

IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 884 of 2023

Anusara Begum @ Ansura Begum @ Ansura Begam @ Baby

Vs.

The State of West Bengal & Anr.

WITH

CRR 5122 of 2024

Sheikh Sahajahan

Vs.

Union of India

**For the Petitioner
In CRR 884 of 2023**

: Mr. Ayan Bhattacharjee, Sr. Adv.
Mr. Anand Kesari,
Mr. Joydeep Mishra,
Mr. Ranajit Roy,
Ms. Ritu Das.

**For the NCB
In CRR 884 of 2023**

: Mr. Kallol Mondal, Sr. Adv.
Mr. Amajit De.

**For the Petitioner
In CRR 5122 of 2024**

: Mr. Y.J. Dastoor, Sr. Adv.
Mr. Joydeep Mishra,
Mr. Ranajit Roy,
Ms. Ritu Das.

**For the NCB
In CRR 5122 of 2024**

: Mr. Arun Kr. Maity (Mohanty),
Mr. Priyankar Ganguly.

Hearing concluded on **:** 05.03.2025

Judgment on **:** 04.04.2025

Shampa Dutt (Paul), J.:

1. The petitioners in the two revisional applications are husband and wife implicated in NDPS Case No. T.R. 53 of 2021 corresponding to NCB Crime No. 77/2021 under Sections 8(c) read with Sections 20 b(ii)(C) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985, pending before the Court of the learned Additional Sessions Judge, 3rd Court (NDPS Court), Howrah including the order dated 04.04.2022 passed in connection therewith.
2. The said petitioners have prayed for quashing of the said proceeding including the order dated 04.04.2022.
3. Vide the order dated 04.04.2022 cognizance has been taken by the learned Judge (Special Court).
4. The petitioners' case is that they have been falsely implicated in the present case. One of the contentions being that they have been implicated only on the basis of the statement of co-accused and that there is a case of misidentification.
5. It is stated that the petitioner Anusara Begum @ Ansura Begum @ Ansura Begam @ Baby has been wrongly implicated in place of Baby Begum, the daughter-in-law of another accused Sahanara Begum.
6. It is further stated that there has been a confusion of identity and the petitioner Anusara Begum @ Baby has been wrongly implicated in the present case.
7. It is also submitted that the address of Baby Begum and the address of Anusara Begum @ Baby are separate and the alleged

incident of attacking the NCB team was in the area where Baby Begum, daughter-in-law of Sahanara Begum resides and as such Anusara Begum @ Baby being wrongly implicated is liable to be discharged from the present case on the proceeding being quashed.

8. The petitioners have filed written notes of argument. Supplementary affidavit filed is also on record. Vide the supplementary affidavit the petitioners have tried to show that the address of Sahanara Begum and her daughter-in-law Baby Begum and that of Anusara Begum are at a distance of eight hundred meters, that is about 11 minutes walk.
9. It appears from the written complaint that accused James Nayak was apprehended and arrested carrying substantial quantity of 'ganja'. James Nayak on being arrested stated before the officers of the NCB that he was to handover the said drug to Sheikh Sahajahan @ Bada Bhai and Anusara Begum @ Baby who is the wife of Sheikh Sahajahan residing near Chamrail Railway Station, P.S. Uluberia, Dist. Howrah. The said incident led to the registration of the present case.
10. From the case diary it is clear that the petitioner Anusara Begum @ Baby has been clearly **identified as the wife of Sheikh Sahajahan**. There is no doubt that she is the person who is an accused in the present case. There is no discrepancy in the name of the husband of the petitioner Anusara Begum @ Baby. As such,

prima facie there is no reason to believe that it is Baby Begum, daughter-in-law of Sahanara Begum who is the actual accused.

11. It appears that **Baby Begum is not an accused in the present case.** Written notes by the petitioner has been filed stating that the investigation in the present case is not being conducted in a proper manner and there is a case of mis-identification and the case is solely on the basis of the statement of co-accused.

