

**CRA-D-307-DB-2005 (O&M)**

-1-

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

-.-

CRA-D-307-DB-2005 (O&M)**Reserved on :-01.10.2024****Date of Decision : 21.10.2024**

Avtar Singh

....Appellant

VERSUS

State of Punjab

....Respondents

**CORAM : HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA**

Present: Mr. N.S.Sodhi, Advocate for the appellant.

Mr. Maninderjit Singh Bedi, Addl. A.G., Punjab.

-.-

SUDEEPTI SHARMA, J.

The challenge in the present appeal is to the judgment of conviction dated 06.04.2005 and order of sentence dated 07.04.2005 passed by the learned Special Judge, Moga, whereby the appellant has been convicted in FIR No.63, dated 25.08.2002, registered at Police Station Mehna, under Section 15-C of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short, 'NDPS Act') and sentenced to undergo rigorous imprisonment for 15 years and to pay a fine of Rs.1,50,000/- and in case of default to pay fine, he is further sentenced to undergo rigorous imprisonment for one year.

**CRA-D-307-DB-2005 (O&M)****-2-****FACTUAL BACKGROUND**

2. The brief facts of the case are that on 25.08.2002, SI Jasbir Singh alongwith other police officials namely ASI Shamsheer Singh, HC Hari Singh, HC Rajinder Singh, HC Dilbagh Singh, CII Gulab Singh, C.Gurmail Singh, C Baldev Singh and C.Kewal in official TATA Sumo bearing registration No.PB-29A-9692 in connection with patrol duty and checking of suspected persons was going from the side of Moga towards Bohana Mehron villages. When the police party reached on Moga-Baghapurana bypass, Gant Singh son of Bihari Singh resident of Sahibzada Ajit Singh Nagar, Moga met the police party who was associated in the police party. The police party then proceeded towards Bughipura-Bohana and reached on the turn of Bughipura-Bohana road, where, a person gave signal to their vehicle to stop. When SI alighted from the vehicle, a secret informer gave information that Surjit Singh S/o Narain Singh, r/o Daulewala and Avtar Singh S/o Hazara Singh r/o Gagra P.S. Kot Ise Khan who are indulging in sale of poppy husk for a long time, have loaded their truck bearing registration No.PB-04-2867 with gunny bags containing poppy husk which is covered with tarpaulin and are standing on the embankment of seepage drain on link road of village Bugipura. If raid is conducted, then they can be apprehended with heavy quantity of poppy husk. The information being reliable, ruqa was sent to the police station through C. Baldev Singh on the basis of which formal FIR was registered at Police Station Mehna. Special report was also sent to DSP through C Gurmail Singh to reach the spot. Then the police party reached the disclosed place and found the truck standing there. The police party encircled the truck and SI Jasbir Singh asked the person sitting in the truck to disclose his name whereupon the said person

**CRA-D-307-DB-2005 (O&M)****-3-**

disclosed his name to be Avtar Singh. SI Jasbir Singh also disclosed his name and rank and informed Avtar Singh that he has suspicion that there is poppy husk in the truck and he wanted to get the search of the truck conducted. He further disclosed Avtar Singh that he (Avtar Singh) has right to get the search conducted in the presence of some Gazetted Officer or Magistrate to whom he can call to the spot to which Avtar Singh replied that he wanted to get the search of the truck conducted in the presence of Gazetted Officer. His consent memo in this regard was reduced into writing. In the meantime, DSP Nachhatar Singh reached at the spot who also disclosed his identity and rank to Avtar Singh and also apprised him about his legal right. On consent of Avtar Singh, DSP Nachhatar Singh gave instructions to SI Jasbir Singh to conduct the search of the truck. After removing the tarpaulin, 40 gunny bags of poppy husk were recovered from the body of the truck. The said bags were weighed and each bag was containing 35 Kgs poppy husk. Out of the recovered bags, 250 grams of poppy husk was taken as sample and their parcels were prepared which were sealed by SI Jasbir Singh with his seal bearing impressions "JS" and seal of DSP bearing impressions "NS". The sample parcels and recovered contraband bags alongwith tarpaulin were taken into possession vide separate memos. The sample seals were also prepared. The seal after use was handed over to Gant Singh and DSP kept his seal with him. The truck alongwith RC, route permit, insurance certificate and driving licence of Avtar Singh were taken into possession vide separate memo. Then Avtar Singh was arrested and his personal search was conducted which led to recovery of currency notes of Rs.570 from wallet of black colour kept by him in right pocket of the pant worn by him which were taken into possession vide separate memo. The arrest and

