



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

795

**CRA-S-1970-2019 (O&M)
Date of decision: 10.03.2026**

Sonu

...Appellant

VERSUS

U.T. Chandigarh

...Respondent

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present :- Mr. Robin Hooda, Advocate for the appellant.

Mr. Anil Kumar Lamdharia, Additional Public Prosecutor,
for respondent-U.T. Chandigarh.

VINOD S. BHARDWAJ, J. (Oral)

CRM-19658-2023

Allowed, as prayed for, subject to all just exceptions.

Main case

The present appeal has been preferred against the judgment of conviction and order of sentence dated 31.05.2019 passed by the Judge, Special Court, Chandigarh in case arising from FIR No.146 dated 02.07.2018 registered under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as the Act of 1985) at Police Station Maloya, Chandigarh whereby the petitioner was convicted for the above offence and sentenced to undergo rigorous imprisonment for a period of 10 years and to pay a fine in the sum of Rs.1,00,000/- and in default thereof to further undergo rigorous imprisonment of 02 years.

2. Succinctly stated, the facts giving rise to registration of the

present FIR are that on 02.07.2018, a police party comprising SI Ashok Kumar, HC Sanjay Kumar, HC Rajesh Kumar, Senior Constable Mangat and LC Manpreet Kaur was on routine patrolling duty in the area near Shahpur Light Point, Chandigarh. While so patrolling, the police party reached near the aforesaid location at about 7:55 p.m. At that juncture, a man was noticed approaching from the side of DMC. Upon noticing the presence of the police party, the said person turned back and began to move away in a hurried manner, which aroused suspicion. Acting on such suspicion that the said individual might be carrying stolen property or could be involved in some form of criminal activity, the police party apprehended him. Upon inquiry, the apprehended person disclosed his name as Sonu (the appellant herein). A search of his person was thereafter conducted, during which a polythene bag was found in his possession. Upon examination, the said bag was found to contain 24 injections, namely 12 injections of Buprenorphine of 2 ml each and 12 injections of Pheniramine Maleate of 10 ml each. It was further noticed that the batch numbers of the said injections had been erased with a black ink. The accused was asked to produce any valid licence, permit or authorization for possessing the aforesaid injections; however, he failed to produce any such document to justify the possession of the recovered contraband. Consequently, the above FIR came to be registered.

3. Proceedings under Section 52-A of the Act were thereafter conducted before Judicial Magistrate First Class, Chandigarh and the recovered parcel containing 12 injections of Buprenorphine (2 ml each) and 12 injections of Pheniramine Maleate (10 ml each) was forwarded to the

Central Forensic Science Laboratory (CFSL), Chandigarh for chemical examination. The CFSL report confirmed the presence of Buprenorphine and Pheniramine salts in the said injections.

4. During the course of investigation, statements of the witnesses were recorded under Section 161 of the Code of Criminal Procedure, 1973 (hereinafter referred to as Cr.P.C.) and upon completion of the usual formalities, a report under Section 173 Cr.P.C. was presented before the Court. Thereafter, compliance of Section 207 Cr.P.C. was effected by supplying copies of the challan and the documents relied upon by the prosecution to the accused, free of cost.

5. Upon consideration of the material placed on record and finding that a prima facie case was made out, the Trial Court framed charges against the appellant under Section 22 of the Act of 1985, on 13.07.2018, to which, he pleaded not guilty and claimed trial

6. Prosecution examined as many as 07 witnesses to prove the recovery from the petitioner. The same are briefed as under:-

- a. **PW-1, MMHC Head Constable Sanjiv Kumar**, deposed regarding the link evidence, stating that on 02.07.2018, Inspector/SHO Baldev Kumar, vide entry No. 320, deposited one sealed parcel containing 24 injections (12 Buprenorphine and 12 Pheniramine Maleate) bearing seals 'S' and 'BK', along with the sample seal, in the Malkhana. He further stated that on 03.07.2018, the parcel was produced before Ms. Nazneen Singh, JMIC, Chandigarh by SI Dalip Singh, where it was opened for inventory, verification, and photography, and thereafter re-sealed with the seal

‘NS’, with a sample seal of ‘NS’ prepared by the Court, and deposited again in the Malkhana in intact condition. He further proved that on 11.07.2018, the parcel sealed with ‘NS’ was handed over to Constable Mangat for deposit at CFSL, who returned the receipt the same day, and also proved the relevant Malkhana entry in Register No. 19 (Ex. P1).

