

Reserved on : 25.10.2025
Pronounced on : 08.01.2026

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 08TH DAY OF JANUARY, 2026

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

CRIMINAL PETITION No.3473 OF 2024

BETWEEN:

JUNAID HUSSAIN HAVERI

[REDACTED]

[REDACTED]

... PETITIONER

(BY MS. KEERTHI KRISHNA REDDY, ADVOCATE)

AND:

UNION OF INDIA
BY INTELLIGENCE OFFICER

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NARCOTICS CONTROL BUREAU
BENGALURU ZONAL UNIT
BENGALURU – 560 093.

... RESPONDENT

(BY SRI K.ARVIND KAMATH, ADDL. SOLICITOR GENERAL A/W.,
SMT. SHRIDEVI M.BHOSLE, CGC)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C., PRAYING TO QUASH THE COMPLAINT / CHARGE SHEET IN SPL.C.C.NO.2932/2023 (NCB CR.NO.48/1/24/2023/BZU) ON THE FILE OF 33RD ADDL. CITY CIVIL AND SESSIONS JUDGE AND SPECIAL JUDGE (NDPS) BENGALURU FOR THE ALLEGED OFFENCE P/U/S 8(c) READ WITH SECTION 22(c), 23(c), 27, 27A, 28 AND 29 OF NDPS ACT IN RESPECT OF THE PETITIONER AND PASS ANY OTHER SUCH ORDER AS DEEM FIT.

THIS CRIMINAL PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 25.10.2025, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

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

CAV ORDER

The petitioner/accused No.3 is before this Court calling in question proceedings in Special C.C.No.2932 of 2023, pending before the 33rd Additional City Civil and Sessions Judge and Special Judge (NDPS), Bengaluru, registered for offences punishable under Sections 22(c), 23(c), 27, 27A, 28 and 29 of the Narcotic Drugs and

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Psychotropic Substances Act, 1985 (hereinafter referred to as 'the Act' for short).

2. Heard Ms. Keerthi Krishna Reddy, learned counsel appearing for the petitioner and Sri K.Arvind Kamath, learned Additional Solicitor General along with Smt. Shridevi M. Bhosle, learned Central Government Counsel appearing for the respondent.

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

A complaint comes to be registered by the respondent before the Special Judge under Section 36A of the Act alleging offences punishable as afore-quoted. It is alleged that pursuant to a credible information received by the Intelligence Officer of Narcotics Control Bureau ('NCB'), that one speed post parcel sent from Coimbatore destined to Marathalli Colony Sub-Post Office was suspected to be containing drug concealment and would reach Marathalli Sub-Post Office on 20-06-2023. The said information was taken down in Form, NCB-I. The team reached the Sub-Post Office on 20-06-2023, at around 14.30 hours and on the written request, the Post Master handed over the parcel to the Investigating Officer. It was

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seen that the shipper address was mentioned as Global Wisdom Centre and the receiver address was mentioned as the name of the petitioner. Further, on opening the same, it was found that there were four blank pages; one folded blank page; on opening of the blank page, a plastic pouch was found, which was containing silver foil, containing 50 blot papers in a printed pattern, which is believed to be LSD tablets and were weighed and the net weight of which came to 0.560 gms. This led to drawing of a panchanama as per law and the Investigating Officer requested the Post Master to deliver a dummy parcel bearing the same number at the assignee address. The Post Master is said to have delivered a dummy parcel and a person receives the parcel after affixing his signature. The Investigating Officer intercepts the person and upon inquiry, the name of the petitioner is revealed by the said person and summons was issued to the petitioner under Section 67(2) of the Act.

3.1. On interrogation, it was revealed that his friend Abhay Kumar, accused No.2 who was his previous roommate, who has now moved to IIM-B Hostel, telephonically informed that a parcel which was addressed in the name of the petitioner will be delivered

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and requested the same to be accepted and later to hand it over to accused No.2. This is the alleged *modus operandi*. Therefore, one factor becomes clear that the name of the petitioner is drawn by the statement of the person whom the Investigating Officer apprehended who would be accused No.1. **Accused No.1 revealed that accused No.2, the present petitioner had arranged this to be delivered to accused No.3.** Therefore, the offences sprang. On 22.06.2023, the petitioner was taken into custody on drawing up an arrest memo. The NCB officials after conduct of investigation, file a charge sheet against the accused. After receipt of the charge sheet, the concerned Court takes cognizance of the offences as afore-quoted on 16-12-2023. It is this order of taking cognizance that is presently challenged in the subject petition.

4. The learned counsel Ms. Keerthi Krishna Reddy appearing for the petitioner would vehemently contend that accused No.3, the petitioner did not know the contents of the parcel. The voluntary statement of accused No.2 would show that accused No.3 was only requested by accused No.2 to collect the parcel and hand it over to him. The transaction details would show that the petitioner has

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neither transferred money nor received money. The learned counsel would submit that the procedure stipulated under Sections 50-A and 2(vii)(b) of the Act has not been followed, which would vitiate the proceedings instituted against the petitioner. Accused No.3, the petitioner herein, is identified as accused only due to controlled delivery procedure. There is no incriminating material/evidence against the petitioner. The entire case against the petitioner rests on his confession statement. Except the confession statement, there is nothing against the petitioner. Accused Nos.1 and 2 had booked and purchased the alleged drugs from accused Nos.4 and 5. The payment was made by them. The petitioner has only received the parcel upon the request of accused No.2. The petitioner has not booked or purchased the drugs. The complainant includes the name of the petitioner as he has received the parcel. There is no evidence to connect the petitioner to the crime. She would submit that if the very impugned proceedings against accused No.2 is quashed by this Court in the case of **ABHAY KUMAR VS. UNION OF INDIA in Crl.P.No.917/2024, disposed on 10.01.2025,** then petitioner/accused No.3 is on a better footing.

