

HIGH COURT OF MADHYA PRADESH, JABALPUR**BENCH AT INDORE****S.B.: Hon'ble Shri Justice Subodh Abhyankar****Miscellaneous Criminal Case No.45017/2020**(Ramniwas s/o Ambalal
VersusThe State of Madhya Pradesh
through Narcotics Control Bureau, Zonal Unit, Indore)(Case was heard on 19th January, 2021)

- Counsel for the Parties** : Mr. Saransh Jain, learned counsel for the applicant.
Mr. Manoj Kumar Soni, learned counsel for the respondent / Narcotics Control Bureau, Indore.
- Whether approved for reporting** : Yes
- Law laid down** : 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.
- As to whether the decision rendered by the Supreme Court in the case of **Toofan Singh v. State of Tamil Nadu** reported as **2020 SCC Online SC 882** would be applicable prospectively or retrospectively.
- It is held that in case of **Toofan Singh v. State of Tamil Nadu** (supra), the Supreme Court has only interpreted the law.
- So far as the contention of Shri Manoj Soni, that the aforesaid decision would be applicable prospectively is concerned, it has no legs to stand as in the said case of *Toofan Singh* (supra), the Supreme Court has only interpreted the law which was already existing and hence the judgment would be binding on all the parties concerned notwithstanding that the incident has taken place on 12th May, 2017 i.e., prior to the date of the said decision which is 29.10.2020.
- Thus, it is held that the decision rendered by the Supreme Court in the case of **Toofan Singh v. State of Tamil Nadu** (Supra) would be applicable retrospectively.
- Significant paragraph numbers** : 10 to 12

O R D E R

Post for

08.02.2021

sd/-

(Subodh Abhyankar)
Judge

High Court of Madhya Pradesh, Jabalpur
Bench at Indore
Miscellaneous Criminal Case No.45017/2020

(Ramniwas s/o Ambalal
Versus
The State of Madhya Pradesh
through Narcotics Control Bureau, Zonal Unit, Indore)

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Mr. Saransh Jain, learned counsel for the applicant.
Mr. Manoj Kumar Soni, learned counsel for the respondent / Nar-
cotics Control Bureau, Indore.

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ORDER

(Passed on this 8th day of February, 2021)

They are heard through **Video Conferencing**.
Perused the case diary / challan papers.

This is the applicant's **third** application under Section 439 of Criminal Procedure Code, 1973, as he / she is implicated in connection with Crime No.01/2017 registered at Police Station Narcotics Control Bureau, Zonal Unit, Indore District Indore (MP) for offence punishable under Section 8 read with Section 15 and Section 29 of the Narcotic Drugs & Psychotropic Substances Act, 1985 (herein after referred to as the Act). The applicant is in custody since 26.09.2018.

2. Learned counsel for the applicant has submitted that this is the applicant's third application, as earlier bail application Miscellaneous Criminal Case No.22967/2019 was dismissed as withdrawn vide its order dated 02.07.2019 whereas Miscellaneous Criminal Case No.48085/2019 was dismissed on merits by this Court vide order dated 21.01.2020.

3. Facts in the present case are not disputed that the applicant is facing prosecution under Section 8 read with Section 15 and Section 29 of the Act in connection with recovery of 1239.765 kilograms of poppy straw from the co-accused Subhash s/o Rajaram Gurjar, who in his statement recorded under Section 67 of the Act, has stated that it was the present applicant who had loaded the aforesaid contraband in the vehicle. Earlier bail application of the applicant Miscellaneous Criminal Case No.48085/2019 was dismissed by this Court while observing that whether the statement recorded under Section 67 of the Act can be treated as confessional statement or not, is pending consideration before the Larger Bench of the Supreme Court; and has further proceeded to hold that “confessional statement is admissible”, while relying upon the decision rendered in the case of **Mohammed Farin v. State Represented by the Intelligence Officer** reported as **(2019) 8 SCC 811**, has dismissed the bail application.

4. Mr. Saransh Jain, counsel for the applicant has submitted that subsequently the Larger Bench of the Supreme Court in the case of **Toofan Singh v. State of Tamil Nadu** reported as **2020 SCC Online SC 882** has clearly held that the 'Officers' under Section 53 of the Act are “Police Officer” within the meaning of Section 25 of the Evidence Act; and the confessional statement made to them would be barred under Section 25 of the Evidence Act and cannot be looked upon; and conse-

quently it is also held that the statement recorded under Section 67 of the Act cannot be used as confessional statement in the trial of an offence under the Act.

5. Relying upon the aforesaid latest dictum of the Supreme Court, counsel has contended that the applicant is entitled to be released on bail, as he has been roped-in in the matter, only on the basis of his statement and the statement of co-accused regarding his involvement.

6. Counsel has submitted that except the confessional statement of the co-accused and the present applicant, there is nothing on record even to remotely connect him with the aforesaid offence; and his plea of being falsely implicated is also corroborated by his medical document, whereby he was hospitalized during the period when the incident took place. It is further submitted that there are no criminal antecedents of the applicant. Thus, it is submitted that the applicant be released on bail.

7. Mr. Manoj Soni, Id. Counsel for the respondent / State, on the other hand, has opposed the prayer; and it is submitted that no case for interference is made out. Although, Mr. Soni has fairly submitted that in the case of **Toofan Singh** v. **State of Tamil Nadu** (Supra), Larger Bench of the Supreme Court has held that statement recorded under Section 67 of the Act is not admissible in evidence, however, his contention is that the aforesaid decision would be applicable prospectively and hence, would not be applicable in the present facts and

circumstances of the case where the incident has taken place on 12th May, 2017. It is however not denied that there are no criminal antecedents of the applicant.

8. I have heard learned counsel for the parties and perused the record.

9. The Supreme Court, in the case of *Toofan Singh* (supra) delivered by Justice R.F. Nariman has concluded the reference in the following terms:-

“158. 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.”

10. A perusal of the same clearly reveals that the statement made by the co-accused as also the confessional statement of an accused are not admissible in law and cannot be taken into account to convict an accused under the NDPS Act. In view of the same, this court has no hesitation to hold that the applicant, who is arrested solely on the basis of the statement made by the co-accused and his own confessional statement, is entitled to be released on bail.

11. So far as the contention of Shri Manoj Soni, that the aforesaid decision would be applicable prospectively is concerned, it has no legs to stand as in the said case of *Toofan Singh* (supra), the Supreme Court has only interpreted the law which was already existing and hence the judgment would be binding on all the parties

concerned notwithstanding that the incident has taken place on 12th May, 2017 i.e., prior to the date of the said decision which is 29.10.2020.

12. Thus, it is held that the decision rendered by the Supreme Court in the case of **Toofan Singh** v. **State of Tamil Nadu** (Supra) would be applicable retrospectively.

13. Having considered the rival submissions, perusal of the case diary, this Court finds it expedient to allow the bail application.

14. Accordingly, without commenting on the merits of the case, the application filed by the applicant is allowed. The applicant is directed to be released on bail upon furnishing a personal bond in the sum of **Rs.1,00,000/- (Rupees One Lakh)** with one solvent surety of the like amount to the satisfaction of the trial Court for his / her regular appearance before the trial Court during trial, with a condition that he / she shall remain present before the court concerned during trial and shall also abide by the conditions enumerated under Section 437 (3) Criminal Procedure Code, 1973.

This order shall be effective till the end of the trial, however, in case of bail jump, it shall become ineffective.

Certified copy as per rules.

sd/-

(Subodh Abhyankar)
Judge