b. **PW–2, Senior Constable Mangat Singh**, proved the link evidence regarding the deposit of the sample parcel with CFSL, Chandigarh. He deposed that on 11.07.2018, AMMHC Surinder Kumar handed over to him one parcel sealed with the seal ‘NS’, along with the relevant documents and sample seal, vide RC No. 50/2018, for deposit at CFSL. He further stated that he deposited the parcel at CFSL in intact condition and thereafter returned the receipt to AMMHC Surinder Kumar on the same day.

c. **PW–3, SI Dalip Singh, the Investigating Officer**, deposed that on 02.07.2018 at about 9:38 p.m., he received information from MHC, PS Maloya directing him to reach near Karan Taxi Stand, DMC, Chandigarh, where SI Ashok Kumar along with other police officials had apprehended the accused Sonu with 24 injections (12 Buprenorphine and 12 Pheniramine). Upon reaching the spot at about 9:50 p.m., SI Ashok Kumar handed over to him the accused, one sealed parcel bearing the seal ‘S’, the sample seal, test memo (Ex. P-2A), and recovery memo (Ex. P-3). The accused was interrogated and formally arrested and his personal search was conducted vide memos Ex. P-4 and Ex. P-5. Meanwhile, Constable

Mangat Singh returned to the spot with the ruqa (Ex. P-6) and copy of the FIR (Ex. P-7). The witness thereafter inspected the place of occurrence and prepared the rough site plan (Ex. P-8). After completing the proceedings at the spot, he produced the accused and case property before Inspector/SHO Baldev Kumar at PS Maloya, who verified the recovery and affixed his seal 'BK' on the parcel and sample seal, after which the case property was deposited with the MMHC. He further deposed that on 03.07.2018, the sealed parcel and sample seal were produced before Ms. Nazmeen Singh, JMIC, Chandigarh, for certification of inventory, whereupon the Magistrate prepared and sealed the parcel with seal 'NS', and the proceedings were documented through applications and inventory (Ex. P-9, Ex. P-10), court order (Ex. P-11) and photographs (Ex. P-12 and Ex. P-13). The sealed parcel was thereafter sent to CFSL through Constable Mangat Singh on 11.07.2018 and the CFSL report (Ex. P-2) was received during investigation. He further stated that the statements of witnesses were recorded, and upon completion of investigation, the challan was prepared by Inspector Baldev Kumar, whose signatures he identified.

d. **PW-4, SI Ashok Kumar**, deposed that on 02.07.2018, while he along with HC Sanjay Kumar, HC Rajesh Kumar, Senior Constable Mangat Singh, and LC Manpreet Kaur was on patrolling duty near Karan Taxi Stand/Shahpur Light Point, Chandigarh, the accused Sonu was noticed coming from the side of DMC and, upon seeing the police party, attempted to retreat hurriedly, which

aroused suspicion. The accused was apprehended and, upon search, a polythene bag containing a blue carry bag was recovered from his possession, which was found to contain 24 injections (12 Buprenorphine 2 ml each and 12 Pheniramine Maleate 10 ml each), with their batch numbers erased with black ink. As the accused failed to produce any valid licence or permit, the injections were seized, sealed with the seal 'S', and taken into possession vide seizure memo (Ex. P-14), with a sample seal and test memo (Ex. P-2A) prepared at the spot. Thereafter, the ruqa (Ex. P-6) was sent through Senior Constable Mangat Singh for registration of the FIR and information was conveyed to the police station for deputing the second Investigating Officer. SI Dalip Singh subsequently reached the spot, to whom the accused, case property and documents were handed over vide memo (Ex. P-3); the site plan (Ex. P-8) was prepared, the accused was arrested (Ex. P-4) and personally searched (Ex. P-5). After completion of proceedings at the spot, the police party produced the accused and sealed parcel before Inspector/SHO Baldev Kumar, who verified the recovery, affixed his seal 'BK' on the parcel and sample seal and deposited the case property with the MMHC for further proceedings.

