

THE HIGH COURT OF MADHYA PRADESH
PRINCIPAL SEAT AT JABALPUR

S. B. : Hon'ble Shri Justice Rajendra Kumar Srivastava
M.Cr.C.No.11699/2021

Vipin Kushwaha

Vs

The State of M.P.

Shri Ramanuj Choubey, learned counsel for the applicant.

Shri Mukund Chaurasiya, learned P.L. for the respondents/State.

ORDER
(06.09.2021)

The instant petition under Section 482 of Cr.P.C. has been filed by the applicant being aggrieved by the order dated 27.01.2021 in ST No.499/2016 passed by 22nd ASJ Jabalpur whereby the learned ASJ has rejected the application filed by the applicant seeking direction to perform his Narco test.

2. Learned counsel for the applicant submits that the applicant is facing trial for the offence under Sections 294, 452, 323,324, 506, 307 and 302 of IPC. The case has been fixed for

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recording the defence evidence. The applicant has been falsely implicated in the case and he wants to record his statement under Section 29 of Evidence Act via conducting the Narco Analysis Test. The learned trial Court has rejected the said prayer of applicant without applying the judicial mind. The Narco Analysis Test is necessary to prove innocence of applicant and in the absence of same, the applicant would not be able to put his defence. The defence is right of accused. The learned trial Court has rejected the prayer of applicant without giving any justified reason. If the said test is not done, the applicant will suffer from irreparable loss. In support of his contention, he has also relied upon the order passed by the Gujrat High Court in the case of *Jaga Arjun Dangar vs. State of Gujrat* in Special Criminal Application No.6403/18 dated 09.08.2018.

3. On the other hand, learned P.L. for the respondent/State opposes the prayer of applicant submitting that the applicant is trying to mislead the trial Court and cause delay in trial proceedings. The order passed by the learned trial Court does not warrant any interference. The Narco Analysis Test is not an admissible evidence to prove the applicant innocent.

4. Heard.

5. It is submitted by the learned counsel for the applicant that it is necessary for the applicant to undergo the Narco Analysis Test in order to break the possibility of his guilt. The applicant wants to record his confession under Section 29 of Evidence Act via Narco Analysis Test.

6. In relation to Narco Analysis Test, it is essential to go through the verdict of the Hon'ble Supreme Court in the case of ***Smt. Selvi & Ors. vs. State of Karnataka*** reported in ***(2010) 7 SCC 263***. The relevant paras are quoted herein under :-

"49. This technique can serve several ends. The revelations could help investigators to uncover vital evidence or to corroborate pee-exsiting testimonies and prosecution theories. Narcoanalysis tests have also been used to detect "malingering" (faking of amnesia). The premise is that during the "hypnotic stage" the subject is unable to wilfully suppress the memories associated with the relevant facts. Thus, it has been urged that drug-induced revelations can help to narrow down investigation efforts thereby saving public resources. There is of course a very real possibility that information extracted through such interviews can lead to the uncovering of independent evidence which may be relevant. Hence, we must consider the implications of such derivative use of the drug-induced revelations, even if such revelations are not admissible as evidence. We must also account for the uses of this technique by persons other than investigators and prosecutors. Narcoanalysis tests could be requested by the defendants who want to prove their innocence. Demands for this test could also be made for purposes such as gauging the credibility of testimony, to refresh the memory of witnesses or to

ascertain the mental capacity of persons to stand trial. Such uses can have a direct impact on the efficiency of investigations as well as the fairness of criminal trials.

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*264. In light of these conclusions, we hold that no individual should be forcibly subjected to any of the techniques in question, whether in the context of investigation in criminal cases or otherwise. Doing so would amount to an unwarranted intrusion into personal liberty. However, we do leave room for the voluntary administration of the impugned techniques in the context of criminal justice provided that certain safeguards are in place. **Even when the subject has given consent to undergo any of these tests, the test results by themselves cannot be admitted as evidence because the subject does not exercise conscious control over the responses during the administration of the test. However, any information or material that is subsequently discovered with the help of voluntary administered test results can be admitted in accordance with Section 27 of the Evidence Act, 1872.***

Emphasis supplied)

7. On careful reading of the above-cited pronouncement, it is clearly observed by the Hon'ble Apex Court that even if the subject had given consent to undergo the Narco Analysis Test, the test results by themselves cannot be admitted as evidence because the subject did not exercise conscious control over the responses during the administration of the test.

8. In the case of *Yogesh @ Charu Ananda Chandane vs. State of Maharashtra passed in Criminal Writ*

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Petition No.2420/2016, the High Court of Bombay has rejected the similar prayer made by the petitioner thereof. The Bench of High Court of Bombay has also considered the judgment of the Hon'ble Supreme Court in the case of Selvi (supra). The relevant para of said order is also quoted herein under :-

"7. In fact, the order passed by the learned Sessions Judge does not warrant any interference. That the evidence which is recorded in the course of the Narco Analysis Test or Polygraph Test is not an admissible evidence. It would be a hazardous situation to permit any/every accused to undergo narco analysis test for proving his innocence. It is incumbent upon the prosecution to substantiate its case and prove the guilt of the accused beyond reasonable doubt. Criminal Jurisprudence contemplates that an accused has a right to silence and it is the duty of the prosecution to prove its case beyond reasonable doubt, The technique such as polygraph test and narco analysis test would be helpful technology for the investigating agency or to seek a direction in the course of investigation.

"We must also account for the uses of this technique by persons other than investigators and prosecutors. Narcoanalysis tests could be requested by defendants who want to prove their innocence."

However, the facts would differ in each case. Criminal Jurisprudence does not contemplate of technique such as the admission or denial without any influence of a particular drug. What has to be taken into consideration is a voluntary and truthful version of the prosecution case. In these circumstances, the application filed by the present petitioner was rightly rejected by the learned Sessions Judge.

8. Evidence collected by the investigating agency in the course of investigation would be material at the time of trial. Just as inculpatory statement of the accused cannot be made basis for

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conviction; in the same manner, exculpatory statement cannot be made basis for acquittal. Hence, it would be a futile exercise to permit the accused to undergo any further test."

(Emphasis supplied)

9. Relying upon the above-cited verdict of the High Court of Bombay, the High Court of Delhi has also expressed the similar view in the case of Sidhu Yadav @ Siddharth Vs. State of NCT of Delhi reported in 2017 SCC OnLine Del 12757 which has been upheld by the Hon'ble Supreme Court by dismissal of SLP No.24422/2017 filed by the Sidhu Yadav.

10. In view of the aforesaid discussion, permitting the applicant to undergo Narco Analysis Test would be a futile exercise as same is not admissible as evidence.

11. Accordingly, this petition is hereby **dismissed**.

(Rajendra Kumar Srivastava)
Judge

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