

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

Crl. Appeal No.S-848-SB of 2017 (O&M)
Date of Decision: March 20, 2017

Deepak Kumar

...Appellant

VERSUS

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Yashpal Malik, 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 04.01.2017 passed by learned Judge, Special Court, Patiala, whereby the appellant was held guilty and convicted and sentenced to undergo rigorous imprisonment for a period of one year 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 22 of the NDPS Act.

At the time of preliminary hearing, learned counsel for the appellant did not dispute the concurrent findings of the Court below regarding conviction and only contended on the point of reduction of sentence.

Notice of motion was issued only qua quantum of sentence.

Learned State counsel appeared and contested the petition.

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

“2. As per prosecution story, on 20.09.2013 a police patrolling party consisting of ASI Satnam Singh PW4, ASI Roop Singh PW5 and other police officials was present at Bhakhra bridge Nai Wala. The accused was spotted coming from village Khanouri side on the pavement of Bhakhra canal on foot and on seeing the police party, he got perplexed and turned towards his back side. On suspicion, he was apprehended and his name and particulars were ascertained.

3. ASI Satnam Singh PW4 introduced himself to the accused and apprised him about requirement of his search due to suspicion and the accused was also apprised of his legal right to opt for his search before gazetted officer or Magistrate. The accused reposed faith in ASI Satnam Singh PW4 for his search. In this respect, consent memo Ex.PD was prepared. ASI Satnam Singh PW4 conducted search of accused and one polythene envelope containing intoxicant tablets was recovered from right pocket of jeans worn by him. Two samples weighing 10 tablets each were separated and the remaining bulk of recovered tablets was counted to be 280. Both samples and remaining bulk of recovered intoxicant tablets were put into separate plastic containers and were converted into parcels. Seals were affixed upon these parcels. Sample seal chits including chit Ex.P1 were prepared separately. Seal after use was handed over to ASI Roop Singh PW5. All the sealed parcels were taken into police possession vide memo Ex.PE. Ruqa Ex.PF was sent to police station and on its basis, a formal FIR Ex.PF/1 was recorded. The personal search of accused was conducted by memo Ex.PG. The accused was formally arrested vide memo Ex.PH and intimation of his arrest was given to his brother-in-law Vasudev on phone. Site plan of spot Ex.PJ was also prepared.

4. On return to police station, ASI Satnam Singh PW4 produced the accused along with case property, sample seal chit and other documents before SI Gurcharan Singh (now Inspector) PW1, the then officiating SHO and apprised him about the recovery. After verifying the case property, the officer-in-charge affixed his seals over the case property parcels and deposited the same with MHC Rajvir PW2. ASI Satnam Singh PW4 sent report under Section 57 of NDPS Act Ex.PK to higher authorities.”

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

In support of its case, prosecution examined PW-1 SI Gurcharan Singh, PW-2 Head Constable Rajvir, PW-3 Head Constable Karnail Singh, PW-4 ASI Satnam Singh and PW-5 ASI Roop 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 prayed for reduction of sentence only. Learned counsel for the appellant contended that 300 intoxicant tablets containing 35.4 grams of Alprazolam have been recovered from the accused-appellant, which falls under non-commercial quantity. He also contended that the appellant is suffering from criminal proceedings since 2013. He further contended that the appellant is poor person. Learned counsel for the appellant next contended that appellant has already undergone 6 months and 7 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 04.01.2017 passed by learned Judge, Special Court, Patiala, 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 and is suffering from long protracted criminal proceedings since 2013 i.e. for the last about 4 years and further in view of the fact that appellant has already undergone actual sentence of 6 months and 7 days and keeping in view the fact the recovery from the accused-appellant falls under non-commercial quantity i.e. 300 intoxicant tablets containing 35.4 grams of 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 Deepak Kumar, 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.

March 20, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No