

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

CRA-S No.695-SB of 2004 (O&M)

Reserved on:18.01.2019

Decided on: 21.01.2019

Raj Kumar

....Appellant

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. Veneet Sharma, Advocate
for the appellant.

Mr. Sidakmeet Singh Sandhu, AAG, Punjab.

ARVIND SINGH SANGWAN, J.

Prayer in this appeal is for setting-aside the judgment of conviction as well as the order of sentence dated 22.03.2004 vide which the appellant was convicted for offence punishable under Section 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'the NDPS Act') and was sentenced to undergo rigorous imprisonment for a period of 06 months and to pay a fine of Rs.500/- and in default of payment of fine to further undergo rigorous imprisonment for a period of 15 days.

Brief facts of the case are that on 26.03.2002, S.I. Baldev Singh along with other police officials was present at Chowk Islamabad, Amritsar, in connection with detection of some bad elements and there, he received a secret information that Raj Kumar (the appellant/accused) was selling smack in the area of Daim Ganj, Guru Nanakpura, and Putlighar etc. and he could be nabbed and smack could

be recovered from him if a vigil was kept. Taking the said information to be credible, a ruqa (Ex.PD) was written and was sent to the Police Station through S.P.O. Som Lal, for registration of the case, upon which a formal F.I.R. (Ex.PD/1) was recorded. On the next day i.e. on 27.3.2002, S.I. Baldev Singh alongwith other police officials was present at Railway Crossing No.22 for patrolling. Thereafter, a person was seen coming from the side of Khalsa College towards Railway crossing No.22, who on seeing the police party tried to turn back and on suspicion, he was apprehended. Thereafter, on enquiry, he told his name as Ranjit Singh son of Shangara Singh r/o Khandwala, Amritsar and S.I. Baldev Singh told the accused that his conduct raised suspicion about correctness of his particulars whereupon the accused in a bid to give proof of his particulars took out a diary from the right side pocket of the pants worn by him. When he was taking out the diary, one glazed paper containing some material fell down. Then, he told his name as Raj Kumar son of Roshan Lal, r/o Lohgarh. On verification, the glazed paper which had fallen down, was found containing smack, which weighed 7 grams and the same was made into a parcel. The parcel was sealed with the seal bearing impression 'BS'. The sample seal was separately prepared and the same after use was handed over to HC Harnek Singh. Thereafter, the said parcel alongwith the diary were taken into possession vide memo (Ex.PA) and the accused was arrested (vide memo Ex.PE). On 08.04.2002 the sample parcel was sent to the Forensic Science Laboratory, Punjab, Chandigarh through C. Dharambir who deposited the same and produce the relevant receipt before S.I./S.H.O. Mandip Singh. Thereafter, on receiving the report,

the challan under Section 173(2) of the Code of Criminal Procedure (in short 'Cr.P.C.') was submitted before the trial Court.

On presentation of the challan and other relevant documents, a *prima facie* case under Section 22 of the NDPS Act was found to have been made by the then, Presiding Officer against the appellant/accused, however, the charge was later amended to substitute Section 21 with Section 22 of the NDPS Act, to which the accused/appellant did not plead guilty and claimed trial.

The prosecution examined H.C. Harnek Singh as PW1, S.I. Baldev Singh as PW2, C. Dharambir as PW3 and S.I. Mandeep Singh as PW4. PW Chaman Lal has been given up having been won over by the accused while PW C. Rajbir Singh has been given up being unnecessary.

After the conclusion of the evidence of prosecution, the statement of appellant/accused was recorded under Section 313 Cr.P.C. and the entire incriminating evidence, which the prosecution produced against him, was put to him to tender explanation for the same. The appellant/accused denied the allegation of prosecution and pleaded that he has been falsely implicated in the case. However, in defence evidence, the accused/appellant examined HC Jasbir Singh as DW1.

The trial Court, after hearing learned counsel for the parties and after appreciating the evidence on record, convicted and sentenced the appellant/accused under Section 21 of the NDPS Act.

Feeling dissatisfied with the judgment of conviction and order of sentence dated 22.03.2004, the accused/appellant has preferred the present appeal, which was admitted on 01.04.2004. Thereafter, the

sentence of the appellant/accused was also suspended by this Court vide order of even date i.e. 01.04.2004.

Counsel for the appellant has argued that the appellant was not produced before the Gazetted Officer or the Magistrate in terms of Section 50 of the NDPS Act and at no point of time, the second Investigating Officer was called at the spot and the entire investigation including the recovery was conducted by the same Investigating Officer, therefore, the investigation carried out by SI Baldev Singh is not legal. Counsel for the appellant has placed reliance on the judgment ***“Mohan Lal vs State of Punjab”, 2018(4) RCR (Criminal) 101***, to submit that the informant and the Investigating Officer cannot be the same person. It is further submitted that as per the Custody Certificate dated 11.01.2019, the appellant has undergone 02 months and 05 days of actual sentence out of 06 months rigorous imprisonment awarded by the trial Court. The FIR pertains to the year 2002 and the sentence of the appellant was suspended by this Court during the pendency of the present appeal and he has never misused the concession of suspension of sentence. It is further submitted that the appellant is a poor person and has his own family to support and the appellant has faced the agony of protracted trial for a period of about 17 years, therefore, by taking a lenient view, the sentence awarded to the appellant be reduced to the period already undergone by him. Counsel for the appellant has further argued that the appellant is not involved in any other case.

Counsel for the State has not disputed the fact that the appellant has undergone 02 months and 05 days of actual sentence out of 06 months rigorous imprisonment awarded by the trial Court.

After hearing the counsel for the parties, I uphold the judgment of conviction passed by the trial Court, however, considering the fact that the appellant has faced the agony of protracted trial for a period of about 17 years; the appellant has undergone 02 months and 05 days of actual sentence and while his sentence was suspended in the year 2004 for a period of about more than 15 years, he is not involved in any other case which shows that he has improved his character and has joined the mainstream of the society and also in view of the fact that he is a poor person and has his own family to support, the present appeal is *partly allowed* and the sentence awarded to the appellant is reduced to the period already undergone by him i.e. 08 months.

Disposed of accordingly.

(ARVIND SINGH SANGWAN)
JUDGE

21.01.2019
yakub

Whether speaking/reasoned	Yes/No
Whether reportable:	Yes/No6