- e. **PW-5, Constable Surinder Kumar**, proved the link evidence relating to the transmission of the sample parcel. He deposed that on 11.07.2018, on the instructions of the Investigating Officer, he handed over one parcel sealed with the seal 'NS', containing the injections, to Constable Mangat Singh vide RC No. 50/18 for

deposit at CFSL. He further produced and proved the relevant entry in Register No. 19 (Ex. P-1) and stated that after depositing the parcel at CFSL, Constable Mangat Singh returned the receipt to him on the same day.

f. **PW-6 Head Constable Rajesh Kumar** corroborated version of prosecution in his testimony being recovery witness and deposed on the lines of PW-3 and PW-4.

g. **PW-7, Inspector Baldev Kumar**, deposed that on 02.07.2018 at about 11:54 p.m., SI Dalip Singh produced the accused Sonu, along with police officials and a sealed parcel bearing seal 'S' at two places, containing 12 injections of Buprenorphine (2 ml each) and 12 injections of Pheniramine (10 ml each). He stated that after verifying the facts of recovery, he affixed his seal 'BK' on the parcel and the sample seal and thereafter deposited the case property along with the sample seal in the Malkhana with MMHC Sanjeev Kumar.

7. The learned Public Prosecutor tendered in evidence the CFSL report (Ex. P-2), the same being admissible under Section 293 of the Code of Criminal Procedure, and thereafter closed the prosecution evidence.

8. Upon the closure of the prosecution evidence, the statement of the appellant-accused under Section 313 of Cr.P.C. was recorded, wherein all the incriminating circumstances appearing in the prosecution evidence were put to him. The appellant-accused denied the said allegations, claiming that he had been falsely implicated and that no contraband was recovered from his possession. He further asserted that the alleged recovery had been

falsely planted and that a fabricated case had been set up against him by creating false evidence. The appellant-accused, however, did not lead any evidence in defence.

9. Upon appreciation of the evidence on record and consideration of the submissions advanced on behalf of the parties, the Trial Court held the appellant guilty, having found him to be in conscious possession of 12 injections of Buprenorphine without any valid licence or permit. Consequently, he was convicted for the offence punishable under Section 22 of the Act of 1985 and vide order dated 31.05.2019 sentenced to undergo rigorous imprisonment for a period of 10 years and to pay a fine of Rs.1,00,000/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of two years. Aggrieved thereby, the present appeal has been preferred.

10. Learned counsel for the appellant submits that the appellant has been falsely implicated in the present case and that there are numerous discrepancies in the testimonies of the prosecution witnesses. It is further contended that although certain Buprenorphine injections were allegedly recovered, the CFSL report does not specify the percentage of Buprenorphine in the mixture and therefore the entire quantity seized would not automatically be treated as a prohibited contraband. Counsel further submits that the appellant was then a young man but a drug addict and that Buprenorphine had been prescribed to him by medical practitioners, a fact which also stood reflected during the medical examination conducted at the time of his admission to prison after his conviction. It is also contended that during that period, several minor criminal cases had been registered against

the appellant, primarily arising out of his drug dependency. Learned counsel submits that subsequent to his conviction in the present case, the appellant has undergone de-addiction therapy and intends to re-integrate into the main frame of the society. He has since married and is presently blessed with two children.

11. On an earlier date of hearing before this Court i.e. 25.02.2026, counsel for the appellant had made a reference to the substitution therapy programme, which the appellant had been undergoing since 12.09.2014, i.e., prior to the registration of the present FIR. As per the OST File, the appellant had been regularly prescribed Buprenorphine tablets; however, he remained absent from the programme with effect from 07.10.2015, reportedly on account of convulsions and withdrawal symptoms. It is contended that, being a heroin addict, the appellant experienced severe withdrawal symptoms and was consequently advised Buprenorphine injections. Counsel further submits that even after his admission to prison, the appellant continued to receive treatment for de-addiction and was prescribed opioids.

12. Noticing the above argument, the counsel for respondent-U.T. Chandigarh was directed to verify the said aspect and to file the medical report of the appellant herein.

13. In compliance with the aforesaid direction, the medical report along with the medical history of the appellant was placed on record by the respondent. The relevant extract thereof reads as under:

***“Subject: Regarding medical report of convicted prisoner Sonu s/o Ramesh confined in Model Jail, Chandigarh.*”**

It is submitted that convicted prisoner Sonu s/o Ramesh admitted in Model Jail, Chandigarh on 06.10.2022 in case FIR No. 129 dated 05.10.2022 under section 21 NDPS ACT, P.S., Maloya, Chandigarh. During health screening of prisoner at the time of admission, he disclosed that he was a known a case of heroine addict. As per record, he disclosed to visiting Psychiatrist from GMCH, Sector-32, Chandigarh that he was taking intravenous injections before his admission in jail. Now he is inside the jail more than three years. He complained of alleged intake of Tablet Adnok/Opoid Derivative and body pains/withdrawls to visiting Psychiatrist. He was diagnosed as a case of F 60 with IDU for which he was advised treatment i.e., Tablet Clonidine 0.1 mg. Tablet Olanazpine 5 mg, tablet Tapantadol Tablet Diclofenac and Tablet Carbamazepine 200 mg for one week on 30.10.2024. On 08.11.2024, he was again examined by the visiting Psychiatrist from GMCH. Sector-32, Chandigarh who advised Tablet Olanazpine 5mg, Tablet Carbamazepine 200 mg and Tablet Clonidine 0.1 mg to continue along with Tablet B Complex and Tablet Vitamin C which was provided to him from the jail dispensary.

