

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

Crl. Revision 1239 of 2011

Date of Decision : January 12, 2018

Ajay Kumar and another

.....Petitioners

VERSUS

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE T.P.S. MANN

Present : Mr. R.K.Girdhar, Advocate
for the petitioners.

Mr. Gaurav Garg Dhuriwala, Sr. Deputy A.G., Punjab.

T.P.S. MANN, J. (Oral)

The petitioners, namely, Ajay Kumar and Dhiraj Kumar were tried for committing the offence punishable under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985. Vide judgment and order dated 6.7.2010, learned Judicial Magistrate 1st Class, Sri Muktsar Sahib convicted them for the aforementioned offence and sentenced them to undergo rigorous imprisonment for a period of six months and to pay a fine of Rs. 1,000/- each and in default of payment of fine, to further undergo simple imprisonment for one month. The period of custody already undergone by them during the investigation and trial was ordered to be set off against term of imprisonment.

Aggrieved of their conviction and sentence, the petitioners preferred an appeal but remained unsuccessful as it came to be dismissed by learned Sessions Judge, Sri Muktsar

Sahib on 17.5.2011.

Still not satisfied, the petitioners preferred the present revision which stands admitted and vide order dated 1.6.2011, their sentences of imprisonment were suspended.

According to the prosecution, on 24.10.2005, ASI Bhag Singh alongwith other police officials was proceeding to village Dhigana from village Rupana in a private jeep. When the police party was half a kilometer short of village Dhigana, two clean shaven persons were seen sitting in the ditches on the left side of the road, while holding a black polythene bag and were looking into it. On seeing the police party, they threw the polythene bag and tried to run away, but ASI Bhag Singh apprehended them with the help of other police officials. ASI Bhag Singh ascertained the name and address from them and they disclosed their names as Ajay Kumar and Dhiraj Kumar. Thereafter ASI Bhag Singh tried to join some private witness, but none was available. ASI Bhag Singh checked the contents of envelope thrown by accused Ajay Kumar and Dhiraj Kumar in the presence of his co-employees and found two packets of momolit tablets of green colour, each containing 100 tablets. Further search of the envelope led to recovery of four more packets, each containing 100 tablets of momolit. In all, six hundred tablets of momolit were recovered and on the packets Lot No. 625, expiry

date July, 2008 was mentioned. 120 tablets of Alpraquil 0.25 mg with batch No. 49074A and expiry dated 2006, 120 tablets of Alpraquil 0.5 mg with Batch No. 08665ABB and expiry date November, 2007 and 54 Oxytocin injections with batch No. A030 were also recovered. Out of the above referred tablets and injections one packet of 100 tablets of momolit, one strip of ten tablets of Alpraquil 0.5 mg. one strip of ten tablets of Alpraquil 0.25 mg. and four injections of oxytocin were taken out as sample which were put into a plastic container and were converted into a sealed parcel with seal bearing impression "BS". The remaining tablets and injections were put into the same polythene envelope which was converted into a parcel by further putting them in a plastic container sealed with seal bearing impression "BS". The sample seal was prepared separately and seal after use, was handed over to HC Gurmel Singh No. 324. The above referred case property and sample parcel were taken into police possession vide recovery memo attested by the witnesses. The accused could not produce any licence or permit for keeping in their possession the above referred tablets and injections. ASI Bhag Singh sent ruqa to the Police Station through PHG Manjit Singh, on the basis of which the formal FIR in this case was registered by Inspector Bikramjit Singh. The Investigating Officer inspected the spot and prepared rough site plan of the place of

recovery. He recorded the statements of witnesses at the spot. He also arrested accused Ajay Kumar and Dhiraj Kumar by conveying them the grounds of their arrest. From personal search of accused Dhiraj Kumar Rs.20/- were recovered and from personal search of accused Ajay Kumar Rs. 50/- were recovered, which were taken into police possession vide separate recovery memos, signed by the accused and attested by the witnesses. On return to the Police Station, ASI Bhag Singh produced the case property and the accused before SHO Bikramjit Singh. They were lodged in the police lock up. SHO Bikramjit Singh sealed the parcels with his seal bearing impression "BS" and kept the case property in his custody. Entrustment memo was prepared which was attested by ASI Bhag Singh, whose statement was also recorded. On 25.10.2005, SHO Bikramjit Singh produced the accused alongwith case property in the Court of Sub Divisional Judicial Magistrate, Sri Muktsar Sahib, where inventory of the case property was prepared. The representative samples were drawn in the Court. The case property and representative samples were sealed with seal of the Court bearing impression "HS". On return to the Police Station, the case property was deposited in an intact condition with the MHC in the Malkhana of Police Station. The compliance of Section 57 of Narcotic Drugs and Psychotropic Substances Act, 1985 was

made. The samples were sent to the Forensic Science Laboratory, Punjab, Chandigarh. On completion of necessary investigation and on receipt of report of the FSL, challan was presented against the accused in the Court.

Learned counsel for the petitioners has not been able to point any material/evidence from the record from which it could be established that the petitioners have not committed the offence under Section 22 of the Act. On the other hand, the prosecution has examined various police officials, who have deposed regarding the recovery of the contraband from the petitioners. Under these circumstances, no case is made out for any interference in the impugned judgment of their conviction.

As regards the quantum of sentence, both the petitioners are facing the agony of criminal prosecution for the last more than twelve years. Out of the sentence of six months imposed upon them, they have already undergone an actual sentence of twenty two days. None of them is either involved or convicted in any other case, much less under the provisions of the Act. All these facts are mentioned in the custody certificate dated 18.8.2017 already brought on record by the learned State counsel.

Taking into consideration the totality of the circumstances, this Court is of the view that no useful purpose will

be served by sending the petitioners behind the bars, once again, for undergoing their remaining sentences of imprisonment. Ends of justice will be best served if the substantive sentences of imprisonment of the petitioners are reduced to the one already undergone by them.

Resultantly, the conviction of the petitioners under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 is upheld. Their substantive sentences of imprisonment are reduced to the one already undergone by them. The fine of Rs.1,000/- imposed upon each of them is, however, enhanced to Rs.10,000/- each. The enhanced amount of fine be deposited by them before the learned trial Court within three months from today, failing which they shall undergo simple imprisonment for three months.

The revision is, accordingly, disposed of.

January 12, 2018

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**(T.P.S. MANN)
JUDGE**

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No