

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

Crl. Appeal No.S-3734-SB of 2016 (O&M)
Date of Decision: November 21, 2016

Ajit Singh alias Jeet

...Appellant

VERSUS

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Kamaldip Singh Sidhu, 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 28.09.2016 passed by learned Judge, Special Court, Amritsar, whereby the appellant was held guilty and convicted and sentenced to undergo rigorous imprisonment for a period of one year and to pay fine of ₹5,000/- and in default of payment of fine, to undergo rigorous imprisonment for a period of one month 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, Amritsar, are as under:-

“2. Brief facts of the prosecution version are that 11.7.2013 ASI Prem Pal No.2214 Narcotic Cell, Amritsar, alongwith his police officials was going from G.T. Road 2 Pingalwara towards Tehsilpura on private vehicles and when the police party was behind Pingalwara it saw two persons coming from

the side of Rani Bazar who turned away towards different directions on seeing the police party but ASI Prem Pal alongwith other police officials apprehended one clean shaven person who was about to throw a polythene after taking it out from right pocket of his trouser and on asking he disclosed his name as Ajit Singh above mentioned. The other person was apprehended by ASI Davinder Singh. Before conducting his search the police tried to join an independent witness but nobody became ready. From the possession of accused on checking 220 capsules make Pevon Spas were recovered out of which 10 capsules were separated as sample. The bulk and sample were put in different plastic boxes and parcels of the same were prepared. The said parcels were sealed by ASI with his seal bearing impression 'PS' and sample seal was also prepared. Form M29 was completed and seal after use was handed over to HC Puran Singh. Both the parcels were taken in possession vide recovery memo. Accused could not produce any licence to keep 220 capsules in his possession. Ruqa was sent to the Police Station for registration of the FIR. Accused was arrested. Site plan of the place of recovery was prepared. On coming back to the Police Station the accused alongwith both the parcels, sample seal 3 and form M29 were produced before the SHO and on 12.7.2013 accused was produced before Ilaqa Magistrate alongwith parcels of contraband and inventory under section 52-A of NDPS Act was prepared. Sample was sent to the office of Chemical Examiner and on receipt of report and on completion of investigation challan was presented against the accused in the Special Court under NDPS Act. ”

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 Surinderpal, PW-2 Inspector Jatinder Singh,, PW-3 ASI Puran Singh and PW-4 SI Prem Pal, Investigating Officer.

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 220 capsules of Pevon Spas have been recovered from the accused-appellant, which falls under non-commercial quantity. The appellant is suffering from criminal proceedings since 2013. 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 7 months 28 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 28.09.2016 passed by learned

Judge, Special Court, Amritsar, 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 2013 and further in view of the fact that appellant has already undergone actual sentence of 7 months and 28 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. 220 capsules of Pevon Spas (118 grams of Dextropropoxyphene), 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.

Accordingly, present criminal appeal stands partly allowed.

Appellant Ajit Singh alias Jeet, 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 as imposed by the Courts below.

November 21, 2016
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No