

In the High Court of Punjab and Haryana at Chandigarh

**CRM-M No. 43476 of 2021
Date of Decision: 09.2.2022**

Kamal Sikka

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present: Mr. Govind Chauhan, Advocate
for the petitioner.

Mr. Pardeep Prakash Chahar, DAG, Haryana.

SURESHWAR THAKUR, J. (ORAL)

(Through video conferencing)

1. In FIR bearing No. 295 of 17.9.2021, registered at Police Station Ram Nagar, District Karnal, an offence under Section 21(c) of the NDPS Act, 1985, is embodied.
2. The learned counsel for the petitioner submits, that the petitioner has been falsely implicated in the present case. He argues, that the petitioner was neither apprehended at the spot, nor any recovery has been effected from his conscious, and, exclusive possession. He further submits, that the petitioner has been implicated in the FIR (supra), owing to his old animosity with one of the police official(s).
3. The learned State counsel submits, that the recovery of the psychotropic substance became effected from the house of the petitioner, and, that its weight falls in the apposite commercial quantity thereof. He further submits, that the petitioner has criminal antecedents, as he is

indulging in the illegal business of selling psychotropic substances.

4. In the reply, as furnished by the State, it is contended that, at the time, when the police raided the house of the petitioner, his wife one Shilpa, was available at the afore stage. Though, as per the learned counsel for the petitioner, neither the petitioner was apprehended at the spot, nor any recovery has been effected from him, yet the recovery of the intoxicating drugs, whose weight falls within the ambit of commercial quantity thereof, has been effected from the house of the petitioner, and, in the presence of his wife, who is the co-accused in the FIR (supra). Therefore, the learned State argues, that when the apposite recovery of the psychotropic substance concerned, rather weighing carrying commercial quantity, hence has occurred from the house of the accused, and, in the presence of his wife, thereupon, the bail petitioner, though, was not available at the relevant time, yet when there is no evidence suggestive of his holding no knowledge with respect to the presence, in his house, of the recovered substance, and, also when there is no evidence, suggestive that the specific portion of the house from where the recovery became effected, was in the exclusive possession of his wife. Therefore, the learned State counsel argues, that the absence of the petitioner in his house, at the relevant time, is insignificant, rather the disclosure statement, as made by his wife, against him, is meritworthy, and, it attracts against the petitioner, the inculpable role of a conspirator.

5. Since the Hon'ble Apex Court, has pronounced, that not only the weight of the prohibited salt, as, carried in the seized psychotropic substance, is to be borne in mind rather the entire or the gross weight of the seizure, is to be borne in mind, for making a conclusion, that whether the seizure falls within the category of small quantity, intermediate quantity or

commercial quantity. Therefore, bearing in mind the afore principle of law, and, upon making its application, qua the gross weight of the seizure, thereupon the weight of the entire seizure or the gross weight thereof rather makes the seizure to fall within the domain of commercial quantity. Therefore, the rigors of Section 37 of the NDPS Act are applicable thereon, and, the bail applicant is prima-facie not entitled to his being admitted on bail.

6. Moreover, even if the bail applicant, did not ensure, at his instance, the recovery of the alleged seized psychotropic substance, and even when the seizure occurred from his house, and, in the presence of his wife Shilpa. However, the factum of absence of the bail applicant-petitioner in the premises concerned, does not *prima facie*, at this stage, constitute any credible exculpatory evidence qua the accused. The reason being that the premises concerned being both owned by the bail applicant-petitioner, and, also his holding possession thereof. Therefore, the above factum does prima facie make him vicariously penally inculpable along with his wife, one Shilpa, who rather, was present at the relevant time, of the premises being raided, and, in pursuance whereof, the recovery became effected, especially when in negation of his holding ownership, possession of the premises besides concomitantly his holding knowledge qua the apposite existences therein, rather the relevant evidence is grossly amiss. The further reason, for making the afore inference becomes derived from the factum that the afore Shilpa, who at the relevant time of effectuation of recovery, was available at the site of recovery, has made during her custodial interrogation, an incriminatory disclosure against the bail applicant-petitioner. Though, the learned counsel

for the petitioner argues that the above disclosure is neither admissible nor relevant. However, the above made argument cannot be accepted.

