[2025] 7 S.C.R. 394 : 2025 INSC 810

# Amlesh Kumar
**v.**
# The State of Bihar

(Criminal Appeal No. 2901 of 2025)

09 June 2025

**[Sanjay Karol* and Prasanna B. Varale, JJ.]**

## Issue for Consideration

Whether in the attending facts and circumstances, the High Court could have accepted a submission of the Sub-Divisional Police Officer, to conduct narco-analysis test of all the accused persons (including the appellant) and other witnesses, during the investigation; whether a report of a voluntary narco-analysis test can form the sole basis of conviction in the absence of other evidence on record; whether an accused can voluntarily seek a narco-analysis test, as a matter of an indefeasible right.

## Headnotes†

**Constitution of India – Art.20(3) and Art.21 – Code of Criminal Procedure, 1973 – s.439 – The High Court accepted the submission of the Sub-Divisional Police Officer, Mahua, that she would conduct narco-analysis test of all the accused persons (including the appellant herein) and other witnesses, during the investigation – Correctness:**

**Held:** There was no reason for the High Court to accept a submission by the Investigating Officer, stating that they will conduct a narco-analysis test of all the accused persons – Such a submission and its acceptance, is in direct contravention to the judgment of this Court in Selvi, being hit by the protections u/ Arts.20(3) and 21 of the Constitution – Moreover, it is settled law that while entertaining an application for grant of bail, the Court has to take into consideration the allegations against the accused; period of custody undergone; nature of evidence and the crime in question; likelihood of influencing witnesses and other such relevant grounds – It does not involve entering into a roving enquiry or accepting the use of involuntary investigative techniques – Therefore, the High Court has erred in accepting a submission to carry out a narco-analysis test of all accused persons by the Investigating Officer. [Paras 10, 11, 13]

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**Evidence, 1872 – s.27 – Whether a report of a voluntary narco-analysis test can form the sole basis of conviction in the absence of other evidence on record:**

**Held:** This Court in Selvi had considered voluntary narco-analysis tests and opined that the reports thereof cannot be admitted directly into evidence – Information that is discovered, as a consequence thereof, can be admitted with the aid of s.27 of the Evidence Act, 1872 – It is settled that in the absence of supporting evidence, a conviction cannot be based solely on such information – Therefore, a report of a voluntary narco analysis test with adequate safeguards as well in place, or information found as a result thereof, cannot form the sole basis of conviction of an accused person. [Paras 14, 15, 16]

**Evidence – Voluntary narco-analysis test – Whether an accused can voluntarily seek a narco analysis test, as a matter of an indefeasible right:**

**Held:** The accused has a right to voluntarily undergo a narco-analysis test at an appropriate stage – The appropriate stage for such a test to be conducted is when the accused is exercising his right to lead evidence in a trial – However, there is no indefeasible right with the accused to undergo a narco-analysis test, for upon receipt of such an application the concerned Court, must consider the totality of circumstances surrounding the matter, such as free consent, appropriate safeguards etc., authorizing a person to undergo a voluntary narco-analysis test. [Para 21]

**Case Law Cited**

*Selvi and Ors. v. State of Karnataka* **[2010] 5 SCR 381 : (2010) 7 SCC 263;** *Sangitaben Shaileshbhai Datana v. State of Gujarat* **(2019) 14 SCC 522;** *Vinobhai v. State of Kerela,* **2025 SCC Online SC 178;** *Manoj Kumar Soni v. State of M.P.,* **2023 SCC OnLine SC 984 – relied on.**

*Rajesh Talwar v. CBI,* **2013 SCC Online All 5533;** *Dominic Luis v. State,* **2014 SCC Online Bom 452;** *Mohd. Samir v. State,* **2017 SCC Online Bom 19;** *Ashwini Kumar Upadhyay v. Union of India,* **2023 SCC Online Del 3816;** *Louis v. State of Kerala,* **2021 SCC Online Ker 4519;** *State of Gujarat v. Sanjay Kumar Kanchanlal Desai,* **2014 SCC Online Guj 6150;** *Navjeet Kaur v. State of Punjab,* **2015 SCC Online P&H 15351 – referred to.**

**Books and Periodicals Cited**

B R Sharma, Forensic Science in Criminal Investigation & Trials, Sixth Edition, 2020 – Paragraph 32.1.1

**List of Acts**

Constitution of India; Code of Criminal Procedure, 1973; Evidence, 1872.

