

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

CRA-S-3767-SB-2017

Date of decision:-27.4.2022

Jagsir Singh

...Appellant

Versus

State of Punjab

...Respondent

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

Present: Ms.Neha Gupta, Legal Aid counsel
for the appellant.

Mr.Anmol Singh Sandhu, AAG, Punjab.

H.S. MADAAN, J.

Appellant/accused Jagsir Singh was tried by Judge, Special Court, Moga in case FIR No.84 dated 1.10.2013, under Section 21 of Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as '**the Act**'), Police Station Mehna, on the allegations that on 1.10.2013 at about 3.10 p.m. on being apprehended by a police party in the area near turn of village Rauli, he was found in possession of 70 gms. of heroin. The accused was accordingly arrested in this case. The contraband was seized. After completion of investigation and other formalities, he was challaned and sent up to face trial.

The trial ended in his conviction and vide judgment dated 5.9.2017, he was convicted for the offence under Section 21(b) of NDPS Act and vide order of even date, he was sentenced to undergo rigorous imprisonment for one year and to pay a fine of ₹15,,000/- and in default thereof to further undergo simple imprisonment for a period of two

months.

Feeling aggrieved by the said judgment of conviction and order of sentence, the accused/appellant had preferred the present appeal before this Court, which came up for hearing on 26.10.2017 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 having been filed by the appellant/accused for suspension of his sentence of imprisonment during the pendency of appeal, the same was allowed on 15.12.2017.

I have heard learned counsel for the appellant-accused and learned State counsel besides going through the record.

Learned counsel appearing for the appellant has attacked the impugned judgment passed by the trial Court on various grounds contending that there was non-compliance of Section 50 of the Act; link evidence was missing; there are several contradictions and variations in the statements of material witnesses; no independent witness was joined at the time of alleged recovery and there was delay of 30 days in sending samples to the office of Chemical Examiner, Punjab and thus there could be possibility of samples being tampered, in that way, the prosecution had been unable to prove its charge against the accused beyond a shadow of reasonable doubt. However, the trial Court by misappraisal of evidence and wrong interpretation of law has convicted and sentenced the accused. She has further argued that by way of acceptance of the present appeal, the impugned judgment of conviction and order of sentence be set aside and accused be acquitted of the charge framed against him.

Whereas, learned State counsel has defended the judgment as legal and valid stating that no ground is there for setting it aside.

After hearing the rival contentions, I find that no ground is there to interfere with the impugned judgment.

As far as non-compliance of Section 50 of the Act is concerned, the same does not come out to be there since as it comes out that the police officer, who had apprehended the accused and suspected him to be carrying contraband is shown to have apprised the accused of his legal right to get his search conducted in presence of a gazetted officer or a Magistrate but accused reposed faith in the police officer signing the consent memo, which was attested by two witnesses. Therefore, there cannot be said to be any violation of Section 50 of the Act.

As far as the second contention that the link evidence is missing in the case, that aspect has been dealt at length by the trial Court in the impugned judgment observing that the witnesses examined by the prosecution while appearing in the witness box have duly described the factum from its recovery till it reached its destination. Therefore, no link evidence was missing. I do not see any reason to disagree with the trial trial.

With regard to non-examination of any independent witness, it has to be taken note of that there is nothing on record to show that the official witnesses had any previous enmity with the accused putting a question mark over their impartiality or making their depositions doubtful. It being so, their depositions are to be taken at par with independent witnesses. Furthermore, it is a matter of common knowledge that people

generally hesitate to get associated with the investigation of the criminal case may be to avoid the animosity of the criminals and to avoid hassles of going to the police stations or to the Courts. Therefore, non-joining of independent witness in this case does not make any difference.

As regards the delay in sending the sample to the Chemical Examiner for its analysis, the same is not shown to have caused any prejudice to the accused. The trial Court by citing law on the subject has rightly come to the conclusion that delay in sending the sample is inconsequential in this case.

As regards the contention of learned counsel for the appellant that there are contradictions and variations in the statements of material prosecution witnesses, I find that a few minor variations in their statements do not go to the root of the matter since those are bound to occur due to difference in power of perception, observation and retention of events in various persons and so also due to lapse of memory due to passage of time etc.

I find that the prosecution had successfully proved its case against the accused beyond a shadow of reasonable doubt.

The judgment 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 in the judgment, as such, the same is upheld.

However, with regard to the sentence awarded to the accused/appellant, in my view the submissions made by learned counsel for the appellant for reduction in sentence can be considered for various

reasons. Firstly, the contraband recovered from the appellant/accused amounts to non-commercial quantity. Secondly, he is a first offender and statedly only earning member of the his family and he was aged about 23 years at the time of recovery of the contraband. Furthermore, the appellant is not shown to have indulged in any criminal activity after his being released on bail while suspending his remaining sentence during the pendency of the appeal. As per custody certificate furnished by the State counsel and as mentioned in the earlier order dated 15.12.2017, the appellant-accused has already undergone imprisonment of 4 months and 22 days in this case.

In that way, while upholding the judgment of conviction passed against the appellant/accused, the order of sentence is modified and his sentence is reduced to one already undergone by him in this case. Whereas, the fine part is kept as intact. The appellant/accused may deposit the amount of fine in the trial Court within one month from today and in case of default of payment of fine, the appellant/accused shall be liable to be taken into custody and made to undergo sentence in default of payment of fine.

As such the appeal challenging the impugned judgment stand disposed of with above modification in sentence.

Necessary intimation be sent to Chief Judicial Magistrate, Moga for necessary compliance.

27.4.2022

Brij

(H.S.MADAAN)

JUDGE

Whether reasoned/speaking : No / Yes
Whether reportable : No / Yes