

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

CRA-S-4209-SB-2016(O&M)

Date of decision:-1.9.2022

Parveen Kumar @ Dokri

...Appellant

Versus

State of Punjab

...Respondent

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

Present: Mr.Gaurav Sharma, Advocate,
for the appellant.

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

H.S. MADAAN, J.

1. Appellant Parveen Kumar @ Dokri, an accused in FIR No.29 dated 18.5.2015, under Section 22 of Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as '**the Act**'), Police Station GRP Faridkot, was tried by Judge, Special Court, Faridkot, on the allegations that on 18.5.2015 at about 3:00 p.m. in the area of Railway Station Moga, he was found in possession of 23 strips of intoxicant capsules make Parvon Spas each having 10 capsules, 7 strips of Spasorid-Poxivon each having 8 capsules each, 20 strips of intoxicated tablets make Alprasil 0.5 each having 15 tablets and 60 strips of Prozolam 0.5 each

having 10 tablets, without any licence or permit.

2. Briefly stated, facts of the case, as per the prosecution story are that on 18.5.2015, ASI Jagdev Singh (hereinafter referred to as the Investigating Officer/IO) along with HC Sohan Singh and some other police officials from Police Station GRP, Faridkot was on patrol duty in connection with search of bad elements in the area of Railway Station, Moga; when the police party was going from Platform No.1 towards Platform No.2 and the time was about 3:00 p.m., then they observed accused Parveen Kumar @ Dokri sitting under stairs in an attempt to conceal his presence; he was carrying a polythene bag of black colour having some contents; on seeing the police party, the accused became nervous and tried to run away towards labour union side; he was apprehended on the basis of suspicion and his name and other particulars were inquired about, which he disclosed; the Investigating Officer told the accused that he suspected him to be carrying some intoxicant material in the polythene bag, as such wanted to search the same; he apprised the accused of his 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; consent memo in that regard was recorded as Ex.PA, which was executed by the accused and attested by witnesses; thereafter the polythene bag being carried by the accused was searched and it was found to contain 23 strips of intoxicant capsules make Parvon Spas each having 10 capsules, 7 strips of Spasorid-Poxivon each having 8 capsules each, 20 strips of intoxicant tablets make Alprasil 0.5 each having 15 tablets and 60 strips of Prozolam 0.5 each having 10 tablets; the

Investigating Officer took out two strips each from recovered intoxicant capsules and intoxicant tablets, converting those into two separate parcels, then the samples were converted into separate parcels, whereas remaining intoxicant tablets and parcels were converted into a bulk parcels; all the three parcels were sealed by the Investigating Officer with his seal bearing inscription 'JS'; the sample seal impression was taken on Form M29 Ex.P1 and seal after use was handed over to HC Sohan Singh; the case property along with Form M29 Ex.P1 were taken into police possession vide seizure memo Ex.PB, attested by HC Sohan Singh and HC Gurdev Singh; the accused was accordingly arrested in this case; a memo in that regard was prepared as Ex.PD; he was apprised about his right to call the counsel and his physical verification was got conducted vide memo Ex.PE; personal search (jamatalashi) of the accused was got conducted, which resulted in recovery of currency notes of the value of Rs.70/-; a memo in that regard was prepared as Ex.PF; all the memos were thumb marked by the accused and attested by HC Sohan Singh and HC Gurdev Singh.

3. Ruqa Ex.PC was sent to the police station through HC Surjit Singh, on the basis of which formal FIR Ex.PC/1 was registered at police station by SI Sukhdev Singh, who made his endorsement Ex.PC/2 on the ruqa, while returning it to the Investigating Officer through bearer HC Surjit Singh. The Investigating officer prepared rough site plan Ex.PG 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 Sukhdev Singh, the then SHO of the police station, who verified the facts of the case and on

being satisfied put his own seal having impressions 'SS' on the two sample parcels and one bulk parcels besides attesting Form Ex.P1 with his seal having impression 'SS'. Then the entire case property along with form Ex.P1 was taken into police possession by the SI Sukhdev Singh vide memo Ex.PH. The case property was deposited with MHC and subsequently it was produced before the Judicial Magistrate along with articles for inventory Ex.PW4/A. A separate application was filed requesting in terms of Section 52-A of the Act as Ex.PW4/B besides another application for issuance of direction to deposit the case property in judicial malkhana as Ex.PW4/C. Learned Magistrate passed requisite orders on the applications, whereas the accused was remanded to judicial custody. On return to the police station, the case property was deposited with the MHC after retaining one sample parcel of intoxicant capsules and intoxicant tablets duly sealed with the seals having impressions JS and SS along with Ex.P1 for the purpose of depositing the same with the FSL, Punjab, Mohali.