**List of Keywords**

Narco-analysis test; Forced or involuntary narco-analysis test; Regular bail; Right against self-incrimination; Right to privacy; Indefeasible right; Article 20(3) of the Constitution of India.

**Case Arising From**

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 2901 of 2025

From the Judgment and Order dated 09.11.2023 of the High Court of Judicature at Patna in CRLM No. 71293 of 2023

**Appearances for Parties**

Gaurav Agrawal, Sr. Adv./Amicus Curiae, Manan Garg.

*Advs. for the Appellant:*
Mithilesh Kumar Singh, Ashutosh Kumar Singh, Mrs. Manju Singh, Aditya Durgvanshi, Saumitra Singh, Apurva Pandey.

*Advs. for the Respondent:*
Anshul Narayan, Prem Prakash.

**Judgment / Order of the Supreme Court**

**Judgment**

**Sanjay Karol, J.**

Leave Granted.

2. The present Appeal arises from the impugned Order dated 9th November 2023 passed in Criminal Miscellaneous No.71293 of 2023 by the High Court of Judicature at Patna, whereby the Court

accepted the submission of the Sub-Divisional Police Officer, Mahua, that she would conduct narco-analysis test of all the accused persons (*including the Appellant herein*) and other witnesses, during the investigation.

3. Aggrieved thereof, the Appellant is before us. The significant ground of challenge taken is that the acceptance of such a submission by the High Court is in direct contravention of the exposition of law laid down by this Court in ***Selvi and Ors. v. State of Karnataka***[1], wherein it was observed that forceful subjection of an individual to techniques, such as the narco-analysis test, violates personal liberty enshrined under Article 21 of the Constitution of India.

4. The brief facts giving rise to the Appeal at hand are as follows:

   4.1. On 24th August 2022, FIR No.545 of 2022 was registered at P.S. Mahua under Sections 341, 342, 323, 363, 364, 498(A), 504, 506 and 34 of the Indian Penal Code, 1860[2], against the Appellant (husband) and his family. It was stated by the complainant therein that her sister got married to the Appellant on 11th December 2020, and thereafter, the accused persons had been making repeated demands for dowry and beating her. On 22nd August 2022, she received a call from the Appellant, informing that her sister had run away from the matrimonial home. Despite searching, she is unable to locate her sister and suspects foul play by the accused persons (including the Appellant).

   4.2. The case of the Appellant is that on 21st August 2022, while en route to Ayodhya, his wife got off the bus at Baabali Chawk for nature's call but never returned. He filed a complaint before P.S. Jahangir Ganj, recorded as GD No. 038, on 28th August 2022.

   4.3. The admitted position is that the missing person (wife) has not been found to date. The mother, father and brothers of the Appellant have been granted bail by the High Court of Judicature at Patna.

   4.4. The Appellant's prayer for regular bail came to be rejected *vide* Order dated 1st August 2023 passed by the Sessions Judge,

1 (2010) 7 SCC 263.

2 Hereinafter 'IPC'.

Vaishali at Hajipur in B.P.No.1141 of 2023. The Court was not inclined to grant bail on the basis of the allegations made in the FIR, as well as the confessional statements of the co-accused, who stated that they had thrown the missing person in the river Saryu on the intervening night of the 21st and 22nd August 2022.

4.5. Dissatisfied with the Order of the Sessions Judge, the Appellant approached the High Court of Judicature at Patna for grant of a regular bail *vide* Crl. Misc. No.71293 of 2023. *Vide* the impugned interim Order, the High Court accepted the submission of the Sub-Divisional Police Officer, Mahua, that she will conduct a narco-analysis test of all the accused persons and posted the case for hearing on 12th July 2024. The relevant portion thereof is extracted below, for ready reference :

> "2. Pursuant to the order dated 07.11.2023, the SubDivisional Police Officer, Mahua and the S.H.O. Mahua are present in the court.
>
> 3. The S.D.P.O. Mahua, assures this court that she will take further steps in the investigation to find out details about the missing woman and for that she has further submitted that she will get narco test of all the accused persons and other witnesses, if required in the investigation.
>
> 4. List this case on 12.07.2024.
>
> 5. On the next date of hearing, the investigation report shall be produced by the learned APP."
>
> (Emphasis supplied)

4.6. Aggrieved thereof, the Appellant has preferred the present Appeal before this Court.

5. We have heard the learned counsel for the Appellant and the learned Addl. Standing Counsel on behalf of the Respondent State. After hearing the parties in part, vide Order dated 22nd April 2025, this Court appointed Mr. Gaurav Agrawal, Senior Advocate, as an *Amicus Curiae* to assist the Court, given the issues involved. We have heard the learned *Amicus Curiae* and the learned counsel for the parties as also perused the written submissions filed.

