

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-46238-2021 (O&M)

Date of decision: 21.12.2021

AMIT KHURANA

...Petitioner

Versus

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present: Mr. S.K. Garg Narwana, Senior Advocate with
Mr. Vishal Garg Narwana, Advocate and
Mr. Nitin Sachdeva, Advocate
for the petitioner.

Mr. Tanuj Sharma, AAG, Haryana.

SURESHWAR THAKUR, J.

1. Through the instant petition, cast under the provisions of Section 439 of the Cr.P.C., the bail petitioner seeks an order for his being released from judicial custody. The petitioner is lodged in judicial custody, in case FIR No.156 dated 09.05.2021, registered at PS Israna, District Panipat, constituting therein offences, under Sections 21 of Narcotic Drugs and Psychotropic Substances Act, 1985 (Sections 22 and 29 of Narcotic Drugs and Psychotropic Substances Act added lateron).

2. The recovery of scheduled drugs, comprising of 4 bottles of BIOREX – 100 ML, 4 bottles of CODISTAR-100 ml, 25 injections DOLOPENT-1ML, 158 injections HACKET-1ML/30MG, 76 injections PANLAB-1ml/30mg, 420 Tablets of LOMOTIL, happened at the site of the occurrence initially from the alleged conscious, and, exclusive possession of accused Annu son of Karambir. However, the afore Annu made a disclosure

statement, wherein, he revealed that he purchased the contraband (supra) from accused Feroz Ahmed. Consequently, Feroz Ahmed was arrested on 11.05.2021, and, from his alleged conscious and exclusive possession recovery of 600 tablets of Alprazolam, and, 800 injections of Pentazocine (Hacket) hence became effected. However, accused (supra) made a disclosure statement, that he purchased the contraband (supra) from one Anuj Kumar. Anuj Kumar was arrested on 24.05.2021. On the arrest of Anuj Kumar recovery of 13 boxes of TRAMADOL HYDROCHLORIDE CAPSULES containing 3900 capsules, and, 19 boxes of alprazolam tablets containing 11400 tablets, became effected, from afore, by the investigating officer concerned. The afore accused Anuj Kumar made a disclosure statement, naming therein, the accused-applicant Amit Khurana, to be supplier of the afore psychotropic substance, as became recovered from his alleged conscious and exclusive possession. Consequently, the bail applicant was arrested on 26.05.2021.

3. Since the Hon'ble Apex Court has pronounced, that not only the weight of the prohibited salt, as, carried in the seized psychotropic substance, is to be borne in mind rather the entire or the gross weight of the seizure, is to be borne in mind, for making a conclusion, that whether the seizure falls within the category of small quantity, intermediate quantity or commercial quantity. Therefore, bearing in mind the afore principle of law, and, upon making its application, qua the gross weight of the seizure, thereupon the weight of the entire seizure or the gross weight thereof rather makes the seizure to fall within the domain of commercial quantity. Therefore, the rigors of Section 37 of the NDPS Act are applicable thereon, and, the bail applicant is *prima-facie* not entitled to his being admitted on bail.

4. The learned Senior Advocate appearing for the bail petitioner, has contended, that since the Hon'ble Apex Court in **Tofan Singh Versus State of Tamil Nadu reported in (2013) 16 SCC 31**, has made the hereinafter extracted expostulations of law.

“(i) That 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.”

5. Therefore, he contends that the afore made respective statements are unworthy of evidentiary vigour nor also any conviction can be firmly founded thereons, rather he contends that in case reliance is placed, upon the afore made disclosure statements, thereupon this Court, would be impermissibly fettering the personal liberty of the bail applicant.

