

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

229

CRA-S-1834-2019(O&M)
Date of decision : 07.12.2019

TIRATH RAM

.....Appellant

versus

STATE OF HARYANA

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Rajesh Tushar, Advocate
for the appellant.
Mr. Anmol Malik, AAG, Haryana

ANIL KSHETARPAL, J. (ORAL)

Present appeal has been filed against the judgment of conviction passed by the learned Special Judge, Kaithal under the NDPS Act, 1985, sentencing the appellant for a period of 14 months with fine of Rs.20,000/- under Section 22 (b) of the NDPS Act, 1985.

Facts of the case as noticed by the learned Special Judge are extracted as under:-

“2. In brief, it is the version of the prosecution that on 29.08.2017, the police party headed by Assistant Sub-Inspector Rajender Singh (PW9) and consisting of Exemptee Assistant Sub-Inspector Krishan Kumar (PW5), Head Constable Raj Singh, Assistant Sub-Inspector Balaj Singh and Head Constable Shubhkaran, in government vehicle make Tavera bearing registration No.HR64-5011, being driven by Exemptee Assistant Sub-Inspector Vikram singh, was present at T-point Bhuna Road, Kanghtali, in connection with aw and order duty with regard to Baba Ram Rahim, when accused was spotted coming from the side of village Bhuna towards village Kangthali, who at the sight of the police party, in

front of him, took an about turn and started walking briskly; that the accused was asked by Assistant Sub-Inspector Rajender Singh to halt but he did not halt; that when Assistant Sub-Inspector Rajender Singh was trying to apprehend the accused, accused removed one transparent polythene from the right pocket of his half pant (capri) and while trying to throw the polythene with his right hand, he was overpowered by the Investigating Officer with the help of fellow police officials along with weighty transparent polythene in his hand; that on inquiry, he identified himself as accused of this case; that in the weighty polythene, brown substance was visible; that on opening the polythene, smack was found in the same; that accused also confirmed that it was smack in the polythene; that on weighing the smack along with polythene with the help of electronic weighing machine, smack was found to be 10 grams; that Investigating Officer tied the mouth of the polythene and put the smack in a cloth parcel, the mouth of which was sewed with needle and thread; that Assistant Sub-Inspector Rajender Singh affixed his two seals of monogram of 'RS' on the parcel of the smack; that Investigating Officer also prepared sample seal impression sheet by affixing his two seals of monogram of 'RS'; that seal after use was handed over to Exemptee Assistant Sub-Inspector Krishan Kumar; that seizure memo 'Ex.P6' of the recovered smack was prepared; that notice 'Ex.P4' under section 50 of the Act and consent memo 'Ex.P5' were also prepared in this regard.

Written information 'Ex.P7' was sent to the Police Station through Exemptee Assistant Sub-Inspector Vikram Singh for registration of First Information Report for the commission of an offence punishable under section 21 of the Act. Further investigation in the case was conducted by Assistant Sub-Inspector Subhash

Chand (PW10), who reached the place of recovery and prepared site plan 'Ex.P13' and recorded the statements of the witnesses under section 161 of the Code of Criminal Procedure, 1973. Accused was arrested. After completion of the investigation on the place of recovery, Investigating Officer when reached in front of Police Station Siwan, the S.H.O. was found present on Siwan Barricade, Siwan. The S.H.O. was apprised of the facts of the case and accused, witnesses, case file, case property and report 'Ex.P1' under section 57 of the Act, were produced before the S.H.O., who verified the facts of the case from the accused and witnesses and found those in line with the version mentioned in the F.I.R. The S.H.O. affixed his one seal each of monogram of 'RS' on the parcel of the smack and sample seal impression sheet. Parcel of the smack, sample seal impression sheet and seizure memo were also attested by the S.H.O. The S.H.O. Prepared report 'Ex.P2' under section 55 of the Act. As per the directions of the S.H.O., case property was deposited in the 'Malkhana' (a store in the Police Station for housing the case property) of the Police Station and accused was put in the lock-up of the Police Station.

