



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 4TH DAY OF SEPTEMBER, 2024

BEFORE

THE HON'BLE MR JUSTICE M.NAGAPRASANNA

CRIMINAL PETITION NO. 3 OF 2024

BETWEEN:

SAIKAT BHATTACHARYYA
AGED ABOUT 25 YEARS
S/O SUKANTI BHATTACHARYA
RESIDING AT NO.303
PRANAVAH FERN APRTMENTS
GREEN GLEN LAYOUT
BELLANDUR
BENGALURU - 560 103.

...PETITIONER

(BY SRI SHIVARAM SHARMA BUDDHIRAJU AND
SMT.TAHURA ANZAR, ADVOCATES)

AND:

UNION OF INDIA
THROUGH INTELLIGENCE OFFICER
NARCOTICS CONTROL BUREAU
BENGALURU ZONAL UNIT
REPRESENTED BY ITS
SPECIAL PUBLIC PROSECUTOR
HIGH COURT OF KARNATAKA
BENGALURU - 560 001.

...RESPONDENT

(BY SRI H.MALLAN GOUD, CGSC)





THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C.,(528 OF BNSS) PRAYING TO QUASH THE COMPLAINT AND THE ENTIRE PROCEEDINGS IN SPL.C.C.NO.2076/2023 ON THE FILE OF THE XXXIII ADDL.CITY CIVIL AND SESSIONS JUDGE AND SPECIAL JUDGE FOR NDPS CASES, AT BENGALURU FOR THE OFFENCES P/U/S 8(c) R/W 20(b)(ii)(A), 23(a), 27, 27A, 28 AND 29 OF THE NDPS ACT AS AGAINST THE PETITIONER.

THIS PETITION, COMING ON FOR ADMISSION, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: **HON'BLE MR JUSTICE M.NAGAPRASANNA**

ORAL ORDER

Petitioner/accused No.3 is knocking at the doors of this Court, in the subject petition, calling in question the entire proceedings in Spl.C.C.No.2076 of 2023 registered for offences punishable under Section 8(c) r/w Section 20(b)(ii)(A), 23(a), 27, 27A, 28 and 29 of the Narcotics Drugs and Psychotropic Substances Act, 1985 ('NDPS' Act).

2. Heard the learned counsel Smt Tahura Anzar, appearing for the petitioner and Sri H Mallan Goud, learned Central Government Standing Counsel representing the respondent-Narcotics Control Bureau.



3. Facts adumbrated are as follows:

On receipt of certain credible information of illegal transportation of drugs in 4 different parcels booked at Shree Maruthi Courier Services Pvt. Ltd., Hebbal, Bengaluru, the respondent-police constitute a team and search the place on 30-11-2022 at 12.30 p.m., and in the presence of the witnesses open the parcels, it transpires that it contained cannabis – ganja in each of the 4 parcels. Therefore, the respondent registers a *suo motu* complaint against the petitioners and other accused persons. On the same day, issued summons.

4. The statements of the petitioner is recorded on 30-11-2022, 01-12-2022 and 02-12-2022, in which it is alleged that the petitioner had confessed to committing the crime, stating that the petitioner had placed an order on his whatapp to one person called Raja Saha and the said Raja Saha had couriered the parcel to the address of the petitioner. The petitioner is then taken into custody by the respondent and later enlarged on bail. The police then file a charge sheet against the petitioner and other accused and the concerned



Court registers Spl.C.C.No.2076 of 2023 for the afore-quoted offences. Filing of the charge sheet and the registration of Spl. C.C. 2076 of 2022 for the aforesaid offences is what has driven the petitioner to this Court in the subject petition.

5. Learned counsel Smt Tahura Anzar appearing for the petitioner would vehemently contend that there is no recovery of any contraband substance from the hands of the petitioner, neither the parcel showed the address of the petitioner. The only circumstance that drew the petitioner into the web of the crime was the telephone number that was found on the cover of the parcel at Shree Maruthi Courier Service. It is on that score the petitioner was interrogated and in the interrogation, he has confessed to the crime as aforesaid. Learned counsel would submit that voluntary statement or confession statement made under Section 67 of the NDPS Act cannot be used as evidence against the maker of the statement. This Court on 30-8-2024, by a detailed order, stayed further proceedings against the petitioner awaiting response of the learned counsel for respondent.



6. The learned counsel for respondent, on verification of records and instructions would submit that, apart from the statements that is tendered by the petitioner-accused No.3 there is no corroborative material that would pin down the petitioner for the aforesaid offences. Learned counsel would submit that necessary orders be passed by this Court.

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 of the petitioner being drawn into the web of crime is not disputed. How he gets into the crime is what is required to be reiterated. The respondent is said to have received information of a parcel being sent from Shree Maruthi Courier Service. They were 4 in number. All the 4 parcels is said to have contained ganja. On ganja being found in those 4 parcels, the police registers a *suo motu* case against several accused, all the accused are before this Court. After registration of the crime, the accused were interrogated and their statements were recorded under Section 67 of the



NDPS Act. Recording of the statement led to the filing of a complaint against the petitioner/accused No.3 before this Court in the subject petition.