6. The afore made expostulations of law in judgment (supra) are to be revered.

7. However, the afore expostulations of law, are made in respect of a statement recorded under Section 67 of the NDPS Act. Moreover, also therein a declaration of law is made, that since officers investigating offences under the NDPS Act, are police officers within the meaning of Section 25, of the Indian Evidence Act, therefore, any confessional statements, as made to them would be barred, under the provisions of Section 25 of the Indian Evidence Act, and, also hence they cannot be taken into account for convicting any accused, of an offence, under the NDPS Act. Succinctly put the aforemade expostulation(s) of law, appertain to a statement recorded under Section 67 of the NDPS Act, and, also appertain to any statement made to an officer investigating an offence under

the NDPS Act, as all confessional statements made to officers investigating offences (supra), would be hit by Section 25 of the Indian Evidence Act. From the aforemade expostulations of law borne in verdict (supra), the learned Senior counsel appearing for the bail applicant, as afore stated has contended, that the disclosure statement as made against him, by the accused concerned, does squarely fall within the ambit of Section 67, of the NDPS Act, and, has further argued that it is also hit, and, also becomes concomitantly ousted, by the sweep and clout of the Section 25 of the Indian Evidence Act, as Section 25 of the Indian Evidence Act, as becomes extracted hereinafter, makes both inadmissible as well as irrelevant, any confessional statement as made by an accused, hence to a police officer.

“25. Confession to police officer not to be proved.—No confession made to a police officer, shall be proved as against a person accused of any offence.”

8. However, the afore mandate, as, carried in Section 25 of the Indian Evidence Act, has an exception thereto inasmuch as, in Section 27 thereof. The provisions of Section 27 of the Indian Evidence Act are extracted hereinafter. Conspicuously so, as Section 67 of the NDPS Act, does not expressly oust the clout of Section 27 of the Indian Evidence Act, and, as such saves its operation to offences constituted under the NDPS Act.

“27. How much of information received from accused may be proved.-Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.”

9. A circumspect analysis of the provisions carried in Section 27 of the Act (supra), makes a clear display that, when in pursuance to a confession or information received from an accused, especially during the course of his custodial interrogation, by a police officer, and, when thereafter the fact confessed or the information revealed by such accused person, to the police officer concerned, becomes discovered, thereupon the bar created against the inadmissibility of a bald confessional statement, as made to a police officer, by an accused, becomes lifted, or became relieved, and/or, in other words, the fact discovered in pursuance to a confessional statement, as made by an accused, rather during the course of his custodial interrogation, by the investigating officer, becomes both, admissible as well as relevant.

10. However, the words 'may be proved' as occur in Section 27 of the Evidence Act, appertain to proof of the discovered incriminatory fact, hence made in pursuance to a confessional statement, as, made by an accused to the police officer, during the latter making his custodial interrogation, and, rather do assume the gravest importance. As afore stated, it carves an exception to the general principle (supra) against inadmissibility of a bald confession, as, made to a police officer, by an accused, and/or against proof being made qua any, simpliciter statement, made by an accused to a police officer, during the course of the accuseds' custodial interrogation. Even though, the apposite exception, as borne in Section 27, permits proof of the discovered incriminatory fact, as happens, in pursuance to a confessional statement, made to a police officer by the accused, during the latters custodial interrogation. However, the revealed incriminatory fact, has to be *prima-facie* reduced into writing, and/or memos are to be prepared in respect thereof, besides the signatures respectively of the marginal witnesses, and, of the accused rather are to exist thereons.

11. The afore drawn information, as, made by the accused to the investigating officer, has to thereafter, subject to certain exceptions, lead to the discovery of the fact, as disclosed by the accused, to the investigating officer, during the accuseds' custodial interrogation. Necessarily also the factum of recovery of the revealed incriminatory fact concerned, has to become, for ensuring its carrying evidentiary creditworthiness, rather reduced into writing or a recovery memo has to be drawn, and, thereons are to exist the signatures of the marginal witnesses thereto, and/or of the accused. Therefore, the respectively made disclosure statement, and, the recovery memos, as, become prepared in consequence thereof, constitute admissible evidence, in exception to Section 25, of the Indian Evidence Act, and, also become amenable to meteings of evidentiary worth thereto, yet subject to, upon, opening of trial against the accused hence the memos concerned, becoming proven to be validly or efficaciously drawn, through the investigating officer concerned, and the marginal witnesses thereto rather deposing, in affirmation, to all the disclosures borne therein. Nonetheless even when the coinage 'may be proved' as occurring in Section 27 of the Indian Evidence Act, though makes disclosures qua the drawn memos (supra), becoming amenable to evidentiary worth, being meted thereto, and, besides postpones the meteings of completest evidentiary vigor thereto, upon, cogent proof in respect of drawings thereof, becoming adduced rather by the prosecution witnesses concerned. However, even when the trial has not opened for ensuring that, completest proof qua the afore drawn memos, becomes adduced, rather even at the investigation stage, the afore drawn memos may yet comprise *prima-facie* evidence of evidentiary worth against the accused. The afore drawn conclusion(s) become rested, upon a conjoint reading of the mandate carried respectively in Sections 25 and 27, of, the Indian

Evidence Act. Further, the inference (supra) is subject to hereinafter made conditions.

