

202 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M No.20983 of 2020 (O&M)
Date of Decision : 21.09.2020

Asha ...Petitioner

Versus

State of HaryanaRespondent

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

Present : Mr. Ramnish Puri, 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 438 Cr.P.C. is for grant of pre-arrest bail to the petitioner in case FIR No.158, dated 12.07.2020, registered under Sections 18 of the NDPS Act, 1985 at Police Station Sadar Narwana, District Jind.
3. Learned counsel for the petitioner contends that pursuant to the order of this Court dated 18.08.2020, the petitioner joined investigation and fully cooperated with the Police, was released on ad interim pre arrest bail and that her custodial interrogation is not required.
4. Learned counsel for the petitioner reiterates reliance on the decision of Hon'ble the Supreme Court in '*Haricharan Kurmi 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 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 **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 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."*

5. Learned State Counsel, Haryana, by referring to paragraph

No.6 of the reply by way of affidavit filed by the Deputy Superintendent of Police, Narwana, states that the whereabouts of the petitioner's husband co-accused Prem Singh and Talu from whom contraband was stated to have purchased are not known despite best efforts, besides the petitioner's husband Prem Singh is involved in 05 other cases under the Narcotic Drugs and Psychotropic Substances Act, therefore in the circumstances, the petitioner is not entitled to release on anticipatory bail. Learned Assistant Advocate General however does not deny that there is no other material against the petitioner to connect her with the offence except the second disclosure statement of her son, that she does not have any other case registered against her under the Narcotic Drugs and Psychotropic Substances Act, is not a previous convict, besides was released on ad interim pre arrest bail. He however states that the petitioner did not disclose the whereabouts of the co accused. In response thereto, it is the categorical stand of learned counsel for the petitioner that the petitioner is not aware of any person by the name of Talu nor has anything to do with him besides she is not aware of the present whereabouts of her husband and that it is for the police to ascertain the whereabouts of said persons and take such action against them as is warranted under law.

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

7. Admittedly, the petitioner is not a previous offender, nor is involved in any other case and has been implicated in the instant case solely on the second disclosure statement of her son namely Sanjay after he had retracted from his earlier statement and made a supplementary disclosure

statement while in custody. The petitioner joined investigation, cooperated with the police except expressing no knowledge of present whereabouts of her husband Prem Singh or for that matter any knowledge of co-accused Talu, besides was released on ad interim pre arrest bail. In the circumstances, it is for the police to ascertain the whereabouts of said persons and take such action against them as is warranted under law.

8. Accordingly, in the light of the position as noted above, especially of the petitioner being involved in the case solely on the basis of disclosure statement and not being involved in any other case and there being no other material against the petitioner to connect her with the offence, order of this Court dated 18.08.2020 is made absolute. However, respondents are directed to take appropriate steps to ascertain the whereabouts of co-accused Prem Singh and Talu and take appropriate action against them in accordance with law.

9. Petition stands ***disposed of*** in the aforementioned terms.

(B.S. Walia)
Judge

September 21, 2020

'Rajneesh-Amit'

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