

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

**CRA-S-771-2019**

**Date of Decision: 23.09.2020**

**VIKAS KUMAR @ KASHA**

**... APPELLANT**

**V/S**

**STATE OF PUNJAB**

**... RESPONDENT**

**CORAM: HON'BLE MR. JUSTICE VIVEK PURI**

Present: Mr. A.S.Sandhu, Advocate for the appellant.

Mr. Mehardeep Singh Dullat, Addl. AG Punjab.

*(The case has been taken up through video conferencing on  
account of Covid-19 pandemic)*

\* \* \*

**VIVEK PURI, J. (ORAL)**

The present appeal has been preferred against the judgment of conviction and order of sentence dated 29.1.2019 passed by learned Judge Special Court, Moga vide which the appellant has been convicted under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'The Act') and sentenced to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.5,000/-, in default whereof to further undergo rigorous imprisonment for a period of 15 days.

Briefly, the facts as putforth by the prosecution are to the effect that on 16.5.2016, at about 3 P.M., the appellant was spotted by the police party headed by ASI Sukhmander Singh. On seeing the police party, the appellant tried to turn back and on suspicion he was

apprehended. The identity of the appellant was verified. ASI Sukhmander Singh told the appellant that it was suspected that he was carrying some intoxicating substance and his search has to be conducted. The appellant was apprised of his legal right to get the search conducted in the presence of a Gazetted Officer or a Magistrate but the appellant reposed confidence upon him. The search of the appellant led to the recovery of intoxicant powder wrapped in a polythene bag which was recovered from the lower worn by the appellant. 10 gms of intoxicant powder was separated as sample and the remaining powder weighed 250 gms. Separate parcels of the sample at the bulk were prepared and were sealed with the seal bearing impression SS. The personal search of the appellant was conducted. Ruqa was recorded, despatched to the police station and on the basis thereof FIR was registered.

On completion of the investigation, the challan was presented in the Court. A prima facie case under Section 22 of the Act was made out against the appellant to which he pleaded not guilty and claimed trial.

In support of its allegations, the prosecution has examined 5 witnesses namely HC Charanjit Singh (Sample carrier), PW2 ASI Sukhmander Singh, Investigating Officer, PW3 ASI - Jagdev Singh, recovery witness, PW4 Inspector Rashminder Singh, the Officer in-charge of the Police Station and ASI Jarnail Singh who was officiating SHO during the relevant period besides producing documentary

evidence. The statement of the appellant under Section 313 Cr.P.C. was recorded wherein he denied the correctness of the incriminating evidence appearing against him and pleaded false implication. The appellant had also examined DW1 HC Harwinder Singh during the course of his defence evidence.

Vide judgment of conviction and order of sentence the appellant was convicted and sentenced as aforesaid.

During the course of hearing, learned counsel for the appellant has not disputed the findings of the conviction as recorded by the Court below and has only sought leniency in the matter of sentence.

Learned State counsel has also stated that the matter may be disposed of accordingly.

I have also gone through the record of the learned trial Court. In the case in hand, the recovery has been effected by ASI Sukhmander Singh, PW2 in the presence of ASI Jagdev Singh, PW3. Both the witnesses to the recovery have deposed in a fairly satisfactory and reliable manner on all the material aspects of the proceedings conducted at the spot and recovery of incriminating articles from the conscious possession of the appellant. The search of the appellant has been conducted after apprising him of his legal right to get the search conducted in the presence of Gazetted Officer or Magistrate. The appellant had reposed confidence upon PW 2 ASI Sukhmander Singh and his search led to the recovery of incriminating articles. The consent

statement of the appellant has been proved as Ex.P1 and the incriminating articles were taken into possession vide recovery memo Ex.P3. As per the report of Forensic Science Laboratory, Ex.P13, the contents of the parcel were that of Nitrazepam. In these circumstances, the conviction of the appellant has been correctly recorded by the Court below on the basis of the satisfactory, reliable and convincing evidence adduced against the appellant. Consequently, the judgment of conviction as recorded by the learned Judge, Special Court is upheld and affirmed.

With regard to the quantum of sentence, it has not been disputed that the appellant has already undergone imprisonment for a period of one year, 9 months and 5 days at the time when his sentence of imprisonment was suspended. The appellant was in his early twenties at the time of recovery. No criminal antecedents have been putforth against him.

It has further been stated by learned counsel for the appellant that he is a married person having small children and his aged parents are also dependent upon him. Furthermore, keeping in view the period of incarceration already undergone by the appellant, the substantive sentence of imprisonment imposed upon the appellant is reduced to already undergone.

With regard to the amount of fine, it has been stated by learned counsel for the appellant that the said amount shall be deposited within a period of two months before the trial Court. In the

event, the amount of fine is not deposited within the aforesaid time period, the trial Court shall initiate necessary steps for enforcement of the recovery/re-arrest of the appellant to undergo the default sentence.

With the aforesaid partial modification in the quantum of sentence, the appeal being devoid of merit is dismissed.

**23.09.2020**

Janki

**(VIVEK PURI)**  
**JUDGE**

*Whether speaking/reasoned : Yes/No*

*Whether reportable : Yes/No*