

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

Criminal Revision No.164 of 2022(O&M)

Vishal ...Petitioner

Versus

State of Punjab ...Respondent

and

Criminal Revision No.395 of 2022(O&M)

Anshul Goyal ...Petitioner

Versus

State of Punjab ...Respondent

Date of Decision: April 21, 2022

CORAM: HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

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Present: - Mr.Siddarth Gupta, Advocate
for the petitioner in CRR-164-2022.

Mr.Guninder Singh Brar, Advocate
for the petitioner in CRR-395-2022.

Mr.B.S.Sewak, Addl.AG, Punjab.

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HARINDER SINGH SIDHU, J.

This judgment shall dispose of two Criminal Revisions bearing
No.164 of 2022 and 395 of 2022, as both have arisen out of the same FIR.

The petitioners (Vishal and Anshul Goyal) are accused in case
FIR No.0132 dated 13.06.2020 registered under Sections 21, 25 of the
Narcotic Drugs and Psychotropic Substances Act, 1985 (*for short 'the Act'*)

(offence under Section 27 of the Act added lateron), registered at Police

Station Canal Colony, Bathinda.

In both the petitions, challenge is to the order dated 21.12.2021 passed by Ld.Judge, Special Court, Bathinda, whereby, charges have been framed against the petitioners under Sections 21 and 27 of the Act.

Ld. counsel for the petitioners have submitted that even as per the prosecution case, the petitioners were found only consuming the alleged intoxicant substance. There is no allegation of any recovery from the petitioners, and thus, they cannot be tried for the offence under Section 21 of the Act.

Brief facts of the case are that the FIR was recorded on the statement of ASI Jagsir Singh, who stated that on 12.06.2020, he along with HC Parwinder Singh, C-2 Swaranjeet Singh, C.Sher Bahadur was on patrolling duty in the area of Paras Ram Nagar, Gurukul Road in official vehicle Tavera bearing Reg.No.PB-65D-7389, driven by C.Harjeet Singh. At about 5.45 PM, when the police party was just 10 karams from Sirhind Canal passage metalled road, it noticed a car make Indica Vista of silver colour bearing Reg.No.DL-5CG-0254. Three youths were seen standing near the same. One of them was carrying a transparent polythene bag. He kept it on the bonnet of the car. The other two were seen standing with him. The Police party stopped and apprehended all three on suspicion of their having some intoxicant substance. SI Jagroop Singh, Incharge CIA Staff-2, Bathinda was called on the spot. The young persons disclosed their names as Manvir Singh @ Kaku, Vishal (petitioner) and Anshul (petitioner). Notice under Section 50 of the Act was given. Thereafter, from the transparent polythene bag, which was open, *Heroine* was recovered. On

article was found in the car.

I have heard Ld. counsel for the parties and perused the records.

Admittedly, as per the FIR, the case of the prosecution was that three youths were seen standing near the car, out of which one youth was carrying a transparent polythene bag and keeping it on the bonnet of the car. Other two youths were seen standing with him. During investigation and from the dope test, it was found that petitioners Anshul and Vishal were addicted to intoxicants. Thus, they were found to have committed an offence only under Section 27 of the Act. General Diary report No.017 dated 13.06.2020 was recorded in this regard, which reads:

“During the course of investigation in the present case, according to the interrogation of the accused persons, statements and from the dope test, it has been found that in the present case, the arrested accused Anshul son of Salab Kumar resident of # 119, street No.1, Tilak Nagar, Gidderbaha, District Sri Muktsar Sahib and Vishal son of Surinder Mohan, resident of #68, Street No.2C/2, Vishal Nagar, Bathinda, District Bathinda is only addicted to intoxication, upon which the offence under Section 27 NDPS Act against the above mentioned Anshul and Vishal Kumar and their offence regarding selling intoxicants does not stand proved, due to which the arrest of the above mentioned Anshul and Vishal is postponed. If any fact regarding sale of intoxicant against the above mentioned Anshul and Vishal came on the file, then appropriate action will be set into motion. The offence under Section 27 of NDPS Act being bailable, Anshul and Vishal are released on bail. Moharrir Head Constable is hereby directed that regarding addition of offence in the present case and regarding other proceedings, send copies of rapar to the Area Magistrate and Senior Officers...”

Thereafter, the Police submitted its final report under Section 173 Cr.P.C., wherein, the petitioners were challaned for the offence under Section 27 of the Act.

In the above facts and circumstances, there was no valid reason with the Trial Court to frame charge under Section 21 of the Act against the petitioners, which states that '*whoever, in contravention of any provision of this Act or any rule or order made or condition of licence granted thereunder, manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses any manufactured drug or any preparation containing any manufactured drug shall be punishable*'.

However, the petitioners have been rightly charged under Section 27 of the Act, which prescribes punishment for '*consumption of any narcotic drug or psychotropic substance*'.

Accordingly, both the revision petitions are allowed. The impugned order dated 21.12.2021, only to the extent of framing charge under Section 21 of the Act against petitioners (**Vishal and Anshul Goyal**), is set aside.

Trial Court is directed to proceed accordingly.

April 21, 2022

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(HARINDER SINGH SIDHU)
JUDGE

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No