

In the High Court of Punjab and Haryana at Chandigarh

1.

CRM-M No. 55417 of 2022 (O&M)
Reserved on: 27.9.2024
Date of Decision: 23.10.2024
- SI Narinder Singh

.....Petitioner
- Versus
- State of Punjab

.....Respondent
2.

CRM-M No. 4030 of 2023 (O&M)
- Avtar Singh @ Avtar Singh Maratta

.....Petitioner
- Versus
- State of Punjab

.....Respondent
3.

CRM-M No. 13176 of 2023 (O&M)
- Gurbir Singh alias Gura

.....Petitioner
- Versus
- State of Punjab

.....Respondent
4.

CRA-D-1190 of 2023 (O&M)
- Surmukh Singh @ Sammu

.....Appellant
- Versus
- State of Punjab

.....Respondent
5.

CRA-D-1288 of 2023 (O&M)
- Surmukh Singh @ Sammu

.....Appellant
- Versus
- State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE KULDEEP TIWARI

Argued by: Mr. P.S.Ahluwalia, Advocate
for the petitioner(s)
(in CRM-M-55417-2022 & in CRM-M-13176-2023).

Ms. G.K.Mann, Senior Advocate with
Mr. Anmol Jeevan Singh Gill, Advocate and
Mr. Jashandeep Singh Sandhu, Advocate
for the petitioner (in CRM-M-4030-2023).

Mr. Vipul Jindal, Advocate
for the appellant(s)
(in CRA-D-1190-2023 and CRA-D-1288-2023).

Mr. Maninderjit Singh Bedi, Addl. A.G., Punjab.

SURESHWAR THAKUR, J.

1. Since a common question of law is involved in the petitions (supra) as well as in the criminal appeals (supra), therefore, all the petitions (supra) and the criminal appeals (supra) are amenable to be decided through a common verdict being made thereons.

Brief facts of the cases

CRM-M-55417-2022

2. In *CRM-M-55417-2022*, the petitioner seeks the indulgence of regular bail being granted to him, in case FIR No. 92 of 16.5.2022 registered at Police Station Special Task Force, District SAS Nagar embodying therein offences under Sections 21, 23, 29 and 59 of the Narcotics Drugs and Psychotropic Substances Act, 1985 (for short 'the NDPS Act'), under Section 25 of the Arms Act, 1959 (for short 'the Act of 1959'), and under Sections 13,18(b) of the Unlawful Activities (Prevention) Act, 1967 (for short 'the UAPA Act'), and, under Sections 7,13(1)(a) and 13(2) of the Prevention of Corruption Act, 1988 (for short 'the Act of 1988').

3. In the petition (supra), it is averred that the petitioner has been falsely implicated in the present case, and, that the present FIR became registered on the basis of a secret information, to the effect that two accused,

namely, Lakhbir Singh alias Lakha and Sarabjit Singh alias Satnam and their accomplices are in link with Pakistani smugglers, and that they used to bring heavy quantity of drugs, arms and explosives from Pakistan. It is further averred therein, that the time of submission of final report by the investigating agency, the provisions of the Arms Act as well as of the Explosive Substances Act were deleted. The provisions of Sections 29 and 59 of the NDPS, as well as the provisions of the Act of 1988 have been invoked against the petitioner on the basis of disclosure statement suffered by co-accused Guravtar Singh, wherein, he disclosed that he had paid money on different dates to the petitioner to save him from the present case. Subsequently, the petitioner was arrested, and, recovery of Rs. 9,75,000/- became effected from him. However, at the outset the offences constituted under the UAPA Act, have been deleted.

CRM-M-4030-2023

4. In ***CRM-M-4030-2023***, the petitioner prays for regular bail being granted to him, in case FIR No. 92 of 16.5.2022 registered at Police Station Special Task Force, District SAS Nagar embodying therein offences under Sections 21/23 of the NDPS Act, Sections 4/5 of the Explosive Substance Act, 1908 (for short 'the Act of 1908'). However, during investigations, offences under Section 29/59 of the NDPS Act and under Sections 13/16/18/20 of the UAPA Act, and, under Sections 7/13(1)(A)(2) of the Act of 1988 were added, and, the offence under Section 25 of the Act of 1959, and, under Sections 4/5 of the Act of 1908 became deleted.

5. In the petition (supra), it is averred that on the basis of disclosure statement suffered by accused Dilbagh Singh @ Bagho, Guravtar Singh @ Pannu and Avtar Singh (the present petitioner) became arrested. Petitioner Avtar Singh suffered a disclosure statement to the effect that out of one packet

of heroin received by him and Guravtar Singh @ Sonu from a Pakistani based smuggler Babbar, half of the said packet was retained by Guravtar Singh @ Sonu and the remaining half packet was kept concealed by him in the generator box placed near the outer gate of his house at Green Valley, Chhehrata. Pursuant to the said disclosure statement, the petitioner got recovered 500 grams of heroin.

