

CRM-M No.41 of 2021
Date of Decision : 25.02.2021

Sanjay ...Petitioner

Versus

State of HaryanaRespondent

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

Present : Mr. Amit Choudhary, 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 Covid-19 pandemic.

2. Prayer in the petition under Section 438 Cr.P.C. is for grant of pre-arrest bail to the petitioner in case FIR No.0058 dated 13.03.2020, registered under Sections 20 & 61, NDPS Act, 1985 at Police Station Uklana, District Hisar.

3. Learned counsel for the petitioner contends that the petitioner has been implicated in the case, solely on the basis of disclosure statement of co-accused / Kuldeep @ Bablu of his having lent his car to the petitioner and of contraband having been recovered from the same while the car was parked in the house of one Vishnu.

4. Pursuant to order dated 06.01.2021, learned State Counsel on instructions from *SI Bhup Singh*, confirms that apart from the disclosure statement, there is no other material against the petitioner.

5. Accordingly, in the light of the position noted above, as well as decision of Hon'ble the Supreme Court in '**Haricharan Kurmi** versus **State of Bihar**', 1964 AIR (SC) 1184, learned Counsel contends 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 **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.”*

6. In the light of position noted above, the petition for pre-arrest bail of the petitioner is accepted and petitioner is ordered to join investigation and fully cooperate with the police. However, in the event of arrest, the petitioner be released on pre-arrest bail, subject to his furnishing bail / surety 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 protection granted to him shall stand vacated.

7. However, nothing stated hereinabove shall be taken to be an expression of opinion on the merits of the case.

February 25, 2021
'Rajneesh/Amit'

(B.S. Walia)
Judge

Whether speaking/ reasoned

:

Yes/No

Whether reportable

:

Yes/No