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5. *Per contra*, the learned Additional Solicitor General Sri K.Arvind Kamath, appearing for the respondent - NCB at the outset submits that this Court must not follow the order that led to quashing of proceedings against accused No.2. It is his submission that if controlled delivery is vitiated on account of not following procedure under Section 50-A of the Act, the controlled delivery will go away but not the other evidence that is collected against the accused. This Court has erred in holding that the controlled delivery would vitiate the procedure itself in **ABHAY KUMAR**'s case *supra*. It is his submission that the procedural irregularity does not vitiate prosecution unless prejudice is shown. The learned Additional Solicitor General would submit that controlled delivery procedure is a tool of investigation, not the investigation itself for it to be quashed. He would seek to place reliance upon an order passed by the High Court of Delhi in the case of **VAIBHAV YADAV v. NCB**¹, concerning bail application, wherein, it is held that Section 50-A of the Act is procedural and directory and not mandatory. He would further contend that WhatsApp conversation between the accused person containing incriminating material against the

¹ **Bail Application No.1362/2024**

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petitioner, when the petition was filed by accused No.2, the proceedings were at the crime stage. But, now the investigation is complete, FSL report has been prepared and on the ground of parity, it cannot be accepted *qua* accused No.3, as further proceedings were quashed in the case of accused No.2 solely on the ground that the procedure under Section 50-A of the Act was not complied with, which at all times was only directory.

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

7. At the outset, I deem it appropriate to paraphrase what this Court has held in quashing the proceedings against accused No.2 in **ABHAY KUMAR**'s case *supra*. The order reads as follows:

"8. The afore-narrated facts are a matter of record. A complaint is registered on 20-06-2023. It is the case of the complainant that he received an information that a parcel containing suspected drugs would be received in Marathahalli Colony Sub-Post Office, Bangalore. A team of NCB goes into the post office, meets CW-5 Post Master, gives a request to hand over the parcel and asks her to become an independent witness. The complaint would further narrate that the Investigating Officer on 20-06-2023 requests the Post Master for delivery of a dummy parcel which is designated to be delivered to one Junaid Hussain Haveri, accused No.3 and later the parcel to be

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delivered from Junaid Hussain Haveri to the petitioner. Since the entire issue now revolves round Section 50A, I deem it appropriate to notice Section 50A of the Act. It reads as follows:

"50-A. Power to undertake controlled delivery.— The Director General of Narcotics Control Bureau constituted under sub-section (3) of Section 4 or any other officer authorised by him in this behalf, may, notwithstanding anything contained in this Act, undertake controlled delivery of any consignment to—

- (a) any destination in India;
- (b) a foreign country, in consultation with the competent authority of such foreign country to which consignment is destined, in such manner as may be prescribed."

Section 50A permits carrying out of controlled delivery by the Director General of NCB or any other officer authorised by him in this behalf. The authorisation to the officer must be under Section 4 of the Act. Section 4 of the Act reads as follows:

"4. Central Government to take measures for preventing and combating abuse of and illicit traffic in narcotic drugs, etc.—(1) Subject to the provisions of this Act, the Central Government shall take all such measures as it deems necessary or expedient for the purpose of preventing and combating abuse of narcotic drugs and psychotropic substances and the illicit traffic therein and for ensuring their medical and scientific use.

(2) In particular and without prejudice to the generality of the provisions of sub-section (1), the measures which the Central Government may take under that sub section include measures with respect to all or any of the following matters, namely:—

- (a) coordination of actions by various officers, State Governments and other authorities—
 - (i) under this Act, or
 - (ii) under any other law for the time being in force in connection with the

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enforcement of the provisions of this Act;

- (b) obligations under the International Conventions;
- (c) assistance to the concerned authorities in foreign countries and concerned international organisations with a view of facilitating coordination and universal action for prevention and suppression of illicit traffic in narcotic drugs and psychotropic substances;
- (d) identification, treatment, education, after care, rehabilitation and social re-integration of addicts;
- (da) availability of narcotic drugs and psychotropic substances for medical and scientific use;
- (e) such other matters as the Central Government deems necessary or expedient for the purpose of securing the effective implementation of the provisions of this Act and preventing and combating the abuse of narcotic drugs and psychotropic substances and illicit traffic therein.

3) The Central Government may, if it considers it necessary or expedient so to do for the purposes of this Act, by order, published in the Official Gazette, constitute an authority or a hierarchy of authorities by such name or names as may be specified in the order for the purpose of exercising such of the powers and functions of the Central Government under this Act and for taking measures with respect to such of the matters referred to in sub-section (2) as may be mentioned in the order, and subject to the supervision and control of the Central Government and the provisions of such order, such authority or authorities may exercise the powers and take the measures so mentioned in the order as if such authority or authorities had been empowered by this Act to exercise those powers and take such measures."

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Sub-section (3) of Section 4 directs constitution of an authority by the Central Government with specified powers. Section 50A refers to Section 4(3). It is the officer who has been authorised has to undertake such controlled delivery. 'Controlled delivery' in the case at hand is undertaken in the manner that is described hereinabove.

9. The contention of the learned counsel for the petitioner is that controlled delivery has to be mandatorily undertaken by the Director General of NCB or an officer authorised by him. Here, the respondent/Investigating Officer is neither the Director General nor the officer authorised by him, has undertaken controlled delivery. The issue now would be whether Section 50A of the Act is mandatory insofar as it directs a particular officer or a particular officer authorised by the Director General to be the only person to undertake controlled delivery.

10. It becomes germane to notice the findings rendered by the coordinate Bench while granting bail to the petitioner. The findings would lend necessary support the contention of learned counsel for the petitioner coordinate Bench in the case of MR.JUNAID HUSSAIN HAVERI v. UNION OF INDIA - Criminal Petition No.6853 of 2023 and connected cases decided on 12th September, 2023, has held as follows:

"....

10. Section 50A of the NDPS Act provides the power to undertake "controlled delivery". Section 50A of the NDPS Act reads as follows:- 1 Criminal Petition No.6853 of 2023 and connected cases decided on 12th September, 2023

"50A. **Power to under take controlled delivery.** The Director General of Narcotics Control Bureau constituted under subsection (3) of section 4 or any other officer authorised by him in this behalf, may, notwithstanding anything contained in this Act, undertake controlled delivery of any consignment to—

(a) any destination in India;

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- (b) a foreign country, in consultation with the competent authority of such foreign country to which such consignment is destined, in such manner as may be prescribed."

