

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CRR-334-2020(O&M)
Date of decision:-17.2.2020**

Tej Partap Singh @ Tabu

...Petitioner

Versus

State of Haryana

...Respondent

CORAM : HON' BLE MR. JUSTICE H.S. MADAAN

Present : Mr.S.S. Gill, Advocate
for the petitioner.

H.S. MADAAN, J.

Briefly stated, facts of the case as per the prosecution story are that FIR No.550 dated 23.10.2017 for the offences under Sections 21, 27-A and 29 of NDPS Act was registered at Police Station Sadar, Thanesar, District Kurukshetra on the basis of secret information that one Mahinder Singh @ Babloo, a resident of village Bara, Rajasthan used to bring huge quantity of smack/heroin from Rajasthan and supplying the same in the area of Haryana. Accordingly a raid was conducted and 106 gms. of smack was recovered from accused Mahinder Singh @ Babloo. He was arrested in this case. While being interrogated, he suffered a disclosure statement that Tej Partap Singh @ Tabu (present petitioner) had advanced him Rs.1,00,000/- to bring 100 gms. smack from Rajasthan and the recovered smack was to be supplied to him. He had further stated that he had purchased that smack from his neighbour Narayan Singh @ Parmod. Petitioner Tej Partap Singh @

Tabu was arrested by the police of Police Station Jhansa in FIR No.86 dated 14.9.2017. He was formally arrested in this case on 26.10.2017. On completion of investigation, challan has been filed against the accused. Accused Narayan Singh @Parmod and Mahinder Singh @Babloo had absented from the proceedings and both of them were declared proclaimed offenders. Notice under Section 446 Cr.P.C. were given to the sureties of such accused and penalty was imposed upon them. Vide order dated 23.9.2019 finding a prima facie case, charge for the offences under Sections 27-A and 29 of the NDPS Act was framed against the accused Tej Partap Singh @ Tabu, to which, he pleaded not guilty and claimed trial. The case stood adjourned for prosecution evidence. Now said accused Tej Partap Singh @ Tabu has challenged that order by way of filing the instant revision petition.

I have heard learned counsel for the petitioner besides going through the record.

The revision petition has been filed belatedly by 38 days. An application under Section 5 of the Limitation Act for condonation of delay has been filed contending that the revision petition could not be filed within time on account of financial constraints. There does not appear to be much merit in this contention. I do not see any satisfactory or plausible reason to condone the delay. Therefore, the revision petition being time barred is liable to be dismissed on that score.

However, on merits also, the revisionist does not have any case. Just because the co-accused of petitioner/accused had been declared proclaimed offenders does not mean that trial against him is also to be brought to a standstill. As and when those accused, who have

been declared proclaimed offenders are arrested, they would also be made to face trial.

Section 27-A of the NDPS Act deals with punishment for financing illicit traffic and harbouring offenders. Whereas Section 29 of NDPS Act deals with punishment for abetment and criminal conspiracy. The accused can certainly be tried for those offences and there is no legal bar coming in the way.

The judgment i.e. **Suresh Budharmal Kalani @ Pappu Kalani Versus State of Maharashtra, 1998(4) RCR(Criminal)433** referred to by learned counsel for the petitioner is not applicable since as per facts of the judgment, one of the accused, who had made confessional statement against the co-accused had been discharged and was not facing trial. It was for the said reason that the Apex Court had observed that the confession of the accused, who stood discharged could not be used against co-accused. Here facts of the case are entirely different. The co-accused have been declared proclaimed offenders and not given a clean chit in the case.

As regards the next judgment i.e. **Bhavsingh D. Rathod Versus The Asst. Collector of Customs, 2005(3) RCR(Criminal)359** referred to by learned counsel for the petitioner, again that judgment does not help the petitioner since while discussing Section 30, it was observed that confession of co-accused can be taken into consideration, subject to fulfilment of some conditions. Though it was also observed that accused cannot be convicted on the basis of confession of co-accused, if there is no independent evidence against him. However, only during trial it can be so determined and not at the stage of framing of

charge.

For the similar reasons, third authority *Ananta Dixit Versus The State, 1984 CriLJ 1126* pressed into service by learned counsel for the petitioner is not applicable due to different facts and circumstances and the context in which such observations had been made.

Even otherwise, during the course of consideration on the point of charge and even thereafter no such objection is shown to have been raised before the trial Court and all of sudden this revision petition has been filed challenging the impugned order.

Finding no merit in the revision petition, the same stands dismissed.

Necessary intimation be sent to the quarter concerned.

17.2.2020
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No