

Presented on : 18.11.2022
Registered on : 18.11.2022
Decided on : 11.10.2024
Duration : 1 years, 10 months 7 days

IN THE COURT OF
Judicial Magistrate - Ist Class
AT Khanna, Ludhiana
(Presided Over by Ms. Prabhjot Kaur)

CHA/92/22

State	Versus	Taranpreet Singh @ Taran @ Titli S/o Jagjit Singh R/o Faizgarh, PS Sadar Khanna, District Ludhiana. ...Accused
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FIR No. 88 of 02.06.2022
Under Section : 27-61-85 NDPS Act
Police Station : Sadar, Khanna

Present: Sh. Dhanesh Kumar, APP for the State
Accused Taranpreet Singh on bail with counsel
Sh Pardeep Kumar, Advocate.

JUDGMENT

- The above named accused has been sent to this court by the Officer In-Charge of Police Station Sadar, Khanna to face trial for the commission of offence punishable under Section 27 of The Narcotic Drugs and Psychotropic Substances Act, 1985.
- Briefly stated, the case of prosecution is that on 02.06.2022, SI Santokh Singh along with other police officials were present at Bus Stand, Village Faizgarh, where he received secret information that Taranpreet Singh @ Taran @ titli was habitual of consuming heroin and today also he was consuming heroin through silver paper and gas lighter in his house. On the basis of said information, FIR u/s 27-61-85 NDPS Act was registered

was apprehended and one silver paper, one yellow lighter, one plastic polythene which was stained with heroin was recovered from his possession. Thereafter IO prepared the sample parcel and sealed the same with his seal impression ‘SS’. Seal after use was handed over to ASI Parmod Kumar. Site plan was prepared. Statement of witnesses were recorded. Form No. 29 was prepared and on return to police station, case property was deposited. On receipt of the report of Chemical Examiner and on completion of investigation, challan was prepared and presented in the court against the accused for trial.

3. On presentation of challan in the court, accused was supplied with the complete copies of documents, free of costs, as per the provisions of Section 207 of Cr. P.C.

4. Finding a prima facie case, accused was served with a charge sheet for commission of offence punishable under Section 27 of The Narcotic Drugs and Psychotropic Substances Act, 1985, to which, accused pleaded not guilty and claimed trial.

5. To substantiate its case, prosecution examined following witnesses:-

PW-1	ASI Parmod Kumar	Recovery witness to prove on record ruqa Ex.PA, FIR Ex.PB, recovery memo Ex.PC, site plan Ex.PD, arrest memo Ex.PE, personal search memo Ex.PF, intimation of arrest memo Ex.PG.
PW-2	SI Santokh Singh	Investigating Officer to prove on record ruqa Ex.PA, FIR Ex.PB, recovery memo Ex.PC, site

		plan Ex.PD, arrest memo Ex.PE, personal search memo Ex.PF, intimation of arrest memo Ex.PG, FSL report Ex.PX, form No 29 Ex.PY, sample seal Ex.PZ and case property Ex. MO1.
PW-3	ASI Rajinder Singh, MMHC	Witness to proved on record his register No. 19 Ex.PW3/A.
PW-4	Retired ASI Amar Singh	Witness to prove on record FIR Ex.PB, endorsement on ruqa Ex.PW4/A.
PW-5	Dr. Harbinder Singh	Witness to prove on record his report regarding dope test of accused Ex.PW5

Thereafter, vide separate statement, Ld. APP for the State closed the prosecution evidence.

6. Statement of accused was recorded in terms of section 313 Cr.P.C, so as to apprise him of incriminating circumstances appearing against him in evidence led by prosecution, to which he pleaded innocence and claimed false implication.

7. Despite numerous opportunities, the defence failed to lead any evidence and hence, the same was closed by order.

8. This court has heard the submissions made by learned APP for the State and learned defence counsel and has also gone through the prosecution evidence. From the entire case, following points for determination emerge out:-

1. Whether on 02.06.2022 in the area of PS Sadar Khanna, accused was found in possession of silver wrap stained with heroine and gas lighter without any license and permit?