7. The reason being that the Hon'ble Apex Court in ***Tofan Singh Versus State of Tamil Nadu reported in (2013) 16 SCC 31***, has made the hereinafter extracted expostulations of law.

“(i) That the officers who are invested with powers under Section 53 of the NDPS Act are “police officers” within the meaning of section 25 of the Evidence Act, as a result of which any confessional statement made to them would be barred under the provisions of section 25 of the Evidence Act, and cannot be taken into account in order to convict an accused under the NDPS Act.”

8. The afore made expostulations of law in judgment (supra) are to be revered. The learned counsel for the petitioner contends, that the afore made disclosure statement, is unworthy of evidentiary vigour nor also any conviction can be firmly founded thereons, besides he contends that in case reliance is placed, upon the afore made disclosure statements, thereupon this Court, would be impermissibly fettering the personal liberty of the bail applicant.

9. However, the afore expostulations of law, are made in respect of a statement recorded under Section 67 of the NDPS Act. Moreover, also therein a declaration of law is made, that since officers investigating offences under the NDPS Act, are police officers within the meaning of Section 25, of the Indian Evidence Act, therefore, any confessional statements, as made to them would be barred, under the provisions of Section 25 of the Indian Evidence Act, and, also hence they cannot be taken into account for convicting any accused, of an offence, under the NDPS Act. Succinctly put, the aforemade expostulation(s) of law, appertain to a

statement recorded under Section 67 of the NDPS Act, and, also appertain to any statement made to an officer investigating an offence under the NDPS Act, as all confessional statements made to officers investigating offences (supra), would be hit by Section 25 of the Indian Evidence Act. From the aforemade expostulations of law borne in verdict (supra), the learned counsel appearing for the bail applicant, as afore stated, has contended, that the disclosure statement as made against him, by the accused concerned, does squarely fall within the ambit of Section 67, of the NDPS Act, and, has further argued that it is also hit, and, also becomes concomitantly ousted, by the sweep and clout of the Section 25 of the Indian Evidence Act, as Section 25 of the Indian Evidence Act, as becomes extracted hereinafter, makes both inadmissible as well as irrelevant, any confessional statement as made by an accused, hence to a police officer.

“25. Confession to police officer not to be proved.—No confession made to a police officer, shall be proved as against a person accused of any offence.”

10. However, the afore mandate, as, carried in Section 25 of the Indian Evidence Act, has an exception thereto inasmuch as, in Section 27 thereof. The provisions of Section 27 of the Indian Evidence Act are extracted hereinafter. Conspicuously so, as Section 67 of the NDPS Act, does not expressly oust the clout of Section 27 of the Indian Evidence Act, and, as such saves its operation to offences constituted under the NDPS Act.

“ 27. How much of information received from accused may be proved.-Provided that, when any fact is deposed 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.”

11. A circumspect analysis of the provisions carried in Section 27 of the Act (*supra*), makes a clear display that, when in pursuance to a confession or information received from an accused, especially during the course of his custodial interrogation, by a police officer, and, when thereafter the fact confessed or the information revealed by such accused person, to the police officer concerned, becomes discovered, thereupon the bar created against the inadmissibility of a bald confessional statement, as made to a police officer, by an accused, becomes lifted, or becomes relieved, and/or, in other words, the fact discovered in pursuance to a confessional statement, as made by an accused, rather during the course of his custodial interrogation, by the investigating officer, becomes both, admissible as well as relevant.

