

108

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

CRA-S-475-2022 (O&M)
Date of decision : 29.03.2022

Tehal Singh

...Appellant

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Arjinder Singh Sidhu, Advocate for the appellant.

Mr. Sarabjit S. Cheema, AAG, Punjab.

VIKAS BAHL, J. (ORAL)

Challenge in the present appeal is to the judgment dated 15.03.2022 vide which Judge, Special Court, Bathinda had convicted the present appellant under Section 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter to be referred as “the NDPS Act”) and sentenced him to undergo rigorous imprisonment for a period of four months and he had also been directed to pay a fine of Rs.2,000/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of two weeks.

The brief background of the case is that on 11.11.2018, SI Gurinder Singh alongwith other police officials had laid a barricade in connection with checking of suspects and vehicles on the Bathinda-Dabwali, Badal Crossing and when it was about 5.30 p.m., one Alto Car bearing registration No.PB-03AX-9103 came from the side of Dabwali, which was signalled to stop, but the driver of the car immediately tried to turn back and

tried to flee from the spot, but was apprehended on the basis of suspicion and on enquiry, it was learnt that it was the present appellant who was driving the car. Since, SI Gurinder Singh informed him that there was suspicion that some intoxicant substance were being carried by the appellant and therefore, made him aware of his legal right to get himself searched in the presence of Magistrate or a Gazetted Officer, but the appellant reposed confidence in him only and accordingly, consent memo was prepared. The recovery of 60 grams of heroin was ultimately effected and after following due procedure, challan in the present case was presented and case property was produced in the Court of Sh. Varun Nagpal, Additional Chief Judicial Magistrate, Bathinda on 12.11.2018 where two samples of 5 gm each were drawn, which were sealed with seal bearing mark ACJM. Thereafter, on 13.11.2018, sample parcel was sent to the office of RTFSL, Bathinda through Constable Rajesh Kumar and after receipt of report of RTFSL, challan was presented and charges under Section 21 of the NDPS Act were framed.

In order to prove the case, the prosecution has examined as many as five witnesses, which are detailed as follows:

1. PW1 SI C.Rajesh Kumar (sample carrier).
2. PW-2 SI Ganeshwar Kumar (second Investigating Officer and Officer Incharge).
3. PW-3 ASI Harinder Singh (recovery witness).
4. PW4 SI Gurinder Singh (first Investigating Officer).
5. PW5 Tejinder Singh, Clerk, Office of RTA.

PW4 SI Gurinder Singh was the first Investigating Officer, who had fully supported the case of the prosecution and had also proved on record

consent memo Ex.P17. The RC of the car was also recovered and was exhibited as Ex.P8.

The version as given by said PW4 was fully corroborated by the testimony of PW-3 ASI Harinder Singh, who was the recovery witness.

PW2 SI Ganeshwar Kumar was the Officer Incharge had also fully supported the case of the prosecution.

After considering inter alia, the abovesaid evidence including evidence of PW1 and PW5, the trial Court had convicted the appellant under Section 21 of the NDPS Act for being found in possession of 60 grams of heroin and sentenced him to undergo rigorous imprisonment for a period of four months and also imposed a fine of Rs.2000/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of two weeks.

It is against the said judgment that the present appeal has been filed.

During the course of arguments, learned counsel for the appellant has submitted that although, he does not wish to challenge the conviction of the appellant under Section 21 of the NDPS Act but he prays that the sentence awarded to the present appellant be reduced to the period already undergone. With respect to the said prayer, learned counsel for the appellant has submitted that the FIR in the present case is of the year 2018 and thus, the appellant has suffered agony of trial/appeal for all these years and the appellant was granted the concession of bail and he has never misused that concession. It is further submitted that the appellant is about 42 years of age and he is the sole bread winner of his family. It is further submitted

that appellant has old aged parents, a minor child and wife and his wife is suffering from tumor in the uterus. It is further submitted that the appellant is not involved in any other case and has already undergone 1 month and 14 days of actual custody out of the total period of 4 months of rigorous imprisonment awarded.

In support of his arguments, learned counsel for the appellant has relied upon judgments of co-ordinate Benches of this Court in ***CRA-S-3505-SB-2017*** decided on 07.10.2017 titled as “***Rupesh Kumar @ Kala vs. State of Punjab***” reported as ***2017(4) RCR (Criminal) 668*** and in ***Crl. Revision No.1239 of 2011*** decided on 12.01.2018 titled as “***Ajay Kumar and another vs. State of Punjab***”, reported as ***2018(1) Law Herald 514***.

Learned counsel for the State has stated that the judgment of the Court below has been correctly passed after considering the entire evidence and material on record. The other factual aspects have not been rebutted by the learned counsel for the State. He has also produced on record the custody certificate of the appellant, which is taken on record, as per which, the period of custody as stated by the learned counsel for the appellant, is reiterated.

This Court has heard the learned counsel for the parties and has gone through the paper book.

Insofar as the conviction of the present appellant under Section 21 of the NDPS Act is concerned, the Special Court, Bathinda has duly considered all the factors and the evidence on record and has rightly convicted the appellant under Section 21 of the NDPS Act.

