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

**BEFORE
HON'BLE SHRI JUSTICE DINESH KUMAR PALIWAL**

ON THE 8th OF FEBRUARY, 2023

CRIMINAL REVISION No. 2324 of 2022

BETWEEN:-

**ANIL PATEL S/O LALTA PATEL, AGED ABOUT 27 YEARS,
OCCUPATION: MAJDOORI NIWASI GRAM CHHILPA
POLICE STATION BHALUMADA ZILA ANUPPUR M.P.
(MADHYA PRADESH)**

.....APPLICANT

(BY SHRI SANDEEP KUMAR JAIN- ADVOCATE)

AND

**THE STATE OF MADHYA PRADESH DWARA POLICE
STATION JAYSINGH NAGAR ZILA SHAHDOL M.P.
(MADHYA PRADESH)**

.....RESPONDENT

(MRS. NALINI GURUNG- PANEL LAWYER)

*This revision coming on for admission this day, the court passed the
following:*

ORDER

This Criminal Revision under Section 397/401 of the Code of Criminal Procedure has been filed being aggrieved by the order dated 28.04.2022 passed in Special/NDPS/Case No. 16/2022 by Special Judge (NDPS), District Shahdol (M.P.) whereby charges under Section 8(C), 20(B)(II)(C) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short "NDPS Act") have been framed against the applicant.

2. As per the prosecution case on 10.09.2021, Narbad Singh Dhurve S.H.O. of P.S. Jaisingnagar received a secret information from the informer that

one Rohit Gupta @ Chandan Kumar Gupta alongwith one Dipak Namdeo carrying a sack/ bag of Ganja are going from Jaitpur to Beohari via Gohparu and Jaisingnagar. On the basis of information, after completing the formalities alongwith witnesses, the S.H.O. intercepted one motorcycle Bajaj Pulser bearing registration No.MP-18-MR-9205. The person who was driving the motorcycle introduced himself as Rohit Gupta and the person sitting as pillion rider and was holding the bag, introduced himself as Dipak Namdeo. The sack was recovered in presence of witnesses. When it was opened, four packets were found in it. In checking 25 Kg Ganja (cannabis) was found. The same was seized. On the basis of aforesaid, F.I.R.No.405/2021 was registered at P.S. Jaisingnagar District Shahdol for the offence under Section 8/20 of the NDPS Act. In the course of investigation, disclosure memo of accused Rohit Gupta under section 27 of Evidence Act was recorded. He his memorandum disclosed that he had bought the seized Ganja from one Anil Patel of village Chhilpa. On the basis of memorandum statement of Rohit Gupta, the present applicant was arrested on 27.02.2022, almost after 05 months and 15 days of the recovery of the seized contraband from the possession of co-accused Rohit Gupta. After completion of investigation, the charge sheet was filed against the accused persons. The Special Judge (NDPS) Act, Shahdol framed the charges against the applicant too under Section 8(c) read with section 20(b)(II)(c) of the NDPS Act. The applicant abjured his guilt. Being aggrieved by aforesaid, applicant filed this revision.

3. Learned counsel for the applicant submitted that applicant has been implicated as an accused on the basis of memorandum of co-accused. He has nothing to do with the commission of offence. The charges framed against him are not tenable as nothing was seized from his possession by the police to

establish that the seized Ganja was purchased by the applicant from him. It is submitted that there is nothing on record to connect the present applicant with the alleged offence except the memorandum of co-accused Rohit Gupta recorded under section 27 of the Evidence Act. It is argued that the confessional statement made under section 27 of the Evidence Act is hit by section 25 of the Evidence Act and section 162 and 164 of Cr.P.C and same cannot be taken into account in order to convict the applicant. In support of his contention, learned counsel has placed reliance on order dated **03.04.2018** passed **M.Cr.C.No.357/2017 (Rajkumar Tiwari Vs. State of M.P.)**, order dated **19.11.2019** passed in **CRR No.3904/2019 (Rinku Sonkar and others Vs. State of M.P.)** and order dated **13.09.2021** passed in **Cr.R.No.1341/2021 (Anoop Jaiswal alias Jassa Vs. State of M.P.)** by the co-ordinate bench of this court. He also placed reliance on the decision of the Apex Court in the case of **Tofan Singh Vs. State of Tamil Nadu -AIR 2020 SC 5592**, **Dipakbhai Jagdishchandra Patel Vs. State of Gujrat and another-(2019) 16 SCC 547** and **Aghnoo Nagesia Vs. State of Bihar-AIR 1966 SC 119**.