11. From a reading of the aforesaid provisions of law, it is very clear that, exercise of "controlled delivery" which is a investigative tool is undertaken by the investigating officers who are authorised as provided under section 50A of the NDPS Act with a view to identifying the persons involved in the commission of the offence under the NDPS Act.

12. Learned Senior Counsel appearing for accused No.3 has raised a specific contention that requirements of Section 50A of the NDPS Act has not been complied with by the NCB officers before undertaking the exercise of "controlled delivery". He submits that, the officers were not authorised under Section 50A of the NDPS Act and therefore, it cannot be said that the accused persons were identified.

13. Learned counsel appearing for respondent has failed to demonstrate before this court that, the officers who had undertaken the exercise of "controlled delivery" with the help of postman and post master of Marathahalli sub post office were authorised as provided under section 50A of the NDPS Act. In the absence of authorization as provided under Section 50A of the NDPS Act which is the mandatory requirement of law, it cannot be said that exercise of "controlled delivery" undertaken by the NCB officers had successfully led them to identify the persons involved in the commission of offence under NDPS Act. The NCB officers have recorded the delivery proceedings of dummy parcel of speed post on 20.06.2023 at 17 hours. A perusal of the said report would indicate that, there is no mention about authorization under section 50A of the NDPS Act obtained by the officers before undertaking the "controlled delivery" mechanism. In fact, from reading of the delivery proceedings it is seen that immediately after the consignment was opened by

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the NCB officers in the post office, they had requested the postmaster to designate postman for the purpose of "controlled delivery" exercise. In addition to the same, the exercise of "controlled delivery" was undertaken by the NCB only as against accused Nos.2 and 3. Though it is the specific case of the prosecution that the consignment was booked by accused No.1 through accused No.2 in the name of accused No.3, the exercise of "controlled delivery" was not undertaken by the NCB officers as against accused No.1 for the reasons best known to them.

....

23. There is also no material to show that accused Nos.2 and 3 had the knowledge that the consignment/parcel which was booked by accused No.1 contain contained narcotic drugs/psychotropic substance. Since the consignment/parcel was opened even before it was delivered to the addressee and the contraband article found in the consignment/parcel was seized under a panchanama in the absence of accused, the only option open for the NCB officers to connect the accused to the crime was by identifying them through the technique known as "controlled delivery". However, since the NCB officers have not complied with mandatory requirements of section 50A of the NDPS Act before undertaking the exercise of "controlled delivery", the report of "controlled delivery" on which reliance has been placed by the prosecution cannot be considered since the exercise of "controlled delivery" gets vitiated for non-compliance of the mandatory requirement under section 50A of the NDPS Act."

(Emphasis supplied)

The coordinate Bench granting bail clearly holds that panchanama would indicate that NCB has not complied with the mandatory requirements of Section 50A before undertaking the exercise of controlled delivery and non-compliance of Section 50A would vitiate entire proceedings. The said order granting bail, as on today has become final.

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11. I am in complete agreement with the reasons so rendered by the coordinate Bench while granting bail. Since the only submission made by the learned counsel appearing for the petitioner was with regard to controlled delivery and that having found favour with the petitioner, all further proceedings in the aftermath of undertaking controlled delivery, would become contrary to law, and lead to obliteration of the crime against the petitioner.

12. For the aforesaid reasons, the following:

O R D E R

- (i) Criminal Petition is allowed.
- (ii) Proceedings in Special C.C. No.2932 of 2023 pending before the XXXIII Additional City Civil and Sessions Judge and Special Judge for NDPS Cases at Bangalore arising out of NCB Crime No.48/1/24/2023/BZU of Narcotics Control Bureau stand quashed qua the petitioner.
- (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 the concerned Court."

The submission of the learned Additional Solicitor General is that, in the subject petition, this Court should not follow what is rendered *qua* accused No.2, as afore-quoted. While that would not become acceptable, the contentions advanced by the learned

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counsel for the petitioner and the learned Additional Solicitor General would undoubtedly merit consideration.

8. It is the case of the petitioner that the petitioner is pinned down only on the voluntary statement recorded by the Investigating Officer and there is no material evidence to show that the petitioner/accused No.3 was aware of the contents of the parcel. Therefore, the petitioner comes in as an accused only on the basis of his voluntary statement. The voluntary statement of the petitioner is as follows:

"VOLUNTARY STATEMENT OF JUNAID HUSSAIN HAVERI

[REDACTED]

. IN CONNECTION WITH SEIZURE OF 0.560 GMS (50 NOS) LSD BLOTS AT MARATHAHALLI COLONY SUB POST OFFICE, BENGALURU, KARNATAKA-560037 ON 20.06.2023. IN RESPONSE TO SUMMONS U/S 67 OF NDPS ACT 1985 DATED 20.06.2023 APPEARED BEFORE SH.P.SIVA RAO, INTELLIGENCE OFFICER, NCB, BANGALORE ZONAL UNIT ON 20.06.2023

I, Junaid Hussain Haveri, [REDACTED], [REDACTED], have appeared today i.e.20.06.2023 before you to give my voluntary statement in response to the summons issued to me under section 67 of NDPS Act, 1985 dated 20.06.2023. Before giving this statement, I have been informed about the provisions of the section 67 of NDPS Act, 1985 that, the

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statement given by me can be used against anyone as evidence in any court of law. I have been informed that, I can remain silent and I can also deny giving my voluntary statement. This is my statement given voluntarily. I can speak, read, write and understand English, Hindi & Kannada. I request you to record my statement in English as per my say.

[REDACTED]

[REDACTED]

I now request the NCB officer that, I want to take rest and sleep. Tomorrow morning, I will continue giving my statement. I was provided proper food.

This is my true statement which I am giving voluntarily. I have given my statement without any fear or force. I have read the contents of my statement. I have understood the same and it has been correctly recorded and confirm that, it has been typed exactly as I have told.