5. On 20.5.2015, SI Sukhdev Singh handed over one sample parcel along with Ex.P1 to HC Ranbir Singh for depositing the same in the office of FSL, Punjab, Mohali, who got docket issued from the office of SSP Faridkot and went to the office of FSL, Punjab, Mohali, but an objection was raised therefrom as such he brought the sample parcel along with Ex.P1 back handing over the same to SI Sukhdev Singh on 21.5.2015; the objection was removed and SI Sukhdev Singh again handed over the sample parcel and Ex.P1 sample seal to HC Ranbir Singh on 25.5.2015, who took those articles to the office of FSL, Punjab, Mohali

and deposited the same there on that very day and on return to the police station handed over receipt to SI Sukhdev Singh. A report in positive Ex.PJ was received from the office of FSL, Punjab, Mohali. After completion of investigation and other formalities, challan against the accused was prepared and filed in the Court.

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

7. 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.

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

PW1 ASI Jagdev Singh, the Investigating Officer of this case besides a witness of recovery supported the prosecution story on material aspects. PW2 HC Ranbir Singh, a formal witness, who had taken the sample parcels and sample seal impression to the office of FSL, Punjab, Mohali deposed in that regard. PW3 HC Jagroop Singh was the then MHC of Police Station GRP Faridkot with whom the case property was deposited till its production before the Magistrate. PW4 SI Sukhdev Singh was the SHO of Police Station GRP Faridkot before whom the case property and the accused were produced by the IO on return to the police station after recovery. PW5 HC Sohan Singh, was another witness of recovery.

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. He had further taken up a plea that as a matter of fact he was apprehended from the train, which was going from Ferozpur to Ludhiana; he was travelling without ticket; he had requested the Ticket Checker to charge genuine fare from him but the latter refused to do so, rather there took place some arguments between two of them. When the train reached at Moga Railway Station, the Ticket Checker handed over him to GRP Moga for the reason of travelling without ticket, however, the police planted a false case under the Act upon him.

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

11. After hearing arguments, learned trial Court of Judge, Special Court, Faridkot vide judgment dated 15.10.2016 convicted the accused in that case for the offence under Section 22 of the Act. For ready reference, the relevant para No.22 of the impugned judgment is being reproduced as under:

22. In view of the above discussion, it is held that the prosecution has been able to prove its case beyond shadow of reasonable doubt that on 18.05.2015, at about 3:00 PM, in the area of platform Railway Station, Moga, accused Parveen Kumar @ Dokri was found in conscious possession of 230 capsules make-Parvon spas containing salt "Tramadol hydrochloride" and its weight as per report Ex.PJ is 601 mgs per capsule and its contents

in bulk comes to 138.23 grams. Further as per report Ex.PJ eight capsules in a strip labeled as Spasorid-Proxivon having salt "Tramadol hydrochloride" and its weight as per report is 681 mgs per capsule and its contents in bulk comes to 38.136 grams. Further as per FSL report fifteen tablets of peach colour in strip labeled as Alprasil-0.5 having salt "Alprazolam" and its weight as per report Ex.PJ is 126 mgs per tablet and its contents in bulk comes to 37.8 grams, which is mentioned at Sr.No.178 of the table and according to that 05 grams to 100 grams comes under "non-commercial quantity" and above 100 gms is "commercial quantity". Further as per report ten tablets of peach colour in strip labeled as Prozolam-0.5 having salt "Alprazolam" and its weight as per report Ex.PJ is 126 mgs per tablet and its contents in bulk comes to 75.6 grams, which is mentioned at Sr.No.178 of the table and according to that 05 grams to 100 grams comes under "non-commercial" quantity and above 100 gms is "commercial quantity". It is pertinent to mention here that out of entire recovery of intoxicated substances, effected from the accused, only 300 tablets of Alprasil-0.5 having salt "Alprazolam" and 600 tablets of Prozolam-0.5 having salt "Alprazolam", falls within the ambit of NDPS Act and if we taken into consideration both these recoveries effected from the accused Parveen Kumar @ Dokri, because both are having same salt, which comes to 113.4 grams of "Alprazolam", it falls within the ambit of "commercial quantity" and accordingly, I reached to the conclusion that the prosecution

