

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

CRA-S-2374-SB-2004 (O&M)

Date of Decision: 11.02.2020

Sandeep @ Kala

...Appellant

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S. MADAAN

Present: Mr. Nitin Rathee, Advocate for the appellant.

Mr. Kuldeep Sharma, DAG, Haryana.

H.S. MADAAN, J.

Briefly stated facts of the case are that accused Sandeep @ Kala had been undergoing life imprisonment while being lodged in District Jail, Sonapat in case FIR No.05 for an offence under Section 302 IPC, titled as 'State Vs. Sandeep etc.' he was released on parole on 28.11.2002 and he reported back at jail gate on 28.12.2002. His personal search was conducted, which resulted in recovery of contraband in the form of charas, weighing 500 gms. Police of Police Station City Sonapat was informed in that regard. SI Mohinder Singh (for short 'the IO') along with other police officials from the said police station went to District Jail, Sonapat. Sh. Hawa Singh Hooda, Superintendent, District Jail, Sonapat submitted a written complaint

Ex.PC to him and produced the case property before said police officer. The IO got the contraband weighed, which came out to 500 gms of charas; 20 gms of recovered charas was separated by way of sample and the residue were converted into sealed parcels, sealed with seal of SI Mohinder Singh having inscription 'MS'. The seal after use was handed over to Sh. Hawa Singh Hooda, Superintendent, District Jail, Sonapat. The bulk and the sample parcel were taken into possession, vide recovery memo Ex.PA. The IO had appended his endorsement Ex.PC/1 below written complaint Ex.PC, sending ruqa to police station through Constable Prem Singh, on the basis of which, formal FIR Ex.PC/2 was recorded at the police station by SI Hukam Singh. The IO prepared the rough site plan of the place of recovery. On return to the police station, the IO produced the case property and the witness besides the accused before Inspector Balbir Singh, SHO of the police station, who verified facts of the case and affixed his own seal having inscription 'BS' on the samples and the residue parcel. The case property was deposited with the MHC of the police station.

After completion of investigation and other formalities, the challan against the accused was prepared and filed in the Court of Illaqa Magistrate. Such Magistrate supplied copies of documents relied upon in the challan to the accused free of costs as provided

under Section 207 Cr.P.C. and then finding that offence under Section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the Act') for which the accused had been booked was exclusively triable by the Court of Sessions, committed the case to the Court of Sessions.

Finding a prima facie case, charge for offence under Section 20 (b) of the Act was framed against the accused, to which, he pleaded not guilty and claimed trial.

During the course of prosecution evidence, it examined as many as 08 PWs as per details below:-

PW1- Sh. Hawa Singh Hooda, Superintendent, District Jail, Sonapat deposed that on 28.12.2002 when PW Satpal was performing his duty as a Warder on the main gate, he searched Sandeep who had returned after availing his parole w.e.f. 29.11.2002 to 28.12.2002 and recovered 500 gms of charas from the possession of the accused. PW Satpal informed him accordingly and he had gone to the spot.

PW2- Sh. Dharam Singh, Deputy Superintendent, District Jail, Sonapat deposed that on 28.12.2002, PW Satpal informed him that charas had been recovered from the possession of accused during course of the search, while the accused had returned after availing of parole. This witness went to the spot and sent ruqa

Ex.PC to the Incharge Police Post Gohana. The police party headed by SI Mohinder Singh came to the spot, who weighed the recovered charas, which came out to 500 gms.

PW3- Satpal, Warder, District Jail, Sonapat testified that on 28.12.2002, he had carried out search of accused Sandeep and recovered charas from inside the shoes of the accused. He had informed Superintendent and Deputy Superintendent of District Jail, Sonapat in that respect.

PW4- HC Randhir Singh, PW5 Constable Ram Virender and PW7 Hukam Singh happened to be formal witnesses.

