

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

CRA-S-1317-SB-2017

Date of decision:-2.9.2022

Tinku Ram

...Appellant

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Arpit Bansal, Advocate for
Ms.Supriya Garg, Advocate,
for the appellant.

Mr.G.S. Dhillon, AAG, Punjab.

H.S. MADAAN, J.

1. Appellant Tinku Ram, an accused in FIR No.158 dated 15.9.2013, under Section 22 of Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as '**the Act**'), Police Station Moonak, was tried by Judge, Special Court, Sangrur, on the allegations that on 15.9.2013 at about 12:45 p.m. when apprehended by the police party in the area of Talab Chowk, Moonak, he was found in conscious possession of 40 vials of Rexcof syrup, an intoxicant drug, without any licence or permit, thereby committing an offence under Section 22 of the Act.

2. Briefly stated, facts of the case, as per the prosecution story are that on 15.9.2013, a police party from Police Station Moonak headed by ASI Manjit Singh (hereinafter referred to as the Investigating Officer/IO) was present at Talab Chowk, Moonak in a private vehicle having laptop and printer; at about 12:45 p.m., the accused was spotted

coming from Moonak side carrying a bag on his right shoulder; on seeing the police party, he got perplexed and tried to turn back; he was apprehended on the basis of suspicion; his name and other particulars were inquired about, which he disclosed; the Investigating Officer gave his introduction to the accused informing him that he suspected that there was some intoxicant substance in the bag carried by him and wanted to conduct his personal search and search of the bag and that the accused had a legal right to get his search conducted in presence of a gazetted officer or a Magistrate; the accused however reposed faith in the Investigating Officer; his statement in that regard was recorded; thereafter the bag in possession of the accused was checked and it was found to contain 40 vials of Rexcof syrup; the accused could not produce any licence for possession of such vials of Rexcof syrup; the Investigating Officer took out two vials each containing 100 m.l. of Rexcof syrup as samples, converting those into parcels; the remaining 38 vials were converted into a bulk parcel; all three parcels were then sealed with the seal of Investigating Officer having inscription 'MS'; the sample seal impression was also taken; the seal after use was handed over to ASI Randeep Singh; accused was arrested in this case as per rules and requisite documents were prepared.

3. The Investigating Officer sent ruqa to the police station, on the basis of which formal FIR was recorded. The Investigating officer prepared rough site plan of the place of recovery and recorded statements of witnesses.

4. On return to the police station, the Investigating Officer

produced the accused, the case property and witnesses before Inspector Harwinder Singh, SHO of the police station, who verified the facts and affixed his own seal having inscription 'HS' on the parcels and sample seal impression chit. Thereafter, on his instructions, the case property was deposited with the MHC Suresh Kumar. Accused was lodged in the lock up.

5. On the next day i.e. on 16.9.2013, the Investigating Officer withdrew the case property from MHC and produced the same before SDJM, Moonak, who after seeing and signing the parcels of case property and sample seals, ordered that the same be deposited in Judicial Malkhana, Sangrur. It was so done accordingly vide entry at Serial No.595. One sample parcel along with sample seal impression chit were taken for depositing the same in the office of FSL, Punjab, Mohali. Those were deposited with MHC Suresh Kumar.

6. On 18.9.2013, MHC Suresh Kumar sent a sample parcel to the office of FSL, Punjab, Mohali through Constable Maninder Singh. A report Ex.PW1/A was received therefrom that on analysis the sample was found to be codeine phosphate 9.68 mg/5ml and chlorpheniramine maleate 3.68 mg/5ml. After completion of investigation and other formalities, challan against the accused was prepared and filed in the Court.

7. On presentation of the challan, copies thereof were supplied to the accused free of costs, as envisaged under Section 207 Cr.P.C.

8. Then observing that prima facie charge for an offence under Section 22 of the Act was disclosed against the accused, he was charge-

sheeted accordingly, to which, he pleaded not guilty and claimed trial.

9. During the course of its evidence, the prosecution examined PW1 Inspector Harwinder Singh, PW2 HC Gurbhej Singh, PW3 HC Suresh Kumar, PW4 ASI Manjit Singh, PW5 ASI Randeep Singh and PW6 Constable Maninder Singh.

The prosecution relied upon several documents and then its evidence was closed.

10. Statement of the accused was recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing in the prosecution evidence against him were put to such accused but he denied the allegations contending that he was innocent and had been falsely involved in this case. He had further taken up a plea that he was a Government employee serving in Civil Hospital at Rampura Phul and he was arrested when he was on duty.

