IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

CNR No: PHHC011350802025
2026:PHHC:187907

325

CRM-M-47417-2025 (O&M)
Date of decision : 14.10.2026

Harpreet Singh **...Petitioner**

Versus

State of Haryana **...Respondent**

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. P. K. Ganga, Advocate
for the petitioner.

Mr. Neeraj Poswal, AAG, Haryana.

MANISHA BATRA, J.*(Oral)*

1. The present petition has been filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 *(for short 'the BNSS')* for quashing of FIR No.0007 dated 12.01.2021, registered under Section 22(C) of the Narcotic Drugs and Psychotropic Substances Act, 1985 *(for short 'the NDPS Act')* at Police Station Kalanwali, District Sirsa (Annexure P-1), and all the subsequent proceedings arising therefrom, qua the petitioner.

2. Brief facts of the case relevant for the purpose of disposal of this petition are that on 12.01.2021, ASI Madan Lal of CIA Staff Kalanwali, along with other police officials, was on patrolling duty on Gadrana road, Kalanwali. A motorcycle bearing registration No.HR-94-7704 was seen coming from the side of village Gadrana. On seeing the police party, its rider tried to turn back but the motorcycle stopped and the three youngsters riding it were overpowered. They disclosed their names as Gurpreet Singh, Rajveer

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Singh and Harpreet Singh of Manga Singh. Rajveer Singh, who was sitting in the middle, was holding a yellow polythene bag. On checking, the bag was found to contain 270 strips of 10 tablets each, i.e. 2700 tablets of Tridol-100 Tramadol Hydrochloride. None of them could produce any permit for the tablets. On being interrogated, they disclosed that they had bought the tablets on the same day from Harpreet Singh son of Nachhatar Singh, who is the petitioner herein. On this basis, the FIR in question was registered against all four of them.

3. During investigation, Gurpreet Singh, Rajveer Singh and Harpreet Singh son of Manga Singh were arrested. Harpreet Singh son of Manga Singh suffered a disclosure statement (Annexure R-1). In it, he stated that the three of them had jointly bought the 2700 tablets from the petitioner for Rs.27,000/- on credit, and offered to point out the place of purchase. The place was then demarcated at his instance. The sample was sent to the Forensic Science Laboratory, Madhuban, and as per its report dated 21.04.2022 (Annexure R-2), Tramadol was detected in it. During further investigation, Gurpreet Singh and Rajveer Singh were found to be juveniles on the basis of their school records and the report against them was presented before the Juvenile Justice Board, Sirsa.

4. In the meanwhile, the petitioner approached this Court for the grant of anticipatory bail. He was granted concession of anticipatory bail by this Court. He joined the investigation on 10.07.2021 and suffered a disclosure statement (Annexure R-3) to the effect that he had received 2700 tablets in December, 2020 from his friend Rajender son of Jaswinder Singh,

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resident of Talwandi Sabo, for Rs.20,000/-. He is further stated to have disclosed having sold those tablets on 11.01.2021 to the aforesaid three persons for Rs.27,000/-. He is also stated to have got the place of sale demarcated and to have produced a sum of Rs.1500/- as the balance of the sale proceeds. Rajender could not be traced as his address was incomplete.

5. As further discernible from the record, vide judgment dated 14.02.2022 (Annexure P-4), the Juvenile Justice Board, Sirsa, on Gurpreet Singh and Rajveer Singh having admitted their mistake, held them to be involved in the offence under Section 22(c) of the NDPS Act. By a dispositional order of the same date, they were directed to perform community service at the Community Health Centre, Kalanwali, for a period of three months. On 21.12.2023, a supplementary report under Section 173 Cr.P.C. was presented against the petitioner before the Additional Sessions Judge, Fast Track Special Court, Sirsa, who admitted him to regular bail on the same day (Annexure P-3). By the same order, on receipt of the death report and death certificate of Harpreet Singh son of Manga Singh, the proceedings against him were ordered to have abated. Thereafter, the charge under Section 22(c) of the NDPS Act was framed against the petitioner on 23.01.2024. As per the reply filed by the State, the prosecution has cited 18 witnesses, out of whom 5 have been examined so far.

