

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

**Crl. Appeal No.S-4733-SB of 2015 (O&M)
Date of Decision: October 19, 2016**

Sardool Singh

...Appellant

VERSUS

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Kamal Narula, Advocate
for the appellant.

Ms.Shivali, 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 06.10.2015 passed by learned Judge, Special Court, Ferozepur, 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 ₹2000/- 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, Ferozepur, are as under:-

“2. The facts, as put forth by the prosecution, are to the effect that on 08.06.2014, SI Gurpreet Singh, the Officer Incharge, Police Station, Makhu, was present in the police Station. He

received an information on his mobile phone to the effect that Sardul Singh and Swaranjit Singh @ Babbu accused are notorious smugglers and indulging in the trade of narcotic substance. They bring narcotic substance from the side of Bhikhiwind and supply the same in the area of Makhu and Fatehgarh Panjtoor. Both of them are coming on a motor cycle bearing registration No. PB 05 U 8639 from the side of Bhikhiwind along with heroin and proceeding towards Makhu and if the checking is conducted on the road leading to Harike, they can be apprehended. Accordingly, an entry was recorded in the DDR and SI Gurpreet Singh along with fellow police officials proceeded towards Harike Head. On the way, the fellow police officials were told about the detail of proceedings to be conducted. When the police party was 3-4 killas short of Harike Head, they spotted two persons coming on the afore said motor cycle. On seeing the police party, they got perplexed and immediately tried to turn the motor cycle in the rear direction. With the help of the fellow police officials, efforts were made to over power the occupants of the motor cycle. The person travelling on the rear seat of the motor cycle got down and slipped away. HC Jagrup Singh and PHG Jaspal Singh tried to chase him, but he managed to slip away. Sardool Singh accused was apprehended at the spot and his identity was verified. He disclosed the name of the accused who managed to slip away as Swaranjit Singh @ Babbu. An effort was made to join public witness, but no one was willing to join the police party. SI Gurpreet Singh gave his introduction to the accused and told him that it is suspected that he is carrying heroin with him and his search is to be conducted. He further apprised the accused of his legal right to get the search conducted in the presence of a Magistrate or a Gazetted Officer or through him. The accused reposed confidence upon him and the consent statement was reduced into writing. From the search of the accused, heroin wrapped in glazed paper was recovered from the front pocket of the Kurta worn by him. Two samples weighing one gram each were separated and the remaining heroin weighed 48 grams. Separate parcels of both the samples and the remaining heroin were prepared and sealed with the seal bearing impression GS. The specimen seal was also prepared and the seal after use was handed over ASI Balwinder Singh. The incriminating articles were taken into possession vide separate recovery memo. Subsequently, the arrest of Swaranjit Singh @ Babbu accused was effected on 23.09.2014 when he surrendered in the court of learned Judicial Magistrate Ist Class, Zira.”

After necessary investigation, challan was presented against the

accused-appellant and co-accused. On presentation of challan against

accused-appellant and co-accused, copies of challan and other documents were supplied to them under Section 207 Cr.P.C. Finding prima facie case, the accused-appellant along with co-accused was charge-sheeted under Section 21 of the NDPS Act, to which they pleaded not guilty and claimed trial.

In support of its case, prosecution examined PW-1 ASI Balwinder Singh No.811, PW-2 Head Constable Baljinder Singh, PW-3 SI Gurpreet Singh, Investigating Officer and PW-4 ASI Balwinder Singh.

At the close of prosecution evidence, the accused-appellant and co-accused 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 also pleaded that they have been falsely implicated. In defence, accused examined DW-1 Wan Singh.

The learned trial Court, after appreciation of the evidence, convicted and sentenced the accused-appellant as stated above and acquitted co-accused Swaranjit Singh @ Babbu.

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 50 grams of heroin has been recovered from the accused-appellant, which falls under non-commercial quantity. The appellant is suffering from criminal proceedings since 2014. 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 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. She 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 06.10.2015 passed by learned Judge, Special Judge, Ferozepur, is correct, as per law and does not require any interference from this Court.

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 2014 and further in view of the fact that appellant has already undergone actual sentence of 5 months and 5 days as on 19.01.2016 out of the total sentence as his sentence was suspended by this Court vide order dated 14.01.2016 and keeping in view the fact the recovery from the accused-appellant falls under non-commercial quantity i.e. 50 grams of heroin, 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

law.

Accordingly, present criminal appeal stands partly allowed.

Since, appellant Sardool Singh is on bail, his bail/surety bonds stand discharged.

October 19, 2016
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No