

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL WRIT PETITION NO. 255 OF 2020

Firoz @ Aabu S/O Aziz Khan,
Aged about 47 years, Occ : Business,
R/o: Azad Colony, Motha Tajbag,
Sakkardara, Nagpur.
(Presently at Central Prison, Nagpur)

.... **PETITIONER**

- **VERSUS** -

The State of Maharashtra,
through P. S. O.,
P. S. Sakkardara,
Nagpur.

.... **RESPONDENT**

Mr R. M. Daga with Mr. Fazil S. Choudhary, Advocates for petitioner
Mr. S. S. Doifode, A.P.P. for the State/respondent

CORAM : ROHIT B. DEO, J.
DATED : 12th FEBRUARY, 2021

ORAL JUDGMENT :

The petitioner, who shall be hereinafter referred to as the accused, is facing trial for offences punishable under Sections 21(c) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act) and Section 142 of the Maharashtra Police Act.

2. The prosecution case is that pursuant to secret information received on 6-11-2019, officials of the Crime Branch raided the residence of Javed Khan and found 59 gms of M.D. drugs in a bag. Javed Khan and Arshad Khan were arrested from the spot. Crime 12/2019 came to be registered on 7-1-2019 against Javed Khan and Arshad Khan. The petitioner-accused was arrested on 8-1-2019 in connection with different Crime 14/2019 which is also registered under the provisions of NDPS Act at Police Station, Sakardara, Nagpur. While the petitioner-accused was in custody, the Crime Branch obtained production warrant from the jurisdictional court and arrested the petitioner-accused in Crime 12/2019 on 19-1-2019.

3. Culmination of investigation in Crime 12/2019 has led to submission of final report under Section 173 of the Code of Criminal Procedure (Code).

4. The petitioner-accused preferred an application under Section 227 and 228 of the Code seeking discharge from offences punishable under Sections 21(c) and 29 of the NDPS Act and Section 142 of the Maharashtra Police Act. This application is rejected by the learned Additional Sessions Judge observing that the petitioner-accused is facing a separate crime and that discharging an accused on the

ground that his involvement is disclosed only in the confessional statement of the co-accused is impermissible.

5. Learned counsel Mr. R. M. Daga has a short submission to canvass.

6. Mr. R. M. Daga would submit that in view of the decision of the Supreme court in *Tofan Singh Vs. State of Tamil Nadu [2020(12) Scale 519]*, neither the confession of the accused nor the confessional statements of the co-accused recorded under Section 67 of the NDPS Act is admissible evidence, and therefore, in the absence of any other material in the charge-sheet as would warrant a trial, the petitioner-accused is entitled to discharge.

7. In view of the submission canvassed by Mr. R. M. Daga, I called upon the learned Additional Public Prosecutor Mr. Sanjay Doifode to clarify whether there is any material on record other than the alleged confessional statement of the petitioner-accused and the alleged confessional statements of co-accused Javed Khan and Arshad Khan recorded under Section 67 of the NDPS Act. Learned Additional Public Prosecutor fairly states that other than the confessional statement of the petitioner-accused and the confessional statements of

the co-accused, there is no material in the charge-sheet as would implicate the petitioner-accused in the crime.

8. Trial cannot be an empty and ritualistic formality. Considering the authoritative pronouncement of the Supreme Court in ***Tofan Singh Vs. State of Tamil Nadu***, the submission of Mr. Daga that there is no admissible material on record to even warrant a trial merits acceptance. The petition is allowed in terms of prayer clause (a) which reads thus :

(a) Quash and set aside order dated 26/2/2020 passed by Ad-hoc District Judge – 2 and Additional Sessions Judge, Nagpur below Exh. 11 in Special (NDPS) Case No. 23/2019 and petitioner may kindly be discharged from said case in the interest of justice.

JUDGE