12. The following judgments have been relied upon on behalf of the petitioners:-

1. Tofan Singh vs. State of Tamil Nadu, (2021) 4 SCC 1;

2. Tajmul Hosssain Shah @ Taju Shah & Anr. vs. State of West Bengal & Anr., 2007 (1) AICLR;

3. Kamlesh & Anr. vs. State of Rajasthan & Anr., 2019 SCC OnLine SC 1822;

4. Noor Aga vs. State of Punjab & Anr., (2008) 16 SCC 417;

5. Mahmood Ali & Ors. vs. State of Uttar Pradesh & Ors., (2023) 15 SCC 488;

6. State of Orissa vs. Debendra Nath Padhi, (2005) 1 SCC 568;

13. On hearing the learned counsels for the parties and on considering the materials on record including the written notes and the judgments relied upon, it appears that the name of Anusara

Begam @ Baby and her husband Sheikh Sahajahan was stated by the apprehended accused James Nayak.

14. When the NCB team went to conduct search in the house of Sahanara Begum, Anusara Begum @ Baby and Sheikh Sahajahan they were allegedly attacked by them and physically assaulted.
15. Admittedly, accuseds Sahanara Begum, Anusara Begum @ Baby and Sheikh Sahajahan are all related to each other and live in a common area which is adjacent to each other. There is a prima facie case that Sahanara Begum, Anusara Begum @ Baby and her husband Sheikh Sahajahan are actively involved in the drug business.
16. **It is the case of the NCB** that the role of Anusara Begum @ Baby is clearly established through several collaborating evidence, primarily on the basis of her CDR connection with co-accused James Nayak (8457942947, 8280958978) and Kishore Lima (8984743012) through mobile nos. (8420055189, 7003298642 & 8017509345) being used by her. It is stated that tower location of these three mobile numbers (8420055189, 7003298642 & 8017509345) **were exactly matching with the house location of Anusara Begum @ Baby. Besides James Nayak has admitted that the drug deal was arranged by Anusara Begum @ Baby, Shahanara Begum & Sheikh Sahajahan and on their directions, James Nayak used to collect Ganja from Odisha and deliver it to house of Anusara Begum @ Baby & Sheikh Sahajahan.**

17. There are other evidence and materials to make out a prima facie case against the petitioner's herein including the CDR/call records. As such, it appears that it is not only on the statement of co-accused that the petitioners have been implicated. The case of mis-identification as claimed has been already clearly discussed earlier and has no substance.

18. In **Sanjay Dutt vs The State of Maharashtra, through CBI (STF), Bombay, Criminal Appeal No. 1060 of 2007, on 21 March, 2013**, the Supreme Court held:-

“42) In Manjit Singh vs. CBI, (2011) 11 SCC 578, this Court, while considering the question whether retracted confessions of the co-accused could be relied upon to convict the accused, held that the retracted statements can be used against the accused as well as the co-accused provided such statements were truthful and voluntary when made. In the said case, two accused persons made confessional statements and, subsequently, they retracted from their statements. This Court observed:

“87. A confessional statement given under Section 15 of TADA shall not be discarded merely for the reason that the same has been retracted....” It is pointed out that the confession in the present case was truthful and voluntary and has been recorded after strictly following the law and the prescribed procedure, the subsequent retraction and denial of such confessional statements in the statement of the accused under Section 313 was only as a result of an afterthought.

51) In Nazir Khan vs. State of Delhi, (2003) 8 SCC 461, this court held that the confessional statements made by the co-accused can be used to convict a person, and that it is only as a rule of prudence that the Court should look for corroboration elsewhere. It was held that:

“27. Applying the principles which can be culled out from the principles set out above to the factual

scenario, the inevitable conclusion is that the trial court was justified in its conclusions by holding the accused-appellants guilty. When an accused is a participant in a big game planned, he cannot take the advantage of being ignorant about the finer details applied to give effect to the conspiracy hatched, for example, A-7 is stated to be ignorant of the conspiracy and the kidnapping. But the factual scenario described by the co-accused in the statements recorded under Section 15 of the TADA Act shows his deep involvement in the meticulous planning done by Umar Sheikh. He organized all the activities for making arrangements for the accused and other terrorists.”

19. The NCB has prayed that the petitioner should face trial in this case relying upon the judgment of the Supreme Court in **Central Bureau of Investigation vs. Aryan Singh Etc. in Criminal Appeal Nos. 1025-1026 of 2023 reported in 2023 LiveLaw (SC) 292** dated April 10, 2023 wherein the Court held as follows:-

“High Court cannot quash criminal proceedings at Section 482 Cr.P.C. stage by saying charges aren’t proved – High Court cannot conduct a “mini trial” while exercising powers under Section 482 Cr.P.C. – At the stage of discharge and/or while exercising the powers under Section 482 Cr.P.C., the Court has a very limited jurisdiction and is required to consider “whether any sufficient material is available to proceed further against the accused for which the accused is required to be tried or not.” – Whether the criminal proceedings was/were malicious or not, is not required to be considered at this stage. The same is required to be considered at the conclusion of the trial – What is required to be considered is a prima facie case and the material collected during the course of the investigation, which warranted the accused to be tried.”

