

Cr. Appeal (S.J.) No.1494 of 2006

[Against the judgment of conviction dated 14.09.2006 and order of sentence dated 18.09.2006 passed by learned Additional Sessions Judge, FTC, Sahibganj in S.T. No.69 of 2005 (T.R. Case No.31 of 2006)]

Bajrang Khudania, S/o Late Hari Prasad Khudania, resident of
Jain Rai Road Talbanna, P.O.-Sahibganju, P.S.-Sahibganju Town,
District-Sahibganj Appellant

Versus

The State of Jharkhand Respondent

For the Appellants : Mr. Rajeev Kr. Sharma, Sr. Advocate
Mr. Anwar Hussain, Advocate
Mr. Kunj Bihari Prasad, Advocate

For the State : Mrs. Vandana Bharti, A.P.P.

PRESENT

HON'BLE MR. JUSTICE PRADEEP KUMAR SRIVASTAVA

JUDGEMENT

18/11/2024

By court:

1. The present appeal is directed against the judgment of conviction dated 14.09.2006 and order of sentence dated 18.09.2006 passed by learned Additional Sessions Judge, FTC, Sahibganj in S.T. No.69 of 2005 (T.R. Case No.31 of 2006), whereby and whereunder, the appellant has been held guilty and convicted for the offence under Section 22 of Narcotic

Drugs and Psychotropic Substance Act, 1985 and sentenced to undergo R.I. of 1 month along with fine of Rs.2,000/- with the default stipulation.

FACTUAL MATRIX

2. Factual matrix giving rise to this appeal is that on 04.05.1989 at about 6:00 AM, while the informant along with havaladar Nashim Khna and havaladar Rameshwar Murmu were coming from New Road, he received secret information about drug paddler, who is standing near the house of Manik Singh with heroine for the purpose of selling. Upon aforesaid information, the informant along with both havaldars reached at the specified place and saw a person standing near the house of Manik Singh. Upon seeing the police party, he started fleeing away but he was apprehended with the help of both havaldars. On interrogation, he disclosed his name as Bajrang Khudania. The search of the accused was made in presence of two independent witnesses Ram Naresh Ram and Ramdhani Ram and from his one pocket a white coloured plastic chunauti was recovered containing with eight puriyas of heroin from one side of chunauti and in the next side there was lime. The accused/appellant could not explain about the said

puriyas of heroin, thereafter the material was seized and the seizure list was prepared.

3. After conclusion of the investigation, the charge-sheet was submitted against above named accused/appellant for the offence under sections 22 and 27 of Narcotic Drugs and Psychotropic Substance Act, 1985. The charge was framed against the accused for the offence under sections 22 and 27 of Narcotic Drugs and Psychotropic Substance Act, 1985. After conclusion of the trial, the impugned judgment and order has been passed.
4. Learned senior counsel for the appellant assailing the impugned judgment and order of conviction and sentence of the appellant submitted that altogether three witnesses were examined by the prosecution in this case in order to substantiate the charge leveled against the appellant. Admittedly, the case pertains to offence under N.D.P.S. Act and the seizure of heroin from the person of the appellant but there was no compliance of mandatory provision of section 51 of N.D.P.S. Act. Neither the seized materials were properly seized nor any specimen were collected and sent to F.S.L. The appellant is addict of taking khaini(tobacco) and admittedly there was seizure of chunauti from the possession of the

appellant, which is used to keep tobacco with lime but the police personnels had shown the same as heroin. It is surprising that without having concrete evidence on record, it was believed by the trial court that the seized material is heroin. No conviction can be based for the offence under section 22 of N.D.P.S. Act. As such, the conviction and sentence of the appellant for the offence under section 22 of N.D.P.S. Act is absolutely unwarranted under law and the appellant deserves acquittal, allowing this appeal.

5. **Per contra**, learned A.P.P. appearing for the State has vehemently opposed the aforesaid contentions raised on behalf of the appellant and submitted that the FSL report was not obtained in respect of the seized material and the same was not produced at the time of trial. Learned trial court has taken view in the matter and sentenced the appellant to undergo R.I. of only one month along with fine of Rs.2,000/-. Hence this appeal is liable to be dismissed.
6. In order to substantiate the charge levelled against the appellant altogether 3 witnesses were examined in this case.

P.W.1 Nasim Khan is the police personnel, who was also member of raid in party. According to his evidence, about 14-15 years ago, he along with S.I. Kami Kant Mishra and other

police persons were proceeding towards the house of one Manik Singh, then one boy started fleeing away seeing them, on chase, he was apprehended. Upon search of the said body, one chunauti was recovered from right pocket, which was containing eight puriyas. The seizure list was prepared by S.I. Kami Kant Mishra and the arrested person disclosed his name as Bajrang Khudania and he was brought to police station.

P.W.2 Ramdhani Ram has put his signature on seizure list marked as Ext.1, but he has failed to disclose any recovery from the possession of the appellant.

P.W.3 Uday Kumar Gupta is an independent villager, who has also identified his signature on the written report of S.I. Kami Kant Mishra marked as Ext. 2 and signature on seizure list marked as Ext.3.

7. It appears that the Investigating Officer of this case has not been examined in this case and the seized material was also not produced and no specimen was collected and sent to FSL for chemical examination. In the instant case, there is flagrant violation of mandatory provision of section 51 of NDPS Act as regards personal search and the seizure of the appellant. There is no evidence to establish that the seized material was heroin.

8. In the facts and circumstances of the case, I find force in the contention of learned counsel for the appellant that the appellant was addict of taking khani(tobacco) and the seized chunauti was containing khaini and wet lime and he has falsely been implicated in this case. In view of the aforesaid discussions and reasons, I find that learned trial court has committed serious illegality in convicting the appellant without any cogent and reliable evidence. Accordingly, the impugned judgment and order is hereby set aside, allowing this appeal.
9. The appellant is on bail, hence he is discharged from bail bond. Sureties shall also be discharged.
10. Pending I.A(s), if any, is also disposed of accordingly.
11. Let the copy of this judgment along with Trial Court Record be sent back to the court concerned for information and needful.

(Pradeep Kumar Srivastava, J.)

Jharkhand High Court, at Ranchi

Date:-18/11/2024

Pappu/- N.A.F.R.