12. However, it is also incumbent upon this Court to determine the import of Section 67 of the NDPS Act. For making an appreciation of the mandate of Section 67, of the NDPS Act, the provisions thereof, are extracted hereinafter.

“67. Power to call for information, etc. Any officer referred to in section 42 who is authorised in this behalf by the Central Government or a State Government may, during the course of any enquiry in connection with the contravention of any provisions of this Act,

(a) call for information from any person for the purpose of satisfying himself whether there has been any contravention of the provisions of this Act or any rule or order made thereunder;

(b) require any person to produce or deliver any document or thing useful or relevant to the enquiry;

(c) examine any person acquainted with the facts and circumstances of the case.”

13. An incisive reading of the hereinbefore extracted provisions carried in Section 67 of the NDPS Act, reveal, that they empower the authorized officer concerned, to during the course of his making an inquiry with respect to contravention of the provisions of NDPS Act, hence call for information from any person with respect to contravention of the provisions of the NDPS Act. For the purpose of satisfying himself, he is empowered to recourse the provisions of sub-sections a), b) and c). Necessarily hence the relevant provisions, empower the authorized officer concerned, to elicit information from any person or to require any person to produce and deliver any document, and/or to examine any person acquainted to the facts and circumstances of the case. The afore statutory provision, though speaks in each of its clauses, about 'any person', and, the

words 'any person' occurring therein, though may also appertain to an accused. However, the statutorily leverages, (supra) as are conferred, upon, the authorized officer concerned, do not further communicate, that 'any person' concerned, wherefrom whom, the mentioned therein elicitation, callings or apposite productions are solicited, by the investigating officer concerned, is, imperatively at the relevant stage, in the custody of the investigating officer concerned, nor any articulation occurs therein, that the 'any person concerned', from whom the authorized officer concerned, seeks the relevant information or requires him to produce and deliver documents or even if he proceeds to examine such 'any person', hence acquainted with the facts, does make or render all of them, imperatively during the phase of 'his' being in the custody of the police officer. Moreover, Section 67 of the NDPS Act also when does not through a non-obstante clause, occurring therein expressly oust the workability or the clout of Section 27, of the Indian Evidence Act (supra), which as aforesaid is an exception to Section 25, of the Indian Evidence Act. Therefore, the absence of a non-obstante clause (supra) in Section 67 of the NDPS Act, rather renders the clout of Section 27 of the Indian Evidence Act, to remain intact, and, also fosters a conclusion from this Court, that Section 67 of the NDPS Act, is independent therefrom, and, it does not imperatively and mandatorily, require the authorized officer concerned to, during the course of his making the relevant inquiries (supra), upon the person concerned, to take him into custody nor also if any bald confessional statement, is made during the course thereof, by any person concerned, it would not rather constitute tenable evidence, unless, is made in custody, and, also it leads to a valid discovery of an incriminatory fact. Therefore, Section 67 of the NDPS Act begets no contradiction with either Section 25 or with Section 27 of the Indian Evidence Act, nor the mandate of

Section 27 of the Indian Evidence Act, becomes ousted vis-a-vis offences borne in the NDPS Act. The afore conclusion does hence beget an imperative holistic reconciliation *inter-se* all (supra), statutory provisions, and, also makes them all workable rather than untenably making them otiose.