6. Learned counsel for the petitioner has argued that he has been falsely implicated in this case. He was neither present at the spot nor anything was recovered from his possession. He has been roped in only on the strength of the disclosure statement made by his co-accused to the police. Such a

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statement is a confession made to a police officer and is hit by Section 25 of the Indian Evidence Act, 1872. Harpreet Singh son of Manga Singh, who made this disclosure, has since died and the proceedings against him have abated, so his statement can never be put to test. The two juveniles have already been dealt with by the Juvenile Justice Board in separate proceedings. Learned counsel has further argued that no call detail record, money trail or independent witness connects the petitioner with the co-accused and this position stands admitted by the State in its reply. The so-called disclosure statement of the petitioner himself is equally inadmissible, and the recovery of Rs.1500/- from him has no connection with the alleged sale.

7. It is further argued that the statements recorded even by the officers empowered under the NDPS Act have been held to be inadmissible by the Hon'ble Supreme Court and a statement made to the local police stands on a weaker footing. The trial is, thus, bound to end in acquittal and compelling the petitioner to face it is nothing but an abuse of the process of law. Learned counsel has also referred to the personal circumstances of the petitioner. He is a young married man whose wife has been working in Canada since 17.01.2025 and he is unable to join her due to the pendency of the case. The only other case registered against him under the NDPS Act has already ended in his acquittal. To buttress his arguments learned counsel for the petitioner has relied upon the authorities cited as ***K. Ram Krishan and another v. State of Bihar and another, JT 2000 (Suppl.1) SC 53***, ***Tofan Singh v. State of Tamil Nadu, (2021) 4 SCC 1***, ***Surinder Kumar Khanna v. Intelligence Officer, Directorate of Revenue Intelligence, (2018) 8 SCC***

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271, ***Karan Talwar v. State of Tamil Nadu, 2024 INSC 1012*** and ***Siddaraju v. State of Karnataka, 2025 NCKHC 345***.

8. Learned State counsel, on the other hand, has opposed the petition with reference to the reply filed by way of affidavit of the Deputy Superintendent of Police, Kalanwali. It is argued on behalf of the State that the petitioner is specifically named in the FIR and in the disclosure statement of co-accused Harpreet Singh son of Manga Singh as the supplier of the recovered tablets. During investigation, the petitioner himself suffered a disclosure statement admitting his involvement, got the place of sale demarcated and got Rs.1500/- recovered out of the sale proceeds. It is further submitted that the contraband is of commercial quantity and the involvement of the petitioner stands fully established on the case file. The challan has been presented, the charge has been framed and the prosecution evidence is in progress, so the truth of the allegations can only be tested at the trial. It is also pointed out that the petitioner was earlier involved in another case under the NDPS Act. A prayer has, therefore, been made for dismissal of the petition.

9. This Court has heard the rival submissions at considerable length, besides going through the material placed on record.

10. The petitioner seeks quashing of the proceedings at a stage when the charge has already been framed and the trial is in progress. The first question, therefore, is whether the collected material contains anything legally admissible on which the petitioner could be made to stand trial. If the answer is in the negative, the second question is whether the stage of the case stands in the way of this Court in exercising its inherent power. Before taking

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up these questions, it would be apt to notice the settled principles governing the exercise of such power.

11. The power under Section 528 of the BNSS is the same inherent power of the High Court which was earlier saved by Section 482 Cr.P.C. Its contours were laid down by the Hon'ble Supreme Court in ***State of Haryana and others v. Bhajan Lal and others, 1992 Supp (1) SCC 335***. After surveying the earlier law, the Hon'ble Supreme Court illustrated the categories of cases in which the power can be exercised to prevent abuse of the process of any Court or otherwise to secure the ends of justice. A note of caution was also added that the power is to be exercised sparingly, and the Court is not to enquire into the reliability or genuineness of the allegations. The relevant part of the judgment reads as under:-

> "In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extra-ordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

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> 1. Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.
>
> xxx xxx xxx
>
> 3. Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.
>
> xxx xxx xxx
>
> We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the Court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the F.I.R. or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the Court to act according to its whim or caprice."

