

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

**Crl. Appeal No.S-5415-SB of 2015 (O&M)
Date of Decision: September 06, 2016**

Tarsem Singh

...Appellant

VERSUS

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.A.G.S.Dhillon, 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 the judgment of conviction and order of sentence dated 03.11.2015 passed by learned Judge, Special Court, Patiala, whereby the appellant was held guilty and convicted and sentenced to undergo rigorous imprisonment for a period of one and half 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 21 of the NDPS Act.

The brief facts of the prosecution case as noted down in the judgment passed by learned Judge, Special Court, Patiala are as under:-

“2. In brief the facts of the case are that on 2.8.2012 ASI Gurmail Singh along with HC Madan Gopal, HC Iqbal Singh, HC Suraj Parkash and PHG Kuldeep Singh on Government vehicle bearing registration no. PB-11AG-8911 driven by Harmesh Kumar in connection with patrolling and checking of

bad elements were present at YPS Chowk, Patiala. ASI Gurmail Singh received secret information that Tarsem Singh son of Jasbir Singh resident of Dakala was indulging in the sale of smack. Today he was coming on motorcycle bearing registration no. PB-23-D-1862. He was going towards railway crossing no.22 through YPS Chowk. If raid is conducted then he can be apprehended along with smack. Secret informer also disclosed the features of accused Tarsem Singh and colour of clothes worn by him. Then ASI Gurmail Singh along with police party set up naka at YPS Chowk. One person was seen coming from the side of Moti Mehal, Patiala on motorcycle bearing registration no. PB-23-D-1862 at about 1.15 pm. On seeing the police party accused became perplexed and tried to turn back but he was apprehended. The identity of the accused was verified and accused told his name as Tarsem Singh son of Jasbir Singh resident of village Dakala. ASI Gurmail Singh disclosed his identity to the accused and further told him that it is suspected that some narcotics is in the possession of the accused. The accused has got a right that search can be conducted in the presence of some Gazetted Officer or Magistrate and told that they can be called at the spot. But the accused reposed faith upon ASI Gurmail Singh. The consent statement of accused Ex.PB was recorded which was signed by accused and witnessed by HC Madan Gopal and HC Iqbal Singh. From the search of the accused smack wrapped in glazed paper was recovered from the right pocket of his pants worn by him. Then two samples of 1 gram each were separated from the bulk and the remaining on weighing came to be 38 grams. The bulk and samples were converted into parcels and all the parcels were sealed by ASI Gurmail Singh with his seal bearing impression GS. Specimen seal Ex.P1 was prepared and seal after its use handed over to HC Madan Gopal. The incriminating articles were taken into possession vide memo Ex.PC, which was witnessed by HC Madan Gopal and HC Iqbal Singh. Motorcycle was taken into possession along with its registration certificate and affidavit of accused Tarsem Singh regarding purchase of above said vehicle from Kuldeep Singh vide memo EX.PC/1. Ruqa Ex.PE was sent to police station through HC Suraj Parkash and FIR Ex.PF was registered. Rough site plan Ex.PH of the place of recovery was prepared. The accused was arrested vide memo Ex.PD/1 and personal search was conducted vide memo Ex.PD.

3. After completing the investigation at the spot, Investigating Officer ASI Gurmail Singh produced the accused, case property along with specimen seal chits, articles recovered during the personal search of accused and witnesses before Inspector Rajesh Kumar, SHO of P.S.Civil Lines, Patiala. He verified the facts of the case and sealed the case property with his seal bearing impression RK. Specimen seal Ex.P1 was prepared and same was also attested by SHO. Thereafter, SHO deposited the case property with MHC Devi Ram with seals

intact.

4. On the following day i.e. 03.08.2012 ASI Gurmail Singh took the case property from MHC Devi Ram and produced the accused along with case property before Learned JMIC, Patiala Patiala along with application for remand EXPJ, application for inventory EXPK and application for depositing the case property in judicial malkahan Ex.PL. Learned JMIC, Patiala put his initials on all the parcels as well as specimen seal and passed order EXPL/1. Thereafter ASI Gurmail Singh deposited the bulk parcel and one sample parcel in judicial malkhana at Patiala and the remaining sample parcel was deposited with MHC Devi Ram. Receipt issued by the concerned clerk of Judicial Malkhana was handed over to MHC Devi Ram. The sample was sent to the Laboratory on 17.8.2012 through HC Gurmeet Singh and after receipt of the report of chemical examiner Ex.PM the report under section 173(2) Cr PC was presented against the accused.”

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 Suraj Parkash, PW-2 Inspector Rajesh Kumar, PW-3 Head Constable Gurmeet Singh, PW-4 ASI Devi Ram, PW-5 Harjit Singh, Clerk DTO office, Patiala, PW-6 Head Constable Madan Gopal and PW-7 ASI Gurmail Singh, 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 40 grams of smack has been recovered from the accused-appellant, which falls under non-commercial quantity. The appellant is suffering from criminal proceedings since 2012. 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 actual sentence of 3 months and 29 days out of the total 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 03.11.2015 passed by learned Judge, Special Judge, Patiala, 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

2012 i.e. for the last about 4 years and further in view of the fact that appellant has already undergone actual sentence of 3 months and 29 days out of the total sentence as on 01.02.2016, the date when the sentence of the appellant was suspended during the pendency of the appeal and keeping in view the fact the recovery from the accused-appellant falls under non-commercial quantity i.e. 40 grams of smack, 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 receiving the certified copy of the order, if already not paid, otherwise, the trial Court is directed to take necessary action as per law.

Accordingly, present criminal appeal stands partly allowed.

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

September 06, 2016
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No