

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRA-S-766-2021(O&M)

Date of decision : 25.11.2021

Sukhandeep @ Sunny

... Appellant

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

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

Mr.Sarabjit Singh, AAG, Punjab.

VIKAS BAHL, J.(ORAL)

CRM-24303-2021

This is an application under Section 389 Cr.P.C. for suspension of sentence of the applicant-appellant during the pendency of the appeal.

During the course of hearing, it has transpired that the applicant-appellant has already undergone a period of 11 months of actual custody out of the total sentence awarded of 1 ½ years and after arguing the matter, learned counsel for the applicant-appellant has submitted that he would not challenge the conviction of the applicant-appellant but seeks indulgence of this Court to consider the sentence of the applicant-appellant in view of the custody period as well as in view of the fact that he is not involved in any other case.

Learned State counsel has stated that he is also ready to fully assist in the present case.

Accordingly, the present application is disposed of by taking the main case for hearing with the consent of both the learned counsel.

CRA-S-766-2021

Challenge in the present appeal is to the judgment of conviction and order of sentence dated 22.03.2021 vide which the Judge, Special Court, Jalandhar, had convicted the appellant under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'NDPS Act') and had sentenced him to undergo rigorous imprisonment for a period of 1 ½ years and to pay a fine of Rs.10,000/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of three months, in FIR no.115 dated 24.08.2017 registered under Section 22 of NDPS Act, at Police Station Bilga Jalandhar.

Brief facts of the prosecution case are that on 24.08.2017, ASI Paramjit Singh along with other police officials were going from village Ramewal towards Rajowal side in their private vehicles. When the police party reached near the bridge canal, they spotted a clean shaven person coming on foot who, after seeing the police party, started to walk beside the river. On seeing the suspicious conduct of the person, the police officials nabbed the said person who disclosed his name to be Sukhandeep Singh @ Sunny (appellant). Thereafter, the investigating officer informed the said appellant about his name, rank, posting and stated that they had suspicion that the appellant was carrying some intoxicant powder in his possession and also apprised the appellant of his legal right to get the search conducted either by a Magistrate or by a Gazetted Officer. The appellant had reposed confidence upon him and the consent memo was accordingly prepared. The search of appellant was conducted and a polythene bag was recovered

containing intoxicant powder wrapped in a glazed paper from the left pocket of his trousers, which on weighing on digital weighing scale, came out to be 46 grams. The same was put into a plastic box and was sealed with seal bearing impression 'PS'. Form M-29 was prepared and investigating officer also put his seal bearing impression 'PS' on the said form. The case property was taken into possession vide recovery memo and ruqa was sent to the Police Station and on the basis of which FIR in question was registered. The appellant was arrested and investigation was carried out. After investigation, the challan was presented and thereafter, charges were framed.

The prosecution in order to prove its case, examined six witnesses. The details of which have been given hereinbelow:-

PW1 Constable Amandeep Singh

PW2 ASI Paramjit Singh

PW3 Retired Inspector Harjit Singh

PW4 DSP Surinder Mohan

PW5 ASI Sukhwinder Singh

PW6 HC Manoj Kumar

PW2 ASI Paramjit Singh was the investigating officer of the case and had fully supported the case of the prosecution and had proved on record the consent memo of appellant as Ex.P1, recovery memo Ex.P2, ruqa Ex.P3, personal search memo Ex.P7, applications to produce the appellant along with case property before Illaqa Magistrate Ex.P8, orders passed by the Magistrate Ex.P11, report of Chemical Examiner Ex.PY amongst other relevant documents.

PW3 Retired Inspector Harjit Singh had deposed that he had

deposited the parcel along with Form M-29 with MHC Sukhwinder Singh intact and thereafter, he had taken one parcel containing 5 grams intoxicant powder sealed with seal 'RS' from MHC Sukhwinder Singh and put the same into another cloth bag and sealed the same with his seal bearing impression 'HS' and also affixed his secret code no.68/2017 on the said parcel. The said PW3 had also fully supported the case of prosecution.