Sd/-
(Junaid Hussain Haveri)
20/06/2023

Recorded before me:

Sd/-20/06/2023
(P.Siva Rao)
IO, NCB, BZU
P. SIVA RAO Intelligence Officer
Narcotics Control Bureau

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MHA, Government of India
Bangalore Zonal Unit, Bengaluru-63”

....

VOLUNTARY STATEMENT OF JUNAID HUSSAIN HAVERI



IN CONNECTION WITH SEIZURE OF 0.560 GMS (50 NOS) LSD BLOTS AT MARATHAHALLI COLONY SUB POST OFFICE, BENGALURU, KARNATAKA-560037 ON 20.06.2023. IN RESPONSE TO SUMMONS U/S 67 OF NDPS ACT 1985 DATED 20.06.2023 APPEARED BEFORE SH.P.SIVA RAO, INTELLIGENCE OFFICER, NCB, BANGALORE ZONAL UNIT ON 21.06.2023.

In continuation to my statement on 20.06.2023, I appeared before the intelligence officer to continue my statement on 21.06.2023.

Upon asking about the said speed post parcel ET586713424IN that contains drugs, I state that, on 20.06.2023 I received a parcel mentioned ET586713424IN from a post man at my above address and I acknowledge the receipt of said parcel which was in my name. After receipt of the said parcel some persons intercepted me at my front entrance door of the house and introduced that they are officers from NCB, BZU, Bangalore and asked me about the said parcel. **I told that, one of my friend named Abhay Kumar informed me telephonically that one parcel will come which was addressed in my name and address and he requested me to receive the same and handover to him i.e Abhay Kumar. On 19.06.2023 Abhay Kumar again asked me about the delivery of the above said parcel.**

Questionnaire:

Q1) What is your mobile number and in whose name it is subscribed?

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Ans:

[REDACTED]

Q2) Do you have any bank account? If yes, provide the details of bank account?

Ans:

[REDACTED]

Q3) On 20.06.2023 a Speed post parcel bearing no. ET586713424IN was seized from Marathahalli Colony Sub Post Office, Bengaluru, Karnataka-560037 in which 0.560 grams of LSD Blots (50 Nos) were seized and the said parcel was found in the name of Junaid Haveri

[REDACTED]

What do you want to say about this and whose mobile is [REDACTED]

Ans: Actually, I am aware about the content of the said parcel, on 18.06.2023 one of my friend named Abhay Kumar informed me telephonically that one parcel will come which was addressed in my name and address and requested me to receive the same and handover to him i.e Abhay Kumar or one of his friend who will come to collect the same from the said address. On 19.06.2023 Abhay Kumar again asked me about the delivery of the above said parcel.

Q4) Do you know the sender person as mentioned on the seized Speed post parcel bearing no. ET586713424IN?

Ans: No.

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Q5) Do you hold crypto currency? If yes, give details.

Ans: No.

Q6) Do you know the person named Abhay Kumar? What is the connection with him and what is his mobile number?

Ans: Yes. Abhay kumar is one of my friend and he was staying at the same above mentioned [REDACTED] and I was recently moved to the said address last 04 months back and we became roommates. I know him since from 18 months through one of my college [REDACTED]

Q7) Do you consume drugs and from when?

Ans: Yes, I consume Ganja occasionally along with my friends.

Q8) Whether you have ordered any drugs?

Ans: No.

Q9) Whether you had any contacts with any drug trafficking person/associates? Do you had any conversations with them? Explain.

Ans: **Previously my friend Abhay had [REDACTED] which I had received in the month of June, 2023 and I had intimated [REDACTED] over whatsapp. I kept it near the front door window of our villa and the window door was kept open and I don't know who picked the said previous parcel. I hereby put my signatures on the whatsapp chats made with [REDACTED] regarding previous parcel and I had used the code of mics which means LSD chemicals i.e. LSD Blots.**

Q10) Do you have any previous criminal history?

Ans: No.

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Q11) Do you know any person by name Ayush Borse ?

Ans: Yes, [REDACTED].

Q12) What is your Adhar Card number and Pan Card number?

Ans: [REDACTED]

I now request the NCB officer to give me a break, as I want to take rest. After some rest and food, I will continue giving my statement.

This is my true statement which I am giving voluntarily. I have given my statement without any fear or force. I was explained about the contents of my statement. I have understood the same and it has been correctly recorded and confirm that, it has been typed as per my say.

Sd/-
(Junaid Hussain Haveri)
21/06/2023

Recorded before me:

Sd/-21/06/2023
(P.Siva Rao)
IO, NCB, Bengaluru
P. SIVA RAO Intelligence Officer
Narcotics Control Bureau
MHA, Government of India
Bangalore Zonal Unit, Bengaluru-63"

(Emphasis added)

A perusal at the statement indicates that accused Nos.1 and 2 had certain transactions and accused No.2 telephonically informs accused No.3 that a parcel will be delivered in the name of accused

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No.3 and requested accused No.3 to collect the same and hand it over to accused No.2. Accused No.3 contends that accused No.2 was his roommate previously and what had happened is found in the afore-quoted voluntary statement. Voluntary statement of accused No.2 is also recorded which reveals the role of accused No.3, the petitioner. The voluntary statement and further statement of accused No.2 is as follows:

"VOLUNTARY STATEMENT OF ABHAY KUMAR [REDACTED]

[REDACTED], IN CONNECTION WITH SEIZURE OF 0.560 GMS (50 NOS) LSD BLOTS AT MARATHAHALLI COLONY SUB POST OFFICE, BENGALURU, KARNATAKA-560037 ON 20.06.2023. IN RESPONSE TO SUMMONS U/S 67 OF NDPS ACT 1985 DATED 20.06.2023 APPEARED BEFORE SH.P.SIVA RAO, INTELLIGENCE OFFICER, NCB, BANGALORE ZONAL UNIT ON 20.06.2023.

