



In the High Court of Punjab and Haryana at Chandigarh

CRA-D-916-2022 (O&M)
Reserved on: 20.12.2024
Date of Decision: 23.01.2025

Amit Kumar alias MeetuAppellant

Versus

State of HaryanaRespondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE KULDEEP TIWARI

Present: Mr. Ashish Aggarwal, Advocate for
Mr. Kushagra Mahajan, Advocate
for the appellant.

Mr. P.P.Chahar, Sr. DAG, Haryana.

SURESHWAR THAKUR, J.

1. The appeal (supra) is directed against the impugned verdict, as made on 19.09.2022, upon Session Case (NDPS) No.13 of 2021, by the learned Additional Sessions Judge, Yamuna Nagar at Jagadhri wherethrough in respect of charges drawn against the accused for offence punishable under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as “the NDPS Act”), the learned trial Judge concerned, proceeded to record a finding of conviction against the accused-appellant.

2. Furthermore, through a separate sentencing order of even date, the learned trial Judge concerned, imposed upon, the convict-Amit Kumar alias Meetu both sentence(s) of imprisonment as well as sentence(s) of fine, but in the hereinafter extracted manner:

Offence under section	Sentence awarded	Amount of fine imposed	Sentence in default of payment of fine
22 of NDPS Act	R.I. for a period of eleven years	Rs. 1,00,000/-	R.I for a period of six months.



3. The period of detention undergone by the convict, during the investigation, and, trial of the case, was, in terms of Section 428 of the Cr.P.C., rather ordered to be set off, from the above imposed sentence(s) of imprisonment.

4. The accused-convict becomes aggrieved from the above drawn verdict of conviction, besides also, becomes aggrieved from the consequent therewith sentences of imprisonment, and, of fine as became imposed, upon him, by the learned convicting Court concerned, and, hence has chosen to institute thereagainst the instant criminal appeal.

Factual Background and Investigation proceedings

5. The genesis of the prosecution case, becomes embodied in the appeal/FIR, to which Ex.P1 is assigned. The narrations carried in Ex.P1, are that on 11.12.2020, ASI Satnam Singh alongwith ESI Jasbir Singh, LEHC Saraswati, Constable Amarjeet and Constable Sandeep Kumar were present at Ledi Turn, Bilaspur in connection with patrolling in a government vehicle bearing registration No.HR-02-AL-1400 being driven by EHC Pankaj Kumar. Meanwhile, ASI Satnam Singh received secret information that Amit Kumar alias Meetu resident of Bilaspur who had been indulged in selling of intoxicating medicines, was standing near Court Complex, Bilaspur waiting for someone to sell the intoxicating medicines. If a raid would be conducted, he could be apprehended red handed. Believing the information as correct, ASI Satnam Singh informed the other police officials. Notice under Section 42 of the NDPS Act was prepared and information was sent to Ashish Chaudhary, HPS, Deputy Superintendent of Police through LEHC Saraswati. Thereafter, ASI Satnam Singh sent a rukka



which, the present FIR under Section 22/61/85 of the NDPS Act was lodged. After receipt of information, Sub Inspector Surinder Kumar reached at the spot where ASI Satnam Singh was present. ASI Satnam Singh gave a copy of notice under Section 42 of the NDPS to Sub Inspector Surinder Kumar. Thereafter, search of police officials was conducted by Sub Inspector Surinder Kumar but nothing incriminating was found in their possession. Search of Sub Inspector Surinder Kumar was conducted by ESI Jasbir Singh but nothing incriminating was also found in his possession. Thereupon, after constituting a raiding party, they reached at the spot. On the signal of secret informant, accused was apprehended. On enquiry, he disclosed his name as Amit Kumar alias Meetu. Notice under Section 50 of the NDPS Act was served upon the accused, who gave his consent for his search from a Gazetted Officer. Then, Tarun Sahota, Tehsildar, Bilaspur was contacted on telephone. After some time, he came at the spot. Thereupon, search of polythene was conducted. Upon its search, 54 packets Marka Simplex C containing 432 capsules were recovered. Thereafter, Parveen Kumar, Drugs Control Officer was called who submitted his report that the weight of recovered tablets/capsules is 283.39 gram i.e. commercial quantity. During investigation, accused Amit Kumar alias Meetu suffered disclosure statement that he had purchased the said intoxicant medicines from accused Shahrukh. Section 29 of the NDPS Act was inserted. Statement of witnesses under Section 161 Cr.P.C. were recorded. Site plan of the place of occurrence was prepared. Accused Shahrukh Khan was arrested. After completion of investigation, the final report under Section 173 of Code of Criminal Procedure, 1973 was presented in the Court.

