

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

CRA-S-2171-SB-2017(O&M)

Date of decision:-10.5.2022

Deepak @ Deepu

...Appellant

Versus

State of Punjab

...Respondent

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

Present: Mr.K.S. Dhillon, Legal Aid Counsel
for the appellant.

Mr.Harbir Sandhu, AAG, Punjab.

H.S. MADAAN, J.

1. This appeal is directed against the judgment dated 18.4.2017 passed by Judge, Special Court, Kapurthala vide which accused Deepak @ Deepu was convicted for an offence under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as '*the Act*') and in terms of an order of the even 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 further undergo simple imprisonment for 6 months.

2. The accused-convict – Deepak @ Deepu, who is appellant before this Court prays that the appeal be accepted, the impugned judgment of his conviction and sentence be set aside and he be acquitted of the charge framed against him.

3. Briefly stated, the prosecution story is that on 5.5.2014, a police party led by ASI Bhupinder Singh had conducted a raid at a place

near bushes of village Jhal Lai Wala in connection with investigation of case FIR No.58 dated 5.5.2014, under Sections 399/401 IPC; the police party had observed seven persons comprising six males and a female sitting together talking with each other in low tone; on seeing the police party all of them tried to escape in different directions; ASI Bhupinder Singh along with other police officials had caught hold of one of them i.e. accused Deepak @ Deepu; the police officer concerned informed the accused that he suspected him to be in conscious possession of some contraband and desired to conduct his search; he had apprised the accused Deepak @ Deepu of his right to get his search conducted before a gazetted officer or a Magistrate, however, accused Deepak @ Deepu reposed confidence in ASI Bhupinder Singh; a separate consent memo in that regard was prepared; personal search of accused Deepak @ Deepu was conducted, which resulted in recovery of an iron *datar*, which accused was holding in his right hand and that *datar* was taken into police possession; furthermore a polythene envelope containing intoxicant powder was recovered from the right pocket of the trouser, which the accused was wearing at that time; two samples of 5 gms. each were drawn from the intoxicant powder, which were converted into sealed parcels and remaining powder on being weighed came out to 50 gms.; it was also converted into a sealed parcel; the bulk as well as the sample parcels were taken into police possession. Accused Deepak @ Deepu was arrested in this case. Ruqa was sent to the police station, which formed basis for registration of the formal FIR. The investigation in the case started. On return to the police station, the case property was deposited in the

MALKHANA after completing usual formalities. During the course of investigation, 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 Diphenoxylate Hydrochloride.

4. After completion of investigation and other formalities, challan against accused Deepak @ Deepu, who was arrested at the spot was prepared and filed in the Court of Judge, Special Court, Kapurthala.

5. On presentation of challan in the Court of Judge, Special Court, Kapurthala, he supplied copies of documents relied upon in the challan to the accused Deepak @ Deepu free of cost as provided under Section 207 Cr.P.C.

6. Learned Judge, Special Court, Kapurthala finding that charge for offence under Section 22 of the Act was disclosed against the accused, charge-sheeted the accused for the said offence, to which, he pleaded not guilty and claimed trial. The case was then fixed for evidence of prosecution.

7. The trial Court had formulated the following point for determination:

- 1) Whether on 5.5.2014 at about 1:45 p.m. in the area of village Jhal Lai Wala, accused Deepak @ Deepu was found in conscious possession of 60 grams of intoxicant powder containing Diphenoxylate Hydrochloride without any legal permit or licence?

8. To bring home guilt to the accused, the prosecution examined as many as five witnesses i.e. PW1 HC Subeg Singh, PW2 MHC Puran Chand, PW3 ASI Bhupinder Singh, PW4 HC Gurmeet Singh

and PW5 Inspector Harpreet Singh. The prosecution had relied upon various documents.

9. With that the prosecution evidence stood closed.

10. Statement of accused was recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against him were put to him but he denied the allegations contending that he is innocent and had been falsely involved in this case .

11. The accused did not lead any evidence in his defence.

12. After hearing arguments, learned Judge, Special Court, Kapurthala convicted and sentenced the accused as mentioned supra, which left appellant – accused Deepak @ Deepu aggrieved and he has filed the present appeal, which was put up on 31.5.2017 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 remaining sentence during the pendency of the present appeal, the same was allowed and he was ordered to be released on bail during the pendency of the present appeal in terms of order dated 9.7.2019. Now the appeal has come up for final hearing.