PW4 SI Gurinder Singh, who was the first Investigating Officer, had specifically deposed on 11.11.2018, he alongwith other police officials

were present at Bathinda-Dabwali, Badal Crossing for checking of suspects and at about 5.30 p.m., one Alto Car bearing registration No.PB-03AX-9103 came from the side of Dabwali and he signalled the driver/accused to stop the car and the appellant, who was driving the said car, got perplexed and tried to reverse the same but however, the appellant was apprehended on suspicion and the said PW4 had put it to the appellant that they had suspicion that he was carrying some intoxicant substance and thus, search was required and informed him about his legal right of being searched from some Magistrate/Gazetted Officer but, the appellant reposed confidence in him and accordingly, consent memo Ex.P17 was prepared. One RC Ex.P8 was also recovered from the car. The said evidence of PW4 SI Gurinder Singh has been fully corroborated by the testimony of PW3 ASI Harinder Singh, who was the recovery witness. PW1 Constable Rajesh Kumar, had deposed that SHO had handed over to him a parcel which was duly sealed with the seal bearing impression ACJM. It is further proved on record that two samples were taken on 12.11.2018 when the case property was produced in the Court of Sh. Varun Nagpal, ACJM, Bathinda and as per evidence of PW1 Constable Rajesh Kumar, it was stated that said parcel duly sealed with seal bearing impression ACJM was deposited in the office of RTFSL. PW5 Tejinder Singh, Clerk, RTA, Bathinda has proved the computerized record of the Maruti Car K-10 which was car in question in the name of Tehal Singh (appellant). The due procedure in accordance with law has been followed and thus, from the evidence on record, offence under Section 21 of the NDPS Act stands proved. Moreover, learned counsel for the appellant has not challenged the conviction of the appellant under Section 21 of the NDPS Act,

thus, the conviction of appellant under Section 21 of the NDPS Act is upheld.

Insofar as the sentence which has been awarded to the appellant is concerned, this Court is of the view that the incident in the present case is of the year 2018 and the appellant has never misused the concession of bail granted to him. The appellant is about 42 years of age and is the sole bread winner of his family. It has been recorded in para 1 of order on quantum of sentence that the appellant has old aged parents, a minor child and a wife and his wife is suffering from a tumor in the uterus. It is also clear from the record that the appellant is not involved in any other case and the appellant has already undergone a period of 1 month and 14 days of actual custody out of the total period of 4 months of rigorous imprisonment awarded.

A co-ordinate Bench of this Court in ***Rupesh Kumar @ Kala's*** case (supra) has held as under:-

“Appellant had faced trial in FIR No. 58 dated 1.6.2016 registered at Police Station City Budhlada, District Mansa under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (‘the Act’ for short). The trial Court vide judgment/order dated 5.9.2017 convicted the appellant for commission of offence punishable under Section 22 of the Act, and sentenced him to undergo two years rigorous imprisonment and to pay a sum of Rs.5000/- as fine and, in default of payment of fine, to further undergo rigorous imprisonment for a period of one month. Hence, the present appeal by the accused-appellant.

As per the prosecution case, appellant was found in conscious possession of 510 tablets of “Almax-05” containing the salt “Alprazolam” (51 strips of tablets of Alprazolam, each of 10 tablets) without any permit or licence.

During the course of arguments, learned counsel for the appellant has not challenged the conviction of the appellant under Section 22 of the Act as ordered by the Trial Court but has submitted that the sentence qua imprisonment of the appellant be reduced to the period already undergone by him. Learned counsel for the appellant has further submitted that the appellant is a poor man and confined in jail and has no means to pay the fine. Appellant is the only bread earner of the family. In support of his arguments, learned counsel has relied upon the judgment in Mukesh vs. State of M.P. 2015(1) RCR(Criminal) 251 where in Hon'ble the Supreme Court has reduced the sentence to already undergone. Learned counsel for the appellant has also placed reliance on the judgment of this Court in Balvinder Singh vs. State of Haryana 2012 (2) RCR(Criminal) 458, wherein it was held that the contraband recovered from the accused does not fall within the definition of commercial quantity and the ends of justice would be best met if the substantive sentence of imprisonment be reduced to that already undergone by him.

A perusal of the custody certificate of the appellant, placed on record reveals that the appellant has undergone about one year three months and seven days of actual sentence and is not involved in any other criminal case. Appellant has been facing criminal proceeding since the year 2016. Moreover, recovery of 510 tablets of "Almax05" containing the salt "Alprazolam" effected from the possession of the accused falls in the ambit of non-commercial quantity.

Keeping in view the submissions made by learned counsel for the appellant, it would be just and expedient to reduce the sentence qua imprisonment of the appellant to the period already undergone by him."

Thus, in view of the above said facts and circumstances, as also the judgments relied upon by the learned counsel for the appellant, sentence awarded to the appellant is ordered to be reduced to the period already undergone by him. In addition to the fine of Rs.2,000/- imposed by the learned trial Court, compensation to the tune of Rs.15,000/- is also being imposed. The above said reduction of sentence to the period already undergone will be subject to the the appellant depositing a fine of Rs.2,000/- with the concerned trial Court, if not already deposited/paid, within a period of two months from today and the compensation of Rs.15,000/- in the High Court Lawyers and Welfare Fund within a period of two months from today.

It is made clear that in case the abovesaid amounts are not deposited by the appellant within a period of two months from today, as directed herein above, the present appeal will be deemed to have been dismissed.

With the above said observations, the present appeal is disposed of.

Since, the main appeal has been decided, application bearing CRM-11278-2022 for suspension of sentence of applicant-appellant and application bearing CRM-11277-2022 for stay of recovery of fine imposed upon the applicant/appellant are rendered infructuous and are disposed of as such.

29.03.2022*Pawan***(VIKAS BAHL)
JUDGE****Whether speaking/reasoned:- Yes/No****Whether reportable:- Yes/No**