

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

Crl. Appeal No.S-4211-SB of 2016 (O&M)
Date of Decision: January 19, 2017

Mandeep Singh alias Mani

...Appellant

VERSUS

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Sandeep Kumar, Advocate
for the appellant.

Mr.Deep Singh, 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 and order of sentence dated 14.10.2016 passed by learned Judge, Special Court, Jalandhar, whereby the appellant was held guilty and convicted and sentenced to undergo rigorous imprisonment for a period of two 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, Jalandhar, are as under:-

“2. Brief facts of the case are that on 9.6.2014 ASI Baldev Singh along with other police officials was present at Jandiala Nakodar Road T- Point near Gurdwara Sahib Baba Panj Peer

for checking of bad elements. He further stated that they saw that one person was coming on foot from the opposite side and on seeing the police party, he tried to slip away, but he was apprehended with the help of other police officials. On inquiry he disclosed his name as Mandeep Singh @ Mani son of Balwinder Singh R/o Patti Dhunni Ki near Kaura Hospital Jandiala Manjki P.S. Sadar Jamsheer. Thereafter ASI Baldev Singh disclosed his identity and he stated to accused that he suspect some contraband with him and he wants to conduct his search and he apprised the accused about his legal right to opt his search from himself or from any Gazetted Officer or Magistrate. Thereafter, accused reposed confidence in ASI Baldev Singh. Thereafter, consent memo was prepared which was signed by accused. Thereafter IO tried to join the independent witness, but nobody was ready to join the police party. Thereafter, search was conducted as per rules. On search one plastic envelop was recovered from the right pocket of the pent of accused. On checking intoxicant powder was recovered from the plastic envelop. Thereafter two samples of 5 gram each were separated and remaining intoxicant powder was weighed and it became 50 gram. Thereafter both sample parcels and bulk parcel was sealed with the seal 'BS'. Thereafter form M-29 was also filled at the spot. Thereafter, both sample parcels and bulk parcel was taken into police possession vide separate memo. Thereafter seal after use was handed over to HC Satnam Singh. Accused Mandeep Singh @ Mani had committed an offence punishable under section 22 of NDPS Act while keeping in his possession 60 gram intoxicant powder without any permit or licence. Thereafter, ruqa was sent to the police station for registration of the case through C-Ranjit Singh. Thereafter, investigation was made. Statements of witnesses were recorded. Site plan was prepared. Accused was arrested. Thereafter in the evening ASI Baldev Singh produced the sample parcels, bulk parcel and form M-29 along with accused before SHO Dilbagh Singh. Thereafter SHO verified the facts and affixed his seal DS on sample parcels and bulk parcel. He had also affixed his seal DS on form M-29. Thereafter, SHO deposited the sample parcels, bulk parcel and form M-29 with MHC of police station and accused was sent to police lockup. He further stated that on the next day ASI Baldev Singh produced the accused, sample parcels, bulk parcel along with form M-29 sealed with the seal BS and DS before the court of Mrs. Geeta Rani, learned JMJC, Nakodar and court seen the case property. Thereafter IO deposited these articles with MHC of police station and accused was sent to judicial custody. He further stated that on 5.9.2014 one sample parcel was sent to chemical examiner for comparison through CHarpreet Sahota. Thereafter, report of chemical examiner was received and after completion of necessary investigation, challan under Section 22 of the Narcotic Drugs & Psychotropic Substances Act was prepared and 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 Head Constable Satnam Singh, PW-2 MHC Narinder Pal, PW-3 ASI Baldev Singh, Investigating Officer, PW-4 Constable Harpreet Sahota and PW-5 DSP Dilbagh 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 falsely implicated.

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 60 grams of intoxicant powder containing “Alprazolam” has been recovered from the accused-appellant, which falls under non-commercial quantity. The appellant is suffering from criminal proceedings since 2014. He further contended that the appellant is poor person and only bread earner of the family. He further contended that appellant has already undergone 9

months 15 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 appellants 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 14.10.2016 passed by learned Judge, Special Court, Jalandhar, 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 2014 i.e. for the last about three years and further in view of the fact that appellant has already undergone actual sentence of 9 months 15 days and keeping in view the fact the recovery from the accused-appellants falls under non-commercial quantity i.e. 60 grams of intoxicant powder containing "Alprazolam", 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 Mandeep Singh alias Mani, 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.

January 19, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No