

**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE**

BEFORE

HON'BLE SHRI JUSTICE PRANAY VERMA

MISC. CRIMINAL CASE No. 49043 of 2022

BETWEEN:-

**KAILASH S/O MANGILAL NAGDA, AGED
ABOUT 45 YEARS, OCCUPATION: FARMER/
BUSINESS R/O VILLAGE KANKA TEHSIL
JAWAD DISTT. NEEMUCH (MADHYA PRADESH)**

.....APPLICANT

(BY SHRI RISHIRAJ TRIVEDI - ADVOCATE)

AND

**THE STATE OF MADHYA PRADESH STATION
HOUSE OFFICER THROUGH POLICE STATION
JAWAD DISTRICT NEEMUCH (MADHYA
PRADESH)**

.....RESPONDENT

(BY SHRI RANJEET SEN – GOVT. ADVOCATE)

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Reserved on : 09.02.2023

Pronounced on : 30.06.2023
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*This petition having been heard and reserved for orders, coming
on for pronouncement this day, the court passed the following:*

ORDER

1. This petition under Section 482 of the Cr.P.C. 1973 (here-in-after referred to as “the Code”) has been filed by the petitioner for quashment of the First Information Report (FIR) registered vide Crime No.79/2021 at Police Station Javad, District Neemuch for offences punishable under Sections 8(c), 15(c), 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (here-in-after referred to as “the Act”), the charge-sheet filed arising out of the aforesaid FIR and the consequent criminal proceedings pending before Special Judge, N.D.P.S. Act, Javad, District Neemuch in Sessions Trial No.25/2021.

2. Facts of the case are that on 23.02.2021 acting upon a secret information the Sub Inspector of Outpost Nayagaon, Police Station Javad, District Neemuch intercepted a truck bearing registration No.PB-65-8W-0664 and recovered total 160 Kg. of contraband poppy straw from possession of co-accused Mandeep Singh. Upon his arrest his disclosure statement under Section 27 of the Evidence Act was recorded in which he stated that the petitioner had loaded the contraband in the truck for transportation. The CDR information of mobile numbers of the co-accused and that of the petitioner were also collected by the Police from which it was revealed that they had been in constant touch. The Bank Account statement of the petitioner was also seized from which it appeared that co-accused have made deposit in his Bank account. On the basis of the aforesaid the petitioner has been implicated for the present offence.

3. Learned counsel for the petitioner has submitted that the memos so prepared under Section 27 of the Evidence Act of the co-accused and that of the petitioner are of no avail to the prosecution in absence of any other tangible material available on record. He has further submitted that a bare perusal of the aforesaid memos under Section 27 of the Evidence Act clearly reveals that the petitioner has been arraigned in the present case only on their basis which cannot be used in any manner to convict him under the aforesaid Sections in which charge-sheet has been filed. It is also submitted that the CDR of mobile phones of the petitioner and the co-accused is wholly insignificant and does not connect the petitioner with the present crime. It is further submitted that mere deposit of certain sum in the account of the petitioner by the co-accused also cannot lead to any inference that such deposit was only towards participation of the petitioner in transportation of the recovered contraband. It is hence submitted that the entire proceedings against the petitioner deserve to be quashed. Reliance has been placed on the decision of this Court in **Bhupendra V/s. State of M.P., M.Cr.C. No.5563/2017** decided by order dated 29.04.2022, **Dilip Kumar V/s. State of M.P., M.Cr.C. No.2748/2022** decided on 12.04.2022, **Mohar Singh V/s. State of M.P., M.Cr.C. No.41528/2021** decided on 28.06.2022 and similar other decisions.

4. On the other hand learned counsel for the respondent/State has opposed the prayer and has submitted that no case for interference is

made out. It is submitted that not only the memorandum of co-accused and his own memorandum recorded under Section 27 of the Evidence Act are available against the petitioner, but there are call details also between both of them from which it is apparent that they have been in constant touch throughout the relevant time and even prior thereto. Several deposits have been made by co accused in the Bank Account of the petitioner. There is hence sufficient material to proceed against the petitioner and proceedings against him do not deserve to be quashed.

5. I have heard learned counsel for the parties and have perused the case diary.

6. It is true that memorandum under Section 27 of the Evidence Act of the co-accused and the petitioner by themselves cannot be used against the petitioner for his conviction. However, that is not the sole material available against the petitioner. From the case diary it is apparent that there have been several calls exchanged between the co-accused and the petitioner throughout the relevant time and even prior to that. They had been in constant touch with each other. It is not a case where the conversations had taken place between them at a point of time otherwise than the relevant time when transportation of the contraband was being made. It *prima facie* appears that while transporting the contraband both the co-accused remained in constant touch with the petitioner.

7. The CDR on record indicates that not only the petitioner and the co-accused Mandeep Singh but the other co-accused also have remained in constant touch with each other. The petitioner in his statement under Section 27 of the Evidence Act has stated that one of the SIM card which was being used by him to operate his mobile phone was in the name of one Gopal Khatik and that the same was a forged SIM card obtained in name of another person. He has other mobile numbers also from which he had been talking to the owner of the truck Kuldeep Singh on his two mobile numbers and co-accused Mandeep Singh on his three mobile numbers. It is hence apparent that the petitioner as well as the other co-accused had been using 2-3 different mobile numbers for the purpose of keeping in contact with each other during transportation of the contraband.

8. From a perusal of the Bank Account statement of the petitioner it is evident that a sum of Rs.1,80,000/- has been deposited therein. As per the petitioner himself, the said amount has been deposited by the owner of the truck Kulvinder Singh. On record there is not only the memorandum of co-accused and that of the petitioner recorded under Section 27 of the Evidence Act but there are also call details showing that the petitioner and both the other co-accused had remained in constant touch with each other. Amount has also *prima facie* been deposited by the co-accused in the Bank Account of the petitioner.

9. It hence cannot be said that there is no material whatsoever to

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proceed against the petitioner and that the prosecution against him is without any basis or substance. Thus, in view of the aforesaid, I do not find any merit in this petition which is accordingly dismissed.

(PRANAY VERMA)
JUDGE

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