



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



S.B. Criminal Miscellaneous (Petition) No. 5721/2024
Shri Sanjeev Khokha S/o Shri (Late) R.K. Khokha, R/o Plot No.
63, First Floor, Udyog Vihar Phase-I, Gurugram, Haryana
-----Petitioner

Versus

Union Of India, Through Central Narcotics Bureau (CNB) Office
Of Superintendent (P) Pre And Intl. Cell, Bhawani Mandi, District
Jhalawar-326502.
-----Respondent



For Petitioner(s) : Mr. Madhav Mitra, Sr. Adv. with
Mr. Nitin Bhandari
Mr. Sumit Rastogi
Ms. Jaya Mitra
For Respondent(s) : Mr. Tej Prakash Sharma, Special PP

HON'BLE MR. JUSTICE SAMEER JAIN
Order

REPORTABLE

Reserved On :: 04/09/2024

Pronounced On :: 19/09/2024

1. The present petition is filed under the provisions of Section 528 of B.N.S.S., 2023 assailing the order dated 06.11.2017 passed by learned Special Judge (NDPS) District and Sessions Court, Bhawanimandi, Jhalawar in Session Case no. 03/2010.
2. In a nutshell the factual narrative as averred by the learned counsel representing the petitioner is that the petitioner being proprietor of the firm viz. India International Builders (hereinafter referred to as the firm) was engaged in the business of construction ever-since the year 1983. On 13.04.1998 the firm of the petitioner entered into an agreement (Annexure P-3) with M/s SS Constructions (hereinafter referred to as contractors) whereby, the petitioner was entrusted with the work of outsourcing job



works to the contractor upon the site of construction. However, the petitioner's firm suffered a gargantuan loss and in order to settle the debts of the contractor, the petitioner entered into a settlement agreement with the contractor whereby, one car having registration no. DL-4-CH-1763: Maruti Zen (hereinafter referred to as the offending vehicle) *inter alia* several other machineries, equipment and vehicles was handed over to the contractor in the year 1998. The said settlement agreement was reduced in writing on 07.03.2000 (Annexure P-4).

3. Learned counsel representing the petitioner had fairly conceded with the fact that since the offending vehicle was under a hypothecation lease, the same was not transferred to the contractor and the petitioner had undertaken to provide a NOC to the contractor upon discharge of the same. The controversy qua the instant dispute arose when on 11.10.2009 three persons were arrested with contraband of 1100 gms. of opium from the offending vehicle. Resultantly, on 14.10.2009 the Central Narcotics Bureau (hereinafter referred to as CNB) issued notices qua the petitioner (as the offending vehicle was registered under the petitioner's name). Sequentially, a criminal case bearing no. 1/2009 was registered against the accused, and learned Special Judge (NDPS Act) District and Sessions Court, Jhalawar, Rajasthan ordered conviction to the accused persons by sentencing 5 months of rigorous imprisonment and a fine of Rs. 10,000/- each.

4. Consecutively, the CNB on 25.05.2017 filed a supplementary complaint before the Special Judge (NDPS Act) District and Session Judge, Bhawanimandi, Rajasthan, ensuing to which the petitioner was summoned for offences under sections 8/25 of



NDPS Act, 1985. Nevertheless, the petitioner failed to appear before the concerned authorities on the prescribed date; therefore, vide order dated 06.11.2017 non-bailable warrants were issued qua the petitioner.

5. In this backdrop, learned counsel appearing for the petitioner had placed reliance upon the contents of Annexure P-4 i.e. the settlement agreement in-between the petitioner and the contractor and had submitted that the petitioner had already transferred the offending vehicle to S.S. Construction Company in the year 2000. Withal, invoking the provisions of section 25 read with section 35 of NDPS Act, 1985 and taking cognizance qua the petitioner without any substantial evidence is intrinsically wrong and violative qua the petitioner's legal rights. It was further contended that the petitioner was already enlarged on anticipatory bail considering the vital aspect of transfer of the said vehicle to latter company. Lastly, learned counsel had urged that in order to derive a better depiction of the ownership of the offending vehicle past decade records qua the insurance and other relevant documents can be procured by the investigating agencies.

6. In support of the contentions made insofar, learned senior counsel had placed reliance upon the ratio encapsulated in **Criminal Appeal nos. 735-55 of 2009** titled as **State of Punjab vs. Davinder Pal Singh Bhullar & ors., Minu Kumari and ors. vs. State of Bihar and ors.** reported in **AIR 2006 SC 1937**, **Prashant Bharti Vs. State of NCT of Delhi** reported in **AIR 2013 SC 2753** and **Shaileshbahi Ranchhodbhai Patel & anr. vs. State of Gujarat** in **Criminal Appeal no. 1884/2013**. Whilst placing reliance upon the afore-cited dictums learned



counsel had averred that in order to invoke the provisions of Section 25 and 35 of the NDPS Act, certain foundational facts ought to be exhibited by the prosecution to prove their case. Moreover, the *onus* to prove the allegations is on the prosecution. To conclude learned counsel had submitted that the name of the petitioner was not encompassed in the foremost case filed against the main accused moreover, the petitioner's name was subsequently added in the said complaint, which reflects dubiousness on part of the investigating agencies.

