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

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Reserved on:- 24.07.2024

Pronounced on:- 30.08.2024

Yudhvir Singh @ Yodha and Another

....Appellants

Versus

State of Punjab

...Respondent

CORAM:- HON'BLE MRS. JUSTICE AMARJOT BHATTI

Present:- Mr. Vishal Nehra, Advocate
for the appellants.

Mr. Neeraj Madaan, Sr. DAG, Punjab.

AMARJOT BHATTI, J.

1. The appellants – Yudhvir Singh @ Yodha and Baljit Singh have filed present appeal against judgment of conviction and order of sentence dated 27.02.2015, passed by learned Judge, Special Court (Adhoc), Fast Track Court, Hoshiarpur, in NDPS Case bearing No. 44 of 07.11.2013, titled as “State Vs. Yudhvir Singh @ Yodha and Baljit Singh”, vide which Yudhvir Singh @ Yodha and Baljit Singh were held guilty and convicted under Section 22 of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short ‘NDPS Act’) and were sentenced to undergo rigorous imprisonment for a period of 8 years and to pay fine of ₹50,000/- each and in default of payment of fine, to further undergo rigorous imprisonment for one year.



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2. Brief facts of the case are that on 08.03.2013, ASI Gulzar Singh along with police party was going towards village Mandpander, Sansarpur side in their government vehicle i.e. Balero bearing No. PB-07-R-3476. When they reached on Sansarpur Road near turn of village Kallowal, they saw one motorcycle coming from opposite side, on which two young boys were sitting. After seeing the police party, they tried to turn back. Police party stopped their motorcycle and on suspicion, both boys were apprehended. On asking, they disclosed their names as Yudhvir Singh @ Yodha son of Avtar Singh and Baljit Singh son of Ramji. ASI Gulzar Singh told them that he had suspicion that there was some objectionable articles in their possession and he wanted to conduct their personal search. He also told them they had legal right to get their search conducted from some Gazetted Officer or Magistrate and if they so desire, then arrangement thereof could be made. However, accused reposed faith on ASI Gulzar Singh and told that he can search them. After completing necessary formalities as per law, search of both accused was conducted. On search of accused Yudhvir Singh @ Yodha, one polythene envelope containing intoxicant powder was recovered from right pocket of his pant. 10 gram of intoxicant powder was separated as sample and remaining was 240 gm. On the personal search of accused Baljit Singh, one polythene envelope containing intoxicant powder was recovered from left pocket of his pants and ASI Gulzar Singh separated 10 gm of said powder and remaining was 170 gm. Case property was sealed with seal impression GS. All parcels were taken into police possession. The motorcycle bearing No. PB-21-D-Temp-5421 make Bajaj Platina Black was also taken into police possession vide separate memo. Rough site plan as well as arrest memos of



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both accused were prepared. After completion of all the formalities, challan was prepared and it was presented in the Court.

3. Both accused were supplied complete set of copies of challan report as provided under Section 207 Cr.P.C.

4. Learned Additional Sessions Judge, Fast Track Court, Hoshiarpur after hearing the arguments framed charge-sheet against accused Yudhvir Singh @ Yodha and Baljit Singh under Section 22 of NDPS Act, which was read over and explained to them in simple language to which they pleaded not guilty and claimed trial.

5. In order to prove the facts of case, learned Additional Public Prosecutor for State examined ASI Gulzar Singh as PW-1, HC Jarnail Singh as PW-2, HC Mohinder Singh as PW-3, Inspector Onkar Singh as PW-4 and HC Satnam Singh as PW-5. Thereafter, prosecution evidence was closed by order of Court on dated 17.10.2014.

6. Statements of both accused were recorded under Section 313 Cr.P.C. to which they pleaded innocence and false implication.

7. In defence, accused examined Mohinder Singh as DW-1, Avtar Singh as DW-2 and Baldev Singh as DW-3 and thereafter closed defence evidence vide their joint statement.

8. After hearing arguments advanced by learned Additional Public Prosecutor for State and learned counsel representing both accused, accused persons were convicted and sentenced under Section 22 of NDPS Act, as referred above and feeling aggrieved of this judgment of conviction and order of sentence dated 27.02.2015, present appeal has been filed.

9. I have heard arguments advanced by learned counsel for the appellants/convicts as well as learned counsel representing State and have



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gone through the record carefully.

10. Learned counsel for appellants/convicts argued that facts of the case and evidence led by prosecution was not rightly considered. The Investigating Officer failed to follow mandatory provisions of NDPS Act regarding arrest, search and seizure of appellants. The version of prosecution is highly improbable. As per the facts narrated by prosecution, two persons came on a motorcycle and on seeing police party they tried to turn back. In case the appellants were carrying any objectionable article, they would have not come close to police party. At the time of conducting search no private witness was joined in police party. Provisions of Section 50 of NDPS Act were not complied with. Appellants were not produced before a Magistrate or Gazetted Officer for conducting search. Link evidence is defective. There is delay in sending samples to Chemical Examiner Laboratory. Defence evidence led by appellants was wrongly rejected. Prosecution had failed to prove guilt of appellants beyond the shadows of reasonable doubt. Even if the alleged quantity of contraband is taken into account, which falls under non-commercial quantity, the punishment awarded by trial Court is towards higher side. With these arguments, learned counsel for appellants prayed that impugned judgment and order of sentence dated 27.02.2015 passed by learned Judge, Special Court (Adhoc), Fast Track Court, Hoshiarpur be kindly set aside by accepting present appeal.

