

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRA-S-36-SB-2006 (O&M)

Date of decision :- 1.8.2022

Varinder Kumar

.....Appellant

vs.

State of Punjab

.....Respondent

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Ms. Satpreet K. Kapila, Advocate
for the appellant.

Mr. Sandeep Vermani, Additional Advocate General,
Punjab.

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H. S. Madaan, J.

1. This appeal is directed against judgment and order dated 15.12.2005, passed by the Court of Special Judge, Rupnagar, vide which on conclusion of trial against Bimla Devi w/o Sher Singh, aged 45 years, r/o Doctor Ambedkar Nagar, near Bhojpur Nagar, Sunder Nagar, Police Station Chitrokri, District Mandi (H.P.) and Varinder Kumar (present appellant) s/o Dharam Pal, aged 34 years, cultivator, r/o Village Jakhera, Tehsil and District Una (H.P.), both of them being accused in FIR No. 65 dated 12.6.2003, for an offence under Section 18/61/85 of the NDPS Act, registered at Police Station Anandpur Sahib. Bimla Devi was acquitted of the charge framed against her under Section 18 of the Narcotic and Psychotropic Substances Act, (hereinafter referred to as 'the Act'), whereas accused Varinder Kumar was convicted for the said offence and vide order passed on that very date, had sentenced him to undergo rigorous imprisonment for 3 years and to pay a fine of Rs.25,000/-, in default of payment of fine to undergo rigorous imprisonment for 3 months.

2. Briefly stated, facts of the case, as per the prosecution story are that on 12.6.2003, at about 7.00 P.M., accused Varinder Kumar, while driving a scooter bearing registration No. HP-20-A-9886, on which his co-accused Bimla Devi was pillion riding, came from the Bilaspur side. The scooter was signalled to stop by the Police Party headed by SI/SHO Dharampal of Police Station Anandpur Sahib (hereinafter referred to as the Investigating Officer/IO also), in the area of village Baruwal near petrol pump, where a picket had been laid by the Police Party. In the meanwhile, one Swaran Singh, resident of Kiratpur Sahib, arrived there and he was joined with the Police Party. Since SI/SHO Dharampal suspected Varinder Kumar to be in possession of some contraband, he informed him in that regard, stating that accused had a right to get his search and that of the scooter, conducted from him or some Gazetted Officer or a Magistrate. Varinder Kumar opted to get the search conducted by a Gazetted Officer. His statement in that regard was recorded by SI/SHO Dharampal.

3. Accordingly, Mr. Varinder Singh Brar, DSP, Anandpur Sahib (hereinafter referred to as the DSP also), a Gazetted Officer was summoned to the spot, who disclosed his identity to the accused informing that the accused had a right to get the search conducted from him or any other Gazetted Officer or a Magistrate. The accused reposed confidence in Mr. Varinder Singh Brar, DSP, Anandpur Sahib. Consent statement of Varinder Kumar accused was recorded in that regard. Then personal search of Varinder Kumar was conducted, which revealed that he had tied a *parna* (a piece of cloth) around his waist. On being untied, it was found to contain opium wrapped in a glazed paper. On being weighed, it came out to be 1 kg.

Two samples of 10 grams each were drawn out of the recovered opium and

put into two plastic boxes, whereas the remaining opium weighing 980 grams, was put in a separate plastic box. All the three boxes were converted into parcels sealed with seals of the Investigating Officer and the DSP and taken into police possession. The accused were arrested in this case. The scooter of the accused alongwith its registration certificate and driving license of the accused – Varinder Kumar, were also taken into police possession. Rough site plan of the place of recovery was prepared. Statements of the prosecution witnesses were recorded. *Ruka* was sent to the Police Station, which formed the basis for registration of FIR Exhibit PJ/1, at Police Station Anandpur Sahib. On return to the Police Station, the accused were put in the lockup, whereas the case property was deposited with MHC Amrit Lal. On the next day, both the accused alongwith the case property, were produced in the Court of Illaqa Magistrate. During the course of investigation, one of the sample parcel was sent to the office of Chemical Examiner, Punjab and as per report received therefrom, it was found to be that of opium.