6.

The copy of the challan and other documents relied upon by the



prosecution were supplied to the accused. After being *prima facie* satisfied of the allegations, the learned Additional Sessions Judge, Yamuna Nagar at Jagadhri, framed charges against accused Amit Kumar alias Meetu under Section 22 of the NDPS Act, whereas, co-accused Shahrukh Khan was charge-sheeted under Section 22 read with Section 29 of the NDPS Act, on 06.09.2021, to which the accused pleaded not guilty and claimed trial.

Trial Proceedings

7. In support of its case, the prosecution examined eighteen witnesses, and, thereafter the learned Public Prosecutor concerned, closed the prosecution evidence. After the closure of prosecution evidence, the learned trial Judge concerned, drew proceedings, under Section 313 of the Cr.P.C., but therein, the accused pleaded innocence, and, claimed false implication. No evidence was in led by the accused in their defense.

8. As above stated, the learned trial Judge concerned, proceeded to convict the accused-Amit Kumar alias Meetu for the charge (*supra*), as became drawn against him, and, also as above stated, proceeded to, in the hereinabove manner, impose the sentence(s) of imprisonment, as well as of fine, upon the convict. However, the learned Additional Sessions Judge, Yamuna Nagar at Jagadhri made a verdict of acquittal qua his co-accused Shahrukh Khan.

Submissions of the learned counsel for the appellant.

9. The learned counsel for the aggrieved convict-appellant has argued before this Court, that the impugned verdict of conviction, and, consequent therewith order of sentence, require an interference. He supports the above submission on the ground, that it is based on a gross misappreciation, and, non-appreciation of evidence germane to the charge.



Submissions of the learned State counsel

10. On the other hand, the learned State counsel has argued before this Court, that the verdict of conviction, and, consequent therewith sentence(s) (supra), as become imposed upon the convict, is well merited, and, does not require any interference, being made by this Court in the exercise of its appellate jurisdiction. Therefore, he has argued that the instant appeal, as preferred by the convict, be dismissed.

Analysis of the case

11. Through recovery memo Ex.P6, the recovery of the contraband became allegedly recovered from the attache concerned. In proof of the prosecution case, Inspector Surinder Kumar, stepped into the witness box as PW-10, and, in his examination-in-chief, he made speakings therein, which concur with the contents of the appeal FIR, to which Ex.P1 is assigned. However, only the unexamined bulk became produced. The production of the unexamined bulk does not prove the charge as only upon the examination of the stuff inside the said produced parcel, thus the charge would become proven.

12. The prosecution though has been able to lead cogent evidence, in proof of the recovery of the seizure, thus being effected from the attache which was in possession of the present appellant, and, the same thus being sealed with the relevant seal impressions. Moreover, though the prosecution has also been able to cogently establish, that the sealed cloth parcels, became deposited in the malkhana concerned. In addition, though the prosecution has been able to establish, that the case property travelled in an untampered condition to the FSL concerned.

13. A reading of the report (Ex.PX), as made by the FSL concerned,



whereto the relevant seizure became sent for an examination being made of the stuff inside the sealed cloth parcels, though reveals, that the examined stuff inside the sealed cloth parcels, as became sent to it for examination, thus being **Tramadol, Dicyclomine & Chlorphineramine**. The said report is *ad verbatim* extracted hereinafter.

“x x x x

Description of articles contained in parcels.

<i>Parcel No.</i>	<i>No. and seal impression</i>	<i>Description of articles/samples</i>
<i>1.</i>	<i>1-HS</i>	<i>One sealed cloth parcel Bearing bar code – 20865-201231-868636 Sample marked here as N-2215/2020 Sample-1: 54 x 2 Capsules of SIMPLEX C + make, Mfd. by Neutec Healthcare Pvt. Ltd., Batch No. SMC-20031, labeled to contain Tramadol-Hcl-50 mg, Chlorphineramine – 4 mg. & Dicyclomine Hcl-10 mg/Capsule. Average weight of a capsule : 0.664 g per capsule.</i>

Analytical Techniques Applied :-

Colour tests, TLC & GCMS techniques.

Based upon the above examination the results obtained are as under.

Results of Analysis

1. Tramadol, Dicyclomine & Chlorphineramine were detected in the sample 1.

Notes :-

- 1. The opinion relates to the analyzed sample only.*
- 2. After examination the remnants of the sample alongwith its original wrapper were sealed with the seal of AD General FSLH.”*

14. Be that as it may, though a reading of the report (supra) of the FSL also discloses, that the sealed cloth parcels, became received there, hence with the seal impressions thereons being intact. However, the chemical examiner at the FSL concerned, after making examinations of the

stuff inside the sealed cloth parcels, and, thereafter his drawing the report



(supra), though mentions in the report Ex.PX, about his re-enclosing the examined stuff inside the cloth parcels, and, his thereons affixing the seals of the FSL concerned.