11. On the other hand, learned counsel representing State of Punjab pointed out that prosecution led convincing evidence on record to prove charge-sheet framed against both appellants/convicts. ASI Gulzar Singh Investigating Officer stepped into witness box as PW-1 to prove his



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version and his statement is fully corroborated by recovery witness HC Jarnail Singh PW-2. The Investigating Officer conducted search of both appellants/convicts by following proper procedure as prescribed under the provisions of Section 42 and Section 50 of NDPS Act. They had reposed confidence on the Investigating Officer and consent memos were prepared accordingly. From the possession of appellant Yudhvair Singh @ Yodha, 250 grams of intoxicant powder in polythene envelope was recovered, whereas, from the possession of Baljit Singh, 180 grams of intoxicant powder in polythene envelope was recovered. After completing all the formalities, both appellants and case property were produced before SHO/Inspector Onkar Singh Brar who is also examined as PW-4. Prosecution examined HC Satnam Singh PW-5 who was posted as MHC and HC Mohinder Singh PW3 who had deposited the samples in Forensic Science Laboratory, to prove the link evidence. The report of Forensic Science Laboratory is Ex.PQ, according to which samples tested in laboratory was 'Lorazepam'. The recovery fell in non-commercial quantity. Considering the entire evidence on record, both appellants/convicts were rightly held guilty under Section 22 of NDPS Act and they were rightly convicted thereunder. Appeal preferred by both appellants deserves dismissal.

12. I have considered the arguments and have carefully perused the evidence led by prosecution as well as witnesses examined in defence. As per the case of prosecution, on 08.03.2013, ASI Gulzar Singh alongwith police party was going on Government vehicle towards village Mandpandher, Sansarpur side. When they reached on the turn of Kallowal on Sansarpur road, they saw two young boys coming on a motorcycle from



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the opposite side who tried to turn on seeing police party. They were apprehended on the basis of suspicion and their names were inquired. One of the boy disclosed his name as Yudhvir Singh @ Yodha and other boy disclosed his name as Baljit Singh. To prove the facts of case, prosecution examined ASI Gulzar Singh, Investigating Officer PW-1 and HC Jarnail Singh recovery witness PW-2. It has come in statements of both witnesses that ASI Gulzar Singh categorically asked Yudhvir Singh @ Yodha and Baljit Singh individually that he suspected some intoxicant material in their possession and for that purpose their personal search was required. They were duly apprised of their right to get their search conducted in the presence of Magistrate or Gazetted Police Officer. In reply, both appellants reposed confidence on Investigating Officer. Consent memo of Yudhvir Singh @ Yodha is Ex.PA and consent memo of Baljit Singh is Ex.PB. Thereafter, search of both appellants was conducted by ASI Gulzar Singh, Investigating Officer. Consent memos of both appellants is clear and unambiguous. They were duly apprised of their right to get search conducted in presence of Gazetted Officer or a Judicial Magistrate. Therefore, it cannot be said that Investigating Officer did not follow the procedure prescribed under the provisions of NDPS Act. Yudhvir Singh @Yodha affixed his signatures on consent memo Ex.PA at two places in English, whereas, Baljit Singh affixed his signatures on consent memo Ex.PB at two places in Punjabi. Therefore, I do not find any defect in aforesaid consent memos vide which both appellants/convicts were apprised of their rights individually to get their search conducted in the presence of a Gazetted Officer or a Magistrate.



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13. Learned counsel for appellants raised the issue that at the time of conducting search no private witness was joined in police party. It is matter of record that search was conducted by ASI Gulzar Singh in the presence of his police party. On the search of Yudhvir Singh @ Yodha, from the right pocket of his pants, white coloured powder weighing 250 grams was recovered, which was taken into police possession vide recovery memo Ex.PD, which was duly signed by accused as well as witnesses HC Pawan Kumar and HC Jarnail Singh who is examined as PW-2. Similarly on the search of Baljit Singh, from the left pocket of his pant, white coloured powder weighing 180 grams was recovered, which was taken into police possession vide recovery memo Ex.PE, which was signed by Baljit Singh accused and marginal witnesses HC Pawan Kumar and HC Jarnail Singh, examined as PW-2. It has come in cross-examination of ASI Gulzar Singh PW-1 as well as HC Jarnail Singh recovery witness PW-2 that effort was made to join some private witness in police party but nobody agreed to join by expressing their difficulty. Therefore, in the case in hand, said recovery is proved on file by ASI Gulzar Singh PW-1 and HC Jarnail Singh PW-2, both police officials. Non-joining of private witness in police party is not always fatal to prosecution case. Only requirement is to peruse the facts, circumstances of case and evidence on record carefully. I have gone through the cross-examination of ASI Gulzar Singh PW-1 and HC Jarnail Singh PW-2. Their statements have remained consistent on all material points. Learned counsel for appellants/convicts could not point out any material discrepancy in their statements to shatter their credibility. Therefore, I do not find any reason to discard the testimonies of ASI Gulzar Singh