4. On the other hand, learned panel lawyer appearing for the respondent/State has submitted that sufficient evidence is available against the present applicant on considering the memorandum of co-accused and the quantity of contraband seized from the main accused, *prima facie*, ingredients of offences alleged against the applicant are available. The learned trial court has not committed any error in framing the charges as at the stage of framing of charge, detail appreciation of evidence is not permissible and mere strong suspicion is sufficient to frame the charge.

5. I have heard the rival submissions and perused the material available on record.

6. In the case in hand applicant Anil Patel has been arrayed as an accused only on the basis of memorandum of co-accused recorded under section 27 of the Evidence Act. No evidence has been collected on the point that co-accused Rohit Gupta had purchased the seized Ganja from the applicant. Undoubtedly, at the time of framing of charge roving inquiry and meticulous appreciation of the evidence available on record is not required but at the same time while exercising the revisionary jurisdiction if it is found that the charge framed by the trial court is grossly erroneous or has been made without any material on record, is based on no evidence or has been arbitrarily or perversely exercised then revisionary jurisdiction can be exercised.

7. On perusal of the record it is found that except the statement of co-accused Rohit Gupta, there is nothing on record against the applicant. Statement of co-accused is a weak type of evidence. In the case of *Superintendent of Customs Vs. Bhanabhai Khalpathai Patel-AIR 1992 SC 1583*, it has been made clear that statement of the co-accused given before the authorities cannot be relied upon to corroborate the evidence of co-accused who has turned as a prosecution witness. It was further held that conviction based solely on such a statement was not sustainable.

8. The Hon'ble Apex Court in the case of *Tofan Singh* (supra) has held as under:-

"The confessional statement recorded under Section 27 of the Evidence Act is hit by Section 25 of the Evidence Act and has no evidentiary value. Section 25 of the Evidence Act, 1872 states that a confession made to any police officer, whatever his rank, cannot be relied upon against a

person/accused of any offence. The involuntariness or otherwise of the confession being irrelevant."

9. The Hon'ble Apex Court in the case of ***Dipakbhai Jagdishchandra Patel (supra)*** in para 23 and 24 has observed as under:-

"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 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, taken the view that confession by a co-accused containing incriminating matter against a person 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. We notice 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, the Court has proceeded to take the view that only on the basis of statement of the co-accused, no case is made out, even for framing a charge."

10. In the case of *Anoop Jaiswal alias Jassa Vs. State of M.P.* (*supra*), the co-ordinate bench of this court held as under :-

"The Narcotic Drugs and Psychotropic Substances Act, 1985 prescribes offences which are very severe. Section 54 of the NDPS Act provides presumption of Commission of an offence under this Act. If the accused fails to account satisfactorily for the possession of the contraband. Section 66 of the NDPS Act provides presumption as to documents seized from the accused.

While framing a charge, the court is expected to apply its mind to the entire record and documents placed therewith

before the court. No meticulous examination of evidence is needed for considering whether the case would end in conviction or not. However, the court is required to consider and apply its judicial mind, whether the allegations taken as a whole will, prima facie constitute an offence and if so, whether continuation of proceedings is an abuse of process of court leading to injustice."

11. In the case in hand, as discussed hereinabove, apart from the memorandum of statement of co-accused Rohit Gupta, there is no other evidence or document or seizure from the applicant which may form basis of strong suspicion or which may implicate or connect the applicant with the alleged offence. In similar circumstances, the applicants therein were discharged in respect of offences under section 8/20(b) of NDPS Act.

12. In the light of aforesaid discussion, this criminal revision is **allowed**. The impugned order dated 28.04.2022 (Annexure A-1) passed by Special Judge (NDPS) Shahdol in Special Case No.16/2022 framing charges against the present applicant Anil Patel under Section 8(c) read with Section 20(b)(II)(c) of NDPS Act is hereby set aside. The applicant is discharged from the aforesaid offences. However, in respect of other co-accused, the trial will continue.

(DINESH KUMAR PALIWAL)
JUDGE