

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

**CRA-S-45-2021 (O&M)
Date of decision: 25.05.2022**

Chief Obonna @ Modi @ Prince

...Appellant

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present: Ms. Swati Verma, Advocate
for the appellant.

Mr. Joginder Pal Ratra, DAG, Punjab.

ARVIND SINGH SANGWAN, J.

Prayer in this appeal is for setting aside the judgment of conviction as well as the order of sentence dated 14.01.2021, vide which the appellant was convicted for offence punishable under Section 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'NDPS Act') and was sentenced to undergo rigorous imprisonment for a period of 04 years along with a fine of Rs.25,000/- and in default of payment of fine, the appellant was further ordered to undergo R.I. for a period of 03 months.

Brief facts of the case are that on 13.03.2019, ASI Ravinder Singh along with other police officials was present at high tech Naka at Satluj Bridge, Phillaur. He received a secret information that Miraj Rehmani @ Miraj, a resident of New Delhi, is indulging in the business of selling heroin. He is going in a bus with heroin from Delhi to Jalandhar. In case vehicles are properly checked, he can be apprehended with heroin. Finding the information to be credible, ASI Ravinder Singh sent a ruqa to the police station for registration of case under section 21 NDPS Act. On his telephonic call, Inspector/SHO Prem Singh along with other police officials also reached there. Checking of the vehicles was started. Due to checking, there was rush of the vehicles and speed of the vehicles also slowed. One clean shaven person alighted from a private bus, carrying a bag on his back and started walking briskly. He was apprehended and told his name as Miraj Rehmani @ Miraj. Inspector Prem Singh told him that there is suspicion of heroin with him or in his bag, for which search is to be conducted. He has got legal right to get his search conducted before a Magistrate or a Gazetted officer, who can be called at the spot. Miraj Rehmani stated in hindi that he wants the search to be conducted by a Gazetted Officer. Non-consent memo was prepared, upon which Miraj Rehmani put his signatures. Inspector Prem Singh telephonically called DSP Davinder Kumar, who reached at the spot after sometime. He introduced himself to Miraj Rehmani and told him that he is a Gazetted Officer of Punjab Govt. There is suspicion of some intoxicant

material with him, for which his search as well as his bag is to be conducted. He has got legal right to get such search conducted from another Gazetted Officer or Magistrate, who can be called at the spot. Miraj Rehmani told that he has faith in him and he can conduct his search and the bag. Thereafter, his consent memo was prepared. A witness from public was tried to be joined, but none agreed. Thereafter, as per instructions of DSP Davinder Kumar, Inspector Prem Singh conducted search of the bag of Miraj Rehmani. A polythene envelope containing heroin was recovered from the bag. Same was found to be containing 01 kg of heroin. Same was put back in the said polythene envelope and then converted into a parcel, which was sealed by Inspector Prem Singh with his seal bearing impression 'PS'. DSP Davinder Kumar also affixed his seal bearing impression 'DK' on the parcel. Form M-29 was prepared. Separate seal impressions were prepared. Inspector Prem Singh handed over his seal to ASI Ravinder Singh, whereas DSP kept his seal with him. Form M-29 and sample impression of seal were taken in possession by Inspector Prem Singh vide separate memo. Site plan of the spot was also prepared. Miraj Rehmani accused was arrested. During interrogation, he suffered disclosure statement, whereupon Modi, resident of Delhi, was nominated as accused. On completion of investigation at the spot, Inspector Prem Singh moved an application in the court of Ms. Harpreet Kaur, SDJM, Phillaur and obtained arrest warrants of accused Modi. Thereafter, Inspector Prem Singh along with other police officials and