9. The undisputed facts, in the case at hand, are that the name of the petitioner was not found on the envelope that allegedly contained ganja. What was found was the telephone number of the petitioner on the cover which led the police to interrogate and record statement of the petitioner, which forms part of the complaint so filed for the afore-quoted offences. Apart from the confession statement recorded by the respondent-police of the petitioner, there is no other material that can pin down the petitioner, as parcel though contained ganja, the address was not that of the petitioner nor it was in the name of the petitioner, except the mysterious printing of the telephone number on the cover. The petitioner is said to have confessed to the crime while recording the statement under Section 67 of the NDPS Act. The complaint so filed against the petitioner read as follows:

"on the basis of the voluntary statement of Mr. Saikat Bhattacharya S/o Sukanti Bhattacharya Dated 30.11.2022, 01.12.2022, 02.12.2022 and the material



objects seized i.e. 109 Grams of Ganja on dated 30.11.2022 was **arrested** by Smt. Sheeja Sivaraman, Junior Intelligence Officer (**CW-2**) on dated **02.12.2022 at 12:10 Hrs.** for committing offences u/s 8(c) read with 20(b)(ii)(A), 27, 28 and 29 of the NDPS Act (**Ex..... Page Nos.44**). Jamatalashi were done by CW-2 in respect of Mr.Saikat Bhattacharrya S/o Sukanti Bhattacharrya immediately after his arrest on dated 02.12.2022 (**Ex..... Page Nos.45**).”

A perusal at the complaint would indicate that no recovery of ganja was made from the hands of the petitioner.

10. It becomes apposite to refer to the judgment of the Apex Court in the case of **TOFAN SINGH v. STATE OF TAMIL NADU**¹ wherein the Apex Court holds as follows:

“....
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)

¹ (2021) 4 SCC 1



The Apex Court has held that a voluntary or a confession statement made under Section 67 of the NDPS Act cannot be used to pin the accused down for the offences under the NDPS Act.

11. 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 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.,

² (2022) 12 SCC 633



(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)



12. 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.**

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

³ 2023 SCC OnLine SC 1213



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)



13. 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 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.*

⁴ 2024 SCC OnLine SC 680



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)



14. Further, the Apex Court in its latest judgment in the case of **NAJMUNISHA V. STATE OF GUJARAT**⁵, has held as follows:

"49. Thereinafter, a significant reliance was placed by the High Court on the statements of the accused wherein a categorical admission was substantiated by them, especially Accused No. 01 and Accused No. 04. To begin with, Section 67 of the NDPS Act 1985 reads:

"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."

50. *The evidentiary value of confessional statements recorded under Section 67 of the NDPS Act 1985 was dealt with by this Court in the case of Tofan Singh (supra). As per the majority verdict delivered by 3-Judges' Bench in this case has held that the powers conferred on the empowered officers under Section 41 and 42 of the NDPS Act 1985 read with Section 67 of the NDPS Act 1985 are*

⁵ 2024 SCC OnLine SC 520



limited in nature conferred for the purpose of entry, search, seizure and arrest without warrant along with safeguards enlisted thereof. The "enquiry" undertaken under the aforesaid provisions may lead to initiation of an investigation or enquiry by the officers empowered to do so either under Section 53 of the NDPS Act 1985 or otherwise. Thus, the officers empowered only under the aforesaid provisions neither having power to investigate nor to file a police report meet the test of police officer for the purpose of Section 25 of the IEA 1872. Consequently, the bar under Section 25 of the IEA 1872 is not applicable against the admissibility of confessional statement made to the officers empowered under Section 41 and 42 of the NDPS Act 1985.

51. *Furthermore, it was also held by this Court that Section 67 is at an antecedent stage to the investigation, which occurs after the empowered officer under Section 42 of the NDPS Act 1985 has the reason to believe upon information gathered in an enquiry made in that behalf that an offence under NDPS Act 1985 has been committed and is thus not even in the nature of a confessional statement. Hence, question of its being admissible in trial as a confessional statement against the accused does not arise.*

52. *The same, therefore, cannot be considered to convict an accused person under the NDPS Act 1985. A reference at this stage may be made to the majority view in the 3-Judges' Bench decision wherein it was held as follows in paragraph number 158:*

"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.*

53. *By virtue of the decision in Tofan Singh (supra), the benefit is to be granted to the appellants herein in regard to the inadmissibility of their statements under Section 67 of the NDPS Act 1985."*

15. On a coalesce of the judgments rendered by the Apex Court as quoted hereinabove, what would unmistakably emerge is, the proceedings against the petitioner cannot be permitted to be continued, as there is not an iota of corroboration that would pin down the petitioner to the offences, except the voluntary/confessional statement of the petitioner 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 statement,



would become an abuse of the process of law and result in patent injustice.

16. For the aforesaid reasons, the following:

ORDER

- (i) Criminal Petition is allowed.
- (ii) Impugned proceedings in Spl.C.C.No.2076 of 2023 pending on the file of XXXIII Additional City Civil and Sessions Judge and Special Judge for NDPS Cases, Bengaluru stands quashed.

Sd/-
(M.NAGAPRASANNA)
JUDGE

BKP
List No.: 1 Sl No.: 6