

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

Crl R No. 01/2020

Reserved on:- 06.06.2024
Pronounced on:- 03.07.2024

Union of India
through Intelligence Officer,
Narcotics Control Bureau, Jammu Zonal Unit,
42 B/B IInd Extension Gandhi Nagar,
Jammu-180004

..... Petitioner

Through :- Mr. Sumant Sudan, Advocate vice
Mr. Vishal Sharma, DSGI

v/s

Ravinder Singh
S/O Hazara Singh R/O Chatha Farm, Jammu

.....Respondent

Through :- Mr. Mazher Ali Khan, Advocate
Mr. Anuj Dewan Raina, Advocate.

CORAM: HON'BLE MR. JUSTICE RAJESH SEKHRI, JUDGE

JUDGMENT

01. This petition has been directed against order dated 03.05.2019, passed by learned Principal Sessions Judge, Jammu [“trail court”, for short], vide which, respondent came to be discharged for commission of offences under Sections 8, 21, 29 & 60 of The Narcotic Drugs and Psychotropic Substances Act, 1985 [“NDPS Act”].

02. Background facts of the case, set out by the prosecution in the trial court, are that on 06.08.2018, petitioner received a written complaint from SHO, Bahu Fort, Jammu that an information had been received regarding Narcotics consignment being carried in a truck bearing Registration No.

JK02AD-3965 and a request was made to depute a team so that appropriate legal action could be initiated. Consequently, a team of NCB was constituted along with police team of Police Station, Bahu Fort and a Naka was laid at Rajiv Nagar Chowk, Narwal, Bye Pass, Jammu on 06.08.2018. At around 1300 hours, the aforesaid truck on its way from Kashmir to Jammu was intercepted. The driver and the conductor of the truck revealed their identity as Gurjit Singh and Ravi Kumar respectively, whose personal search was conducted in presence of the Executive Magistrate 1st Class, Jammu. They disclosed that Heroin was concealed in a false cavity of the cabin in the backside of the truck, consequent whereupon 51 packets of Heroin weighing 50.300 Kgs (without packed material) was recovered and seized. Both driver and conductor of the truck, namely, Gurjit Singh and Ravi Kumar were arrested. During investigation, statements of aforesaid accused came to be recorded in terms of Section 67 of the NDPS Act, whereby accused-Gurjit Singh revealed that transaction of the seized contraband was being carried out on the instructions of accused-Ravinder Singh, the respondent herein, who was lodged in Central Jail, Kot Bhalwal, Jammu.

03. It surfaced during investigation that accused-Gurjit Singh was in constant touch with the respondent/accused and frequently met him in the Central Jail, Kot Bhalwal on 17.05.2018, 25.05.2018, 02.06.2018, 23.06.2018 and 12.07.2018, with respect to which evidence was collected from the jail authorities. Pertinently, the investigating agency also obtained evidence in the shape of Call Detail Records (CDRs) of the mobiles used by accused-Gurjit Singh and the respondent/accused, showing location of mobile at Central Jail Kot Bhalwal, Jammu, where respondent/accused, at

the relevant time, was lodged, which according to the investigating agency, clearly established that respondent was using mobile inside the jail to give instructions to accused-Gurjit Singh regarding transactions of the Narcotics. On completion of the investigation, a complaint came to be filed before the trial court against accused persons, including the respondent. While, accused Gurjit Singh and Ravi Kumar, came to be charged for the aforesaid offences, the respondent came to be discharged by learned trial Court on the ground that apart from the statements of co-accused Gurjit Singh and Ravi Kumar, there is no material suggesting his involvement in the commission of alleged offences.

04. Having heard rival contentions of the parties and perused the CD file, I have given my thoughtful consideration to the facts and circumstances obtaining the present case and the legal position governing the field. .