12. However, the words 'may be proved' as occur in Section 27 of the Evidence Act, appertain to proof of the discovered incriminatory fact, hence made in pursuance to a confessional statement, as, made by an accused to the police officer, during the latter making his custodial interrogation, and, rather do also assume the gravest importance. As afore stated, it carves an exception to the general principle (*supra*) against inadmissibility of a bald confession, as, made to a police officer, by an accused, and/or against proof being made qua any, simpliciter statement, made by an accused to a police officer, during the course of the accused's custodial interrogation. Even though, the apposite exception, as borne in Section 27, permits proof of the discovered incriminatory fact, as happens, in pursuance to a confessional statement, made to a police officer by the accused, during the latter's custodial interrogation. However, the revealed incriminatory fact, has to be *prima-facie* reduced into writing, and/or memos

are to be prepared in respect thereof, besides the signatures respectively of the marginal witnesses, and, of the accused rather are to exist thereons.

13. The afore drawn information, as, made by the accused to the investigating officer, has to thereafter, subject to certain exceptions, lead to the discovery of the fact, as disclosed by the accused, to the investigating officer, during the accuseds' custodial interrogation. Necessarily also the factum of recovery of the revealed incriminatory fact concerned, has to become, for ensuring its carrying evidentiary creditworthiness, rather reduced into writing or a recovery memo has to be drawn, and, thereons are to exist the valid signatures of the marginal witnesses thereto, and/or of the accused. Therefore, the respectively made disclosure statement, and, the recovery memos, as, become prepared in consequence thereof, constitute admissible evidence, in exception to Section 25, of the Indian Evidence Act, and, also become amenable to meteings of evidentiary worth thereto, yet subject to, upon, opening of trial against the accused hence the memos concerned, becoming proven to be validly or efficaciously drawn, through the investigating officer concerned, and the marginal witnesses thereto rather deposing, in affirmation, to all the disclosures borne therein. Nonetheless even when the coinage 'may be proved' as occurring in Section 27 of the Indian Evidence Act, though makes disclosures qua the drawn memos (supra), becoming amenable to evidentiary worth, being meted thereto, and, besides postpones the meteings of completest evidentiary vigor thereto, upon, cogent proof in respect of drawings thereof, becoming adduced rather by the prosecution witnesses concerned. However, even when the trial has not opened hence for ensuring that, completest proof qua the afore drawn memos, becomes adduced, rather even at the investigation

stage, the afore drawn memos may yet comprise prima-facie evidence of evidentiary worth against the accused. The afore drawn conclusion(s) become rested, upon a conjoint reading of the mandate carried respectively in Sections 25 and 27, of, the Indian Evidence Act. Further, the inference (supra) is subject to hereinafter made conditions.

14. However, it is also incumbent upon this Court to determine the import of Section 67 of the NDPS Act. For making an appreciation of the mandate of Section 67, of the NDPS Act, the provisions thereof, are extracted hereinafter.

“67. Power to call for information, etc. Any officer referred to in section 42 who is authorised in this behalf by the Central Government or a State Government may, during the course of any enquiry in connection with the contravention of any provisions of this Act,

(a) call for information from any person for the purpose of satisfying himself whether there has been any contravention of the provisions of this Act or any rule or order made thereunder;

(b) require any person to produce or deliver any document or thing useful or relevant to the enquiry;

(c) examine any person acquainted with the facts and circumstances of the case.”

15. An incisive reading of the hereinbefore extracted provisions carried in Section 67 of the NDPS Act, reveal, that they empower the authorized officer concerned, to during the course of his making an inquiry with respect to contravention of the provisions of NDPS Act, hence call for information from any person with respect to contravention of the provisions of the NDPS Act. For the purpose of satisfying himself, he is empowered to recourse the provisions of sub-sections a), b) and c). Necessarily hence the