12. The approach to be adopted by the High Court, where the accused relies upon material which cannot be disputed, was spelt out by the Hon'ble Supreme Court in ***Rajiv Thapar and others v. Madan Lal Kapoor, (2013) 3 SCC 330***. It was held that if such material rules out the accusation and proceeding with the trial would be an abuse of the process of the Court, the High Court ought to quash the proceedings. Such exercise, besides doing justice to the accused, saves the time of the Court which would otherwise be

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spent on a trial that cannot end in conviction. The following steps were laid down:-

> "Based on the factors canvassed in the foregoing paragraphs, we would delineate the following steps to determine the veracity of a prayer for quashing, raised by an accused by invoking the power vested in the High Court under Section 482 of the Cr.P.C.:-
>
> (i) Step one, whether the material relied upon by the accused is sound, reasonable, and indubitable, i.e., the material is of sterling and impeccable quality?
>
> (ii) Step two, whether the material relied upon by the accused, would rule out the assertions contained in the charges levelled against the accused, i.e., the material is sufficient to reject and overrule the factual assertions contained in the complaint, i.e., the material is such, as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false.
>
> (iii) Step three, whether the material relied upon by the accused, has not been refuted by the prosecution/complainant; and/or the material is such, that it cannot be justifiably refuted by the prosecution/complainant?
>
> (iv) Step four, whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?
>
> If the answer to all the steps is in the affirmative, judicial conscience of the High Court should persuade it to quash such criminal proceedings, in exercise of power vested in it under Section 482 of the Cr.P.C. Such exercise of power, besides doing justice to the accused, would save

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> precious court time, which would otherwise be wasted in holding such a trial (as well as, proceedings arising therefrom) specially when, it is clear that the same would not conclude in the conviction of the accused."

13. As regards the stage of the proceedings, the Hon'ble Supreme Court in ***Anand Kumar Mohatta and another v. State (Government of NCT of Delhi), Department of Home and another, (2019) 11 SCC 706*** held that nothing in the provision confines the inherent power to the stage of the FIR. It was observed that the abuse of process caused by an FIR stands aggravated when it takes the form of a charge-sheet. The relevant observations are as under:-

> "There is nothing in the words of this Section which restricts the exercise of the power of the Court to prevent the abuse of process of court or miscarriage of justice only to the stage of the FIR. It is settled principle of law that the High court can exercise jurisdiction under Section 482 of Cr.P.C even when the discharge application is pending with the trial court. Indeed, it would be a travesty to hold that proceedings initiated against a person can be interfered with at the stage of FIR but not if it has advanced, and the allegations have materialized into a charge sheet. On the contrary it could be said that the abuse of process caused by FIR stands aggravated if the FIR has taken the form of a charge sheet after investigation. The power is undoubtedly conferred to prevent abuse of process of power of any court."

14. The same reasoning holds good after the framing of the charge. The power, however, has to be exercised with greater circumspection at that

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stage and it cannot be used to weigh the evidence or to decide disputed questions of fact. It is also true that the petitioner did not assail the order framing the charge. However, the question raised by him goes to the very root of the prosecution. It concerns the legal admissibility of the only material relied upon against him, and it does not call for any appreciation of evidence. Such a challenge cannot be shut out merely because the order framing the charge was not challenged. It may be noticed that in ***Dipakbhai Jagdishchandra Patel v. State of Gujarat and another, (2019) 16 SCC 547***, which is discussed in detail hereinafter, the order framing the charge itself was set aside in a petition filed under Section 482 Cr.P.C.

15. With the above principles in view, the material collected against the petitioner may now be examined. It is the admitted position that the petitioner was not present at the spot and no contraband was recovered from him. The State, in its reply, relies upon four circumstances against him. These are the disclosure statement of co-accused Harpreet Singh son of Manga Singh, the disclosure statement of the petitioner dated 10.07.2021, the demarcation of the place of sale at his instance and the production of Rs.1500/- by him. The statement of Constable Sunil Kumar (Annexure P-5) only records his arrest and the preparation of these memos. In paragraph 11 of the petition, it has been specifically averred that no call detail record connects the petitioner with the co-accused and there is no other independent evidence linking him with drug trafficking. In reply to this paragraph, the State has merely stated that its contents are a matter of record. No other piece

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of evidence has been set up against the petitioner and the alleged source of the tablets, Rajender, has remained untraced.

