**IN THE HIGH COURT OF JUDICATURE AT PATNA**
**CRIMINAL REVISION No.455 of 2019**

Arising Out of PS. Case No.-718 Year-2016 Thana- BETTIAH CITY District- West Champaran

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Aslam @ Md. Aslam Ali @ Aslam Ali Son Of Late Khairati Mian, Resident Of Village- Sirisiya Mal, P.S.- Nakdei, District- East Champaran.

... ... Petitioner/s

Versus

The State of Bihar

... ... Respondent/s

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**Appearance :**
For the Petitioner/s : Mr. Ajay Kumar Thakur, Advocate
Ms. Vaishnavi Singh, Advocate
Mr. Ritwik Thakur, Advocate
Mr. Pranshu, Advocate
For the State : Mr. Upendra Kumar, APP

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**CORAM: HONOURABLE MR. JUSTICE JITENDRA KUMAR**
**ORAL JUDGMENT**

**Date : 06-02-2025**

The present petition has been preferred by the petitioner against the impugned order dated 19.01.2019 passed by learned Sessions Judge, Bettiah, West Champaran in Trial No. 46 of 2017, whereby learned Sessions Court/Special Court, N.D.P.S. has dismissed the application of the petitioner for discharge filed under Section 227 of the Cr.PC.

**2**. The prosecution case, as per the written report of the informant/Bimlendu Kumar, who is Police Sub-Inspector, is that he was posted in Town Police Station, Bettiah. On 26.12.2016, in the morning, he got information that one Md. Saheb is selling smack at Naurangabag. Information was given to his senior officer and one team was constituted. The raiding

team reached Naurangabag, near the house as informed by the informer, surrounded the house and in the presence of one Nagendra Mishra and Prabhawati Devi, door was opened and one man called Md. Saheb emerged from the house. After taking his consent for searching his house and following the rules of search, the raiding team commenced the searching operation. In course of search, 200 gram smack was recovered from the jacket of Md. Saheb. On further inquiry, he stated that it was Aslam, who supplied smack to him through his man, Wahab Mukhiya. The recovered contraband was seized and sealed and seizure list was prepared.

**3.** Upon the above written report of the informant, Bettiah Town P.S. Case No. 718 of 2016 was registered on 26.12.2016 against the three accused persons, including the petitioner for offence punishable under Sections 20, 23, 25, 27(A) and 29 of the N.D.P.S Act.

**4**. After investigation, separate charge-sheet was submitted against the petitioner and thereafter, cognizance was taken against him and at the stage of framing of charge, his application for discharge was rejected by learned Trial Court by the impugned order and subsequently charge was framed against the sole accused/petitioner herein vide order dated 15.04.2019

under Sections 21(b), 22(b) and 23(b) of the NDPS Act.

**5**. I heard learned counsel for the petitioner and learned APP for the State.

**6**. Learned counsel for the petitioner submits that the petitioner is innocent and has been falsely implicated in this case. He further submits that only material against the petitioner is the confessional statement of co-accused, which is not admissible in view of celebrated judgment of **Tofan Singh Vs. State of T.N.,** as reported in **2021 (4) SCC 1**. Moreover, there is no recovery from the possession of the petitioner despite raid having been made by the police at his house. Hence, there is no legally admissible material at all against the petitioner even to arouse any suspicion against him. Hence, there is no question of framing of charge. Hence, learned Trial Court has erroneously passed the impugned order rejecting the application of the petitioner for discharge.

**7.** He refers to and relies upon the following judicial precedents:

(i) **Dipakbhai J. Patel Vs. State of Gujarat,**
(2019) 16 SCC 547

(ii) **Karan Talwar Vs. The State of Tamilnadu**
(2024 INSC 1012, 2024 SCC Online SC 3803)

**8.** However, learned APP for the State defends the

impugned order submitting that there is no illegality or infirmity in it. He refers to Section 30 of the Evidence Act to submit that confession of the co-accused is relevant and admissible against the petitioner/accused and, therefore, there is no illegality to frame charge against him on the basis of the confessional statement of the co-accused. Hence, the present petition is liable to be dismissed.

**9.** I considered the submissions advanced by both the parties and perused the materials on record.

**10**. It is settled principle of law the power of this Court under Section 482 Cr.PC, for quashing the criminal proceedings, particularly, the charge framed in course of trial is required to be exercised very sparingly and with circumspection and that too in the rarest of rare cases. At this stage, the Court is only required to apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith *prima facie* establish the offence or not. The Court can interfere only if the allegations are found to be so patently absurd or inherently improbable that no prudent person can believe such an allegation or where the basic ingredients of a criminal offence are not satisfied as per the material on record.

**11.** It is also settled principle of law that at the stage of framing of charge, the Court is not required to conduct a mini trial. It is required to consider the material on record only with a view to find out if there is a ground for presuming that accused had committed the offence, and not to see whether prosecution has made out a case for conviction of the accused. At this stage, the probative value of the material on record cannot be gone into, and the material brought on record by the prosecution has to be accepted as true. The truth, veracity and effect of the evidence which the prosecutor proposes to adduce are not to be meticulously examined. Nor is any weight to be attached to the probable defence of the accused. The court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence.

**12**. It is also settled position of law that even strong suspicion based on material on record is sufficient to frame charge.