I, Abhay Kumar, [REDACTED], have appeared today i.e.20.06.2023 before you to give my voluntary statement in response to the summons issued to me under section 67 of NDPS Act, 1985 dated 20.06.2023. Before giving this statement, I have been informed about the provisions of the section 67 of NDPS Act, 1985 that, the statement given by me can be used against anyone as evidence in any court of law. I have been informed that, I can remain silent and I can also deny giving my voluntary statement. This is my statement given voluntarily. I can speak, read, write and understand English & Hindi. I request you to record my statement in English as per my say.

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[REDACTED]

[REDACTED]

[REDACTED]

I now request the NCB officer that, I want to take rest and sleep. Tomorrow morning, I will continue giving my statement. I was provided proper food.

This is my true statement which I am giving voluntarily. I have given my statement without any fear or force. I have read the contents of my statement. I have understood the same and it has been correctly recorded and confirm that, it has been typed exactly as I have told.

Sd/-
20/6/23
(Abhay Kumar)

Recorded before me:

Sd/-
20/06/2023

(P.Siva Rao)

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I0, NCB, BZU
P. SIVA RAO
Intelligence Officer
Narcotics Control Bureau
MHA, Government of India
Bangalore Zonal Unit, Bengaluru-63"

.....
"VOLUNTARY STATEMENT OF ABHAY KUMAR [REDACTED]

[REDACTED] IN CONNECTION WITH SEIZURE OF 0.560 GMS (50 NOS) LSD BLOTS AT MARATHAHALLI COLONY SUB POST OFFICE, BENGALURU, KARNATAKA-560037 ON 20.06.2023. IN RESPONSE TO SUMMONS U/S-67 OF NDPS ACT 1985 DATED 20.06.2023 APPEARED BEFORE SH.P.SIVA RAO, INTELLIGENCE OFFICER, NCB, BANGALORE ZONAL UNIT ON 21.06.2023.

In continuation to my statement on 20.06.2023, I appeared before the intelligence officer to continue my statement on 21.06.2023.

Upon asking about the speed post parcel ET58671342IN in the name of Junaid Haveri that contains drugs, I state that, said parcel was belong to one of my friend named Ayush Borse which was sent in the name of my friend Junaid Haveri at the [REDACTED]

[REDACTED] as I vacated from the said address on 12th June 2023. Earlier two days back on 18.06.2023, I informed to Junaid Haveri telephonically that one parcel will come which was addressed in his name (Junaid Haveri) and at above mentioned address and requested him to receive the same and handover to me i.e. Abhay Kumar or to one of my friend who will come to collect the same parcel from the above said address and again on 19.06.2023 I

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asked him about the confirmation of delivery of the above said parcel.

Further, Ayush Borse asked me telephonically and through whatsapp disappearing message on 20.06.2023 whether the said parcel is delivered or not. As, I was busy in my college activities, I given mobile number of Junaid Haveri to Ayush Borse to contact him and can collect the said parcel from Junaid Haveri address. Then, on 20.06.2023 evening I was intercepted by NCB, BZU, Bangalore at [REDACTED] when I taken the parcel of speed post parcel ET58671342IN which was booked from Ayush Borse. Then, NCB official served a notice u/s 67 of the NDPS Act, to me and was summoned to NCB Office, Bengaluru forthwith to appear for enquiry in relation to NCB Case No.48/1/24/2023/BZU. Then I accompanied NCB team to NCB Office, Bangalore on 20.06.2023.

Questionnaire:

Q1) What is your mobile number and in whose name it is subscribed?

Ans: [REDACTED] and it is subscribed in my name.

Q2) On 20.06.2023 a Speed post parcel bearing no. ET586713424IN was seized [REDACTED]

[REDACTED] in which 0.560 grams of LSD Blots (50 Nos) were seized and the said parcel was found in the name of Junaid Haveri [REDACTED]

[REDACTED] and it was sent [REDACTED]

[REDACTED] What do you want to say about this and whose mobile is [REDACTED]?

Ans: The speed post parcel ET58671342IN in the name of Junaid Haveri that contains drugs was belong to one of my acquaintance named Ayush Borse which was sent in the name of my friend Junaid Haveri at the address [REDACTED]

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[REDACTED] The name and address of Junaid Haveri was given by me to Ayush Borse as receiver address, as I vacated from the said address on 12th June 2023. Earlier two days back on 18.06.2023, I informed to Junaid Haveri telephonically that one drug parcel will come which was addressed in his name i.e Junaid Haveri and at above mentioned address and requested him to receive the same and handover to me i.e. Abhay Kumar or to one of my friend who will come to collect the same parcel from the above said address. On 19.06.2023 I again asked him about the delivery of the above said parcel. Ayush Borse asked me telephonically and through whatsapp disappearing message on 20.06.2023 whether the said parcel is delivered or not. As, I was busy in my college activities, I given mobile number of Junaid Haveri to Ayush Borse to contact him and can collect the said parcel from Junaid Haveri address.

Q3) Do you use darknet ?

Ans: No Sir. I don't know how to use darknet.

Q4) What roles did you play in booking the said drugs parcel ET586713424IN?

Ans: I had done the payment of 2.82417 XMR to wallet id:

[REDACTED] My friend Ayush Borse had given me Rs.10,100/ on 12.06.2023 and one of his friend Aditya Bhatt at also sent me Rs.6000/-. Total I got Rs. 16,100/-. Ayush told me to pay to the above mentioned wallet id an amount of about Rs.31,100/- to the above wallet id. I had put Rs.15,000/- from my account and completed the transaction of Rs.31,100/- equivalent 2.82417 XMR at that time to the above mentioned wallet id. Then I had sent the screenshot of the payment to Ayush Borse. I hereby show the transactions and the payment details on the Binance app and put my signature on the screenshots of these payment details.

Q5) Do you know Ayush Borse and Aditya Bhatt? What are there mobile numbers?

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Ans. Yes. I know Ayush Borse but I don't know Aditya bhatt. Ayush Borse is a friend of mine. Aditya Bhatt is a friend of Ayush but I don't know Aditya. The phone number of Ayush Borse is [REDACTED] I don't know the mobile number of Aditya.