16. Since the trial in the present case was pending before 01.07.2024, it continues to be governed by the Indian Evidence Act, 1872 in view of Section 170(2) of the Bharatiya Sakshya Adhiniyam, 2023. In any case, the corresponding provisions contained in Sections 23 and 24 of the Adhiniyam are on the same lines. Sections 25, 26, 27 and 30 of the Evidence Act read as under:-

> "25. Confession to police officer not to be proved.—No confession made to a police officer shall be proved as against a person accused of any offence.
>
> 26. Confession by accused while in custody of police not to be proved against him.—No confession made by any person whilst he is in the custody of a police officer, unless it be made in the immediate presence of a Magistrate, shall be proved as against such person.
>
> 27. How much of information received from accused may be proved.—Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.
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> xxx xxx xxx
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> 30. Consideration of proved confession affecting person making it and others jointly under trial for same offence.—When more persons than one are being tried jointly for the same offence, and a confession made by

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> one of such persons affecting himself and some other of such persons is proved, the Court may take into consideration such confession as against such other person as well as against the person who makes such confession."

17. The disclosure statement of Harpreet Singh son of Manga Singh was made to a police officer while he was in police custody. In so far as it implicates the petitioner, it is nothing but a confession of a co-accused made to the police. Section 25 of the Evidence Act forbids its proof against any person accused of any offence and Section 26 bars a confession made in police custody. Section 30 of the Evidence Act also does not come to the aid of the prosecution. That provision applies only where the maker of the confession and the other accused are being tried jointly for the same offence. Harpreet Singh son of Manga Singh has died and the proceedings against him have abated, so there is no joint trial in which his confession could be proved. The statement cannot be brought on record under Section 32 of the Evidence Act on account of his death either. Section 162(2) Cr.P.C. saves only those statements made to the police which fall under clause (1) of Section 32, and a confession to the police in any case remains hit by Section 25.

18. In ***Suresh Budharmal Kalani alias Pappu Kalani v. State of Maharashtra, (1998) 7 SCC 337***, the Hon'ble Supreme Court held that the confession of an accused who had been discharged, and was thus not facing a joint trial, could not be used against his co-accused even for framing a charge. It was further held that at the stage of charge, the Court is to confine itself to the material which can be legally translated into evidence. The Court cannot proceed on the possibility of further evidence being led by the

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prosecution at the trial, such as by examining the discharged accused as a witness. The relevant part of the judgment reads as under:-

> "Thus said, we may turn our attention to the confession made by Dr. Bansal and Jayawant Suryarao. Under Section 30 of the Evidence Act a confession of an accused is relevant and admissible against a co-accused if both are jointly facing trial for the same offence. Since, admittedly Dr. Bansal has been discharged from the case and would not be facing trial with Kalani his confession cannot be used against Kalani. The impugned order shows that the Designated Court was fully aware of the above legal position but, surprisingly enough, it still decided to rely upon the confession on the specious ground that the prosecution was not in any way precluded from examining Dr. Bansal as a witness in the trial for establishing the facts disclosed in his confession. This again, was a perverse approach of the Designated Court while dealing with the question of framing charges. At that stage the court is required to confine its attention to only those materials collected during investigation which can be legally translated into evidence and not upon further evidence (dehors those materials) that the prosecution may adduce in the trial, which would commence only after the charges are framed and the accused denies the charges. The Designated Court was, therefore not at all justified in taking into consideration the confessional statement of Dr. Bansal for framing charges against Kalani."

19. Even where Section 30 of the Evidence Act applies, the confession of a co-accused is not substantive evidence. In ***Haricharan Kurmi and Jogia Hajam v. State of Bihar, AIR 1964 SC 1184***, a Constitution

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Bench of the Hon'ble Supreme Court held that the Court cannot start with such a confession. It has to begin with the other evidence and may turn to the confession only to lend assurance to the conclusion drawn from that evidence. Following this principle in a prosecution under the NDPS Act, the Hon'ble Supreme Court in ***Surinder Kumar Khanna's case (supra)*** set aside the conviction of an accused against whom there was no material other than the statements of his co-accused. The relevant part of ***Haricharan Kurmi's case (supra)***, as extracted in ***Surinder Kumar Khanna's case (supra)***, reads as under:-

> "As we have already indicated, this question has been considered on several occasions by judicial decisions and it has been consistently held that a confession cannot be treated as evidence which is substantive evidence against a co-accused person.
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> xxx xxx xxx
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> The result, therefore, is that in dealing with a case against an accused person, the court cannot start with the confession of a co-accused person; it must begin with other evidence adduced by the prosecution and after it has formed its opinion with regard to the quality and effect of the said evidence, then it is permissible to turn to the confession in order to receive assurance to the conclusion of guilt which the judicial mind is about to reach on the said other evidence."