2. Whether the evidence of prosecution led on the file is sufficient to hold accused guilty and to convict and sentence him ?

POINTS NO.1 AND 2 FOR DETERMINATION :-

9. Both points for determination have been taken up together for the sake of brevity and to avoid repetition. Sh. Dhanesh Kumar, learned APP for the State has argued that prosecution witnesses have deposed on the lines of prosecution story and proved on record documents such as ruqa Ex.PA, FIR Ex.PB, recovery memo Ex.PC, site plan Ex.PD, arrest memo Ex.PE, personal search memo Ex.PF, intimation of arrest memo Ex.PG, FSL report Ex.PX, form No. 29 Ex .PY, sample seal Ex.PZ, case property Ex.MO1, endorsement Ex. PW4/A, copy of register No 19 Ex.PW3./A and report of doctor Ex.PW5/A. Thus, by placing reliance on the oral testimony of all the witnesses and documentary evidence proved on record by prosecution, learned APP for the State has further contended that the case of prosecution has been established on record beyond the shadow of reasonable doubt, therefore, accused must be convicted and be sentenced with the maximum punishment as provided under law.

10. On the other hand, Ld. Defence counsels have raised counter arguments thereby stating that accused is innocent and has been falsely implicated in this case. He has also submitted that no independent witness has been joined by the investigating agency at the time of effecting alleged recovery, which is fatal. Since, prosecution has miserably failed to prove its case beyond the shadow of reasonable doubt, thus, affording benefit of

doubt, accused must be acquitted for want of proper, cogent and convincing prosecution evidence.

11. After giving thoughtful consideration to the rival submissions made by learned APP for the State as well as learned defence counsel, this court has minutely scrutinized the oral and documentary evidence and after going through the entire record otherwise available on the file, is of the considered view that it is the burdened duty of the prosecution to prove its case beyond reasonable doubt. Accused has constitutional right to remain silent during the course of trial and if any doubt is created in the case of prosecution, benefit of it should be given to accused.

12. Here, in this case, FIR has been registered against accused on the allegations that accused Taranpreet was found in possession of silver wrap stained with heroine alongwith gas lighter, as such he was charge-sheeted for the commission of offence punishable u/s 27 of NDPS Act. In order to prove the guilt of accused, prosecution got examined four official witnesses to establish the link of recovery, alleged to have been effected from the present accused. **PW-2 ASI Santokh Singh, investigating officer,** has deposed that on 02.06.2022, he was posted at CIA Staff Khanna and on that day he was present at bus stand, Village Faizgarh . He further stated that he received a secret information that accused Taranpreet Singh @ Taran @ Titli is consuming a Narcotic Substance at his residential house with silver wrapper and gas lighter, if raid be conducted, he could be apprehended. He further stated that he scribed ruqa Ex.PA and sent it through Ct. Pargat Singh for registration of FIR and on that basis FIR Ex.PB was registered by ASI Amar Singh whose signatures he identified.

He further stated that he alongwith police party conducted raid at the house of accused where it was found that accused was consuming Narcotic Substance at his house with silver wrapper and gas lighter. He further stated that accused was apprehended and he disclosed his name as Taranpreet Singh. He further stated that he prepared the parcel regarding the recovered articles and sealed the same with his seal impression SS and after use the seal was handed over to ASI Parmod Kumar. He further stated that he prepared sample seal chit on the spot and took all the parcels, form No. 29, sample seal chit into police possession vide Ex.PC duly witnessed by ASI Parmod Kumar and ASI Satnam Singh and attested by him. He further stated that he prepared rough site plan Ex.PD. He arrested the accused vide arrest cum intimation memo Ex.PE, personal search memo Ex PF, intimation memo Ex.PG and all these memos were witnessed by ASI Parmod Kumar and ASI Satnam Singh. He further proved FSL report Ex.PX, form No. 29 Ex.PY, sample seal Ex.PZ and case property Ex.MO1.