11. During his defence evidence, the accused examined DW1 Neeraj Bansal, Clerk, Civil Hospital, Rampura Phul, who had brought the summoned record i.e. attendance register of August 2013 to November 2013, copy of which being Ex.D1. He stated that in the register the name of accused Tinku Ram was at Serial No.6 and he was marked present before 13.9.2013 regularly and he was posted as Class IV employee in their hospital. In his cross-examination, he stated that 14.9.2013 was a holiday and 15.9.2013 was a Sunday.

12. After hearing arguments, learned trial Court of Judge, Special Court, Sangrur vide judgment dated 30.1.2017 convicted the accused in that case for the offence under Section 22 of the Act and vide

order passed on that very date, he was sentenced to undergo rigorous imprisonment for ten years and to pay a fine of Rs.1,00,000/- and in default thereof to undergo further rigorous imprisonment for a period of 2 years.

13. The said judgment of conviction and order of sentence left the accused aggrieved and he had filed the present appeal, which was taken up on 31.3.2017 when it was admitted for regular hearing and recovery of fine was ordered to remain stayed during the pendency of the appeal. On an application under Section 389 Cr.P.C. having been filed by the appellant/accused for suspension of his sentence of imprisonment during the pendency of appeal, the same was allowed on 8.5.2019 observing that the appellant/accused has already undergone total sentence of 3 years, 11 months and 17 days, with post conviction imprisonment of 2 years, 3 months and 8 days out of total sentence of 10 years of imprisonment and the remaining sentence of the appellant was suspended during the pendency of the appeal and he was ordered to be released on bail, subject to his furnishing of his bail bonds/surety bonds to the satisfaction of CJM/Duty Magistrate/Illaqa Magistrate.

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

15. I have heard learned counsel appearing for the appellant – accused - convict, learned AAG for the State of Punjab besides going through the record.

16. Here both the witnesses of recovery namely PW2 HC Gurbhej Singh and PW4 ASI ASI Manjit Singh, the Investigating Officer have fully supported the prosecution story with regard to accused having

been found in conscious possession of the contraband. They were cross-examined at length on behalf of the accused but they stuck to their guns and could not be shattered on any material point. No previous enmity between them and the accused – convict has been alleged or proved prompted by which they might have involved the accused in this case wrongly and deposed against him falsely to secure his conviction. The account given by these PWs come out to be worthy of reliance.

17. The necessary link evidence had been produced by the prosecution by examining PW3 HC Suresh Kumar, a formal witness, who submitted his affidavit Ex.PW3/A with regard to safe custody of the case property so long as it remained in his possession. PW6 Constable Maninder Singh, was the carrier of the sample parcels along with sample seal impression to the office of FSL, Punjab, Mohali after collecting it from MHC Suresh Kumar. In his affidavit Ex.PW6/A, he stated that he had got docket issued from the office of SSP Sangrur and then deposited the sample parcel sealed with the seals of MS and HS in the office of FSL, Punjab, Mohali on 19.9.2013 and then handed over the receipt to MHC Suresh Kumar. He testified that the case property remained intact when it was in his possession. The report PW1/A from FSL, Punjab, Mohali goes to show that the parcels sealed with two seals one each of HS and MS were received there on 19.9.2013 and seals on the parcels were found intact and tallied with the specimen seal impression.

18. The investigation in this case has been conducted in a fair and impartial manner. The Investigating Officer had no reason to involve the accused in this case wrongly, challan him falsely or to depose against

him to secure his conviction.

19. The remaining evidence is of corroborative in nature supporting the prosecution case materially.

20. Learned counsel for the appellant has however attacked the impugned judgment contending that it suffers from various shortcomings and lacunae; the prosecution had been unable to prove its charge against the accused conclusively and affirmatively but the trial Court ignoring such infirmities in the prosecution case has wrongly convicted and sentenced the accused. He has attacked the prosecution case on various grounds.

21. The first submission made by him in that regard was that no independent witness was joined with the police party despite easy availability, which puts a question mark over truthfulness of the prosecution story.

22. However, I do not find any merit in this contention. As discussed above, the witnesses of recovery, who are police officials are not shown to have any previous enmity with the accused prompted by which they might have involved him in this case wrongly or deposed against him falsely to secure his conviction. They had stood the test of cross-examination well. Their statements are to be taken at par with independent witnesses. A Single Judge of this Court in judgment **Krishan Kumar Versus State of Punjab, 2016(2) RCR(Criminal)707** has observed that testimonies of the official witnesses carry the same evidentiary value as that of any other witness and their statements cannot be discarded simply on account of their official designation.