05. While Mr. Sumant Sudan, Advocate appearing vice Mr. Vishal Sharma, learned DSGI appearing for the petitioner has reiterated the grounds urged in the memo of petition, Mr. Anuj Dewan Raina, learned counsel appearing for the respondent has relied upon **Asar Mohammad & Ors vs. The State of UP; 2018 AIR (SC) 5264** and **Surinder Kumar Khanna vs. Intelligence Officer Directorate of Revenue Intelligence; 2018 (8) SCC 271** to contend that CDRs of the mobile phones of the respondent and co-accused cannot be translated into evidence during trial and statements of accused-Gurjit Singh and Ravi Kumar, recorded by the investigating agency, under Section 67 of the NDPS Act, while they were in custody, is inadmissible in evidence because it is hit by the provisions of Section 25 of the Evidence Act.

06. It is trite in law that trial court, at the stage of charge/discharge, must be satisfied with the material placed on record by the investigating agency as to whether there is sufficient ground for presuming that accused has committed an offence or not. The trial court, for the said purpose, is vested with the power to sift and objectively analyze the material placed before it by the investigating agency for limited purpose to ascertain whether a strong suspicion is founded on the basis of said material and form a prima facie opinion that whether accused has committed the offence or not.

07. Impugned order has been called into question by the petitioner on the predominant premise that apart from the statements of accused-Gurjit Singh and Ravi Kumar recorded during investigation under Section 67 of the NDPS Act, there is sufficient evidence in the shape of CDRs of the mobile phones used by respondent-Ravinder Singh and accused-Gurjit Singh, showing location of the mobile of the respondent at Central Jail, Kot Bhalwal, Jammu at the relevant time and the evidence collected from the jail authorities regarding frequent meetings of the respondent with accused-Gurjit Singh, to establish that all the accused persons were in regular contact with each other and the transaction of the contraband in question was being carried out on the instructions of the respondent.

08. There is no quarrel to the settled position of law that statement made by an accused during investigation, while in custody, is hit by the provisions of Section 25 of the Evidence Act and it cannot be used as a confessional statement in a trial under the NDPS Act. A Three Judge Bench of Hon'ble Supreme Court, as per the majority decision in "**Tofan Singh Vs. State of Tamil Nadu**"; (2021) 4 SCC 1, has held that since officers vested with powers under Section 53 of the NDPS Act are "police officers"

in terms of Section 25 of the Evidence Act, therefore, any confessional statement made to them would be barred under the provision of Section 25 of the Evidence Act and a statement recorded by them under Section 67 of the NDPS Act can neither be used as a confessional statement in the trial nor taken into consideration to convict an accused under the NDPS Act. Relevant excerpt of the judgment, for the facility of reference, reads as below:-

“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 provision 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.”

09. It is, however, pertinent to underline that respondent in the present case has been involved by the investigating agency not only on the basis of statement made by accused-Gurjit Singh under Section 67 of the NDPS Act, but also on the basis of evidence collected by it regarding his frequent meetings with the respondent in Central Jail, Kot Bhalwal, Jammu and the evidence in the shape of CDRs of their mobile phones and in view of the fact that pertinently the mobile phone of the respondent, at the relevant point of time, reflected its location at Central Jail, Kot Bhalwal, Jammu.

10. Hon’ble Supreme Court in **State by (NCB) Bengaluru vs. Pallulabid Ahmad Arimutta & Anr.; 2022 (2) Supreme 409**, in a similar fact situation, has observed that CDR details of an accused is an aspect that is to be examined during the trial. Relevant observation captured in para 10 of the judgment reads as below:-

10. “It has been held in clear terms in Tofan Singh vs. State of Tamil Nadu, (2021) 4 SCC 1, 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 releasing them on bail. The CDR details of some of the accused or the allegations of tempering 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 16th September, 2019, 14th January, 2020, 16 January, 2020, 19th December, 2019 and 20th January, 2020 passed in SLP (Crl.) No@ Dairy No. 22702/2020, SLP (Crl.) No. 1454/2021, SLP (Crl.) No. 1465/2021, SLP (Crl.) No. 1773-74/2021 and SLP (Crl.) No. 2080/2021 respectively. The impugned orders are, accordingly, upheld and the Special Leave Petitions filed by the petitioner-NCB seeking cancellation of bail to the respective respondents, are dismissed as meritless.

