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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL BAIL APPLICATION NO. 4716 OF 2024

Bashir Kamruddin Sayyed

.. Applicant

Versus

Union of India and Anr.

.. Respondents

.....

- Mr. Kamlesh Satre, Advocate for Applicant.
- Mr. Dinesh J. Haldankar, APP for Respondent No.2 – State.
- None for Respondent No.1 – Union of India.

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CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 04, 2025.

P.C.:

1. Heard Mr. Satre, learned Advocate for Applicant and Mr. Haldankar, learned APP for Respondent No.2 – State.

2. Today when the Application is called out for hearing, none appears for Respondent No.1 – Union of India.

3. Respondent No.1 – Union of India is directed to keep a responsible pleader present in the Court on the next adjourned date when further orders will be passed.

4. After hearing learned Advocate for Applicant and learned APP, it is seen that this is a case of chance recovery of the alleged contraband totalling weighing 31 kgs, 16 kgs from Accused No.1 and 15 kgs from Accused No.2 outside a railway station in Mumbai in a public place.

5. Statement recorded of the Accused Nos.1 and 2 have revealed involvement of Accused Nos.3 and 4. Applicant before me is Accused No.3. Accused No.2 disclosed the name of the present Applicant who has been one of the persons involved with him. Applicant before me is a rickshaw driver.

6. The only incriminating material as can be seen from the record is the statement of Accused No.2 and the CDR record which is relied upon by the Prosecution.

7. Under the provisions of Section 67 of the NDPS Act the said statement of the Accused would undoubtedly not be material at this stage to indict the Applicant, unless there is corroborative evidence to show involvement of the Applicant before me. Mere CDR records *per se* on its own without transcripts of conversation would not be adequate evidence to establish complicity of the Applicant in the crime either.

8. Most important clinching fact is that no recovery has been effected from the Applicant. In this regard, learned Advocate has placed before me the order of grant of bail to Accused No.4 passed by the learned Sessions Court which is appended at page No.711 of the Application dated 18.09.2024. He would submit that there is no material whatsoever with respect to Accused No.4 and the present Applicant.

9. The Supreme Court in the case of *Toofan Singh Vs. State of Tamil Nadu*¹ Court held that statements recorded by NDPS officers could be construed as statements to police officers given their duties and responsibilities in preventing and detecting crime under the NDPS Act. It held that right against self-incrimination and right to privacy under Article 20(3) and Article 21 of the Constitution apply to confessions recorded under Section 67 of the NDPS Act. It also held that officers under the NDPS Act should be construed as 'police officers' under Section 25 of the Evidence Act to prevent coercion in recording confessions and that confessions made before such officers are inadmissible as evidence to protect fundamental rights under Articles 20(3) and 21 of the Constitution.

10. In the case of *Phundreimayum Yas Khan Vs. State (NCT of Delhi)*² the Delhi High Court has observed that disclosure statement of co-accused is *per se* not admissible without there being any corroboration thereof. Relevant paragraph No.24 of the said judgement reads thus:-

“24. The case of the prosecution, in so far as the applicant is concerned, is circumstantial, i.e. based solely on disclosure statement of the co-accused Sayed Javed Hussain which is per se not admissible without there being any corroboration. The prosecution has not been able to establish any connection between the subject offence and the location/CDRs of the accused persons, where the applicant is alleged to be present at the time when the contraband was collected by Sayed Javed Hussain. Merely because the applicant had been having frequent

¹ (2021) 4 SCC 1
² 2023 SCC OnLine 135

calls with the co-accused, would not be sufficient to hold that applicant is guilty of the subject offence.”

11. In the case of *Jasbir Singh Vs. Narcotics Control Bureau*³ the Delhi High Court in paragraph Nos.63, 67 and 68 of its judgment while interpreting Section 67 of the NDPS Act *vis-a-vis* Sections 25 and 27 of the Indian Evidence Act, 1872 held as under:-

“63. As statements recorded under Section 67 NDPS Act are inadmissible being hit by Section 25 IEA, the only way to make any part of such statements admissible, is by way of Section 27 IEA which creates an exception and allows only such part of a confessional statement, being information leading to discovery of some fact not previously in the knowledge of the police officer. In the present case, none of the statements of the Applicant lead to any discovery of a fact”, and hence, the statutory bar to their admissibility and reliability is attracted.

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67. With regards to applicability of Section 27 IEA, the fact so discovered is admissible when accompanied by the recovery of a material object and does not include purely mental or psychological facts. It is relevant to note the observations of this Hon"ble Court in State v. Navjot Sandhu @ Afsan Guru CrI. A. No. 80/2003 wherein this Hon"ble Court, after placing reliance on Pulukuri Kottaya and Ors v. The King-Emperor 1946 SCC OnLine PC 49, and several other judgments of the Hon"ble Supreme Court and other courts, summarized the law governing Section 27 IEA as follows:

“396. We, therefore, hold that in order that Section 27 may be brought in aid, the prosecution must establish:—

1. That consequent to the information given by the accused, it led to the discovery of some fact stated by him.

2. The fact discovered must be one which was not within the knowledge of the police and the knowledge of the fact was for the first time derived from the information given by the accused.

3. Information given by the accused must lead to the discovery of a fact which is the direct outcome of such information.

4. The discovery of the fact must be in relation to a material object and of course would then embrace within its fold the mental condition i.e. the knowledge of the accused of the place from where the object was produced and the knowledge that it was there.

5. Only such portion of the information as is distinctly connected with the said discovery is admissible.

6. The discovery of the fact must relate to the commission of some offence.”

68. Therefore, for any part of the alleged disclosures of the Applicant to be admissible, it was necessary that such disclosure led the Respondent to recovery of any contraband, or any other 'fact' related to the alleged offences. Given that none of the disclosures of the Applicant, except (at best for the recovery of a contraband involving quantity lesser than small quantity) led to the discovery of any object, or a “new fact” thereby, such disclosures under section 67 NDPS Act are held inadmissible in evidence.”

12. In the case of *State Vs. Pallulabid Ahmad Arimutta⁴* , the Supreme Court held that CDR details of the some of the accused or allegations of tampering of evidence by accused is an aspect that can be examined at the stage of trial. Hence statement given under Section 67 of the NDPS Act, 1985 cannot be considered at the stage of bail.

13. In view of the above, Respondent No.1 – Union of India is directed to ensure that a responsible Advocate remains present on the next adjourned date when this Court shall pass appropriate orders determining the present Application.

14. It is clarified that on the next adjourned date, if Respondent No.1's Advocate does not remain present, this Court shall not await his

⁴ SLP (Cri.) No. 3242 / 2022 dated 10.01.2022

presence and proceed with passing appropriate orders in accordance with law as discussed above.

15. Copy of this order shall be served by Advocate for the Applicant on Respondent No.1 immediately.

16. Stand over to **07th February 2025**. To be placed under the caption '**First on Board**'.

[MILIND N. JADHAV, J.]

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