6. Consequently, the issues which arise for consideration of this Court are :

   i. Firstly, whether in the attending facts and circumstances, the High Court could have accepted such a submission.

   ii. Secondly, whether a report of a voluntary narco-analysis test can form the sole basis of conviction in the absence of other evidence on record.

   iii. Lastly, whether an accused can voluntarily seek a narco-analysis test, as a matter of an indefeasible right.

7. For the purposes of clarity, a narco-analysis test is an interrogation method whereby a suspect of a crime is injected with a psychoactive drug under controlled conditions to suppress their reasoning power or the ability to determine what is good/bad for themselves.[3] As submitted by the learned *Amicus Curiae*, the drug used for this test is sodium pentothal, which is also used in higher dosages for inducing general anesthesia in surgeries.

8. However, conducting such tests on persons accused of committing a crime raises serious questions, *vis-à-vis*, the constitutional protection granted from compulsion to become a witness against oneself under Article 20(3). The constitutional validity of this test, along with similar tests like the polygraph test, came to be challenged before this Court in ***Selvi*** (supra). After an elaborate discussion, this Court (three-Judge Bench) held involuntary administration of this test to be hit by Articles 20(3) and 21 of the Constitution. The following principles came to be expounded:

   8.1. Articles 20 and 21 of the Constitution are non-derogable and sacrosanct rights to which the judiciary cannot carve out exceptions;

   8.2. Involuntary administration of narco-analysis and similar tests is in contravention of the protection given by Article 20(3) of the Constitution, i.e. the right against self-incrimination;

   8.3. The results of such involuntary tests cannot be considered as 'material evidence' in the eyes of the law;

3 B R Sharma, Forensic Science in Criminal Investigation & Trials, Sixth Edition, 2020 – Paragraph 32.1.1.

8.4. Conducting such tests in the absence of consent violates 'substantive due process' – which is an essential element required for restraining one's personal liberty. Permitting such tests may lead to a disproportionate exercise of police powers;

8.5. The boundaries of privacy of a person are also breached when these tests are conducted without consent; and

8.6. For voluntary tests, it must be ensured that appropriate safeguards are in place. Moreover, the results of the same cannot be admitted directly as evidence. Pertinently, any fact or information that is discovered subsequent thereto, with the help of the information supplied in the result, can be admitted into evidence with the aid of Section 27 of the Indian Evidence Act 1872.

9. From the above exposition of law, it is clear that under no circumstances, is an involuntary or forced narco-analysis test permissible under law. Consequently, a report of such involuntary test or information that is discovered subsequently is also not *per se* admissible as evidence in criminal or other proceedings.

10. Adverting to the facts at hand, we cannot find a reason in the High Court accepting a submission by the Investigating Officer, stating that they will conduct a narco-analysis test of all the accused persons. Such a submission and its acceptance, is in direct contravention to the judgment of this Court in ***Selvi*** (supra), being hit by the protections under Articles 20(3) and 21 of the Constitution.

11. Moreover, we fail to understand how such an endeavour was accepted by the High Court when adjudicating an application for regular bail under Section 439 of the Code of Criminal Procedure, 1973. It is settled law that while entertaining an application for grant of bail, the Court has to take into consideration the allegations against the accused; period of custody undergone; nature of evidence and the crime in question; likelihood of influencing witnesses and other such relevant grounds. It does not involve entering into a roving enquiry or accepting the use of involuntary investigative techniques. In similar circumstances, where the High Court had ordered lie detector, brain mapping and narco-analysis tests, this Court in ***Sangitaben Shaileshbhai Datana v. State of Gujarat***[4], observed :

4 (2019) 14 SCC 522.

