

CRM-M-31939-2021

Date of Decision:27.10.2021

Lakhwinder Singh alias Lakhi

.....Petitioner

Vs.

State of Punjab

....Respondent

CORAM : HON'BLE MR.JUSTICE AMOL RATTAN SINGHPresent: Mr. J.K.Singla, Advocate,
for the petitioner.

Mr. Rana Harjasdeep Singh, DAG, Punjab.

AMOL RATTAN SINGH, J. (Oral)

Case heard by video conference.

On 16.08.2021, the following order had been passed by this
court:-

“Case heard via video conferencing.

By this petition, the petitioner seeks the concession of anticipatory bail, upon FIR no.168, dated 2.8.2020, having been registered at Police Station Bhikhi, District Mansa, alleging therein the commission of offences punishable under Sections 22 and 29 of the NDPS Act, 1985.

Pursuant to the last order passed, learned counsel for the petitioner today refers to Sections 27 and 30 of the Indian Evidence Act, 1872, as also Section 29 thereof, which read as follows:-

“27. How much of information received from accused may be proved.- Provided that, when any fact is proved to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.

xx xx xx

29. Confession otherwise relevant not to become irrelevant because of promise of secrecy, etc.- If such a confession is otherwise relevant, it does not become irrelevant merely because it was made under a promise of secrecy, or in consequence of a deception practiced on the accused person for the purpose of obtaining it, or when he was drunk, or because it was made in answer to questions which he need not have answered, whatever

may have been the form of those questions, or because he was not warned that he was not bound to make such confession, and that evidence of it might be given against him.

30. Consideration of proved confession affecting person making it and others jointly under trial for same offence.- When more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of such persons is proved, the Court may take into consideration such confession as against such other person as well as against the person who makes such confession.”

He then refers to a judgment of the Supreme Court in Surinder Kumar Khanna vs. Intelligence Officer Directorate of Revenue Intelligence 2018(3) RCR (CrI.) 954, from which he points to the detailed discussion made on the issue of the effect of a confessional statement of a co-accused, with the Supreme Court eventually holding as follows:-

“14. In the present case it is accepted that apart from the aforesaid statements of co-accused there is no material suggesting involvement of the appellant in the crime in question. We are thus left with only one piece of material that is the confessional statements of the co-accused as stated above. On the touchstone of law laid down by this court such a confessional statement of a co-accused cannot by itself be taken as a substantive piece of evidence against another coaccused and can at best be used or utilized in order to lend assurance to the court. In the absence of any substantive evidence it would be inappropriate to base the conviction of the appellant purely on the statements of co-accused. The appellant is therefore entitled to be acquitted of the charges leveled against him. We, therefore, accept the appeal, set aside the orders of conviction and sentence and acquit the appellant. The appellant shall be released forthwith unless his custody is required in connection with any other offence.”

He thus submits that in the present case also, with there being no other evidence at all against the petitioner, qua the present case at least, other than the alleged confessional statement made by his co-accused, Karamjit Singh @ Dhannu, he cannot be denied the concession of pre-arrest bail, there being a complete doubt on his involvement in the sale/purchase of the contraband alleged to have been recovered from Karamjit Singh (as per the case of the investigating agency).

Notice of motion.

Mr.S.S.Sandhu, learned AAG, Punjab, accepts notice at the asking of the court and wishes to rely upon the judgment that has been essentially relied upon by the learned Judge Special Court, Mansa, while declining a similar petition filed before that court, that judgment being in the case of Pardeep versus State of Haryana (CRM-M no.13092 of 2021, decided on 6.7.2021), passed by a coordinate bench of this court.

Upon query put to him as to whether the judgment in Surinder Kumar Khannas' case has been referred to in that case, he fairly submits that though that judgment has not been referred to, other judgments have been referred to of the Supreme Court, and that he would place the judgment in Pardeep Kumars' case before this court on the next date of hearing, for this court to come to a conclusion as to whether it is the judgment in Surinder Kumar Khannas' case that is to be followed in the circumstances of the present case, or not.

That being so, with the judgment in Pardeep Kumars' case in any case not being before this court presently and this being a petition by the petitioner seeking the concession of anticipatory bail, and if interim protection at least is not granted to him in the meanwhile, he may actually be arrested, and there definitely being a doubt at least in the mind of this court (at this stage) as regards his involvement in any crime simply on the basis of a disclosure statement allegedly made in police custody, in my opinion it would be appropriate to invoke jurisdiction at this stage to sub clause (ii) of Clause (B) of Section 37 of the NDPS Act, 1985.

Consequently, without making any comment on the actual merits of the case at this stage, the petitioner is directed to join investigation within one week and upon him so joining if he is sought to be arrested, he shall be released on bail, on his furnishing adequate bail and surety bonds to the satisfaction of the arresting officer/Ilaqa Magistrate.

He shall also comply with all conditions stipulated in Section 438(2) of the Cr.P.C.

If the investigating officer does not actually join the petitioner in investigation, he would appear before the learned Ilaqa Magistrate immediately, who would then summon the arresting officer and direct him to join him in investigation, in terms of the order of this court.

Adjourned to 17.9.2021.”

Today learned State counsel submits, on instructions from ASI Major Singh, that the petitioner has duly joined investigation and presently at least his custodial interrogation is not required.

That being so, without making any comment on the actual merits of the case, this petition has actually been rendered infructuous and is disposed of as such.

However, if the petitioners' custodial interrogation is required at any stage hereinafter, in the context of the FIR in question, he would be given 10 days notice before arrest, duly shown to be served upon him.

October 27, 2021

dharamvir

**(AMOL RATTAN SINGH)
JUDGE**

Whether speaking/reasoned : YES/NO
Whether Reportable : YES/NO