has been able to prove that the accused Parveen Kumar @ Dokri was having “commercial quantity” of Narcotic Drugs.

In terms of order dated 17.10.2016, considering that the contraband recovered from the conscious possession of the accused without any permit or licence coming within the mischief of commercial quantity, 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.

12. 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 28.11.2016 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 4.12.2018 and the remaining sentence of the appellant was suspended during the pendency of the appeal, subject to his furnishing of his bail bonds/surety bonds to the satisfaction of CJM/Duty Magistrate, Faridkot.

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

14. It is relevant to mention here that due to non-appearance of the accused either in person or through counsel, the order dated 4.12.2018 granting concession of suspension of sentence and consequent bail to him was recalled and non-bailable warrants were ordered to be issued through CJM, Faridkot, who has sent a report that in compliance of order dated 20.7.2022, the appellant/accused was arrested and sent to jail.

15. I have heard learned counsel 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 PW1 ASI Jagdev Singh, the Investigating Officer and PW5 HC Sohan Singh, who was member of the police party, which had apprehended the accused and effected recovery of the contraband from the accused as detailed above 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 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.

17. The link evidence in this case is also there in the form of statement of PW3 HC Jagroop Singh, the then MHC of the police station with whom the case property had been deposited after recovery and production before SI/SHO Sukhdev Singh till it was produced before the Magistrate. From the statement of PW2 HC Ranbir Singh, the carrier of the sample parcel to FSL, Punjab Mohali and PW4 SI Sukhdev Singh, it comes out that the case property had remained in safe custody and no tampering therewith had taken place and further that the sample parcels had reached the office of FSL, Punjab Mohali in an intact condition.

Report from the FSL, Punjab, Mohali Ex.PJ also goes to show that. This

very report reflects as under:

Ingredients Present	Average quantity of ingredients in the parcel at			
	i	ii	iii	iv
Tramadol hydrochloride	99.8 mg/capsule	49.8 mg/capsule	-	-
Diclofenac Sodium	49.8 mg/capsule	-	-	
Dicyclomine hydrochloride	9.8 mg/capsule	9.8 mg/capsule	-	-
Chlorpheniramine Maleate	3.8 mg/capsule	3.6 mg/capsule	-	-
Alprazolam	-	-	0.42 mg/tablet	0.41 mg/tablet

That means intoxicant salts were present therein. On being calculated, recovery involved comes within definition of commercial quantity.

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 plea taken by the accused in defence that as a matter of fact, he was travelling in the train without ticket when he was caught by the Ticket Checker and the Ticket Checker had handed him over to the police at GRP Moga for that very reason but the police planted a false case upon him, does not appear to be plausible and satisfactory. No evidence has been produced by the accused in support of that stand taken by him. It is difficult to imagine that the police would procure this much amount of contraband from its own sources and then plant it upon the accused without any rhyme or reason. A Single Judge of this Court in

judgment **Krishan Kumar Versus State of Punjab, 2016(2)**

RCR(Criminal)707 has considered this aspect and observed that when recovery from the accused is on the high side, then such huge quantity of the contraband cannot be planted by the police from its own source, that too, just for the false implication. Therefore, the conviction and sentence awarded by the trial Court to the appellant/accused was upheld.

20. Learned counsel for the appellant/accused has attacked the impugned judgment on various grounds. First ground of attack being that though the place of recovery according to the prosecution story happened to be a railway platform but neither any official from the railway department nor any other independent person was joined, rendering the prosecution story doubtful.

