

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

Crl. Appeal No.S-3791-SB of 2016 (O&M)

Date of Decision: November 18, 2016

Rakesh Kumar alias Pawan

...Appellant

VERSUS

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Karan Chaudhary, Advocate
for the appellant.

Mr.Deepak Garg, 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 12.10.2016 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 one year and to pay fine of ₹5,000/- 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, Gurdaspur, are as under:-

“2. Briefly the facts of the prosecution case are that on 28.06.2013 ASI Hira Singh along-with other police officials was on patrolling duty and was present near village Gahlari. There one clean shaven man was seen coming on foot from village Hassanpur side. On seeing the police party, he became perplexed and turned back. On suspicion, ASI Hira Singh along-with other police officials stopped him and enquired about his name. On enquiry, he disclosed his name as Rakesh

Kumar son of Vijay Kumar. ASI Hira Singh told his rank and gave option to the accused that there is some suspicion that the accused is having some intoxicant contraband and he has a legal right to get him searched from him or from any Magistrate or from any Gazetted officer of the police. Upon this, accused Rakesh Kumar told that he wants to get him searched from some Gazetted Officer of the police. He prepared the non consent memo and informed to Puran Chand the then DSP through wireless questy.

3. After 30 minutes, DSP came and he introduced him to the accused as he is Gazetted officer of the police and wants to search him and he has legal right that he can get him searched from any Magistrate or any other Gazetted Officer. Upon this option, accused reposed faith in him and became ready to get him searched from DSP, upon which consent memo was prepared. At that time, police party tried to join the independent witness, but nobody was ready to join the police party. ASI Hira Singh conducted personal search of accused Rakesh Kumar and he found in possession one polythene envelop containing intoxicant capsules Marka Promodex from his pocket. He took out two samples of 10/10 of intoxicant capsules and remaining was counted and it came to 400 intoxicant capsules. The same were kept in the same polythene bag and it was converted into one parcel. All the parcels were sealed by ASI Hira Singh with his seal bearing impression "HS" and sealed the seal of DSP bearing impression "PC". Sample seal was separately prepared and after use, the sample seal was handed over to HC Harjit Singh, whereas seal of DSP was retained by him. All the parcels along-with samples seal were taken into police possession.

4. Accused Rakesh Kumar could not produce any licence or permit for retaining said intoxicant contraband and hence, Ruqa was sent to Police Station for registration the case through PHC PHG Amrik Singh, upon which the present FIR was registered.

5. During investigation, sample was sent to Chemical Examiner, Mohali. Accused Rakesh Kumar was arrested. Statements of witnesses were recorded. After receipt of the report of Chemical Examiner and after completion of necessary investigation, challan against the accused was presented before this Court."

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 Harjit Singh, PW-2 PHC Rajinder Singh, PW-3 DSP Puran Chand, PW-4 ASI Hira Singh, PW-5 SI Mukhtiar Singh and PW-6 PHC Ramnik 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 420 intoxicant capsules (138 grams of Dextropropoxyphene Hydro Chloride) has 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 5 months 9 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 12.10.2016 passed by learned Judge, Special Court, Gurdaspur, 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 5 months and 9 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. 420 intoxicant capsules (138 grams of Dextropropoxyphene Hydro Chloride), 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 Rakesh Kumar alias Pawan, 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.

November 18, 2016
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No