CRM-M-13176-2023

6. In ***CRM-M-13176-2023***, the petitioner seeks the indulgence of regular bail being granted to him, in case FIR No. 92 of 16.5.2022 registered at Police Station Special Task Force, District SAS Nagar embodying therein offences under Sections 21, 23, 29 and 59 of the NDPS Act, and, under Sections 7,13(1)(a) and 13(2) of the Act of 1988. However, during investigations offences under the Act of 1959, and, under the Act of 1908 were deleted, whereas, no charge has been framed by the learned trial Court under the UAPA Act.

7. In the petition (supra), it is averred that the petitioner has been falsely implicated in the present case, and, that the present FIR became registered on the basis of a secret information, to the effect that two accused, namely, Lakhbir Singh alias Lakha and Sarabjit Singh alias Satnam, and their accomplices are in link with Pakistani smugglers, and they used to bring heavy quantity of drugs, arms and explosives from Pakistan. It is further averred therein, that the investigating agency has invoked multiple provisions under NDPS Act. However, insofar as the provisions of Section 59 of the NDPS Act are concerned, the same had been invoked only against SI Narinder Singh, and, that no charge qua the said offence has been framed against the petitioner. It is also averred in the instant petition that no recovery of any contraband has been

effected from the present petitioner and he has been implicated as an accused on the basis of the disclosure statement made by the co-accused. Resultantly, the present became implicated for the commission of an offence punishable under Section 29 of the NDPS Act.

CRA-D-1288-2023

8. The instant appeal has been filed by appellant Surmukh Singh @ Sammu challenging the order dated 25.8.2023 passed by the learned Additional Sessions Judge, Amritsar, whereby the regular bail application filed by the appellant, was dismissed.

9. In the instant appeal, it is averred that no recovery was effected from the present appellant, and, on the date of alleged recoveries from the other co-accused, the present appellant was already confined in prison. It is further averred therein, that as per the prosecution case, on 18.5.2002, co-accused Dilbagh Singh made a disclosure statement qua his inculcation in a bomb blast in the District Courts, Ludhiana on 23.12.2021, and, also disclosed about the involvement of the present appellant in the said crime event. Subsequently, the present appellant was arrested in this case on 20.5.2022 after getting his production warrants on 19.5.2022. During interrogations, the appellant made a disclosure statement with regard to his involvement in the smuggling of heroin, arms and drones. It is further averred that no recovery was effected from the present appellant, and, he has been roped in the instant case in the face of the apposite disclosure statements, which are already subject matter of two other FIRs. Resultantly, the present became implicated for the commission of an offence punishable under Section 29 of the NDPS Act.

CRA-D-1190-2023

10. In the instant appeal, the appellant seeks the indulgence of regular bail being granted to him, in case FIR No.8 of 14.1.2022 registered at Police Station Special Task Force, District SAS Nagar, Punjab, under Sections 21, 23, 29 of the NDPS Act, and, under Section 25 of the Act of 1959, besides under Sections 4 and 5 of Explosive Act, besides under Sections 13, 16, 18 and 20 of the UAPA Act, besides under Section 120-B of the IPC.

11. In the appeal (supra), it is averred that the appellant has been falsely implicated in the present case, on the basis of a secret information regarding concealment of huge amount of drugs, arms, explosives in Bachiwind area. DSP Vavinder Kumar and his team including SI Vinod Sharma was deputed by AIG Rachhpal Singh and during search at the disclosed area, a suspected bomb was spotted and bomb disposal team was called. The same was found to be an improvised Explosive Device and was defused accordingly by the bomb disposal team. On 2.2.2022 during investigation, secret information was received by DSP that the recovered bomb was kept by Surmukh Singh @ Summu who is having links with ISI agent Musa, other agents and Pakistani Heroin smugglers. He kept this bomb on the asking of ISI agent Musa. His companion Gurpreet Singh is also involved in the said conspiracy and they both are present in their houses. After preparing the police party, DSP raided the houses of Surmukh Singh and Gurpreet Singh and apprehended them. On 6.2.2022, accused Surmukh Singh suffered a disclosure statement and got recovered 1 kg 10 grams of Heroin from the garage of tractor, situated in his Dera. As per disclosure statement of accused Surmukh Singh of dated 8.2.2022, in the

with two magazines, 22 live cartridges and Rs.1,00,000/- were recovered in the area of village Singhoke and village Gaggar which were thrown by way of drowns by Pakistan. The accused-applicant was arrested on 3.2.2022 and since then he is in custody.

