

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Ajay Kumar Gupta

C.R.R. 4110 of 2022

Aasif Mohammad @ Asif Mohammad @ Asif @ Viki

Versus

The State of West Bengal

For the Petitioner : Mr. Mrityunjoy Chatterjee, Adv.
Mr. Arindam Poali, Adv.

For the State : Mr. Saryati Dutta, Adv.
Ms. Baishakhi Chatterjee, Adv.

Heard on : 06.02.2026

Judgment on : 06.04.2026

Ajay Kumar Gupta, J.:-

1. The instant Criminal Revisional application under Section 482 of the Code of Criminal Procedure, 1973 (in short 'Cr.P.C.') has been preferred by the petitioner seeking quashing of proceeding being Special Case No. 125 of 2021 arising out of Malda Police Station Case No. 556 of 2021 dated 12.11.2021 under Sections 21(c)/29 of the

Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'NDPS Act') read with Sections 18(b)/27 of Drugs & Cosmetics Act, 1940 (in short 'DC Act') pending before the Learned Judge, Special 3rd Court under NDPS Act, Malda.

FACTS OF THE CASE: -

2. The brief facts, leading to the filing of this instant Criminal Revisional application, are as follows: -
 - a. On 12.11.2021, the police personnel of Malda Police Station lodged a suo moto complaint alleging, *inter alia*, that one Masroor, son of Late Islam, and Md. Arif, son of Ghurekha, both of Hazipur, Hapur, Uttar Pradesh, were apprehended with one Tata Truck bearing No. UP15CT2770 as per source information after hot chase at Narayanpur Popra More under Malda P.S. and recovered 20,000 bottles of phensedyl, 3 pieces of mobile handsets, and genuine Indian currency of Rs. 6,500/-.
 - b. It was further alleged that during interrogation, the detained accused persons confessed that the said seized smuggled items belonged to the petitioner herein, Asif @ Viki of Meerut, UP, having the mobile no. 8001419887 and 9120888444. They further submitted that the items were to be delivered to one Shyam of Gangarampur, Dakshin Dinajpur, in lieu of money.

- c.** Based on such facts, a case being Malda Police Station Case No. 556 of 2021, dated 12.11.2021, under Sections 21(c)/29 of the NDPS Act read with Sections 18(b)/27 of the DC Act, has been registered against four accused persons and an investigation was initiated.
- d.** Upon getting to know about lodging the aforesaid false case, on the basis of confessional statement of the co-accused made before the police officer, the petitioner immediately filed an Anticipatory bail application being C.R.M. (A) No. 2441 of 2022 dated 08.06.2022 and obtained Anticipatory Bail from the Hon'ble High Court.
- e.** After completion of the investigation, the investigating agency submitted a charge sheet, being Charge Sheet No. 242 of 2022 dated 07.05.2022 under Sections 21(c)/29 of the NDPS Act read with Sections 18(b)/27 of the DC Act against seven accused persons including the Petitioner although he was completely innocent and no evidence, even prima facie, was found against the petitioner.
- f.** Being aggrieved by and dissatisfied with the initiation and continuation of the aforesaid criminal proceedings, the petitioner filed this Criminal Revisional application with aforesaid prayer. Hence, this application.

SUBMISSION ON BEHALF OF THE PETITIONER: -

3. Learned counsel appearing on behalf of the petitioner submitted that nothing has been recovered from the possession of the petitioner and the petitioner has been implicated falsely in the present case. The alleged mobile numbers disclosed by the co-accused do not belong to the petitioner, which has also been observed by this Hon'ble High Court, while granting bail to the petitioner. The report submitted before the Hon'ble High Court does not show that the petitioner was the owner of the SIM card/mobile phones, through which telephonic conversations had been made with the co-accused while transportation. Therefore, the petitioner has been granted Anticipatory bail by this Hon'ble High Court vide CRM (A) No. 2441 of 2022 dated 08.06.2022.
4. Learned counsel further submitted that the petitioner is completely innocent and in no way involved with the alleged offence and he was falsely implicated in this case, only on the basis of the statement of the co-accused. The name of the petitioner transpiring in the present case, on the basis of confessional statement of the co-accused before the police officer, is inadmissible evidence.
5. Learned counsel further submitted that the Investigating Agency has already submitted the Charge Sheet being CS No. 242 of 2022 dated 07.05.2022 under Sections 21(c)/29 of the NDPS Act read with

Sections 18(b)/27 of the DC Act against seven accused persons before the Learned Chief Judicial Magistrate, Malda. However, the investigating agency has not been able to establish a nexus regarding the phone calls and/or any other link or connection with the co-accused persons in the instant case, who were arrested with the commercial quantity of Narcotics. There is no evidence against the petitioner.

- 6.** Learned counsel further submitted that even if the allegations in the FIR are taken to be true at face value and accepted in their entirety, they do not prima facie constitute any offence or make out any case against the petitioner and the instant criminal proceeding is manifestly attended with a mala fide intention with an ulterior motive for wreaking vengeance on the accused person. The allegations are absurd and inherently improbable, and on the basis of the same, no prudent person can conclude that there are sufficient grounds for proceeding against the petitioner herein.
- 7.** Finally, the learned counsel submitted that in the present case, permission of Court proceeding may degenerate into a weapon of harassment or prosecution and, in such circumstances, in the interest of justice, it would be justified for this Hon'ble High Court to quash the criminal proceeding.

8. Learned advocate has further relied upon the decision in the case of ***Karan Talwar Vs. State of Tamil Nadu***¹ particularly paragraph nos. 9, 10 and 12 to support his contention that the confessional statement made by the co-accused before the police officer during custody is inadmissible in law and cannot be the only basis for prosecution.