**CRA-D-307-DB-2005 (O&M)****-4-**

personal search memos were attested by the witnesses and thumb marked by accused Avtar Singh. The DSP attested the gunny bags and sample parcels and specimen seal at the spot. Rough site plan of the place of recovery was prepared. Statements of the witnesses were also recorded at the spot. On return to the police station, the case property and accused were produced before Sub Inspector Mukhtiar Singh, the concerned SHO who verified the facts from the accused and witnesses, affixed his seal on the case property bearing impressions "MS" and thereafter deposited the same with MHC. Accused was put behind the bars.

3. On 26.08.2002, ASI Chamkaur Singh through SHO, Police Station Mehanatook sample parcels and bulk case-property parcels from the MHC and produced the same alongwith accused before the Court of Illaqa Magistrate who remanded the accused to police custody and case property was ordered to be deposited with the MHC concerned. After return to the police station, the case property was deposited with MHC and accused Avtar Singh sent to lock up.

4. During interrogation accused Avtar Singh made disclosure statement that Surjit Singh had gone to bring customers for sale of poppy husk, as such, he could not be arrested.

5. During investigation, accused Surjit Singh had obtained anticipatory bail from the Sessions Court, Moga. He was arrested in this present case and was released on bail.

TRIAL COURT PROCEEDINGS

6. After completion of the investigation and on receipt of the report of the Chemical Examiner, challan was presented before the Court.

**CRA-D-307-DB-2005 (O&M)****-5-**

7. On presentation of the challan, copies of the challan and other documents annexed therewith were supplied to the accused free of costs as required under Section 207 Cr.P.C.

8. Initially charge for offence under Section 15 of the NDPS Act was framed against the accused to which they pleaded not guilty and claimed trial.

9. Later on amended charge was framed against the accused for having committed an offence punishable under Section 15 of NDPS Act read with Section 25 of the NDPS Act to which they pleaded not guilty and claimed trial.

10. During the trial, the prosecution has examined PW-I ASI Chamkaur Singh, PW-2 Anu Sharma Addl. Ahlmad of JMIC, Moga, PW-3 Shri Nachhattar Singh, DSP, Sub Division, Moga a Gazetted Officer at the relevant time, PW-4 ASI Shamsheer Singh, PW-5 Ramesh Kumar, PW-6 SI Jasbir Singh the Investigating Officer, PW-7 ASI Baljinder Singh, PW-8 Gurmit Singh, PW-9 Sub Inspector Mukhtiar Singh, SHO of P.S. Mehna at the relevant time, PW-10 Mahesh Kumar, Clerk, DTO Moga. Besides oral evidence, documentary evidence led in the prosecution evidence are: Ex.PA ruqa, copy of FIR EX.PA/1, Ex.PB an application moved before Illaqa Magistrate for getting order regarding case property, Ex.PB/1 order passed by the Illaqa Magistrate, Moga thereon, Ex.PC Recovery memo regarding taking into possession the poppy straw, Ex.PD, recovery memo regarding taking into possession truck along with RC, copy of Insurance, permit Part A and Part B and photostat copy of driving licence, Ex.PE personal search memo of Avtar Singh, Ex.PF special report dated 25.8.2002, Ex.PF/1 endorsement of DSP thereon, Ex.PF/2 photostat copy of driving licence pertaining to accused Avtar Singh, Ex.PF/3 affidavit of C Romesh Kumar, Ex.PF/4 photostat copy of

