

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

C.R.R. No. 2885 of 2024
Kajim Sk. @ Khajim Sekh @ Khajim Seikh
Vs.
The State of West Bengal

Before: The Hon'ble Justice Apurba Sinha Ray

For the Petitioner : Mr. Soumyajit Das Mahapatra, Adv.
Md. G.N. Imrohi, Adv.
Ms. M. Sinha, Adv.
Ms. Upasana Banerjee, Adv.

For the State : Ms. Anasuya Sinha, Ld. A.P.P.
Mr. Samarjit Balial, Adv.

CAV On : 08.08.2025

Judgment On : 10.09.2025

Apurba Sinha Ray, J. :-

1. By this application under Section 482 of Cr.P.C., the petitioner Kajim Sk. has prayed for quashing of the NDPS Case No. 35 of 2024 corresponding to GR Case No. 1591 of 2010 arising out of Jalangi Police Station Case No. 308 of 2010 dated 15.05.2010 under Sections 379/411/413/414 of the Indian Penal Code and Section 27(a)(6)(ii) of the Drugs and Cosmetics Act, pending before the Learned Judge, Special Court under NDPS Act cum-ADJ,

5th Court, Berhampore, Murshidabad including the order dated 02.09.2010 passed by the Learned Chief Judicial Magistrate, Murshidabad and all subsequent orders passed thereto.

2. Mr. Das Mahapatra has submitted that on the basis of a suo moto complaint of one Sujoy Roy Assistant Sub-Inspector of Police (ASI), Jalangi Police Station the said case was initiated on the factual aspects that after receiving a source information Mr. Roy conducted a raid on 15.05.2010 and thereupon recovered narcotics from one Maruti Car bearing Registration No. WB 02F/8837. Two accused persons namely Babu Sk @ Abid Hossain and Ejaharun Mandal were arrested and further on the basis of the statements of the said accused, the present petitioner was also entangled in the case although the petitioner was not at all present at the spot and nothing was recovered from his possession. Mr. Das Mahapatra has further submitted that the petitioner had no knowledge of the initiation of the aforesaid case and a chargesheet was submitted under Section 379/411/413/414 of IPC and 27(a)(6)(ii) of Drugs and Cosmetics Act on 02.09.2010 showing him absconder. After taking cognizance on 02.09.2010, a warrant of arrest was issued on that day against the present petitioner. Though the petitioner was residing at his place within the jurisdiction of Sagarpara Police Station, no warrant of arrest was executed against him after expiry of more than 13 years from the issuance of warrant of arrest. However, the petitioner was arrested on 22.03.2024. There is no material showing that the petitioner was involved with the commission of the offence which took place almost 14

years ago and he was arrested only on the complicity and on the basis of statements of the accused persons.

3. The learned counsel has relied upon several decision reported **in 2019 SCC OnLine Cal 2072 (Ashok Jain V. Narcotics Control Bureau), AIR 1964 SC 1184 (Haricharan Kurmi Vs. State of Bihar), (2019) 16 SCC 547 (Dipakbhai Jagdishchandra Patel Vs. State of Gujarat and Anr.)** and also another decision of Hon'ble Co-ordinate Bench in connection with **CRR No. 2657 of 2024 (Gopinath Majumder Vs. The State of West Bengal)** in support of his contention.

4. Mr. Das Mahapatra has further submitted that in **State of Haryana Vs. Bhajanlal reported in AIR 1992 SC 604** the Hon'ble Supreme Court has laid down the principles of quashing a proceeding under Section 482 of the Code of Criminal Procedure. In essence the Hon'ble Apex Court has been pleased to observe that where the allegations made in the First Information Report or the complaint even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused, such FIR is liable to be quashed.

5. The learned counsel has categorically submitted that there is no material which justifies the entanglement of the petitioner in this case. The basis of his arrest is the statement of the accused which is inadmissible evidence in the eye of law. As there is no other material apart from such inadmissible statement of the alleged co-accused, allowing to continue the

relevant proceeding against the present petitioner is a sheer abuse of process of court and as such the relevant FIR, the chargesheet and other orders are liable to be quashed.

6. The learned counsel for the State, Mrs. Sinha has fairly submitted that it is true that the instant case was initiated on 15.05.2010 and on the basis of the statement of the co-accused, the FIR was also lodged against the present petitioner along with others. But the fact remains that the accused remained absconder for about 14 years and as a result of such absconcion, the investigating agency was unable to procure any material evidence against him. Had he not absconded for so long the investigating agency could have collected incriminating materials against the petitioner. As the petitioner did not co-operate with the investigation by remaining absconder for a period of 14 years, his prayer for quashing the proceedings should not be allowed.

