

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

CRA-S No.4442-SB of 2015 (O&M)

Date of decision: 29.09.2018

Gurdarshan Singh @ Baba

....Appellant

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Kamal Kumar Yogi, Advocate (Legal Aid Counsel)
for the appellant.

Mr.Dhruv Dayal, Senior Deputy Advocate General, Punjab.

ARVIND SINGH SANGWAN J.

Challenge in this appeal is to the judgment of conviction and order of sentence dated 04.07.2015, vide which the appellant was held guilty of offence punishable under Section 22 of the Narcotic Drug and Psychotropic Substances Act, 1985 (in short 'the NDPS Act') and was sentenced to undergo rigorous imprisonment for a period of 02 years and to pay a fine of Rs.20,000/- and in default of payment of fine to further undergo rigorous imprisonment for a period of 06 months.

This appeal is listed in the Special Category of the cases, which are taken up on Saturday and these appeals are filed by the Legal Aid Counsels, in which the accused/appellant(s) are in judicial custody.

From the last 02 dates of hearing, no one has appeared on behalf of the appellant, therefore, Mr. Kamal Kumar Yogi, Advocate, who is present in the Court and is on the panel of the Legal Aid Counsel, was appointed as *amicus curiae* to assist this Court on behalf of the appellant.

A complete copy of the paperbook has been handed over by learned counsel for the State to *amicus curiae* in the Court.

Brief facts of the case are that on 04.09.2013, the police party headed by SI Balwinder Singh, was present at the bridge of small canal of Kacha Dalip Nagar, in the area of Gobindgarh, in connection with patrolling and checking of anti-social elements, then the accused was found coming from the side of the bridge of small canal of village Jassran at 4:30 pm on foot, by carrying a plastic bag of black colour in his right hand but the accused on seeing the police party present there at once by perturbing, tried to turn towards his left hand but on suspicion, he was stopped and apprehended by SI Balwinder Singh with the help of fellow police officials. The accused on inquiry disclosed his name and whereabouts. Then, SI Balwinder Singh disclosed his identity to the accused and told him that the accused had suspected contraband in the plastic bag carried by him in his right hand and showed his intention to conduct the search of the accused and his plastic bag and apprised that the accused had a legal right of getting the search of his plastic bag conducted either in the presence of Magistrate or the Gazetted Officer or the Higher Officer, if the accused had so desire, then the said officer could be made available at the spot. The accused ultimately reposed his confidence in SI Balwinder Singh in writing to

the said effect. The efforts were made to join independent witness by SI Balwinder Singh but none had obliged to the said effect. Then the search of accused was conducted and the same led to recovery of intoxicant powder and intoxicant capsules from the plastic bag carried by the accused. The accused could not produce any permit or any licence for retaining the same in his possession. Then, two pouches each of 10 capsules of Parvon-spas from 20 pouches of capsules, as samples, were separated. The remaining 18 pouches each of 10 capsules of Parvon-spas with the said samples were sealed in separate parcels. Thereafter, two samples of 10 gm. each of intoxicant powder were separated. The remaining intoxicant powder on weighing came to 270 gm. and the parcels of the same and the samples were sealed by SI Balwinder Singh with his seal of 'BS'. The sample of seal was prepared. The sealed case property was taken in possession vide separate memo prepared to the said effect. The seal after use was given to HC Onkar Singh. The ruqa was drafted for registration of FIR under Section 22 of the Narcotic Drugs and Psychotropic Substances Act and the same was sent to the Police Station through, PHG Harmesh Singh. The FIR under the said offence was registered against the accused and the investigation was initiated, during course of which, the rough site plan of the place of recovery was prepared with marginal notes and statements of witnesses were recorded. The formalities of investigation were completed and the challan was prepared and presented before the Court for the trial of accused under the offence punishable under sections 22 of the Narcotic Drugs and Psychotropic Substances Act.

Thereafter, on completion of the investigation and

presentation of challan, the trial Court framed charge against the appellant under Section 22 of the NDPS Act.

