

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

**Case:- Crl LP(D) No. 16/2020
CrIM No. 1709/2023**

Union Territory of J&K, through
SHO Police Station, Bus Stand, Jammu Petitioner(s)/Appellant(s)

Through:- Mr. Amit Gupta, AAG

v/s

1. Mohd Akbar S/o Qasim Sheikh, R/o Room No. 33, Samad Patel Chhawl, Chawra Bazar, Mumbai Dharavi, Maharashtra.
2. Akil, S/o Qadir Shaikh, R/o ZO-133, Agasavadi Vibhag, Dharavi Road (S.Khand-7), Mumbai City.

....Respondent(s)

Through:- Mr. Prince Khanna, Advocate for R-1

**CORAM: HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE
HON'BLE MR. JUSTICE MOHAN LAL, JUDGE**

**ORDER(ORAL)
15.11.2023**

CrIM No. 1709/2023

1. For the reasons stated in the application coupled with the submissions made at the Bar, it is allowed. The delay of 88 days in filing the appeal is condoned.
2. Application is **disposed of**.

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3. This is an application seeking leave to file the appeal against the judgment dated 17.08.2019 passed by learned 2nd Additional Sessions Judge, Jammu.
4. Heard learned counsel for the parties.
5. The allegations against the respondents are that on 04.04.2017, ASI Ahmed Din was on patrolling duty at Bus Stand Jammu and was checking and frisking in Bus Stand area and during the course of checking at about

07.30pm near B.C. Road, Jammu, two persons coming from K.C.Chowk and proceeding towards Jewal Chowk Jammu, were stopped for checking. One person was having a black coloured bag in his hand and the same was checked and during checking one green coloured polythene bag was found which contained four packets rapped with brown tape, the same were opened for checking in which Charas like substance was recovered. On inquiry, the person who carried the bag in his hand disclosed his name as Akbar Sheikh, however, the other person disclosed his name as Akil. FIR bearing No. 33/2017 under Sections 8/20/29 NDPS Act was registered at Police Station Bus Stand, Jammu and after completion of investigation, charge sheet was filed against both the accused for the commission of offences mentioned above. The respondents did not plead guilty and claimed to be tried. As such, the prosecution was directed to lead evidence. The prosecution examined eight witnesses out of total ten witnesses.

6. We have examined the judgment passed by the learned trial Court and find that prosecution had miserably failed to prove that after recovery of the contraband was effected from respondent-Mohd Akbar, it was kept in safe custody and after re-sealing, it was again deposited in safe custody. In order to convict a person for the commission of offences under Section 8/20 NDPS Act, it was obligatory on the part of the investigating agency to not only prove the recovery of contraband from the accused but also to prove that the recovered contraband only was sent to the FSL for examination. In the case on hand, the recovery of contraband was made on 04.11.2017 and was sent to FSL on 11.11.2017.
7. PW-Taj Din has deposed that the Investigating Officer handed over sealed packets to him which he deposited in Malkhana, but at the same time during cross examination he stated that he had not given any receipt to the

Investigating Officer with regard to the entry made in the Malkhana Register. He further stated that the contraband was sent to FSL for chemical examination on 10.04.2017 and the Investigating Officer did not take any receipt of Malkhana Register with regard to the entry made in the Malkhana Register. He further deposed ignorance as to whether four packets were received back by the police agency from FSL or not. This witness has further admitted that no entry was made in the Malkhana Register.

8. Thus, it is evident that there is no evidence that the Investigating Officer after recovering the contraband deposited the same in the Malkhana and thereafter received contraband from Malkhana for sending it to FSL for chemical examination. The link evidence is absolutely missing in the instant case. It assumes significance as there was delay of seven days in sending the samples to FSL. Moreso, the Investigating Officer has not been examined by the prosecution, who is the most important witness in the NDPS cases to prove that after recovery was effected, samples were extracted and kept in safe custody so as to negate any chance of tampering with the samples.
9. Further, we also find that PW-Ashok Kumar, who was sent for depositing the samples with the FSL has not been examined by the prosecution.
10. Granting leave in the present case and hearing the appeal finally would be an exercise in futility. Accordingly, we are of the considered view that this is not a case in which leave is required to be granted.
11. Accordingly, this application is **dismissed**.

(Mohan Lal)
Judge

(Rajnish Oswal)
Judge

Jammu
15.11.2023
Vijay

Whether the order is speaking: Yes
Whether the order is reportable: No