



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

1141

CRA-S-2937-2023 (O&M)
Date of decision: January 10th, 2025

Shinder
.....Appellant

Versus

State of Punjab
.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Ankit Joshi, Legal Aid Counsel
for the appellant.

Mr. Amit Rana, Senior Deputy Advocate General, Punjab.

MANJARI NEHRU KAUL, J.

Learned counsel for the appellant has impugned the judgment of conviction and order of sentence dated 01.08.2023 passed by learned Judge, Special Court, Pathankot, whereby the appellant has been convicted and sentenced as follows:

Offence under Section	Period of sentence	Fine imposed	Period of sentence in default of payment of fine
22(c) of the NDPS Act, 1985.	RI for ten years	₹1 lakh	R.I. for six months

2. The brief facts of the prosecution case may be noted as thus:

(i) On 29.11.2018, Sub Inspector Balwinder Kumar, In-charge of CIA Staff, Pathankot, along with other police personnel, was conducting surveillance at Adda Nangal in a Government vehicle. Inspector Gurvinder Singh, SHO of Police Station Nangal Bhoor, joined them with his team. During this time, ASI Sukhdev Raj received secret information that four individuals-Janu alias Rahul, Happy alias

Punnu, Shinder and Rangeela alias Neela were engaged in selling intoxicants and were travelling from Mukerian to Pathankot on motorcycles carrying a significant quantity of illegal substances.

(ii) Acting on this information, the police set up a checkpoint at Mirthal. Shortly thereafter, two motorcycles approached the *naka*. When signalled to stop, the riders attempted to flee but were intercepted. Sub Inspector Balwinder Kumar detained two individuals on one motorcycle bearing registration number HP-38-A-1640. The driver of the motorcycle identified himself as Shinder (present appellant), and the pillion rider as Rangeela alias Neela.

(iii) Sub Inspector Balwinder Kumar informed them about the suspicion of possessing illegal substances and apprised them of their legal right to be searched in the presence of a Magistrate or Gazetted Officer. Both opted for search before a Gazetted Officer. DSP Kuldeep Singh PW-1, a Gazetted Officer, was summoned to the spot and conducted the search in their presence. From appellant Shinder's trouser pocket, 210 grams of white intoxicant powder was recovered, while 205 grams of a similar substance was recovered from co-accused Rangeela's hoodie. The contraband was sealed and seized following due procedure. Despite efforts, independent witnesses could not be secured.

(iv) The accused were arrested, and a formal FIR (Exhibit PW6/B) under Sections 21, 22, 61 of The Narcotic Drugs and Psychotropic Substances Act, 1985 was registered. The investigation included preparation of a site plan (Exhibit PW6/C), recording of statements of the witnesses, and compliance with procedural requirements under the NDPS Act. Challan was subsequently submitted

to the Court.

(v) During trial, the prosecution examined eight witnesses to substantiate its case. The key witnesses included PW-1 DSP Kuldeep Singh, who conducted the search of the accused and confirmed compliance with the mandatory provisions of Act. PW-2 Inspector Gurvinder Singh and Sub Inspector Balwinder Kumar, who were also present with the police team at the time of the alleged recovery corroborated the sequence of events and the recovery process. PW-8 Lovedeep Singh delivered the sample parcels to the Forensic Science Laboratory.

(vi) The FSL report (Exhibit PX) confirmed that the recovered contraband contained Alprazolam.

3. **SUBMISSIONS OF LEARNED COUNSEL FOR THE APPELLANT:**

(i) Learned counsel for the appellant has vehemently argued that the Investigating Officer PW-6 Balwinder Kumar and Gazetted Officer PW-1 DSP Kuldeep Singh did not handover their seal to the recovery witnesses, indicating a possibility of tampering with the case property. It has further been asserted that no independent witnesses were involved during the recovery, violating the mandatory provisions under the NDPS Act. Learned counsel has still further submitted that discrepancy was evident in the affidavit of PW-8 Lovedeep Singh (Exhibit PW-8/8), where the seal impression was stated as 'AK' instead of 'KA'. Furthermore, it has been argued that there were contradictions in the testimony of the prosecution witnesses, which cast doubt on the reliability of their evidence, coupled with the fact that there was also a delay of four days in sending the samples to the FSL, which further undermined the credibility of the prosecution's case.

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

5. *Per contra*, learned State counsel has vehemently opposed the prayer and submissions made by the counsel opposite and has argued that the impugned judgment is a well reasoned one and cannot be faulted with; sufficient cogent and convincing evidence was led during trial which also included the deposition of PW-1 DSP Kuldeep Singh, which confirms that all the mandatory provisions of the NDPS Act were duly complied with. He further submits that all the other witnesses also fully supported the case of the prosecution. A prayer has, therefore, been made for dismissal of the instant appeal.

6. Upon careful scrutiny of the evidence led and the material on record including the impugned judgment, this Court does not find any merit in the instant appeal for the reasons to follow:

(i) The testimonies of PW-1 DSP Kuldeep Singh and other prosecution witnesses confirm that all mandatory provisions of the NDPS Act were strictly adhered to. The accused were informed of their legal rights and opted to be searched in the presence of a Gazetted Officer. Consent memos (Exhibit PW1/A and PW1/B) were duly prepared and signed by the accused. The contraband was seized and sealed as per procedure. Furthermore, the arguments of the learned counsel for the appellant regarding the absence of independent witnesses does not hold merit, as the accused failed to prove any enmity with the police to suggest false implication. The testimonies of official witnesses were consistent, credible and supported the case of the prosecution on all material aspects. Still further, the discrepancy in the affidavit of PW-8 Lovedeep Singh regarding the seal impression is

inconsequential. The FSL report (Exhibit PX) confirmed that the samples were received in an intact condition with no tampering. The counsel for the appellant although argued vehemently about the four days delay in despatching the samples to the FSL, however, this delay does not affect the integrity of the case, as the samples were received intact, and no tampering was reported by the Chemical Examiner.

(ii) This court finds that the alleged contradictions in the testimonies of the witnesses pertain to trivial details and do not undermine the core facts of the case. Such discrepancies are natural to happen with the passage of time and, therefore, do not affect the credibility of the prosecution’s evidence.

(iii) Based on the above findings, this Court has no hesitation to hold that the prosecution successfully proved its case beyond reasonable doubt. The accused/appellant was found in possession of contraband, and all procedural requirements under the NDPS Act were duly complied with. Resultantly, the instant appeal fails and is hereby dismissed.

January 10th, 2025
Puneet

(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : No