

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

Crl. Appeal No.S-1197-SB of 2017 (O&M)

Date of Decision: April 06, 2017

Beant Singh

...Appellant

VERSUS

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.R.S.Sekhon, 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 dated 28.02.2017 and order of sentence dated 01.03.2017 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 seven months and to pay fine of ₹2,000/- and in default of payment of fine, to undergo rigorous imprisonment for a period of one month 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. In brief, facts of the prosecution case are that on 17.11.2014, ASI Parveen Kumar of CIA Staff, Ferozepur,

along with ASI Pipal Singh and other police officials were patrolling on official vehicle and they were going from Polytechnic College towards RSD College, Ferozepur City. When the police party was short of about 100 yards from veterinary Hospital, a vehicle make TATA Pick up bearing registration No.PB-10-EG(T)/2580 came from opposite direction. On seeing the police party, its driver tried to turn back. On suspicion, the vehicle was stopped and its driver was apprehended. On asking, he disclosed his name as Beant Singh son of Gurdit Singh, resident of village Nazu Shah Mishri. After introducing himself to the accused, ASI Parveen Kumar told accused that he was suspected to be in possession of some intoxicant material and his search was to be conducted. He apprised the accused of his right to be searched in presence of a Gazetted Officer or a Magistrate; whereupon, the accused reposed confidence in him (ASI Parveen Kumar) vide consent memo (Ex.P17). Then he conducted search of accused and recovered 50 grams of Heroin wrapped in a glazed paper from left pocket of 'pent' worn by the accused. Out of the recovered Heroin, two samples each containing 2 grams were separated and thereafter the samples as well as residue Heroin were separately packed, sealed with the seal bearing impression 'PK' and were taken into possession, along with vehicle Tata Pick up bearing registration No.PB-10-EG(T)/2580, vide memo (Ex.P18). CFSL form No.29 (Ex.P5) was prepared. On personal search of accused, one mobile phone make Samsung and currency notes of Rs.220/- were recovered, which were taken into possession vide memo (Ex.P19). ASI Parveen Kumar sent ruqa (Ex.P2) to the police station, on the basis of which, formal FIR (Ex.P3) was registered against accused. Accused was arrested in this case and grounds of arrest were intimated to him vide memo (Ex.P20). Investigating Officer prepared rough site plan (Ex.PW6/A). On return to police station, ASI Parveen Kumar produced accused as well as the case property before ASI Parmatma Singh, Officiating SHO, who verified the investigation, interrogated accused and kept case property in his possession vide memo (Ex.P6). On the next day, he produced accused and the case property before the learned Illaqa Magistrate. Sample was sent to the Chemical Examiner for analysis and on receipt of the report Ex.P16 and after conclusion of investigation and other necessary formalities, challan in hand was submitted for commencement of trial against the accused.”

On presentation of challan against accused-appellant, copies of

challan and other documents were supplied to him under Section 207

under Sections 21 and 25 of the NDPS Act, to which he pleaded not guilty and claimed trial.

In support of its case, prosecution examined PW-1 Constable Randhir Singh, PW-2 ASI Parmatma Singh, PW-3 ASI Pipal Singh, PW-4 Nachhattar Singh, PW-5 Harbhajan Singh, Assistant Superintendent, Central Jail and PW-6 ASI Parveen Kumar, 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 his 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 50 grams smack has been recovered from the accused-appellant, which falls under non-commercial quantity. He also contended that the appellant is young boy, first offender and suffering from criminal proceedings since 2014. Learned counsel for the appellant next contended that appellant has already undergone 2 months and 4 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. 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 28.02.2017 passed by learned Judge, Special Court, Ferozepur , 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 stated to be young boy, first offender and suffering from long protracted criminal proceedings since 2014 i.e. for the last about 3 years and further in view of the fact that appellant has already undergone actual sentence of 2 months and 4 days and keeping in view the fact the recovery from the accused-appellant falls under non-commercial quantity i.e. 50 grams 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.

Accordingly, present criminal appeal stands partly allowed.

Appellant Beant Singh, who is in custody, be set at liberty forthwith, if his custody is not required in connection with any other case, subject to payment of fine, if already not paid.

April 06, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No