

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

CRA-S No.3989-SB of 2016 (O&M)

Decided on: 10.02.2018

Mohd. Ramzan @ Hero

....Appellant

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. Rohan Mittal, Advocate (Legal Aid Counsel)
and Mr. Gaurav Sethi, Advocate for the appellant.

Mr. Ajay Pal Singh Gill, DAG, Punjab.

ARVIND SINGH SANGWAN, J.

Challenge in this appeal is to the judgment of conviction and order of sentence dated 08.08.2016 passed by the Special Judge, Sangrur vide which the appellant was convicted under Section 22(a) of the Narcotic Drugs and Psychotropic Substances Act (in short 'NDPS Act') for keeping in possession 1.22 gms of Alprazolam salt contained in 10 tables as well as under Section 22(b) of the NDPS Act for keeping 100 mls of Codeine salt contained in one vial of Rexcof syrup. The appellant was sentenced to undergo rigorous imprisonment for a period of 01 year and to pay a fine of Rs.5,000/- under Section 22(a) of the NDPS Act and in default of payment of fine to further undergo rigorous imprisonment for a period of 03 months and further sentenced to undergo rigorous imprisonment for a period of 04 years and to pay a fine of Rs.10,000/- and in default thereof to further undergo rigorous imprisonment for a period of 06 months under Section 22(b) of the NDPS Act. It was further ordered that both the sentences will run concurrently.

Brief facts of the case are that on 16.08.2014, SI Amarjit Kaur along with other police officials were present in the area of her Police Station on private vehicles and when the police party was 20 yards behind Raikot bus-stand and were proceeding from Satta Chowk to Raikot Railway crossing, they saw the accused person coming on a motorcycle from Berian Wala Mohalla side carrying a plastic bag. On seeing, the police party, he got perplexed and tried to turn back and thereafter, he was stopped and apprehended by the police. He disclosed his name as Mohd. Ramzan @ Hero. The Investigating Officer disclosed her identity and conveyed him the desire of being searched as there were apprehension that he is carrying some intoxicating material. He was also informed about his legal right to be searched before a Magistrate or the Gazetted Officer. On this, the accused reposed faith in her and his consent memo was prepared which was thumb-marked by him. Thereafter, on search of the bag, 15 vials of Rexcof syrup of 100 ml each and 100 strips of Alprazolam each containing tables and 1137 strips of Proxyvon capsules each containing 8 capsules and a strip of 4 capsules of Proxyvon, total 9100 capsules, were recovered. Thereafter, two samples from each contraband were separated and sealed as sample parcel and the remaining bulk was also sealed by the Investigating Officer with her seal bearing impression 'AK'. A sample seal chit was also prepared and the seal was entrusted to ASI Jagjit Singh. Since, the accused could not produce any licence or permit for keeping the said articles in his possession, a ruqa/written complaint was sent to the police station through HC Anayat Khan for registration of the case on the basis of which a formal FIR was registered by ASI Jagtar Singh and

the recovered articles along with motorcycle bearing registration No.PB-13P-1433 make Victor was taken into possession vide seizure memo and the accused was arrested and intimation regarding his arrest was sent. Thereafter, his arrest memo was prepared which was attested by the official witnesses and his personal search was also done vide separate recovery memo. The site plan was prepared and a report under Section 57 of the NDPS Act was also prepared at the spot.

On return to the police station, the case property was produced before SI Mandhir Singh who verified the facts and on his satisfaction, he put his seal bearing impression 'MS' thereon and on his direction, the case property was deposited with MHC Gurmeet Singh. Thereafter, on the next day, the case property and the accused were produced before the Illaqa Magistrate and the representative samples of each contraband were drawn after opening the bulk parcels and the same was resealed in presence of the Illaqa Magistrate and the representative samples with seal bearing impressions 'RK/AK' was done, the photographs were also taken and an inventory was also prepared. The Magistrate passed an order to deposit the case property in the Judicial Malkhana, however, the same could not be deposited on the same day as the order of the Magistrate was not made available and it was deposited on 20.08.2014. Total 06 parcels were deposited in the Judicial Malkhana and the remaining case property was deposited in the police malkhana as there was shortage of space in the judicial malkhana.

On 25.09.2014, 03 samples i.e. one sample parcel of each contraband, were taken by Constable Gurjit Singh from NHC Gurmeet

Singh for depositing the same in the office of FSL but the same could not be deposited in the office of FSL as some objection was raised. Thereafter, Constable Gurjit Singh re-deposited the sample parcels with MHC. Again on 28.09.2014, after removing the objection raised by the FSL, the sample parcels were deposited with the office of FSL by Constable Gurjit Singh.