Submission of the learned counsels for the petitioners/appellants

12. At the outset, the learned counsels appearing for the petitioners/appellants have vehemently argued that since there has been delay in the conclusion of the trial(s), as arise from petition/appeal FIRs, thereupon in terms of a plethora of judgments rendered by the Hon'ble Apex Court, thus with declarations therein, that speedy and expeditious trial of cases, by the Courts concerned, is the sine qua non, for fully endowing to the accused, the Constitutional right of life guaranteed under Article 21 of the Constitution of India. Therefore, they have argued that irrespective of the heinousness of the offences, allegedly committed by the petitioners/appellants, yet they are entitled to the indulgence of regular bail being granted to them.

Reasons for rejecting the submission (supra)

13. However, the said submission does not find favour with this Court, as the learned State counsel has intimated this Court, that after the drawing of charges against the accused concerned, thus the learned trial Judge concerned, has with the utmost despatch recorded the depositions of the prosecution witnesses concerned. Believing the said made statement at the bar by the learned State counsel, wherebys given the despatch shown by the learned trial Judge concerned, to expeditiously conclude the trial(s), as arise from the petition/appeal FIRs, thus rather deters this Court from the

bestowing the indulgence of bail to the petitioners/appellants, thus on the

purported premise, that there has been a tardy progress in the conclusion of the trial, as becomes entered against the accused concerned.

14. Be that as it may, the offences embodied under penal Sections (supra) are grave and heinous in nature. They are overloaded with incriminatory overtones exemplifying cross border narco terrorism. As such, the according of indulgence of bail to the accused, thus would not only erode the economic fabric of the nation, but would also cause grave endangerment to the security of the nation.

15. Moreover, the seizure(s) of the narcotic substance at the instance of the accused concerned, is/are of commercial quantities, thereby the statutory embargo created under Section 37 of the NDPS Act, against the accordings of indulgence of regular bail, to the present petitioners/appellants, thus becomes pointedly attracted against them, whereby this Court is not inclined to grant the asked for indulgence of regular bail to the accused.

16. Though from the accused in CRM-M-13176-2023 and from the accused in CRA-D-1288-2023 rather no recovery(ies) became effected from their respective conscious and exclusive possession, thus at the crime site, rather by the investigation officer concerned.

17. Despite no recovery(ies) becoming effected from the respective conscious and exclusive possession of the accused (supra), at the crime site, yet they become implicated in the FIRs concerned, but as conspirators with the principal accused concerned, rather on the basis of disclosure(s) statements being made by the accused, who become arrested at the crime site. Therefore, on the basis of a judgment rendered by the Hon'ble Supreme

31, wherein, the hereinafter expostulations of law are made, it is argued by the learned State counsel that thereby the incrimination drawn against the said accused is a falsely drawn incrimination and that they are entitled to the craved for indulgence of regular bail.

“(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.”

Reasons for rejecting the said submission

18. Since this Court in a verdict rendered in case bearing No.CRM-M-46238-2021 titled as “Amit Khurana V. State of Haryana”, revered the (supra) expostulation of law. Nonetheless, this Court yet further concluded that the said expostulations of law are made in respect of statement(s) recorded under Section 67 of the NDPS Act, and that they do not oust, either the workability of Section 27 of the Indian Evidence Act, nor they oust the workability of Section 29 of the NDPS Act. Relevant paragraphs whereof become extracted hereinafter.

“7. 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 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 non-obstante 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.

15. The disclosure statement as made against the bail applicant, rather was made, during the custodial interrogation, of Anuj (supra), and, though it did 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 conscious and exclusive possession of one Anuj. However, even if the afore discovery, had already occurred from the conscious and exclusive possession of the afore Anuj. 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.

16. *Consequently, 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 Anuj, yet with the bail applicant purportedly unlawfully supplying the seizure to Anuj, he hence becomes prima-facie penally liable along with one Anuj. As such, upon the confession as made by Anuj, from whose conscious and exclusive possession, the incriminatory fact (supra), became discovered or recovered, at the site of occurrence, the applicant 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 opening of trial against all accused concerned. However, the afore made confession or disclosure statement, is to be made during the course of custodial interrogation of Anuj. A reading of the disclosure statement makes it abundantly clear, that the apposite disclosure statement inculcating the bail applicant was made during the custodial interrogation of one Anuj.*

17. *Be that as it may, the evidentiary strength of the afore discovered fact, vis-a-vis the bail applicant, is to tested, and, as unless it holds some pirma-facie evidentiary value, it would unnecessarily hamper and fetter the personal liberty of the bail applicant. In other words, the disclosure statement, is to be accompanied by further corroborative evidence, comprised in the unexplained for hence lawful purposes, the inter-se mobile conversations between Anuj (supra), as exist in the respective call detail records, of the accused concerned, and, the afore is also to be gathered by the investigating officer concerned. Furthermore, the bank records concerned, are also be*

ascertained, to determine the manner of transfer of funds, as occurred from one accused to the other. In addition the stock registers concerned, are to be thoroughly examined, for unearthing the factum whether the supplied psychotropic substance occurred unauthorizedly from one accused to the other, inasmuch as, the supplies occurring, without any corresponding entries, through the prescription slips becoming entered in the stocks/ledgers, as, maintained by the chemist/druggist concerned.

