

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

**Crl. Appeal No.S-227-SB of 2016 (O&M)
Date of Decision: February 01, 2017**

Sahil Kumar alias Veeru

...Appellant

VERSUS

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Rishu Mahajan, Advocate
for the appellant.

Mr.K.S.Aulakh, Asstt. Advocate General, Haryana
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 13.08.2015 passed by learned Judge, Special Court, Amritsar, whereby the appellant was held guilty and convicted and sentenced to undergo rigorous imprisonment for a period of three 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 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, Amritsar, are as under:-

“2. Brief facts of the prosecution case are that on 8.10.2011, SI Shiv Nath alongwith other police officials was 2 going on motor cycles from Police Station to Hall Gate, Ram Bagh etc

and when the police party reached near turning Vegetable market, one person was seen coming on foot from the side of Vegetable market and on noticing the police party he took out one polythene envelope from the pocket of his wearing pant and thrown under his feet. On suspicion, he was apprehended and on enquiry he disclosed his name as Sahil Kumar alias Veeru son of Devi Sharan, resident of House no.121, Gali no.10, sunder Nagar Amritsar. Before picking up the polythene envelope, efforts were made to join the public witness but no one was ready. The polythene envelope was picked up and was checked and it was found to be containing 70 capsules Pyeevon Spas and four packets containing 100 tablets each of Microlit. 10 capsules were separated as sample and put into plastic container and remaining 60 capsules were also put into different plastic container. 100 tablets of Microlit were also separated as sample and put into plastic container and remaining three packets of Microlit tablets were put into different plastic containers. All of the sample as well as bulk were made into parcels and sealed by SI with his seal SN and taken into police possession. Sample seal was prepared separately and case property was taken into police possession. Seal after use was handed over to HC Satpal Singh. Case has been registered. Accused was arrested. On completion of the investigation, challan against the 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 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 SI (Retd.) Shiv Nath, PW-2 SHO (Retd.) Prithvi Raj, PW-3 Head Constable Satpal Singh, PW-4 Head Constable Satnam Singh and PW-5 ASI Vijay Pal 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 and his false implication.

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 70 capsules Pyeevon Spas and four packets containing 100 tablets each of Microlit have been recovered from the accused-appellant, which falls under non-commercial quantity. The appellant is suffering from criminal proceedings since 2011. He further contended that the appellant is poor person and only bread earner of the family. He further contended that appellant has already undergone 1 year 3 months and 5 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 13.08.2015 passed by learned Judge, Special Court, Amritsar, 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 poor person, only bread earner of the family and is suffering from long protracted criminal proceedings since 2011 i.e. for the last about six years and further in view of the fact that appellant has already undergone actual sentence of 1 year 3 months and 5 days and keeping in view the fact the recovery from the accused-appellant falls under non-commercial quantity i.e. 70 capsules Pyeevon Spas and four packets containing 100 tablets each of Microlit, 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. As argued, fine has already been paid.

Accordingly, present criminal appeal stands partly allowed.

Since, appellant Sahil Kumar alias Veeru is on bail, his bail/surety bonds stand discharged.

February 01, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No