13. However, he failed to appear in the court for his cross examination, therefore, his testimony cannot be read into evidence and is liable to be discarded totally.

14. Prosecution examined PW1 ASI Parmod Kumar, the recovery witness who proved on record ruqa Ex.PA, FIR Ex.PB, recovery memo Ex.PC, site plan Ex.PD, arrest memo Ex.PE, personal search memo Ex.PF, intimation of arrest memo Ex.PG.

15. During his cross examination, he deposed that IO did not join any person of village for the purpose of investigation and neither did he inquire about the residential address of Taranpreet Singh from any person.

He further stated that there was no packet of silver wrapper paper at the house of Taranpreet Singh. He further stated that he has never seen the case property in the court. He further deposed that he cannot tell the number of rooms in the house of accused Taranpreet Singh. He further deposed that he cannot tell the boundary of house of accused Taranpreet Singh. He further stated that no drug was recovered from the possession of accused Taranpreet Singh.

16. Prosecution also got examined **PW-3 ASI Rajinder Singh, MMHC** who deposed that on 02.06.2022, IO deposited with him the case property and entry was made by him in register no. 19 and on 06.06.2022, he sent the sample parcel for chemical testing.

17. Lastly, prosecution has examined PW4 Retired ASI Amar Singh who deposed regarding registration of FIR Ex.PB on receipt of ruqa. He also deposed regarding affixing his seal on the parcel of case property produced by IO SI Santokh Singh. During his cross examination he deposed that he has not seen the case property in the court. He further stated that he has seen the copy of register No. 19 on court file and there is no entry regarding the recovery of yellow gas lighter.

18. After going through the entire evidence on record, this court has come to the conclusion that there are major lapses in the case of prosecution, of which accused deserves the benefit of doubt. Since the case has been registered on secret information, it was of utmost importance that testimony of the investigating officer is corroborated by the testimony of recovery witness, however, the IO has failed to turn up for his cross-examination. Thus, the only testimony available on the record is that of the

recovery witness, who during his cross-examination has deposed that neither any silver wrap packet nor any narcotic substance was recovered from the house of accused. As per the report of chemical examiner Ex. PX, the silver wrapper alleged to be recovered from the accused contained diacetylmorphine (heroin). However, as per the dope test report Ex. PW5/A, accused was found positive for barbiturates, morphine and propoxyphene. During his cross-examination, PW5 Dr. Harbinder Singh who prepared the aforementioned report, submitted that the salts noticed in urine sample of the accused are not the components of heroine. Thus, it makes the prosecution case highly doubtful as to whether accused was found consuming heroine as alleged.

19. As far as the non-joining of independent witness is concerned, as per prosecution story recovery was effected from house of accused but nothing has been explained by prosecution agency showing reasons for non-joining of independent witness in such an eventuality. Perusal of evidence lead by the prosecution shows that the entire case of prosecution was based on testimony of official witnesses. Prosecution failed to join the witness from public and no plausible explanation has been given for non-joining of witness from public. The corroboration from an independent witness would have been essential in the present case in view of the lacunae noted above. Lastly, the case property in the present case has not been produced in the court, thus, possibility of tempering with the same can also not be ruled out.

20. Thus, from the entire evidence produced on record by prosecution, it is clear that prosecution remained unsuccessful in proving on

record the guilt of accused, beyond the shadow of reasonable doubt.

Accordingly, in these circumstances, accused Taranpreet Singh is ordered to be acquitted from the charges framed against him. His bail bonds/surety bonds to remain operative till the period of expiry of appeal or revision, if any. Case property, if any, be dealt with as per law, after the expiry of period of appeal or revision, if any. File be consigned to the record room after due compilation.

Date of order: 11.10.2024
Kritika-Stgr-II

Prabhjot Kaur, PCS
Judicial Magistrate Ist Class,
Khanna, UID No. PB0650