The prosecution in its evidence recorded the statement of PW1 – HC Onkar Singh, who was one of the member of the police party and proved the memo Ex.PA, vide which the consent of the appellant was taken and memo Ex.PB, vide which the case property in a sealed packet was taken in possession, ruqa Ex.PC sent to the Police Station for registration of the FIR and memo Ex.PD, vide which the personal search of the accused was conducted and the arrest memo of the accused is Ex.PE.

PW2 – HC Balkar Singh, the then MHC, submitted his affidavit Ex.PF to the effect that the case property along with the sample seal chit bearing seals of 'BS' and 'SK' was deposited on 04.09.2013 by ASI Suresh Kumar, with him and thereafter, on 09.09.2013, he handed over the same to Constable Hans Raj for depositing the same in the office of Forensic Science Laboratory, Mohali, however, Constable Hans Raj returned to the Police Station with some objections and thereafter, again the same was deposited on the next day i.e. 10.09.2013, after removing the objection and Constable Hans Raj handed over a receipt to him.

PW3 – Constable Hans Raj also tendered his affidavit Ex.PG and deposed that the sample parcels of intoxicant power and Parvon-spas capsules bearing seals of 'BS' and 'SK' along with sample seal chit were given to him on 09.09.2013 by MHC – Balkar Singh vide road certificate No.471 for depositing the same in the office of FSL apart from deposing that docket from the office of Senior

Superintendent of Police, Fatehgarh Sahib, was taken and the same was deposited in the office of FSL, Mohali, after removing the objections on 10.09.2013.

PW4 – SI Balwinder Singh, the Investigating Officer, deposed on the line, in a manner, in which the investigation was completed. He further proved memo Ex.PA vide which the consent of the accused was taken for conducting his personal search as well as search of the plastic bag, memo Ex.PB vide which the case property was taken in possession, ruqa Ex.PC sent to the Police Station for registration of the FIR through PHG Harmesh Singh. The personal search memo Ex.PD, arrest memo Ex.PE, sample chit Ex.PH, sample seal chit Ex.PJ and formal FIR Ex.PK, which bears the signatures of ASI Suresh Kumar at Ex.PC/1. This witness also proved rough site plan Ex.PK, application Ex.PL moved before the Illaqa Magistrate for depositing the case property in Judicial Malkhana and the order passed by the Illaqa Magistrate Ex.PM and report of the FSL, Mohali Exs. PN and PO.

PW5 – ASI Suresh Kumar, deposed that on receiving the ruqa Ex.PC sent by PW3 – SI Balwinder Singh on 04.09.2013, he recorded the FIR Ex.PP. This witness also stated that the accused along with the case property and sample seal chits bearing the same seal were produced before him on 04.09.2013 and after verifying the same, he sealed it with the seal bearing impression 'SK' and deposited the same with MHC.

Thereafter, the prosecution closed its evidence and all the incriminating evidence was put to the accused in his statement,

recorded under Section 313 of the Code of Criminal Procedure (in short 'Cr.P.C'), to which he denied the allegations and did not plead guilty, however, no defence evidence was led by him.

The trial Court, thereafter, held that the appellant is guilty of keeping in possession 290 gms of intoxicant powder containing the salt of Codeine Phosphate of non-commercial quantity and 200 capsules of Parvon-spas containing the salt of Dextropropoxyphene Hydrochloride, which is also of non-commercial quantity and convicted and sentenced him as noticed above.

Learned *amicus curiae* appearing for the appellant has submitted that there are discrepancies in the statement of the prosecution witnesses with regard to the place of recovery and arrest of the appellant, however, these are found to be minor in nature and does not have any direct bearing on their testimony, in a manner that it impeach their credibility. It is further submitted that no independent witness was joined and no proper offer under Section 50 of the NDPS Act was made. It is also submitted that it has come in the cross-examination of the witnesses that the place of recovery was a place where people were coming but no efforts were made to join any independent witness.

Learned *amicus curiae* has further submitted that the samples were sent to FSL, Mohali after a delay of 05 days and there is no explanation of the same. It is further argued that no specific question was put to the accused regarding his conscious possession while recording his statement under Section 313 Cr.P.C. and no evidence has been produced to show that the case property was deposited in the

Judicial Malkhana.