information from any person or to require any person to produce and deliver any document, and/or to examine any person acquainted to the facts, and, circumstances of the case. The afore statutory provision, though speaks in each of its clauses, about 'any person', and, the words 'any person' occurring therein, though may also appertain to an accused. However, the statutorily leverages, (supra) as are conferred, upon, the authorized officer concerned, do not further communicate, that 'any person' concerned, wherefrom whom, the mentioned therein elicitation, callings or apposite productions are solicited, by the investigating officer concerned, is, imperatively at the relevant stage, in the custody of the investigating officer concerned, nor any articulation occurs therein, that the 'any person concerned', from whom the authorized officer concerned, seeks the relevant information or requires him to produce and deliver documents or even if he proceeds to examine such 'any person', hence acquainted with the facts, does make or render all of them, imperatively during the phase of 'his' being in the custody of the police officer. Moreover, Section 67 of the NDPS Act also when does not through a nonobstante clause, occurring therein expressly oust the workability or the clout of Section 27, of the Indian Evidence Act (supra), which as aforestated is an exception to Section 25, of the Indian Evidence Act. Therefore, the absence of a non-obstante clause (supra) in Section 67 of the NDPS Act, rather renders the clout of Section 27 of the Indian Evidence Act, to remain intact, and, also fosters a conclusion from this Court, that Section 67 of the NDPS Act, is independent therefrom, and, it does not imperatively and mandatorily, require the authorized officer concerned to, during the course of his making the relevant inquiries (supra), upon the person concerned, to take him into custody nor also if any bald

confessional statement, is made during the course thereof, by any person concerned, it would not rather constitute tenable evidence, unless, is made in custody, and, also it leads to a valid discovery of an incriminatory fact. Therefore, Section 67 of the NDPS Act rather begets no contradiction with either Section 25 or with Section 27 of the Indian Evidence Act, nor the mandate of Section 27 of the Indian Evidence Act, becomes ousted vis-a-vis offences borne in the NDPS Act. The afore conclusion does hence beget an imperative holistic reconciliation inter-se all (supra), statutory provisions, and, also makes them all workable rather than untenably making them otiose.

16. Therefore, the expostulations of law (supra), apart from applying to persons outside police custody, also apply to disclosures' as made under Section 67 of the NDPS Act, by 'any person' who at the relevant stage, of his/theirs making is/are in police custody, and, if during the afore spell, 'he/they' makes a bald confessional disclosure statement, leading rather to no valid incriminatory fact becoming discovered at his instance, thereupon the afore bald disclosure would be inadmissible. In other words if 'any person concerned', makes a bald confessional statement, it would be hit by Section 25 of the Indian Evidence Act, and/or if any person concerned, during the course of his custodial interrogation, also makes a bald statement, thereupon his bald confession, would be also hit by Section 25 of the Indian Evidence Act. However, if in pursuance thereof, the revealed incriminatory fact, becomes discovered, thereupon the discovered incriminatory fact concerned, would, as stipulated in Section 27 of the Indian Evidence Act, become admissible as well as a piece of evidence of immense probative vigor. However, subject to its requiring cogent proof with respect to

apposite drawings of relevant memos.

17. The disclosure statement as made against the bail applicant, rather was made, during the custodial interrogation, of wife of the bail applicant one Shilpa, in whose presence, the relevant recovery became effected, and, it did obviously lead to the apposite discovery, given the fact revealed or the discovered fact becoming already recovered or being already in existence, inasmuch as, the seizure occurring prior thereto, from the premises concerned, or from the house owned by the petitioner, and, in the presence of the wife of the bail applicant-petitioner. Nonetheless, any incriminatory fact even if is in existence, in contemporaneity, to the making of a confessional statement, by the arrested person, and, it makes an inculcation against any other accused, wherefrom whom, the incriminatory fact or the recovered incriminatory psychotropic substance or narcotic drug, was earlier thereto or prior to the recovery happening at the site of crime, rather taken into possession, by the maker of the disclosure statement or by the arrested person, and, if the inculcation (supra) becomes linked to the person wherefrom whom the arrested person has assumed possession of the relevant seizure, as made from the arrested persons' alleged conscious and exclusive possession. Therefore, the person from whom, possession (supra) is acquired by the arrested person also becomes vicariously liable alongwith the arrested person.