On 30.8.2017, inventory report 'Ex.P3' was prepared and then accused, case property, inventory and application 'Ex.P15' under section 52-A of the Act, were produced before the Court of Shri Amit Kumar Grover, the then learned Sub Divisional Judicial Magistrate, Guhla, who passed order dated 30.8.2017 'Ex.P17', which will reflect as to what transpired before that Court. This order is reproduced below for facility of reference:

"Investigating Officer has produced the case property which is stated to be 10 gram smack, which is sufficiently moist and wet in form and is contained in

cloth bag under plastic box and polythene before the Court. Said parcel of case property is bearing two seals of RS (I.O) and one seal of RS (SHO). One sample seal on a cloth also produced which bears the impressions of two seals of RS and one seal of RS. The photographs of the sealed case property and sample seals were taken before the court by Investigating Officer Subhash Chand A.S.I. Himself. Thereafter the case property is unsealed by making cut in the cloth bag and opened the plastic box and the case property containing in polythene is weighed with the help of weighing balance machine by the Investigating Officer. The case property was found 18 grams (including the packing material i.e. cloth, polythene and three seals). Thereafter, two samples from case property weighing 1 grams each are taken, before the Court with the help of weighing balance machine by the Investigating Officer. Photographs of unsealed case properties were also taken by the I.O. The remaining case property is again sealed with my two seals of AKG. I have also put my own two seals of AKG on two samples extracted. Two sample seals were prepared on separate pieces of cloths bearing my two seals of AKG. Two seals of my own seals were also put on the sample seals produced by the investigating officer. Photographs of again sealed case property was taken by the I.O. The IO is directed to develop the photographs. The inventory prepared by Investigating Officer under section 52-A of NDPS Act is certified by me.

An application for disposal of case property i.e. smack under section 52-A(2) of NDPS Act, 1985 moved by the investigating officer. Head. In view of the contents mentioned in the application, same is hereby allowed. The I.O. is directed to dispose off the case property, except samples as per rules. The samples were entrusted to the investigating officer, to be deposited in judicial

Malkhana.”

Three photographs ‘Ex.P7/A, Ex.P8 and ‘Ex.P9’ of the accused and the case property which were clicked in the Court were got attested from the then learned Sub Divisional Judicial Magistrate, Guhla. Sample parcel was sent to F.S.L. Madhuban, from where report ‘Ex.P10’ was received, as per which content of the sample parcel was found as ‘alprazolam’.”

Learned counsel for the appellant after arguing for some time, faced with a difficulty of convincing the Court on merits, has come up with an alternative prayer. He submits that the appellant is a first time offender. He further submits that the appellant was found in possession of 10 gram powder which when sent for analysis to Forensic Science Laboratory, Haryana, it was reported to contain Alprazolam, Paracetamol and Caffeine. He further submits that the percentage of Caffeine ingredients have not been specified. He, hence, submits that the total weight of the prohibited substance i.e. Alprazolam can even be less than the small quantity. The small quantity is upto 5 gram, whereas the total recovery of the powder is 10 gram.

The benefit of doubt has to be given to the accused-convict. In absence of any material to prove that what was the percentage of Alprazolam in the powder, it is safe to assume that it was in equal proportion. Accordingly, the quantity of prohibited substance comes to less than the small quantity as notified by the Government.

Hence, the conviction would stand converted to Section 22(a) of NDPS Act, 1985. Maximum imprisonment as provided under the aforesaid provision is one year. There is no minimum sentence prescribed.

As per custody certificate, appellant has already undergone 8 months and 6

days till 06.12.2019, not involved in any other case.

Keeping in view the facts of the case, the sentence awarded by the Special Court is reduced to the one already undergone.

Appellant is directed to be released forthwith, if he is not required in any other case.

December 07, 2019
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(ANIL KSHETARPAL)
JUDGE

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