

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

**Crl. Appeal No.S-344-SB of 2016 (O&M)
Date of Decision: November 21, 2016**

Vikramjit Singh alias Vicky

...Appellant

VERSUS

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.K.S.Brar, Advocate
for the appellant.

Mr.Varun Sharma, Asstt. Advocate General, Punjab
for the respondent-State.

INDERJIT SINGH, J.

The present appeal has been filed by the appellant against State of Punjab, challenging the judgment of conviction and order of sentence dated 04.11.2015 passed by learned Judge, Special Court, Mansa, whereby the appellant was held guilty and convicted and sentenced to undergo rigorous imprisonment for a period of two years and to pay fine of ₹10,000/- and in default of payment of fine, to undergo rigorous imprisonment for a period of two months under Section 21 of the NDPS Act.

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

“2. The material facts, as are unfolded in the report under Section 173 Cr.P.C, fall within a short compass and are, herein, given:- That, on 13.01.2012, ASI Gurtej Singh, along with his police companions, in connection with patrolling duty and checking of bad elements, was present at bus-stand of

village Khudal Kalan, then Gurmeet Singh, son of Ajaib Singh, resident of Khudal Kalan, had come there, who was associated in the police party. Thereafter, when the police party, during the course of patrolling, had proceeded from village Shekhupur Khudal Kalan via katcha path towards village Kahangarh, then, from the opposite side, one motorcycle Honda was spotted coming, which was driven by a Hindu gentleman. On seeing the police party, the said person got perplexed and slowed down his motorcycle and tried to turn back. On suspicion, ASI Gurtej Singh, with the help of his companions, intercepted the aforesaid person. On inquiry, the said person, disclosed his name as "Vikramjit Singh alias Vicky" and also disclosed his other particulars. ASI Gurtej Singh has stated to Vikramjit Singh alias Vicky that he suspects him to be carrying some narcotic substance in the right pocket of his pant, which he was wearing and he intends to conduct his search. He also apprised Vikramjit Singh alias Vicky, that he has the option to get the search conducted, in the presence of Gazetted Officer or Magistrate. However, Vikramjit Singh alias Vicky reposed confidence in ASI Gurtej Singh and expressed his desire to get the search conducted from him, upon which, consent memo was separately prepared. Thereafter, ASI Gurtej Singh conducted the search, which led to recovery of smack in the polythene lifafa, from the right pocket of the pant, which Vikramjit Singh alias Vicky was wearing. One sample of one gram smack was drawn from the polythene lifafa and the residue smack, weighed to be 124 grams. Separate parcels of the sample and the residue smack were prepared, which were sealed with the seal bearing impression 'GS'. Sample seal was separately prepared. Seal after use, was handed over to ASI Sukhmander Singh. Even, the Honda motorcycle CBR-25DR was checked, but however, no papers were found, which was bearing Chassis No.NE4MC423GB8001896. Then all the aforesaid articles were taken into possession, vide separate memo. Personal search of the accused was conducted, which led to recovery of currency notes of Rs.800/-, regarding which, separate personal search memo was prepared. While keeping smack, in his possession, Vikramjit Singh alias Vicky, has committed the offence punishable under Section 21 of the Narcotic Drugs & Psychotropic Substances Act, 1985. Ruqa was sent to the Police Station, on the basis whereof, case was registered against the accused. Rough site plan of the spot of recovery was prepared. On return to the Police Station, the accused and the case property were produced before SHO, SI Sikander Singh, who had verified the fact of recovery and counter-sealed the case property with his seal bearing impressions 'SS' and retained the case property in his possession vide separate memo. During the course of interrogation, Vikramjit Singh alias Vicky made statement under Section 27 of the Evidence Act, wherein he had disclosed about one Nokia mobile phone

was thrown by him, on the ground, on seeing the police party and if search is conducted at the spot, it can be recovered. On the basis thereof, from the disclosed spot, Nokia Phone was recovered, which was taken into possession, vide separate memo. During the course of investigation, sample parcel was sent to the office of the Chemical Examiner and the latter, vide its report, opined the sample to be "Smack". On completion of the investigation, accused Vikramjit Singh alias Vicky was sent up to face trial for the commission of offence under Section 21 of the Narcotic Drugs & Psychotropic Substances Act, 1985 by the police of Police Station, Bareta."

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 21 of the NDPS Act, to which he pleaded not guilty and claimed trial.

In support of its case, prosecution examined PW-1 Head Constable Jaspal Singh, PW-2 ASI Gurtej Singh, Investigating Officer,, PW-3 ASI Sukhmander Singh and PW-4 SI Sikander 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 and has been falsely implicated.

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 120 grams of smack has been recovered from the accused-appellant, which falls under non-commercial quantity. The appellant is suffering from criminal proceedings since 2012. He further contended that the appellant is first offender and only bread earner of the family. He further contended that accused-appellant has already undergone 1 year 2 months and 5 days 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.

In view of the evidence, I find that the prosecution has duly proved its case by leading cogent evidence beyond reasonable doubt. Therefore, the judgment of conviction dated 04.11.2015 passed by learned Judge, Special Court, Mansa, is correct, as per law and does not require any interference from this Court.

However, keeping in view the facts and circumstances of the present case and in view of the fact that appellant is first offender, only bread earner of the family and is suffering from long protracted criminal proceedings since 2012 and further in view of the fact that appellant has already undergone actual sentence of 1 year 2 months and 5 days out of the total sentence and keeping in view the fact the recovery from the accused-

appellant falls under non-commercial quantity i.e. 120 grams of smack, the

sentence imposed upon the appellant is reduced to the sentence already undergone by him. However, the sentence of fine and in default thereof shall remain the same. The appellant is directed to pay the fine within one month from the date of receiving the certified copy of the order, if already not paid, otherwise, the trial Court is directed to take necessary action as per law.

Accordingly, present criminal appeal stands partly allowed.

Since, appellant Vikramjit Singh alias Vicky is on bail, his bail/surety bonds stand discharged.

November 21, 2016
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No