

In the High Court of Punjab and Haryana at Chandigarh

.....

Criminal Appeal No.S-1888-SB of 2016

.....

Date of decision:9.3.2017

Jaspal Singh alias Pala

...Appellant

v.

State of Punjab

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

.....

Present: Ms. G.K. Mann, Advocate for the appellant.

Mr. K.S. Aulakh, Assistant Advocate General, Punjab for the
respondent-State.

.....

Inderjit Singh, J.

This criminal appeal has been filed by Jaspal Singh alias Pala -appellant challenging the impugned judgment of conviction and order of sentence dated 8.4.2016 passed by learned Additional Sessions Judge, Amritsar, whereby the accused/appellant has been held guilty and convicted for the offence under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'the NDPS Act'). He has been sentenced to undergo rigorous imprisonment for six months and to pay a fine of ₹10,000/- and in default of payment of fine to further undergo rigorous imprisonment for one month for the offence under Section 22 of the Act.

The brief facts of the prosecution case as mentioned in the

judgment dated 8.4.2016 of the learned Additional Sessions Judge, Amritsar are as under:-

“In nutshell, facts as put forth by the prosecution in its case against the accused are that on 31.5.2014 I.O. SI Bikramjit Singh alongwith other police personnel were present at turning point Village Sarangara on private car Bearing No.PB02 BT 8507 in connection with patrolling and crime checking during which a person was seen coming from the side of Village Sarangara on foot and on seeing the police party sat at the left side of the road on the pretext of urinating and took out the polythene from the left pocket of his pant and tried to throw away a polythene bag in the fields but was apprehended by I.O. with the help of other police personnel. On being asked his name and identity he disclosed his name and identity as Jaspal Singh @ Palla. On checking the black coloured polythene bag it was found containing intoxicant powder out of which a sample weighing 10 gms. was separated and was put into a plastic container and remaining bulk portion was weighed which came out to be 100 gms. and was also put into a different plastic container alongwith polythene. Both the container were converted into parcels and were sealed by I.O. with his seal impression BS. Sample seals were prepared separately. Relevant portion of Form M29 was completed. Seal was handed over to HC Lakhwinder Singh after use. Both the

parcels, sample seals and Form M29 were taken into possession vide memo Ex.P1 in the presence of HC Lakhwinder Singh and Ct. Karandeep Singh, Ruqa Ex.P2 was sent to police station on the basis of which FIR Ex.P3 was recorded by SI Didar Singh. I.O. prepared rough site plan Ex.P4 at the spot. Accused was arrested vide memo Ex.P5 and intimation regarding his arrest was given to his relatives in the presence of witness. During his personal search sum of Rs.1200/- was recovered from the possession of the accused. Personal search Memo Ex.P6 was prepared in the presence of aforesaid witness. Statement of witnesses were recorded. On arrival to police station, I.O. produced the case property before Insp. Sikander Singh the then SHO P.S. Lopoke alongwith accused. After verifying the intactness of the seals on the parcels, SHO sealed the parcels with his impression SS, prepared his sample seals separately and after completion of relevant portion of Form M29, SHO kept the all in his double lock. Handing over memo to this effect is Ex.P7 which was attested by SHO Sikandar Singh. The case property was produced before the Area Magistrate for authentication and then the sample was sent to the office of chemical examiner for analysis.”

After necessary investigation, the challan was presented in Court.

On presentation of challan, the trial Court finding *prima facie* case against the accused-appellant framed charge for the offence under

Sections 22 of the Act, to which the accused pleaded not guilty and claimed trial.

In support of its case, the prosecution examined PW-1 SI Bikramjit Singh-Investigating Officer, who deposed regarding the investigation conducted in this case. PW-2 HC Lakhwinder Singh also deposed as per prosecution version regarding the recovery of 110 grams intoxicant powder. PW-3 Inspector Sikander Singh was posted as SHO. PW-HC Harwant Singh deposited the sample in the office of Chemical Examiner.

At the close of the prosecution evidence, the accused was examined under Section 313 Cr.P.C. and was confronted with the evidence of the prosecution, but he denied the correctness of the evidence and pleaded himself as innocent.

In defence, the accused examined DW-1 Sukhchain Singh. The learned Additional Sessions Judge, Amritsar, after appreciating the evidence convicted and sentenced the accused as mentioned above.

At the time of arguments, learned counsel for the appellant argued that first of all a mandatory provision under Section 50 of the NDPS Act has not been complied with. No independent witness had been joined by the Police party and there is delay of more than 30 days in sending the sample which also creates doubt.

On the other hand, learned State counsel argued that the case of the prosecution has been duly proved by the PWs. There are no material contradictions or improbabilities in the version of the prosecution. There

are no material improvements in the version of the prosecution. The PWs have consistently deposed regarding the prosecution case. There are no material discrepancies in the statements of PWs. He also argued that there is nothing in the cross-examination of the PWs which may make the statements of the PWs unreliable. He also argued that there is no enmity of the Police officials with the accused/appellant and further the seals were found intact by the FSL. Therefore, the delay will not be of any consequence. He also argued that the provisions of Section 50 of the NDPS Act will not apply in the present case.

After going through the record, I find that the case of the prosecution is that on seeing the Police party, the accused sat down as he was urinating or he was passing urine. He took out the polythene from the left pocket of his pant and tried to throw away a polythene bag in the fields, but was apprehended by SI Bikramjit Singh. In the present case, it looks that the recovery had been effected from the hand of the accused, who brought out the polythene bag from the pocket and tried to throw away in the field and in the meantime he was apprehended. No offer had been given under Section 50 of the NDPS Act to get his personal search conducted. It is not the case of the prosecution that intoxicant powder had been recovered from some vehicle or some brief case or 'Jhola' or bag etc. The intoxicant powder as per prosecution version was in the pocket and the accused took out the same from the left pocket of his pant and tried to throw away. Therefore, in the facts and circumstances of the present case, it is clear that this recovery had been effected from the hands of the accused, which will

amount to recovery from the search of the person of the accused. The provisions of Section 50 of the NDPS Act are mandatory in nature which have not been complied with by the Investigating Officer and only on this ground the accused is entitled to acquittal. No offer of any type had been given to the accused qua his personal search.

Next, I find that in the case there is a long delay in sending the sample. Though delay in itself is not fatal to the prosecution case, but it should be explained. The delay in sending the sample for such a long period is to be taken note of. Furthermore, there was no independent corroboration in the present case. Therefore, from the above, I find that as the mandatory provisions under Section 50 of the NDPS Act had not been complied with, the prosecution has failed to prove the guilt of the accused/ appellant by leading cogent evidence beyond doubt.

Therefore, from the above discussion, this criminal appeal is allowed. The impugned judgment of conviction and order of sentence passed by the learned Additional Sessions Judge, Amritsar, is set aside and the appellant is acquitted of the charge as framed against him. The sentence of imprisonment of the appellant was suspended and he was released on bail. As he was on bail, therefore, his bail bonds and surety bonds shall stand discharged.

March 9, 2017.

(Inderjit Singh)
Judge

hsp

NOTE:	Whether speaking/reasoned:	Yes
	Whether reportable:	No