

**IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
(CRIMINAL REVISIONAL JURISDICTION)**

Present:

THE HON'BLE DR. JUSTICE AJOY KUMAR MUKHERJEE

CRR 112 of 2025

**Naresh Mahato
Versus
The State of West Bengal**

For the Petitioner	:	Mr. Somraj Paul Mr. Subham Ghosh Ms. Shruti Yadav Mr. Sujit Swami
For the State.	:	Mr. Aditi Shankar Chakraborty Mr. Abhijit Sarkar Mr. Arjun Chowdhury
Heard on	:	10.03.2025
Judgment on	:	07.04.2025

Dr. Ajoy Kumar Mukherjee , J.:

1. The petitioner herein has challenged the impugned criminal proceeding being Bhaktinagar Police Case no. 31 of 2024 dated 12.01.2024 under Section 21(C), 22(C) and Section 29 of the Narcotic Drugs And Psychotropic Substances, Act 1985 (in short NDPS Act) being case no. 5 of 2024 presently pending before learned Special Judge 1st Court at Jalpaiguri.

2. The case of the prosecution is that on 11.01.2024 at about 16:45 hrs onwards, S.I of Bhakti Nagar Police Station along with other officers and

forces, acting on source information, seized huge quantity of Narcotics substance, being cough syrup, capsules and tablets, form the exclusive and conscious possession of one Santanu Mazumdar and as such he was arrested and thereafter during investigation the said accused Santanu Mazumdar spelt out the name of the present petitioner. After being called by the police the present petitioner appeared before police on 24.10.2024 and he was arrested and thereafter he was released on bail.

3. Mr. Paul learned counsel appearing on behalf of the petitioner submits that the name of the petitioner transpires on the basis of confessional statement made by the person arrested namely Santanu Mazumdar during his custodial interrogation. However said Santanu Mazumdar expired during investigation. He further contended that on the basis of said alleged confession, search and seizure were conducted but no contraband substance could be recovered from the possession of the petitioner.

4. The investigating agency has submitted charge sheet and it has been alleged that during the course of investigation, said Santanu Mazumder, since deceased faced prolonged interrogation, when he revealed that he along with the petitioner are involved in procuring and selling narcotic substance illegally for the last few months for their illegal gain.

5. Learned counsel for the petitioner contended that on a bare perusal of the written complaint and the charge sheet which has been submitted after completion of the investigation that the petitioner is no way involved with the alleged offence. He further contended that the confessional statement of deceased accused Santanu Mazumdar, before the police

authorities, naming the present petitioner is inadmissible in the eye of law and the complicity of the present petitioner being only limited to the outer limit of the confessional statement of the accused Santanu Mazumdar, since deceased, no possible implication of the petitioner with the instant case is in existence. He further contended that the petitioner at present has been enlarged on bail by an order of this Court dated 14.02.2025 and during hearing of the bail application, no incriminating material against the petitioner could be produced by the Investigating Agency. The petitioner is not FIR named and only from the confession of the principal accused, since deceased, the name of the petitioner surfaced. However confession by an accused made to a police officer or to another person while in the custody of a police officer, are as a rule inadmissible under section 25 and 26 of the Indian Evidence Act. Section 27 of the Indian Evidence Act though serves as an exception allowing specific statement made in police custody to be admissible, if they directly result in the discovery of a relevant fact related to the crime but here no discovery could be made in respect of present petitioner. He further argued that statement extracted through coercion or undue influences are inadmissible and the confession obtained through compulsion also, violates Article 20(3) of the Constitution.

6. Mr. Paul further contended that in the instant proceeding, even if assuming that the name of the petitioner surfaced owing to confession made by Santatnu Mazumdar, but said confession was not made in presence of a Magistrate. Moreover the statement of the involvement of the petitioner as allegedly confessed by deceased principal accused Santanu, did not even distantly lead to discovery of any new fact related to the crime,

in as much as, acting upon such confession, the police authorities conducted search and seizure but nothing could be found from the custody of the petitioner and no complicity of the petitioner with the alleged crime could be established.

7. Mr. Paul further argued referring judgment of ***Tofan Singh Vs. State of Tamil Nadu*** reported in **(2021) 4 SCC 1** that the interpretation and the application of the Section 67, 53A, 42 of the NDPS Act are to be done in accordance with the dictum of Article 21, 14 and 20(3) of the Constitution of India, and therefore the statement of the principal accused implicating the present petitioner shall not be the basis of an acquisition, which does not even at the face value makes an offence. In this context petitioner also relied upon the judgment of ***Karan Talwar Vs. State of Tamil Nadu*** reported in **(2024) SCC OnLine SC 3803**.

8. It is further submitted that the other count of implication of the petitioner in the instant case is that the petitioner allegedly has confessed his guilt before the investigating officer while in custody but the same goes against the spirit of the Constitution of India. He further contended that Article 20(3) of the Constitution of India dictates that no person accused of any offence shall be compelled to be the witness against himself. In this context he further argued that an implication only under the statement of an accused recorded while in custody of police is not sustainable as the same cannot be proved against the maker. In this context he relied upon the judgment of ***Suresh Budharmal Kalani Vs. State of Maharashtra*** reported in **(1998) 7 SCC 337**. Accordingly petitioner submits that the investigating agency has filed the instant charge sheet against the

petitioner, without applying their mind and as such the entire proceeding is liable to be quashed.

