

IN THE HIGH COURT OF PUNJAB AND HARYANA HIGH COURT
AT CHANDIGARH

CRA No.S-1950-SB-2004

Date of Decision: 22.09.2016.

Gulshan @ Gulshi

...Appellant

Versus

The State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE A.B.CHAUDHARI

Present: None for the appellant.

Mr. Surender Singh, AAG, Haryana.

A.B.CHAUDHARI, J. (ORAL)

Being aggrieved by the judgment and order dated 02.09.2004, passed by Special Judge, Sonapat, in Sessions Case No.37 of 2003, arising out of FIR No.186, dated 14.07.2003, by which the appellant was convicted for offence under Section 20(b) of the Narcotic Drugs & Psychotropic Substances Act, 1985 (in short, the NDPS Act) and was sentenced to undergo rigorous imprisonment for a period of two years and was ordered to pay a fine in the sum of Rs.15,000/-, in default to further undergo rigorous imprisonment for a period of seven months, the present appeal was filed by him in this Court.

Neither the appellant nor his counsel is present

In the light of the decision of the Hon'ble Supreme Court in **K.S.Panduranga v. State of Karnataka, 2013(2) R.C.R. (Criminal), 219**, this Court proceed to determine the appeal on its

own merits.

Per contra learned counsel for the State has vehemently opposed this appeal.

The incident is of the date i.e. 14.07.2003, when the appellant was caught while he was coming towards Murthal Adda on foot. The appellant was found in possession of 225 gms. Charas. After filing of the challan, the trial was held and the appellant was convicted stated above. The appellant has raised the ground of challenge that there was no compliance of mandatory provision of Section 50 of the NDPS Act and, therefore, the appellant deserves to be acquitted. No independent witness was examined by the prosecution. There was a discrepancy in the evidence tendered by the prosecution and therefore, the appellant was entitled to the benefit of doubt. No link evidence was established by the prosecution. The trial court should not have accepted the evidence of the witnesses of the prosecution as gospel truth. The trial court wrongly convicted the appellant.

I have perused the reasons given by the learned trial Judge for convicting the appellant for the aforesaid offence. The learned trial Judge discussed evidence of the witnesses examined by the prosecution threadbare and I find no difficulty in concurring with the findings of fact recorded by the trial Judge for arriving at the finding of conviction. I caught the following reasons from paragraph 16 to 20, which are reproduced below:-

16. PW3 Ram Chander, Inspector has stated that on 15.7.2003 at about 2.00 AM ASI Rajiv Kumar had

produced the accused and three sealed parcels with the seal bearing inscription RK. He verified the facts of the case and affixed his own seal bearing inscription RC on all the three sealed parcels. Remainder is Ex.P1. His statement was recorded by the Investigating Officer He directed the ASI Rajiv Kumar to deposit the case property with the MHC and to lodge the accused in police lock up. After completion of necessary investigation, he prepared and submitted the report under Section 173 Cr.P.C., which bears his signatures.

- 17. PW4 SI Kartar Singh had partly investigated this case and had recorded the statement of the MHC under Section 161 Cr.P.C. on 24.7.2003. PW5 HC Suresh Chander has deposed that on 14.7.2003 he along with ASI Rajive Kumar and other police officials was present at Murthal Adda, Sonapat. On that date, a secret information was received that Gulshan Kumar was coming towards Murthal Adda and he may be found in possession of Charas. In the meanwhile, accused was seen coming from the side of Murthal. On seeing the police, he retraced his steps. The accused was apprehended. The Investigating Officer served notice Ex.PC upon the accused and gave him an option to be searched before a Gazetted Officer or a Magistrate. The*

accused vide his statement Ex.PC/1 opted to be searched before a Gazetted Officer.

- 18. The accused was produced before Sh. Satish Kumar, the then Tehsildar, Sonapat. Under his direction, the investigating officer effected search of the accused. The accused was holding a polythene bag which was green in colour. During the course of search from inside the polythene bag, the Investigating Officer recovered charas. On weighing, it was found to be 225 gms. The Investigating Officer took out two samples of five grams each from the recovered Charas and sealed the samples and the remainder into separate sealed parcels with the seal bearing inscription RK. All the three sealed parcels were taken into possession vide recovery memo Ex.PD, which bears his signatures and that of Satish Kumar Tehsildar and HC Bhagat Singh.*
- 19. The accused and the case property were produced before Sh. Ram Chander, Inspector/SHO, P.S.City, Sonapat. He also affixed his own seal bearing inscription RC on all the sealed parcels i.e. samples and the remainder.*
- 20. PW6 Sh. Satish Kumar has deposed that ASI Rajiv Kumar had produced the accused before him in PWD Rest House. He directed the Investigating*

Officer to effect search of the accused. The accused was holding a polythene bag green in colour. During the course of search ASI Rajiv Kumar recovered Charas from inside the polythene bag. On weighment it was found to be 225 gms. The Investigating Officer took out two samples of five gms. each from recovered Charas and sealed the sample and the remainder into three separate sealed parcels bearing inscription RK. All the three sealed parcels were taken in possession vide recovery memo Ex.PD.”

In my opinion, the above reasons recorded by the learned trial Judge recording the findings of conviction are good enough and based on evidence and no fault as such can be found on the basis.

Resultantly, I confirm the findings of conviction under Section 20 (b) of the NDPS Act, recorded by the trial Judge.

Now coming to the aspect of sentence awarded to the appellant, I find that the appellant has been sentenced to undergo rigorous imprisonment for a period of two years. On the date, namely, 22.03.2005, he had already undergone eight months rigorous imprisonment, as recorded in the order granting suspension of sentence by this Court. The custody certificate shows that he has already undergone 09 months 16 days of sentence . In my opinion, looking to the efflux of time and the date of incident, namely, 14.07.2003 and in the absence of any criminal antecedent, it would be too harsh to push the appellant again in the jail at such a late

stage.

In that view of the matter, I am of the opinion that sentence of two years deserves to be reduced to the one which he has already undergone. Hence, I make the following order:-

ORDER

- (i) CRA No.S-1950-SB of 2004 is partly allowed;
- (ii) the impugned judgment of conviction of the appellant under Section 20(b) of the NDPS Act is confirmed.
- (iii) However, the order awarding sentence of rigorous imprisonment for a period of two years and fine is modified and the appellant is sentenced to undergo rigorous imprisonment for the period he has already undergone.

September 22, 2016
nt/pankaj

(A.B.CHAUDHARI)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No