

CRM-M No.17665 of 2020

Date of Decision : 01.10.2020

Jaswant Singh @ Santu

...Petitioner

Versus

State of Haryana

....Respondent

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

Present : Mr. J.S. Dhaliwal, Advocate for the petitioner.

Mr. Surender Singh, Asstt. A.G., Haryana.

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 439Cr.P.C. is for grant of regular bail to the petitioner in case FIR No.71 dated 20.02.2020, registered under Sections 21 (a), 22 (b), 27-A of the NDPS Act, at Police Station Sadar Fatehabad, District Fatehabad.

3. Learned counsel for the petitioner contends that the petitioner has been implicated in the instant case solely on the basis of disclosure statement of co-accused Virender Singh, from whom 10 strips of Alprazolam tablets IP 0.5 mg. Alprasaft 0.5 B.NO. PCCAA 424 MFG. date 06.2019 exp. Date 05, 2022, total 100 tablets weighing 20 grams 66 mgs. with weight of wrapper and having net weight 12.6 grams was recovered and Jaswinder from whom 02 grams of heroin was recovered on personal search.

4. Learned counsel contends that except for the disclosure

statement, there is no other material to connect the petitioner with the recovery made from Jaswinder Singh and Virender Singh, the petitioner has been in custody since 09.03.2020, provisions of Section 37, NDPS Act are not attracted, Challan has been filed and charges have been framed but the trial is not progressing on account of prevailing Corona Virus Pandemic, that out of 16 prosecution witnesses not even a single witness has been examined, the petitioner has 02 minor daughters and he is the sole bread winner of the family, therefore, no useful purpose would be served by detaining the petitioner in custody.

5. Learned State Counsel, while not controverting the aforementioned factual position brings to the notice of this Court that the petitioner is involved in a number of other cases. The petitioner stands convicted in 03 cases under the NDPS Act, 04 cases under the Excise Act, while in 02 cases, he is facing trial under the NDPS Act, besides is facing trial in 01 case under the Excise Act and was acquitted in 01 case under the NDPS Act, therefore, being a habitual offender, he should not be granted the concession of bail.

6. I have considered the submissions of learned counsel for the parties.

7. Admittedly, there is no material other than the disclosure statement of co-accused Virender Singh and Jaswinder Singh to connect the accused with the offence, at least none has been pointed out despite specific query to learned State Counsel, besides no recovery has been made from the petitioner and the only recovery, which has been made is from Jaswinder

Alprazolam tablets IP 0.5 mg. Alprasafe 0.5 B.NO. PCCAA 424 MFG. date 06.2019 exp. Date 05, 2022, total 100 tablets weighing 20 grams 66 mgs. with weight of wrapper and having net weight 12.6 grams were recovered. Since the recovery is of non commercial quantity, provisions of Section 37, NDPS Act are not involved. Although, involvement of the petitioner in a number of other cases is a factor to be taken into account, while considering the grant of bail but the fact remains that in the instant case, the petitioner stands implicated in the instant case solely on the basis of disclosure statement of co-accused without there being any other material against the petitioner pointing to his involvement in the instant case. Besides, no recovery has been made from the petitioner. In case titled as 'Haricharan Kurmi versus State of Bihar', 1964 AIR (SC) 1184 Hon'ble the Supreme Court was pleased to hold 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 other 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**, ILR 38 Calcutta 559 at P. 588 a confession can only be used to "lend assurance to other*

*evidence against a co-accused". In Peryaswami Noopan versus Emperor. ILR 54 Madras 75 at P. 77 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. The King**, 76 Ind App., 147 at p. 155 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 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, 1952 SCR 526**, where the decision of the Privy Council in *Bhuboni Sahu's case* has been cited with approval.”*

9. In view of the fact that the petitioner has been arrayed as an accused in the instant case solely on the basis of disclosure statement and no recovery has been made from him and there is no other material to connect the petitioner with the instant case, besides out of 16 prosecution witnesses, not even a single witness has been examined till date, trial in the case would likely take time on account of prevailing Corona Virus Pandemic, the petition for regular bail is **allowed**. Accordingly, the petitioner is ordered to be released on bail pending trial, subject to his furnishing bail/surety bonds to the satisfaction of the learned trial Court/CJM/Duty Magistrate provided he is not required in any other case.

henceforth in any other similar case, bail granted to him in the instant case would be liable to be cancelled on the prosecution moving an application for cancellation of bail.

10. However, nothing stated hereinabove would be taken as an expression of opinion qua the merits of the case.

October 01, 2020
'Rajneesh-Amit'

(B.S. Walia)
Judge

<i>Whether speaking/ reasoned</i>	:	<i>Yes/No</i>
<i>Whether reportable</i>	:	<i>Yes/No</i>