



IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH

CRM-10138-2023 in/and
CRA-S-1010-2020
Date of Decision: 10.07.2024

STATE OF HARYANA

.....APPLICANT

VERSUS

AMIT GOYAL

.....RESPONDENT

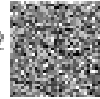
CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. S.S.Pannu, Addl, A.G, Haryana

SANDEEP MOUDGIL, J

CRM-10138-2020

1. The appeal has been filed along with the application under section 5 of the Limitation Act seeking condonation of delay of 56 days in filing the appeal, against the judgment dated 19.09.2019 passed by Additional Sessions Judge, Charkhi Dadri whereby the respondent-accused have been convicted for an offence under section 21(A) of NDPS Act instead of being convicted under Section 21-B of the Act
2. The learned state counsel having given a convincing explanation for the delay of 56 days in filing the instant appeal, wherein the delay is neither intentional nor wilful and rather have occurred due to delay in completing the procedural formalities which has to pass through a step by step official authorization stands allowed.
3. Delay condoned. Application stands allowed.

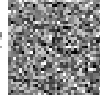


Main case

4. The jurisdiction of this court has been invoked for enhancement of sentence against the judgment dated 19.09.2019 passed by Additional Session Judge, Charkhi Dadri vide which the accused-respondent has been wrongly convicted under section 21(A) of the NDPS Act instead of being convicted under section 21-B of the Act.

5. The factual matrix of the case unfolds that on 04.03,2016, Sub Inspector along with other co-officials was present for crime checking duty at Anaj Mandi when MHC informed them a team of doctors is visiting for checking purpose and help be provided to them wherein on checking, the owner of the shop fled away and team recovered 13 MTP Kits and two types of Misoprostol which are used for illegal termination of pregnancy. It is further maintained that four types of narcotic drugs and psychotropic substances were found, which are having 2250 tablets of Alprazolam, 240 tablets of Lorasepam, 40 injections of Pentazocinelactateing and 9 injections of Diazeparn. It was further observed that accused-respondent was found to be indulging in illegal trade of narcotic drugs and psychotropic substances and same were being used by him for illegal termination of pregnancy, Recovered narcotic drugs and psychotropic substances were taken into police possession and an FIR No. 53 dated 04.03.2016 was registered under sections 21(B) of NDPS Act and section 4 of Medical Termination of Pregnancy Act 1971 at Police Station Dadri.

6. Learned state counsel at the very outset contends that the prosecution have proved the recovery of 2250 tablets of Alprazolam, 240 tablets of Lorasepam, 40 injections Pentazocinelactateing , 9 injections of Diazepam from the possession of accused-respondent which is ample enough to convict him under section 21(B) of the NDPS Act.



7. He further contends that the trial court has erred in calculating the recovered quantity by measuring the content in the mixture making it fall under small quantity whereas as per the settled proposition of law, the entire substance recovered is to be considered for determining the commercial quantity of the contraband.

8. Having heard learned state counsel and after meticulously going through the record in hand, this court does not find any illegality or perversity in the judgment passed by the trial court.

9. As far as considering the quantum of the narcotic contraband recovered from the shop of the accused-respondent is concerned, there has been a debate on the aspect as to whether the entire substance of the tablets and injections be considered to weight the quantum of narcotic contraband which was put to an end by the Apex Court in “ ***E.Micheal Raj vs Intelligence Officer, Narcotic Control Bureau (2008) 5 Supreme Court Cases 161***” wherein it has been held that:-

“In the mixture of narcotic drug or psychotropic substance with one or more neutral substance, the quantity of neutral substance with one or more neutral substance is not to be taken into consideration while determining the small or commercial quantity of the narcotic drug or psychotropic substances. It was further held that it is only the actual content by weight of the offending drug, which is relevant for the purpose of determining whether it would constitute small quantity of commercial quantity.”

10. This court in “ ***Rajvir Singh alias Raju Vs State of Punjab CRM-M-35080-2018***” has also held that it is only the quantity of such narcotic and psychotropic substance present in the mixture/solution, which is to be taken into counting for the purpose of determining the commercial quantity.



11. Therefore, the trial court while applying the above mentioned methodology has rightly calculated the recovered contraband to be of small quantity and has accordingly convicted the accused-respondent under section 21(A) of the NDPS Act.
12. This court while finding no merits in the instant appeal, dismiss the same without any costs.
13. Dismissed.

10.07.2024
Anuradha

(SANDEEP MOUDGIL)
JUDGE

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