

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

CRA S-3680-SB of 2016 (O&M)

Decided on: 18.11.2016.

Kamaldeen

... Appellant

Versus

U.T. Chandigarh

... Respondent

CORAM : Hon'ble Mr. Justice Jitendra Chauhan

Present : Mr. SPS Sidhu, Advocate,
for the appellant.

Mr. D.S. Brar, APP for UT, Chd.

JITENDRA CHAUHAN.J.

This appeal is directed against the judgment and order dated 22.09.016, passed by Judge, Special Court, Chandigarh, vide which the appellant was convicted under Section 18 of the Narcotic Drugs & Psychotropic Substances Act, 1985 (for short “the NDPS Act”) and sentenced to undergo RI for one year and to pay fine of Rs.3,000/- with default stipulation.

Briefly stated the case of the prosecution as noticed in the judgment passed by the trial Court is as under:-

“The prosecution story in brief, is that on 24.5.2015, ASI Jogi Ram along with H.C. Harinder Singh, HC Jagtar, C. Sharandeep Singh and C. Ajay were on patrolling duty in the government vehicle whose

driver was C. Naveen. During patrolling they held a naka near Windsor farm on the road from Shastri Nagar Light point towards Kishangarh Chowk and were checking the vehicles as well as passersby. They checked certain vehicles and passersby. At about 5.30 p.m., a person was seen coming on Scooter four wheeler (handicapped scooter) towards naka side. He was signalled to stop. He tried to throw the polythene with his right hand which was hanged towards the bottom side of the scooter seat. He did not allow the accused to throw the polythene and apprehended him. On checking the polythene, opium was recovered. On asking accused failed to produce any valid licence or permit to retain in his conscious possession aforesaid opium. On asking, accused disclosed his name Kamaldeen. Persons from the public were asked to join the investigation but no one was ready for the same. The narcotic substance was weighed on the spot and on weightment it was found to be 400 grams. Out of the recovered opium two samples of 25 grams each were taken out and same were put into small polybags and further kept the same in the plastic containers which were converted into sealed parcel

and two seals of JS were affixed on the same. Remaining 350 grams opium was kept in the same polythene and kept in the plastic container which was converted into sealed parcel bearing two seals of JS on the same. Separate sample seal was also prepared and after use, seal was handed over to C. Sharandeep. The seizure memo of aforesaid two sealed parcels along with sample seal was prepared. Ruqa was sent through C. Ajay Kumar for registration of formal FIR and FIR was recorded. Rough site plan of the spot was also prepared. Separate test memo form Ex.P10 was prepared. Separate intimation about aforesaid recovery was also sent by him about the apprehension of accused. SI Narinder Singh second IO reached the spot and carried out further investigation. He disclosed the complete facts of the case to SI Narinder Singh and handed over him the case property along with accused and other related documents including sample seal. Accused was arrested and personally searched”

On presentation of challan, copies of documents as required under Section 207 Cr.P.C were supplied to the accused, free of costs.

Charge under Section 18 of the NDPS Act was framed against the accused to which the accused did not plead guilty and claimed trial.

In order to prove its case, the prosecution examined PW-1, Head Constable, Yash Pal, draftsman, PW-2 HC Sakattar Singh, PW-3 Atul Bajaj, Junior Scientific Officer, CFSL, PW-5 Manoj Kumar, Data Entry Operator, PW-6, SI Narinder Singh, PW-7, ASI Jogi Ram, Operation Cell, PW-8, Inspector Jasbir Singh, SHO and thereafter closed its evidence.

The statement of accused was recorded under Section 313 Cr.P.C in which all the incriminating circumstances appearing in the prosecution evidence were put to the accused to which the accused denied and pleaded false implication. It was further stated by the accused that he was present at his house. Since, he was renovating his house, an amount of Rs.1,70,000/- was lying in his house for the said purpose. Said amount was taken into possession by the police on the suspicion that he was indulging in Dara Satta. When his family members protested by visiting operation cell for his illegal custody then the contraband was planted upon him. He has not committed any such offence. He is a victim of false accusation and tainted investigation.

