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

2023:PHHC:093563

CRA-S-1544-2020 (O&M)

RESERVED ON:24th JANUARY, 2023

PRONOUNCED ON: 1.06.2023

AVNEET KUMAR @ BALLA

.....APPELLANT

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Karan Garg, Advocate
for the appellant.

Mr. Mohit Kapoor, AAG, Punjab.

SANDEEP MOUDGIL, J.

1. The present appeal has been preferred by the appellant-Avneet Kumar @ Balla, against the judgment of conviction and order of sentence dated 04.09.2020, passed by learned Judge, Special Court, Patiala, whereby the appellant has been convicted for an offence under Section 22 of Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'NDPS Act') and sentenced to undergo rigorous imprisonment for a period of six months along-with fine to the tune of Rs.3000/- and in default of payment of fine, to further undergo Rigorous Imprisonment for a period of 15 days.

2. On having a glance to prosecution story, facts would culminate as on 20.06.2018, ASI Karamjit Singh along with police officials was present on the back side of PRTC Workshop, Patiala near Gurudwara Jhal

Sahib on an official Vehicle bearing registration No, PB-12-E-0079, two person were seen coming on motorcycle bearing registration No. PB 11 AQ 3628 from the Rajpura side. They were apprehended by ASI Karamjit Singh with the help of other police officials, on asking the driver of the motorcycle disclosed his name as Avneet Kumar @ Bala s/o Bhatwant Rai accused above mentioned and pillion rider disclosed his name as Ashu Bhatia s/o Rakesh Bhatia, On suspicion, an intimation was given to DSP (Investigation) Sukhminder Singh Chauhan and was asked to reached the spot within 20 minutes he reached there and he disclosed his identity to the motorcyclists that he is Sukhminder Singh Chauhan, DSP Investigation, Patiala. He suspect that the accused are having some intoxicating material in the bag possessed by them. He want to conduct search of accused, their bag and the motorcycle but accused have legal right that they can get their search conducted in the presence of Magistrate or Gazatted Officer of any department but accused reposed faith in him. So, DSP Sukhminder singh prepared separate consen memo of each accused and in the presence of him ASI Karamjit Singh checked the bag. On checking the bag three polythenes of different color were recovered . The accused disclosed that the said polythene are containing intoxicating material, On checking the black colored polythene white colored tablets were recovered which on counting came out to be 2700. On checking the blue colored polythene blue colored capsules counting 240 were recovered. The parcel of the same was also prepared which was marked No.2 and on checking the white colored polythene brown colored 500 capsules were recovered which were converted into a parcel and was given mark No.3. All the parcels were sealed by ASI

Karamjit Singh with seal bearing impression KS SS. Seals after use were handed over to ASI Iqbal Singh. The entire parcels along with black colored bag and the motorcycle were taken in possession vide recovery memos.

3. On appearance of both the accused in the Court, the copies of challan and documents etc. as relied upon by the prosecution were supplied to them free of cost.

4. The prosecution has examined as many as six prosecution witnesses and closed the prosecution evidence.

5. The incriminating evidence coming on record from testimonies of the prosecution evidence, which was put to the appellant during the course of statement under Section 313 Cr.P.C., to which he denied and pleaded false implication and innocence.

6. The appellant in defence has examined as many as three defense witnesses, thereafter, closed the defense evidence.

7. Learned Court below has convicted the accused and sentenced him to undergo rigorous imprisonment for a period of six months and also to pay fine of Rs.3000/- and in default of time, to further undergo Rigorous Imprisonment for 15 days.

8. Learned counsel for the appellant has contended that though the appellant had already undergone the sentence eventually imposed upon him (six months rigorous imprisonment) even at the time of pronouncement of the judgment of the trial court and the order of sentence, he already having been in custody for more than two years at that point of time itself, however, he is challenging the judgment and order of sentence on the merits thereof, as even Karamjeet Singh-investigating officer in his testimony as PW-2

before the trial court admitted that actually no evidence had come on record to prove that the appellant (Avneet Kumar @ Balla) was in any manner related to his co-accused Ashu Bhatia from whom the recovery of contraband is actually stated to have been made as per the case of the prosecution. It is seen that in the impugned judgment, the learned trial court has gone on to hold that since the motorcycle on which the two accused were travelling was owned by the appellant, he could not be absolved of guilt.

