

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
BENCH AT AURANGABAD.**

CRIMINAL APPLICATION NO. 5975 OF 2017

Guljar S/o Alibhai Shaikh,
Age : 40 years, Occu. Business,
R/o. Opp. I.T.I. College, Pathardi Road,
Shevgaon, Tq. Shevgaon,
Dist. Ahmednagar.

...The Applicant

VERSUS

1. State of Maharashtra,
Through Police Inspector,
Tofkhana Police Station, Ahmednagar,
Professor Chowk, Opp. To Akashwani,
Savedi, Ahmednagar – 400 103.
2. Police Inspector,
Tofkhana Police Station, Ahmednagar,
Professor Chowk, Opp. To Akashwani,
Savedi, Ahmednagar 400 103.

**The Respondents...
(Resp. No. 2 - Informant)**

.....
Mr S. V. Natu, Advocate for the applicant
Mrs Vaishali S. Choudhari, APP for respondent Nos. 1 and 2
.....

**CORAM : S. S. SHINDE &
A. M. DHAVALA, JJ.**

RESERVED ON : 15.12.2017.
PRONOUNCED ON : 21.12.2017.

JUDGMENT (PER A. M. DHAVALA, J.)

. Rule. Rule made returnable forthwith. Heard finally with

the consent of the parties and taken up for final disposal at admission stage.

2. Accused no. 21 - Guljar Shaikh has filed this application u/s 482 for quashing of prosecution against him by way of Special Sessions Case No. 218/2017 u/s 20 & 22 of Narcotic Drugs and Psychotropic Substance Act, 1985. The quashing is sought on the ground that, there is only evidence against him in the form of statement of co-accused.

3. As per charge-sheet, on 17.10.2017 at 06:29 a.m. on the basis of information received, the Police of Tofkhana Police Station Ahmednagar tried to stop two vehicles Innova Car MH24 V1699 and MH17 AJ6943 in front of Hotel Sunny Palace while they were coming from Aurangabad side. The drivers of the vehicles did not halt the vehicles and speedily drove the vehicles towards Ahmednagar. Hence those were chased by Police jeep and were stopped at 06:50 a.m. in front of Asha Talkies by blocking their way with the police jeep. On search of the vehicles, it was noticed that Innova Car was driven by Sandip Anbhule and one Seema Panchariya was inside the car. 150 cannabis packets weighing 337.50 kg worth Rs. 50,62,500/- were found in the Innova. Similarly, Sagar was driving Bolero Jeep and

Ganesh Lonare and Shobha Kokate were inside the Jeep. On search, 136 cannabis packets weighing 306 kg. worth Rs. 45,90,000/- were found in the said vehicle. Cash of Rs. 86,500/- was found with Seema Panchariya. Accordingly, FIR was lodged by Head Constable Deepak Rohakale, which was registered at C.R. No. II-121/2017. During investigation, on inquiry with arrested persons from the vehicles, it was disclosed that, they were going to sell those ganja packets to various retailers including the present applicant Guljar Shaikh. Name of Guljar Shaikh appears in the statement of Seema u/s 21, page 38 and 42 of paper-book and in statement of Navnath Aher, pages 45 and 49 and in pursuance of information received, several other persons including the applicant Guljar Shaikh were arrested on 23.06.2017. The charge-sheet discloses that no recovery was made from the present applicant. Besides the statements of co-accused, there is no other evidence against the present applicant.

4. Ld. Advocate Shri. S. V. Natu for the applicant submitted that, statement of co-accused is not substantive evidence. It can be used only for corroboration. No cognizance could have been taken on the basis of such evidence against the present applicant. In this regard, he relied on **Monish Bhalla v Satya Bahl 2005 Cri.L.J. 1827** (Bombay) (Judgment by Mrs. V. K. Tahilramani, J.), **Kashmira Singh v**

The State of M.P AIR 1952 SC 159 and Inspector of Police, Tamil Nadu Versus Balaprasanna AIR 2009 (Supp.) (SC) 648.

