



REPORTABLE

**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Criminal Revision Petition No. 784/2019

Bhopal Singh @ Pappu Singh S/o Sh. Himmat Singh, Aged About
35 Years, R/o Sujanpura, Pipaliya Mandi Police Station, Tehsil
Mallargarh, District Mandsaur (Mp)

-----Petitioner

Versus

State Of Rajasthan, Through PP

-----Respondent

For Petitioner(s) : Mr. B.R. Bishnoi.
For Respondent(s) : Mr. Anees Bhurat, PP.

HON'BLE MR. JUSTICE BIRENDRA KUMAR

Order

07/08/2024

1. Heard learned counsel for the parties.
2. Petitioner has challenged the order framing charges dated 20.02.2019 passed in Sessions Case No. 14/2018, whereby the trial Judge framed charges against the petitioner for offences under Section 8/18 read with 8/29 NDPS Act. The FIR of the incident bearing no. 20/2018 was registered with Sheo Police Station, Barmer.
3. The FIR contains allegation of recovery of narcotics from possession of Kalu Ram and Oma Ram. Kalu Ram made statement before the police under Section 27 of the Evidence Act stating therein that he had purchased the seized milk of opium from Pappu Ram of village Sujanpura, Pipaliya Mandi in the State of Madhya Pradesh. Kalu Ram further stated that he can show the



place from where he had purchased the same. Thereafter, police did nothing to collect evidence against the petitioner, no witness of village Sujanpura was examined to substantiate that accused Pappu Singh S/o Gattu Singh is the same person known as Bhopal Singh S/o Himmat Singh. The petitioner claims that he is Bhopal Singh S/o Himmat Singh. In support of his claim, the petitioner has produced copy of his Aadhar Card, identity card issued by the Election Commission of India showing Bhopal Singh as voter of his constituency and certificate of the Principal of the school where the petitioner had studied. Further, the mark-sheet of high school (10+2) issued in the year 1996 and other university documents has been produced showing that the petitioner is Bhopal Singh S/o Himmat Singh. The driving license and residential certificate also shows that petitioner is Bhopal Singh S/o Himmat Singh. The Sarpanch of the local Gram Panchayat has issued certificate which is attached with the police papers submitted along with charge sheet after investigation of the case. The same discloses that the petitioner is Bhopal Singh S/o Himmat Singh and has no alias name as Pappu Singh S/o Gattu Singh.

4. In view of the lack of direct material that petitioner Bhopal Singh S/o Himmat Singh is the same person, which has come in the statement of Kalu Ram as Pappu Singh S/o Gattu Singh, moreover, on the basis of aforesaid material i.e. statement of the co-accused while in police custody recorded under Section 27 of the Evidence Act, the petitioner cannot be arrayed as accused in the trial. In the case of ***Tofan Singh Vs. State of Tamil Nadu reported in (2021) 4 SCC 1***, the Hon'ble Supreme Court said that "statement recorded under Section 67 NDPS Act is



information gathered at antecedent stage prior to commencement of the investigation and is thus not even in the nature of a confessional statement. Hence, question of its being admissible in trial as confessional statement against the accused does not arise. Hence, the same cannot be taken into account in order to convict an accused for this foundational reason. Furthermore, even if it is accepted for the sake of argument that statement obtained under Section 67 NDPS Act amounts to a confessional statement, permitting the same to be admissible against an accused would violate the fundamental rights of such accused and Section 67 of NDPS Act would have to be read down accordingly.”

5. Learned counsel for the State opposed the prayer on the ground that at the stage of framing charges meticulous appreciation of evidence is not permissible even suspicion is sufficient to ask the accused to face trial. There is no reason why the police would falsely implicated the petitioner.

6. No doubt, a suspicion of commission of offence would be a ground to ask the accused to face trial, however, that suspicion must be based on legally admissible evidence. If there is no legal evidence against the petitioner which can be used during trial, the fundamental right of the petitioner, to have fair criminal prosecution, requires to be protected.

7. Moreover, identity of the petitioner has not been connected with Pappu Singh whose name has surfaced with the statement of co-accused Kalu Ram rather, contrary material is there on the police record submitted with the charge-sheet to show that the petitioner was never known even for mere calling as Pappu Singh. The trial Court has completely ignored the lack of evidence in this





regard. Hence, the impugned order suffers from illegality as well as impropriety.

8. Accordingly the impugned order of charge against the petitioner stands hereby set aside and this criminal revision stands allowed.

(BIRENDRA KUMAR),J

45-charul/-

