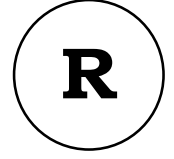


Reserved on : 02.07.2024
Pronounced on : 19.07.2024



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 19TH DAY OF JULY, 2024

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

CRIMINAL PETITION No. 1850 OF 2023

BETWEEN:

MR. PARITOSH CHANDRASHEKAR KULKARNI
S/O CHANDRASHEKAR KULKARNI
AGED ABOUT 24 YEARS
RESIDENT OF PLOT NO.18
NADBRAMHA PIPELINE ROAD
NICE WEIGH BRIDGE
GULMOHAR VIHAR COLONY, NASHIK
MAHARASHTRA - 422 007.

PRESENTLY R/AT NO.729
JONES ST. APT 508
SAN FRANCISCO
CALIFORNIA - 94109

... PETITIONER

(BY SRI MAHANTESH SHETTAR, ADVOCATE)

AND:

STATE OF KARNATAKA
BY MANIPAL POLICE STATION
UDUPI SUB-DIVISION, UDUPI
REPRESENTED BY ITS
STATE PUBLIC PROSECUTOR

HIGH COURT BUILDING
BENGALURU – 560 001.

... RESPONDENT

(BY SRI THEJESH P., HCGP)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C., PRAYING TO QUASH THE ENTIRE PROCEEDINGS IN SPLIT UP SPL.C.NO.24/2022 ARISING OUT OF SPL.C.NO.131/2019 IN CR.NO.94/2018 REGISTERED ON 12.08.2018 FOR THE OFFENCE P/U/S. 8C, 20(B)(II)(b) OF N.D.P.S. ACT PENDING ON THE FILE OF THE PRINCIPAL DISTRICT AND SESSIONS JUDGE, UDUPI.

THIS CRIMINAL PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 02.07.2024, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

The petitioner/accused No.3 is before this Court calling in question entire proceedings in split up Special C. No. 24 of 2022 arising out of Special C.No.131 of 2019 concerning Crime No.94 of 2018 registered for offences punishable under Sections 8C and 20(B)(II)(b) of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('the Act' for short).

2. Heard Sri Mahantesh Shettar, learned counsel appearing for the petitioner and Sri P Thejesh, learned High Court Government Pleader appearing for the respondent.

3. Facts, in brief, germane are as follows:-

The petitioner, at the relevant point in time, was a student of B.Tech in the discipline of Chemical Engineering at Manipal Institute of Technology, Manipal. He was a student between 2016 and 2020. He completes his studies and is pursuing higher studies in the United States of America – M.S. in Chemical Engineering at Columbia University. The issue in the *lis* is what happened between 2016 and 2020. On 12-08-2018, a *suo motu* crime comes to be registered by the respondent in Crime No.94 of 2018 for the afore-quoted offences. The petitioner was arraigned as accused No.3. The arraigning of the petitioner happens on account of statements of accused Nos. 1 and 2 recorded by the Police. It is the case of the prosecution that on 12-08-2018 at around 12 p.m. the police conduct a search in a particular house near Gurukripa apartment and seized 1 kg. and 712 gms. of ganja from the hands of accused Nos. 1 and 2 where accused Nos. 1 and 2 were staying. It is alleged that the petitioner/accused No.3 ran away from there. Accused Nos. 1 and 2 were taken into custody and the aforesaid quantity of ganja was seized.

4. The Police record the statements of accused Nos. 1 and 2 wherein they have informed that they got into the habit of possession and consumption of ganja from accused No.3, the petitioner and he was not available for questioning. On 24-08-2018 accused Nos.1 and 2 were enlarged on bail and the petitioner is seen absconding. The police file a charge sheet against accused Nos. 1 and 2 and show the petitioner as an absconder in the charge sheet filed on 9-07-2019. The concerned Court, takes cognizance of the offence as afore-quoted and registers Special case No.131 of 2019. Noticing the fact that the petitioner was shown as absconder, a split charge sheet was drawn against the petitioner on 4-03-2022 in Special C. No.24 of 2022. The petitioner claims that he then became aware of the proceedings against him, as he was not in the country at the time when the trial was on. On getting to know of the proceedings, the petitioner has preferred the subject petition seeking quashment of the entire proceedings.

5. The learned counsel appearing for the petitioner would vehemently contend that apart from showing the petitioner as absconder, no attempts are made to reach the petitioner. It is his

case that the name of the petitioner is drawn only on confessional statements of accused Nos. 1 and 2 recorded under Section 67 of the Act. It is his submission that statements of co-accused do not have any evidentiary value, unless they are corroborated with the acts of the petitioner. He would seek quashment of entire proceedings on the said ground.

