

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

Crl. Appeal No.S-1717-SB of 2016 (O&M)
Date of Decision: March 14, 2017

Hira Lal

...Appellant

VERSUS

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Vinay Kumar Malhotra, Advocate for
Mr.J.S.Gill, Advocate
for the appellant.

Mr.K.S.Aulakh, 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 14.03.2016 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 1½ years and to pay fine of ₹8,000/- and in default of payment of fine, to undergo rigorous imprisonment for a period of one month under Sections 21 and 22 of the NDPS Act regarding recovery of 450 intoxicant capsules and further to undergo rigorous imprisonment for a period of 1½ years and to pay fine of ₹10,000/- and in default of payment of fine, to undergo rigorous imprisonment for a period of two months under Sections 21 and 22 of the

NDPS Act regarding recovery of 5 intoxicant injections. Both the sentences were ordered to run concurrently.

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

“2. Tersely the prosecution version is that on dated 30.8.2012 complainant ASI Sukhdev Singh alongwith police party was going on private vehicles in connection with patrolling duty and when they reached ahead of petrol pump of Nangal Bagbana, one person was coming from opposite side who on seeing the police party became perplexed and tried to turn back and throw away one polythene envelope from his right pocket of pant. On suspicion police party apprehended him and enquired about his name and address who stated his name as Hira son of Sat Pal, Caste Ghumiar, resident of Mohalla Prem Nagar Qadian. On enquiry of the polythene envelope he disclosed the the same containing intoxicant capsules and injections. Efforts were made to join the witness from public but nobody was ready. Thereafter, the accused was asked to pick up the said polythene envelope and he picked up the same and produced before the Investigating Officer. From the said polythene envelope 5 intoxicant injections without label and 450 intoxicant capsules were recovered. Then two sample intoxicant capsules of 10/10 capsules and 2 intoxicant injections, which were put into a separate plastic containers and remaining were put in a separate plastic container and converted into parcels sealed with the seal bearing impressions “SS” and case property was taken into police possession vide separate memo. Seal after use was handed over to PHC Palwinder Singh by the I.O. Then ASI introduced himself to the accused and told him that he was suspected that he is in possession of some more intoxicant substances and apprised him about his legal right of his search either he wants to be searched from Gazetted Officer or from Magistrate. Accused stated that recovery has already effected from him and he showed his intention to get search from Investigating Officer. His consent memo was prepared. His personal search was conducted but nothing was recovered from him. As the recovery of 5 intoxicant 3 injections and 450 intoxicant capsules was effected from accused Hira Lal, thus he was booked in offence under section 21, 22-61-85 of N.D.P.S. Act. Ruqa was sent to the police station through PHG Gurmit Singh and on the basis of which formal FIR was registered by ASI Sulakhan Singh. Rough site plan was prepared. Accused was arrested. Personal search memo was prepared. On receipt of report of Chemical Examiner and after completion of all other necessary formalities of the investigation, challan against the accused Hira Lal was prepared for having committing an

offence under section 22 of Narcotic Drugs and Psychotropic Substances Act, 1985 and 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 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 ASI Sukhdev Singh, Investigating Officer, PW-2 Inspector Suba Singh, PW-3 Head Constable Kewal Singh, PW-4 PHC Palwinder Singh and PW-5 Head Constable Sarwan 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 his innocence and false implication in the present case.

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 450 intoxicant capsules and 5 intoxicant injections have been recovered from the accused-appellant, which falls under non-commercial quantity. He also contended that the appellant is suffering from criminal proceedings since 2012. He further contended that the appellant is young man and only

contended that appellant has already undergone 7 months 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 14.03.2016 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 young man, stated to be only bread earner of the family and is suffering from long protracted criminal proceedings since 2012 i.e. for the last about 5 years and further in view of the fact that appellant has already undergone actual sentence of 7 months till 20.10.2016 and that the recovery from the accused-appellant falls under non-commercial quantity i.e. 450 intoxicant capsules and 5 intoxicant injections, 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 not paid, otherwise, the trial Court is directed to take

necessary action as per law.

Accordingly, present criminal appeal stands partly allowed.

Since, appellant Hira Lal is on bail, his bail/surety bonds stand discharged.

March 14, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No