13. I have heard learned counsel for the appellant-accused-convict and learned Assistant Advocate General for the State of Punjab besides going through the record and I find that there is no merit in the appeal.

14. The first ground of attack by learned counsel for the appellant/accused was that there is variation in the version given in the

FIR and as narrated by PW1 HC Subeg Singh with regard to the purpose of the raid, which goes to the root of the matter causing dent in prosecution case.

15. Whereas, learned State counsel has countered the argument stating that variation, if any, does not have any adverse effect on the prosecution case.

16. After hearing the rival contentions, I find that though such contention of learned counsel for the appellant is not clearly proved on record but even if it is so, that does not affect the veracity of the prosecution version much because the main thing to be seen is as to whether the accused was found in possession of contraband as per the prosecution story and things relating to the pre-recovery or post-recovery period are not much relevant.

17. Another argument advanced by learned counsel for the appellant was that there has not been proper compliance of Section 50 of the Act inasmuch as the offer given to the accused was defective.

18. Whereas, learned State counsel has refuted such contention.

19. However, after considering the contentions set up by learned counsel for the appellant and learned State counsel, I find little force in such argument put forward by learned counsel for the appellant. The consent memo prepared in this case Ex.PW1/A goes to show that ASI Bhupinder Singh had informed the accused that he suspected him to be in possession of some contraband and accused had a right to get the search conducted before a gazetted officer or a Magistrate but accused opted to got himself searched by ASI Bhupinder Singh. In that way, it cannot be

said that there has been any non-compliance of Section 50 of the Act. The trial Court has dealt with such objection in a very detailed and proper manner in paras No.25 and 26 of the judgment.

20. Next coming to the argument put forward by learned counsel for the appellant that no independent witness was joined with the police party, it has to be taken note of that there is nothing on record to show that ASI Bhupinder Singh (PW3) and HC Subeg Singh (PW1), who had deposed with regard to the recovery of contraband from the accused, had any motive for making false statements against him. Nevertheless they stood firm in their cross-examination. It being so, their statements are to be taken at par with independent witnesses and the prosecution story cannot be condemned for absence of independent corroboration.

21. Learned counsel for the appellant has pointed out certain variations between the statements of the prosecution witnesses with regard to arranging weighing scales stating that one witness stated that it was already with the Investigating Officer, whereas other stated that it was got arranged after apprehension of accused. He has pointed out towards a few more variations with regard to time, distance etc. but I find that small variations in the statements of witnesses are bound to take place on account of lapse of memory due to passage of time and differences in power of memorization of events and re-collection in various individuals. These small variations are not much material.

22. PW3 ASI Bhupinder Singh and PW1 HC Subeg Singh both witnesses of recovery had fully supported the prosecution story with regard to recovery of contraband from the accused on 5.5.2014 in the area

of near bushes of village Jhal Lai Wala. Though they were cross-examined at length by the defence counsel but they could not be shattered on any material point. The recovery comes out to be as per rules.

23. Furthermore, from the evidence brought on the file by the prosecution, it comes out that no tampering of seals had taken place with the case property and samples during the period of those deposit in the MALKHANA till the sample reached office of Chemical Examiner and as per report received from the office of Chemical Examiner, the sample was found to be that of Diphenoxylate Hydrochloride.

24. The prosecution has been successful in its endeavour to prove charge against the accused beyond a shadow of reasonable doubt. Accused has not rendered any reasonable or plausible explanation for his alleged false implication in this case. Therefore, no fault can be found with the conclusion reached by the trial Court in convicting the accused under Section 22 of the Act.

25. 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. With regard to the sentence, the contraband recovered amounts to commercial quantity and the trial Court has awarded minimum sentence provided for the offence to the appellant/accused. There is no scope for reduction 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.

26. Deepak alias Deepu appellant – accused is stated to be on

bail granted to him by this Court vide order dated 9.7.2019 while suspending his remaining sentence. His bail is cancelled and he is directed to surrender forthwith within a week from today. If he does not do so then Chief Judicial Magistrate, Kapurthala would issue Non-bailable warrants of arrest against him to get him arrested and make him undergo the remaining sentence of imprisonment and to effect recovery of fine.

10.5.2022
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No