Thereafter he never complained regarding drug intake body pain and he never showed himself to the visiting Psychiatrist. He was tested negative for HIV, Hepatitis B & C viruses. He was released on 28 days parole from 28.01.2026 to till date. He was also counseled by the Clinical Psychologist posted in jail. He was doing well in jail and there was no loss of appetite/weight loss/ drug withdrawls or jaundice. It is further submitted that the jail administration is committed to ensuring the well-being of all individuals in our custody and is adhering to all necessary medical protocols. Photo copy of the medical record is enclosed. This is for your information and further necessary action please.”

14. It is evident from a perusal of the aforesaid report that the

respondent-U.T. Chandigarh has not disputed that the appellant was a heroin addict at the time of commission of the alleged offence and that prior to his admission to jail, the appellant had disclosed a history of intravenous drug use, including the use of injections. The report submitted by the jail authorities also indicates that the appellant is presently stable and doing well in custody, with no reported loss of appetite, weight loss, drug withdrawal symptoms, or jaundice, and that his overall health and well-being have been adequately monitored and attended to by the prison medical staff, with the assistance of appropriate medical treatment. It is further evident from the medical material placed on record that during the course of treatment, the appellant was placed on substitution therapy, wherein opioid derivative tablets were administered in place of the Buprenorphine injections which he had earlier been consuming intravenously. The medical record thus lends support to the argument that the appellant was suffering from drug dependence and was undergoing treatment for the same. In the light of the aforesaid circumstances and having regard to the medical history of the appellant as well as the nature of the material placed on record, the submission advanced on behalf of the appellant that he was not engaged in drug trafficking or smuggling but was, in fact, a drug-dependent individual and that his case ought appropriately to have been considered under Section 27 of the Act of 1985, which specifically deals with punishment for consumption of narcotic drugs or psychotropic substances for personal use, merits due consideration.

15. Per contra, learned Additional Public Prosecutor submits that a recovery of 12 injections of Buprenorphine had been effected from the

appellant. He, however, fairly does not dispute the medical report placed on record, establishes that the appellant was a heroin addict at the time of his admission to jail and that he has since undergone treatment while in custody. It has further been reported that the withdrawal symptoms have now subsided, and that the appellant has successfully undergone de-addiction and seeks to reintegrate into society. It is also not disputed that the appellant has already undergone an actual sentence of more than 04 years and 05 months.

16. I have heard counsel appearing on behalf of the respective parties and have gone through the documents appended alongwith the present appeal.

17. It is evident from the additional document i.e. the medical report pertaining to the appellant herein, which has been filed by the respondent-U.T. Chandigarh, that the appellant was indeed suffering from drug dependence and was a heroin addict at the time of his arrest in the present case and also including around the period of his conviction. Additionally, it also transpires that the appellant had been undergoing de-addiction treatment, during which opioid derivatives were administered to him as part of substitution therapy. It is significant to note that Buprenorphine itself is an opioid derivative, widely used in opioid substitution therapy for the treatment of heroin addiction. The same is used to treat for opioid use disorder as it reduces withdrawal symptoms and cravings while Buprenorphine is safer than other opioids, it is still addictive and can cause withdrawals if stopped abruptly. The photocopy of the medical record produced by the respondent–U.T. Chandigarh, which is taken on record as Mark ‘X’, pertains to the year 2015, i.e., prior to the registration

of the FIR in the present case, and clearly indicates that the appellant had been prescribed Buprenorphine on a daily dosage basis as a part of his medical treatment. The said document thus lends considerable and credible support to the factual position that the appellant had been undergoing treatment for drug dependence even prior to the recovery in the present case. In the said circumstances, the version put forth by the appellant that the appellant was not a drug peddler or a participant in the illicit trade of narcotic or psychotropic substances and was rather a drug-dependent individual consuming such substances owing to his addiction, hence his case ought to be dealt under Section 27 of the Act of 1985, seems to be plausible. The medical history produced before this Court indicates that the appellant was himself a victim of drug abuse and that the substance recovered from him was consistent with the medication prescribed for the management of opioid dependence.