In reply, learned counsel for the State has submitted that after issuing a notice under Section 50 of the NDPS Act, in which the accused has given a consent to be searched before the Investigating Officer, after following the due process, the recovery was effected and immediately thereafter, the accused was produced before the Illaqa Magistrate and on moving an application and after seeking an order from the Illaqa Magistrate, the case property was deposited with MHC and thereafter, it was sent to FSL, Mohali for its examination. It is further submitted that nothing has come on record that the Investigating Officer has not followed the proper procedure and immediately after the arrest of the appellant, the accused was presented before the In-charge of the Police Station, who had re-verified the fact of recovery, after putting his seal and, therefore, even the investigation was re-verified by another police officer and, thus, there is no violation of the provisions of the NDPS Act. It is also stated that in the statement of the accused, recorded under Section 313 Cr.P.C., all the evidence has been put to him and except for denial, no evidence was led by the accused that the police party has falsely implicated him in the case, which show that the accused could not lead any defence evidence to prove his innocence.

Learned counsel for the State has also placed on record the Custody Certificate dated 29.09.2018 to submit that the appellant has already undergone the substantive sentence of 02 years and presently, he is undergoing the sentence under the default clause as he has failed to deposit the fine of Rs.20,000/- and even under the default clause, he has undergone 02 months and 08 days of sentence. It is also submitted

that the appellant is also convicted in 02 other cases, in which his sentence will start after the sentence in the present case is completed.

After hearing the counsel for the parties, I find no ground to interfere in the findings recorded by the trial Court holding the appellant guilty of offence punishable under Section 22 of the NDPS Act.

The scrutiny of the evidence from the lower Court record show that the Investigating Officer has complied with the provisions of Section 50(1) of the NDPS Act and after the recovery was effected, he was produced before the In-charge of the Police Station, who had re-verified the facts and has put his own seal on the case property. Thereafter, the accused was produced before the Illaqa Magistrate and as per the order Ex.PM, passed by the Illaqa Magistrate, the case property was deposited in the Malkhana in the custody of MHC and from there, it was sent to FSL, Mohali for its examination, therefore, except for certain minor discrepancies, which is bound to occur with the passage of time regarding the time given by the prosecution witnesses or the manner of sealing the case property, nothing has come on record that, when the case property was produced before the trial Court, the seals were tempered. Even, the accused failed to lead any defence evidence to show any reason for which, he has been falsely implicated in the present case. Further by producing the accused immediately before the In-charge of the Police Station and then, before the Illaqa Magistrate the investigation was duly re-verified and thereafter, sending the sealed parcels along with sample seal chit to the FSL, Mohali, the Investigating Officer has followed the proper

procedure and the entire evidence was put to the accused in his statement, recorded under Section 313 Cr.P.C., to which he has simply stated that he has been falsely implicated without leading any defence evidence.

At this stage, learned *amicus curiae* appearing for the appellant has submitted that, in fact, the appellant is a very poor person and he is not in a position to pay the fine of Rs.20,000/-.

In view of what has been discussed hereinabove, I uphold the judgment of conviction dated 04.07.2015 passed by the trial Court, however, the sentence awarded to appellant by the trial Court i.e. 02 years rigorous imprisonment and to pay a fine of Rs.20,000/- and in default of payment of fine to further undergo rigorous imprisonment for a period of 06 months is modified to the extent that since the appellant has already undergone the substantive sentence of 02 years rigorous imprisonment and on account of non-payment of fine of Rs.20,000/-, he is presently undergoing the rigorous imprisonment for a period of 06 months in terms of the default clause, and even out of 06 months, he has undergone 02 months and 08 days, the sentence awarded to the appellant under the default clause for non-payment of fine is reduced from 06 months to the period of 02 months and 08 days, which is already undergone by the appellant.

With the aforesaid modification, the present appeal is dismissed.

A copy of this order be sent to the Superintendent of District Jail, Nabha for compliance.

The appellant be released, in this case, his custody is not

required in any other FIR, in which he is undergoing the sentence.

Disposed of.

(ARVIND SINGH SANGWAN)
JUDGE

29.09.2018
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Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No