

CRM-M-12777-2021 (O&M)

Date of decision: 15.09.2021

Harpreet Singh

.... Petitioner

versus

State of Punjab

.... Respondent

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

Present : Mr. SapanDhir, Advocate for the petitioner.

Mr. Hittan Nehra, Addl. A.G., Punjab.

B.S. Walia, J. (Oral)

1. Payer in the petition under Section 438 Cr.P.C. is for grant of pre-arrest bail to the petitioner in case FIR No.08 dated 24.02.2021, registered under Section 22, 29, 61, 85 NDPS At, 1985 at Police Station Thulliwal, District Barnala.

2. On 19.03.2021, the following order was passed:-

“Case is being taken up for hearing through Video Conferencing due to Covid-19 pandemic.

Learned counsel contends that the petitioner has been falsely implicated in the instant case solely on the basis of disclosure statement of co-accused Sukhwinder Singh @ Raja and Raj Kumar @ Budhu who were arrested on 26.02.2021 and from whom 950 loose intoxicant tablets were recovered and who stated that they used to purchase the intoxicating tablets from the petitioner. Learned counsel contends that apart from the disclosure statements, there is no other material to connect the petitioner with the commission of the offence besides the petitioner is not involved in any other criminal case and is also ready and willing to join investigation as and when required and fully cooperate with the Investigating Agency. Learned counsel for the petitioner further contends that mere disclosure statements in the absence of other material is no

ground to deny bail to the petitioner in view of the decision of Hon'ble the Supreme Court in 'HaricharanKurmiversus State of Bihar', 1964 AIR (SC) 1184.

Notice of motion.

Mr. Hittan Nehra, Addl. AG, Punjab, accepts notice on behalf of the respondent and prays for time to obtain instructions and to file reply.

Adjourned to 23.04.2021.

In the meantime, the petitioner is directed to join investigation and fully cooperate with the police. However, in the event of arrest, the petitioner be released on ad-interim pre-arrest bail subject to his furnishing bail bonds to the satisfaction of the Arresting / Investigating Officer. The petitioner shall abide by the conditions envisaged under Section 438(2) Cr.P.C., failing which, the interim protection granted to The petitioner, shall stand vacated."

3. Learned counsel for the petitioner contends that in view of the decision of Hon'ble the Supreme Court in *HaricharanKurmiversus State of Bihar*', 1964 AIR (SC) 1184, mere *confession of co-accused is not enough to implicate an accused except where there is other satisfactory evidence to sustain the charge against said accused person, in which eventuality, the confession can be used by the court to assure itself that the conclusion which it is inclined to draw from the other evidence is right*. Relevant extract of the decision in HaricharanKurmi's case (supra) is reproduced as under:-

".....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.....”

4. Today, learned counsel for the petitioner contends while learned State Counsel on instructions from *ASI Manjit Singh* confirms that pursuant to the order of this Court dated 19.03.2021, the petitioner joined investigation, fully cooperated with the police, was released on ad interim pre arrest bail and that apart from the disclosure statement, there is no other material to connect the petitioner with the commission of the offence, therefore, in the circumstances his custodial interrogation is not required.

5. Accordingly, although recovery in the instant case is of commercial quantity, yet the bar under Section 37 of the NDPS Act, neither has been pleaded by the State Counsel nor would be attracted in the facts and circumstances of the case in view of the petitioner not having been arrested on the spot and there being no recovery from him besides in view of the only material relied upon by the State being of disclosure statement of co-accused while in police custody, petitioner not being involved in any other case under the NDPS Act, therefore, in the circumstances, it can be reasonably presumed that he is not likely to

investigation is stated to be completed, challan has been presented and the charges are yet to be framed.

6. Accordingly, in the light of position noted above as also in view of the stand of the learned State Counsel, of the petitioner not being required for custodial interrogation, order dated 19.03.2021, passed by this Court, is made absolute. The petitioner shall abide with the conditions enumerated in Section 438(2) Cr.P.C. However, nothing stated hereinabove shall be construed to be an expression of opinion on the merits of the case.

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

(B.S. Walia)
Judge

15.09.2021
'rajesh-jyoti'

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