After appraisal of the evidence, the trial Court, vide impugned judgment and order dated 22.09.2016, convicted and sentenced the accused, as narrated above.

Feeling aggrieved against the judgment and order dated 22.09.2016, passed by the trial Court, the accused has filed the instant appeal.

It is submitted by the learned counsel for the appellant that he does not challenge the judgment of conviction on its merits but prays that a lenient view be taken in the matter of sentence in view of his physical disability. He being a handicapped person can move only with the help of crutches. He is the sole bread earner of his family.

Though, the learned counsel has not challenged the judgment of conviction on merits, still this Court has gone through the entire evidence and finds that no link is missing in the case of the prosecution. The Investigating Officer, ASI Jogi Ram while appearing as PW-7 has fully supported the version of the prosecution and proved on record all the material documents i.e. seizure memo Ex.P-4, Ruqa Ex.P-15, FIR Ex./P-16, Rough site plan Ex.P-9, Test memo Ex.P-10, sample seal memo Ex.P-7, search memo Ex.P-5, arrest memo Ex.P-8. It was further deposed that on 24.5.2015 at about 5.30 p.m., the accused was seen coming on scooter four wheeler (scooter for handicapped) towards *naka* side. The accused was stopped. On seeking the police party, the accused tried to throw the polythene with his right hand which was hung towards the bottom side of the scooter seat. On checking the polythene opium was recovered. The accused failed to

produce any valid licence or permit to retain in his conscious possession aforesaid opium. Persons from the public were asked to join the investigation but no one was ready for the same. The narcotic substance was weighed on the spot and on weighment it was found to be 400 grams. Out of the recovered opium, two samples of 25 grams each were taken out and same were put into small polybags and were further kept in plastic containers which were converted into sealed parcels and two seals of 'JS' were affixed on the same. All the remaining formalities were completed at the spot. PW-6, SI Narinder Singh, the second I.O., stated that on 24.5.2015 he received information in the Police Post for sending second IO at the spot i.e. near light point, Shastri Nagar, Kishangarh Road, Manimajra. After receiving information, he reached the spot. On reaching there, ASI Jogi Ram met him along with police party and accused Kamaldeen. ASI Jogi Ram disclosed to him the facts of the case and handed over three sealed parcels, duly sealed with seal of 'JS' at two places, sample seal along with all related documents of the case vide memo Ex.P-7 and same were taken into possession by him. The accused was also handed over to him who was arrested and personally searched vide memo Ex.P-8. He prepared the rough site plan Ex.P-9 at the instance of ASI Jogi Ram. Aactiva Honda bearing No. CH-01-AZ-3841, a four wheeler for handicapped persons, along with RC, insurance and cash of Rs.1,70,000 which were recovered from the dickey of the vehicle of the

accused were also taken into possession vide seizure memo Ex.P-11. This Court finds that all the necessary formalities were completed. The recovery of 400 grams opium from the conscious possession of the appellant stands proved. Thus, the judgment of conviction is upheld.

Now adverting to the quantum of sentence, taking into consideration the mitigating circumstances that the appellant is handicapped; he is unable to walk without the help of crutches; he has already undergone actual sentence of 3 months and 22 days out of one year; he is the sole bread winner of his family and; is not a previous convict, this Court feels that the ends of justice would be squarely met in case the sentence of the appellant is reduced from one year to six months under Section 18 of the NDPS Act. It is ordered accordingly. However, the appellant shall pay a further sum of Rs.25,000/- as fine over and above the amount awarded by the trial Court.

The appeal is allowed partly in the manner indicated above.

18.11.2016.
SN

(JITENDRA CHAUHAN)
JUDGE

Whether speaking/reasoned :
Whether reportable :

Yes/No
Yes/No