20. Applying the above principle, it was held in ***Surinder Kumar Khanna's case (supra)*** as under:-

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> "In the present case it is accepted that apart from the aforesaid statements of co-accused there is no material suggesting involvement of the appellant in the crime in question. We are thus left with only one piece of material that is the confessional statements of the co-accused as stated above. On the touchstone of law laid down by this Court such a confessional statement of a co-accused cannot by itself be taken as a substantive piece of evidence against another co-accused and can at best be used or utilized in order to lend assurance to the Court. In the absence of any substantive evidence it would be inappropriate to base the conviction of the appellant purely on the statements of co-accused. The appellant is therefore entitled to be acquitted of the charges leveled against him. We, therefore, accept this appeal, set aside the orders of conviction and sentence and acquit the appellant."

21. When ***Surinder Kumar Khanna's case (supra)*** was decided, one question was pending before a larger Bench of the Hon'ble Supreme Court. The question was whether a statement recorded by an officer under Section 67 of the NDPS Act amounts to a confession made to a police officer. The Hon'ble Supreme Court took note of this reference in that case itself. Its decision, however, did not depend upon the answer to that question. The appellant was acquitted on the settled principle that a confession of a co-accused is not substantive evidence and can only lend assurance to other evidence. That principle has never been doubted and the judgment, therefore, continues to hold the field. The question referred to the larger Bench was later answered in ***Tofan Singh's case (supra)***, wherein it was held that the

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officers invested with powers under Section 53 of the NDPS Act are police officers within the meaning of Section 25 of the Evidence Act. Any confessional statement made to them is barred by that provision and a statement recorded under Section 67 cannot be used as a confession at the trial. The earlier view taken in ***Kanhaiyalal v. Union of India, (2008) 4 SCC 668*** was overruled. The reference was answered as under:-

> "We answer the reference by stating:
>
> (i) 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.
>
> (ii) 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."

22. The officers of departments such as the Narcotics Control Bureau or the Directorate of Revenue Intelligence, who are invested with powers under the NDPS Act, are not police officers by designation. Even so, confessions made to them have been held to be barred by Section 25 of the Evidence Act. In the present case, the disclosure statements were recorded by officials of the State police during the investigation of the FIR. They are police officers in the plainest sense of the term. The confessional parts of these statements are, therefore, all the more inadmissible against the petitioner.

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23. The admission of guilt made by Gurpreet Singh and Rajveer Singh before the Juvenile Justice Board does not improve the case of the prosecution. A perusal of the judgment dated 14.02.2022 (Annexure P-4) shows that they merely admitted their own mistake and the petitioner does not even find mention therein. That inquiry was held separately under the Juvenile Justice (Care and Protection of Children) Act, 2015, and the petitioner was not a party to it. The statements of these two persons to the police, recorded along with that of Harpreet Singh son of Manga Singh, are hit by the same bar of Section 25 of the Evidence Act. The State has not claimed in its reply that either of them has been cited as a witness against the petitioner. Even otherwise, as held in ***Suresh Budharmal Kalani's case (supra)***, the Court cannot proceed on the possibility of further evidence which the prosecution may lead at the trial.

24. The disclosure statement of the petitioner dated 10.07.2021 was recorded after his formal arrest, while he was in police custody. To the extent it is a confession, it is barred by Sections 25 and 26 of the Evidence Act. Only that part of it which relates distinctly to a fact discovered in consequence thereof could be proved under Section 27. The meaning of the expression 'fact discovered' has been settled since the decision of the Privy Council in ***Pulukuri Kotayya v. King Emperor, AIR 1947 PC 67***. In ***State (NCT of Delhi) v. Navjot Sandhu alias Afsan Guru, (2005) 11 SCC 600***, the Hon'ble Supreme Court noticed this line of authority, and quoted the following observations made in ***Himachal Pradesh Administration v. Om Prakash, (1972) 1 SCC 249***:-

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> "A fact discovered within the meaning of Section 27 must refer to a material fact to which the information directly relates. In order to render the information admissible the fact discovered must be relevant and must have been such that it constitutes the information through which the discovery was made."

