

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-20901-2020

Date of Decision : 10.08.2020

Shiv Shambhu

....Petitioner

Versus

State of Haryana

....Respondent

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

Present : Mr. Amardeep Sheoran, Advocate for the petitioner.
Mr. Deepak Bhardwaj, DAG, 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 438 Cr.P.C. is for grant of anticipatory bail to the petitioner in case FIR No.90 dated 05.07.2020 registered under Sections 379, 411, 120-B IPC, 1860, at Police Station Rojka Meo, District Nuh.

3. Learned counsel for the petitioner contends that pursuant to the order of this Court dated 31.07.2020, the petitioner joined investigation and fully cooperated with the police but the police has taken up the stand in the reply filed that the petitioner failed to cooperate simply on the ground that he has not admitted his complicity in having asked the co-accused to take out the vehicle from the custody of the police or of having told him that he would give him Rs.5,000/-. Learned counsel states that the disclosure statement (Annexure R-1) is weak evidence and in itself cannot be made the

the Supreme Court in case titled as '**HaricharanKurmi**versus**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 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 Chuckerbuttv**, ILR 38 Calcutta 559 at P. 588 a confession can only be used to "lend assurance to other evidence against a co-accused". In **PeryaswamiNoopan 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 **BhuboniSahu 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 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, 1952 SCR 526**, where the decision of the*

Privy Council in Bhuboni Sahu's case has been cited with approval."

4. Learned counsel for the petitioner contends that mere disclosure statement of the co-accused is of no avail in the absence of any other corroborative evidence and that in the absence of any other corroborated evidence having been pointed out in the reply, the prayer for pre-arrest bail is liable to be confirmed.

5. *Per contra*, learned DAG, Haryana, on instructions from HC Manoj, reiterates the implication of the petitioner on the basis of the disclosure statement by co-accused.

6. I have considered the submissions of learned counsel for the parties and have gone over the reply.

7. Admittedly, the petitioner has been implicated in the case, solely on the basis of disclosure statement of co-accused. However, in the light of the decision in 'Haricharan Kurmi's' case (supra), the same cannot be considered as substantive evidence against the petitioner in the absence of there being other material against the petitioner.

8. Accordingly, without commenting on the merits of the case, the petition for pre-arrest bail is **allowed**. Order dated 31.07.2020 is made **absolute**. The petitioner shall continue to abide by the terms and conditions enumerated in Section 438(2) Cr.P.C. However, nothing stated hereinabove shall be taken as an expression of opinion on the merits of the case.

August 10, 2020

'Rajneesh-Amit'

(B.S. Walia)

Judge