6. Per contra, the learned High Court Government Pleader appearing for the respondent would vehemently refute the submissions to contend that the petitioner has been absconding, not available for trial, charge sheet is filed and, therefore, he must come out clean in the trial. He is not in India. Therefore, he has not appeared before the concerned Court on any occasion. Innumerable non-bailable warrants issued have all become unexecutable, as the petitioner is beyond the shores of the nation. He would, nonetheless, seek dismissal of the petition.

7. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record.

8. The afore-narrated facts are not in dispute. It is a matter of record that when the crime was registered and the house was searched, it related only to accused Nos. 1 and 2. Statements of accused Nos. 1 and 2 were recorded under Section 67 of the Act. Section 67 of the Act reads as follows:

"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 provision 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."

(Emphasis supplied)

The empowered officer is entitled to record the statement of the accused in terms of the afore-quoted provision of the Act. The statements of accused 1 and 2 were recorded. When the search was conducted the petitioner was not found anywhere. It is the case of accused Nos. 1 and 2 while giving statements that the petitioner ran away from the place and it is because of the

petitioner that they have got into the habit of consuming ganja. These are statements rendered by accused Nos. 1 and 2. This is again a matter of record.

9. The petitioner is dragged into the crime as accused No.3 and in the charge sheet as absconder only on the confessional statements made by accused Nos. 1 and 2. There is no corroboration of any of the fact that became attachable to the petitioner. Therefore, it becomes an admitted fact that the petitioner is got into the web of crime only on the confessional statements of the co-accused without any spec of corroboration. In such circumstances, whether further proceedings should be permitted against the petitioner is required to be answered. The answer need not detain this Court for long or delve deep into the matter.

10. The Apex Court in the case of **TOFAN SINGH v. STATE OF TAMIL NADU**¹ has held as follows:

"....

¹ (2021) 4 SCC 1

158. We answer the reference by stating:

158.1. 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.**

158.2. That a statement recorded under Section 67 of the NDPS Act cannot be used as a confessional statement in the trial of an offence under the NDPS Act."

(Emphasis supplied)

The Apex Court in the case of **STATE v. PALLULABID AHMAD ARIMUTTA**² has held as follows:

" "

11. Having gone through the records along with the tabulated statement of the respondents submitted on behalf of the petitioner NCB and on carefully perusing the impugned orders [Pallulabid Ahamad Arimutta v. State, 2019 SCC OnLine Kar 3516] [Mohd. Afzal v. Union of India, 2020 SCC OnLine Kar 3433] [Munees Kavil Paramabath v. State, 2020 SCC OnLine Kar 3431] [Abu Thahir v. State, 2019 SCC OnLine Kar 3517] [Mohd. Afzal v. Union of India, 2020 SCC OnLine Kar 1294] [Munees Kavil Paramabath v. State of Karnataka, 2020 SCC OnLine Kar 3432] passed in each case, **it emerges that except for the voluntary statements of A-1 and A-2 in the first case and that of the respondents themselves recorded under Section 67 of the NDPS Act, it appears, prima facie, that no substantial material was available with the prosecution at the time of arrest to connect the respondents with the allegations levelled against them of**

² (2022) 12 SCC 633

indulging in drug trafficking. It has not been denied by the prosecution that except for the respondent in SLP (Crl.) No. 1569 of 2021, none of the other respondents were found to be in possession of commercial quantities of psychotropic substances, as contemplated under the NDPS Act.

12. It has been held in clear terms in Tofan Singh v. State of T.N. [Tofan Singh v. State of T.N., (2021) 4 SCC 1; (2021) 2 SCC (Cri) 246] , that a confessional statement recorded under Section 67 of the NDPS Act will remain inadmissible in the trial of an offence under the NDPS Act. In the teeth of the aforesaid decision, the arrests made by the petitioner NCB, on the basis of the confession/voluntary statements of the respondents or the co-accused under Section 67 of the NDPS Act, cannot form the basis for overturning the impugned orders [Pallulabid Ahamad Arimutta v. State, 2019 SCC OnLine Kar 3516]’ [Mohd. Afzal v. Union of India, 2020 SCC OnLine Kar 3433]’ [Munees Kavil Paramabath v. State, 2020 SCC OnLine Kar 3431]’ [Abu Thahir v. State, 2019 SCC OnLine Kar 3517]’ [Mohd. Afzal v. Union of India, 2020 SCC OnLine Kar 1294]’ [Munees Kavil Paramabath v. State of Karnataka, 2020 SCC OnLine Kar 3432] releasing them on bail. The CDR details of some of the accused or the allegations of tampering of evidence on the part of one of the respondents is an aspect that will be examined at the stage of trial. For the aforesaid reason, this Court is not inclined to interfere in the orders dated 16-9-2019 [Pallulabid Ahamad Arimutta v. State, 2019 SCC OnLine Kar 3516] , 14-1-2020 [Mohd. Afzal v. Union of India, 2020 SCC OnLine Kar 3433] , 16-1-2020 [Munees Kavil Paramabath v. State, 2020 SCC OnLine Kar 3431] , 19-12-2019 [Abu Thahir v. State, 2019 SCC OnLine Kar 3517] and 20-1-2020 [Munees Kavil Paramabath v. State of Karnataka, 2020 SCC OnLine Kar 3432] passed in SLP (Crl.) No. arising out of Diary No. 22702 of 2020, SLP (Crl.) No. 1454 of 2021, SLP (Crl.) No. 1465 of 2021, SLPs (Crl.) Nos. 1773-74 of 2021 and SLP (Crl.) No. 2080 of 2021 respectively. The impugned orders [Pallulabid Ahamad Arimutta v. State, 2019 SCC OnLine Kar 3516]’ [Mohd. Afzal v. Union of India, 2020 SCC OnLine Kar 3433]’ [Munees Kavil Paramabath v. State, 2020 SCC OnLine Kar 3431]’ [Abu Thahir v. State, 2019 SCC OnLine Kar 3517]’ [Mohd. Afzal v. Union of India, 2020 SCC OnLine Kar 1294]’ [Munees Kavil Paramabath v. State of Karnataka, 2020 SCC OnLine Kar

