

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

CRA No.S-3013-SB of 2016 (O & M)
Date of decision :27.06.2018

Sanjeev Kumar

...Appellant

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Angel Sharma, Advocate (Legal Aid Counsel)
for the appellant.

Mr. Rajesh Bhardwaj, Addl. A.G., Punjab.

ANIL KSHETARPAL, J.

Appellant has filed this appeal through legal aid against judgment of conviction in Session Case No.51 under Section 22 of the Narcotics Drugs and Psychotropic Substance Act, 1985 and order of sentence imposing a rigorous imprisonment for a period of ten years and to pay a fine of Rs.1 lac and in default of payment of fine to further undergo two years rigorous imprisonment.

Facts as noticed by the learned trial Judge are extracted as under:-

“The backdrops of the story of prosecution are that on 04.08.2014, ASI Parshotam Singh of P.S. Kot Dharmu alongwith other police officials was going in Govt. vehicle from village Khokhar Kalan towards Mansa in connection with patrolling duty. When the above said

party had covered one kilometer from village Khokhar Kalan towards Mansa, then one person was seen while sitting on the motorcycle bearing No.PB-65-E-2153. At that time, said person was looking into polythene bag. When the vehicle of police party had reached near said person, then he suddenly stood up. Then, ASI Parshotam Singh had apprehended him on the basis of suspicion and asked his name and address who disclosed the same as Sanjeev Kumar son of Harmesh Kumar resident of Ward No.1 near Railway Station Jakhal. Then, ASI Parshotam Singh had disclosed his identity and place of posting to said Sanjeev Kumar and asked him that he has suspicion of some contraband in his possession and he wants to take his search. ASI Parshotam Singh also apprised said Sanjeev Kumar that he has legal right to get his personal search conducted in the presence of any Magistrate or some Gazetted Officer or from him, but said Sanjeev Kumar reposed him confidence upon ASI Parshotam Singh. Then, consent memo of said Sanjeev Kumar was prepared. On search of said polythene bag, strips of Alprazolam 0.5 tablets were recovered. On counting, 300 strips, each strip containing 10 tablets, total 3000 Alprazolam 0.5 tablets were recovered, but he could not produce any permit or licence for keeping that intoxicant Alprazolam 0.5 tablets. Then, one strip of Alprazolam 0.5 tablets containing 10 tablets was

separated out as sample and its parcel was prepared. Parcel of remaining 299 strips of Alprazolam 0.5 tablets was prepared. Both the said parcels were sealed by ASI Parshotam Singh with his seal impression "PS". Sample of seal was prepared separately and he filled up form No.29. Seal was entrusted to HC Raghbir Singh after its use. Then, above said parcels of case property and sample thereof, sample of seal, form no.29, motorcycle bearing No. PB-65-E-2153 were taken into police possession vide separate recovery memo. Then, ruqa was drafted for registration of FIR under the NDPS Act and the same was sent to police station Kot Dharmu, where the present case was registered. Accused Sanjeev Kumar was arrested and the investigation was initiated, during which, rough site plan of the place of recovery was prepared with correct marginal notes and statements of witnesses were recorded. Inventory memo was prepared. Accused Sanjeev Kumar alongwith case property was produced before SI Chanan Singh SHO P.S. Kot Dharmu and then, accused Sanjeev Kumar alongwith case property was produced before Id. Judicial Magistrate Ist Class Mansa, for initiating proceedings u/s 52-A of NDPS Act and then, accused Sanjeev Kumar was put up in lock-up. After completion of necessary formalities of investigation, challan was prepared by SHO of P.S. Kot Dharmu and was presented

in the court.”

Prosecution examined PW1 Constable Sandeep Singh; PW2 Sub Inspector Chanan Singh SHO; PW3 ASI Parshotam Singh Investigating Officer; PW4 Head Constable Raghbir Singh recovery witness and PW5 Pawan Kumar, Clerk in the office of DTO Sangrur.

Learned counsel for the appellant while pointing out the fact in the case set up by the prosecution has drawn attention of the Court to the fact that as per the assertion 3000 tablets of Alprazolam 0.5 were recovered whereas as per the report of the Chemical Examiner strip labelled as alto-0.5 were sent for examination. He has pointed out that in this manner there is reasonable doubt about the correctness of the case set up by the prosecution. He has further pointed out that ASI Yadwinder Singh has not been examined. He has further pointed out that in the information which was sent to the police station FIR number has been mentioned.

On the other hand, learned State counsel submits that on careful examination of the report of Forensic Science Laboratory, it is apparent that ingredient present has been found to be Alprazolam. Hence the argument of learned counsel for the appellant has no substance. He has further drawn attention of the Court to the information sent by the police for registration of the FIR wherein FIR number has been mentioned at the space which was left blank. He has further submitted that prosecution in the present case has already examined all the material witnesses including investigating officer Parshotam Singh as PW3. Hence he submitted that non examination of Yadwinder Singh could not be viewed with suspicion. He has further drawn the attention of the Court to the statement of Parshotam Singh, who has identified the signatures of Yadwinder Singh on FIR (Ex.PL)

assistance of learned counsel for the parties gone through the record of the case.

As regards the first argument of learned counsel for the appellant, it is significant to note that report of the Forensic Science Laboratory (Ex.PX) clearly depicts that ingredient found present in the tablets recovered was Alprazolam. Report of the Forensic Science Laboratory only refers to the tablets received in strip labelled as alto-0.5. The Forensic Science Laboratory has only mentioned the labelled name of the strip. Ingredient which has been found are Alprazolam and in each tablet 0.42 milligram Alprazolam has been found in each tablet. The seals of the parcel were found intact and matched with the specimen seal impression. Still further on 04.08.2014 appellant was apprehended. On 05.08.2014, he was produced before the learned Judicial Magistrate Ist Class and the learned Judicial Magistrate also took out from the main parcel one representative sample strip which was sealed. The representative sample drawn by the learned Judicial Magistrate and one sample parcel drawn by the police was ordered to be deposited in the Judicial Malkhana.

The representative sample which was drawn by the learned Judicial Magistrate was available at the time of trial. However, no effort was made by the defence to draw the attention of the Court with respect to the difference in the tablet as is being argued by the learned counsel for the appellant.

Further argument of the learned counsel for the appellant that FIR number has been mentioned in the information sent to the police station for registration of the FIR. It is apparent that space was left and FIR number was filled in later on.

With respect to the argument that Assistant Sub Inspector Yadwinder Singh having not been examined, it is sufficient to note that learned counsel for the appellant could not bring to the notice of this Court any prejudice caused because of non examination of Yadwinder Singh. Prosecution has produced sufficient evidence so as to bring home the guilt of the accused. It is not necessary that all the official witnesses must be examined to unnecessary burden the file. It is for the Court to assess as to whether non examination of the particular witness creates a reasonable doubt on the case set up by the prosecution.

In the last, learned counsel for the appellant submitted that the sample strip was alleged to have been put in a plastic box, however, the same has not been mentioned by the Forensic Science Laboratory. It is significant to note that in the report of the Forensic Science Laboratory, Mohali, it is mentioned that one parcel sealed with two seals has been received with seals intact and tallied with the specimen seal impression. Whether the parcel was in a plastic box or in some other container was not necessarily required to be mentioned. Such omission cannot be treated as fatal to the case of the prosecution.

In view of the discussion made above, this Court does not find any good ground to interfere with the judgment of conviction and order of sentence.

Hence appeal is dismissed.

27.06.2018
sheetal

(ANIL KSHETARPAL)
JUDGE

Whether Speaking/reasoned : Yes/No
Whether Reportable : Yes/No