18. Though even though the bail applicant-petitioner, was not at the relevant time, available in the premises concerned, and, even when at the relevant time, his wife one Shilpa, was available in the premises concerned, and, in whose presence the search, and, recoveries became effectuated, yet on the basis of the incriminatory disclosure statement made

against the bail applicant, by Shilpa, to the investigating officer concerned, during her custodial interrogation, rather makes the bail applicant prima facie penally liable along with her wife, in the offence (supra). The reason being that, from the incriminatory disclosure statement, as made against the bail applicant-petitioner, by his wife Shilpa to the investigating officer concerned, the incriminatory discovery, as became effected from the premises concerned, though in the absence of the bail applicant rather becomes linked to the bail applicant, as the premises concerned were lawfully owned, and, possessed by the bail applicant, and, at this stage, prima facie, there is no evidence that the relevant portion of the premises concerned, were exclusively owned or possessed by his wife, one Shilpa. Consequently, with the afore inter-connectivity, and, inter-linkage *inter se* the bail petitioner, and, Shilpa hence becoming aroused, thereupon, the incriminatory disclosure statement made by Shilpa, against the bail applicant, becomes admissible in evidence, and, also can become 'may be proved', during the course of opening of trial against all accused concerned. Moreover, the afore made confession or disclosure statement, is made during the course of custodial interrogation of the wife of the bail applicant one Shilpa. The afore made disclosure statement attracts against the bail applicant the incriminatory role of a conspirator along with his wife, in whose presence, the recovery became effected from the house, owned and possessed by the petitioner. Necessarily the express statutory provision, in the NDPS Act appertaining to inculpatory charges becoming amenable to be drawn against a conspirator, would become completely negated, in case the incriminatory disclosure statement made against the accused, by his wife, becomes ousted.

19. The further reason for declining bail to the bail applicant, is reiterated also grooved in the fact, that all the afore inferences are to be drawn, rather for ensuring that the provisions in the NDPS Act, as appertaining to inculcation of conspirators, do not become otiose, and, also to ensure that the foot soldiers carrying contraband at the site of occurrence are alongwith the drug mafia or the drug warlords, who make supplies to the foot soldiers are along with them brought to inculcation. Emphasizingly, the factum of animosity becoming reared against any police official concerned, and, it resulting in his house being raided, cannot at this stage, be given any relevance, as there is no prima facie proof of any active malafides, and, animosity, being reared against the bail applicant-petitioner, by any police official concerned.

20. The afore drawn inferences also gathers vigor from the mandate of Section 30 of the Indian Evidence Act, provisions whereof became extracted hereafter.

“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.”

21. A reading of the afore extracted provisions, reveal that their supplement and augment provisions of Section 27 of the Indian Evidence Act, as the making of a confession, has to lead to the discovery of the fact, in respect whereof, information is, during the custodial interrogation of the accused, hence given to the police officer concerned. Significantly in

absence of the apposite discovery, to be made in accordance with law, the bald or simpliciter confessional statement as made by the accused to the police officer, rather would be hit by Section 25 of the Indian Evidence Act. Consequently, the recovery of intoxicant tablets, which falls under the commercial quantity, was effected from the house of the petitioner, and, moreover he could not produce any valid licence to keep the same at his abode. Furthermore, also when the petitioner earlier remained involved in a case under the NDPS Act, though he was acquitted in the said case on some technical grounds, yet again he is found to re-indulge in the selling of intoxicant substances. Therefore, no case for grant of anticipatory bail to the petitioner is made out.

22. This Court places on record its appreciation for the assistance given to this Court, by the learned counsel for the petitioner, and, by Mr. Pradeep Prakash Chahar, learned DAG, Haryana.

23. The petition is dismissed.

(SURESHWAR THAKUR)
JUDGE

February 09, 2022
Gurpreet

Whether speaking/reasoned : Yes
Whether reportable : Yes