9. Mr. Sarkar learned counsel appearing on behalf of the State submits that the NDPS Act 1985, is a special statutes and has been enacted by the legislature to curb the meance of drug trafficking. He further contended that the present case is not of such a nature that the implication of the accused person in the offence is totally improbable or his implication or involvement in the offence is beyond doubt. The charge sheet had already been submitted against the petitioner and the case is almost ready for trial. He further contended that if the plea of the petitioner is to be accepted then it will create a dangerous precedent, wherein all the accused persons who are implicated on the basis of a co-accused statement, in cases involving trafficking of narcotics, would come before the High Court for invoking its extra-ordinary or inherent jurisdiction on the ground that their names transpire only from the co-accused statement, which is inadmissible in evidence.

10. In this context he further contended that the admissibility of the evidence and/or material collected during investigation has to be tested by the Trial Court by conducting a full-fledged trial in accordance with law and only thereafter a court of competent jurisdiction will be able to come to conclusive finding whether the accused is guilty or not and the High court at this stage is not supposed to conduct a mini trial on the issue to decide whether the accused/petitioner is at all guilty or not. He further submits that in many cases, it is only the co-accused statement, on the basis of which the real people who are involved in the offence are apprehended.

Therefore the High Court exercising its extra ordinary jurisdiction should not stifle a case at the initial stage. Accordingly he prayed for rejection of the Application. In this context he relied upon the judgment passed by Division Bench of this court in C.R.M no. 6135 of 2021 dated 28th January 2022 and the judgment of the supreme court in the case of ***Narcotics Control Bureau vs. Kasif*** reported in **2024 SCC OnLine SC 3848**.

11. In reply learned counsel appearing on behalf of the petitioner relying upon the judgment of ***Karan Talwar Vs. State of Tamil Nadu*** contended that the petitioner has been arraigned as an accused on the basis of confessional statement of the deceased co-accused and nothing was recovered from his possession and as such the impugned proceeding is not maintainable in the eye of law. In this context he also relied upon the judgment of ***Depakbhai Jagadishchandra Patel Vs. State Gujarat*** reported in **AIR 2019 SC 3363** and contended that the petitioner is not liable to be convicted on the basis of the statement of co-accused, as also there is no chance of joint trial with the deceased co-accused in order to satisfy the need as mentioned in Section 30 of the Evidence Act.

12. In the present context there exists not only the confessional statement made by the deceased accused implicating the present petitioner but the petitioner also made confessional statement while he was in custody. A confession if it is voluntary and truthful and reliable and beyond reproach, is an efficacious piece of evidence to establish the guilt of the accused. It is no doubt true that before solely acting on confession, the court requires some corroboration to award conviction but it cannot be said

that a conviction cannot be maintained at all on the basis of the confession made during investigation in a proceeding under the NDPS Act.

13. It is also settled law that while considering an Application under Section 482 of the Code of Criminal Procedure, the court is not supposed to evaluate the materials available in the record in order to come to a conclusion as to whether there is a chance of conviction at the end of trial or not. Since a conviction can be maintained on the basis of a confession in appropriate cases, I find no reason to quash the impugned proceeding invoking this Courts inherent jurisdiction under Section 482 of the Code of Criminal Procedure.

14. The ratio laid down in the **Karan Talwar** Case (supra) is factually distinguishable from the present case as the said special leave to appeal was preferred against the order of refusal to discharge the appellant and in the said proceeding the sole material available against the appellant was the confessional statement of the co-accused and it was held that strong suspicion against the petitioner does not exists in absence of sufficient materials to frame charge against the appellant.

15. Coming back to the present case it states that the petitioner herein has also made a confessional statement while he was in custody, which constitutes a *prima facie* case against the petitioner. Materials so far placed, is not sufficient to hold that the confession was not voluntary. It is well settled that High Court's power under Section 482 should be exercised *Ex debito justitiae* i.e. in accordance with the requirement of justice to prevent the abuse of the process of court but not to stifle the legitimate prosecution. The proceeding are generally quashed if the allegation made

therein are so absurd and inherently improbable that no prudent man can ever reach a just conclusion that there is sufficient ground for proceeding against the accused or when the criminal proceeding is manifestly attended with *mala fide* or is maliciously instituted with an *ulterior motive for wreaking vengeance* on the accused with a view to spite him due to private and personal grudge and if the complaint even if taken at their face value and accepted in entirety, does not disclose the commission of an offence.

16. Moreover, I am also informed that the investigation has already been culminated into a charge sheet and as such if the petitioner thinks that the materials collected during investigation is not sufficient to frame charge against him, he can very well agitate all his grievances at the time of charge hearing but in view of aforesaid fact and circumstance of the case, the High court would not be justified in quashing the proceeding, invoking its jurisdiction under Section 482 of the Code.

17. In view of above **CRR 112 of 2025** Stands dismissed.

18. However this dismissal order will not preclude the petitioner herein to ventilate all his grievances made herein before the court below, at the time of charge hearing or at any appropriate subsequent stage and in the event of making any prayer by the petitioner for his discharge, the Trial Court will dispose of such prayer without being influence by any observation made herein.

Urgent Xerox certified photocopies of this Judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Dr. AJOY KUMAR MUKHERJEE, J.)