15. The above was required to be mandatorily done and though was done, as, thereupon the imperatively required to be proven, thus unbroken links (supra) in the chain of incriminatory evidence, commencing from the seizure being made from the offending attache, through recovery memo Ex.P6, and, lasting upto the production of the examined case property in Court, but becomes convincingly proven, thus to remain unsnapped or unbroken. Moreover, *prima facie* in the above event, thus the charge drawn against the accused may be concluded to become cogently established. However, as above stated, though the chemical examiner concerned, after making examination(s) of the stuff inside, the sealed cloth parcels, he re-enclosed the examined stuff inside the cloth parcels, and, also though he further embossed thereons, rather the seals of the FSL concerned.

16. Be that as it may, subsequently the examined stuff was required to be returned to the office wherefrom it travelled to the FSL concerned, whereafter it was required to be both produced in Court, and, also was also required to be then shown to the prosecution witnesses concerned.

17. Since in paragraph no. 35 of the judgment rendered by the Hon'ble Apex Court in **"Noor Aga V. State of Punjab and another"** **Criminal Appeal No.1034 of 2008, decided on 09.07.2008**, paragraph whereof becomes extracted hereinafter, thus become spelt the imperative *sine qua non*, rather requiring to become cogently proven hence for therebys the charge drawn against the accused becoming declared to become unflinchingly proven. However, since after the examination(s) being made of



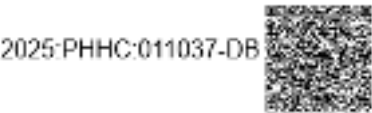
the stuff inside the sample parcels, thus by the FSL concerned, rather the latter though did re-enclose them in the sealed cloth parcels, besides also embossed thereons the seal of the FSL concerned. However, when the examined sample parcel(s) never became returned to the office wherefrom they generated nor when they became produced in Court rather for the examined samples being then shown to the prosecution witnesses concerned.

“35. The High Court proceeded on the basis that non-production of physical evidence is not fatal to the prosecution case but the fact remains that a cumulative view with respect to the discrepancies in physical evidence creates an overarching inference which dents the credibility of the prosecution. Even for the said purpose the retracted confession on the part of the accused could not have been taken recourse to.”

18. Consequently, the expostulation of law carried in verdict (supra), remains unsatiated thereby the accused become entitled to an acquittal.

19. Moreover, reiteratedly in terms of the expostulations of law made in “Noor Aga V. State of Punjab and another” Criminal Appeal No.1034 of 2008, decided on 09.07.2008, there was also a further requirement that the examined stuff which was re-enclosed in the cloth parcel(s) by the Chemical Analyst and whereons become affixed the seals of the FSL concerned, thus becoming initially returned to the Malkhana concerned, and thereafter becoming produced in Court, for the same becoming then shown to the prosecution witnesses concerned, rather for therebys the charge becoming efficaciously proven. However, in the instant case there is no such evidence.

20. The said view is also supported by a judgment rendered in case titled as “Gunter Edwin Kircher V. State of Goa, Secretariat Panji, Goa”, Criminal Appeal No.642 of 1991, decided on 16.03.1993, relevant



“J. Narcotic Drugs and Psychotropic Substances Act, 1985, Sections 52A and 53 – Customs Act, 1962, Section 110(IB) – Physical evidence – Case Property – Recovery of heroin from accused – Case property destroyed and not produced – Physical evidence relating to three samples taken from the bulk amount of heroin were also not produced – Bulk quantity was destroyed the samples were essential to be produced and proved as primary evidence for the purpose of establishing the fact of recovery of heroin as envisaged under Section 52A of the Act.”

Final order

21. The result of the above discussion, is that, this Court finds merit in the appeal, and, is constrained to allow the same. Consequently, the appeal is allowed. The impugned judgment convicting, and, sentencing the appellant, and, as becomes recorded by the learned trial Judge concerned, is quashed, and, set aside. The appellant is acquitted of the charge framed against him. The fine amount, if any, deposited by him, be, in accordance with law, refunded to him. The personal, and, surety bonds of the accused shall stand forthwith cancelled, and, discharged. The case property be dealt with, in accordance with law, but after the expiry of the period of limitation for the filing of an appeal. The appellant, if in custody, and, if not required in any other case, be forthwith set at liberty. Release warrants be prepared accordingly.

22. Records be sent down forthwith.

23. The miscellaneous application(s), if any, is/are also disposed of.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

23.01.2025
kavneet singh