

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-47053-2022

DECIDED ON: 14th OCTOBER, 2022

ASHANI

.....PETITIONER

VERSUS

STATE OF PUNJAB

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Piyush Khanna, Advocate
for the petitioner.

SANDEEP MOUDGIL,J.(ORAL)

The jurisdiction of this Court has been invoked under Section 438 Cr.P.C for grant of anticipatory bail to the petitioner in FIR No. 69 dated 30.06.2022 registered under Sections 22 and 29 of NDPS Act at Police Station Chabbewal, District Hoshiarpur.

Learned counsel for the petitioner submits that the petitioner has been falsely implicated in the present case. It is asserted that the name of the petitioner surfaced on the basis of disclosure statement of his co-accused namely Manjit Singh. Assertion is that nothing has been recovered from the petitioner in fact recovery of 27 grams of intoxicant powder was effected from the co-accused i.e., Manjit Singh.

Notice of motion.

On the asking of the court Mr. Rajiv Verma, DAG Punjab accepts notice on behalf of the State and has opposed the present petition for grant of anticipatory bail to the petitioner on the ground that petitioner is involved in the crime with other co-accused from whom recovery of 27 grams of intoxicant powder has been effected. It has also been pointed out that the co-

accused named the petitioner in the disclosure statement who is none other than his father and in fact it is whole family which is involved in the illegal business of narcotics.

Heard learned counsel for the respective parties.

The primary assertion raised by the learned counsel for the petitioner that he was not named in the FIR but has been roped in merely on the basis of disclosure statement needs to be examined in the light of recent judgment rendered by this Court in the case of “Amit Khurana versus State of Haryana”, 2022(1) Law Herald 49, wherein the worth of evidentiary vigor was examined in respect of confessional statements in the light of Sections 25 & 27 of the Evidence Act and Section 67 of the NDPS Act. The relevant extract from the said judgment needs to be incorporated hereinbelow, which has originated from the Apex Court judgment in “Toofan Singh Vs. State of Tamil Naidu”; (2013) 16, SCC 31, which made the hereinafter extracted expostulation 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.”

5. XXXXX XXXXX XXXX XXXXX XXXXX
6. *The afore made expostulations of law in judgment (supra) are to be revered.*
7. *However, the afore expostulations of law, are made in respect of a statement recorded under Section 67 of the NDPS Act. Moreover, also thereins 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 Senior 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."

8. *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."

9. *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 became 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.*
10. *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 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 accuseds' 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 latters 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.

11. *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 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 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.

12. *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.”

13. *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 relevant provisions, empower the authorized officer concerned, to elicit 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 thereins, 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 therefroms, 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 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.

14. *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 their making is in police custody, and, if during the afore spell, 'he' 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.”*

Coming back to the facts of the case in hand, the recovery was admittedly made from co-accused Manjit Singh who made a disclosure statement against the present bail applicant during the custodial interrogation.

This Court is of the considered view that even if the petitioner did not ensure,

at this instance, the recovery of alleged seized psychotropic substance, and even when the seizure occurred from co-accused Manjit Singh yet the petitioner is purportedly involved in unlawful dealing of contraband, which has been recovered from Manjit Singh, becomes prima-facie penally liable along-with the co-accused. As such, upon the disclosure as made by Manjit Singh, from whose conscious and exclusive possession the incriminatory material became discovered or recovered at the site of occurrence, the petitioner rather also becomes enjoined to become connected to or is to be linked to afore discovered fact whereupon it would become admissible in evidence and also can become “may be proved” during the course of trial against all the accused concerned. The very fact which further weighs to the mind of this Court while adjudicating the question of entitlement to the petitioner for anticipatory bail, is that he is son of the co-accused Manjit Singh and by any stretch of imagination there can be no reason whatsoever for a father to name his own son for any other reason except on account of his active involvement in this unlawful commissioning of offence.

In the light of discussions made hereinabove and the facts as unfolded with the assistance of Mr. Rajiv Verma, Deputy Advocate General, Punjab, this Court does not agree with the present petition which lacks merit.

Hence, the same is dismissed.

14th OCTOBER, 2022

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Whether speaking/reasoned Yes/No

Whether reportable Yes/No

(SANDEEP MOUDGIL)
JUDGE