

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

Crl. Appeal No.S-5147-SB of 2015 (O&M)

Date of Decision: August 12, 2016

Satnam Singh @ Satta

...Appellant

VERSUS

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Rajesh Kapila, 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 the judgment of conviction and order of sentence dated 09.09.2015 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 1½ years and to pay a fine of ₹10,000/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of three months 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, Gurdaspur, are as under:-

“2. The prosecution version is that on 07-05-2013 I.O/ASI Vipan Kumar, with his police party, was on patrol duty and they were coming from the side of Village Rampur towards Village Behrampur. Police party was short of Behrampur Mosque. They noticed a non-Sikh fellow coming from Behrampur side. Finding police party he got perplexed and turned back. I.O called out asking him to stop. Instead, said person started running back but was apprehended by the police party. He disclosed his name as Satnam Singh (accused). I.O disclosed his name, rank and place of posting

and told him that he was suspecting that accused was possessing some intoxicant substance and, therefore, he was to be searched regarding which he had the legal right to get such search conducted from him (I.O) or from a Magistrate or from a Gazetted Officer. Accused shows his willingness to get his search conducted from a Gazetted Officer. I.O. then prepared his non-consent memo. By 12.00 P.M. I.O gave wireless message to SDP(H) Puran Chand requesting him to come at the spot. DSP reached there by 12-20 P.M. with his police party and disclosed his name, Rank and place of posting to accused while further informing him that he was suspected of possessing some intoxicant substance and that he had the legal right to get himself searched from him (DSP) or from a Magistrate. Accused reposed his faith in the DSP. His consent memo then was prepared. Independent witness was tried to be joined unsuccessfully. On instructions of DSP, I.O then searched accused and recovered a polythene envelop from right pocket of his shirt. This envelop was found containing Pyremal Spas intoxicating Capsules. Two samples of 10 such capsules each were separated from these Capsules. Remaining 295 Capsules, and these sample quantities were put in three separate plastic containers which in due course were sealed by I.O with his seal V.P and by DSP Puran Chand with his seal P.C. Sample seal also was prepared. I.O handed over the seal to PHC Sarwan Singh. DSP kept his seal with him. Case property was taken into police possession vide separate memo. Ruqa was sent for registration of FIR under Section 21/22 of N.D.P.S. Act.

3. I.O produced accused and the sealed case property before SHO/SI Raj Kumar on the same day, who received them against entrustment memo and also put his seal R.K one each on the parcels before putting them in double lock. He also completed inventory proceedings before Ilaga Magistrate on that day. On 09-05-2013 he moved another application before learned Chief Judicial Magistrate for permission to deposit the case property with Judicial Malkhana. It accordingly was deposited there on 24-05-2013 (excluding one sample parcel). This SHO then sent one sample parcel and Form No.M-29 through PHC Ramesh Kumar on 16-05-2013 to FSL, Mohali. Chemical report was received from there which showed that contents of recovered Capsules were Dextropropoxyphene Hydrochloride salt. After completion of investigation, challan against accused was presented in the Court.”

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

claimed trial.

In support of its case, prosecution examined PW-1 PHC Sarwan Singh, recovery witness, PW-2 PHC Vaishno Dass, special messenger, PW-3 PHC Ramesh Kumar, sample carrier, PW-4 SHO/SI Raj Kumar, PW-5 DSP Puran Chand, PW-6 IO/ASI Vipin Kumar and gave up PW PHC Sohan 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.

In defence, accused-appellant examined DW-1 Bachan Singh and DW-2 Such Singh and gave up Clerk from MTO, Police Line, Gurdaspur.

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 315 Capsules containing Dextropropoxyphene Hydrochloride salt has been recovered from the accused-appellant, which falls under non-commercial quantity. The appellant is suffering from criminal proceedings since 2013. He is first offender, poor person and only bread earner of the family. He further contended that as per order dated 25.01.2016 suspending the sentence of the accused-appellant, he has already undergone about 9 months and 20 days of actual sentence till 23.01.2016.

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.

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 i.e. for the last about 3 years and further in view of the fact that appellant has already undergone actual sentence of about 9 months 20 days out of the total sentence till 23.01.2016 and keeping in view the fact the recovery from the accused-appellants falls under non-commercial quantity i.e. 315 Capsules containing Dextropropoxyphene Hydrochloride salt, the sentence imposed upon the appellant is reduced to the sentence already undergone by him. The sentence of fine is also reduced and he is directed to pay fine of ₹5000/- instead of ₹10,000/- and in default of payment of fine, to undergo rigorous imprisonment for a period of two months instead of three months. Fine be paid within one month.

Accordingly, present criminal appeal stands partly allowed.

Since, appellant Satnam Singh alias Satta is on bail, his bail/surety bonds stand discharged.

August 12, 2016
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No