3432] are, accordingly, upheld and the special leave petitions filed by the petitioner NCB seeking cancellation of bail granted to the respective respondents, are dismissed as meritless."

(Emphasis supplied)

The Judgment in the case of **TOFAN SINGH** is reiterated in **BALWINDER SINGH v. NARCOTICS CONTROL BUREAU**³ where the Apex Court holds as follows:

"....

26. Now that it has been declared in Tofan Singh's case (*supra*) that the judgments in the case of Kanhaiyalal (*supra*) and Raj Kumar Karwal (*supra*) did not state the correct legal position and they stand overruled, the entire case set up by the prosecution against Balwinder Singh, collapses like a House of cards. It is not in dispute that Balwinder Singh was not apprehended by the NCB officials from the spot where the naka was laid and that Satnam Singh alone was apprehended in the Indica car. **The version of the prosecution is that after Satnam Singh was arrested, his statement was recorded under Section 67 of the NDPS Act wherein he ascribed a specific role to the co-accused - Balwinder Singh and the Sarpanch. The NCB officers claimed that they were on the lookout for both of them since they had managed to run away from the spot. While Sarpanch could not be apprehended, the NCB officers learnt from reports in the newspaper that Balwinder had been arrested by the Amritsar Police in an NDPS case and was lodged in the Central Jail, Amritsar. Permission was taken from the concerned Court to take Balwinder Singh into custody in the instant case and he was arrested. A notice was served on him under Section 67 of the NDPS Act and his statement was recorded. Treating his statement as a confessional statement, Balwinder Singh was arrested.**

³ 2023 SCC OnLine SC 1213

27. Once the confessional statement of the co-accused, Satnam Singh recorded by the NCB officers under Section 67 of the NDPS Act, who had attributed a role to Balwinder Singh and the subsequently recorded statement of Balwinder Singh himself under Section 67 of the NDPS Act are rejected in the light of the law laid down in Tofan Singh (supra), there is no other independent incriminating evidence that has been brought to the fore by the prosecution for convicting Balwinder Singh under the NDPS Act. On ignoring the said confessional statements & recorded before the officers of the NCB in the course of the investigation, the vital link between Balwinder Singh³ and the offence for which he has been charged snaps conclusively and his conviction order cannot be sustained.

28. As a result of the above discussion, we are of the opinion that Balwinder Singh deserves to be acquitted of the charge of being in conscious possession of commercial quantity of heroin under the NDPS Act. Ordered accordingly.

... ..

31. Thus, it can be seen that the initial burden is cast on the prosecution to establish the essential factors on which its case is premised. After the prosecution discharges the said burden, the onus shifts to the accused to prove his innocence. However, the standard of proof required for the accused to prove his innocence, is not pegged as high as expected of the prosecution. In the words of Justice Sinha, who speaking for the Bench in Noor Aga (supra), had observed that:

"58. Whereas the standard of proof required to prove the guilt of the accused on the prosecution is "beyond all reasonable doubt" but it is "preponderance of probability" on the accused. If the prosecution fails to prove the foundational facts so as to attract the rigours of Section 35 of the Act, the actus reus which is possession of contraband by the accused cannot be said to have been established."

32. The essence of the discussion in the captioned case was that for attracting the provisions of Section 54 of the NDPS Act, it is essential for the prosecution to establish the element of possession of contraband by the accused for the burden to shift to the accused to prove his innocence. This aspect of possession

of the contraband has to be proved by the prosecution beyond reasonable doubt."

