

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

CRA-S-3160-SB-2015(O&M)

Date of decision:-23.8.2022

Nikka Singh

...Appellant

Versus

State of Punjab

...Respondent

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

Present: Mr.Sanjeev Sharma, Advocate(Legal Aid Counsel),
for the appellant.

Mr.Anmol Singh Sandhu, AAG, Punjab.

H.S. MADAAN, J.

1. Appellant Nikka Singh was tried by learned Judge, Special Court, Barnala in case FIR No.86 dated 6.11.2012 for an offence under Section 22 of Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as '**the Act**'), Police Station Dhanuala and vide judgment dated 22.4.2015, he was convicted in that case for the offence under Section 22(c) of the Act and in terms of 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.

2. Briefly stated, the facts of the case as per prosecution version are that on 6.11.2012, a police party from Police Station Dhanaula, District Barnala led by ASI Gurjant Singh (hereinafter referred to as the Investigating Officer/IO) was on patrol duty going from village Bhaini Mehraj towards village Kundara via link road; when the police party had reached 1 k.m. ahead towards village Kundara and time was about 2:30 p.m., then accused Nikka Singh was spotted coming on foot from village Kundara side; he was carrying a plastic bag (JHOLA) having contents; on seeing the police party, the accused tried to turn towards his left hand side so as to slip away but he was apprehended by the police party and his name and other particulars were inquired about, which he disclosed. The Investigating Officer disclosed his identity to the accused informing him that he suspected that the accused was carrying some intoxicant substance and as such he wanted to carry out his personal search as well as search of plastic bag being carried by him and that accused had a right to get his search conducted in presence of a gazetted officer or a Magistrate; the accused however reposed confidence in the Investigating Officer; consent statement of the accused in that regard was recorded, which was thumb marked by the accused and attested by witnesses ASI Bhim Sain and HC Gurmeet Singh; when searched, the plastic bag being carried by the accused was found to contain packets of intoxicant tablets Phenotil, each packet containing 100 tablets; two packets of intoxicant tablets each containing 100 tablets were separated as samples and converted into parcels, whereas the remaining packets on being counted came out to be 136 packets i.e. 13600 tablets; the said 136 packets were put in a plastic

bag and converted into a parcel; two sample parcels and bulk parcel were sealed by the Investigating Officer with his seal bearing inscription GS; the sample seal impression chit Ex.P1 was prepared and seal after use was handed over to ASI Bhim Sain; the entire case property along with the sample seal impression chit were taken into police possession vide recovery memo Ex.PB attested by the witnesses; the accused was arrested in this case as per rules preparing requisite memos.

3. The Investigating Officer sent ruqa Ex.PE to the police station through Constable Kanwarpreet Singh, on the basis of which formal FIR ExPE/1 was recorded at Police Station Dhanaula. The Investigating officer prepared rough site plan Ex.PF 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 was produced before SI Navdeep Singh, SHO of Police Station, Dhanaula, who verified the facts of the case and on being satisfied put his own seal having impressions NS on the case property. He attested the sample seal chit. The entire case property was deposited with MHC Rajinder Singh. Report under Section 57 of the Act Ex.PG was prepared on which DSP made his endorsement Ex.PG/1.

5. On 7.11.2012, ASI Gurjant Singh took the case property from MHC and produced it along with inventory Ex.PW2/A and accused before the Illaqa Magistrate; learned Illaqa Magistrate after seeing the case property and inventory put his own signatures and passed order Ex.PH; thereafter as per the directions of Illaqa Magistrate, the Investigating Officer deposited the case property in judicial MALKHANA, however,

keeping the requisite samples along with sample seal chit with him for sending the same to the office of Forensic Science Laboratory, Punjab, Mohali which were then deposited with MHC.

