

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.67305 of 2025

Arising Out of PS. Case No.-18 Year-2025 Thana- Basmatia District- Araria

Firoz Aalam S/o Abdul Haque Resident of Village - Tinkambha, Ward No. -01
(Bela), P.S - Basmatiya, District - Araria

... .. Petitioner

Versus

The State of Bihar

... .. Opposite Party

Appearance :

For the Petitioner	:	Mr. Bindhyachal Singh, Sr. Advocate Ms. Nikita Mittal, Advocate Mr. Rajesh Roy, Advocate Mr. Kumar Awinash Ankit, Advocate
For the State	:	Mr. Anil Kumar Singh No. 1, APP

CORAM: HONOURABLE MR. JUSTICE JITENDRA KUMAR
ORAL ORDER

2 17-09-2025 Heard learned counsel for the petitioner and
learned APP for the State.

2. The petitioner seeks bail, apprehending his arrest, in connection with Basmatiya P.S. Case No. 18 of 2025, dated.15.03.2025, registered for the offences punishable under Sections 21(c), 22, 23 of the N.D.P.S., Act.

3. As per allegation, on secret information, the police chased two motorcyclists. The names of the motorcyclists were Ram Khilawan Paswan and Om Prakash Karn. On search, one box containing 11,520 Spasmo-Proxyvon Plus capsules was recovered from them, and as per their statements, they were taking it to Nepal for smuggling. In the course of investigation,



the name of the Petitioner has transpired in the confessional statement of the co-accused, Ram Khilawan Paswan, who has stated that he along with other co-accused, including the Petitioner used to smuggle the contraband into Nepal.

4. Learned counsel for the petitioner submits that the Petitioner is innocent and has falsely been implicated in this case. He further submits that confession before the police is not admissible in the light of the celebrated Judgment of **Tofan Singh Vs. State of Tamil Nadu** as reported in **2021 4 SCC 1**. As such, such confession cannot be admissible even against the co-accused, because only admissible confession of accomplice is admissible against the co-accused. Moreover, there is no recovery whatsoever from the Petitioner. As such, there is no legally admissible material against the Petitioner, and hence, there is no basis for the prosecution of the Petitioner in this case.

5. It is also stated in paragraph no. 2 of the bail petition that the petitioner has not moved this Court earlier either for anticipatory bail or regular one in the instant case.

6. It has further been stated in paragraph no.3 of the bail petition that the petitioner has no criminal antecedents.

7. However, learned APP for the State vehemently opposes the prayer of the Petitioner for bail. He refers to and



relies upon Section 30 of the Evidence Act, as per which confession of an accused is relevant and admissible against the accomplice.

8. I considered the submission advanced by both the parties and perused the material on record.

9. I find that the whole case of the prosecution is based on confessional statement of co-accused as recorded under Section 67 of the NDPS Act.

10. Here it would be pertinent to refer to **Tofan Singh Vs. State of T.N. 2021 (4) SCC 1** wherein Hon'ble Supreme Court has clearly held that the confessional statement of the accused as recorded under Section 67 of the NDPS Act is not admissible. Here it has been explained that the powers conferred on the empowered officers under Section 41 and 42 of the NDPS Act 1985 read with Section 67 of the NDPS Act 1985 are limited in nature conferred for the purpose of entry, search, seizure and arrest without warrant along with safeguards enlisted thereof. The "enquiry" undertaken under the aforesaid provisions may lead to initiation of an investigation or enquiry by the officers empowered to do so either under Section 53 of the NDPS Act 1985 or otherwise. Thus, 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.

11. In recent judgment of **Najmunisha v. State of Gujarat, 2024 SCC OnLine SC 520, AIRONLINE 2024 SC 306**, Hon'ble Supreme Court has again held, relying upon Tofan Singh Case (supra) that a statement recorded under Section 67 of the NDPS Act cannot be considered to convict an accused person under the NDPS Act 1985.

12. Here it would be also pertinent to refer to **Dipakbhai J. Patel Vs. State of Gujrat, (2021) 16 SCC 547**. Though this judgment has been delivered by Hon'ble Supreme Court in the context of framing of charge, the observation made herein is relevant even in the present context. Here, Hon'ble Apex Court has held that the material on the basis of which charge could be framed must be such material which could be translated into evidence during the trial. The relevant part of the judgment reads as follows:

"23. At the stage of framing the charge in accordance with the principles which have been laid down by this Court, what the court is expected to do is, it does not act as a mere post office. The court must indeed sift the material before it. The material to be sifted would be the material



which is produced and relied upon by the prosecution. The sifting is not to be meticulous in the sense that the court dons the mantle of the trial Judge hearing arguments after the entire evidence has been adduced after a full-fledged trial and the question is not whether the prosecution has made out the case for the conviction of the accused. All that is required is, the court must be satisfied that with the materials available, a case is made out for the accused to stand trial. A strong suspicion suffices. However, a strong suspicion must be founded on some material. The material must be such as can be translated into evidence at the stage of trial. The strong suspicion cannot be the pure subjective satisfaction based on the moral notions of the Judge that here is a case where it is possible that the accused has committed the offence. Strong suspicion must be the suspicion which is premised on some material which commends itself to the court as sufficient to entertain the prima facie view that the accused has committed the offence."

(Emphasis supplied)

13. Similar view has been expressed by Hon'ble Supreme Court in **Karan Talwar Vs. The State of Tamilnadu (2024) SCC Online SC 3803**, holding as follows relying upon Dipakbhai J. Patel case (supra) :

"10.There is absolutely no case that any recovery of contraband was recovered from the appellant. As regards the confession statement of the appellant in view of Section 25 of the Indian Evidence Act, 1872 there can be no doubt with respect to the fact that it is inadmissible in evidence. In this context it is worthy to refer to the decision of this Court in **Ram Singh v. Central Bureau of Narcotics, (2011) 11 SCC 347**. In the said decision, this Court held that Section 25 of the Indian Evidence Act would make confessional statement of accused before police inadmissible in evidence and it could not be brought on record by prosecution to obtain conviction. Shortly stated, except the confessional statement of co-accused No. 1 there is absolutely no material available on record against the appellant.

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12. As noted hereinbefore, the sole material



available against the appellant is the confession statement of the co-accused viz., accused No. 1, which undoubtedly cannot translate into admissible evidence at the stage of trial and against the appellant. When that be the position, how can it be said that a prima facie case is made out to make the appellant to stand the trial. There can be no doubt with respect to the position that standing the trial is an ordeal and, therefore, in a case where there is no material at all which could be translated into evidence at the trial stage it would be a miscarriage of justice to make the person concerned to stand the trial.”

(Emphasis supplied)

14. Even reference to and reliance of learned APP upon Section 30 of the Evidence Act does not help the prosecution. A careful reading of Section 30 shows that even as per Section 30, only legally admissible confession of the co-accused is relevant and admissible against the accused, because the condition precedent for making the confessional statement of the co-accused relevant against accused is that there should be not only a joint trial of the accused along with the co-accused, even the confessional statement should be such which could be proved in the trial. Needless to say that inadmissible confession cannot be proved during the trial. As such, confession as referred to in Section 30 of the Evidence Act means only admissible confession and not such confession which is hit by Section 25 of the Evidence Act.

15. In view of the aforesaid facts and circumstances, I find that the prosecution case against the petitioner is based only on inadmissible material which could not be translated into evidence against the accused/petitioner during his trial. Hence, it



would be travesty of justice to curtail the liberty of the accused/petitioner under such facts and circumstances.

16. Accordingly, **this application is allowed**, directing the petitioner, above-named, to be enlarged on bail on his furnishing bail bonds in the sum of Rs. 10,000 /- (Ten Thousand) with two sureties of the like amount each to the satisfaction of learned I/C Special Judge, NDPS Act, Araria, in connection with Basmatiya P.S. Case No.18 of 2025, on the following conditions:

(i) The petitioner will make himself available for interrogation by a police officer/court as and when required.

(ii) The petitioner will undertake that investigation/trial will not get hampered on account of his absence or non-cooperation. He must be available to the police or the court whenever his presence is required.

(iii) The petitioner shall not, directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court or to any police officer.

(iv) In case, it is brought to the notice of the court below that the petitioner has criminal antecedents other than the disclosed one, learned court below shall cancel the bail bonds of



the petitioner after hearing him and getting satisfied that the petitioner has concealed his criminal antecedents despite his knowledge of the same.

(v) In case, it is brought to the notice of the court below that statement regarding previous bail petition is wrong, learned court below shall cancel the bail bonds of the petitioner.

(Jitendra Kumar, J.)

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