Q6) Do you hold crypto currency? If yes, give details

Ans.: I hold crypto currency and the details are as below:

[REDACTED]

I put my signature on the screen shot of my wallet id.

Q7) Do you consume drugs and from when?

Ans: I used to consume Ganja only in college time and other occasions. But since two-three months I have not taken any drugs.

Q8) Whether you have ordered any drugs?

Ans: No sir I have not ordered any drugs. But I had bought Ganja by cash from some of my friends in the past.

Q9) How did you order the drugs in darknet? How was the payment made & source of money?

Ans: I had not ordered any drugs on the darknet. I had made payment of Rs.31,100/- approx. to wallet

[REDACTED]

[REDACTED] on the directions of Ayush Borse. Ayush Borse had told me to pay amount to the above mentioned wallet id.

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Ayush told me that he would give me back the remaining amount i.e. Rs.15,000/- which I had put from my bank account for the above payment.

Q10) How do you know Junaid Haveri?

Ans: I got to know about Junaid Haveri from my mutual friends. Junaid Haveri moved into the same Villa in which I was already staying. Junaid was staying with me since from 04 months.

Q11) Does Ayush know Junaid Haveri?

Ans: Ayush does not know about Junaid Haveri directly. I had introduced Junaid to Ayush.

I now request the NCB officer to give me a break, as I want to take rest. After some rest and food, I will continue giving my statement.

This is my true statement which I am giving voluntarily. I have given my statement without any fear or force. I was explained about the contents of my statement. I have understood the same and it has been correctly recorded and confirm that, it has been typed as per my say.

Sd/-
(Abhay Kumar)
21/6/2023

Recorded before me

Sd/-
21/06/2023
(P.Siva Rao)

IO,NCB, Bengaluru

P. SIVA RAO
Intelligence Officer
Narcotics Control Bureau

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MHA, Government of India
Bangalore Zonal Unit, Bengaluru-63”

....

“VOLUNTARY STATEMENT OF ABHAY KUMAR

IN CONNECTION WITH SEIZURE OF 0.560 GMS (50 NOS) LSD BLOTS AT MARATHAHALLI COLONY SUB POST OFFICE, BENGALURU, KARNATAKA-560037 ON 20.06.2023. IN RESPONSE TO SUMMONS U/S 67 OF NDPS ACT 1985 DATED 20.06.2023 APPEARED BEFORE SH.P.SIVA RAO, INTELLIGENCE OFFICER, NCB, BANGALORE ZONAL UNIT ON 22.06.2023.

In continuation to my statement on 21.06.2023, I appeared before the intelligence officer to continue my statement on 22.06.2023.

Q12) Who gave the address of Junaid Haveri to Ayush Borse?

Ans: I had given the address and details of Junaid Haveri to Ayush Borse when he asked for address to get some of his parcels.

Q13) Why did you give the address of Junaid Haveri to Ayush Borse?

Ans: I had given the address and details of Junaid Haveri to Ayush Borse because I had shifted to the [REDACTED] [REDACTED] for getting the parcel for Ayush Borse.

Q14) Can you show the chat which you had with Ayush on Whatsapp?

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Ans: Yes sir I can show the chats which will disappear as Ayush Borse had activated disappearing messages feature on Whatsapp. I hereby put my sign on the whatsapp chats made between us.

Q15) What is the role of Ayush Borse and Aditya Bhatt in procurement of this drug parcel ET586713424IN?

Ans: Ayush Borse had ordered the parcel ET587713424IN. Ayush Borse transferred Rs.10,100/- into my bank account and Aditya Bhatt had transferred Rs.6,000/- into my bank account for making payment to the wallet id given by Ayush Borse. I had paid the remaining amount of Rs.15,000/- from my bank account. I hereby put my sign on the google Pay payment slips of Ayush and Aditya.

Q16) Do you have a bank account? If so name of the bank and branch?

Ans:

[REDACTED]

Q17) What is the mobile number of Junaid Hussain Haveri?

Ans: The mobile No. of Junaid Haveri is 7829023969.

Q18) Earlier any such drug parcels booked by you?

Ans: Earlier one parcel was booked by Ayush Borse and delivered in my name at the same above mentioned

[REDACTED]

once told me that he had a contact with some person who send LSD blots through such parcels to him and this time also he ordered LSD blots in the said parcel. The payment made by me for the previous parcel was done through my Binance Wallet and I hereby put my signatures on the previous transaction statement and history.

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Q19) Do Junaid Haveri was aware of the contents of said seized parcel ET586713424IN? Do you have informed him about Concealment of LSD blots in said parcel to him?

Ans: Yes.

Q20) Do you have any previous criminal history?

Ans.: No.

Q21). What is your Adhar Card number and Pan Card number?

Ans.

[REDACTED]

Q22) Do you have any movable and immovable property in your name and family members name?

Ans.

[REDACTED]

Q23) You are hereby shown one photographs of two persons. Can you identify them?

Ans. Yes Sir. I identify them as Junaid Haveri is my friend and another person is Ayush Borse who is acquaintance of mine.

Q24) Do you know that dealing with drugs, smuggling drugs is an offence in India?

Yes, I very well know that drugs smuggling and helping in smuggling drugs is an offence in India.

Q25) Do you want to say anything else?

Ans. Nothing. Further, I will not repeat any such activities or being involved in such drug related cases.

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I now request the NCB officer to give me a break, as I want to take rest. After some rest and food, I will continue giving my statement.

This is my true statement which I am giving voluntarily. I have given my statement without any fear or force. I was explained about the contents of my statement. I have understood the same and it has been correctly recorded and confirm that, it has been typed as per my say.