SUBMISSION ON BEHALF OF THE STATE: -

9. Learned counsel appearing on behalf of the State opposed the prayer for quashing of the proceeding pending against the petitioner. It was contended that the Petitioner was very much involved in the matter of the seized articles, which transpired during the investigation from the co-accused persons, who were apprehended at the time of recovery of the contraband goods.
10. It was further submitted that the allegation against the petitioner is a serious and grievous one. 20,000 bottles of phensedyl, 3 pieces of mobile handsets, and genuine Indian currency of Rs. 6,500/- were recovered, and he was the owner of such phensedyl. Therefore, the application is liable to be dismissed.

DISCUSSIONS, ANALYSIS AND CONCLUSION OF THIS COURT: -

11. Having heard the learned counsels appearing on behalf of the respective parties and upon perusal of the case diary produced by the

¹ 2024 SCC OnLine SC 3803.

Learned Advocate for the State, this court is of the considered view that there is no iota of evidence collected during the investigation against the petitioner indicating his involvement, in any way, in the crime as alleged. A charge sheet has been filed against seven accused persons, including the petitioner, only on the basis of confessional statements of the co-accused persons without any link to the seized goods.

- 12.** The investigating officer failed to collect any evidence to connect the Petitioner to the crime. Although the prosecution alleges that the petitioner was in telephonic contact with the co-accused during the transportation of phensedyl, the investigating agency has not produced any documentary evidence or call detail records to establish that the SIM cards or mobile phones in question were owned or used by the petitioner. Further, no financial trail or incriminating material has been disclosed on record linking the petitioner to the alleged offence.
- 13.** When there is no material at all against the petitioner, it would be a miscarriage of justice to make the person concerned stand the trial because it would highly prejudice the petitioner, and all efforts would be futile as the conviction in the present case would be rare and remote, as there is absolutely no case of recovery of contraband goods from the Petitioner. No evidence transpires from the case diary as

regards any link with the petitioner and contraband goods recovered from the co-accused persons.

14. As regards the confessional statement of the co-accused 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. Such a statement can, at best, be used only for corroboration or to lend assurance to the court if there is other substantial independent evidence, but it cannot be the sole basis for conviction.
15. A confessional statement made by the co-accused under Section 67 of the NDPS Act is inadmissible as evidence against another co-accused in a trial and is considered a confession made to a “police officer” hit by Section 25 of the Evidence Act and cannot be used to convict an accused in view of the decision in the case of ***Tofan Singh V. State of Tamil Nadu***².
16. The allegation of the investigation agency against the petitioner, that he is the master mind behind the racket, who supplied to the drug racket operated in Gangarampur and Balurghat area by Shyam Saha and his accomplice in the crime, is baseless when no iota of evidence transpired from the record against the petitioner.
17. The confessional statement made by the accused before the police during custody is inadmissible in law and cannot be the only basis

² (2021) 4 SCC 1

for prosecution. Such observation, made particularly in paragraphs 9, 10 and 12 in the case of **Karan Talwar (Supra)** as hereinunder, is squarely applicable in the present facts and circumstances of this case: -

“9. As noted earlier, the accusation against the appellant is commission of offence punishable under Section 27(b) of the NDPS Act. The said Section, in so far as it is relevant, reads thus: —

“27. Punishment for consumption of any narcotic drug or psychotropic substance. — *Whoever, consumes any narcotic drug or psychotropic substance shall be punishable, —*

(a)

(b) where the narcotic drug or psychotropic substance consumed is other than those specified in or under clause (a), with imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees, or with both.”

*10. As is evident from the said Section, the alleged offence is consumption of narcotic drug or psychotropic substance other than those specified in or under clause (a) of Section 27, NDPS Act, and therefore, the question is whether any material is available to charge the appellant thereunder. The contention of the appellant is that he has been arraigned as accused No. 13 based on the confession statement of co-accused viz., accused No. 1. Certainly, in the absence of any other material on record to connect the appellant with the crime, the confession statement of the co-accused by itself cannot be the reason for his implication in the crime. This view has been fortified by the law laid down in **Suresh Budharmal Kalani v. State of Maharashtra reported in (1998) 7 SCC 337: 1998 INSC 364**, wherein it was stated that a co-accused's confession containing incriminating matter against a person would not by itself suffice to frame charge against him. The*

materials on record would reveal that the investigating agency had not subjected him to medical examination and instead, going by complaint Witness No. 23, he smelt the accused. The less said the better and we do not think it necessary to comment upon adoption of such a course. We need only to say that even if he tendered such evidence, it would not help the prosecution in anyway. 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 reported in (2011) 11 SCC 347: 2011 INSC 342**. 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.

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.”

18. In the light of the aforesaid discussion and relying upon the aforesaid judgments, **CRR 4110 of 2022** is, thus, **allowed**. Connected applications, if any, are also, thus, disposed of.
19. The proceeding being Special Case No. 125 of 2021 arising out of Malda Police Station Case No. 556 of 2021 dated 12.11.2021 under Sections 21(c)/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 read with Sections 18(b)/27 of Drugs & Cosmetics Act, 1940 pending before the Learned Judge, Special 3rd Court under NDPS Act, Malda is hereby quashed insofar as the petitioner is concerned.
20. Let a copy of this Judgment be sent to the Learned Court below for information.
21. Case diary, if any, be returned to the learned counsel appearing on behalf of the State.
22. Interim order, if any, stands vacated.
23. All parties will act on the basis of server copies of this Judgment duly downloaded from the official website of this Hon'ble High Court.
24. Urgent Photostat certified copies of this Judgment, if applied for, are to be given as expeditiously to the parties on compliance of all legal and necessary formalities.

(Ajay Kumar Gupta, J.)

(P.A.)