NDPS offence. The prosecution is required to place material indicating either abetment of an offence punishable under Chapter IV of the NDPS Act or participation in a criminal conspiracy to commit such an offence. The statutory requirement, therefore, is not satisfied by a general allegation of 'cooperation' unless the material discloses, at least prima facie, the nature of the alleged assistance, the act constituting such assistance, or the circumstances from which participation in the alleged conspiracy may reasonably be inferred. The statutory language of Section 29 itself makes abetment or



participation in a criminal conspiracy the gravamen of the offence.

6. Tested on the aforesaid touchstone, the material relied upon by the prosecution against the petitioner suffers from a conspicuous lack of specificity. The information furnished under Section 57 of the NDPS Act records that, after Rameshwar and Kalu had been arrested, the petitioner came to meet them and that, thereafter, on the basis of the statements of the said accused persons, a summon under Section 67 of the NDPS Act was issued to the petitioner. The relevant portion states, in substance, that the petitioner had 'cooperated' with the arrested accused persons in their business of trafficking illicit narcotic substances. However, the record does not disclose what precisely constituted such cooperation.

7. The expression 'cooperated' is conspicuously bereft of particulars. The prosecution material does not specify whether the petitioner allegedly procured any contraband, transported it, stored it, concealed it, financed its procurement, facilitated its sale, introduced purchasers, arranged transportation, provided premises, communicated with suppliers or purchasers, or performed any other identifiable act in furtherance of the alleged narcotic trade. No particular transaction, date, place, quantity, vehicle, financial dealing, communication or other overt act has been



attributed to the petitioner. The allegation, in its present form, is therefore not merely general; it is substantively indeterminate.

8. This aspect assumes considerable significance because the charge is not under a provision where mere association with the principal offender constitutes the offence. The petitioner is sought to be prosecuted with the aid of Section 29. Consequently, the prosecution material must, at the minimum, disclose a factual substratum from which abetment or participation in a criminal conspiracy can legitimately be inferred. A bare assertion that the petitioner 'cooperated' with the principal accused, without disclosing the nature, manner or occasion of such cooperation, cannot by itself supply the missing ingredients of Section 29.

9. The evidentiary foundation upon which the aforesaid allegation rests also requires careful consideration. The prosecution itself records that the petitioner was implicated on the basis of the statements of co-accused Rameshwar and Kalu recorded under Section 67 of the NDPS Act. The legal position in this regard now admits of no ambiguity. In *Tofan Singh v. State of Tamil Nadu*, (2021) 4 SCC 1, the Supreme Court, upon reconsideration of the earlier line of authorities, categorically held that a statement recorded under Section 67 of the NDPS Act cannot be used as a confessional statement in the trial of an offence under the NDPS Act. The



Constitution Bench further held that officers invested with powers under Section 53 of the Act are 'police officers' for the purposes of Section 25 of the Evidence Act and that a confessional statement made to such an officer cannot be taken into account to convict an accused.

10.The consequence of *Tofan Singh* is not confined merely to the ultimate stage of conviction. Where the very foundation for implicating a person in the present case is stated to be the alleged confession of co-accused recorded under Section 67, such material cannot be treated as an independent substantive confession supplying the missing ingredients of the offence. The Supreme Court has subsequently reiterated that, in the absence of substantial material other than such Section 67 statements, such statements cannot furnish the basis for sustaining criminal proceedings against an accused under the NDPS Act.

11.In the case at hand, the position is even more significant because the Investigating Officer, in his deposition, has admitted that the petitioner was not present at the place where the alleged contraband was recovered; that no contraband was recovered from his possession; and that there was no independent evidence connecting him with the alleged narcotic activity apart from the statements of Rameshwar and Kalu. The Investigating Officer has further admitted that the petitioner was not named in the initial



information and that the information furnished under Section 57 of the NDPS Act did not attribute to the petitioner the commission of an offence under the relevant substantive provisions of the Act.

12. Thus, once the Section 67 confessional material is kept outside the evidentiary consideration in view of the law declared in *Tofan Singh*, what remains against the petitioner must independently disclose the ingredients of Section 29. On the material presently placed before this Court, that foundational requirement is not satisfied.

13. The prosecution has sought to derive further incriminating significance from the recovery of ₹68,500/- from the personal possession of the petitioner. According to the prosecution, the petitioner allegedly stated that the amount had been brought for being paid to the narcotics officials so as to secure some relaxation for Rameshwar in relation to his statement. This circumstance, however, cannot be elevated beyond the evidentiary significance which it legitimately bears.