accused Miraj Rehmani reached New Delhi to arrest accused Modi. On identification of accused Miraj Rehmani, accused Modi was arrested, who disclosed his name as Chief Obonna @ Modi @ Prince resident of Nigeria at present of Uttam Nagar, New Delhi. On return to Phillaur, accused along with case property were produced in the court of JMIC, Phillaur, who took out two samples of 05 grams each from the parcel, sealed the said sample parcel and the bulk parcel with his seal bearing impression 'AK' and remanded the accused in three days police custody. During interrogation, accused Chief Obonna @ Modi @ Prince suffered disclosure statement and as per his disclosure statement got recovered 150 grams of heroin. Same was converted in a parcel and sealed with his seal bearing impression 'PS' by Inspector Prem Singh. He also prepared Form M-29. He prepared rough site plan of the spot and recorded statements of witnesses. On return to the police station, he handed over the case property to MHC. On 16.03.2019, he produced the said case property in the court of SDJM, Phillaur, who took out two samples of 05 grams each from the parcel and sealed the said sample parcels and bulk parcel with her seal bearing impression 'HK'. On return to the police station, case property was deposited with MHC. On 25.03.2019, MHC sent sample parcels to Forensic Science Laboratory, Mohali through LC Gurpreet Kaur. On completion of investigation, challan against the accused was prepared and presented in the Court. On appearance of accused

in the Court, copy of challan was supplied to him as envisaged under section 207 Cr.P.C.

Finding a prima facie case, charges under Sections 21 (c) & 29 of NDPS Act were framed against the accused, to which he pleaded not guilty and claimed trial.

In order to prove its case, the prosecution examined PW1 ASI Ravinder Singh, PW2 LC Gurpreet Kaur, PW3 ASI Vijay Kumar, PW4 DSP Davinder Kumar, Sub Division Phillaur and PW5 Inspector Prem Singh, the Investigating Officer and closed the evidence.

After conclusion of the prosecution evidence, statement of accused was recorded under Section 313 Cr.P.C. and the entire incriminating evidence, which the prosecution produced against him, was put to him to tender explanation for the same. The appellant-accused denied the allegation of the prosecution and pleaded false implication. In defence, the accused examined DW1 Sartaj Malik, DW2 Govind Ram and DW3 Sanjay Srivastava.

The trial Court, after hearing learned counsel for the parties and appreciating the evidence on record, vide judgment of conviction and order of sentence of even date i.e. 14.01.2021, convicted and sentenced the appellant/accused under Section 21 of NDPS Act, as the prosecution failed to prove its case for offence under Section 29 of NDPS Act.

Learned counsel for the appellant has argued that as per statement of PW1 ASI Ravinder Singh, after arrest of co-accused Miraj Rehmani, his disclosure statement Ex.P9 was recorded, in which he stated that he purchased the drug from appellant Chief Obonna @ Modi @ Prince and thereafter, on 14.03.2019, the appellant was arrested from Delhi vide arrest-cum-intimation memo Ex.P11 and his personal search was conducted vide Ex.P12, however, nothing was found. It has come in the statement of PW1 that on the same day, he was produced before the Illaqa Magistrate and three days police remand was obtained and on 15.03.2019, the appellant suffered a disclosure statement Ex.P13 that he kept concealed some heroin near a piece of stone near river bridge in Phillaur and he can get it recovered. Thereafter, he was taken to said place and at the spot, he was given an option that recovery can be effected either in presence of a Magistrate or Gazetted Officer, but the accused reposed confidence in the Investigating Officer and thereafter, vide consent memo Ex.P14, his consent was recorded and 150 grams of heroin was recovered vide Ex.P15 and the same was sealed. It is further submitted that in the disclosure statement of appellant Ex.P13, nothing is stated that prior to 15.03.2019, he had ever visited Phillaur, where he kept 150 grams of heroin under the bridge of a river and even as per own case of PW1, the appellant reposed confidence in the same Investigating Officer, who was conducting the investigation right from the beginning that he can conduct further investigation, as he had

confidence in him, therefore, in the absence of any Magistrate or Gazetted Officer, it is highly doubtful that recovery of 150 grams of heroin was effected at the instance of appellant in terms of his disclosure statement.