(Emphasis supplied)

These judgments are again reiterated by the Apex Court in ***FIRDOSKHAN KHURSHIDKHAN v. STATE OF GUJARAT***⁴ holding as follows:

".... "

"23. Now, coming to the case of appellant Firdoskhan(A-2) in Criminal Appeal No. 2044 of 2010.

24. It is not in dispute that the appellant Firdoskhan(A-2) was not apprehended on the spot or at the time of seizure. On a perusal of the panchnama(Exhibit-30), it is evident that Firdoskhan is not named therein. We find that even though Anwarkhan(A-1) was present with the raiding team from 4.30 p.m onwards, no effort was made by any of the NCB officials to make an inquiry from him regarding the identity of his companion who allegedly fled away from the spot.

25. The name of Firdoskhan(A-2) cropped up for the first time in the statement of Anwarkhan(A-1) recorded under Section 67 of the NDPS Act. However, we are duly satisfied that the sequence in which the said statement came to be recorded completely discredits the reliability thereof. Anwarkhan(A-1) was apprehended at the bus stand with the packet of narcotic drug at around 4 : 30 p.m. His signatures had been taken on the panchnama(Exhibit-30) prepared at 9 : 00 p.m. and thus, it does not stand to reason that the Intelligence Officer would defer arresting Anwarkhan(A-1) to a later point of time because, as per the arrest memo(Exhibit-43) his arrest is shown at 11 : 45 p.m. It seems that this

⁴ 2024 SCC OnLine SC 680

deferment in formal arrest of Anwarkhan(A-1) was only shown in papers so that the Intelligence Officer could record the statement of Anwarkhan(A-1) under Section 67 of the NDPS Act and avoid the same being hit by the rigours of Article 20(3) of the Constitution of India.

26. The admissibility of a confessional statement of the accused recorded under Section 67 of the NDPS Act was examined by this Court in the case of Tofan Singh (supra) and it was laid down that such confessional statements are not admissible in evidence.

27. Hence, the statement(Exhibit-42) of Anwarkhan(A-1) wherein he allegedly identified the appellant Firdoskhan(A-2) as the person who had escaped from the spot cannot be read in evidence against the appellant Firdoskhan(A-2) because the manner in which the said statement was recorded leaves much to be desired and creates a grave doubt on the sanctity thereof, in addition to the same having rendered inadmissible by virtue of Tofan Singh (supra).

28. The prosecution witness Deepak Pareek(PW-2) claimed that Firdoskhan(A-2) was apprehended from Shah Jahan Pur Police Station, Madhya Pradesh. However, no document pertaining to the apprehension/detention of appellant Firdoskhan(A-2) at the Shah Jahan Pur Police Station was placed on record by the prosecution. Thus, the very manner in which the said accused was apprehended and brought to the NCB Office at Ahmedabad in the purported exercise of recording his statement under Section 67 of the NDPS Act is full of doubt and creates grave suspicion. Even otherwise, the confession of the accused recorded under Section 67 of the NDPS Act cannot be admitted in evidence as a confession as had been held in the case of Tofan Singh (supra). Hence the confessional statement(Exhibit-42) does not lend any succour to the prosecution in its quest to prove the charges against the accused Firdoskhan(A-2)."

(Emphasis supplied)

11. On a coalesce of the judgments rendered by the Apex Court as quoted hereinabove, what would unmistakably emerge is that, the proceedings against the petitioner cannot be permitted to be continued, as there is not an iota of corroboration that would pin the petitioner to the offences, except the voluntary / confessional statements of the co-accused i.e., accused Nos. 1 and 2, recorded under Section 67 of the Act, which is clearly hit by Section 25 of the Evidence Act, as is considered by the Apex Court on an interplay between Section 25 of the Evidence Act and Section 67 of the Act. Permitting further proceedings against the petitioner who at any point in time was not alleged to be involved in any crime except in the aforesaid statements, would become an abuse of the process of law and result in patent injustice. The petitioner, who is a student pursuing his Masters elsewhere, beyond the shores of the nation, should not be made to suffer for the voluntary / confessional statements of the co-accused.

12. For the aforesaid reasons, the following:

ORDER

- (i) Criminal petition is allowed.
- (ii) The proceedings in split up Special Case No.24 of 2022 arising out of Special Case No.131 of 2019 in Crime No. 94 of 2018 pending before the Principal District and Sessions judge and Special Court, Udupi stand quashed.
- (iii) It is made clear that the observations made in the course of the order are only for the purpose of consideration of the case of petitioner under Section 482 of Cr.P.C. and the same shall not bind or influence the proceedings against any other accused pending before any other *fora*.

Consequently, I.A.No.1 of 2023 also stands disposed.

**Sd/-
JUDGE**

bkp
CT:SS