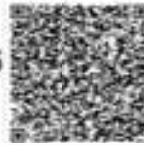


2024:PHHC:154696



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

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**CRM-A-210-2021 (O&M)
DECIDED ON: 19.07.2024**

UNION TERRITORY, CHANDIGARH

...APPLICANT/APPELLANT

VERSUS

VIKAS

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Rajiv Vij, Additional Public Prosecutor
for the applicant/appellant.

SANDEEP MOUDGIL, J

CRM-29745-2021

This application has been filed for condonation of delay of 99 days in filing the accompanying application.

In view of the averments made in the present application,, the same is allowed and delay of 99 days in filing the appeal is condoned.

The application stands disposed of.

CRM-A-210-2021

1. By way of filing the present application, under Section 378(3) Cr.P.C, the applicant is seeking grant of leave to file the present appeal to assail the judgment dated 04.09.2019, whereby the respondent-accused stands acquitted of the charges framed against him under Section 21 of Narcotic Psychotropic Substances Act, 1985 (hereinafter referred to as 'NDPS' Act).

2. The prosecution story in brief is that on April 12, 2017, Sub-Inspector Satvinder and a police team were patrolling in a government vehicle when they noticed a suspicious individual near the Sector 45/46 Civil Hospital corner around 3:00 AM. The person attempted to flee but was apprehended. During the arrest, the accused tried to discard a polythene bag containing a powder-like substance resembling heroin. Weighing 25.14 grams, the substance was seized and sealed by the Investigating Officer (IO). The accused failed to produce a license or permit for possessing heroin. The IO prepared a test memo form, recovery memo, and sent a report (ruka) to the Sector 34, Chandigarh police station for registering the FIR.

3. It is contended that the judgment passed by the trial Court suffers from grave illegality, perversity and the same is based upon surmises and conjectures and as such the same is liable to be set aside. It is further contended that the trial Court gave the benefit of acquittal to the respondent-accused on the ground that provisions of Section 50 of NDPS Act were not complied with, as the alleged recovery of contraband was not made in the presence of any gazetted officer or any Magistrate. Learned trial Court has failed to notice that it was a case of chance recovery and all the prosecution witnesses have testified by leading cogent evidence on record. It is further contended that the prosecution presented compelling evidence through its witnesses, establishing that the heroin was recovered from the respondent-accused illegal possession during a chance recovery. The accused was apprehended due to suspicion. Since the contraband was recovered from a polythene bag carried by the accused, not from his body, therefore, compliance of Section 50 was unnecessary. In this regard, reliance has been placed upon the judgment of the Apex Court in case of **“State of Punjab vs. Balbir Singh”**;

(1994) 3 SSC 299, wherein, it has been held that where a police officer acting under Cr.P.C. comes across a person and on search recovers narcotic drug, question of complying with Section 50 NDPS Act would not be attracted.

4. It is submitted on behalf of the applicant/appellant that the trial Court decision to discredit the official witnesses due to the lack of an independent witness is questionable. PW-1 Satvinder Singh and PW-3 ASI Rajpal testified that they attempted to involve independent witnesses, but none were willing to participate. This is a common phenomenon, as people often avoid getting involved with the police to avoid harassment or testifying in Court. It is essential to consider the credibility of the official witnesses, whose testimonies are consistent, reliable, and trustworthy. The trial Court should have taken this into account instead of disbelieving them solely due to the absence of an independent witness.

5. I have heard learned counsel for the appellant and gone through the record.

6. After hearing the respective submissions of the learned counsel for the parties, this Court finds that the alleged recovery of heroin was effected from the polythene bag carried by the accused and no offer had been given under Section 50 of NDPS Act to get his personal search conducted. It is not the case of the prosecution that alleged contraband recovered from some vehicle or some brief case or jhola etc. the contraband was in the pocket and accused took out of the same from his pocket. Therefore, in the facts and circumstances of the present case, it is clear that this recovery had been effected from the hands of the accused, which will amount to recovery from the search of the person of the accused. The provisions of Section 50 of NDPS

Act are mandatory in nature, which have not been complied with by the Investigating Officer. No offer of any type had been given to the accused qua his personal search.

7. Furthermore, there was no independent corroboration in the present case. Therefore, from the above, I find that as the mandatory provisions under Section 50 of the NDPS Act had not been complied with, the prosecution has failed to prove the guilt of the accused/appellant by leading cogent evidence beyond doubt.

8. In view of the discussions made hereinabove, this Court is of the considered view that the impugned judgment 04.09.2019 is based upon the proper appreciation of the evidence led by the parties. The ground of acquittal, as has been culled out by the trial Court, cannot be said to be faulty, requiring any interference by this Court. The allegations have been found to be not proved beyond reasonable doubt by the evidence which has been led by the prosecution and, therefore, the benefit of doubt has rightly been granted to the accused-respondent.

9. Accordingly, the leave to appeal stands declined.

10. Dismissed.

11. Pending miscellaneous application, if any, shall also stands disposed of.

(SANDEEP MOUDGIL)
JUDGE

19.07.2024

Sham

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No