23. Another contention put forward by learned counsel for the appellant was that mandatory provision of Section 50 of the Act was not complied with inasmuch as no gazetted officer or Magistrate was summoned to the spot and the Investigating Officer went ahead to carry out the search himself.

24. This contention is also misconceived. The law is well settled that Section 50 of the Act applies to personal search of the accused and not to any bag or any container being carried by him. The Apex Court in judgment *State of Himachal Pradesh Versus Pawan Kumar 2005(2) RCR(Cri.) 621* has observed that Section 50 of the Act applies to personal search of the accused and not with regard to the search of bag in his possession.

25. In this case, the recovery had been effected from the bag, which the accused was carrying slung across his shoulder. Therefore, provisions of Section 50 were not applicable. Nevertheless as it transpires from the evidence adduced by the prosecution, the Investigating Officer had informed the accused of his legal right to get his search conducted in presence of a gazetted officer or a Magistrate, who could be summoned to the spot, however, the accused had reposed confidence in him and his consent statement in that regard had been recorded. Therefore, it cannot be said that there was any non-compliance of Section 50 of the Act.

26. Learned counsel for the appellant has referred to judgment *Sanjeev & Anr. Versus State of Himachal Pradesh, 2022 LiveLaw (SC) 267*, which dealt with a case when personal search of the accused had been conducted but no recovery had been effected, in those

circumstances, it had been observed that due to non-compliance of requirement of affording an option to be searched before a Magistrate or a competent Gazetted officer, accused was acquitted.

27. However, I find that judgment does not help the appellant/accused in any manner. Here there is nothing on record to show that personal search of the accused had been conducted since the Investigating Officer suspected him to be carrying contraband on his person. As a matter of fact, the prosecution nowhere claims that personal search of the accused had been conducted to see whether accused was carrying some contraband wrapped on his body or otherwise attached therewith by means of some cloth or any adhesive material.

28. Learned counsel for the appellant pointing out to the memo of jamatalashi conducted stating that personal search of the accused had been carried out in this case, though no recovery was effected. But this argument is misconceived. The jamatalashi of the accused had been conducted at the time of his arrest after recovery of contraband from him, which he was carrying in the bag slung across his shoulder. The jamatalashi can certainly be not equated with the personal search carried out to find out whether the accused was carrying any contraband on his person. The judgment referred to by learned counsel for the appellant does not find application due to facts and circumstances since no personal search in terms of Section 50 of the Act of the accused had been carried out in this case.

29. As regards the other judgment pressed into service by learned counsel for the appellant i.e. **State of Rajasthan Versus Parmanand and**

another, (2014) 5 Supreme Court Cases 345, that was with regard to a different proposition of law that individual communication to each accused should be given as regards their raid to get the search effected before a Magistrate or a gazetted officer. Here there was only one accused in this case. Therefore, the question of service of joint notice to two accused informing them of their right to get their search conducted in presence of a gazetted officer or a Magistrate does not arise. This judgment does not help the appellant/accused in any manner.

30. The defence plea taken by the accused does not seem to be convincing. The recovery in this case had taken place on 15.9.2013, which as deposed by DW1 Neeraj Bansal being Sunday was a holiday. Even it is taken that accused was employed at Civil Hospital, Rampura Phul, it being a holiday, it cannot be said that accused could not be present at the place of recovery and place of employment simultaneously and accused cannot raise plea of alibi. The deposition of DW1 does not help the accused in any manner.

31. The prosecution has proved its charge against the accused conclusively and affirmatively. The accused could not render any reasonable or plausible explanation for his alleged false implication nor could he account for possession of the contraband without any licence or permit thereby showing that he was in conscious possession of the contraband.

32. As regards the sentence part, the accused was sentenced to undergo rigorous imprisonment for ten years, which is the minimum prescribed sentence for possession of commercial quantity of the

contraband. Even otherwise, the appellant/accused for a pecuniary benefit opted to play with lives and health of people of the area by making them addict to taking drugs. 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 increased drug trafficking. Therefore, the sentence awarded to the appellant/accused is not found to be on very high side and does not call for any reduction.

33. The impugned judgment of conviction and order of sentence passed by the trial Court are well reasoned one, based upon proper appraisal and appreciation of evidence and correct interpretation of law. There is no illegality or infirmity therein. The said 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.

34. Appellant Tinku Ram is stated to be on bail granted to him by this Court. His bail is cancelled. Chief Judicial Magistrate, Sangrur is directed to issue arrest warrants to get him arrested so as to make him undergo the remaining sentence.

Necessary intimation be given to the quarter concerned.

2.9.2022
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : No / Yes

Whether reportable : No / Yes