

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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Criminal Appeal-S-2754 of 2019 (O&M)

Date of Decision: February 25, 2020.

Jasveer Sidhu @ Sheera

.....Appellant

versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR.JUSTICE VIVEK PURI.

Present: Mr.Subhash Kumar, Advocate, for the appellant.

Mr.Balbir Singh Sewak, Additional AG, Punjab.

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Vivek Puri, J.

[1] The present appeal has been preferred against the judgment of conviction and order of sentence dated 20.08.2019 vide which the appellant has been convicted by the learned Judge, Special Court, Jalandhar, under Section 22(b) of the Narcotics Drugs and Psychotropic Substances Act, 1985 (for short, 'the Act') and sentenced to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.10000/- in default whereof, to further undergo rigorous imprisonment for a period of two months.

[2] Briefly, the case as put-forth by the prosecution is to the effect that on 12.08.2017, the appellant was spotted near Rampur Chowk in the area of police station Lambra by the police party headed by ASI Karnail Singh. On seeing the police party, the appellant turned back and on suspicion he was apprehended. Identity of the appellant was verified. He was informed that it is suspected that he is carrying some narcotic substance and the search is required to be conducted. He was apprised of his legal

right to get the search conducted in the presence of a gazetted officer or a Magistrate. However, the appellant reposed confidence on ASI Karnail Singh. Consent memo was accordingly prepared. Search of the appellant led to recovery of polythene envelope containing intoxicant powder kept in the right side pocket of the Capri worn by him. On weighing the same, it came to be 35 grams. The parcel was sealed with the seal bearing impression 'KS' On return to the police station, the appellant alongwith the witnesses and the case property were produced before SI Pushap Bali, who was the Station House Officer of the police station, who verified the facts of the case. The case property alongwith the appellant was produced before the learned Illaqa Magistrate who drew two samples of 5 grams each from the bulk parcel. Both the representative parcels and bulk parcel were sealed with the seal bearing impression 'TS'. As per the report of FSL, the contents of the sample parcels were that of 'Alprazolam'.

[3] On completion of the investigation a prima-facie case under Section 22(b) the Act was made out against the appellant but the appellant pleaded not guilty and claimed trial.

[4] To substantiate its case, the prosecution has examined as many as five witnesses besides producing the documentary evidence. Statement of the appellant under Section 313 Cr.P.C. was recorded but no defence evidence was led by him.

[5] Vide the judgment of conviction and order of sentence, the appellant has been convicted and sentenced as mentioned in para No.1 of this judgment.

[6] Aggrieved by the aforesaid judgment and order of sentence, the appellant has preferred the instant appeal.

[7] I have heard learned counsel for the parties and perused the record.

[8] During the course of hearing, learned counsel for the appellant has not assailed the judgment of the learned trial Court as far as conviction of the appellant is concerned. However, he only prayed for leniency in the sentence.

[9] I have gone through the judgment of the learned trial Court. In the instant case, recovery was effected by PW-3 ASI Karnail Singh in the presence of PW-1 HC Jugraj Singh. The search of the appellant was conducted as per the option given by him to PW-3 ASI Karnail Singh. The appellant was apprised of his legal right to get the search conducted in the presence of a gazetted officer or a Magistrate but he reposed confidence on PW-3 ASI Karnail Singh. Both the witnesses to the recovery have deposed in a fairly satisfactory manner on all the material aspects of the case. Deposition of both the witnesses is fairly, consistent, reliable and forms a valid ground for founding the conviction of the appellant. As per the report of the FSL, the contents of the sample parcel were that of 'Alprazolam'. In such circumstances, the conviction of the appellant has been correctly recorded by the trial Court on the basis of satisfactory and reliable evidence establishing the guilt of the appellant beyond the shadow of any reasonable doubt. As such, the judgment of conviction as recorded by the trial Court is upheld.

[10] With regard to the sentence, it may be mentioned here that the custody certificate placed on record indicates that the appellant has undergone actual imprisonment of 11 months out of the substantive sentence of one year imposed upon him by the learned trial Court. There is

nothing to suggest that the appellant is a previous convict. Furthermore, the contraband recovered from the appellant falls in the category of less than the commercial category. In such circumstances, further leniency can be extended to the appellant in the matter of sentence. As such, the substantive sentence of imprisonment imposed upon the appellant is reduced from rigorous imprisonment for one year to rigorous imprisonment already undergone. However, there shall be no alternation with regard to amount of fine and default sentence imposed upon the appellant.

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

February 25, 2020

mohinder

(VIVEK PURI)

JUDGE

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