PW4 DSP Surinder Mohan had also supported the case of the prosecution and had stated that when the Constable had come to him along with one parcel bearing seal impression 'HS', he had put his seal impressions 'SM' with unique code number 874-DPO-Jalandhar (Rural) and returned it back to the Constable.

The chemical examiner report Ex.PY was also seen and it was found that contents of sample contained Alprazolam and the quantity of the same was 46 grams which was less than the commercial quantity inasmuch as more than 100 grams of Alprazolam fall under the ambit of commercial quantity.

The Judge Special Court, after considering the entire evidence on record and also the fact that in spite of the cross-examination, nothing came out in favour of the present appellant and the prosecution evidence was found to be cogent and consistent in all material aspects and accordingly convicted the present appellant under Section 22 of the NDPS Act and sentenced him in the manner, as has been mentioned hereinabove.

Aggrieved against the said judgment and order of sentence, the present appeal has been filed, which is taken up for hearing today with the consent of both the learned counsel for the parties.

During the course of arguments, learned counsel for the

appellant has submitted that although, he does not wish to challenge the conviction of the appellant under Section 22 NDPS Act but he would be satisfied in case a lenient view is taken with respect to the sentence which has been awarded to the appellant. In this regard, he has submitted that the FIR in the present case is of the year 2017 and thus, the appellant has suffered agony of trial/bail/appeal for all these years and the appellant was granted the concession of bail and he has never misused that concession. It is further submitted that the appellant is about 30 years of age. He is married and has got one minor child and since his father also died, his widowed mother is dependent upon him and he is the sole bread winner of the family. The appellant has already undergone 11 months of actual custody out of the entire sentence awarded to him. It is also submitted that the appellant is not involved in any other case.

In support of his arguments, learned counsel for the appellant has relied upon judgments of co-ordinate Benches of this Court in ***CRA-S-3505-SB-2017*** decided on 07.10.2017 titled as “***Rupesh Kumar @ Kala vs. State of Punjab***” reported as ***2017(4) RCR (Criminal) 668*** and in ***Crl. Revision No.1239 of 2011*** decided on 12.01.2018 titled as “***Ajay Kumar and another vs. State of Punjab***”, reported as ***2018(1) Law Herald 514***.

Learned counsel for the State has stated that the judgment of the Court below has been passed after considering the entire evidence and material on record. The other factual aspects have not been rebutted by the learned counsel for the State. He has also produced on record the custody certificate of the appellant, which is taken on record, as per which, the period of custody as stated by the learned counsel for the appellant, is reiterated.

This Court has heard the learned counsel for the parties and has gone through the paper book.

Insofar as the conviction of the present appellant under Section 22 NDPS Act is concerned, this Court is of the view that the Judge, Special Court, had taken into consideration entire evidence and material on record in detail and had rightly come to the conclusion that the appellant is guilty of offence under Section 22 NDPS Act and the judgment passed by the Judge, Special Court, Jalandhar, is well reasoned. PW-2 ASI Paramjit Singh who was the Investigating Officer in the present case, had fully proved that the appellant was apprehended at the spot along with 46 grams of intoxicant powder containing Alprazolam without any valid permit or licence on 24.08.2017. He had also proved on record that the procedure as stipulated under the NDPS Act had duly been followed. He had proved recovery memo Ex.P2, applications to produce the accused / appellant before the Illaqa Magistrate Ex.P8, P9 and Ex.P10 and the order passed by the Illaqa Magistrate Ex.P11 and report of Chemical Examiner Ex.PY which clearly showed that the sample taken was found to have contained Alprazolam. PW-3 Retired Inspector Harjit Singh had also duly supported the case of the prosecution and had proved the entire procedure was meticulously followed. PW-4 DSP Surinder Mohan had deposed with respect to the seal impression 'SM' with unique code number 874-DPO-Jalandhar (Rural) on the parcel bearing seal impression 'HS' which was brought to his office by the constable. The above said documents and evidence have fully proved the case against the appellant and thus, the conviction of the appellant is upheld.