25. Applying this principle to the evidence before it, the Hon'ble Supreme Court in ***Navjot Sandhu's case (supra)*** held that the pointing out of a shop whose name and address were already known to the police was not a discovery under Section 27. The relevant observations read as under:-

> "Thus, the name and address of the shop was already known to the Police. Therefore, Section 27 cannot be pressed into service. However, the conduct of Afzal in pointing out the shop and its proprietor (PW42) would be relevant under Section 8 of the Evidence Act. PW-42 in his deposition testified to the factum of purchase of 50 kgs of silver powder by Afzal on 11.12.01."

26. Tested on this anvil, neither of the two circumstances relied upon by the State amounts to the discovery of a fact. The place where the tablets were allegedly sold had already been demarcated by Harpreet Singh son of Manga Singh during the investigation conducted on 12.01.2021, as is evident from the challan (Annexure P-2) and the reply filed by the State. The petitioner pointing out the same place six months later did not bring to light anything which was not already known to the police. Even if this act is treated as conduct under Section 8 of the Evidence Act, it would show no more than the petitioner pointing out a particular spot. It does not show possession or sale of any contraband by him. In ***Navjot Sandhu's case***

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(supra), the conduct of the accused was considered along with the independent testimony of the shopkeeper who had sold the goods to him. There is no such independent evidence in the present case.

27. As regards the sum of Rs.1500/-, it was produced by the petitioner six months after the occurrence. A small sum of currency is not an object connected with the offence, and nothing has been placed on record to identify these notes with the alleged sale. Besides, as per the disclosure statement of Harpreet Singh son of Manga Singh himself, the tablets were bought on credit. The version of the petitioner retaining the balance out of a sale price of Rs.27,000/- does not even fit in with the prosecution's own case. It is made clear that this Court is not weighing the evidence. The point is only that the production of this amount does not satisfy the requirement of a 'fact discovered' under Section 27 of the Evidence Act. Once these two circumstances are excluded, nothing remains in the disclosure statement of the petitioner which could be proved against him.

28. Whether such material can justify even the framing of a charge is no longer res integra. In ***Dipakbhai Jagdishchandra Patel's case (supra)***, the appellant had filed a petition under Section 482 Cr.P.C. against the order framing the charge. The Hon'ble Supreme Court held that his own statement to the police was inadmissible. The statement of the co-accused, standing alone, could not furnish the strong suspicion required for framing a charge. The order framing the charge was accordingly set aside and the appellant was discharged. The relevant observations are as under:-

> "At the stage of framing the charge in accordance with the principles which have been laid down by this Court, what

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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 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.

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If the statement made by the appellant on 11.04.1996 is inadmissible, then, there will only be the statement of the co-accused available to be considered in deciding whether the charge has to be framed against the appellant or not. It is here that the law laid down by this Court in Suresh Budharmal Kalani Alias Pappu Kalani (supra) becomes applicable.

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> Proceeding on the basis that it is a confession by a co-accused and still proceeding further that there is a joint trial of the accused and that they are accused of the same offences (ignoring the fact that other accused are absconding and appellant appears to be proceeded against on his own) and having found that there is no recovery from the residence of the appellant of the counterfeit notes and that there is no other material on the basis of which even a strong suspicion could be aroused, we would find that the mandate of the law requires us to free the appellant from being proceeded against. Accordingly, we allow the appeal and the petition filed under Section 482 of the Cr.PC. The Order impugned passed by the Sessions Judge framing the charge against the appellant will stand set aside and the appellant will stand discharged."

29. The same view has been reiterated by the Hon'ble Supreme Court recently in ***Karan Talwar's case (supra)***, which is also a case under the NDPS Act. The appellant therein had been arraigned only on the basis of the confession of a co-accused, and no contraband was recovered from him. Relying upon ***Suresh Budharmal Kalani's case (supra)***, it was held that such a confession could not translate into admissible evidence against him. It was further held that compelling a person to stand trial without any such material would be a miscarriage of justice. The orders refusing to discharge him were set aside and he was discharged. The relevant observations are as under:-

> "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

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fortified by the law laid down in Suresh Budharmal Kalani v. State of Maharashtra, 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.