7. *Per contra*, learned special Public Prosecutor had vehemently opposed the contentions made by the counsel representing the petitioner and had submitted that the impugned order was passed in a case that was registered way back in the year 2010, and till date apart from the present petition no protest/assailing application/petition is filed by the petitioner. Therefore, the instant petition is hit by the principle of delay and laches. It was further contended that the provisions of section 25 and 35 of the NDPS Act, draws an inference and presumption against the registered owner of the conveyance in question. Additionally, a bare perusal of the provisions of Section 35 of the NDPS Act, unambiguously clarifies that the malicious/culpable mental state of the accused shall be presumed by the Court, however, the same is palpably rebuttable during the trial.

8. Furthermore, it was averred that the petitioner was summoned before the appropriate authority under section 67 of the NDPS Act, nevertheless, due to non-compliance of the said summons, vide order dated 06.11.2017 non-bailable warrants were issued against the petitioner. At this juncture, learned



counsel representing the respondent had drawn the attention of the Court qua the contents of the supplementary complaint filed by CNB dated 25.05.2017 and had submitted that therein, it is categorically noted that the official address that was tendered by the petitioner qua the S.S. Constructions was incorrect and even after assiduous efforts of the investigating agencies the same could not be located.

9. Moreover, the registration and subsequent records identifies the petitioner as the owner of the offending vehicle. To conclude learned counsel had submitted that the instant petition is filed at a belated stage, merely to affect and cause delay in the ongoing proceedings.

10. Upon an assiduous scanning of the record, considering the aforementioned facts and circumstances of the case, considering the judgments cited at the Bar and taking note of the arguments averred by the learned counsel for both the parties, this Court at this juncture, deems it appropriate to jot down indubitable facts:-

10.1 That resultant to the supplementary complaint dated 25.05.2017, learned Special Judge (NDPS) District and Sessions Court, Bhawanimandi, Jhalawar vide order dated 06.11.2017 issued non-bailable warrants against the petitioner.

10.2 That the petitioner was enlarged on anticipatory bail vide order dated 21.08.2023 in S.B. Criminal Miscellaneous Bail Application no. 2000/2023 by the co-ordinate bench of this Court.

11. Considering the aforementioned observations; juxtaposing the averments raised by the learned counsel for both the sides and taking note of the provisions enumerated under the NDPS Act,



this Court deems it apposite to dismiss the instant petition for the reasons noted herein below:

11.1 That in order to invoke the inherent jurisdiction under Section 528 of B.N.S.S. the High Court has to be copiously satisfied, that the material produced by the accused is such, that would lead to the conclusion that his defense is based on sound, reasonable, and indubitable facts; the material produced is such as would rule out and displace the assertions contained in the charges leveled against the accused; and the material produced is such, as would clearly reject and overrule the veracity of the allegation contained in the accusations leveled by the prosecution. It should be sufficient to rule out, reject and discard the accusations leveled by the prosecution, without necessity of recording the evidence. For the material relied by the accused ought not to be refuted by the prosecution. The material relied upon by the accused should be such, as would persuade a reasonable person to dismiss and condemn the actual basis of the accusations as false. Nevertheless, the contentions made herein, are downright rejected by the prosecution, and this Court is convinced with the averments made by the learned counsel representing the respondent.

11.2 That it is a settled position of law that *vigilantibus non dormientibus jura subveniunt* meaning, law aids only those who are vigilant about their rights and not those who sleep over their rights. In the matter in hand, it is noted that assailing the order dated 06.11.2017 the petitioner has approached the Court/filed the present petition in the year 2024. Moreover, no reasonable



explanation qua the delay of approximately six years is asserted by the learned counsel for the petitioner.

11.3 That the provisions of Section 25 and 35 of the NDPS categorically draw an inference qua the owner of the conveyance and qua the strict presumption of culpable mental state of the accused. In the matter in hand, it is inferred that the ownership of the said offending vehicle is reflected qua the petitioner. For the sake of convenience the relevant provisions of the NDPS Act are reproduced herein below:

"25. Punishment for allowing premises, etc., to be used for commission of an offence.—

Whoever, being the owner or occupier or having the control or use of any house, room, enclosure, space, place, animal or conveyance, knowingly permits it to be used for the commission by any other person of an offence punishable under any provision of this Act, shall be punishable with the punishment provided for that offence.

35. Presumption of culpable mental state

(1) In any prosecution for an offence under this Act which requires a culpable mental state of the accused, the court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

Explanation- In this section "culpable mental state" includes intention motive, knowledge of a fact and belief in, or reason to believe, a fact.