14. Therefore, the expostulations of law (supra), apart from applying to persons outside police custody, also apply to disclosures' as made under Section 67 of the NDPS Act, by 'any person' who at the relevant stage, of their making is in police custody, and, if during the afore spell, 'he' makes a bald confessional disclosure statement, leading rather to no valid incriminatory fact becoming discovered at his instance, thereupon the afore bald disclosure would be inadmissible. In other words if 'any person concerned', makes a bald confessional statement, it would be hit by Section 25 of the Indian Evidence Act, and/or if any person concerned, during the course of his custodial interrogation, also makes a bald statement, thereupon his bald confession, would be also hit by Section 25 of the Indian Evidence Act. However, if in pursuance thereof, the revealed incriminatory fact, becomes discovered, thereupon the discovered incriminatory fact concerned, would, as stipulated in Section 27 of the Indian Evidence Act, become admissible as well as a piece of evidence of immense probative vigor. However, subject to its requiring cogent proof with respect to apposite drawings of relevant memos.

15. The disclosure statement as made against the bail applicant, rather was made, during the custodial interrogation, of Anuj (supra), and, though it did lead to the apposite discovery, given the fact revealed or the discovered fact becoming already recovered or being already in existence, inasmuch as, the seizure occurring prior thereto, from the conscious and exclusive possession of one Anuj. However, even if the afore discovery, had already occurred from the

conscious and exclusive possession of the afore Anuj. Nonetheless, any incriminatory fact even if is in existence, in contemporaneity, to the making of a confessional statement, by the arrested person, and, it makes an inculcation against any other accused, wherefrom whom, the incriminatory fact or the recovered incriminatory psychotropic substance or narcotic drug, was earlier thereto or prior to the recovery happening at the site of crime, rather taken into possession, by the maker of the disclosure statement or by the arrested person, and, if the inculcation (supra) becomes linked to the person wherefrom whom the arrested person has assumed possession of the relevant seizure, as made from the arrested persons' alleged conscious and exclusive possession. Therefore, the person from whom, possession (supra) is acquired by the arrested person also becomes vicariously liable alongwith the arrested person.

16. Consequently, even if the bail applicant, did not ensure, at his instance, the recovery of the alleged seized psychotropic substance, and even when the seizure occurred from Anuj, yet with the bail applicant purportedly unlawfully supplying the seizure to Anuj, he hence becomes *prima-facie* penally liable alongwith one Anuj. As such, upon the confession as made by Anuj, from whose conscious and exclusive possession, the incriminatory fact (supra), became discovered or recovered, at the site of occurrence, the applicant rather also becomes enjoined to become connected to or is to be linked to afore discovered fact, whereupon it would become admissible in evidence, and, also can become 'may be proved', during the course of opening of trial against all accused concerned. However, the afore made confession or disclosure statement, is to be made during the course of custodial interrogation of Anuj. A reading of the disclosure statement makes it abundantly clear, that the apposite disclosure

statement inculcating the bail applicant was made during the custodial interrogation of one Anuj.

17. Be that as it may, the evidentiary strength of the afore discovered fact, vis-a-vis the bail applicant, is to tested, and, as unless it holds some *prima-facie* evidentiary value, it would unnecessarily hamper and fetter the personal liberty of the bail applicant. In other words, the disclosure statement, is to be accompanied by further corroborative evidence, comprised in the unexplained for hence lawful purposes, the *inter-se* mobile conversations between Anuj (supra), as exist in the respective call detail records, of the accused concerned, and, the afore is also to be gathered by the investigating officer concerned. Furthermore, the bank records concerned, are also be ascertained, to determine the manner of transfer of funds, as occurred from one accused to the other. In addition the stock registers concerned, are to be thoroughly examined, for unearthing the factum whether the supplied psychotropic substance occurred unauthorizedly from one accused to the other, inasmuch as, the supplies occurring, without any corresponding entries, through the prescription slips becoming entered in the stocks/ledgers, as, maintained by the chemist/druggist concerned.

