

CRM-M No.44016 of 2020

Date of Decision : 11.01.2021

Bittu Singh

...Petitioner

Versus

State of Haryana

....Respondent

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

Present : Mr. G.S. Sidhu, Advocate for the petitioner.

Mr. Pawan Kumar Longia, DAG, Haryana.

B.S. Walia, J. (VC)

1. Case is being taken up for hearing through Video Conferencing due to the outbreak of Covid-19 pandemic.
2. Prayer in the petition under Section 439 Cr.P.C. is for the grant of concession of regular bail to the petitioner in case FIR No.119 dated 26.06.2020, registered under Section 22-C of the NDPS Act, 1985 at Police Station Baragudha, District Sirsa during the pendency of the trial.
3. Learned counsel for the petitioner contends that the name of the petitioner does not figure in the FIR and the petitioner has been implicated in the instant case solely on the basis of disclosure statement made by co-accused, namely Gurpreet Singh @ Preet from whom recovery of 990 tablets of Tramadol Hydrochloride was made and that there is no other material other than the disclosure statement against the petitioner, as to connect him with the commission of the offence.

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 **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 **Bhuboni Sahu 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 concedes that the petitioner has been involved in the aforementioned case solely on the basis of disclosure statement of co-accused, namely Gurpreet Singh @ Preet from whom recovery of 990 tablets of Tramadol Hydrochloride was made and that there is no other material to connect the accused-petitioner with the commission of offence in the instant case.

6. In view of the position as noted above, particularly of the petitioner having been involved in the case, solely on the basis of the disclosure statement made by the co-accused, of no recovery having been made from the petitioner as also by taking into account that the petitioner has been in custody since 05.10.2020, challan has been filed but charges have not been framed and the trial is likely to take some time, I am of the view that no useful purpose would be served by keeping the petitioner in custody on account of circumstances prevailing due to Corona Virus Pandemic.

7. Accordingly, the petition under Section 439 Cr.P.C. is **allowed** and the petitioner is ordered to be released on regular bail in case FIR No.119 dated 26.06.2020, registered under Section 22-C of the NDPS Act, 1985 at Police Station Baragudha, District Sirsa, during the pendency of trial on his furnishing bail bonds / surety to the satisfaction of the learned CJM /

trial Court / Duty-Ilaqa Magistrate, provided he is not required in any other case.

January 11, 2021

'Rajneesh'

(B.S. Walia)

Judge

Whether speaking/ reasoned

:

Yes/No

Whether reportable

:

Yes/No