

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

**CRM-18062 of 2019 in/and
CRA-S-706-SB-2017 (O&M)
Date of decision : 17.01.2020**

Rajan @ Happy

..... Appellant

versus

State of Punjab

..... Respondent

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present : Mr. Sandeep Verma, Advocate
for the applicant-appellant.

Mr. Sandeep Vermani, Addl. A.G., Punjab.

AJAY TEWARI, J. (Oral)

CRM-18062 of 2019

1 This is an application for grant of suspension of sentence to the applicant-appellant during the pendency of the appeal.

2 Learned counsel have agreed that instead of deciding this application for suspension of sentence, it would be appropriate to hear the main appeal in motion hearing.

3 In these circumstances, the application for suspension of sentence stands dismissed and the main case is taken on board for final disposal today itself.

Main case

4 This appeal has been filed against the judgment and orders of conviction dated 14.09.2016 passed by the Judge Special Court, Patiala whereby the appellant had been convicted under Section 22 (C) of Narcotic Drugs and Psychotropic Substances Act, 1985 (in short the Act)

in FIR No.227 dated 03.09.2012 registered at Police Station City Rajpura. The appellant was sentenced to undergo rigorous imprisonment for a period of 10 years and to pay fine of Rs.1,00,000/- for offence under Section 22 (C) of the Act and to further undergo rigorous imprisonment for a period of one year.

5 The case of the prosecution was that on 03.09.2012 SI Sukhpal Singh Investigating Officer along with other police officials were present in the area of ICL Railway Crossing G.T. Road, Ambala Rajpura, Rajpura in connection with patrolling and for checking of suspected persons and where they apprehended the appellant coming on foot, carrying one khakhi coloured bag on his right shoulder. On the basis of suspicion the Investigating Officer disclosed his identity to the appellant and told him that he was suspicious of carrying some contraband in his possession and he wanted to search him and his bag. He also informed him about his legal right and offered him to get the search conducted in the presence of some Gazetted Officer or Magistrate who, could be called at the spot. But the appellant reposed confidence in the Officer Incharge and therefore, the Officer Incharge searched him and found 2400 intoxicant capsules. A representative of 20 tablets was taken which was packed in 2 packets and sealed with the seal of the Investigating Officer and the officiating S.H.O. On the next day the entire material and the appellant was produced before the competent Magistrate as per the provisions of Section 52A of the Act. On that date the Magistrate also took a representative sample of 10 tablets and packed it and then it was sealed with seal bearing "RK". On 20.09.2017 the samples were sent to the FSL which confirmed that they were

Dextroproxyphene Napsilate. The appellant was tried and having been convicted has filed the present appeal.

6 The prosecution has examined MHC Lakhwinder Singh as PW-1, SI Mohan Singh as PW-2, HC Salochan Singh as PW-3, HC Rajwant Singh as PW-4, SI Sukhpal Singh as PW-5 and HC Nishan Singh as PW-6 and closed evidence. Statement under Section 313 Cr.P.C. of the accused was also recorded.

7 The main argument raised by the learned counsel for the appellant is that once the Magistrate has drawn a sample and had sealed it with his own seal it was only that sample which would have been sent to FSL but the samples which were sent to the FSL were the ones which had been drawn by the police officials and this is clear from the FSL report Ex-PW 4/H in which it was clearly mentioned that one parcel sealed with 2 seals one each of 'MS and 'SS' were the articles received.

8 The contention of learned counsel for the appellant is that the non-forwarding of the sample drawn by the Magistrate coupled with the fact that there was a delay of 18 days in sending the sample give rise to a reasonable doubt thus entitling the appellant to an acquittal.

9 Learned State counsel has pointed out that there are many cases where samples which were sealed by the police officers have been accepted and convictions have been based thereon. That may be so. But in the present case once the entire material was produced before the Magistrate who has drawn his own sample there was no justification for not sending that sample but of sending a different sample drawn by police officials and that too after a delay of 17 days.

10 I find myself in agreement with the argument of the learned counsel for the appellant that the case beyond the appellant could not be said to be proved beyond reasonable doubt.

11 The appeal is allowed and the appellant is acquitted of the charges leveled against him. If he is in jail he be released forthwith and if he is on bail his bail/surety bonds be discharged.

12 Since the main case has been decided, the pending CrI.Misc. Application, if any, also stands disposed of.

(AJAY TEWARI)
JUDGE

17.01.2020

pooja sharma-I

Whether speaking/reasoned

Yes/No

Whether Reportable :

Yes/No