> "**6**. Having heard the counsel for the parties, it is surprising to note the present approach adopted by the High Court while considering the bail application. The High Court ordering the abovementioned tests is not only in contravention to the first principles of criminal law jurisprudence but also violates statutory requirements. While adjudicating a bail application, Section 439 of the Code of Criminal Procedure, 1973 is the guiding principle wherein the court takes into consideration, inter alia, the gravity of the crime, the character of the evidence, position and status of the accused with reference to the victim and witnesses, the likelihood of the accused fleeing from justice and repeating the offence, the possibility of his tampering with the witnesses and obstructing the course of justice and such other grounds. Each criminal case presents its own peculiar factual matrix, and therefore, certain grounds peculiar to a particular case may have to be taken into account by the court. However, the court has to only opine as to whether there is a prima facie case against the accused. The court must not undertake meticulous examination of the evidence collected by the police, or rather order specific tests as done in the present case.
>
> **7**. In the instant case, by ordering the abovementioned tests and venturing into the reports of the same with meticulous details, the High Court has converted the adjudication of a bail matter to that of a mini trial indeed. This assumption of function of a trial court by the High Court is deprecated."
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> (Emphasis supplied)

12. We are not inclined to accept the submission of the Respondent-State that since modern investigative techniques are the need of the hour, the High Court was correct in accepting the submission that narco-analysis test of all accused persons will be conducted. While the need for modern investigative techniques may be true, such investigative techniques cannot be conducted at the cost of constitutional guarantees under Articles 20(3) and 21.

13. Therefore, the first question framed is answered in the negative. The High Court has erred in accepting a submission to carry out a narco-analysis test of all accused persons by the Investigating Officer.

14. In the course of proceedings, the issue of undergoing a narco-analysis test voluntarily came to be raised, which brings us to the second question framed. As discussed above, this Court in ***Selvi*** (supra) had considered voluntary narco-analysis tests and opined that the reports thereof cannot be admitted directly into evidence. Information that is discovered, as a consequence thereof, can be admitted with the aid of Section 27 of the Indian Evidence Act, 1872.

15. The evidentiary value of information received through the aid of Section 27 is no longer *res integra*. This Court in ***Vinobhai v. State of Kerela***[5], while placing reliance on ***Manoj Kumar Soni v. State of M.P.***[6] held that in the absence of supporting evidence, a conviction cannot be based solely on such information. It was observed:

> "8. ….. The law relating to the evidentiary value of recovery made under Section 27 of the Indian Evidence Act, 1872 is settled by this Court in the case of *Manoj Kumar Soni* v. *State of M.P.*. Paragraph 22 of the said decision reads thus:—
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> > **"22.** A doubt looms : can disclosure statements *per se*, unaccompanied by any supporting evidence, be deemed adequate to secure a conviction? We find it implausible. **Although disclosure statements hold significance as a contributing factor in unriddling a case, in our opinion, they are not so strong a piece of evidence sufficient on its own and without anything more to bring home the charges beyond reasonable doubt."**
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> Therefore, in our view, the appellant's guilt was not proved beyond a reasonable doubt."

16. Consequently, in our view, a report of a voluntary narco-analysis test with adequate safeguards as well in place, or information found as a result thereof, cannot form the sole basis of conviction of an accused person. The second question is, therefore, answered in the negative.

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5 2025 SCC Online SC 178.

6 2023 SCC OnLine SC 984.

17. Adverting to the last question framed, the learned *Amicus Curiae* has pointed out that there has been a divergence of views taken by High Courts on the issue as to whether a narco-analysis test can be claimed by an accused as a matter of right. Given the suspect nature of a report of narco-analysis, the *Amicus Curiae* submitted that this position must be clarified.

18. On the one hand, there is High Court of Judicature at Allahabad in ***Rajesh Talwar v. CBI***[7]; High Court of Bombay in ***Dominic Luis v. State***[8] and ***Mohd. Samir v. State***[9]; High Court of Delhi in ***Ashwini Kumar Upadhyay v. Union of India***[10]; High Court of Kerala in ***Louis v. State of Kerala***[11]; High Court of Gujarat in ***State of Gujarat v. Sanjay Kumar Kanchanlal Desai***[12] and High Court of Punjab & Haryana in ***Navjeet Kaur v. State of Punjab***[13], have held that an involuntary narco-analysis test cannot be relied on and have taken an overall view of the circumstances when an accused has sought a narco-analysis test himself.

19. On the other hand, there is Rajasthan High Court, which in ***Sunil Bhatt v. State***[14], held that the accused can seek a narco-analysis test at a relevant stage in view of the statutory right to lead evidence in defence under Section 233 of the Criminal Procedure Code.