18. A crucial question which now arises is as to whether the document placed on record by the prosecution itself should be taken into consideration or not?

19. In this regard reference may be made to Section 391 of Cr.P.C. The same reads thus:

“391. Appellate Court may take further evidence or direct it to be taken.—

(1) In dealing with any appeal under this Chapter, the Appellate Court, if it thinks additional evidence to be necessary, shall record its reasons and may either take such evidence itself, or direct it to be taken by a Magistrate, or, when the Appellate Court is a High Court, by a Court of Session or a Magistrate.

(2) When the additional evidence is taken by the Court of

Session or the Magistrate, it or he shall certify such evidence to the Appellate Court, and such Court shall thereupon proceed to dispose of the appeal.

(3) The accused or his pleader shall have the right to be present when the additional evidence is taken.

(4) The taking of evidence under this section shall be subject to the provisions of Chapter XXIII, as if it were an inquiry.”

20. It is evident from the above that the above section empowers Appellate Court to take further evidence at an additional stage if that evidence is necessary. The guiding principle always has been the interest of justice so that no travesty is caused. Section 391 Cr.P.C. does not impose any restriction as to when additional evidence is to be taken. The use of expression ‘necessary’ does not connote existence of an exigency as would render judgment impossible but even when there is likelihood of failure of justice, if additional evidence is not accepted. Where only a formal proof of a document is required and the evidence, available on record, is likely to have a material impact on the rights of the accused, lapses by the counsel, should not stand in the way of justice. The object behind the provision is to sub-serve interest of justice.

21. This Court, while considering the above document, is also conscious of the fact that even though the provision is not meant to fill in a lacunae in prosecution but it certainly can be invoked where lack of a proper defence by the defence counsel is apparent. Some premium needs to be extended to such addicts who belong to marginalized and socio-economically disadvantaged sections of society, as they often lack access to a quality legal assistance. Given the limited resources at their command, cause of justice is one likely to be sacrificed as it gets negligible priority by

even the defence counsel.

22. Since the documentary evidence i.e. the status report has been filed by the prosecuting agency itself, hence, there is no reason not to allow such evidence.

23. Even otherwise, it is least expected of an investigating agency to have investigated the above aspect, when documents clearly suggested of the appellant as an addicted consumer and to have suitably filed the final report, as per thorough and comprehensive investigation and not just an incarcerating final report carrying maximum sentence.

24. The role of the police is not just that of a punishing/prosecuting agency but is that of a responsible agency for administration of justice. Hence, even as a prosecuting agency, its role is pursuit of justice.

25. The medical record produced by the respondent—U.T. Chandigarh, corroborates the arguments that the appellant was a consumer suffering from opioid addiction and was undergoing treatment for the same, rather than being a person engaged in trafficking, sale or distribution of psychotropic substances.

26. It would now be apposite to refer to the relevant provisions of the Act of 1985, that have a bearing on the controversy involved in the present case. The same are extracted as under:

“22. Punishment for contravention in relation to psychotropic substances.—Whoever, in contravention of any provision of this Act or any rule or order made or condition of licence granted thereunder, manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses any psychotropic substance shall be punishable,—
(a) where the contravention involves small quantity, with

rigorous imprisonment for a term which may extend to [one year], or with fine which may extend to ten thousand rupees, or with both;

(b) where the contravention involves quantity lesser than commercial quantity but greater than small quantity, with rigorous imprisonment for a term which may extend to ten years, and with fine which may extend to one lakh rupees;

(c) where the contravention involves commercial quantity, with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years, and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees:

Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees.

xxxxxxxx xxxxxxxx xxxxxxxx

27. Punishment for consumption of any narcotic drug or psychotropic substance.—Whoever, consumes any narcotic drug or psychotropic substance shall be punishable,—

(a) where the narcotic drug or psychotropic substance consumed is cocaine, morphine, diacetyl-morphine or any other narcotic drug or any psychotropic substance as may be specified in this behalf by the Central Government by notification in the Official Gazette, with rigorous imprisonment for a term which may extend to one year, or with fine which may extend to twenty thousand rupees; or with both; and

(b) where the narcotic drug or psychotropic substance consumed is other than those specified in or under clause (a), with imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees, or with both.”

27. Section 22 of the Act of 1985 is primarily attracted where a person is found to be in possession of the psychotropic substances for illicit trafficking and trade. It thus prescribes punishment based upon the quantity

in possession.

