

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-S-3631-SB of 2016 (O&M)

Date of decision: 26.05.2017

Rohit Kumar

...Appellant

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. Gaurav Sharma, Advocate for the appellant.

Mr. Mehardeep Singh, Addl. A.G., Punjab.

Jitendra Chauhan, J.

The present appeal is directed against the judgment of conviction and order of sentence dated 21.09.2016, passed by Judge Special Court, Sangrur, vide which the accused/appellant was convicted for the offence punishable under Section 20 (b) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act') and sentenced him to undergo rigorous imprisonment for a period of three years, and to pay a fine of ₹15,000/- or in default of payment thereof, to further undergo RI for a period of three months.

The prosecution case against the appellant is that on 08.2.2013 at about 12.10 p.m., in the area of City Dhuri, the accused/appellant was apprehended for having been found in possession of 500 grams of charas, without any permit or licence.

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

punishable under Section 20 of the Act to which he pleaded not guilty and claimed trial.

In support of its case, the prosecution examined the following witnesses:-

PW-1, HC Charanjit Singh; PW-2 ASI Nirmal Singh; PW-3 HC Makhan Singh; PW-4 S.C. Dhanwant Singh and PW-5 Inspector Parminder Singh.

The statement of the accused under Section 313 Cr.P.C., was recorded. He pleaded innocence and alleged false implication. However, he did not lead any evidence in his defence.

After hearing the counsel for the State and counsel for the accused, and after going through the evidence on record, the trial Court convicted and sentenced the accused/appellant, as stated hereinbefore.

Feeling aggrieved, against the judgment of conviction passed by the trial Court, the instant appeal was filed by the accused/appellant which was admitted on 07.10.2016.

Learned counsel for the appellant has contended that the accused has been falsely implicated in the present case. He refers to cross examination of PW-4, SC Dhanwant Singh, who has received the sample parcels on 18.02.2013 to deposit it with the office of Chemical Examiner, to contend that the parcel was kept entire night on 18.12.2013 by PW-4, so the possibility of tampering with contraband cannot be ruled out.

The alleged recovery was planted upon the accused. The case of the prosecution solely rests upon the testimonies of the official witnesses, who are, interested in the conviction of the appellant. As per the prosecution story, the recovery was effected in an open place

accessible to public, however, no independent witness was joined in the investigation, so there is a non compliance of Section 100 of the Code of Criminal Procedure. He further states that CFSL form was not filled on the spot and there is delay in sending the sample to the chemical examiner. There are also some material contradictions in the testimony of the prosecution witnesses.

It is further contended that ordinarily in cases, non examination of Investigating Officer by the prosecution is not fatal but in the present case, the investigating officer was the complainant as well and was to prove the entire prosecution version. The search of the accused/appellant was not conducted before a gazetted officer, rather, it was done before the Investigating Officer. No special report was sent from the place of recovery to the higher official by the Investigating Officer.

Lastly, the learned counsel for the appellant submits that the appellant is a poor man. He has never misused the concession of bail during the trial. He is a first offender and he has already undergone 04 months and 24 days, out of total sentence of 03 years. Thus, the learned counsel prays for a lenient view on the quantum of sentence imposed by the trial Court.

On the other hand, the learned State counsel submits that the appellant was arrested from the spot. The appellant is fully liable for the commission of crime. There was no previous enmity of any of the official witnesses with the accused before registration of the present FIR. The appellant/accused was found in possession of the contraband and has rightly been convicted by the trial Court.

I have heard the arguments of the learned counsel for the parties and has carefully gone through the record of the case.

The prosecution case is fully proved by the statement of Investigating Officer, PW-2 ASI Nirmal Singh who has stated that on 08.02.2013, he along with other police officials were not patrolling duty. When they proceeded from Panchwati Mandir, Dhuri towards Sugar Mill on the road, from the opposite side a person seen coming from the Sugar Mill side while carrying a heavy plastic bag in his right hand. On seeing the police party, he tried to turn towards his back side. Due to suspicion he was apprehended by him with the help of other police officials. On search of plastic bag (lifafa), out of sulphur (charas) was recovered, out of which, two samples of 20 grams each of sulphur (charas) were taken out as sample and converted into two separate parcels and the remaining sulphur (charas) on weight, it came to 460 grams including the plastic bag. Thereafter, recovery memos were prepared and accused was arrested. The testimony of PW-2 ASI Nirmal Singh has been fully corroborated by PW-5 Inspector Parminder Singh and other prosecution witnesses. The link evidence is complete. The accused has neither alleged nor proved any animosity against the police officials. There is no flaw in the judgment of conviction. There is no merit in this appeal which is dismissed on merits.

However, keeping in view the mitigating circumstances that the appellant is a poor person and is stated to be a first time offender, this Court feels that the petitioner deserves leniency in the matter of sentence. As per record, the appellant was on bail during the trial and never misused the concession of bail. As per custody certificate dated 13.01.2017, the appellant has already undergone 04 months and 24 days

out of the total sentence of 03 years. The appellant has suffered agony of a protracted trial as the FIR in the instant case was registered on 08.02.2013. It is one of the mitigating circumstance to take a lenient view in the matter. In view of the above, the prayer made on behalf of the petitioner is accepted. The sentence awarded to the appellant is reduced from 03 years to 1½ year. However, the same shall be subject to payment of fine of Rs.50,000/-, within six months from today. It is made clear that if the amount of fine is not paid, within the stipulated period, the present appeal shall be deemed to be dismissed without any notice.

With the above reduction in the sentence, this appeal fails on merit and is dismissed.

26.05.2017
atulsethi

(JITENDRA CHAUHAN)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No