

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

239

2024:PHHC:049663
CRM-A-194-2024 (O&M)
Date of decision: April 10th, 2024

State of Haryana
.....Applicant

Versus

Mehboob
.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Rajesh Gaur, Additional Advocate General, Haryana,
for the applicant.

MANJARI NEHRU KAUL, J.

CRM-5769-2024

Prayer in this application is for condonation of delay of
80 days in filing the application for grant of leave to appeal.

For the reasons mentioned in the application, the same is
allowed.

Delay of 80 days in filing the application stands condoned.

CRM-A-194-2024

The applicant is impugning the judgment dated 09.08.2023
passed by the learned Additional Sessions Judge-cum-Judge,
Special Court, Kurukshetra, whereby respondent-accused has been
acquitted of the charges framed against him in case FIR No.83 dated
07.02.2021 under Sections 21, 29, 31 of The Narcotic Drugs and
Psychotropic Substances Act, 1985 (hereinafter referred to as
'the NDPS Act'), registered at Police Station Krishna Gate Thanesar.

2. Before proceeding further, the brief facts of the case of the
prosecution may be noticed as thus: On 07.02.2021, a patrol team
comprising of police officials stationed at Rotary Chowk, Kurukshetra,
received secret information from a secret informer regarding one

Akhtar Ali allegedly involved in selling smack/heroin. Acting upon this, a raiding party was constituted and notice under Section 42 of the NDPS Act was sent to DSP, Kurukshetra. Subsequently a barricade was raised at Ravidas Chowk. A young boy, later identified as Akhtar Ali, was seen by the police party, who tried to escape on seeing the police, but was apprehended by the police on suspicion. After complying with all the mandatory provisions of the NDPS Act including notice under Section 50 of the NDPS Act, search of Akhtar Ali was carried out before Gazetted Officer/Naib Tehsildar. Thanesar; the search resulted in the recovery of 45 grams of heroin/smack from the possession of Akhtar Ali. On interrogation, Akhtar Ali suffered a disclosure statement implicating respondent-accused Mehboob as being the supplier of the recovered contraband. Consequently, respondent-accused Mehboob was then arrested on 22.06.2021. On completion of the investigation, final report under Section 173 of the Cr.P.C. was submitted and accused Akhtar Ali was charged under Sections 21 and 31 of the NDPS Act and respondent-accused Mehboob was charged under Section 29 of the NDPS Act. On the basis of the evidence and other material led, while Akhtar Ali was convicted by the learned trial Court, respondent-accused was acquitted. The State is now before this Court to challenge the acquittal of respondent-Mehboob by the learned trial Court.

3. Learned counsel appearing for the State has vehemently asserted that the approach of the learned trial Court in acquitting respondent-accused Mehboob is fundamentally flawed. It has been further contented that the trial Court erred gravely in acquitting the respondent-accused without appreciating that sufficient evidence had

been led to show his involvement in the crime in question, coupled with the fact that the prosecution witnesses had stood their ground during trial. Additionally, it has been argued that the trial Court overlooked crucial evidence provided by the witnesses, particularly the testimony of PW-14 Firdosh, wherein she explicitly detailed the issuance of a SIM card to respondent-Mehboob on the basis of her Aadhaar ID, which respondent-accused subsequently used in the commission of the crime. The prosecution's case was thus supported by cogent and convincing evidence, which clearly hinted towards the active involvement of respondent-accused in drug trafficking. Furthermore, learned State counsel submitted that the deposition of PW-16 Gagandeep Singh also corroborated the transfer of another SIM card to accused Akhtar Ali, underscoring his involvement in drug trafficking, which in turn was corroborated with call detail records. Learning counsel for the State thus prayed for setting aside of the impugned judgment of acquittal as crucial testimonies and evidence of the prosecution had been ignored by the trial Court.

4. I have heard learned counsel for the State and perused the relevant material on record.

5. A perusal of the material on record including the impugned judgment reveals that the name of respondent-accused came to light in the disclosure statements suffered by accused Akhtar Ali (who vide the impugned order already stands convicted). An analysis of the evidence put forth by the prosecution qua the purported involvement of respondent-accused reveals notable deficiencies. While the name of respondent-accused surfaced in the disclosure statement of accused Akhtar Ali, which was admittedly recorded on two different occasions,

and the Investigating Officer leaned on certain call record details, however, this Court has no hesitation in concurring with the findings recorded by the learned trial Court that these circumstances singularly do not conclusively prove the complicity of respondent-accused in the crime in question. Furthermore, after respondent-accused was arrested, a recovery of ₹7,500/- was shown to have been affected from his house, however, even as per the admitted case of the prosecution, no contraband, much less smack/heroin was seized either from the house of the respondent-accused or from his conscious possession; no evidence even remotely linking respondent-accused to drug trafficking was led by the prosecution. The prosecution also failed to prove beyond reasonable doubt that the money allegedly recovered from the possession of respondent-accused i.e. ₹7,500/- had been derived from the sale of narcotics. Furthermore, as per settled law, a confession made by one accused cannot serve as a substantive piece of evidence against a co-accused; its admissibility is limited only for corroborative purposes. Hence, respondent-accused could not have been held culpable only on the basis of the confession/disclosure statements made by co-accused Akhtar Ali. Consequently, considering these lacunae in the case of the prosecution, the trial Court cannot be faulted for recording a finding of acquittal against respondent-accused.

6. Accordingly, the instant application stands dismissed.

April 10th, 2024
Puneet

(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/reasoned : Yes

Whether reportable : No