

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

**Crl. Appeal No.S-3706-SB of 2016 (O&M)
Date of Decision: December 02, 2016**

Ravinder alias Sonu and another

...Appellant

VERSUS

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Ashwani Gaur, Advocate
for the appellants.

Mr.B.S.Virk, Deputy Advocate General, Haryana
for the respondent-State.

INDERJIT SINGH, J.

The present appeal has been filed by the appellants against State of Haryana, challenging the judgment of conviction dated 05.10.2016 and order of sentence dated 07.10.2016 passed by learned Special Judge/Addl. Sessions Judge, Sonapat, whereby the appellants were held guilty and convicted and sentenced to undergo rigorous imprisonment for a period of two years and to pay fine of ₹20,000/- and in default of payment of fine, to undergo rigorous imprisonment for a period of two months each under Section 18(c) of the NDPS Act.

The brief facts of the prosecution case as noted down in the judgment passed by learned Special Judge/Addl. Sessions Judge, Sonapat, are as under:-

“2. Briefly stated the prosecution case is that on 10.11.2013

when ASI Prem Kumar and other police officials were present for petrol and crime checking at Kalupur Octroi Sonapat, a secret informer informed that Rajesh son of Richhpal and Ravinder son of Risal Singh, having Opium in their possession, would come from Kharkhoda to Sonipat on motor cycle bearing registration no. HR10-P-6081 of black colour and if nakabandi is conducted, they could be apprehended along with opium. Secret information was reduced into writing and sent to the police station through EHC Sandeep for registration of DDR. ASI Prem Kumar along with other police officials conducted nakabandi and when two young boys were seen coming on the motor-cycle of black colour, ASI Prem Kumar intercepted the motor-cycle Honda Staner bearing registration no. HR10P- 6081 and apprehended them. The boy, who was driving the motor-cycle disclosed his name as Ravinder alias Sonu and the boy who was pillion rider, disclosed his name as Rajesh and they were served with notice under section 50 of NDPS Act, to which they opted to be searched before DSP. ASI Prem Kumar informed DSP Satish Kumar telephonically. ASI Prem Kumar asked the passers-by to join the investigation but they showed their inability. After some time, DSP Satish Kumar along with his staff reached at the spot and DSP directed ASI Prem Kumar to conduct the search of those young boys. Initially, the search of Ravinder was conducted and during search, one polythene of green colour was recovered from the right pocket of the pants of accused Ravinder. On checking, it was found to be Opium of black colour, weighing 440 grams. Two samples of 10 grams each were separated from the recovered Opium and the remaining Opium when weighed was found as 420 gm. Samples and the remainder were taken into possession vide separate recovery memo after sealing the same with the seal of 'IJ'. DSP also affixed his seal of 'YP' on the samples as well as on the remainder. Thereafter, search of Rajesh was conducted and during search, one polythene of green colour was recovered from the right hand of accused Rajesh. On checking, it was found to be Opium, weighing 500 grams. Two samples of 10 grams each were separated from the recovered Opium and the remaining Opium when weighed was found as 480 gm. Samples and the remainder were taken into possession vide separate recovery memo after sealing the same with the seal of 'IJ'. DSP also affixed his seal of 'YP' on the samples as well as on the remainder and the seal of 'IJ' after its use was handed over to HC Manmohan and the DSP kept his seal after its use. The motor-cycle was taken into police possession vide separate recovery memo. Tehrir was sent to Police Station on which formal FIR was registered. Accused were arrested. Accused as well as case property were produced before SHO who verified the facts from the accused and the witnesses separately and after being satisfied, he affixed his seal on parcels of samples as well as residue. The case property was deposited in

malkhana. After completion of the usual formalities of investigation, police report as per the provisions of Section 173(2) of the Code of Criminal Procedure was prepared and presented in the court of Illaqa Magistrate.”

On presentation of challan against accused-appellants, copies of challan and other documents were supplied to them under Section 207 Cr.P.C. Finding prima facie case, the accused-appellant alongwith co-accused was charge-sheeted under Section 18(c) of the NDPS Act, to which they pleaded not guilty and claimed trial.

In support of its case, prosecution examined PW-1 EHC Ashok, PW-2 Constable Jai Narain, PW-3 Inder Pal, PW-4 Ms.Vinti, PW-5 EASI Naresh, PW-6 SI Rambhaj, PW-7 EHC Sandeep Kumar, PW-8 DSP Satish Kumar, PW-9 HC Manmohan, PW-10 ASI Prem and PW-11 Inspector Jaiveer.

At the close of prosecution evidence, the accused-appellants were examined under Section 313 Cr.P.C. They were confronted with the evidence of the prosecution and they denied the correctness of the evidence and pleaded themselves as innocent and falsely implicated.

No witness was examined in defence.

The learned trial Court, after appreciation of the evidence, convicted and sentenced the accused-appellants as stated above.

At the time of arguments, learned counsel for the appellants did not dispute the findings regarding conviction and only prayed for reduction of sentence of the appellant. Learned counsel for the appellants contended that 440 grams of opium has been recovered from the accused-appellant Ravinder alias Sonu and 500 grams opium has been recovered from

accused-appellant Rajesh, which falls under non-commercial quantity. The

appellants are suffering from criminal proceedings since 2013. He further contended that the appellants are poor persons and only bread earners of the family. He further contended that appellant Ravinder alias Sonu has already undergone 8 months 2 days of actual sentence and appellant Rajesh has already undergone 7 months and 24 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 05.10.2016 passed by learned Special Judge/Addl. Sessions Judge, Sonapat, 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 appellants are poor persons, only bread earners of the family and are suffering from long protracted criminal proceedings since 2013 i.e. for the last three years and further in view of the fact that appellant Ravinder alias Sonu has already undergone actual sentence of 8 months 2 days and appellant Rajesh has already undergone actual sentence of 7 months 24 days including remissions and keeping in

commercial quantity i.e. 440 grams of opium from Ravinder alias Sonu and 500 grams of opium from Rajesh, the sentence imposed upon the appellants is reduced to the sentence already undergone by them. However, the sentence of fine and in default thereof, shall remain the same.

Accordingly, present criminal appeal stands partly allowed.

Appellants Ravinder alias Sonu and Rajesh, who are in custody, be set at liberty forthwith, if their custody is not required in connection with any other case, subject to payment of fine, if already not paid.

December 02, 2016
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No