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Investigating Officer PW-1 and HC Jarnail Singh recovery witness PW-2. There is nothing on record to show that either ASI Gulzar Singh PW-1 or any member of police party was having enmity with appellants/convicts to falsely implicate in this case. Therefore, this argument advanced by learned counsel for appellants does not hold any ground.

14. Learned counsel for appellant Yudhvir Singh @ Yodha examined Baldev Singh DW-3 in defence who claimed that on 08.03.2013, he along with Yudhvir Singh @ Yodha had gone to Chandigarh for their personal work and they had returned home at 08:00 PM. Baldev Singh DW-3 tried to establish that on the day of 8th March, 2013, Yudhvir Singh @ Yodha was not apprehended by police as claimed by prosecution. However, during cross-examination, Baljit Singh DW-3 could not produce anything on record to show that he along with Yudhvir Singh @ Yodha had gone to Chandigarh. He never visited Police Station Dasuya to verify facts regarding arrest of Yudhvir Singh @ Yodha. He never approached any higher Police Officer regarding false implication of Yudhvir Singh @ Yodha in this case registered under NDPS Act. He stated that he is aware that Yudhvir Singh @ Yodha is facing trial in this case.

Similarly, Baljit Singh appellant examined DW-1 Mohinder Singh who claimed that two police officials came to the house of Baljit Singh on 08.03.2013 and took him along with them on a motorcycle. In the evening, he came to know that Baljit Singh was falsely implicated in this case. During cross-examination, this witness claimed that he along with others had gone to Police Station Dasuya but did not meet any police official and they returned home from outside police station. He also never approached any higher Police Officer regarding present case. Avtar Singh



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DW-2 has also given his statement pertaining to Baljit Singh on the same lines. Therefore, defence raised by both appellants/convicts is not convincing and trustworthy and it appears to be afterthought.

15. Learned counsel for appellants/convicts further raised the issue that there was delay in sending samples to Forensic Science Laboratory. Recovery was effected on 08.03.2013. On the same day, after completing all formalities samples and bulk case property was sealed and taken into police possession by Investigating Officer. It was produced before SHO/Inspector Onkar Singh Brar PW-4 who verified the facts and affixed his own seal bearing impression 'OSB'. Thereafter, it was deposited with MHC/HC Satnam Singh who is examined as PW-5. He filed his affidavit Ex.PW5/A to confirm the facts regarding deposit of case property. He again confirmed that on 09.03.2013, both appellants alongwith case property were produced before Judicial Magistrate 1st Class, Dasuya. Said Magistrate also affixed his own seal and case property was again deposited with him. Samples were sent to Forensic Science Laboratory on 12.03.2013 through HC Mohinder Singh who is examined as PW-3 and filed his affidavit Ex.PW3/A confirming this fact. Report of Forensic Science Laboratory, SAS Nagar, Punjab is Ex.PQ. Testimony of aforesaid witnesses as well as report of Forensic Science Laboratory Ex.PQ does not show that case property was ever tampered with. Samples were sent for the purpose of testing after four days without any delay. Therefore, link evidence is complete and objection raised by learned counsel for appellants is without any basis.

16. Therefore, considering the evidence led by prosecution on record, charge-sheet framed against both appellants for recovery of



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contraband is duly proved on record and both of them were rightly held guilty under Section 22 of NDPS Act. Custody certificate on record further shows that Yudhvir Singh @ Yodha is involved in several cases, whereas, Baljit Singh is also involved in another case. Considering their antecedents, I do not find any reason to interfere in the sentence imposed by learned trial Court.

17. Resultantly, the judgment of conviction and order of sentence dated 27.02.2015 passed by learned Judge, Special Court (Adhoc), Fast Track Court, Hoshiarpur is accordingly, upheld and appeal preferred by appellants/convicts Yudhvir Singh @ Yodha and Baljit Singh is accordingly, dismissed. Appellant Baljit Singh, whose suspension of sentence was allowed by this Court vide order dated 27.03.2018, is directed to surrender before learned Chief Judicial Magistrate, Hoshiarpur, within one month from today, failing which learned Chief Judicial Magistrate, Hoshiarpur would issue warrants of arrest to secure his presence and send him to jail to undergo the remaining sentence. Necessary intimation be sent to the Court for information and compliance.

18. The appeal is accordingly, declined.

19. Pending application(s), if any, also stands disposed of.

30.08.2024
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(AMARJOT BHATTI)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No