Insofar as the sentence which has been awarded to the appellant

is concerned, this Court is of the view that the incident in the present case is of the year 2017 and the appellant has never misused the concession of bail granted to him. The petitioner is about 30 years of age and is married and has got one minor child and since his father also died, his widowed mother is also dependent upon him and he is the sole bread winner of the family. As per the custody certificate, he has already undergone 11 months actual custody out of total sentence awarded of 1½ years. A co-ordinate Bench of this Court in ***Rupesh Kumar @ Kala's*** case (supra) has held as under:-

“Appellant had faced trial in FIR No. 58 dated 1.6.2016 registered at Police Station City Budhlada, District Mansa under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (‘the Act’ for short). The trial Court vide judgment/order dated 5.9.2017 convicted the appellant for commission of offence punishable under Section 22 of the Act, and sentenced him to undergo two years rigorous imprisonment and to pay a sum of Rs.5000/- as fine and, in default of payment of fine, to further undergo rigorous imprisonment for a period of one month. Hence, the present appeal by the accused-appellant.

As per the prosecution case, appellant was found in conscious possession of 510 tablets of “Almax-05” containing the salt “Alprazolam” (51 strips of tablets of Alprazolam, each of 10 tablets) without any permit or licence.

During the course of arguments, learned counsel for the appellant has not challenged the conviction of the appellant under Section 22 of the Act as ordered by the Trial Court but has submitted that the sentence qua imprisonment of the appellant be reduced to the period already undergone by him. Learned counsel for the appellant has further submitted that the appellant is a

*poor man and confined in jail and has no means to pay the fine. Appellant is the only bread earner of the family. In support of his arguments, learned counsel has relied upon the judgment in **Mukesh vs. State of M.P.** 2015(1) RCR(Criminal) 251 where in Hon'ble the Supreme Court has reduced the sentence to already undergone.*

*Learned counsel for the appellant has also placed reliance on the judgment of this Court in **Balvinder Singh vs. State of Haryana** 2012 (2) RCR(Criminal) 458, wherein it was held that the contraband recovered from the accused does not fall within the definition of commercial quantity and the ends of justice would be best met if the substantive sentence of imprisonment be reduced to that already undergone by him.*

A perusal of the custody certificate of the appellant, placed on record reveals that the appellant has undergone about one year three months and seven days of actual sentence and is not involved in any other criminal case. Appellant has been facing criminal proceeding since the year 2016. Moreover, recovery of 510 tablets of "Almax-05" containing the salt "Alprazolam" effected from the possession of the accused falls in the ambit of non-commercial quantity.

Keeping in view the submissions made by learned counsel for the appellant, it would be just and expedient to reduce the sentence qua imprisonment of the appellant to the period already undergone by him."

Thus, in view of the above said facts and circumstances, as also the judgments relied upon by the learned counsel for the appellant, sentence awarded to the appellant is ordered to be reduced to the period already undergone by him. In addition to the fine of Rs.10,000/- imposed by the trial Court, Rs.5000/- as compensation has been imposed. The above said

the appellant will deposit the fine amount of Rs.10,000/- with the concerned Appellate Court / trial Court within a period of two months from today and deposit the compensation amount of Rs.5,000/- in the High Court Lawyers Welfare Fund, within a period of two months from today.

It is made clear that in case the said amount of Rs.15,000/- is not deposited within two months from today as indicated above, then the present appeal would be deemed to have been dismissed.

With the above said observations, the present appeal is disposed of.

(VIKAS BAHL)
JUDGE

November 25, 2021

Davinder Kumar

Whether speaking / reasoned

Yes/No

Whether reportable

Yes/No