

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-S-3077-SB-2016(O&M)
Date of decision:-26.8.2022

Kuldeep Singh

...Appellant

Versus

State of Punjab

...Respondent

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

Present: Ms.Sumati Jund, Advocate for
Ms.Shuchi Sodhi, Legal Aid counsel for the appellant.

Mr.Sandeep Vermani, Addl.A.G., Punjab.

H.S. MADAAN, J.

1. Appellant Kuldeep Singh was tried by learned Judge, Special Court, Gurdaspur in case FIR No.263 dated 13.9.2013 for offence under Sections 21/22 of Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as '**the Act**'), Police Station Civil Lines, Batala and in terms of judgment dated 30.4.2016, he was convicted in that case for the offences for which he was booked and in terms of order passed on that very date, he was sentenced as under:

Recovery	U/S	Sentence
200 grams powder (Diphenoxylate)	22 of NDPS Act, 1985	To undergo rigorous imprisonment for a period 10 years and to pay fine of Rs.1,00,000/-(Rs.One Lac only), and in default of payment of fine

		to further undergo rigorous imprisonment for 01 year.
100 capsules (Dextropropoxyphene)	21 of NDPS Act, 1985	To undergo rigorous imprisonment for a period 02 years and to pay fine of Rs.20,000/-(Rs.Twenty Thousands only), and in default of payment of fine to further undergo rigorous imprisonment for 2 months.
05 intoxicant injections (Burenorphine)	21 of NDPS Act, 1985	To undergo rigorous imprisonment for a period 02 years and to pay fine of Rs.20,000/-(Rs.Twenty Thousands only), and in default of payment of fine to further undergo rigorous imprisonment for 2 months.

All the sentences were ordered to run concurrently.

2. Briefly stated, the facts of the case as per prosecution version are that on 13.9.2013, a police party from Police Station Civil Lines, Batala led by ASI Rachhpal Singh (hereinafter referred to as the Investigating Officer/IO) had left the police station in connection with patrolling going towards the side of Bodhe Di Khuhi, Umarpura etc.; when the police party had reached culvert of canal minor near Malave Di Kothi, then the accused was seen walking on the side of the canal minor; on seeing the police party, he tried to throw away the polythene bag, which he was carrying in his hand; the accused was apprehended on the basis of suspicion and his name and other particulars were inquired about, which he disclosed; on being checked, the polythene bag, which was in possession of the accused was found to have 5 vials and 5 injections along with blue capsules without label and white intoxicant powder; separate parcels of 5 vials and 5 injections were prepared and out of blue capsules,

two samples of 10/10 capsules were separated and remaining 80 capsules were converted into separate parcels; two samples of 10 gms. each were drawn from the intoxicant powder and remaining intoxicant powder on being weighed came out to be 180 gms.; the samples and residue were converted into separate parcels, then all the six parcels of samples and two bulk parcels were sealed by the Investigating Officer with his seal having inscription RS; sample seal chit was prepared; Form M-29 was filled up; then the Investigating Officer told the accused that there could be some other intoxicant material in his possession and that he had a legal right to be searched in presence of a gazetted officer or a Magistrate; the accused however reposed confidence in the Investigating Officer; a consent statement of the accused was recorded, which was thumb marked by the accused; though personal search of the accused was conducted thereafter but nothing incriminating was recovered; the recovered contraband was taken into police possession vide a recovery memo; the accused was arrested in this case as per rules, preparing requisite memos and the seal after use was handed over to HC Ram Lubaya.

3. The Investigating Officer sent ruqa to the police station through HC Kuljit Singh, on the basis of which formal FIR was recorded at Police Station Civil Lines, Batala. 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 accused along with the case property and witnesses were produced before Inspector Kanwalpreet Singh, SHO of Police Station Civil Lines, Batala, who verified the facts.

The case property had been handed over to the SHO by the Inspector vide entrustment memo Ex.PW3/H along with Form M-29. On being satisfied, Inspector Kanwalpreet Singh put his own seal having impressions KS on all the parcels as well as on Form M-29. The SHO/Investigating Officer had kept the case property in his safe custody under double lock. The accused was put in the lock up.

5. On receipt of report from the office of Chemical Examiner, Kharar and on completion of investigation and other formalities, challan against the accused was prepared and filed in the Court.

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

7. Then on observing that prima facie charge for an offence under Section 21/22 of the Act was disclosed against the accused, he was charge-sheeted accordingly, to which, he pleaded not guilty and claimed trial.

8. During the course of its evidence, the prosecution examined the following witnesses:

PW1 PHC Paramjit Singh, who had taken sample parcels to the office of Chemical Examiner, Punjab, Kharar had deposed with regard to sample parcels having remained untampered during the period, those remained in his custody.

PW2 PHC Gurnam Singh, who had taken the special reports to Judicial Magistrate and higher police officers testified in that regard.

PW3 ASI Rachhpal Singh, the Investigating Officer of this

case deposed with regard to recovery of contraband from the possession of the accused as well as investigation conducted by him. He proved various documents also.

PW4 ASI Ram Lubaya, a witness of recovery supported the the prosecution story on material aspects.

