

CRM-M-3145-2021 (O&M)

Date of Decision: 15.02.2021

Rahul

...Petitioner

vs.

State of Haryana

...Respondent

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

Present: Mr. Satyawar Singh Nain, Advocate for the petitioner.

Mr. Vivek Chauhan, learned Addl. AG, Haryana.

B.S. Walia, J. (VC)

1. Case is being taken up for hearing through Video Conferencing due to 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.161 dated 02.08.2020, registered under Section 22(c) and 27-A of the NDPS Act, 1985, at Police Station Garhi, District Jind.

3. Learned counsel contends that the petitioner has been implicated in the instant case solely on the basis of disclosure statement of co-accused, Mintu, from whom, 1590 strips of 10 tablets each of tramadol hydrochloride tablets 100 mg clovidol-100 SR tablets (total 15900 tablets, weighing 6 kgs. 519 grams), were recovered that the petitioner had delivered him 16000 tablets of 100 mg clovidol-100 SR on 01.08.2020. Learned counsel contends that apart from the disclosure statement there is no other material to connect the petitioner with the commission of the offence nor the petitioner is involved in any other case besides the co-accused, Manoj, who was also implicated on the basis of disclosure statement of main accused, Mintu, has already been granted

the concession of regular bail vide order dated 27.01.2021, in CRM-M-2624-2021 and that in the circumstances, implication solely on the basis of disclosure statement is not sustainable in the eyes of law, therefore, the petitioner is entitled to regular bail, as the challan has been filed, charges have been framed and there are fourteen witnesses, out of whom, none has been examined till date and the trial is likely to take a long time to conclude, therefore, no useful purpose would be served by keeping the petitioner in custody. Learned counsel relies upon 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 *Peryaswami Noopan 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 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 Addl. AG, Haryana, fairly concedes that apart from disclosure statement there is no other material to connect the petitioner with the commission of offence nor is any other case registered against the petitioner besides similarly situated co-accused, Manoj, has already been granted the concession of regular bail by a Coordinate Bench vide order dated 27.01.2021, in CRM-M-2624-2021.

5. Accordingly, without commenting upon the merits of the case, the petition for regular bail is allowed. Petitioner is ordered to be released on regular bail, during the pendency of the trial subject to his furnishing bail/surety bonds to the satisfaction of the learned CJM/Trial Court/Duty Magistrate, concerned, provided he is not required in any other case. However, nothing stated hereinabove would be taken to be an expression of opinion on the merits of the case.

(B.S. Walia)
Judge

15.02.2021

'Rajesh'

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No