PW6- Inspector Balbir Singh, SHO stated that on 28.12.2002, SI Mohinder Singh had produced before him accused Sandeep. He had verified the investigation and affixed his own seal 'BS' on both the parcels, depositing the same with MHC with seals intact and after completion of investigation, he had prepared the challan and filed it in the Court.

PW8-SI Mohinder Singh, who had carried out the investigation in this case deposed in that regard, proving various documents.

After closure of the prosecution evidence, statement of the accused was recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against the accused were put

to him but he denied the same, contending that he was innocent and had been falsely implicated in the case. The accused did not lead any evidence in defence.

After hearing arguments, Special Judge, Sonapat, vide his detailed judgment dated 25.10.2004, convicted the accused for offence under Section 20 (b) of the Act and vide order dated 28.10.2004, sentenced him to undergo rigorous imprisonment for a period of 05 years and to pay a fine of Rs.40,000/-; in default of payment of fine, to undergo further imprisonment for a period of 02 years.

This judgment of conviction and order of sentence left the accused aggrieved and he has approached this Court, by way of filing an appeal, which was 'Admitted for hearing' and recovery of fine stayed during the pendency of the appeal, vide order dated 03.12.2004. Notice of the appeal was given to the State, which has appeared through its counsel.

I have heard learned counsel for the parties besides going through the record and I find that the impugned judgment is quite detailed and well reasoned, which does not suffer from any illegality or infirmity. Before the trial Court, the defence had raised various pleas with regard to non-compliance of Sections 50 and 55 of the Act, non joining of independent witness, material contradictions

between statements of prosecution witnesses etc. However, all these contentions have been properly dealt with by the trial Court, in view of the settled judicial position. Section 50 of the Act was not applicable, since that relates to personal search of a person, whereas, in this case, the facts and circumstances of the case are somewhat different. Accused, a jail inmate, reported at jail gate, after availing the concession of parole and while being searched as per rules, charas was recovered from inside the shoes of the accused. Therefore, there was no violation of Section 50 of the Act. Similarly, Section 55 of the Act was not violated. PW6 Inspector Balbir Singh, who was working as SHO of the police station at the relevant time, had categorically stated that on 28.12.2002, SI Mohinder Singh had produced the accused along with the case property and witnesses before him. He had verified the investigation and affixed his own seal having inscription 'BS' depositing the case property with MHC with seals intact.

With regard to non joining of independent witnesses, since the recovery had been effected in the jail premises, which is inaccessible to the general public, there was no occasion for joining of any independent witness. Even otherwise, no previous enmity between the accused and official witnesses has been established on the record prompted by which they might have involved the accused

in this case falsely or deposed against him to secure his conviction. Therefore, non-examination of any independent witness does not make any difference.

With regard to some variances in the statements of the official witnesses, the trial Court has rightly observed that those were not much material and rather showed that witnesses were not tutored. Such type of small contradictions and variations are bound to arise with passage of time due to difference in power of observation and perception of various individual and lapse of memory with passage of time. The prosecution had successfully proved its charge against the accused beyond a shadow of reasonable doubt. The accused was rightly convicted and sentenced by the trial Court.

Drug trafficking in this part of the country is increasing at an alarming rate. Youth of the region is increasingly taking to consumption of drugs, in the process ruining their lives. A major social problem has arisen in that regard. The drug peddlers for a small monetary consideration make the youth to use drugs for a small time excitement/kick. The drug peddlers need to be dealt with an iron hand because in case they are shown any leniency, they would be further spurred in drug trafficking. Deterred punishment to the drug peddlers is called for. No sympathy can be shown to them lest that should send a wrong signal in the society that one can indulge in

such type of act and get away lightly. The accused has got a long criminal record inasmuch as according to the custody certificate submitted by the State counsel, he is involved in 11 other criminal cases, most of them dealing with heinous offences like murder, attempt to murder, possessing illegal arms. No ground is made out to reduce the sentence of such a person having criminal bent of mind. There is no merit in the appeal. The same stands dismissed.

11.02.2020
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(H.S. MADAAN)
JUDGE

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