28. The said legislative intendment flows from a harmonious and meaningful construction of Section 22 and 27 of the Act of 1985. ‘Possession’ is a pre-condition for commission of offence under Section 22 and a necessary pre-requisite for consumption, as conceived under Section 27 of the Act of 1985. Significantly, Section 27 of the Act of 1985 does not specify sentencing on quantification but on the class of drug abuse. The legislative focus, for a drug addict, was not punitive but reformatory. Hence, despite prescribing a quantity based punishment structure for offence under Section 22 of the Act of 1985, it refrained from imposing any such quantity based structural punishment under Section 27 of the Act of 1985. The legislature was undoubtedly conscious that there ought to be possession even for consumption, yet, carved out a separate class of offence for the addicts. Hence, for a harmonious construction and interpretation of Section 22 and 27 of the Act of 1985, a person who is an addict and hence in possession of the contraband ought to be excluded from Section 22 as this is a specific class of offenders as compared to the general term “possession”. The distinction thus has to be on the basis of purpose behind possession. When the same is for own consumption it is to be tried as offence under Section 27 of the Act of 1985 otherwise under Section 22 of the Act of 1985.

29. Although the provision expressly penalizes ‘consumption’ and does not employ the phrase “possession for personal consumption,” it would be neither logical nor legally sound to interpret the provision in a manner divorced from the practical realities of drug use. Consumption of a narcotic or psychotropic substance necessarily presupposes temporary possession of

the substance by the consumer prior to its use. Therefore, the provisions of the Act must be interpreted harmoniously so as to give effect to the legislative intent underlying both Sections 22 and 27 of the Act of 1985.

30. Under circumstances where the possession is attributable to personal use by a drug-dependent individual and the surrounding facts indicate consumption rather than trafficking, the matter would more appropriately fall within the scope of Section 27 of the Act of 1985. To hold otherwise would lead to an anomalous situation where a drug-dependent individual apprehended with a substance intended for his own consumption would automatically be subjected to the more stringent provisions of Section 22, merely because such possession is a pre-requisite for consumption. Such an interpretation would defeat the legislative scheme which consciously distinguishes between drug traffickers and drug addicts, the latter category being treated with a comparatively reformatory approach under the statute.

31. Accordingly, in the facts and circumstances of the present case, where the material on record indicates that the appellant was a drug-dependent person and the possession was linked to personal consumption rather than illicit trafficking, the case deserves to be considered within the framework of Section 27 of the Act of 1985 rather than under Section 22 of the Act of 1985 thereof.

32. The Supreme Court in the case of *Ouseph vs State of Kerala* reported as (2004) 4 SCC 446 has held that merely because an accused has primarily contested the charge framed against him under Section 22 of the Act of 1985, he is not precluded from subsequently invoking the benefit of Section 27 of the Act, if the material on record indicates that the substance

was possessed for personal consumption rather than for trafficking or illicit trade. The relevant extract thereof reads as under:

“9. Then the next question is whether this substance was possessed by him for personal consumption. As the accused had adopted a defence of repudiating the allegation against him, it may look that he cannot rely upon the alternative contention that it was possessed by him for personal consumption. It is too harsh to deny the accused-appellant a right to resort to the alternative contention. Merely because on legal advice, he has chosen one line of defence he cannot be precluded from reaching other defence available to him, particularly since the consequences visiting him are very serious. If the fact situation is sufficient for the court to satisfy that the small quantity in his possession was for personal consumption, he should not be denied the benefit of Section 27 of the NDPS Act.”

33. The report submitted by the jail authorities further indicates that the appellant has successfully undergone de-addiction and has now completely withdrawn from the use of drugs. In the given circumstances and established facts from the additional evidence, I am of the opinion that the order of conviction needs to be modified. Accordingly, the conviction of the appellant under Section 22 of the Act of 1985 is set aside for want of necessary ingredients. Instead, the appellant is held guilty and convicted for the offence punishable under Section 27 of the Act of 1985 and he is sentenced to undergo the sentence for one year under Section 27(a) of the Act of 1985.

34. Having held so, it is noticed that the sentence already undergone by the appellant exceeds the sentence as above, hence, he is ordered to be released forthwith, if his custody is not required in any other case.

35. The appeal is ***partly allowed*** in the above terms.

36. Pending application(s), if any, shall stand disposed of.

10.03.2026
Sumit Gusain

(VINOD S. BHARDWAJ)
JUDGE

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