

(1993) 08 RAJ CK 0031

In the Rajasthan High Court

Case No : Criminal Miscellaneous Bail Application 1133 of 93

Wali Mohammed

APPELLANT

Vs

The State of Rajasthan

RESPONDENT

Date of Decision : 19-08-1993

Acts Referred:

Arms Act, 1959 — Section 27, 3

Evidence Act, 1872 — Section 25

Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 29, 67

Citation : (1993) WLN 75

Hon'ble Judges : R.P. Saxena, J

Bench : Single Bench

Judgement

Rajendra Saxena, J.—Heard. Perused the case diary and as also the challan papers in extenso.

2. The S.H.O., Police Station, Nimbahera has filed a chargesheet against petitioner Wali Mohd, for the offences punishable u/s 29 of the Narcotic Drugs & Psychotropic Substances Act, 1985 (in short the Act) read with Section 3/27 of the Arms Act. It is alleged that co-accused Amba Lal, who was carrying 361.5 Kg. opium in a jeep and that when he was intercepted by the police did not stop and was apprehended after encounter, In his interrogation not presumably recorded u/s 67 of the Act by the S.H.O., Police Station, Nimbahera, he disclosed that he had purchased one carbine 9 mm from Petitioner Wali Mohammed some 5 years ago and that he used to purchase cartridges thereof from him. In the interrogation note of petitioner Wali Mohammed., it has also been disclosed that had sold The carbine to Amba Lal in lieu of opium.

3. The learned Public Prosecutor has specifically stated that there is no other evidence against the petitioner except the aforementioned two interrogation notes.

4. I have, given my careful consideration to the rival contentions raised before me.

5. Keeping in view the law laid down in the case of Raj Kumar Karwal v. U.O.I. and Ors. 1990(1) SCC (Cri.)-330 take to this effect that any disclosure/confessional statement made before the police officer u/s 67 of the Act is not admissible in evidence as the same is hit by the provisions of Section 25 of the Evidence Act. Therefore, the alleged interrogation notes of co-accused Amba Lal and petitioner Wali Mohammed, are not admissible. More-over as has been held in Khalid v. State 1989 Cr. L.R. (Raj.)567 a confessional statement of an accused can not be read against the co-accused person. There is no other evidence collected by the Investigation Officer against the present petitioner.

6. Mr. Garg has submitted that there is no other evidence against the petitioner and that there is no ground to believe that in future the petitioner shall commit such an offence.

7. Therefore, Keeping in view all the facts & circumstances of the case, I am of the opinion that there do not exist valid & sufficient reasons/grounds to believe that the petitioner is guilty of the offence punishable u/s 29 of the Act and Section 3/27 of the Arms Act and that he is likely to commit such an offence while on bail

8. The resultant of the above discussion is that I allow this petition and order that petitioner Wali Mohammed be released on bail, provided he executes his personal bond for an amount of Rs. 20,000/- (Rs. twenty thousand) and furnishes two sound and substantial sureties for an amount of Rs. 10,000/- each to the satisfaction of the learned Special Judge (N.D.P.S. Act Cases) (Sessions Judge), Pratapgarh for his regular appearance before him in the session case pertaining to Crime No. 226/93, P.S., Nimbahera on each and every date of hearing and whenever ordered to do so.