

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

Crl. Appeal No.S-570-SB of 2017 (O&M)
Date of Decision: March 29, 2017

Baljinder Singh alias Omi

...Appellant

VERSUS

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Narinder S. Lucky, Advocate
for the appellant.

Mr.V.P.S.Sidhu, 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 03.10.2016 passed by learned Judge, Special Court, Barnala, 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 ₹5,000/- and in default of payment of fine, to undergo rigorous imprisonment for a period of one month under Section 29 of the NDPS Act. However, co-accused Jugraj Singh and Amar Singh were convicted under Section 22(a) of the NDPS Act.

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

“2. Brief facts of the case are that an application was moved

by Superintendent, District Jail, Barnala, to SHO, Police Station, Kotwali, Barnala for taking legal action against the accused Jugraj Singh and Amar Singh. It is mentioned in this application that on 28.6.2014 it was 10.30 am that complainant/Superintendent, District Jail, Barnala was present in his office, then HC Jasvir Singh came here and he disclosed that he has secret information that the under-trial Jugraj Singh and convict Amar Singh are procuring intoxicant tablets and then supply and sell the same to other under-trials and convicts. Today Jugraj Singh with the connivance of Amar Singh stored intoxicant tablets in Baghicha No.5 in the District Jail, Barnala and if search is conducted, then intoxicant tablets can be recovered. Then complainant/Superintendent conducted the search of Baghicha by taking convict Amar Singh and under-trial Jugraj Singh with him and he recovered 100 strips of intoxicant tablets Marka Alprax. Same were in an envelope and concealed under the grass. So action be taken against these under-trial Jugraj Singh and convict Amar Singh. On this application, this case was registered. 100 strips were taken in police possession. Two strips were separated as samples. Parcels were prepared and parcels were sealed with the seal of GS. Third accused Baljinder Singh @ Omi was named in this case on the statement of co accused suffered by them during investigation.”

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 29 of the NDPS Act, to which he pleaded not guilty and claimed trial.

In support of its case, prosecution examined PW1 DSP Amrik Singh, PW-2 Head Constable Sarwan Singh, PW-3 ASI Gurtej Singh, Investigating Officer, PW-4 Constable Jagtar Singh, PW-5 SI Vipin Kumar and PW-6 Tejinder Singh, Assistant Superintendent, District Jail, Barnala.

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 only argued on one point that there is no evidence on record against the present appellant and he has been wrongly convicted and sentenced by the learned trial Court.

On the other hand, learned State counsel argued that case of the prosecution has been duly proved by the PWs. The accused-appellant has been rightly convicted and sentenced by learned trial Court. 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.

As per the record, present petitioner has not been apprehended with any incriminating article. 100 strips of intoxicant tablets have been recovered from other accused Amar Singh and Jugraj Singh. The present appellant has been nominated by the co-accused. I have gone through the statements of the PWs and find that there is not an iota of evidence against the present appellant to show his involvement. PW-1 DSP Amrik Singh deposed regarding the recovery of these 1000 tablets containing Alprazolam. He has not stated anything and even not named the appellant in his evidence. PW-2 Head Constable Sarwan Singh is formal witness, who tendered into evidence his affidavit. PW-3 ASI Gurtej Singh, Investigating Officer, mainly deposed against the present appellant that

during interrogation, accused Balwinder Singh alias Omi was nominated in

the present case. On 04.10.2014, accused Balwinder Singh alias Omi was arrested vide memo Ex.PH after obtaining production warrants from the Court. How, the appellant has been nominated and what is the incriminating evidence, is not mentioned by this witness in his evidence. PW-4 Constable Jagtar Singh is again formal witness. PW-5 SI Vipan Kumar mainly deposed regarding verification of the recovery as he was officiating SHO and accused, PWs and case property was produced before him for verification. PW-6 Tejinder Singh, Assistant Superintendent has also not deposed anything against the accused-appellant. He has simply brought the record showing that Balwinder Singh alias Omi was lodged in the jail in case FIR No.226 dated 20.08.2000 under Section 15 of the NDPS Act. No other evidence has been produced on the file.

From the perusal of the record, I find that there is not an iota of evidence against the present appellant. Therefore, he has been wrongly convicted by learned trial court.

Resultantly, finding merit in the present appeal, the same is allowed. The impugned judgment of conviction and order of sentence dated 03.10.2016 passed by learned Judge, Special Court, Barnala, is set aside qua appellant Balwinder Singh alias Omi.

Appellant Baljinder Singh alias Omi, who is in custody, be set at liberty forthwith in this case, if his custody is not required in connection with any other case.

March 29, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No