7. After considering the rival contentions of the parties and also taking into consideration the case diary and the judicial decisions relied upon by the learned counsel of the petitioner it appears to me that the instant case was initiated on 15.05.2010 and although at that time the petitioner was not present at the spot, on the basis of the statement of the co-accused, the instant case was also started against the petitioner showing him absconder.

In Ashok Jain's case (*supra*) it is observed that *"the principal accused Ansar Rahaman and Deepak Giri were convicted and the other two accused persons Bhagwan Singh and Bhairon Singh whose names were taken by the*

principal accused along with that of the petitioner, have already been acquitted. The house of the petitioner was found under lock and key and no criminal antecedent of the petitioner was revealed on inquiry. Subsequent raid of the petitioner's house also did not lead to anything suggesting his involvement in the alleged offence”.

8. The Hon’ble Court has also observed in paragraph 9 of that decision to the effect *“It is trite law that jurisdiction under Section 482 of the Code ought to be exercised with extreme care, caution and circumspection and should not be used to stifle or axe down a legitimate prosecution. But at the same time, the court should not hesitate to quash any proceedings which may amount to abuse of the process of law.”*

9. In **Haricharan Kurmi’s case (supra)** the Hon’ble Supreme Court has dealt with the provisions under Section 30 of the Evidence Act along with the evidence given by an accomplice under Section 133 of that Act.

10. In **Dipakbhai Jagdishchandra Patel’s case (supra)** the Hon’ble Supreme Court has discussed the effect of confession before the police officer by an accused. In that case what happened is that accused-1, accused-2 and accused-3 were arrested with fake Saudi Arabian currency Riyal and on the basis of their confession to the effect that they were selling fake Saudi Arabian currency Riyal in connivance with the appellant/accused-4, the said accused-4 was arrested. The accused-4 was also admitted before the police regarding his involvement in the said offence.

The plea for discharge of the appellant was rejected by the courts below on the basis that it is premature to say anything at this stage in respect of the credibility of the statement made by the officer in the complaint. It was held by the Hon'ble Apex Court that materials relied on by the State to sustain framing charges against the appellant, are statements given by the appellant under Section 161 of Cr.P.C. and statements also given by the co-accused. It is trite law that confession made to a police officer is clearly an inadmissible piece of evidence and even if it does contain admission by virtue of Section 162 of Cr.P.C. such admissions are also clearly inadmissible. Accordingly, the proceeding on the basis of that it is a confession by an co-accused and still proceeding further that there is a joint trial of the accused is clearly not permitted under the law of the land particularly when there is no recovery from the appellant any counterfeit note nor any other material on the basis of which even a strong suspicion could be aroused. In the unreported case of **Gopinath Majumder (supra)** the Hon'ble Co-ordinate Bench has been pleased to observed:-

"It appears from the case diary that apart from the statement of the co-accused implicating the petitioner in the alleged offence, an independent witness Nanda Gopal Mukherjee was examined under Section 161 of the Code of Criminal Procedure. The said witness has stated that one Chiran handed over Rs.7.5 lakhs to the petitioner for making it over to another person.

The petitioner received the said amount without enquiring about its details. Save and except such statement, no incriminating material has transpired against him to prima facie suggest his involvement in the alleged offence. It is also not in dispute that no recovery has been made from him.

Upon consideration of the entire material of record, particularly the Case Diary, this Court is of the view that allowing the proceeding to continue shall be a futile exercise and abuse of the process of the Court. The material available on record can, under no circumstance, lead to conviction of the petitioner and it shall not be just or fair to compel the petitioner to suffer the ordeal of the trial without any cogent reason whatsoever.”

11. I have gone through the FIR which was lodged by ASI Sujoy Roy on 15.05.2010 stating that after conducting the raid on the basis of a secret source information he recovered narcotics from the vehicle bearing Registration No. WB 02F/8837 and arrested two accused persons namely Babu Sk @ Abid Hossain and Ejaharun Mandal and on interrogation both

the accused confessed that the present petitioner and others were also involved in commission of the offence as alleged.

12. Section 161 of Cr.P.C. has given power to the police officer making an investigation to examine orally any person supposed to be acquainted with the facts of the case and such person shall be bound to answer truly all questions relating to such a case put to him by such officer other than questions of self-incriminating issues. Therefore, the terms 'any person supposed to be acquainted' include the accused also. Hence, the investigating officer has his rights to interrogate the accused person also and in doing so, if the accused makes any comment involving others, the police officer can use such statements as a piece of 'lead' for unfurling further investigation. Needless to mention, the term 'lead' in police investigation implies a piece of information, evidence or a direction or a clue to help in solving a crime or unfurling the truth. The investigators can use such leads to gather more information after verification of the said clue. Therefore, interrogation of the accused by the investigating officer is neither prohibited nor regarded as illegal under the Code of Criminal Procedure, 1973. It is also not illegal to interrogate the accused for obtaining more information relating to the entire gamut of the offence committed and persons involved therewith. It appears from the record that the accused Babu Sk @ Abid Hossain and Ejaharun Mandal were interrogated and certain clues regarding the offence and offenders had been elicited. It is true that on the basis of a statement of an accused none can be punished or convicted unless there are other materials connecting the offenders who