Sd/-
(Abhay Kumar)
22/6/2023

Recorded before me

Sd/-
22/06/2023
(P.Siva Rao)

IO,NCB, Bengaluru

P. SIVA RAO
Intelligence Officer
Narcotics Control Bureau
MHA, Government of India
Bangalore Zonal Unit, Bengaluru-63"

(Emphasis added)

What is discernible from the statement recorded of accused No.2 is that he has spoken to the petitioner to take the parcel. In all these, there is no material except the voluntary statement of accused No.2 and voluntary / confession statement of accused No.3, the petitioner. The voluntary statement of another accused – accused No.1 reads as follows:

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"VOLUNTARY STATEMENT OF AYUSH KISHOR BORSE

[REDACTED]
OF 0.560 GMS (50 NOS)
LSB BLOTS AT MARATHAHALLI COLONY SUB POST OFFICE,
BENGALURU, KARNATAKA-560037 ON 20.06.2023. IN
RESPONSE TO SUMMONS U/S 67 OF NDPS ACT 1985
DATED 21.06.2023 APPEARED BEFORE SH.P.SIVA RAO,
INTELLIGENCE OFFICER, NCB, BANGALORE ZONAL UNIT
ON 21.06.2023.

I, Ayush Kishor Borse, [REDACTED], have appeared today i.e.21.06.2023 before you to give my voluntary statement in response to the summons issued to me under section 67 of NDPS Act, 1985 dated 21.06.2023. Before giving this statement, I have been informed about the provisions of the section 67 of NDPS Act, 1985 that, the statement given by me can be used against anyone as evidence in any court of law. I have been informed that, I can remain silent and I can also deny giving my voluntary statement. This is my, statement given voluntarily. I can speak, read, write and understand English, Hindi & Marathi language. I request you to record my statement in English as per my say.

On being asked, I state that, I completed my graduation

[REDACTED]

[REDACTED]

Upon asking about the speed post parcel ET586713424IN in the name of Junaid Haveri that

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contains drugs, I state that, said parcel was belong to me which was sent in the name Junaid Haveri [REDACTED]

[REDACTED] I know a person named Swapnil Joshi @ S. Joshi who is available on telegram for communication for booking the drugs and he sent through postal services to the address given by me. The said person i.e Swapnil Joshi @ S. Joshi came into contact through telegram through one person last 01 year back and I don't remember his name and mobile number. **I ordered the said seized parcel that contains LSD Blots 50 Nos around one week back through Swapnil Joshi by telegram and it was sent in the name and address of Junaid Haveri which was given by Abhay Kumar to me.** I further gave the said details to Swapnil Joshi through telegram. Actually, I want to order for only 03 LSD Blots for self consumption, but Swapnil Joshi mentioned to me that the vendor is accepting orders only if the minimum order quantity is 50 LSD Blots. I decided to go forward with the order, but the payment was only accepted in Crypto (XMR-MONERO). As I do not have Crypto then I asked Abhay Kumar to use his Crypto account for making payment. The total amount for placing order is around Rs.31,100/- (Approx.) and due to not having sufficient money in my Equitas bank, I transferred Rs. 10,100/- through UPI to the bank account of Abhay Kumar and Rs. 6,000/- was paid by my friend Aditya Bhatt bank account by requesting Abhay Kumar to pay the rest of money from him which will be returned back to him after some days. Then, Swapnil joshi sent wallet id to me through telegram for transferring the crypto coins, then the same was forwarded by me to Abhay Kumar on whatsapp. Then Abhay Kumar transferred the crypto coins to the wallet id which was sent by me to Abhay Kumar. Swapnil joshi had activated auto delete feature in telegram.”

(Emphasis added)

On a coalesce of the statements recorded as quoted hereinabove, there is nothing to show that the petitioner is involved in the crime other than the voluntary statement or confession

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statement recorded in the course of the investigation. Apart from the ground on which proceedings of accused No.2 being quashed become squarely applicable to the case at hand. The case of the petitioner stands entirely on the voluntary statements as afore-quoted. Whether this is permissible or not, need not detain this Court for long or delve deep into the matter.

9. The Apex Court in the case of **TOFAN SINGH v. STATE OF TAMIL NADU**², has held as follows:

“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)

² (2021) 4 SCC 1

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This judgment is followed and the principles are reiterated in the case of **AJAY KUMAR GUPTA v. UNION OF INDIA**³, wherein it is held as follows:

“... ..

13. We may note that the trial court and High Court have relied upon the appellant's statement under Section 67 of the NDPS Act. In para 158 of the decision of this Court in *Tofan Singh [Tofan Singh v. State of T.N., (2021) 4 SCC 1: (2021) 2 SCC (Cri) 246]*, this Court held thus: (SCC p. 141)

“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)

14. Therefore, the appellant's statement recorded under Section 67 of the NDPS Act is not admissible in evidence and cannot be read in evidence.”

(Emphasis supplied)

³ (2024) 9 SCC 455

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Again, the Apex Court in the case of **KARAN TALWAR v.**

STATE OF TAMIL NADU⁴, has held as follows:

“....

10. As is evident from the said Section, the alleged offence is consumption of narcotic drug or psychotropic substance other than those specified in or under clause (a) of Section 27, NDPS Act, and therefore, the question is whether any material is available to charge the appellant thereunder. **The contention of the appellant is that he has been arraigned as accused No. 13 based on the confession statement of co-accused viz., accused No. 1. Certainly, in the absence of any other material on record to connect the appellant with the crime, the confession statement of the co-accused by itself cannot be the reason for his implication in the crime. This view has been fortified by the law laid down in *Suresh Budharmal Kalani v. State of Maharashtra*³, wherein it was stated that a co-accused's confession containing incriminating matter against a person would not by itself suffice to frame charge against him.** The materials on record would reveal that the investigating agency had not subjected him to medical examination and instead, going by complaint Witness No. 23, he smelt the accused. The less said the better and we do not think it necessary to comment upon adoption of such a course. We need only to say that even if he tendered such evidence, it would not help the prosecution in anyway. There is absolutely no case that any recovery of contraband was recovered from the appellant. **As regards the confession statement of the appellant in view of Section 25 of the Indian Evidence Act, 1872 there can be no doubt with respect to the fact that it is inadmissible in evidence. In this context it is worthy to refer to the decision of this Court in *Ram Singh v. Central Bureau of Narcotics*⁴. In the said decision, this Court held that Section 25 of the Indian Evidence Act would make confessional statement of accused before police inadmissible in evidence and it could not be brought on**

⁴ 2024 SCC OnLine SC 3803

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record by prosecution to obtain conviction. Shortly stated, except the confessional statement of co-accused No. 1 there is absolutely no material available on record against the appellant.

