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**(1995) 02 RAJ CK 0020**

**In the Rajasthan High Court**

**Case No :** Criminal Miscellaneous Petition No. 793/94

Narcotics Control Bureau

APPELLANT

Vs

Harnath Singh and Others

RESPONDENT

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**Date of Decision :** 22-02-1995

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 223, 482  
Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 21, 23, 25, 27A, 29

**Citation :** (1995) CriLJ 2770 : (1995) 1 RLW 103 : (1995) 3 WLC 271 : (1995) 1 WLN 276

**Hon'ble Judges :** Rajendra Sharma, J

**Bench :** Single Bench

**Advocate :** S.S. Das, P.P, for the Appellant; R.K. Charan, for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

Rajendra Sharma, J.—Heard, Perused the record of the learned lower Court.

2. Briefly the relevant facts are that in the night intervening 27th and 28th January, 1992, 19.360 kgms. of heroin (brown sugar) was recovered from vehicles No. RNR 8009 and No. GJ 6A 4571; that in those vehicles, accused-respondents Sadiq, Asif, Raghunath Meena, Agdar Shah, Kanhaiyalal Teli and Kanhaiyalal Anjana were travelling. Those accused persons did not have any licence to transport or possess the said contraband article and, as such, the officials of the Narcotics Control Bureau registered a case, arrested the accused persons and after conducting the investigation, submitted a criminal complaint on 23-4-92 against the respondents No. 1 to 9 for the offences under Sections 21, 23, 25, 27A, 29 and 30, N.D.P.S. Act in the Court of the learned Special Judge, N.D.P.S. Act Cases, Udaipur. It is alleged that accused-petitioner No. 10, Gul Anwar Khan, was absconding and could not be apprehended. Investigation against him was incomplete. Charges were framed under various offences against respondents No. 1 to 9 on 9-6-1992 and the statements of as many as

eleven prosecution witnesses were" recorded in that trial. On 25-7-93, accused respondent No. 10, Gul Anwar was arrested by the Narcotics Control Bureau and after necessary formalities, he was put under detention for a period of one year under the PIT NDPS. However, on 18-7-94, the petitioner-Department filed a criminal complaint before the learned Special Judge, NDPS Act Cases, Udaipur against respondent Gul Anwar, who was also involved in the case, wherein the aforementioned contraband was recovered. On 22-10-94, the petitioner-Department filed an application before the learned Special Judge praying that since Gul Anwar is the person, accused of the same offence, committed in the course of the same transaction, the subsequent challan filed against him, which was registered as Special Case No. 150/94, be clubbed/ consolidated with the earlier criminal complaint Registered as Special Case No. 146/94 and that de novo trial be ordered against all the accused respondents. This application was vehemently opposed on behalf of respondents Nos. 1 to 9. The learned Special Judge vide his impugned order dt. 22-10-94 rejected the said application. Aggrieved by the said order, the petitioner-Department has filed this petition u/s 482, Cr. P.C.

3. I have heard Mr. S. S. Das, learned Public Prosecutor appearing for the Narcotics Control Bureau, and Shri R. K. Charan, learned counsel for the accused-respondents at length and carefully perused the record of the learned lower Court.

4. Mr. Das has strenuously canvassed that respondent Gul Anwar is the king pin in this case and that in his statement recorded u/s 67, NDPS Act, he has confessed about his guilt and has stated implicating respondents Nos. 1 to 9, whereas respondents Nos. 1 to 9 in their respective statements recorded u/s 67, NDPS Act have also implicated Gul Anwar. Therefore, in such circumstances, to secure the ends of justice, both the cases, which arise out of the same incident, should have been consolidated/clubbed together and de novo trial ought to have been ordered. He has further submitted that the Narcotics Control Bureau is prepared to produce all the prosecution witnesses within a reasonable time fixed by this Court and that if the trial of both the cases is not consolidated, then a great prejudice will be caused to the petitioner-Department.

5. On the other hand, Mr. R. K. Charan has vigorously opposed this petition and asserted that in Special Case No. 86/92, the trial is at its fag end and now, only three prosecution witnesses remain to be examined; that due to laches and inaction of the petitioner-Department, the respondents No. 1 to 9 should not be allowed to suffer unnecessary detention in this case and to face de novo trial.

6. I have thoughtfully considered the rival submissions. There is no dispute that the respondent Gul Anwar, who is alleged to be the king pin in this case, was arrested by the petitioner-Department as early as on 25-7-93 and prior to that, his statement u/s 67, NDPS Act was recorded. Thereafter, respondent Gul Anwar was put under detention under the PIT NDPS from 2-8-93 for a period of one year. There was no bar for filing the criminal complaint against the then detenu,

Gul Anwar, in this case before the learned Special Judge but the petitioner-Department leisurely waited for a period of about eleven months and thereafter filed the criminal complaint against him on 18-7-94. By that time in Special Case No. 86/92, statements of PW 1 to PW 11 had already been recorded and the statement of PW 12 was incomplete. It is true that accused respondent No. 9 had jumped bail from Feb. 1994 to July, 1994, but prior to that, eleven prosecution witnesses had already been examined but for that, the trial in Special Case No. 86/92 was delayed only for five months and for that, the petitioner-Department cannot derive any benefit. A perusal of the lower Court's file further reveals that on 16-12-94, statements of PWs 12 and 13 were completed. On 17-12-94, PW 14 was examined. The case was fixed on 21st and 23rd Jan. 1995, for recording the remaining prosecution evidence, plea of the accused persons and the defence evidence but due to the interim order dated 16-1-95 passed by this Court, further proceedings in the case were stayed.

7. Respondents Nos. 1 to 9 are in custody since January, 1992 and the trial in their Special Case No. 86/92 is almost at its fag end. If both the cases are now ordered to be consolidated then the respondents Nos. 1 to 9 shall face the de novo trial, which will take considerable time. For the inaction and laches on the part of the petitioner-Department, respondent No. 1 to 9 should not be subjected to de novo trial. u/s 223(a), Cr. P. C, persons accused of the same offence committed in the course of the same transaction, may be charged and tried together but in this case, since the trial against respondents Nos. 1 to 9 is at its fag end, it will not at all be in the interest of justice to consolidate the delayed criminal complaint filed against respondent Gul Anwar and to order for de novo trial. In my considered opinion, the impugned order also does not tantamount to abuse of the process of the Court. The learned Special Judge has given valid reasons for rejecting petitioner-Department's application. It is not at all a fit case for invoking inherent powers of this Court for setting aside the impugned order.

8. The upshot of the above discussion is that this petition is meritless and the same is hereby dismissed. The parties shall appear before the learned Special Judge on 28-3-94 for further proceedings in the matter. The record of the learned lower Court be immediately sent back.