**13**. One may refer to the following judicial precedents which deal with the principles in regard to framing of charge:

**(i) State of T.N. Vs. R. Soundirarasu,**
(2023) 6 SCC 768

**(ii) CBI Vs. Aryan Singh,**
2023 SCC OnLine SC 379

**(iii) G. H. Beigh Vs. Mohd. Maqbool Magrey,**
(2022) 12 SCC 657

**(iv) Saranya vs. Bharathi,**
(2021) 8 SCC 583

**(v) State of Odisha Vs. Pratima Mohanty,**
2021 SCC OnLine SC 1222

**(vi) Dipakbhai J. Patel Vs. State of Gujarat,**
(2019) 16 SCC 547

**(vii) State of Karnataka Vs. M.R. Hiremath,**
(2019) 7 SCC 515

**(viii) State of T.N. Vs. N. Suresh Rajan**
(2014) 11 SCC 709

**(ix) Amit Kapoor Vs. Ramesh Chander**
(2012) 9 SCC 460

**(x) P. Vijayan Vs. State of Kerala,**
(2010) 2 SCC 398

**(xi) Sajjan Kumar Vs. CBI,**
(2010) 9 SCC 368

**(xii) Onkar Nath Mishra Vs. State (NCT of Delhi),**
(2008) 2 SCC 561

**(xiii) Soma Chakravarty Vs. State**
(2007) 5 SCC 403

**(xiv) State of Orissa Vs. Debendra Nath Padhi,**
(2005) 1 SCC 568

**(xv) K. Ramakrishna Vs. State of Bihar**
(2000) 8 SCC 547

**(xvi) State of M.P. Vs. Mohanlal Soni,**
(2000) 6 SCC 338

**(xvii) State of Maharashtra Vs. Som Nath Thapa,**
(1996) 4 SCC 659

**(xviii) Union of India Vs. Prafulla Kumar Samal,**
(1979) 3 SCC 4.

**14**. It is also settled position of law that material on

the basis of which charge could be framed, must be such material which could be translated into evidence during trial. The rationale behind such principle is 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 stage of trial, it would be miscarriage of justice to make the person concerned stand the trial. Therefore, if the confession which is inadmissible under Section 25 of the Evidence Act is the sole material, no charge could be framed against him, because such confession could not be translated into evidence during the trial.

**15**. In this regard, one may refer to **Dipakbhai J. Patel case** (supra), wherein Hon'ble Apex Court has held that even the strong suspicion must be based on such material which could be translated into evidence at the stage of trial. The relevant para of the judgment reads as follows:

> **"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."
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> (Emphasis supplied)

**16**. Similar view has been taken by Hon'ble Apex Court in **Karan Talwar case** (supra) holding as follows, relying upon Dipakbhai J. Patel case (supra):

> "10. ……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, (2011) 11 SCC 347**. 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 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.
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> ……..
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> 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."
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> (Emphasis supplied)

**17**. Even reference to and reliance of learned APP upon Section 30 of the Evidence Act does not help the prosecution. A careful reading of Section 30 shows that even as per Section 30, only legally admissible confession of the co-accused is relevant and admissible against the accused, because the condition precedent for making the confessional statement of the co-accused relevant against accused is that there should be not only a joint trial of the accused along with the co-accused, even the confessional statement should be such which could be proved in the trial. Needless to say that inadmissible confession cannot be proved during the trial. As such, confession as referred to in Section 30 of the Evidence Act means only admissible confession and not such confession which is hit by Section 25 of the Evidence Act.

**18.** Coming to the case on hand, I find that the only material against the petitioner is confessional statement of the co-accused, Md. Saheb as recorded under Section 67 of the NDPS Act. As per his statement, it is the present petitioner who used to supply smack to him through his man Wahab Mukhiya. But on raid, nothing has been recovered from the house of the petitioner or from his personal possession. As such, one and only material against the petitioner is confessional statement of

co-accused before police. But after judgment of **Tofan Singh case** (supra) it is settled position of law that confessional statement of the co-accused as recorded under Section 67 of the NDPS Act is not admissible. Here it has been held by Hon'ble Apex Court that the powers conferred on the empowered officers under Section 41 and 42 of the NDPS Act 1985 read with Section 67 of the NDPS Act 1985 are limited in nature conferred for the purpose of entry, search, seizure and arrest without warrant along with safeguards enlisted thereof. The "enquiry" undertaken under the aforesaid provisions may lead to initiation of an investigation or enquiry by the officers empowered to do so either under Section 53 of the NDPS Act 1985 or otherwise. Thus, the officers 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.

**19.** In recent judgement of **Najmunisha v. State of Gujarat, 2024 SCC OnLine SC 520, AIRONLINE 2024 SC 306,** Hon'ble Supreme Court has again held, relying upon Tofan

Singh Case (supra) that a statement recorded under Section 67 of the NDPS Act cannot be considered to convict an accused person under the NDPS Act 1985.

**20**. As such, there is no such material against the accused/petitioner which could be proved against him during his trial. Hence, I find that the learned Trial Court should have allowed the application of the accused/petitioner for discharge under Section 227 of the Cr.PC. But learned Trial Court has erroneously dismissed the discharge application of the petitioner by the impugned order. There was no legally admissible material against the petitioner even to arouse suspicion, let alone to make out a *prima facie* case against him.

**21.** As such, the impugned order is not sustainable in the eye of law. Accordingly, the present petition is allowed, quashing and setting aside the impugned order and allowing the application of the petitioner filed under Section 227 of the Cr.PC for discharge.

**(Jitendra Kumar, J.)**

Shoaib/
Ravishankar/
Chandan-

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