

324 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-970-SB-2017 (O&M)

Date of decision:03.02.2018

Kala

...Appellant

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Ram Kumar Saini, Legal Aid Counsel
for the appellant.

Mr. Jasdeep Singh Walia, Sr. DAG, Punjab.

ARVIND SINGH SANGWAN, J. (ORAL)

Challenge in this appeal is to the judgment dated 08.11.2016, vide which the appellant has been held guilty of offence punishable under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the Act') as he was found in possession of 522 intoxicant tablets containing the salt of Diphenoxylate hydrochloride, weight of which as per the report of chemical examiner (Ex. PM), is 34.452 gm. As per provisions of the Act, 50 gm and above is commercial quantity and since the appellant was found in possession of non-commercial quantity, he was awarded sentence of rigorous imprisonment of 03 years and to pay a fine of Rs.30,000/-. In default of payment of fine, to further undergo rigorous imprisonment for 06 months.

Brief facts of the case are that on 15.03.2014, ASI-Balkar Singh along with his co-officials, while on patrol duty, was present on a bridge on Sanauri Road, Patiala. One clean shaven boy was seen coming on foot from Sanauri side and on seeing the police party, he tried to turn back and run away. On suspicion, he was apprehended by the police and informed his

name as Kala son of Prem. ASI-Balkar Singh disclosed his identity to the accused and informed that he has suspicion that he has carrying some narcotics in his possession and informed him about his right to be searched in presence of a Gazetted Officer or Magistrate. The accused reposed confidence in ASI-Balkar Singh and after recording his consent statement Ex.PA, attested by HC-Ajaib Singh and HC Sarabjit Singh, his search was conducted and 522 tablets were found in a polythene paper from his right side pocket. Out of which, two samples of 10 tablets each were separated and sealed as sample parcels vide memo Ex.P1 and the remaining residues were also sealed vide memo Ex.PB. Thereafter, after completing the formality at the spot, Ruqa Ex.PC was sent to police station and formal FIR Ex.PW2/A was registered. Thereafter, the accused was arrested and he was produced before SI Vasdev Singh, SHO of Police Station Kotwali, Patiala to verify the case property and seal Ex.P1 was prepared. On the next date, the accused was produced before the Illaqa Magistrate. An application for inventory Ex.PJ and an application for depositing the case property Ex.PK was submitted on which the Magistrate passed an order Ex.PK/1 after seen the case property and directing to deposit the same in judicial malkhana. Thereafter, the bulk parcel and sample parcels were deposited in the judicial malkhana and later on, sent to Forensic Science Laboratory (FSL) on 18.03.2014. Thereafter, challan was presented and charge under Section 22 of the Act was framed against the appellant/accused.

Prosecution examined five witnesses and proved the recovery from the appellant, investigation conducted at the spot and report of FSL Ex. PM. according to which, the total quantity of 522 tablets was 34.452 gm. Thereafter, the trial Court holding the appellant guilty under Section 22

of the NDPS Act, convicted him and further sentenced him 03 years rigorous imprisonment along with fine, vide impugned judgment / order dated 08.11.2016.

Counsel for the appellant has not challenged the conviction of the appellant and has, however prayed for reduction of the sentence of the appellant. It is submitted on behalf of the appellant that the recovery is of non-commercial quantity and the appellant is facing the trial since 2014 and he was on bail during the trial and he has not misused the concession of bail. It is further submitted that he is the only bread earner of the family and has undergone actual sentence of 01 year, 07 months and 13 days, out of 03 years rigorous imprisonment awarded by the trial Court. It is further submitted that the appellant is a poor person and is a labourer and he has his wife and two minor children to support. Counsel for the appellant has relied upon **2017(2) R.C.R. (Criminal) 109, titled as Tarsem Singh Vs. State of Punjab** to submit that in similar circumstances, where the recovery was of non-commercial quantity, the sentence was reduced from one and a half year to 3 months already undergone in that case.

On the other hand, learned State counsel has submitted that the case of the prosecution is duly proved and there is nothing on record to prove that the appellant-accused was falsely implicated in this case. It is also submitted that as per custody certificate dated 03.02.2018, the appellant is convicted in one more case under the NDPS Act.

In reply, counsel for the appellant submits that in FIR No. 107, dated 15.05.2016, under Sections 20, 61, 85 of NDPS Act, the appellant has already undergone the sentence and in FIR No. 225, dated 26.10.2014, under Section 22 of the NDPS act, the appeal is pending.

Keeping in view the arguments of the learned counsel for the appellant as well as counsel for the State and after going through the lower Court Record, I find that the prosecution has proved its case beyond reasonable doubt and therefore, the judgment of conviction dated 08.11.2016 is upheld.

Keeping in view the facts and circumstances of the present case and in view of the fact that the appellant is a poor person and is a daily wager, his family included two minor children to support and the appeal is also filed by the Legal Aid counsel, the appellant has undergone 01 year, 07 months and 13 days of actual sentence, out of 03 years rigorous imprisonment awarded by the trial Court and also in view of the fact that the recovery from the appellant is of non-commercial quantity, the sentence imposed upon the appellant is reduced to the sentence already undergone by the appellant i.e. 01 year, 07 months and 13 days. However, the sentence of fine of Rs.30,000/- is upheld with modification that in default thereof, the appellant shall further undergo imprisonment of 15 days instead of 6 months.

The appellant is directed to pay a fine within a period of 02 months from receiving the certified copy of this order, if not paid and failing which, the appellant shall further undergo 15 days rigorous imprisonment.

Accordingly, this appeal is partly allowed. Since the appellant is in judicial lock up, he shall be released if not required in any other case.

Disposed of.

(ARVIND SINGH SANGWAN)
JUDGE

03.02.2018
Hemlata

Whether speaking/reasoned	Yes
Whether reportable	Yes