20. In our view, as rightly submitted by the learned *Amicus*, the above view of the Rajasthan High Court cannot be sustained. It cannot be said that undergoing a narco-analysis test is part of the indefeasible right to lead evidence, given its suspect nature, and moreover, we find the same to be in the teeth of the judgment of this Court in ***Selvi*** (supra). It had been categorically observed:

> "**240.** We must also contemplate situations where a threat given by the investigators to conduct any of the impugned tests could prompt a person to make incriminatory

7 2013 SCC Online All 5533.

8 2014 SCC Online Bom 452.

9 2017 SCC Online Bom 19.

10 2023 SCC Online Del 3816.

11 2021 SCC Online Ker 4519.

12 2014 SCC Online Guj 6150.

13 2015 SCC Online P&H 15351.

14 2022 SCC Online Raj 1443.

statements or to undergo some mental trauma. Especially in cases of individuals from weaker sections of society who are unaware of their fundamental rights and unable to afford legal advice, the mere apprehension of undergoing scientific tests that supposedly reveal the truth could push them to make confessional statements. Hence, the act of threatening to administer the impugned tests could also elicit testimony. It is also quite conceivable that an individual may give his/her consent to undergo the said tests on account of threats, false promises or deception by the investigators. For example, a person may be convinced to give his/her consent after being promised that this would lead to an early release from custody or dropping of charges. However, after the administration of the tests, the investigators may renege on such promises. In such a case the relevant inquiry is not confined to the apparent voluntariness of the act of undergoing the tests, but also includes an examination of the totality of circumstances.

**253**. We are of the view that an untrammelled right of resorting to the techniques in question will lead to an unnecessary rise in the volume of frivolous litigation before our courts.

**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)

21. In view of the above exposition in ***Selvi*** (Supra), the third question is answered in the following terms :

The accused has a right to voluntarily undergo a narco-analysis test at an appropriate stage. We deem it appropriate to add, that the appropriate stage for such a test to be conducted is when the accused is exercising his right to lead evidence in a trial. However, there is no indefeasible right with the accused to undergo a narco-analysis test, for upon receipt of such an application the concerned Court, must consider the totality of circumstances surrounding the matter, such as free consent, appropriate safeguards etc., authorizing a person to undergo a voluntary narco-analysis test. We deem it appropriate to reproduce and reiterate the guidelines issued in ***Selvi*** (Supra) in this regard as follows :

> "**265.** The National Human Rights Commission had published *Guidelines for the Administration of Polygraph Test (Lie Detector Test) on an Accused* in 2000. These Guidelines should be strictly adhered to and similar safeguards should be adopted for conducting the "narcoanalysis technique" and the "Brain Electrical Activation Profile" test. The text of these Guidelines has been reproduced below:
>
> (*i*) No lie detector tests should be administered except on the basis of consent of the accused. An option should be given to the accused whether he wishes to avail such test.
>
> (*ii*) If the accused volunteers for a lie detector test, he should be given access to a lawyer and the physical, emotional and legal implication of such a test should be explained to him by the police and his lawyer.
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> (*iii*) The consent should be recorded before a Judicial Magistrate.
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> (*iv*) During the hearing before the Magistrate, the person alleged to have agreed should be duly represented by a lawyer.
>
> (*v*) At the hearing, the person in question should also be told in clear terms that the statement that is made shall not be a "confessional" statement to the Magistrate but will have the status of a statement made to the police.

(*vi*) The Magistrate shall consider all factors relating to the detention including the length of detention and the nature of the interrogation.

(*vii*) The actual recording of the lie detector test shall be done by an independent agency (such as a hospital) and conducted in the presence of a lawyer.

(*viii*) A full medical and factual narration of the manner of the information received must be taken on record."

22. Before parting with this appeal, we place on record our appreciation for the learned *Amicus Curiae*, Mr. Gaurav Agrawal, Senior Advocate, in extending his invaluable assistance to the Court.

23. Keeping in view the above discussion, we have no doubt that the impugned Order cannot be sustained. Consequently, the impugned Order dated 9th November 2023 passed in Criminal Miscellaneous No. 71293 of 2023 by the High Court of Judicature at Patna is hereby set aside.

24. The bail application of the Appellant, pending if any, to be decided in accordance with law.

25. In the attending facts and circumstances of this case, the Appeal is allowed.

Pending application(s), if any, shall stand disposed of.

*Result of the case:* Appeal allowed.

†*Headnotes prepared by:* Ankit Gyan