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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.

xxx xxx xxx

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

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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."

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30. Following the aforesaid principles, the High Court of Karnataka in ***Siddaraju's case (supra)*** quashed the proceedings under the NDPS Act against an accused from whose custody, possession or residence nothing was recovered, and who stood implicated only on the voluntary statements of his co-accused. The principle noticed in ***K. Ram Krishan's case (supra)***, also relied upon by the petitioner, is to the same effect. It was observed therein that where, merely by looking at the FIR and the accompanying documents and without appreciating the evidence, the offence alleged is not disclosed, the person proceeded against has to be saved from such litigation.

31. It is true that ***Dipakbhai Jagdishchandra Patel's case (supra)*** and ***Karan Talwar's case (supra)*** were decided at the stage of charge, while ***Surinder Kumar Khanna's case (supra)*** arose after a full trial. In the present case, the charge has been framed and five witnesses have been examined. This, however, makes no material difference. The law laid down at both ends of the trial is consistent. A confession of a co-accused is not sufficient to frame a charge and it is not sufficient to convict either. When the very material on which the charge rests can never be translated into legal evidence, the framing of the charge does not improve its quality. Nothing has been placed on record by the State to show that any of the witnesses examined so far has supplied any other link against the petitioner. The State itself continues to rely only upon the disclosure statements and the memos prepared on their basis. In such a situation, the trial against the petitioner can have only one outcome, and the principle laid down in ***Anand Kumar Mohatta's case (supra)*** applies with full force.

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32. The case of the petitioner, thus, falls squarely within the first and third categories illustrated in ***Bhajan Lal's case (supra)***. Even if the material collected by the prosecution is taken at its face value, it does not make out a case against the petitioner which could be proved by admissible evidence. The note of caution sounded in ***Bhajan Lal's case (supra)*** has been kept in view. This Court has not embarked upon any enquiry into the reliability of the prosecution version, which has been accepted as it stands. The conclusion rests on the legal inadmissibility of the only material relied upon against the petitioner, which is a pure question of law. The four steps laid down in ***Rajiv Thapar's case (supra)*** are also satisfied. The material considered here is the prosecution's own record, comprising the FIR, the challan, the disclosure statements and the reply of the State, and its correctness is not in dispute. It rules out the existence of any admissible evidence against the petitioner and cannot be refuted by the prosecution. Continuing the trial would only prolong the ordeal of the petitioner and consume the time of the trial Court to no purpose.

33. Learned State counsel has laid much emphasis on the commercial quantity of the contraband. However, the quantity of contraband recovered from the co-accused cannot by itself make the petitioner answerable for it. The rigours of Section 37 of the NDPS Act govern the grant of bail and have no bearing on the question whether any admissible evidence exists against an accused. The gravity of an accusation cannot make up for the absence of legal evidence to support it.

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34. As regards the other case relied upon by the State, it stands admitted in the reply that the petitioner has been acquitted in FIR No.63 dated 03.06.2019 under Section 22(c) of the NDPS Act, Police Station Baragudha (Annexure P-9). As noticed in the order dated 23.04.2021 (Annexure P-6), the petitioner had been arraigned in that case also on the basis of a disclosure statement. An acquittal cannot be counted against him and that case is not a circumstance which can weigh against him in the present petition. The personal circumstances pleaded by the petitioner, including the fact that his wife is working in Canada, have also not been the basis of this decision. The petitioner is entitled to relief because the law does not permit him to be tried on material which can never be proved against him.

35. In view of the above discussion, this Court is of the considered view that the continuation of the criminal proceedings against the petitioner would amount to an abuse of the process of the Court. Consequently, the petition is allowed. FIR No.0007 dated 12.01.2021, registered under Section 22(c) of the NDPS Act at Police Station Kalanwali, District Sirsa, and all the subsequent proceedings arising therefrom, including the charge framed on 23.01.2024, are hereby quashed qua the petitioner. The bail bonds and surety bonds furnished by the petitioner stand discharged.

36. Pending miscellaneous application(s), if any, also stand disposed of.

14.10.2026 **(MANISHA BATRA)**
Waseem R. Ansari **JUDGE**

Whether speaking/reasoned Yes/No
Whether reportable Yes/No

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