

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

Crl. Appeal No.S-1787-SB of 2016 (O&M)

Date of Decision: August 04, 2016

Kamaljit alias Lucky

...Appellant

VERSUS

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Vipin Mahajan, Advocate
for the appellant.

Ms.Shivali, Asstt. Advocate General, Punjab
for the respondent-State.

INDERJIT SINGH, J.

Though today only application for suspension of sentence is listed, but in the interest of justice and as prayed for by learned counsel for the appellant, the main appeal which was admitted on 09.05.2016, is being taken up for final disposal.

The present appeal has been filed by the appellant against the judgment of conviction and order of sentence dated 16.04.2016 passed by learned Judge, Special Court, Gurdaspur, whereby the appellant was held guilty and convicted and sentenced to undergo rigorous imprisonment for a period of four years and to pay a fine of ₹10,000/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of one year under Section 22 of the NDPS Act.

The brief facts of the prosecution case as noted down in the judgment passed by learned Judge, Special Court, Gurdaspur, are as under:-

“2. The prosecution version is that on 05-03-2013 I.O/ASI Mohan Lal, with his police party, was on patrol duty, under supervision of S.I Ashok Kumar, Incharge, Anti Gunda Staff, Gurdaspur and they were present at Kahnuwan Chowk, Gurdaspur. There already PHC Puran Chand and PHC Pawan Kumar were present at Naka. They also joined this police party. By then , secret information was received by I.O that Kamaljit @ Lucky (accused) is habitual of consuming and selling intoxicating substances and on that day also he was coming towards said Chowk to sell intoxicants to customers. Police party then laid a Naka and started checking the persons. Independent witness was tried to be joined unsuccessfully. After some time, accused, having physical appearance as was disclosed by the informer, was seen coming on foot from Batala Road side. Finding the police party he tried to turn back but was apprehended on suspicion by the I.O and his police team. I.O then disclosed his name, rank and place of posting and told him that he was suspecting that accused was possessing some intoxicating substance, and, therefore, he was to be searched regarding which he had the legal right to get such search conducted from him (I.O) or from a Magistrate or from a Police Gazetted Officer. Accused showed his willingness to get his search conducted from a Police Gazetted Officer. I.O then prepared his non-consent memo and gave a wireless message to Parveen Kanda, DSP (D), Gurdaspur, informing him about the facts. Latter reached there in about 10 minutes in his official vehicle accompanied by other police officials. DSP then disclosed his name, Rank and place of posting to accused while further informing him that he was suspected of possessing some intoxicating substance and that he had the legal right to get himself searched from him (DSP) or from a Magistrate or from a Police Gazetted Officer. Accused reposed his faith in the DSP. Latter prepared his consent memo. On instructions of DSP, I.O then searched accused and recovered a polythene envelop from right pocket of his Pyjama. This envelop was found containing intoxicating powder. Two samples of 10 gms each were drawn from this powder. Remaining quantity when weighed came out to be 300 gms. All these three quantities were put in three separate plastic containers which in due course were sealed twice each by I.O with his seal M.L and by DSP with his seal P.K. Sample seal also was prepared. I.O handed over the seal to PHC Kuldeep Singh. DSP kept his seal with him. Case property was taken into police possession vide separate memo. Ruqa was sent for registration of FIR under Section 22 of N.D.P.S. Act. The accused was arrested. He and case property were produced by I.O on the same day before

SHO/Inspector Gurdeep Singh, who received them against entrustment memo and also put his one seal G.S each on the parcels before putting them in double lock. He also signed Form No. M-29. On next day accused and case property were produced before Ilaga Magistrate. Inventory proceedings were completed there. SHO also sent one sample to Forensic Science Laboratory (FSL), Mohali, on 07-03-2013 through PHC Karnail Singh. Chemical report was received which showed that contents of recovered contraband were of Dextropropoxyphene Hydrochloride salt.”

After necessary investigation, challan was presented against the accused-appellant. On presentation of challan against accused-appellant, copies of challan and other documents were supplied to him under Section 207 Cr.P.C. Finding prima facie case, the accused-appellant was charge-sheeted under Section 22 of the NDPS Act, to which he pleaded not guilty and claimed trial.

In support of its case, prosecution examined PW-1 Head Constable Kuldeep Singh, recovery witness, PW-2 PHC Jagtar Singh, special messenger, PW-3 ASI Karnail Singh, sample carrier, PW-4 Jatinderjit Singh, Judicial Malkhana Clerk, PW-5 SHO/Inspector Gurdeep Singh, PW-6 DSP Parveen Kanda, PW-7 ASI Jasbir Singh, who partly investigated the case and PW-8 ASI Mohan Lal, Investigating Officer and gave up PWs PHC Pawan Kumar, SI Jagdev Singh, ASI Ammanual Mall and HC Swinder Pal Singh.

At the close of prosecution evidence, the accused-appellant was examined under Section 313 Cr.P.C. He was confronted with the evidence of the prosecution and he denied the correctness of the evidence and pleaded himself as innocent.

No witness was examined in defence.

The learned trial Court, after appreciation of the evidence,

convicted and sentenced the accused-appellant as stated above.

At the time of arguments, learned counsel for the appellant did not dispute the findings regarding conviction and only prayed for reduction of sentence of the appellant. Learned counsel for the appellant contended that 320 grams of intoxicant powder (Dextropropoxyphene Hydrochloride) has been recovered from the accused-appellant, which falls under non-commercial quantity. The appellant is suffering from criminal proceedings since 2013. He is young person of 26 years, first offender and only bread earner of the family. He further contended that accused-appellant has already undergone about 10 months of actual sentence.

On the other hand, learned State counsel argued that case of the prosecution has been duly proved by the PWs. There is nothing on the record to show false implication of the accused in the present case. He next argued that PWs have consistently deposed regarding the recovery from the accused. Learned State counsel, therefore, argued that there being no merit, the present appeal should be dismissed.

I have heard learned counsel for the appellant as well as learned State counsel and have gone through the record.

Keeping in view the facts and circumstances of the present case and in view of the fact that appellant is young man of 26 years, first offender, only bread earner of the family and is suffering from long protracted criminal proceedings since 2013 i.e. for the last about 3 years and further in view of the fact that appellant has already undergone actual sentence of about 10 months out of the total sentence and keeping in view the fact the recovery from the accused-appellant falls under non-commercial

Hydrochloride), the sentence imposed upon the appellant is reduced to the sentence already undergone by him. However, the sentence of fine will remain the same but in default of payment of fine, he is directed to undergo rigorous imprisonment for a period three months instead of one year.

Accordingly, present criminal appeal stands partly allowed.

Appellant Kamaljit alias Lucky, who is in custody, be set at liberty forthwith, if his custody is not required in connection with any other case, subject to payment of fine, if already not paid.

August 04, 2016
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned

Yes

Whether reportable

No