On receiving the report of Chemical Examiner, it was found that the contents of sample parcel of Spasmo Proxyvon capsules were containing Alprazolam and the contents of sample parcel of Rexcof syrup were containing Codeine Phosphate. Thereafter, on completion of the investigation, the report under Section 173 Cr.P.C. was submitted before the Special Court.

The trial Court, thereafter, framed charges against the accused under Section 22 of the NDPS Act to which the accused not pleaded guilty and claimed trial.

The prosecution in its evidence examined ASI Amarjit Kaur as PW1, ASI Jagjit Singh as PW2, C-II Gurjit Singh as PW3, HC Gurmit Singh as PW4, Loku Ram, Stamp Vendor as PW5, SI Mandhir Singh as PW6, Harpreet Singh as PW7, Gurdeep Singh, Assistant Malkhana Nazir as PW8, Shiv Kumar as PW9 and thereafter the Additional Public Prosecutor closed the prosecution evidence.

The statement of the accused under Section 313 Cr.P.C. was recorded and all the incriminating evidence was put to him to which he denied and pleaded false implication, however, no defence evidence was led.

The trial Court, thereafter, vide impugned judgment of

conviction dated 08.08.2016 held that the prosecution has failed to prove the kind of salt which was the content of the bulk parcel as it was not sent for the chemical examination and held that as per report of the chemical examiner, the accused can be held guilty for the intoxicant substance which was part of the sample parcel only and further held that the accused can be held guilty for keeping in his conscious possession, one vial of Rexcof syrup of 100 ml. syrup containing codeine phosphate sale, which falls in non-commercial quantity and one strip of 10 tables weighing 1.22 gms of Alpraquit containing Alprazolam salt and the same also falls in small quantity and thereafter, sentenced the appellant to undergo 04 years rigorous imprisonment as noticed above.

It may be noticed here that no appeal has been filed by the prosecution challenging the judgment of trial Court regarding the finding that the accused cannot be held guilty for the bulk parcel which was not sent for the chemical examination as it may be a debatable issue whether the finding recorded by the trial Court in this regard is correct or not. However, counsel for the appellant has not addressed any arguments with regard to conviction of the accused/appellant recorded by the trial Court and has only prayed for reduction of sentence of the appellant on the following grounds:-

a) The appellant is not facing trial in any other case under the NDPS Act and in one another case where the recovery was of small quantity he has undergone the entire sentence, though he overstayed in judicial custody for 08 months and 19 days as per custody certificate.

b) In the present case, out of 04 years rigorous imprisonment awarded by the trial Court, the appellant has undergone actual sentence of 02 years, 07 months and 15 days as calculated from the custody certificate dated 05.09.2017.

c) The appellant is a poor person and his own family to support. He is the only bread-earner of the family. He was not in a position to file the appeal and the same has been filed through legal aid counsel provided by the High Court Legal Services Authority.

*d) Counsel for the appellant has also relied upon the judgment passed by this Court “**Tarsem Singh vs State of Punjab**”, 2017(2) RCR (Criminal) 109, wherein it has been held that in case of recovery of non-commercial quantity, if the appellant/accused has undergone substantive sentence, his sentence can be reduced to the period already undergone by him.*

e) The appellant has submitted that in the other case i.e. FIR No.21 dated 25.03.2015, the appellant has undergone actual sentence of 01 year, 08 months and 19 days and he was convicted for a period of 01 year only, therefore, the appellant has overstayed in judicial custody for a period of 08 months and 19 days and thus, this may also be taken as a circumstance for reduction of the sentence of the appellant in the present case as well, even if the said sentence is not to be counted towards the

sentence undergone by the appellant in the present case.

Counsel for the State, on the other hand, on the basis of the custody certificate has submitted that the appellant was involved in one more case under the NDPS Act, though, he has undergone the sentence in the said case.

After hearing counsel for the parties and considering the fact that the appellant has undergone 02 years, 07 months and 15 days of actual sentence out of 04 years rigorous imprisonment awarded by the trial Court, also in view of the fact that he has remained in judicial custody for 01 year, 08 months and 19 days in FIR No.21 dated 25.03.2015 whereas the sentence awarded to him was only 01 year and, thus, he has overstayed the sentence for a period of about 08 months and 19 days, also in view of the fact that the recovery effected from the appellant was of non-commercial quantity and he has undergone substantive sentence and in view of the *Tarsem Singh's case (supra)*, the sentence awarded to the appellant is reduced to the period already undergone by him. However, considering the fact that the appellant has overstayed in judicial custody for a period of 08 months and 19 days in the other case i.e. FIR No.21 dated 25.03.2015, the imposition of fine of Rs.15,000/- upon the appellant under Sections 22(a) and 22(b) of the NDPS Act is set-aside. The appellant be released forthwith, if he is not required in any other case.

10.02.2018
yakub

(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable:	Yes/No