14. The allegation regarding the intended payment of money is, in its present form, itself founded upon an alleged statement attributed to the petitioner. More importantly, even assuming such circumstance at its highest, the prosecution has not demonstrated how possession of ₹68,500/- or the alleged intention to procure some favourable treatment for



Rameshwar constitutes, without more, abetment or criminal conspiracy in respect of the substantive NDPS offence allegedly committed by the principal accused. There is no material demonstrating that the amount represented the proceeds of narcotic trafficking, that it was consideration for procuring or transporting contraband, that it was contributed towards a common narcotic enterprise, or that it was otherwise connected with the commission of the offence under Chapter IV of the NDPS Act.

15.The distinction is material. An inference of criminal conspiracy cannot be founded merely upon a hypothesis which is itself sought to be constructed from another hypothesis. The Court, particularly while dealing with an offence carrying stringent statutory consequences, must identify the factual bridge connecting the circumstance relied upon with the statutory ingredients of the offence. That bridge is conspicuously absent in the present case.

16.The prosecution's formulation, in substance, proceeds thus: the petitioner possessed ₹68,500/-, the amount was allegedly intended to be given to narcotics officials, and therefore the petitioner must have been connected with the narcotic activities of Rameshwar and Kalu. Such reasoning involves a chain of inference for which the record, at the stage under consideration, discloses no independent factual foundation. The alleged possession of cash may constitute a



circumstance requiring explanation in an appropriate proceeding; however, it cannot, without a demonstrable nexus with the alleged narcotic offence, be transmuted into prima facie material of abetment or conspiracy under Section 29.

17.It is also noteworthy that the petitioner is not alleged to have participated in the search proceedings, was not found at the place of recovery, and was not found in possession of any narcotic drug or psychotropic substance. No contraband, incriminating article connected with narcotic trafficking, vehicle used for transportation, transaction record, communication or other material has been shown to have been recovered from or attributable to him. The prosecution case against him thus remains dependent upon an allegation of 'cooperation' of unspecified nature and the alleged statements forming the basis of such allegation.

18.This Court is conscious that at the stage of framing of charge, the prosecution is not required to establish the case beyond reasonable doubt. Equally, however, the statutory threshold cannot be reduced to a mere possibility of involvement. The material must disclose the ingredients of the offence with sufficient factual specificity to warrant the accused being put to trial. The Supreme Court has repeatedly emphasised that, while the Court should not conduct a mini-trial, it is entitled to sift and weigh the



material for the limited purpose of determining whether a prima facie case or grave suspicion arises. Where the material gives rise to nothing beyond suspicion which is conjectural or unsupported by legally cognizable material, continuation of the criminal trial would not be justified.

19.The present case, when examined cumulatively, does not disclose the requisite foundational material against the petitioner. The initial source information did not name him; he was not present at the place of recovery; no contraband was recovered from him; no specific overt act in furtherance of the alleged narcotic trade has been attributed to him; the allegation of 'cooperation' is wholly unspecified; the principal material relied upon for his implication emanates from statements recorded under Section 67 of the NDPS Act; and the alleged explanation regarding ₹68,500/- does not, without an independent and legally sustainable nexus, disclose abetment or criminal conspiracy to commit an offence under the NDPS Act.

20.The stringent nature of the statutory scheme of the NDPS Act cannot, conversely, become a reason for lowering the threshold of judicial scrutiny at the stage of framing charge. Stringency of punishment makes it all the more necessary that the foundational ingredients of the offence are demonstrably disclosed by legally cognizable material. The



rigour of the statute cannot substitute the absence of the essential factual nexus required for attracting Section 29.

21. Consequently, this Court is of the considered view that the material available on record, even if taken at its highest and without undertaking a detailed appreciation of its ultimate probative value, does not disclose sufficient ground for presuming that the petitioner had abetted or was a party to a criminal conspiracy for commission of the substantive offences under the NDPS Act. The charge under Section 8/29 of the NDPS Act, as framed against the petitioner, therefore cannot be sustained.

22. Accordingly, the criminal revision petition is allowed. The impugned order dated 06.12.2023 passed by the learned Special Judge, NDPS Cases No.1, Chittorgarh in Sessions Case No.153/2023, insofar as it relates to the present petitioner Bheru Lal son of Shanker, is hereby set aside.

23. The petitioner is accordingly discharged from the offence punishable under Section 8/29 of the NDPS Act in the aforesaid Sessions Case. It is clarified that the observations made herein are confined to the case of the present petitioner and shall not prejudice the prosecution or the proceedings against the remaining accused persons, which shall be considered by the learned trial Court strictly on their own merits and in accordance with law.

24. The record of the learned trial Court be returned forthwith.





25.Stay application, if any, stands disposed of accordingly.

(FARJAND ALI),J

111/Divya Daiya