4. On completion of investigation and other formalities, challan against the accused was prepared and filed in the Court. On receipt of the challan in the Court, copies of documents, relied upon in the challan, were supplied to the accused, free of cost, as provided under Section 207 Cr.P.C. and then finding a prima facie case, charge for offence under Section 18 of the NDPS Act, was framed against both the accused, to which they pleaded not guilty and claimed trial.

5. During the course of prosecution evidence, the prosecution examined in as many as 5 prosecution witnesses. PW-1 Constable Sohan Lal, a formal witness, tendered his affidavit Exhibit PA. PW-2 Sanjay

Kumar, Registration Clerk in the office of Registration and Licensing Authority, Una, had brought the summoned record regarding registration of scooter No. HP-20-A-9886, stating that it was registered in the name of Varinder Kumar s/o Dharampal, resident of village Jekhera, registration certificate being Exhibit PB. He proved the driving license of accused as Exhibit P-C. PW-3 HC Amrit Lal, stated that on 12.6.2003, he was posted as MHC at Police Station, Anandpur Sahib. He tendered in evidence his affidavit Exhibit PD with regard to the safe custody of the case property. PW-5 SI Dharampal, Investigating Officer of this case deposed with regard to the recovery part, as well as the investigation conducted by him, toeing to the line of prosecution. PW-4 Mr. Varinder Singh Brar, DSP, Anandpur Sahib, supported the case of prosecution with regard to recovery of contraband from the accused in his presence. After tendering report of Chemical Examiner Exhibit PQ, the prosecution evidence was closed.

6. Statements of accused were recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing in the prosecution evidence were put to them, but they denied the same, pleading innocence. Accused – Varinder Kumar took up the plea that on 11.6.2003, when he had gone to the Dargah of Baba Budan Shah, to pay obeisance, an altercation took place between him and the police officials. For that reason a false case has been planted upon him.

7. The accused examined DW-1 HC Balbir Singh from Police Station Anandpur Sahib, who deposed that landline number at the residence of DSP Anandpur Sahib is '01887-236638' and that of Police Station Anandpur Sahib is '232027' and he produced the summoned record relating to the DDRs of Police Post, Kirtpur Sahib recorded on 12.6.2003 and

13.6.2003, besides proving some other documents. DW-4 Saroj Bala, an official of Department of Telecommunication, Anandpur Sahib, produced summoned record with regard to telephone Number '236638', stating that it was issued in the name of DSP, Anandpur Sahib. She stated that subsequently digit '2' was prefixed to said telephone number, further deposing that telephone number '230217' is in the name of Dharampal s/o Om Parkash. Accused tendered in evidence telephone bills of mobile phone.

8. After hearing the arguments, accused- Bimla Devi was acquitted of the charge framed against her, whereas accused- Varinder Kumar was convicted and sentenced for an offence under Section 18 of the NDPS Act, by the Court of Special Judge, Rupnagar, vide judgment and order dated 15.12.2005, as mentioned above.

9. Feeling aggrieved by the said judgment of conviction and order of sentence, the accused-convict Varinder Kumar had approached this Court by way of filing the present appeal, which came up for hearing on 9.1.2006, when it was admitted for regular hearing and on an application under Section 389 Cr.P.C. having been filed, remaining sentence of the appellant was suspended during the pendency of the appeal.

10. Now the appeal has come up for final hearing.

11. I have heard learned counsel for the appellant - accused and learned State counsel, besides going through the record.

12. The first ground of attack of learned counsel for the appellant was that the offer given to the accused by the Investigating Officer in terms of Section 50 of the Act was a partial offer, which is not valid in the eyes of law causing prejudice to the accused entitling him to get benefit of acquittal.