11. When this be the position, the question is whether the two Courts were justified in holding that there is *prima facie* case against the appellant to proceed against him. In this contextual situation, it is relevant to refer to the decision of this Court in *Dipakbhai Jagadishchandra Patel v. State of Gujarat*⁵ Paragraphs 23 and 24 of the said decision are relevant for the purpose of this case and they read thus:—

*"23. At the stage of framing the charge in accordance with the principles which have been laid down by this Court, what the court is expected to do is, it does not act as a mere post office. The court must indeed sift the material before it. The material to be sifted would be the material which is produced and relied upon by the prosecution. The sifting is not to be meticulous in the sense that the court dons the mantle of the trial Judge hearing arguments after the entire evidence has been adduced after a full-fledged trial and the question is not whether the prosecution has made out the case for the conviction of the accused. **All that is required is, the court must be satisfied that with the materials available, a case is made out for the accused to stand trial. A strong suspicion suffices. However, a strong suspicion must be founded on some material. The material must be such as can be translated into evidence at the stage of trial. The strong suspicion cannot be the pure subjective satisfaction based on the moral notions of the Judge that here is a case where it is possible that the accused has committed the offence. Strong suspicion must be the suspicion which is premised on some material which commends itself to the court as sufficient to entertain the prima facie view that the accused has committed the offence.***

24. Undoubtedly, this Court has in Suresh Budharmal Kalani [Suresh Budharmal Kalani v. State of Maharashtra, (1998) 7 SCC 337], taken the view that confession by a co-accused containing incriminating matter against a person

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would not by itself suffice to frame charge against it. We may incidentally note that the Court has relied upon the judgment of this Court in Kashmira Singh v. State of M.P. [Kashmira Singh v. State of M.P., (1952) 1 SCC 275]. We notice that the observations, which have been relied upon, were made in the context of an appeal which arose from the conviction of the appellant therein after a trial. The same view has been followed undoubtedly in other cases where the question arose in the context of a conviction and an appeal therefrom. However, in Suresh Budharmal Kalani [Suresh Budharmal Kalani v. State of Maharashtra, (1998) 7 SCC 337], the Court has proceeded to take the view that only on the basis of the statement of the co-accused, no case is made out, even for framing a charge."

(underline supplied)

12. As noted hereinbefore, the sole material available against the appellant is the confession statement of the co-accused viz., accused No. 1, which undoubtedly cannot translate into admissible evidence at the stage of trial and against the appellant. When that be the position, how can it be said that a *prima facie* case is made out to make the appellant to stand the trial. There can be no doubt with respect to the position that standing the trial is an ordeal and, therefore, in a case where there is no material at all which could be translated into evidence at the trial stage it would be a miscarriage of justice to make the person concerned to stand the trial."

(Emphasis supplied)

The judgment of the Apex Court rendered in **TOFAN SINGH's** case (*supra*) is followed by this Court in identical offences and proceedings against the accused therein and quashed the same, in

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the case of **PARITOSH CHANDRASHEKAR KULKARNI v. STATE OF KARNATAKA**⁵, wherein this Court has held as follows:

“....

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* has held 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)

⁵ 2024 SCC OnLine Kar. 4785

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The Apex Court in the case of *State v. Pallulabid Ahmad Arimutta* 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 [PallulabidAhamadArimutta v. State, 2019 SCC OnLine Kar 3516], [Mohd. Afzal v. Union of India, 2020 SCC OnLine Kar 3433], [MuneesKavilParamabath 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], [MuneesKavilParamabath 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 (Cri.) 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*

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Kavil Parambath 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 Parambath 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], [MuneesKavil Parambath 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* 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*

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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 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:

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"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 *FirdoskhanKhurshidkhan v. State of Gujarat* 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

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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.

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

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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."

(Emphasis supplied)

On a blend of the judgments rendered by the Apex Court as quoted hereinabove, which also bear consideration in the order passed by this Court as afore-quoted and the unequivocal fact that the petitioner/ accused No.3 is drawn into the web of proceedings only on the voluntary / confession statement of the accused, further proceedings if permitted to continue would become an abuse of the

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process of law and result in miscarriage of justice. In that light I deem it appropriate to obliterate the proceedings against the petitioner.

10. Insofar as the judgment relied on by the learned Additional Solicitor General, there can be no qualm about the principles so laid down by the Apex Court in the case of **MUNIAPPAN v. STATE OF TAMIL NADU** – (2010) 9 SCC 567; **HEMA v. STATE** – (2013) 10 SCC 192; **NEEHARIKA INFRASTRUCTURE PRIVATE LIMITED v. STATE OF MAHARASHTRA** – 2021 SCC OnLine SC 315; **CBI v. ARYAN SINGH** – (2023) 18 SCC 399; and **MR.KALAM NARENDRA v. UNION OF INDIA** – W.P.No.8449 of 2024 decided on 27-05-2024. The said judgments are rendered in the facts obtaining in those cases and all relate to interference at the hands of this Court under Section 482 of the Cr.P.C., or BNSS and insofar as the judgment of High Court of Delhi in bail application in the case of **VAIBHAV YADAV** (*supra*) is concerned, it though has a persuasive value, it would not persuade this Court, what this Court has held following the judgment of the coordinate bench.

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11. For the aforesaid reasons, the following:

ORDER

- (i) Criminal petition is allowed.
- (ii) Proceedings in Special C.C.No.2932 of 2023 pending before the XXXIII Additional City Civil and Sessions Judge and Special Judge for NDPS Cases at Bangalore, arising out of NCB Crime No.48/1/24/2023/BZU of Narcotics Control Bureau stand quashed *qua* the petitioner.
- (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 the petitioner under Section 482 of Cr.P.C. and the same shall not bind or influence the proceedings against any other accused pending before the concerned Court.

**Sd/-
(M.NAGAPRASANNA)
JUDGE**

nvj
CT:SS