

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

**CRM No.16843 of 2018 in/and
CRM-A No.937-MA of 2018 (O&M)
Date of decision : August 03, 2018**

State of Haryana

..... Applicant

Versus

Pawan Solanki and another

..... Respondents

**CORAM : HON'BLE MR. JUSTICE A.B. CHAUDHARI
HON'BLE MR. JUSTICE KULDIP SINGH**

Present:- Mr. Vivek Saini, DAG, Haryana.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

KULDIP SINGH J.(ORAL)

CRM-16843-2018

There is delay of 24 days in filing the application for grant of leave to appeal.

For the reasons mentioned in the application, delay of 24 days in filing the application for grant of leave to appeal is condoned, subject to all just exception.

Application stands disposed of.

Main Case

The State of Haryana has filed the present application under Section 378(3) Cr.P.C. for grant of leave to appeal against the judgment of acquittal dated 22.12.2017 passed by learned Special Judge, NDPS, Faridabad, whereby the accused-respondents, namely Pawan Solanki and Bharat Singh were acquitted of the charges framed against them under

Section 20 (b)(ii)(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the NDPS Act').

It was alleged against the accused that on 12.02.2016, SI Hari Om along with some other police officials received a secret information that accused-respondents, namely Pawan Solanki and Bharat Tewatia are indulging in sale of *ganja* and that they had taken a godown of Mukesh Kumar on rent in which they had concealed the heavy quantity of narcotics. Accordingly, SI Hari Om along with other officials reached the godown but no one was found present at the spot and the godown was locked. Thereafter, owner of the godown, namely Mukesh Kumar was called at the spot. After some time, said Mukesh Kumar along with Anil Kumar and Amit Kumar reached at the godown. The search of the godown was conducted, on which 22 plastic bags of white colour containing *ganja* were found. Two samples of 50 gms. each were separated from each bag.

We have heard learned DAG, Haryana and examined the paperbook.

According to the investigation, the accused-respondents had taken the said godown on rent. To prove the case, the prosecution examined as many as 23 witnesses.

Undoubtedly, the place of recovery is a plot with boundary wall, in which three rooms had been constructed. Near the said plot Amit Kumar, PW14 had purchased the plot. Mukesh Kumar, PW12 is the owner of the said plot. In his statement, Mukesh Kumar deposed that in the first week of February, Amit Kumar came to him at his plot and asked to give the said plot on rent to his known persons. The rent was agreed to be ₹6,000/-

per month. Amit Kumar said that he will bring his known persons after 2-3 days and will enter into a rent agreement for the said plot. After 2-3 days, Amit Kumar came to him at his plot along with two unknown persons and stated that they wanted to take his plot on rent for the purpose of nursery of small plants. He had insisted for a written agreement, upon which, Amit Kumar said that he will get a written agreement after one week. Thereafter, said two persons did not turn up. On 12.02.2016, he was called by the village Sarpanch's husband, namely, Anil Kumar and he accompanied him to his plot, where the police was present and some bags were found lying in one of the room of his plot. According to Mukesh Kumar, those bags were kept by accused-respondents Pawan Solanki and Bharat Tewatia.

Amit Kumar, PW14 stated that Pawan Solanki and Bharat Tewatia came to him on a motorcycle for taking the plot on rent for the purpose of nursery of small plants. They were asked to enter into a written agreement. After that, they did not turn up. Thereafter, on 10.02.2016, Mukesh Kumar met him and said that some plants are lying kept in his plot, whereas the said persons had not talked with him.

A perusal of the entire evidence shows that both the accused-respondents approached Mukesh Kumar for taking the plot on rent and when Mukesh Kumar insisted to enter into a written agreement, they did not turn up. After some days, some bags containing *ganja* were found lying in a room of the plot of Mukesh Kumar, which were recovered by the police.

We are of the considered view that from the said evidence, it cannot be presumed that Pawan Solanki and Bharat Tewatia are the persons, who kept the plastic bags containing *ganja* in the room of the plot of

Mukesh Kumar. There were three rooms constructed in the said plot and these must be locked. Nobody saw as to who put those bags containing *ganja* in the room of the said plot. Therefore, merely on the basis of suspicion, it cannot be said that Pawan Solanki and Bhagat Tewatia has placed those bags of *ganja* in the room of the plot of Mukesh Kumar. There is no illegality or infirmity in the findings recorded by the learned Special Judge, NDPS, Faridabad. Thus, there is no ground to grant leave to appeal. Consequently, the present application for grant of leave to appeal is dismissed. Consequently, the appeal also stands dismissed.

(A.B. CHAUDHARI)
JUDGE

(KULDIP SINGH)
JUDGE

August 03, 2018
sarita

Whether speaking / reasoned	No
Whether Reportable:	No