

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

CRA-S-3593-SB-2015(O&M)

Date of decision:-24.8.2022

Rajwinder Singh @ Raju

...Appellant

Versus

State of Punjab

...Respondent

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

Present: Mr.Amaninder Preet, Advocate(Legal Aid Counsel),
for the appellant.

Mr.Anmol Singh Sandhu, AAG, Punjab.

H.S. MADAAN, J.

1. Appellant Rajwinder Singh @ Raju was tried by learned Judge, Special Court, Patiala in case FIR No.261 dated 22.10.2012 for an offence under Section 22 of Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as '**the Act**'), Police Station Kotwali, Patiala and in terms of judgment dated 27.7.2015, he was convicted in that case for the offence for which he was booked 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 1 year.

2. Briefly stated, the facts of the case as per prosecution version are that on 22.10.2012, a police party from Police Station Kotwali, Patiala led by SI Baldev Singh (hereinafter referred to as the Investigating Officer/IO) travelling in a private vehicle in connection with patrolling and checking of suspects, was present near Old Octroi Post, Rajpura Road, Patiala; at about 5:35 p.m., accused was spotted coming on foot from the side of Rajpura Road and he on seeing the police party turned back in haste; he was apprehended on the basis of suspicion and on being inquired, he disclosed his name and other particulars; the Investigating Officer suspected that the accused was carrying some narcotic substance and informed him in that regard, apprising him of his legal right to get the search conducted in presence of some gazetted officer or a Magistrate, however, the accused reposed faith in SI Baldev Singh; his consent statement was recorded as Ex.PA, which was thumb marked by him and attested by ASI Gurnam Singh and HC Inderpal Singh; personal search of the accused was conducted and from right pocket of his wearing pant narcotic powder of white colour placed in a polythene carry bag was recovered; the Investigating Officer separated two samples of 10 gms. each from the recovered contraband and on being weighed the residue came out to be 130 gms; the bulk and samples were converted into parcels, sealed with the seal of IO having impression BS; a specimen seal chit Ex.P1 was prepared and seal after use was handed over to ASI Gurnam Singh; the recovered articles were taken into police possession vide seizure memo Ex.PB attested by the witnesses. Accused was arrested in this case as per rules. Necessary memos were prepared and formalities

were carried out. A ruqa Ex.PD was sent to the police station, on the basis of which, formal FIR Ex.PE was recorded at Police Station Kotwali, Patiala. Rough site plan of the place of recovery was prepared as Ex.PG.

3. On return to the police station, the Investigating Officer produced the accused along with the case property and witnesses before Inspector Sukhamrit Singh Randhawa, SHO of Police Station Kotwali; the latter verified the facts of the case and sealed the case property with his own seal having impression 'SS'. Thereafter, the said SHO deposited the case property with MHC Gurbinder Singh.

4. On the next day i.e. on 23.10.2012, SI Baldev Singh took the case property from the MHC and produced the accused along with the case property before CJM, Patiala moving an application for judicial remand Ex.PJ and an application for inventory Ex.PK and another application for depositing the case property in judicial Malkhana Ex.PL were also moved. Learned CJM, Patiala compared the seals of parcels with the specimen seal impressions and also saw and signed the case property thereafter handing it over to SI Baldev Singh for the purpose of depositing it in the judicial malkhana at Patiala and in that regard order Ex.PL/1 was passed. Thereafter, SI baldev Singh deposited the bulk parcel and one sample parcel in judicial malkhana at Patiala, whereas the other sample parcel was handed over to MHC. The receipt issued by concerned clerk of judicial malkhana was handed over to the MHC. The sample was sent to the office of Chemical Examiner, Punjab on 25.10.2012 through HC Charan Singh with seals intact. A report was received from the office of Chemical Examiner as Ex.PM to the effect that the sample was that of

the narcotic powder. After completion of investigation and other formalities, challan against the accused was prepared and filed in the Court.

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

6. On 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.

7. During the course of its evidence, the prosecution examined HC Charan Singh as PW1, DSP Sukhamrit Singh as PW2, SI Gurnam Singh as PW3, HC Gurbinder Singh as PW4 and SI Baldev Singh as PW5.

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

8. 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.

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

10. The trial Court formulated following points for determination:

(A) Whether the prosecution has duly proved conscious possession of 150 gms. of intoxicant powder (Diphenoxylate) of the accused?

(B) Whether the link evidence is complete?

11. 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 20.8.2015 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 2.2.2017.

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

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

14. Here the witnesses of recovery, namely PW3 SI Gurnam Singh and PW5 SI Baldev Singh, Investigating Officer, who were members of the party, which had apprehended the accused and had effected recovery from him fully supported the prosecution story as regards the accused having been found in conscious possession of 150 gms. of intoxicant powder (Diphenoxylate) on 22.10.2012 at about 5:35 p.m. in the area of Old Octroi Post, Rajpura Road, Patiala. 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.

15. To establish the link evidence, the prosecution has examined PW1 HC Charan Singh, who had submitted his affidavit Ex.PW1/A. He had taken the sample parcel from MHC Gurbinder Singh on 25.10.2012 and after getting docket issued from the office of SSP, Patiala, he had deposited it in the office of Chemical Examiner, Punjab. PW4 HC Gurbinder Singh, who was MHC of the Police Station Kotwali in his affidavit PW4/A has toed the line of prosecution stating that so long as the case property remained in his possession, no tampering of seals had taken place. Even otherwise, the report from the office of Chemical Examiner, Punjab goes to show that the sample parcel had reached in the office with seals intact.

16. Though learned counsel for the appellant has raised several pleas to show that the prosecution had been unable to prove the guilt of the accused beyond a shadow of reasonable doubt but I find that these pleas are without any force.

17. With regard to non joining of independent witness, this plea has been discussed in para Nos.15 to 22 of the judgment coming to the conclusion that the Investigating Officer had tried to join independent witness, but nobody was ready to join. It is a matter of common knowledge that now-a-days people generally hesitate to come forward to appear as a witness for the prosecution against the criminals apprehending that such criminals may not turn towards them and cause harm to them or their near relatives. Then there are hassles of going to the police station in connection with investigation and to attend hearings in the Court,

therefore, people mostly avoid joining the investigation and offering themselves as witnesses.

18. In this case, no previous enmity between the accused and witnesses of recovery has been alleged or proved 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.

19. One more plea put forward by learned counsel for the appellant was that there was non-compliance of Section 50 of the Act. Again I do not find any merit in this contention. From the statement of PW5 SI Baldev Singh, the Investigating Officer of this case, it comes out that he had apprised 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 reposed faith in SI Baldev Singh. The consent statement of accused proved on record as Ex.PA bearing thumb marked by the accused attested by ASI Gurnam Singh and HC Inderpal Singh also goes to show that. PW3 SI Gurnam Singh also deposed in that regard.

Nevertheless 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.

20. 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 powder without any licence or permit thereby showing that he was in conscious possession of intoxicant powder.

21. 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.

22. 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.

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

24.8.2022

Brij

(H.S.MADAAN)

JUDGE

Whether reasoned/speaking : No / Yes

Whether reportable : No / Yes