were named by the said accused persons. Therefore, the interrogation by which an accused divulged the names of others cannot be ipso facto wrong during investigation under the provisions of Code of Criminal Procedure unless the same were verified and found wrong. If the investigating officers are not allowed to act upon the 'lead' received from the apprehended accused persons, the investigation cannot proceed, but at the same time, the court should take into consideration whether such 'lead' from the accused persons are actually verified or not by the investigating officer before entangling another person, who was named by the apprehended accused, in the case. If the said information received from the accused is not verified nor acted upon, mere naming of another by the apprehended accused makes the issue irrelevant. However, if the said information/lead is verified or acted upon, and when there are indications that such information may tend to unfurl the entire gamut of the offence or part(s) of it, in that event such interrogation disclosing the name of the other accused person cannot be thrown out by the courts before trial of the case.

13. In our case, although the investigating officer got the alleged information regarding the involvement of the present applicant, no fruitful effort was made by him to apprehend the present applicant. The report filed by one SI Dipak Halder, the Officer-in-Charge of Jalangi Police Station, Murshidabad dated 25.07.2025 shows that warrant of arrest was issued for the first time on 02.09.2010 against the applicant and thereafter on 24.01.2024 a fresh warrant of arrest was issued against him. The explanation of the Officer-in-Charge for non-execution of the warrant of

arrest against the applicant was that as *“no reminder has been received by this police station from the learned Court after issuing the warrant of arrest against accused Kajim Sk., for the period from 03.03.2011 to 19.05.2023,”* the search for Kajim Sk. was stopped. There is no law in our country obliging the court to give a reminder to the police authority of the concerned police station or investigating officer for execution of a warrant of arrest which was already issued. It is the duty of the concerned police personnel to take appropriate action against the concerned accused person against whom a warrant of arrest was issued. Therefore, from the above it transpires that no fruitful effort was made from the side of the concerned police personnel to execute the warrant of arrest issued against the appellant. It is not understood when the investigating officer has got the ‘lead’ or information from the apprehended accused persons what prevented him from arresting the applicant. Another ground for non-execution of the warrant of arrest was mentioned in the report dated 25.07.2025 of the Officer-in-Charge, Jalangi Police Station, Murshidabad to the effect that *“during this time news was also aired regarding the bifurcation of Jalangi Police Station into Jalangi Police Station and Sagarpara Police Station. Later on 13.07.2020 the bifurcation was finally occurred and a newly Police Station Sagarpara was created.”* Is it a ground at all? Warrant of Arrest was issued against the applicant on 02.09.2010 and the bifurcation of the police stations took place in the year 2020. For this long 10 years, the police remained idle since they thought that there would be a separation of jurisdictions of the police stations. Is it a fault of the applicant or is it a fault of the Court? All the above reasons seem

unconscionable and cannot be accepted, particularly when the matter involves the liberty of a person.

14. Therefore, in my considered view, receiving of information from the accused during the interrogation is not at all prohibited and the law suggests that such information received should be verified by the police officer involved in the investigation of the case and even after getting such opportunity to verify the authenticity of such information received from the apprehended accused person if the investigating officer or concerned police personnel remains inactive for a prolonged period, the court should exercise its discretion in favour of the accused person who was merely named by another apprehended accused and no material evidence was collected against him.

15. The case in our hand discloses that excepting one day i.e. 19.05.2010, no attempt was made to apprehend the applicant during 14 years from the initiation of the Jalangi PS Case No. 308 of 2010 dated 15.05.2010 although he was all along within the jurisdiction of Sagarpara P.S. and there is no material on record to show how the applicant was involved with the commission of the alleged offence, and hence I do find merits in the submission of the learned counsel of the applicant to the effect that allowing the proceedings to continue in connection with GR Case No.1591 of 2010 against the present applicant would be a sheer abuse of process of court. Accordingly, the entire proceedings against the applicant Kajim Sk., as stated above is hereby quashed. The petitioner Kajim Sk. be set at liberty at

once, and be released from the correctional home, if he is in custody in connection with this case, and not wanted in any other case.

16. C.R.R. No. 2885 of 2024 is, thus, allowed on contest. No order as to costs. The duplicate case diary be returned.

17. Urgent photostat certified copies of this Judgment, if applied for, be supplied to the parties on compliance of all necessary formalities.

(APURBA SINHA RAY, J)