20. In **Surinder Kumar Khanna vs Intelligence Officer Directorate of Revenue Intelligence, Criminal Appeal No. 949 of 2018, on 31 July, 2018**, the Supreme Court held:-

“12. The law laid down in *Kashmira Singh* (supra) was approved by a Constitution Bench of this Court in *Hari Charan Kurmi and Jogia Hajam v. State of Bihar*¹¹ wherein it was observed:

“As we have already indicated, this question has been considered on several occasions by judicial decisions and it has been consistently held that a confession cannot be treated as evidence which is substantive evidence against a co-accused person. In dealing with a criminal case where the prosecution relies upon the confession of one accused person against another accused person, [1911] I.L.R. 38 Cal. 559 at 588 [1931] I.L.R. 54 Mad. 75 at 77.

(1964) 6 SCR 623 at 631-633 the proper approach to adopt is to consider the other evidence against such an accused person, and if the said evidence appears to be satisfactory and the court is inclined to hold that the said evidence may sustain the charge framed against the said accused person, the court turns to the confession with a view to assure itself that the conclusion which it is inclined to draw from the other evidence is right. As was observed by Sir Lawrence Jenkins in *Emperor v. Lalit Mohan Chuckerburty* a confession can only be used to **“lend assurance to other evidence against a co-accused”**. In *re Periyaswami Moopan Reilly. J.*, observed that the provision of Section 30 goes not further than this: “where there is evidence against the co-accused sufficient, if believed, to support his conviction, then the kind of confession described in Section 30 may be thrown into the scale as an additional reason for believing that evidence”. In *Bhuboni Sahu v. King* the Privy Council has expressed the same view. Sir John Beaumont who spoke for the Board, observed that “a confession of a co-accused is obviously evidence of a very weak type. It does not indeed come within the definition of “evidence” contained in Section 3 of the Evidence Act. It is not required to be given on oath, nor in the presence of the accused, and it cannot be tested by cross-examination. It is a much weaker type of evidence than the evidence of an approver, which is not subject to any of those infirmities. Section 30, however, provides that the court may take the confession into consideration and thereby, no doubt, makes it evidence on which the court may act; but the section does not say that the confession is to amount to proof. Clearly there must be other evidence. The confession is only one element in the consideration of all the facts proved the case; it can be put into the scale and weighed with the

*other evidence”. It would be noticed that as a result of the provisions contained in Section 30, the confession has no doubt to be regarded as amounting to evidence in a general way, because whatever is considered by the court is evidence; circumstances which are considered by the court as well as probabilities do amount to evidence in that generic sense. Thus, though confession may be regarded as evidence in that generic sense because of the provisions of Section 30, the fact remains that it is not evidence as defined by Section 3 of the Act. The result, therefore, is that in dealing with a case against an accused person, the court cannot start with the confession of a co-accused person; it must begin with other evidence adduced by the prosecution and after it has formed its opinion with regard to the quality and effect of the said evidence, then it is permissible to turn to the confession in order to receive assurance to the conclusion of guilt which the judicial mind is about to reach on the said other evidence. That, briefly stated, is the effect of the provisions contained in Section 30. The same view has been expressed by this Court in *Kashmira Singh v. State of Madhya Pradesh* where the decision of the Privy Council in *Bhuboni Sahu* case has been cited with approval.”*

21. In the present case, other than the statement of co-accused James Nayak there are other satisfactory evidences on record being CDR connections used, etc. which prima facie substantiates the statement of the co-accused and the materials on record are prima facie sufficient to sustain the charge against the petitioner herein.
22. **CRR 884 of 2023 and CRR 5122 of 2024 are thus dismissed.**
23. **Trial court to proceed expeditiously with the trial.**
24. All connected applications, if any, stands disposed of.
25. Interim order, if any, stands vacated.
26. Copy of this judgment be sent to the learned Trial Court for necessary compliance.

- 27.** Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)