13. Whereas learned State counsel has vehemently opposed this

contention stating that there was nothing wrong with the offer made by the Investigating Officer to the accused before carrying his search inasmuch as the appellant/accused was informed that he had a right to get the search effected in presence of a gazetted officer or Magistrate and the accused opted to get search conducted in presence of a gazetted officer, accordingly, Sh.Varinder Singh Brar, DSP, Anandpur Sahib, a gazetted officer was called to the spot and in his presence, search was conducted, therefore there was no violation of Section 50 of the Act.

14. After hearing the rival contentions, I find that the argument put forward by learned counsel for the appellant is devoid of any merit and provisions of Section 50 of the Act were duly complied with, as such no prejudice was caused to the accused, therefore, the appellant/accused is not entitled to get any benefit for alleged non-compliance of Section 50 of the Act.

15. The second contention put forward by learned counsel for the appellant was that there was delay in sending the sample to the office of Chemical Examiner, Punjab, Chandigarh, which has not been explained.

16. Whereas learned State counsel has again refuted this contention. I on my part feel that there has not been much delay in sending the sample to the office of Chemical Examiner, Punjab. From the evidence brought on file by the prosecution, it comes out that sample parcel had reached the office of Chemical Examiner with seals intact. Therefore the possibility of tampering with the sample parcels and bulk parcel stands ruled out. Even otherwise, there is nothing to show that the opium is such a substance whose chemical composition changes with passage of time and as such delay, if any, in sending the sample would have resulted in drawing a

wrong conclusion. Therefore, this contention of learned counsel for the appellant is also rejected.

17. The third argument put forward by learned counsel for the appellant was that as per the prosecution story the sample seal after use had been handed over by the Investigating Officer to Sh.Swaran Singh, an independent witness, who was not examined by the prosecution, therefore, the link evidence in this case is missing.

18. On the other hand, learned State counsel has pointed out that Swaran Singh had been won over by the accused, therefore, non-examination of independent witness does not effect the veracity of the prosecution case, which was otherwise proved by leading enough cogent and convincing evidence.

19. I find that the explanation rendered by learned State counsel is quite satisfactory and plausible and therefore such argument advanced by learned counsel for the appellant is also rejected.

20. The impugned judgment of conviction passed by the trial Court is well reasoned one, based upon proper appraisal and appreciation of evidence and correct interpretation of law. There is no illegality or infirmity therein. The prosecution had successfully proved its charge against the accused beyond a shadow of reasonable doubt by bringing enough cogent, convincing and reliable evidence both oral as well as documentary. Although the appellant/accused alleged that he had an altercation with the police at Dargah of Baba Budan Shah but accused could not bring any evidence to show that. The recovery involved in this case is quite substantial i.e. 1 k.g. of opium minimizing the chances of false plantation.

21. With regard to the sentence part, although learned counsel for

the appellant has contended that the appellant is a poor person, married having children and is sole bread winner of his family and he is a first offender, as such he should be shown some leniency in the matter of sentence, but I find that the drug trafficking is rising at an alarming rate in this region, especially in the State of Punjab, which has ruined the lives of young men and women. Drug peddlers for a small monetary consideration make the youth to use drugs for a small time excitement/kick. The drug peddlers have successfully destroyed the social fabric of our society and led youth to the wrongful path. Such type of persons need to be dealt with firmly and sternly and no sympathy can be shown to them lest that should prove to be counter productive and result in increase drug trafficking. Therefore, considering the quantity of contraband recovered, the accused is not entitled to any leniency in sentence.

22. Thus, the judgment of conviction and order of sentence are upheld whereas the appeal is found to be without any merit and the same is dismissed accordingly.

23. Varinder Kumar - appellant/accused is stated to be on bail granted to him by this Court. His bail is cancelled. Chief Judicial Magistrate, Rupnagar is directed to issue arrest warrants to get him arrested so as to make him undergo the remaining sentence of imprisonment and to recover the amount of fine imposed upon him.

(H.S. Madaan)
Judge

1.8.2022
chugh/Brij

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