PW5 Inspector/SHO Kanwalpreet Singh (wrongly written as PW6) deposed regarding his part discussed earlier.

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

9. 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.

10. The accused did not lead any evidence in defence.

11. Learned trial Court had formulated the following points for determination:

(i) Whether on 13.9.2013 at about 7:30 p.m. in the area of village Malave Di Kothi, Batala, accused Kuldeep Singh was found in possession of 200 grams intoxicant powder (Diphenoxylate), 05 intoxicant injections (Burenorphine HCL), 05 intoxicant vials and 100 intoxicant capsules (Dextropropoxyphene) without any licence or permit?

(ii) Whether the prosecution has been able to prove its case beyond the shadow of reasonable doubt?

(iii) Conclusion.

12. After hearing arguments, learned trial Court convicted and sentenced the accused as mentioned above, which left him aggrieved and he had filed the present appeal, which was taken up on 20.9.2016 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 1.6.2018 and remaining sentence of appellant/accused was suspended during the pendency of the appeal and he was ordered to be released on bail on his furnishing requisite bail bonds/surety bonds to the satisfaction of the CJM/Duty Magistrate concerned.

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

14. I have heard learned counsel for the appellant – accused – convict, learned Addl.A.G., for the State of Punjab besides going through the record.

15. Here both the witnesses of recovery namely PW3 ASI Rachhpal Singh and PW4 ASI Ram Lubaya have fully supported the prosecution story with regard to accused having been found in conscious possession of contraband i.e. 200 grams intoxicant powder (Diphenoxylate), 05 intoxicant injections (Burenorphine HCL), 05 intoxicant vials which did not attract any criminal liability as per report Ex.PX/2 since its constituent salt did not come within mischief of the Act and 100 intoxicant capsules (Dextropropoxyphene) without any permit or

licence. They were cross-examined at length on behalf of the accused but they stuck to their guns and could not be shattered on material points. 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.

16. From the statement of PW1 PHC Paramjit Singh and PW6 Inspector/SHO Kanwalpreet Singh, it comes out that the case property remained in safe custody and no tampering of seals had taken place at any stage. Reports Ex.PX/1 to Ex.PX/4 received from the office of Chemical Examiner, Kharar also go to show that the sample parcels had reached there with seals intact. In addition, these reports Ex.PX/1, ExPX/3 and Ex.PX/4 go to show that on being analyzed, the samples were found to contain intoxicant substances, whereas in terms of report Ex.PX/2 the sample of vial contained salt of Pheniramine Maleate which does not come within mischief of the Act.

17. With regard to objection by learned counsel for the appellant about non-joining of independent witness, since in view of detailed discussion above, it has been found that the official witnesses did not have any enmity with the accused prompted by which they might have planted a false case upon the accused or deposed against him wrongly to secure his conviction and even otherwise, the depositions of official witnesses are at par with that of independent witnesses, therefore this objection does not cut any ice. Furthermore, independent corroboration is

a rule of prudence and not requirement of law. It is nowhere provided in any statute that independent corroboration is a must and in absence thereof, the case of the prosecution is to be rejected outrightly.

18. Another contention put forward by learned counsel for the appellant was that samples were sent to FSL after four days, which in my view is without merit since it has come on record that the sample parcels had reached the office of Chemical Examiner, Punjab Kharar with seals intact and no prejudice is shown to have been caused to the accused as a result of samples having been sent to the office of Chemical Examiner, Kharar after 4 days. Therefore, this objection is without merit.

19. Learned State counsel has further placed reliance upon judgment *Sucha Singh Versus State of Punjab 2015(4) RCR (Criminal) 25*. It was a case when an independent witness had been joined during the search and recovery of contraband. He had appeared as a witness for the defence stating that his signatures were procured on blank papers when he had visited the police station in drunken condition. Such contention was not accepted holding that it cannot be believed that numerous signatures on various papers having different written material could be signed by a witness on blank papers. The testimony of that witness was held to be unreliable and was discarded. In that very judgment, credibility of official/police witnesses was considered and it was observed that when there is no allegation of any enmity against the police officials to falsely implicate the appellants and there was no reason for them to depose against the appellants, the trial Court had rightly concluded that non-examination of independent witness of search and

recovery being won over by the accused does not raise any doubt in the prosecution case.

20. The aspect of delay in sending the sample to the office of Chemical Examiner was also discussed holding that when the samples were not sent to the office of Chemical Examiner within 72 hours, the prosecution and conviction cannot be vitiated on that ground since there was no specific provision in the Act in that regard and the instructions/standing orders in that respect were only the guidelines to regulate and control their internal working of Narcotic Control Bureau.

21. The prosecution has proved its charge against the accused conclusively and affirmatively. The accused could neither render any reasonable or plausible explanation for his alleged false implication nor could he account for in possession of the intoxicant substances without any licence or permit thereby showing that he was in conscious possession of such contraband.

22. As regards the sentence part, the accused was sentenced to undergo rigorous imprisonment for ten years each, which is the minimum prescribed sentence for possession of commercial quantity of the contraband as regards 200 grams of diphenoxylate. 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 increase 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.

23. 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.

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

26.8.2022
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : No / Yes

Whether reportable : No / Yes