6. During the course of investigation, on 8.11.2012, MHC Rajinder Singh handed over a sample parcel to HC Surinder Singh for the purpose of depositing the same in the office of FSL, Mohali after getting a docket prepared from the office of SSP, Barnala. HC Surinder Singh accordingly did so. He got the docket issued and took the sample parcel to the office of FSL, Punjab, Mohali, however some objections were raised; HC Surinder Singh brought back the sample parcel and deposited it back with MHC Rajinder Singh on 8.11.2012. However, on 15.11.2012 MHC Rajinder Singh again handed over the sample parcel to HC Surinder Singh after removing the objections. Accordingly, HC Surinder Singh deposited the sample parcel in the office of FSL Punjab, Mohali and handed over the receipt to him on 16.11.2012. As per the report received from the office of FSL, Punjab, Mohali Ex.PX, the tablets were found to contain diphenoxylate Hydrochloride and Atropine sulphate salt. 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(c) 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 the following witnesses:

PW1 HC Rajinder Singh, who was working as MHC with the Police Station Dhanaula at the relevant time, a formal witness vide his affidavit Ex.PW1/A had deposed with regard to safe custody of the case property so long as it remained with him.

PW2 SI Navdeep Singh, who was posted as SHO of P.S. Dhanaula on the day of recovery and before whom the Investigating Officer, namely ASI Gurjant Singh had produced the accused along with the case property and witnesses and who after satisfying himself had put his seal on the bulk and sample parcels and thereafter depositing the case property with MHC Rajinder Singh, testified in that regard.

PW3 HC Surinder Singh, who had taken the sample parcel from MHC Rajinder Singh for the purpose of depositing that in the office of FSL, Punjab Mohali after getting docket issued from the office of SSP Barnala deposed as per the prosecution version stating that so long as the sample parcel remained with him, no tampering therewith had taken place.

PW4 ASI Bhim Sain, a witness of recovery and PW5 ASI Gurjant Singh, the Investigating Officer of this case besides a witness of recovery supported the prosecution story on material aspects.

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 no incriminating article was ever recovered from him and a false recovery has been planted upon him by forging documents while sitting in the police station.

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

12. After hearing arguments, learned trial Court convicted and sentenced the accused as mentioned above, which left him aggrieved and he has filed the present appeal, which was taken up on 23.7.2015 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 5.12.2016.

13. Now the case has come up for regular hearing.

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

15. Here both the witnesses of recovery namely PW4 ASI Bhim Sain and PW5 ASI Gurjant Singh fully supported the prosecution story with regard to accused having been found in conscious possession of 138 packets of intoxicant tablets, which were found to contain diphenoxylate Hydrochloride and Atropine sulphate salt. 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. The link evidence in this case has been provided by PW1 HC Rajinder Singh and PW3 HC Surinder Singh, PW2 SI Navdeep Singh and PW5 ASI Gurjant Singh and it comes out that no tampering of seals had taken place after the sample parcels and bulk parcel were handed over to the MHC till the sample parcel reached office of FSL, Punjab Mohali. Report from FSL, Mohali goes to show that the sample parcel had reached there with seals intact. This very report goes to show that on analysis the sample parcel was found to contain diphenoxylate Hydrochloride and Atropine sulphate that means intoxicant salts.

16. As regards the delay of five days in sending the sample to the office of FSL, Mohali, the recovery having been effected on 6.11.2012 and sample parcels sent there on 15.11.2012, the delay does not have much effect since as discussed above, no tampering of seals had taken place with the sample parcels and sample parcels had reached office of FSL, Mohali with seals intact. No prejudice is shown to have been caused to the accused by such delay. The trial Court has dealt with this aspect in detail in para No.14 of the judgment referring to the law on the subject.

17. With regard to 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. Even otherwise, the depositions of official witnesses are at par with that of independent witness. 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. The trial Court has dealt with this aspect in para No.16 of the judgment. The discussion is quite detailed and convincing.

18. 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 intoxicant tablets without any licence or permit thereby showing that he was in conscious possession of such number of tablets.

19. As regards the sentence part, the accused was sentenced to undergo rigorous imprisonment for ten years each, which is the minimum prescribed conviction 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 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.

20. 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.

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

23.8.2022
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : No / Yes

Whether reportable : No / Yes