(2) For the purpose of this section, a fact is said to be proved only when the court believes it to exist beyond a reasonable doubt and not merely when its existence is established by a preponderance of probability."

11.4 That the contents of the supplementary complaint categorically states that during the investigation it was noted that the petitioner has played indefensible tactics with the investigating



authorities by tendering wrong addresses qua the subsequent buyer(s) of the offending vehicle and S.S. Constructions. Moreover, despite the fact that summons under section 67 of NDPS were served upon the petitioner, he had on his own accord omitted to mark presence before the authorities. The relevant extract of the supplementary complaint dated 25.05.2017 is reproduced herein below:

"3. प्रकरण में आगे विवेचना करते हुए आरापियों द्वारा परिवहन की जा रही मारुति कार डीएल 4 सीएच 1763 जेन कार के वास्तविक मालिक के संबंध में विवेचना करने पर यह तथ्य सामने आया कि उक्त वाहन मेसर्स इण्डिया इंटरनेशनल के नाम से क्रय की गई थी जिसका रजिस्ट्रेशन दिनांक 11/06/1998 को करवाया गया था इस संबंध में पूर्व विवेचना आधिकारी द्वारा विवेचना के दौरान कार्यालय मोटर लाइसेंसिंग अधिकारी, परिवहन विभाग, वेस्ट जोन, राजा गार्डन नई दिल्ली के द्वारा गाड़ी का रजिस्ट्रेशन प्रमाण पत्र भेज कर अवगत कराया गया है। विवेचना के दौरान मेसर्स इण्डिया इंटरनेशनल के प्रोपराइटर संजीव खोखा पिता स्व. श्री आर के खोखा निवासी/कार्यालय- 252, संतनगर, ईस्ट ऑफ कैलाश, नई दिल्ली ने दिनांक 01/09/2012 को अपने बयान में उक्त वाहन को कम्पनी के बंटवारे के दौरान श्री सुभाष चौधरी जो की एस एस कंस्ट्रक्शन के मालिक है को वर्ष 1998 में देना बताया है कि यह कार उनके हिस्से चली गई थी विवेचना के दौरान जब सुभाष चौधरी का पता व कार्यालय जो कि संजीव खोखा द्वारा बताया गया था की तफतीश की तो मालूम हुआ कि जिस पते पर कार्यालय बताया गया था वहां वह कार्यालय नहीं है। और जिस पते पर सुभाष चौधरी का निवास बताया गया था वहां कोई सुभाष चौधरी नहीं रहते हैं। कार्यालय व निवास स्थान की मालवीय नगर पुलिस थाना (नई दिल्ली) व बल्लभगढ़ पुलिस थाना हरियाणा का स्टाफ साथ था जिसका पंचनामा पूर्व में श्री बृजपालसिंह, निरीक्षक/विवेचना अधिकारी द्वारा 27/9/2014 को श्रीमान को प्रस्तुत कर दिया गया है जो पत्रावली में शामिल है। जिससे स्पष्ट होता है कि संजीव खोखा द्वारा विवेचना कार्य को भटकाने का कार्य किया है।

4. प्रकरण कायम होने के उपरांत कार्यालय मोटर लाइसेंसिंग अधिकारी, परिवहन विभाग, वेस्ट जोन, राजा गार्डन, नई दिल्ली के द्वारा गाड़ी



रजिस्ट्रेशन प्रमाण पत्र (जो पत्रावली में शामिल है) भेजकर स्पष्ट किया है कि गाड़ी मेसर्स इण्डिया इंटरनेशनल के नाम है। मेसर्स इण्डिया इंटरनेशनल के प्रोपराईटर संजीव खोखा पिता स्व. श्री आर के खोखा है जिन्हें कई बार एनडीपीएस एक्ट 1985 की धारा 67 का समन देकर कथन परीक्षण हेतु उपस्थित होने के लिए समन जारी किये गए मगर वह कथन परीक्षण हेतु आज दिनांक तक उपस्थित नहीं हुए है। संजीव खोखा ही सत्य-सत्य बता सकते हैं कि उनकी कम्पनी के नाम रजिस्टर्ड मारुति जेन कार जिसका नं डीएल 4 सीएच 1763 है का इस्तेमाल अफीम तस्करी के परिवहन में कैसे किया जा रहा था।”

11.5 That the judgments relied upon by the learned counsel appearing for the petitioner are of distinguishable factual matrix and this Court is not convinced to rely upon the afore-cited cases.

12. In summation of the aforementioned it can be noted that considering the provisions of the NDPS Act; that no explanation qua the delay of six years is tendered by the learned counsel for the petitioner; that the records reflect the owner of the offending vehicle to be the petitioner; non-cooperation of the petitioner in the investigation and trial this Court is not induced to interfere in the instant matter.

13. Accordingly, the instant petition being devoid of any merit is dismissed. Pending applications, if any, shall stand disposed of.

(SAMEER JAIN),J

DEEPAK/58