5. The ld. APP opposed the application.

6. In Monish Bhalla's case, it is observed thus:

10. There is no evidence that any narcotic drug or charas was seized from the possession of accused No. 2 in this case nor there is any documentary evidence to establish his role in the present crime. It means except the confessional statement made by accused No. 1 inculcating accused No. 2, there is no evidence with the prosecution against him. As per the settled law the confession of co-accused can be looked into only to provide corroboration to the other evidence against the accused. But when there is no other evidence, question of seeking corroboration from the confession of such a co-accused will not arise. It is well settled that the Court cannot hold the accused guilty only on the basis of the confession made by co-accused. Thus, it is well settled that under [Section 30](#) of the Evidence Act, the confession made by one accused is not substantive evidence against the co-accused. It has only a corroborative value.

7. In Kashmira Singh's case, in respect of evidence of confession of co-accused, it is observed thus:

10. The proper way to approach a case of this kind is, first, to marshal the evidence against the accused excluding the confession altogether from consideration and see whether, if it is believed, a conviction could safely be based on it. If it is capable of belief independently of the confession, then of course it is not necessary to call the confession in aid. But cases may arise where the judge is not prepared to act on the other evidence as it stands even though, if believed, it would be

sufficient to sustain a conviction. In such an event the judge may call in aid the confession and use it to lend assurance to the other evidence and thus fortify himself in believing what without the aid of the confession he would not be prepared to accept.

8. In **Haricharan Kurmi Versus State of Bihar AIR 1964 SC 1184**, it is held that confession of co-accused implicating the accused can be taken into consideration but it is extremely weak and there could be no conviction without the fullest and strongest corroboration on material particulars.

9. In **Santosh Baccharam Patil Vs. The State of Maharashtra & Anr. 2002 ALL MR (Cri) 997**, the Division Bench at the Principal Seat of this Court held as under:

Though there is nothing in Section 30 which prevents the Court from convicting the accused after taking the confession of co-accused into consideration, but the role attributed in the confession of co-accused uncorroborated by any other evidence is not alone sufficient to sustain conviction. Therefore, the Court should first marshal the evidence against the co-accused excluding the confession altogether for consideration and see whether if it is believed, the conviction can be safely based on it. If it is capable of belief independently of the confession then, ofcourse It is not necessary to call the confession in aid, but if implicit reliance cannot be placed on the evidence, the Judge may call in aid the confession in order to lend assurance to the other evidence.

10. In Balaprasanna's case, while interpreting provisions of

Section 27 of the Evidence Act, the statement of the accused is admissible only if the statement related distinctly to the fact thereby discovered.

11. In **Suresh Kalani v State of Maharashtra AIR 1998 SC 3258**, it is held that, the statement of accused is not enough even to frame charge against the accused.

12. In the present case, the investigation is carried out by the regular Police and not by Special agency like NCB. Even in such case, the statement of co-accused is a weak piece of evidence when it is recorded u/s 67 of NDPS Act. In the present case, the statement of accused is inadmissible as the disclosure of names of the co-accused is not a fact distinctly discovered in consequence of the information received. It does not come within the purview of Section 27 of the Evidence Act. In the first place, it is a statement of the accused against the co-accused before police officer. It is hit by Section 25 of the Evidence Act. We therefore find that there is no material even to frame charge against the applicant/accused person. Obviously, the chances of conviction are nil.

13. Therefore, this is a fit case for quashing of the prosecution against the accused persons. Hence the application is allowed. The criminal proceedings initiated on the basis of Crime No. II-121/2017 registered with Tofkhana Police Station, Dist. Ahmednagar, for the offences punishable u/s 20 and 22 of Narcotics Drugs and Psychotropic Substances Act, 1985, stand quashed to the extent of the applicant/accused no. 21-Gujlar Shaikh.

14. Rule is made absolute in the above terms with no order as to costs.

[A. M. DHAVAL]
JUDGE

[S. S. SHINDE]
JUDGE

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