

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

Crl. Appeal No.S-4664-SB of 2016 (O&M)

Date of Decision: April 06, 2017

Mukader alias Bhai

...Appellant

VERSUS

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Dilpreet Singh Gandhi, 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 and order of sentence dated 25.10.2016 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 two years and to pay fine of ₹20,000/- 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 version are that on 9.6.2014 ASI Sarwan Singh alongwith other police officials was present

near Sikandari Gate in connection of search of bad elements and he saw one clean shaven person coming from the side of DAV College but on seeing the police party he tried to turn away and he was about to throw a black 2 coloured polythene after taking it out from the pocket of his nicker but he was apprehended by the police party and on asking he disclosed his name as Mukadar above mentioned. Before checking the polythene a witness from public was tried to get joined but nobody became ready. On search of polythene 150 grams intoxicating powder was recovered out of which 10 grams was separated as sample and the entire case property was taken in possession by sealing the parcels with seal 'SS'. Form M-29 was completed and seal after use was handed over to HC Hira Singh. Accused could not produce any licence to keep the intoxicating powder in his possession. Ruqa was sent for registration of FIR. Site plan of the place of recovery was prepared. Statements of the witnesses were recorded. On coming back to the police station form M29, both the parcels alongwith accused were produced before SHO Inspector Sarabjit Singh who sealed the same with his seal bearing impression 'SS'. He also completed form M29 and the case property was produced before Ilaqa Magistrate on 9.6.2014 alongwith accused and sample of 10 grams was sent to the office of Chemical examiner on 23.7.2014. On receipt of Chemical Examiner report and on completion of remaining investigation, challan was presented against the accused to the Special Court under NDPS Act.”

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 read with Section 8 of the NDPS Act, to which he pleaded not guilty and claimed trial.

In support of its case, prosecution examined PW-1 ASI Sarwan Singh, PW-2 Head Constable Hira Singh, PW-3 Head Constable Balkar Singh and PW-4 Inspector Sarabjit 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 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 150 grams intoxicating powder containing Lorazepam has been recovered from the accused-appellant, which falls under non-commercial quantity. He also contended that the appellant is suffering from criminal proceedings since 2014. He further contended that the appellant is poor person, first offender and only bread earner of the family. Learned counsel for the appellant next contended that appellant has already undergone 7 months and 27 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 25.10.2016 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, first offender, only bread earner of the family and is 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 7 months and 27 days and keeping in view the fact the recovery from the accused-appellant falls under non-commercial quantity i.e. 150 grams intoxicating powder containing Lorazepam, 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 Mukader alias Bhai, 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