Learned counsel has further referred to the impugned judgment of conviction, wherein, in para No.35, following observations were made: -

“So far as offence under section 29 NDPS Act is concerned, there is absolutely no evidence led by the prosecution of accused Chief Obonna having abetted accused Miraj Rehmani or having entered into a criminal conspiracy with him to commit an offence punishable under NDPS Act. Accused Chief Obonna was nominated in the case on the basis of disclosure statement Ex.P9 of accused Miraj Rehmani, wherein he stated that he had earlier supplied 350 grams heroin at the asking of accused Modi/Chief Obonna, who had paid him Rs.15,000/-. He further stated that on 12.03.2019 accused Modi handed over 1 kg heroin to him, to be supplied at Jalandhar and he was to be paid much more amount this time by accused Modi. That accordingly he was coming from New Delhi to Jalandhar and has been apprehended with 1 kg heroin. So, as per this disclosure statement Ex.P9, 1 kg heroin recovered from accused Miraj Rehmani was given to him by accused Chief Obonna @ Modi, to be supplied at Jalandhar. This disclosure statement did

not lead to any recovery and is inadmissible in evidence. Only on the basis of this disclosure statement, accused Chief Obonna cannot be held guilty for 1 kg heroin recovered from accused Miraj Rehmani, with the aid of section 29 of NDPS Act. Inspector Prem Singh, IO(PW5) in his cross-examination stated that there was no relationship between both the accused. No relationship emerged during his investigation between the accused. Similar is the statement of ASI Ravinder Singh(PW1). There is no evidence of any link or relation of accused Miraj Rehmani with accused Chief Obonna, led by the prosecution. There is no evidence of accused Chief Obonna having abetted accused Miraj Rehmani or having conspired with him to possess 1 kg heroin led by the prosecution. However evidence led on the file proves that 1 kg heroin was recovered from accused Miraj Rehmani on 13.03.2019 and 150 grams heroin was recovered from accused Chief Obonna on 15.03.2019. Both of them are therefore guilty under section 21 NDPS Act. However there is no evidence of abetment or criminal conspiracy, so accused Chief Obonna cannot be linked with the recovery of 1 kg heroin.”

It is further argued that once the trial Court recorded a finding that there is nothing on record to prove that there was any conspiracy

between the appellant and co-accused Miraj Rehmani, from whom 01 kg of heroin was recovered, recovery of 150 grams of heroin is not proved from the appellant. It is also submitted that as on today, out of 04 years R.I. awarded by the trial Court, the appellant has undergone 03 years, 02 months and 07 days and is not involved in any other case under NDPS Act except one FIR under Section 52-A of Prisons Act, which has no direct bearing on merits of the present appeal.

Learned State counsel could not dispute the actual sentence undergone by the appellant. It is also not disputed that recovery of 150 grams of heroin was not effected in presence of any Magistrate or Gazetted Officer, as it has come in the statement of PW1 that the appellant reposed confidence in him, therefore, he himself conducted the investigation.

After hearing learned counsel for the parties, I uphold the judgment of conviction passed by the trial Court, as the same is based on appreciation of prosecution evidence, however, considering aforesaid facts and circumstances of the case, present appeal is partly allowed and sentence of 04 years R.I. awarded to the appellant is reduced to the period already undergone by him i.e. 03 years, 02 months and 07 days. However, the imposition of fine of Rs.25,000/- is waived off.

The appellant will not be released from the Jail till the emigration and the deportation proceedings are completed by Bureau of Immigration or the Senior Superintendent of Police, Jalandhar under

Foreigner Regional Registration Office and after due verification, he will be taken to airport by a team, authorized by the Senior Superintendent of Police/F.R.O., Jalandhar, to hand over his custody to the concerned Emigration Authorities.

The Senior Superintendent of Police/F.R.O., Jalandhar is also directed to ensure the deportation of the appellant and to keep him in jail, till the time, formalities of his deportation are completed and he is handed over to Emigration Authorities along with his passport, which will be released from the custody of the Court/police in due course.

The Embassy of Nigeria is further directed to make sure that return air ticket is provided to the appellant, after his deportation process is over.

With the aforesaid observations and directions issued, present appeal is disposed of.

25.05.2022
vishnu

[ARVIND SINGH SANGWAN]
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable:	Yes/No