11. A similar view has been expressed by learned Delhi High Court in **Amit Ranjan vs. Narcotics Control Bureau, Delhi; 2022 (0) Supreme(Del) 376**, in the following words:-

“It is essential to observe that the aspects of the CDR details and alleged connection between K.K. Pharma Solutions and Vinay Pharmaceuticals and the applicant and the co-accused persons and monetary transactions between them being in relation to illicit trafficking of narcotic or psychotropic substances can only be gauged at trial.....

12. Identical view has been taken by this Court in **Phool Chand vs. Narcotics Control Bureau; 2022(5) JKJ[HC] 195** and **Gh. Mohd. Bhat vs. Narcotics Control Bureau through Intelligence Officer; 2022 (4) JKJ[HC] 57** that call records of the mobile phone of the accused can be examined during the trial.

13. The reliance placed by learned trial court and by Mr. Raina, learned counsel for the petitioner on **Asar Mohammad** and **Surinder Kumar Khanna** is completely misplaced, as the facts and circumstances obtaining the said cases are clearly distinguishable.

14. Hon’ble Supreme Court in **Surinder Kumar Khanna** has rather clarified that in addition to statement of an accused under Section 67 of the NDPS Act, some additional material must be established by the prosecution before acting upon said confessional statement of co-accused. Relevant Para 10 of the judgment reads as below:-

10. “Even if we are to proceed on the premise that such statement under Section 67 of the NDPS Act may amount to confession, in our view, certain additional features must be established before such a confessional statement could be relied upon against a co-accused.....”

15. Similarly, in **Asar Mohammad**, Hon’ble Supreme Court has again clarified that confession of co-accused alone cannot be taken into consideration for conviction of the accused, unless some other material is produced by the prosecution to indicate his involvement in the commission of the offences. Relevant Para 15 of the judgment reads as below:-

15. “The question is whether the same evidence or proved circumstances can be used against the other two appellants, namely, Asraf Mohammed and Akhtar Mohammad. Indisputably, except the confession of the co-accused Asar Mohammed (appellant No.1), the prosecution has not produced any independent substantive evidence to even remotely suggest that appellant Nos. 2 and 3 were involved in committing the murder of Zahida and Ishlam. By now, it is well settled that confession of the co-accused by itself cannot be the basis to proceed against the other accused unless something more is produced to indicate their involvement in the commission of the crime.....”

(emphasis supplied)

16. What has been held in **Surinder Kumar Khanna** and **Asar Mohammad**, is nothing but reiteration of the principle of law expounded by the Apex Court in **Pallulabid Ahmad Arimutta** (supra). Therefore, the reliance by learned trial court and learned counsel for the petitioner on the aforesaid citations, is of no avail to the respondent.

17. Apparently, the relevant material which has escaped the attention of learned trial court is the evidence collected by the investigating agency in the shape of CDRs of the mobile phones of the respondent and accused-Gurjit Singh reflecting location of the mobile phones of respondent at Central Jail, Kot Bhalwal, Jammu as also the evidence regarding personal meetings between the respondent and accused-Gurjit Singh in Central Jail, Kot Bhalwal, Jammu and this aspect of the matter can be examined during the trial.

18. Having regard to what has been observed and discussed above, the impugned order dated 03.05.2019 passed by learned trial court does not sustain in the eyes of law and is liable to be set-aside. Hence, the present petition is **allowed** and impugned order is set-aside and learned trial court is directed to frame charge against the respondent and proceed with the trial in accordance with law.

19. Disposed of along with connected application(s).

(Rajesh Sekhri)
Judge

JAMMU
03.07.2024
Abinash

Whether the judgment is speaking? Yes
Whether the judgment is reportable? Yes