

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-17145-2020

Date of Decision : 10.08.2020

Jaskaran Singh

...Petitioner

Versus

State of Punjab

....Respondent

Coram : Hon'ble Mr. Justice B.S. Walia

Present : Mr. Amit Arora, Advocate for the petitioner.

Mr. Pawan Sharda, Sr. DAG, Punjab.

B.S. Walia, J. (VC)

1. Case is being taken up for hearing through Video Conferencing due to the outbreak of Covid-19 pandemic.
2. Prayer in the petition under Section 439 of Cr.P.C., is for grant of regular bail to the petitioner during pendency of trial in case FIR No.118 dated 11.11.2018, registered under Section 21, NDPS Act, 1985, to which offence U/s 25 and 29 of NPDS Act, 1985 was added later on at Police Station Lohian, District Jalandhar (Rural).
3. Learned counsel contends that the petitioner has been implicated in this case on the basis of disclosure statement by co-accused, Manbir Singh, who stated that the contraband recovered from him i.e. 1 kg of heroin had been supplied by the petitioner. Learned counsel contends that in absence of there being any other material to connect the petitioner with the recovery, the disclosure statement alone was not sufficient to implicate the petitioner, consequently, the petitioner is entitled to be released on bail.

Learned counsel for the petitioner has also relied upon the decision of Hon'ble the Supreme Court in Haricharan Kurmi vs. State of Bihar, 1964 AIR (SC) 1184. Relevant extract of the same is reproduced as under:-

As we have already indicated. This question has been considered on several occasions by judicial decisions and it has been consistently held that:

“a confession cannot be treated as evidence which is substantive evidence against a co-accused person. in dealing with a criminal case where the prosecution relies upon the confession of one accused person against another accused person, the proper approach to adopt is to consider the other evidence against such an accused person, and if the said evidence appears to be satisfactory and the court is inclined to hold that the said evidence may sustain the charge framed against the said accused person, the court turns to the confession with a view to assure itself that the conclusion which it is inclined to draw from the other evidence is right. As was observed by Sir Lawrence Jenkins in Emperor v. Lalit Mohan Chuckerbutty a confession can only be used to "lend assurance to other evidence against a co-accused". In re. Peryaswami Noopan, Reilly J. observed that the provision of Section 30 goes not further than this : "where there is evidence against the co-accused sufficient, if, believed, to support his conviction, then the kind of confession described in Section 30 may be thrown into the scale as an additional reason for

believing that evidence." In *Bhuboni Sahu v. King* the Privy Council has expressed the same view. Sir. John Beaumont who spoke for the Board observed that a confession of a co-accused is obviously evidence of a very weak type. It does not indeed come within the definition of "evidence" contained in Section 3 of the Evidence Act. It is not required to be given on oath, nor in the presence of the accused, and it cannot be tested by cross-examination. It is a much weaker type of evidence than the evidence of an approver, which is not subject to any of those infirmities. Section 30, however, provides that the Court may take the confession into consideration and thereby, no doubt, makes it evidence on which the court may act; but the section does not say that the confession is to amount to proof. Clearly there must be other evidence. The confession is only one element in the consideration of all the facts proved in the case, it can be put into the scale and weighed with the other evidence."

It would be noticed that as a result of the provisions contained in Section 30, the confession has no doubt to be regarded as amounting to evidence in a general way, because whatever is considered by the court is evidence; circumstances which are considered by the court as well as probabilities do amount to evidence in that generic sense. Thus, though confession may be regarded as evidence in that generic sense because of the provisions of Section 30, the fact remains that it is not evidence

as defined by Section 3 of the Act. The result, therefore, is that in dealing with a case against an accused person, the court cannot start with the confession of a co-accused person; it must begin with other evidence adduced by the prosecution and after it has formed its opinion with regard to the quality and effect of the said evidence, then it is permissible to turn to the confession in order to receive assurance to the conclusion of guilt which the judicial mind is about to reach on the said other evidence. That, briefly stated, is the effect of the provisions contained in Section 30. The same view has been expressed by this Court in *Kashmira Singh v. State of Madhya Pradesh*(1) where the decision of the Privy Council in *Bhuboni Sahu's* (2) case has been cited with approval.

4. Learned Sr. DAG, Punjab, on instructions from ASI Kulwinder Singh, has not controverted the factual position as noted above.

5. In view of the position as noted above as also the fact that the petitioner has been in custody since 13.12.2019, no recovery was made from the petitioner, challan has been presented, charges have been framed but the trial is not being conducted on account of prevailing Corona Virus pandemic and that the petitioner has been implicated solely on the basis of disclosure statement of co-accused, Manbir Singh, the petition for regular bail is allowed. Accordingly, the petitioner is ordered to be released on regular bail provided he is not required in any other case and subject to his furnishing bail/surety bonds to the satisfaction of the learned CJM/Trial

6. However, nothing said in this order shall be taken to be an expression of opinion on the merits of the case.

(B.S. Walia)
Judge

August 10, 2020
rajesh.k.khurana

Whether speaking/ reasoned	:	Yes/No
Whether reportable	:	Yes/No