

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

CRM M-5685 of 2016

Date of Decision: January 9, 2017

Amandeep Singh

.....Petitioner

Vs.

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI.

-.-

Present:- Mr. Vipul Jindal, Advocate
for the petitioner.

Mr. K.S. Nalwa, Addl.A.G., Punjab.

-.-

M.M.S. BEDI, J.

Petitioner has been in custody since June 26, 2014 in a case which was registered on the basis of a secret information to the effect that Vicky Kumar, Jagjeet Singh, Nirvail Singh, Hassan, Preet Singh, Gurjant Singh, Gurjeet Singh and others had formed a big gang for supplying intoxicating substances and illegal arms by using mobiles and sim cards of Pakistan and members of the gang were moving in two vehicles Nissan Tereno and Endeavour along with heavy quantity of heroin. Pursuant to the said information, one Gurjeet Singh was arrested. 13 kg of heroin, two

pistols, two revolvers, cartridges and Nissan Tereno car etc. were recovered from him. It is pertinent to observe that neither the petitioner is named in the FIR nor he was arrested along with any intoxicating substance. The case of the prosecution is that Gurjeet Singh made a disclosure statement to the effect that he had brought three different consignments of 70 kg, 62 kg and 41 kg of heroin, respectively on different dates from Pakistan and he had handed over 20 packets of heroin to accused Gurjeet Singh @ Kuk, son of Kashmir Singh. The name of the petitioner was disclosed by Gurjeet Singh son of Inderjit Singh during the course of his interrogation. The petitioner thereafter was arrested on June 27, 2014 and recovery of 1 kg of heroin was effected from the petitioner on June 28, 2014. The petitioner allegedly made a disclosure statement in police custody on June 29, 2014 on the basis of which another 10 kg of heroin was allegedly recovered from his possession. The petitioner has thus been involved in the case on the basis of the statement of one Gurjeet Singh son of Inderjit Singh. He was allegedly found in possession of 1 kg of heroin. The remaining recovery was effected pursuant to his disclosure statement which is claimed by the prosecution agency, to be a statement under Section 27 of the Evidence Act.

The short question which arises for determination in the present case is whether the petitioner can be said to have been found in possession of 11 kg of heroin recovered on the basis of the statement made by his co-accused Gurjeet Singh and on the basis of another statement made by petitioner in custody. It is settled principles of law that any statement made

by any accused in police custody is not admissible in evidence. Section 27 of the Evidence Act is, however, an exception to the prohibition imposed by Sections 24, 25 and 26 of the Evidence Act. By Section 27 of the Evidence Act, information, even if amounted to confession, having been made to a police officer under any circumstances may be proved, or rather so much of it may be proved, as relates distinctly to the fact thereby discovered. The information which relates to the discovery of facts is admissible even though the confession is elicited by improper inducement. It is also settled principle of law that mere discovery of fact as a result of information from accused does not make it admissible unless its relevance is established by other evidence showing the connection between the fact discovered and the offence charged against the accused.

Mr. Jindal, learned counsel for the petitioner has contended that as the petitioner as neither named in the FIR nor any recovery having been effected from him and he having not been arrested from the spot, cannot be said to be in possession of the contraband. He has referred to the following judgments wherein on account of debatable issue involved pertaining to recoveries effected on the basis of the statement made under Section 27 of the Evidence Act in police custody, this Court has granted concession of bail:-

- i) CRM M-17069 of 2014-titled Baz Singh @ Baj Vs. State of Punjab, decided on May 23, 2014.

- ii) CRM M-41458 of 2014 titled Ravi @ Anil Chauhan Vs. State of Punjab, decided on January 21, 2015.
- iii) CRM M-44326 of 2015 titled Harwant Singh @ Harbans Singh Vs. State of Punjab, decided on January 29, 2016.
- iv) CRM M-27961 of 2014, titled Harvinder Singh @ Rimple Vs. State of Punjab, decided on August 4, 2016.
- v) CRM M-5207 of 2014 titled Saleem Mohd. Vs. State of Punjab, decided on November 4, 2015 (DB JUDGMENT).

He has also relied upon the following judgments:-

- i) Arjan Singh Vs. State of Punjab, Crl. Appeal No. 530 of 2012. In the said case the appellant accused had been acquitted as the recovery had been effected on the basis of disclosure statement made by the accused under Section 27 of the Evidence Act.
- ii) In Jabra Singh Vs. State of Punjab, 2000 (2) RCR (Crl.) 626, conviction order in a case of recovery of 6 kg of opium was set aside as the recovery had been effected on the basis of the disclosure

statement made by the accused to the police.

Referring to the provisions of Section 27 of the Evidence Act, recovery of opium, in pursuant of the statement of the accused can only be proved but it cannot be used to show that the accused himself concealed and kept the opium at the place where it was found.

On the other hand, Mr. Nalwa has contended that the recovery which is effected from an accused on the basis of his statement made voluntarily in police custody will be sufficient enough to arrive at a conclusion that the accused had been in conscious possession even if it is not established to be in his actual physical control. He referred to a judgment in **Mohan Lal Vs. State of Rajasthan**, (2015) 6 SCC 222. In the said case, an accused had been arrested in FIR but while in custody he made a disclosure statement that he had stolen contraband articles from malkhana. His statement led to recovery. The conviction was upheld.

The controversy involved in that case was whether provisions of Section 27 of the Evidence Act would be restricted in a case where there are two FIRs and statement has been made in one FIR which led to recovery in the second FIR. Considering the recovery having been proved, the conviction under Section 18 of the NDPS Act was upheld. It was held that accused was not required to be arrested in respect of the same offence for

admissibility of a recovery under Section 27 of the Evidence Act. The said judgment does not deal directly with the controversy involved in the case.

Taking into consideration the above said circumstances, without expression of any opinion on merits of the case, it is sufficient to observe that the fact of arrest of the petitioner on the basis of the statement of his co-accused and recovery having been effected at the time of his arrest and further recovery having been effected of 10 kg of heroin on the basis of his another statement made in police custody, it will be debatable whether the petitioner could be deemed to be in possession of the contraband, warranting conviction under the stringent provisions of the NDPS Act.

Taking into consideration the fact that the petitioner has been in custody w.e.f. June 26, 2014, this petition is allowed. Petitioner is ordered to be released on bail on his furnishing bail bonds/ surety bonds to the satisfaction of the trial Court.

January 9, 2017
sanjay

(M.M.S.BEDI)
JUDGE

Whether speaking/ reasoned:	Yes/ No.
Whether Reportable:	Yes/No.