21. However, I do not find myself convinced by 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. Learned trial Court has discussed this aspect in detail in para No.12 of the impugned judgment referring to judicial pronouncement by the Apex Court in case **Akmal Ahmad Versus State of Delhi, 1999(2) RCR(Criminal)265** to the effect that evidence of search and seizure will not be vitiated solely for the reason that evidence was not supported by any independent witness. Another judgment by this Court has been referred to i.e. **Kesar Singh Versus State of Haryana, 1999(2)**

RCR(CrL), 803 dealing with the reasons why the independent witnesses generally do not join the police party, observing that character of the society has deteriorated and most of the citizens have lost instinct to assist the administration of justice, rather they have developed the tendency to criticize the law Courts and law enforcing agencies and nobody would like to come forward to assist the law or support the law.

22. In **Krishan Kumar Versus State of Punjab**(supra), it was 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. Therefore, non-joining of any official from the Railway Department or any independent witness with the police party while apprehending the accused and effecting recovery from him, does not create any dent in the prosecution case.

24. One more contention put forward by learned counsel for the appellant was that no gazetted officer or Magistrate was called to the spot, thereby violating mandatory provision of Section 50 of the Act, rendering the search and seizure invalid and entitling the accused to acquittal.

25. Again this contention is found to be without any merit. The trial Court has discussed that contention in detail in para No.16 of the impugned judgment and relying upon Division Bench judgment of this Court i.e. **State of Punjab Versus Makhan Chand, 2004(3) RCR(CrL)(1)** to the effect that Section 50 of the Act would apply to the personal search of the accused only and not of something carried by him in his hand. The trial Court concluded that no violation of Section 50 of the Act had taken

place in this case. I find myself in agreement with the trial Court in that regard.

26. The prosecution had proved in evidence statement made by the accused reposing confidence in the Investigating Officer for the purpose of carrying out the search after being informed by the Investigating officer with regard to his right of being searched in presence of some gazetted officer or a Magistrate. For that reason as well as the settled law on the point that Section 50 applies to personal search of the accused only, there does not come out to be any non-compliance of such provision having any adverse effect on the search and seizure and accused is certainly not entitled to get any benefit on that account.

27. Another submission made by learned counsel for the appellant was with regard to delay of 7 days in sending the sample to FSL, Punjab, Mohali. That very plea had been raised before the trial Court and duly discussed in paras No.13 and 14 of the impugned judgment rightly observing that the prosecution by bringing cogent and convincing evidence had established that the sample parcel had reached FSL, Punjab, Mohali with seals intact and the case property had remained in safe custody after its seizure after recovery from the accused. The trial Court had referred to the judgment by the Apex Court i.e. **Hardip Singh Versus State of Punjab, AIR 2009(SC) 432** wherein delay of 40 days in sending the sample to FSL was not found to be such a circumstance so as to vitiate the search and seizure making the accused entitled to any benefit.

28. A Division Bench of this Court in **Sucha Singh Versus**

State of Punjab 2015(4) RCR (Criminal)25 considered this aspect 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.

29. Lastly, learned counsel for the appellant has submitted that in the seizure memo, the batch number, the date of manufacturing and date of expiry of the recovered capsules and tablets have not been mentioned, which is a suspicious circumstance. However, this submission is also does not carry much weightage. Such details, if mentioned would have provided more clarity in the matter but absence thereof cannot be taken adversely to the prosecution story. Even otherwise, the Apex Court in Khet Singh Versus Union of India by the Supreme Court in Appeal (Crl.) 31 of 2000, had observed that law on the point is very clear that even if there is any sort of procedural illegality in conducting the search and seizure, the evidence collected thereby will not become inadmissible and the Court would consider all the circumstances and find out whether any serious prejudice had been caused to the accused. If the search and seizure was in complete defiance of the law and procedure and there was any possibility of the evidence collected likely to have been tampered with or interpolated during the course of such search or seizure, then, it could be said that the evidence is not liable to be admissible in evidence.

30. 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.

31. Appellant accused Parveen Kumar @ Dokri is in custody, who is directed to undergo remaining sentence.

Necessary intimation be given to the quarter concerned.

1.9.2022
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : No / Yes

Whether reportable : No / Yes