

CRM-M No.21843 of 2021

Date of Decision : 28.06.2021

Sharafat

...Petitioner

Versus

State of Haryana

....Respondent

Coram : Hon'ble Mr. Justice B.S. WaliaPresent : Mr. Partap Singh, Advocate for the petitioner.
Mr. Naveen Kumar Sheoran, DAG, 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 during the pendency of trial in case FIR No.45 dated 20.02.2021, registered under Sections 22/29-61-85, NDPS Act, 1985 at Police Station Pratap Nagar, District Yamuna Nagar, Haryana.

3. Learned counsel contends that the petitioner has been implicated in the instant case solely on the basis of disclosure statement of co-accused Shahrukh Khan from whom on his arrest on 20.02.2021, 1440 capsules of Spasmo Proxyvon Plus, 2500 tablets containing Tramadol as active ingredient namely RL-DOL 100, 900 tablets of BECALM containing Alprazolam and 6000 tablets of Lomotil containing Diphenoxylate as active ingredient were recovered and who on his arrest

Learned counsel contends that apart from the disclosure statement, there is no other material to connect the petitioner with the commission of the offence besides, the petitioner is a young man and is in custody since 13.04.2021, moreover, he does not have any other criminal case registered against him. Learned counsel further contends that challan in the case has been presented but charges have not been framed, therefore, no useful purpose would be served by keeping the petitioner in custody as the trial is likely to take considerable period of time to conclude.

4. Learned counsel for the petitioner relies upon the decision of Hon'ble the Supreme Court in 'Haricharan Kurmi versus State of Bihar', 1964 AIR (SC) 1184, to contend that disclosure statement of a co-accused in the absence of corroborative evidence is of no consequence.

Relevant extract of the aforementioned decision is 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 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.”*

5. Learned State Counsel on instructions from SI Subhash confirms that apart from the disclosure statement made by co-accused Shahrukh Khan, there is no other material to connect the petitioner with the commission of the offence.

6. In view of the fact that apart from the disclosure statement there is no other material to connect the petitioner with the commission of the offence, besides there is no other criminal case registered against the petitioner and the petitioner is behind bars since 13.04.2021 as also that although challan has been presented, but charges have not been framed and the trial is likely to take considerable period of time to conclude, therefore without commenting upon the merits of the case, the

petition for regular bail is *allowed* and the petitioner is ordered to be

released on regular bail during the pendency of the trial on his furnishing bail bond and surety bond to the satisfaction of the learned trial Court / Chief Judicial Magistrate / Duty Magistrate concerned, provided he is not required in any other case. However, it is made clear that nothing stated hereinabove shall be construed as an expression of opinion on the merits of the case. It is also made clear that in case the petitioner misuses the concession of bail in any manner whatsoever, the prosecution would be at liberty to move an application for cancellation of bail granted to the petitioner in the instant case.

7. Petition allowed in the aforementioned terms.

(B.S. Walia)
Judge

28.06.2021
'Rajneesh/Amit'

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