9. It is his assertion that as a matter of fact, the appellant only gave a lift to his co-accused, Ashu Bhatia, and therefore simply because he gave such lift, he could not have been convicted of being guilty of any conscious possession of such contraband, simply because the motorcycle they were riding on belongs to him, even in the face of the testimony of the investigating officer.

10. It is further argued that it is an admitted fact that loose tablets and capsules were recovered and despite the said fact, out of said alleged recovery only 10 intoxicating tablets and 20 intoxicating capsules, were sent for chemical analysis. Moreover, the investigating officer in his statement has admitted that the bulk parcels were got changed from 20.06.2018 to 21.06.2018, which shows that there is every possibility of tampering with the parcels. He further argues that the false implication of the appellant is also proved from the cross-examination of PW-7 (ASI Iqbal Singh), who specifically deposed that nothing was recovered from him and the bag was found from the possession of co-accused Ashu Bhatia. Moreover, the samples which were sent to the FSL for analysis having some identity marks

on the same, as per the FSL report Ex.P20 but in the inventory report under Section 52-a of the Act, which is Ex.P19, there is no identity mark on the tablets and capsules recovered and similarly in ruqa Ex.P10 or on the recovery memo Ex.P6, nowhere it is mentioned that the recovered tablets and capsules were having any identity marks.

11. It is submitted by learned counsel for the appellant that no independent witness has been joined in the present. It is also worthwhile to mention her that the ruqa was sent at 11.50 P.M., as is apparent from the statement of Investigating Officer, but on the site plan the date has been mentioned as 20.06.2018 instead of 21.06.2018, which shows that the site place was not prepared at the spot.

12. It is contended by the learned counsel for the State that the learned trial Court has rightly found that the recovery of contraband and the allegations against the accused stands proved beyond any reasonable doubt. The prosecution witnesses have successfully corroborated the prosecution case, which is apparent on record that the prosecution has been successful in getting the accused-respondent convicted. He further contends that in the present case compliance of Section 50 of the Act was not required as the recovery has been effected from the bag and the efforts were made to join the independent witness but nobody became ready.

13. I have heard the learned counsel for the respective parties and also gone through the record of the case.

14. As is evident from the facts, case of the prosecution is that on 20.06.2018, ASI Karamjit Singh (PW-2) along-with other police officials was present on the back side of PRTC Workshop, Patiala and the appellant

along-with his co-accused was seen coming from the Rajpura side on motorcycle bearing Registration No. PB-11-AQ-3628. On seeing the police party one of them tried to conceal the bag but they were apprehended. On checking of the bag, three polythene of different colour were recovered. From the black coloured polythene, 2700 white coloured tablets were recovered and from the blue coloured polythene, 240 blue coloured capsules were recovered.

15. The main thrust of his arguments is that there is nothing on record to show that the appellant in any manner is related to the co-accused (Ashu Bhatia) from whom the recovery of contraband is actually stated to have been made and the said fact has been admitted by the investigating officer who appeared in the witness box as PW-2 and has categorically stated that there is no relation between the Avneet Kumar and Ashu Bhatia. It is evident from the case of the prosecution that the recovery of alleged contraband was effected from the co-accused namely Ashu Bhatia. Evidently, recovery was effected in a public place. There is nothing on record to show that the police party made any effort to join any independent witness at the time of search of the appellant.

16. There is nothing on record to show that the appellant has any criminal antecedents as he has never been involved in any other case of any nature whatsoever. As already discussed above, the police party did not join any independent witness in this case. There is no gainsaying that NDPS Act is a special Act and has the provisions for the stringent punishment. Hence, the standard of investigation is also required to meet all those parameters, which rule out the false implication of an innocent citizen. However, in the

case in hand, the prosecution has failed to rule out the false implication of the appellant.

17. Thus, in view of the findings recorded above, this court has no hesitation to hold that the prosecution has failed to prove its case beyond the reasonable doubt.

18. Resultantly, the present appeal is allowed. The impugned order convicting and sentencing the appellant is set aside and the appellant is acquitted of the charges framed against him.

(SANDEEP MOUDGIL)
JUDGE

01.06. 2023

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Whether speaking/reasoned Yes/No

Whether reportable Yes/No