

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.

CRIMINAL APPLICATION (APL) NO. 1231 OF 2022

APPLICANTS : 1. Manoj s/o Julalsingh Zade, Age : 37
years, Occ: Cultivator,
2. Gajanan s/o Subhan Manja, Age : 35
years, Occ: Cultivator,
Both R/o. Kurhagotmara,
Tq. Motala, Dist. Buldana.
(Presently lodged in Buldna Jail)

//VERSUS//

NON-APPLICANT : State of Maharashtra, through Police
Station Officer, P.S. Buldana (City),
Tq. and Dist. Buldana.

Mr. A.J. Thakkar, Advocate for the Applicants.
Ms. S.S. Jachak, APP for Non-applicant.

CORAM : G. A. SANAP, J.
DATED : 25th NOVEMBER, 2022.

ORAL JUDGMENT

01] **Rule.** Rule made returnable forthwith. The application
is heard finally by consent of the learned advocates for the parties.

02] The order impugned in this application is dated
04.08.2022, whereby the learned Special Judge, Buldana has
overruled the objection raised by the learned advocate for the

accused with regard to the admissibility of the confessional statement made by the accused Manoj Zade at the time of the raid conducted by the Investigating Officer. The learned Judge, as can be seen from the impugned order, relying upon a decision in the case of *Francis Stanly @ Stalin Vs. Intelligent Officer, Narcotic Control Bureau, Thiruvananthapuram, Appeal (Cri.) 996 of 2006 decided on 14.12.2006*, held that the said confessional statement would not be hit by the provisions of Section 25 of the Evidence Act. The learned Judge has also considered the decision in the case of *Tofan Singh Vs. State of Tamil Nadu* reported in *(2021) 2 SCC (Cri) 246*.

03] I have gone through the material placed on record. In my view, in the case of *Francis Stanly @ Stalin* (supra), the statement was recorded by an officer of the Department of Revenue Intelligence. It is to be noted that the said statement was held admissible because it was recorded by the Officer empowered under Section 53 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (“NDPS Act”). The learned Judge has considered the decision in the case of *Tofan Singh* (supra). It appears that the learned Judge has failed to consider the law laid down in the case of *Tofan Singh* (supra). In this case, it is held that

the Officers mentioned under Section 53 of the NDPS Act are “Police Officers” within the meaning of Section 25 of the Evidence Act and therefore, any confessional statement made to them would be barred under Section 25 of the Evidence Act and cannot be taken into consideration. In this case, the statement allegedly made by the accused was to the Police Officer, who was attached to a local Crime Branch, Buldana. In the case of *Francis Stanly @ Stalin* (supra), the admissibility of a confessional statement recorded by an empowered Officer under Section 53 of the NDPS Act was considered. It was held that the confessional statement recorded by the empowered Officer under Section 53 of the NDPS Act would not be hit by the provisions of Section 25 of the Evidence Act. The Supreme Court in the case of *Tofan Singh* (supra) has held that the statement recorded by the Officers mentioned in Section 53 of the NDPS Act is not admissible, inasmuch as the same would be hit by Section 25 of the Evidence Act. In my view, the learned Judge, therefore, appears to have failed to consider the law laid down in the case of *Tofan Singh* (supra) in proper perspective and has come to a wrong conclusion.

04] In my view, therefore, the statement made to the Investigating Officer by the accused was hit by the provisions of

Section 25 of the Evidence Act. Therefore, in my view, the learned Judge was not right in overruling the objection. In the above proposition, the objection was sustainable. Therefore, the impugned order overruling the objection is required to be set aside and it is accordingly set aside. It is held that the statement held to be admissible by the learned Special Judge is not admissible in view of the provisions of Section 25 of the Evidence Act.

05] The application is allowed and disposed of accordingly.

(G. A. SANAP, J.)

Vijay