18. However, at this stage, though the afore evidence, may not exist on record, and may be the non-existence of apposite incriminatory evidence (supra), may arise from hereafter assigned reasons. Nonetheless, since the seizure is of a commercial weight, and, since the bail applicant, became arrested on 26.05.2021, yet with his from 28.05.2021 hence *prima-facie* availing the facility of interim bail on health grounds, and, hence his not facilitating the gathering at his instance, of the afore evidence, for enabling the erection of a firm conclusion, that whether the disclosure statement (supra), is a bald one or is

linked with other incriminatory evidence, of immense evidentiary vigor. Moreover, the afore prolonged availing of facility of bail on health grounds, by the bail applicant, cannot *prima-facie* at this stage, give any leverage to him to contend, that the afore connecting him evidence with the disclosure statement of Anuj, has not surfaced nor is available with the investigating officer concerned, significantly since he has for reasons (supra), not rendered the requisite co-operation to the investigating officer concerned. Moreover, even if he could not render the requisite co-operation to the investigating officer concerned, and, if hence the investigating officer concerned, became precluded to marshal the relevant incriminatory link evidence against the bail applicant, yet the latter could *suo motu* place on record the apposite call details, all the relevant bank transactions besides all the relevant abstracts of the stock registers, as maintained by him, hence in personification of his *prima-facie* innocence. The bail applicant has not re-coursed the afore endeavour. Consequently, this Court does, in view of the weight of the seizure hence, rather recourse the mandate of Section 37 of the NDPS Act, and, deems it fit to not grant the indulgence of bail to the bail applicant.

19. This Court does deprecate the indolence, and, lethargy of the investigating officer, to omit prior to the filing of the report under Section 173 Cr.P.C., and, rather during the phase of investigations, hence marshal the afore incriminatory evidence. Even though, the afore failings of the investigating officer *prima-facie* appear to become generated from the bail applicant availing the facility of interim bail on health grounds. However, the mere non-collection of the afore evidence, does not *per-se* entitle the bail applicant to bail, as hereafter also it is yet open to the investigating officer concerned, to re-course the mandate of Section 67 of the NDPS Act, vis-a-vis service providers

concerned, and, also qua the management of the commercial establishments concerned besides qua the bank concerned. However, the afore can be done only in accordance with law, and, with the leave of the Court concerned. Therefore, when still the afore re-coursings can be done with the leave of the Court, as such it cannot be hence said that the disclosure statement as made by the accused, is a bald one, and, that the bail applicant is not connected with the discovered fact, and, nor further that the fact concerned, 'may not become proved'.

20. However, the bail applicant may also, if no valid incriminatory evidence becomes collected against him through the investigating officer concerned, lawfully marshaling incriminatory evidence (supra), thereupon, re-motion this Court, and, also he may upon his making an effort to *prima-facie* exhibit his innocence through his placing on record the above referred records, rather subsequently make a re-motion.

21. The further reason for declining bail to the bail applicant, is also grooved in the fact, that all the afore inferences are to be drawn, rather for ensuring that the provisions in the NDPS Act, as appertaining to inculcate conspirators, do not become otiose, and, also to ensure that the foot soldiers carrying contraband at the site of occurrence are alongwith the drug mafia or the drug warlords, who make supplies to the foot soldiers are along with them brought to inculpation.

22. The afore drawn inferences also gather vigor from the mandate of Section 30 of the Indian Evidence Act, provisions whereof became extracted hereafter.

“30. Consideration of proved confession affecting person making it and others jointly under trial for same offence.—When more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some

other of such persons is proved, the Court may take into consideration such confession as against such other person as well as against the person who makes such confession."

23. A reading of the afore extracted provisions, reveal that their supplement and augment provisions of Section 27 of the Indian Evidence Act, as the making of a confession, has to lead to the discovery of the fact, in respect whereof, information is, during the custodial interrogation of the accused, hence given to the police officer concerned. Significantly in absence of the apposite discovery, to be made in accordance with law, the bald or simpliciter confessional statement as made by the accused to the police officer, rather would be hit by Section 25 of the Indian Evidence Act.

24. This Court places on record its appreciation for the assistance given to this Court, by learned Senior counsel, appearing on behalf of the petitioner, and also, by Mr. Pradeep Prakash Chahar, learned DAG, by Mr. Bhupender Beniwal, and, by Mr. Tanuj Sharma, learned AAGs.

25. Petition is dismissed.

26. Pending miscellaneous application(s), if any, stand(s), disposed of.

21.12.2021

Ithlesh/Gurpreet

**(SURESHWAR THAKUR)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No