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**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**CRM-M-33067-2019
Date of Decision: 03.03.2020**

Suresh Kumar

..... Petitioner

Versus

Narcotic Control Bureau, Chandigarh

..... Respondent

CORAM: HON'BLE MR. JUSTICE SUDIP AHLUWALIA

Present: Mr. Sachin Kaushik, Advocate,
for the petitioner.

Mr. Rajiv Sharma, Advocate,
for the respondent-NCB.

SUDIP AHLUWALIA, J. (ORAL)

[1]. This is a petition for regular bail under Section 439 Cr.P.C. on behalf of the petitioner, in case bearing Crime No.81/2017, dated 15.12.2017, under Sections 8/20/23/25/29/60 of the Narcotics Drugs and Psychotropic Substances Act, 1985 (in short 'N.D.P.S. Act'), registered at Police Station NCB Zonal, Chandigarh.

[2]. Additional reply by way of affidavit of Mr. Kumar Manohar Manjul, Intelligence Officer, N.C.B., Chandigarh, is filed on behalf of the respondent, along with documents Annexures R-2 and R-3, collectively; Be kept on record.

[3]. On the last date, Ld. Counsel for the petitioner had submitted that Confessional Statement of an accused in N.D.P.S. Act recorded by Personnel of the Narcotic Bureau, is not admissible in evidence, and then sought adjournment to satisfy this Court about the validity of his submission.

[4]. Today, he has relied upon the following decisions in support of his contention:-

- (1). “Kanhaiyalal Vs. Union of India”, 2008(1) R.C.R. (Criminal) 610;
- (2). “Nirmal Singh Pehlwan @ Nimma Vs. Inspector, Customs, House, Punjab”, 2011(3) R.C.R. (Criminal) 831;
- (3). “Tofan Singh Vs. State of Tamil Nadu”, 2013(4) R.C.R. (Criminal) 631; and
- (4). “Surinder Kumar Khanna Vs. Intelligence Officer Directorate of Revenue Intelligence”, 2018(3) R.C.R. (Criminal) 954.

[5]. At the outset, it is admitted by Ld. Counsel for the petitioner that the first judgment in *Kanhaiyalal's case (Supra)*, which was pronounced by Hon'ble Apex Court in the year 2008, goes against his contention inasmuch as, it was observed therein :-

“38. Considering the provisions of Section 67 of the Narcotic Drugs and Psychotropic Substances Act and the views expressed by this Court in Raj Kumar Karwal's case (supra), with which we agree, that an officer vested with the powers of an Officer-in-Charge of a Police Station under Section 53 of the above Act is not a “Police Officer” within the meaning of Section 25 of the Evidence Act, it is clear that a statement made under Section 67 of the Narcotic Drugs and Psychotropic Substances Act is not the same as a statement made under Section 161 of the Code, unless made under threat or coercion. It is this vital difference, which allows a statement made under Section 67 of the Narcotic Drugs and Psychotropic Substances Act to be used as a confession against the person making it and excludes it from the operation of Sections 24 to 27 of the Evidence Act.”

[6]. Thereafter, he has relied upon the decision of Hon'ble Supreme Court in *Nirmal Singh Pehlwan @ Nimma's case (Supra)*, wherein it was observed *inter alia*:-

“9. We also see that the Division Bench in *Kanahiya Lal's case* had not examined the principles and the concepts underlying Section 25 of the Evidence Act vis-a-vis. Section 108 of the Customs Act the powers of Custom Officer who could investigate and bring for trial an accused in a narcotic matter. The said case relied exclusively on the judgment in *Raj Kumar's case (Supra)*. The latest judgment in point of time is *Noor Aga's case* which has dealt very elaborately with this matter. We thus feel it would be proper for us to follow the ratio of the judgment in *Noor Aga's case* particularly as the provisions of Section 50 of the Act which are mandatory have also not been complied with.”

[7]. In *Tofan Singh's case (Supra)*, the Apex Court took note of the decision in *Kanhaiyalal's case (Supra)* and after referring to the above quoted observation in *Nirmal Singh Pehlwan @ Nimma's case (Supra)*, expressed its view “that the matter needs to be referred to a Larger Bench for re-consideration of the issue as to whether the officer investigating the matter under Narcotic Drugs and Psychotropic Substances Act would qualify as police officer or not”.

[8]. The position, therefore, is that as of now the decision in *Kanhaiyalal's case (Supra)*, holds fort although the matter has, subsequently, been referred for consideration to a Larger Bench in *Tofan Singh's case*.

[9]. The last reference of the petitioner in *Surinder Kumar Khanna's case*, is restricted to a position that Confessional Statement made

by a co-accused under Section 67 of N.D.P.S. Act, before the Narcotic Bureau Officer is not admissible against another accused.

[10]. In the present case, however, the petitioner accused himself has made Confessional Statements before the N.C.B. which, in the light of the decision in *Kanhaiyalal's case (Supra)*, is *per se* admissible under Section 67 of the Act. To that extent, the decision in *Surinder Kumar Khanna's case (Supra)*, is not applicable since the effect of it only restricts the admissibility of the Confessional Statement of another co-accused and not of the petitioner himself. Till such a time, as a final determination, by the Larger Bench of the Supreme Court after the reference having been made on the question in *Tofan Singh's case (Supra)*, is made, this Court has no option but to hold that the petitioner's own Confessional Statements before the N.C.B. are only admissible but also sufficient to establish his involvement in the case, in which a recovery of huge contraband in the form of Heroin exceeding 65 kgs. was made.

[11]. In such circumstances and in view of the contention made in the additional reply filed on behalf of the respondent/N.C.B., in which the petitioner's close interaction and involvement with other named Drug Smugglers based in India and Nepal, is demonstrated through his call detail records, the rigors of Section 37 of the N.D.P.S. Act, would apply with full effect qua the petitioner.

[12]. Consequently, the prayer of the petitioner for regular bail is dismissed, at this stage.

03.03.2020

Bhumika

**(SUDIP AHLUWALIA)
JUDGE**

1. Whether speaking/reasoned: Yes/No
2. Whether reportable: Yes/No