18. However, at this stage, though the afore evidence, may not exist on record, and may be the non-existence of apposite incriminatory evidence (supra), may arise from hereafter assigned reasons. Nonetheless, since the seizure is of a commercial weight, and, since the bail applicant, became arrested on 26.05.2021, yet with his from 28.05.2021 hence prima-facie availing the facility of interim bail on health grounds, and, hence his not facilitating the gathering at his instance, of the afore evidence, for enabling the erection of a firm conclusion, that whether the disclosure statement (supra), is a bald one or is linked with other incriminatory evidence, of immense evidentiary vigor. Moreover, the afore prolonged availing of facility of bail on health grounds, by the bail applicant, cannot prima-facie at this stage, give any leverage to him to contend, that the afore connecting him evidence with the disclosure statement of Anuj, has not surfaced nor is available with the investigating officer concerned, significantly since he has for reasons (supra), not rendered the requisite co-operation to the investigating officer concerned. Moreover, even if he could not render the requisite co-operation to the investigating officer concerned, and, if hence the investigating officer concerned, became precluded to marshal the relevant incriminatory link evidence against the bail applicant, yet the latter could suo motu place on record the apposite call details, all the relevant bank transactions besides all the relevant

abstracts of the stock registers, as maintained by him, hence in personification of his prima-facie innocence. The bail applicant has not re-coursed the afore endeavour. Consequently, this Court does, in view of the weight of the seizure hence, rather recourse the mandate of Section 37 of the NDPS Act, and, deems it fit to not grant the indulgence of bail to the bail applicant.

19. *This Court does deprecate the indolence, and, lethargy of the investigating officer, to omit prior to the filing of the report under Section 173 Cr.P.C., and, rather during the phase of investigations, hence marshal the afore incriminatory evidence. Even though, the afore failings of the investigating officer prima-facie appear to become generated from the bail applicant availing the facility of interim bail on health grounds. However, the mere non-collection of the afore evidence, does not per-se entitle the bail applicant to bail, as hereafter also it is yet open to the investigating officer concerned, to re-course the mandate of Section 67 of the NDPS Act, vis-a-vis service providers concerned, and, also qua the management of the commercial establishments concerned besides qua the bank concerned. However, the afore can be done only in accordance with law, and, with the leave of the Court concerned. Therefore, when still the afore re-coursings can be done with the leave of the Court, as such it cannot be hence said that the disclosure statement as made by the accused, is a bald one, and, that the bail applicant is not connected with the discovered fact, and, nor further that the fact concerned, 'may not become proved'.*

20. *However, the bail applicant may also, if no valid incriminatory evidence becomes collected against him through the investigating officer concerned, lawfully marshaling incriminatory evidence (supra), thereupon, re-motion this Court, and, also he may upon his making an effort to prima-facie exhibit his innocence through his placing on record the above referred records, rather subsequently make a re-motion.*

21. The further reason for declining bail to the bail applicant, is 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 inculcate 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.

22. The afore drawn inferences also gather 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.”

23. 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.”

19. Furthermore, in the hereinabove extracted paragraphs 7 onwards, upto paragraph 23, this Court ultimately concluded, that yet therebys there is no bar to thus attract either the provisions embodied in

Section 29 of the NDPS Act, or in Section 27 of the Indian Evidence Act,

rather against those accused, from whose conscious and exclusive possession rather no recovery at the crime site is made, but whose names are disclosed, in the respectively made disclosure statement(s) by the accused, who are arrested at the crime site, thus as conspirators or as suppliers of the narcotic drugs or psychotropic substance, as become recovered at the crime site, from the conscious and exclusive possession of the accused who become arrested at the crime site.

20. Resultantly, thereby this Court concluded that as such, the drug warlords who operate from behind the scene, rather as the apposite suppliers, to the deployed by them foot soldiers, thus would become effectively nabbed.

21. For all the above stated reasons and given the above extracted paragraphs, as carried in the judgment (supra), this Court proceeds to decline the indulgence of regular bail to those accused from whose conscious and exclusive possession, thus no recovery was made at the crime site, but who were named by the principal arrested accused in their respectively recorded disclosure statements, to be the apposite suppliers of the recovered drugs/ narcotic substance(s).

22. Therefore, this Court find no merit in all the instant petitions/ appeals, as such all the petitions/appeals are hereby dismissed.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

October 23, 2024
Gurpreet/Ithlesh

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No