

CRM -M No.24000 of 2020 (O&M)
Date of Decision : 28.09.2020

Kuldeep Singh alias Gullet

...Petitioner

Versus

State of Punjab

....Respondent

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

Present : Mr. Sarbjit Singh, Advocate for the petitioner.

Mr. V.G. Jauhar, Senior 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 Cr.P.C. is for grant of regular bail to the petitioner in case FIR No.70, dated 15.06.2020, registered under Sections 21/27-A/29 of the NDPS Act, 1985 at Police Station STF, SAS Nagar, Mohali.
3. Learned counsel for the petitioner contends that the petitioner, who was serving as a Jail Warden at Amritsar was implicated in the instant case on the basis of disclosure statement of one of the undertrials namely Pardeep Kumar and that there is no other material against the petitioner, no recovery was made from the petitioner, besides the petitioner joined investigation and was interrogated and is in judicial custody since 05.07.2020, the trial would take considerable period of time, therefore, no useful purpose

would be served by keeping the petitioner behind bars during the prevailing Corona Virus Pandemic, especially in view of the fact that all other accused have been released on bail.

4. Learned Senior DAG, Punjab, on instructions from ASI Baljinder Singh does not controvert the factual position as noted above.

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

7. Admittedly, there is no other material against the petitioner except the disclosure statement of Pardeep Kumar. Reference can be made to 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."*

8. Accordingly, in view of the fact that there is no other material against the petitioner except the disclosure statement of Pardeep Kumar, no recovery was made from the petitioner, all other co-accused have been released on bail and the petitioner is in judicial custody since 05.07.2020, besides trial would take considerable period of time, no useful purpose would be served by keeping the petitioner in custody during the pendency of the trial.

9. In the light of the position as noted above, the petition for regular bail is **allowed** and the petitioner is directed to be released on bail, subject to his furnishing bail / surety bonds to the satisfaction of the learned trial Court / CJM / Duty Magistrate concerned, provided he is not required in any other case. The petitioner shall also abide by the conditions contained in Section 437(3) Cr.P.C.

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

September 28, 2020

'Rajneesh-Amit'

(B.S. Walia)

Judge

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