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**(2009) 04 P&H CK 0369**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** Criminal Appeal No. 1923-SB of 2003

Pardeep Kumar

APPELLANT

Vs

State of Punjab

RESPONDENT

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**Date of Decision:** April 17, 2009

**Acts Referred:**

- Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) - Section 21

**Citation:** (2010) 1 RCR(Criminal) 378

**Hon'ble Judges:** Kanwaljit Singh Ahluwalia, J

**Bench:** Single Bench

**Advocate:** G.S. Hooda, for Mr. Ravinder Hooda, for the Appellant; Mehardeep Singh, Assistant Advocate General Punjab, for the Respondent

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**Judgement**

Kanwaljit Singh Ahluwalia, J.

This order shall dispose off Criminal Appeal No. 1923-SB of 2003 preferred by Pardeep Kumar along with Criminal Appeal No. 1924-SB of 2003 preferred by Nisha and Criminal Appeal No. 2022-SB of 2003 preferred by Neeraj Kumar.

2. Three persons, namely Pardeep Kumar, Nisha and Neeraj Kumar were tried in sessions trial cases No. 36, 37 and 38 of 26th February, 2003. All the three sessions trials have been decided by a common judgment passed by the Special Judge, Ferozepur. All the three were named as accused in case FIR No. 269 dated 16.09.2002 registered at Police Station Abohar u/s 21 of the NDPS Act.

3. Case of the prosecution is that all the three accused were arrested on 16th September, 2002, when they were traveling in a white coloured Ambassador car.

4. On 16th September, 2002 at about 8.40 a.m., police party consisting of Inspector Manvinder Singh PW-3 and other police officials, which included ASI Rachhpal Singh PW-4, was holding nakabandi on a crossing of bye-pass road of Abohar. The car was signaled to stop. Pardeep Kumar @ Bobby made an attempt to speed up the car, but

the car struck the brim of the road and halted. All the three accused were apprehended on suspicion. One Rajinder Punia, a public person, who was passing through, was joined as an independent witness. An offer was made to the accused. They gave their consent to be searched from a gazetted officer. Rakesh Aggarwal, IPS officer, who was then posted as ASP Abohar, was called at the spot and search was conducted. From the pocket of Pardeep Kumar @ Bobby, 100 gm of Smack (Diacetylmorphine) was recovered. From the pocket of Neeraj Kumar, 30 gm and from the purse of Nisha, 55 gm of Smack (Diacetylmorphine) was recovered.

5. Case of the prosecution is that Nisha was sitting along with the driver, on the front seat, whereas Neeraj Kumar was sitting on the back seat.

6. Counsel for the appellants has submitted that Diacetylmorphine has been mentioned as Heroin at entry No. 56 in the table drawn in pursuance of sub- clause (viia) and (xxiia) of Section 2 of the Narcotic Drugs and Psychotropic Substances Act, 1985. Under the Act, 5 gm has been defined as small quantity and less than 250 gm as non-commercial quantity. Counsel has submitted that even the recovery from all the three persons is taken as one, then also the recovery effected is 185 gm, which is less than commercial quantity. Counsel has further submitted that however, the trial Court has taken recovery separately qua each of the accused, therefore, Pardeep Kumar has been held liable for 100 gm, Neeraj Kumar for 30 gm and Nisha for 55 gm of Smack (Diacetylmorphine) and accordingly, Pardeep Kumar has been sentenced u/s 21 of the NDPS Act to undergo rigorous imprisonment for four years and to pay fine of Rs. 15,000/-, in default of payment of fine to further undergo rigorous imprisonment for one year. Nisha and Neeraj Kumar have been sentenced to three years rigorous imprisonment and fine of Rs. 10,000/- each, in default of payment of fine to further undergo rigorous imprisonment for nine months.

7. Counsel for the appellants has further submitted that since the recovery was effected in presence of Rakesh Aggarwal, IPS officer, who was then posted as ASP Abohar and he has no enmity with these accused, therefore, he will not be in a position to assail the conviction of the accused. However, he has submitted that in the present case, recovery was effected on 16th September, 2002. About seven years are going to elapse and appellants have already suffered a protracted trial. It has further been submitted that the Court should take into consideration the age of the appellants as Pardeep Kumar was aged 27 years, Nisha 18 years and Neeraj Kumar was aged 32 years at the time of occurrence. They were coming from Delhi and were travelling towards Hanumangarh in Rajasthan, when they were apprehended at Abohar. It has also been submitted that the appellants, in their youth, were found in possession of the Smack, they in no way deal in the narcotic substance, nor they are the carriers. No case was registered earlier to the present case and thereafter also, no case has been registered against the appellants. It has been submitted that taking into consideration the antecedents, age and protracted trial, sentence awarded upon the appellants should be adequately reduced. Counsel

for the appellants has submitted that all the three appellants have undergone about one year of their actual sentence. It has been stated that the appellants should not be sent behind the bars.

8. I find merit in the contentions made by counsel for the appellants. The appellants were in their youth. As stated, they have not committed any offence before the registration of the present case or after grant of bail by this Court.

9. Counsel for the State has not been able to repel the contention that the appellants were not involved in the trade of narcotic substance. Quantity recovered is non-commercial. Protracted trial is another mitigating circumstance. Therefore, sentence awarded upon all the three appellants is reduced to one year rigorous imprisonment. However, sentence of fine is maintained.

10. With these modifications in the sentence, above said three appeals are disposed off.