

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

Crl. Appeal No.S-1736-SB of 2017 (O&M)

Date of Decision: July 05, 2017

Gaurav Kapoor

...Appellant

VERSUS

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Mohit Garg, Advocate
for the appellant.

Mr.A.S.Dhaliwal, Deputy 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 21.04.2017 passed by learned Judge, Special Court, SAS Nagar, Mohali, whereby the appellant was held guilty and convicted and sentenced to undergo rigorous imprisonment for a period of six months and to pay fine of ₹2,000/- and in default of payment of fine, to undergo rigorous imprisonment for a period of fifteen days under Section 18 of the NDPS Act.

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

“2. The prosecution story, as emerges from the report submitted u/s 173 Cr.P.C. and the documents appended therewith, in brief, is that on 23.09.2014, police party headed by SI Kuldeep Chand was present in connection with checking of suspected elements near Excise Office on National Highway, Zirarkpur-Chandigarh Road. In the meantime, at about 07.00 pm, one person was seen coming from side Zirakpur on Motor Cycle bearing registration no. CH-01AU-3906, who on seeing the police party, stopped his vehicle and tried to reverse. He was apprehended on suspicion and on being asked, he disclosed his name as Gaurav Kapoor (accused). Investigating Officer disclosed his identity to the accused and said that he suspects some contraband in his possession and he wants to conduct his search as well as of motor cycle, if he desires, it could be searched in the presence of any Gazetted officer or Magistrate, they can be called at the spot. But accused reposed his confidence in investigating officer. Investigating Officer prepared his consent statement. Then on checking, opium wrapped in a glazed paper and kept in right pocket of pant wore by accused was found. Two samples weighing 10 gm. each were separated and converted into a parcels. The remaining contraband on weighing came to be 80 gms. The sample parcels and bulk parcel was sealed by the investigating officer with his seal. Sample seal chit was separately prepared. The case property was taken into police possession. Accused did not produce any license or permit for retaining the contraband in his possession. Investigating Officer sent ruqa for registration of this case. Site plan was prepared. Accused was arrested and his arrest memo and memo regarding intimation of arrest of accused was prepared. Investigating Officer recorded the statements of witnesses. On return to police station, investigating officer produced the case property along with witnesses and accused before Incharge-SHO concerned, who after verifying the facts and circumstances of the case sealed the case property with his seal. After completion of 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 18 of the NDPS Act, to which he pleaded not guilty and claimed trial.

In support of its case, prosecution examined PW-1 Head

Constable Hardeep Singh, PW-2 ASI Kuldeep Singh, PW-3 SI Kuldeep Chand, PW-4 Manoj Kumar, PW-5 Constable Parminder Singh, PW-6 Ramesh Kumar and PW-7 ASI Hans Raj.

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 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 100 grams of opium has been recovered from the accused-appellant, which falls under non-commercial quantity. He also contended that the appellant is only bread earner of the family and suffering from criminal proceedings since 2014. Learned counsel for the appellant next contended that appellant has already undergone 2 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.

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 21.04.2017 passed by learned Judge, Special Court, SAS Nagar, Mohali, 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 only bread earner of the family 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 5 days and keeping in view the fact the recovery from the accused-appellant falls under non-commercial quantity i.e. 100 grams of opium, 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, the present criminal appeal stands partly allowed.

Since, appellant Gaurav Kapoor, is on bail, his bail/surety bonds stand discharged.

July 05, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No