**CRA-D-307-DB-2005 (O&M)****-6-**

register maintained in the officer of DTO, Moga, rough site plan Ex.PG, Ex.PG/1 Special Report dated 26.8.2002, Ex.PG/2 endorsement of the DSP thereon, Ex.PH grounds of arrest regarding accused Avtar Singh, Ex.PI recovery memo regarding case property, EX.PJ Report of Chemical Examiner, Ex.PK grounds of arrest qua Surjit Singh accused, Ex.PL affidavit of HC Gurmeet Singh, Ex.PM consent memo of accused Avtar Singh, Ex.1 sample seal, Ex.P2 original registration certificate of truck, Ex.P2/A relevant entry in the said registration certification Ex.P2/B photostat copy of the register maintained in the office of DIO, Moga, Ex.P3 Insurance cover note, Ex.P4 original permit part B, Ex.P4/A original permit part A.

11 After closure of the prosecution evidence, statements of the accused under Section 313 Cr.P.C. were recorded. Incriminating circumstances appearing against the accused in the prosecution evidence were put to accused to which they denied and pleaded false implication.

Accused Avtar Singh had taken a plea that he was never employed as driver on the truck No.PB-04-2867 owned by Surjit Singh son of Narain Singh resident of village Daulewala. He was taken by the police of CIA Staff, Moga from his house on 23.8.2002 in the presence of his neighbourers namely Deep Singh son of Thana Singh, Baldev Singh son of Pala Singh residents of village Gagra. Nothing incriminating was recovered from him. He was illegally detained in CIA Staff, Moga for 2/3 days and this false case of poppy straw was planted upon him in connivance with Surjit Singh owner of truck No.PB-04-2867. Gant Singh son of Bihari Singh resident of Moga the alleged independent recovery witness is a convenient witness of the police.

**CRA-D-307-DB-2005 (O&M)****-7-**

Accused Surjit Singh took the plea that on 24.08.2002, he was admitted in Civil Hospital, Makhu and was discharged therefrom on 27.08.2002. Avtar Singh was driver on his truck in those days on monthly salary basis. Sometimes the truck remained in possession of Avtar Singh driver for 8/9 days during transportation of goods. On 23.08.2002, truck was in possession of driver Avtar Singh and in the evening he told him on telephone that he is going to his sister's village on truck to transport some articles of his sister. He came to his knowledge that Avtar Singh alongwith his truck had been apprehended by the police and some bags of poppy husk were also recovered. The police implicated him in this false case. It was not in his knowledge that Avtar Singh was transporting poppy husk in his truck.

12. Accused opted to lead evidence in their defence.

13. In defence evidence, accused examined DW1 Dr. Rajnish Jindal, Medical Officer, Community Health Centre, Makhu, District Ferozepur, DW2 Deep Singh, DW3 HC Chhinder Pal. Besides oral evidence, documentary evidence in defence of the accused are: Ex. D1 statement of SI Mukhtiar Singh, Ex. D2 Statement of Mahesh Kumar, Dealing Clerk, Ex. D3 photostat copy of a register, Ex. D4 certified copy of FIR No.59 dated 19.8.2002, Ex. D5 certified copy of recovery memo in such FIR, Ex. D6 certified copy of statement of Gant Singh, Ex. D7 copy of FIR, Ex.DS photostat copy of FIR NO.223, Dated 23.9.2002.

14. After hearing the learned Addl. Public Prosecutor and counsel for the accused and perusing the whole record, the learned Special Judge, Moga, acquitted the accused Surjit Singh whereas he convicted accused Avtar Singh under Section 15(c) of the NDPS, vide its judgment dated 06.04.2005 and sentenced him to

**CRA-D-307-DB-2005 (O&M)****-8-**

undergo RI for 15 years and to pay fine of Rs.1,50,000/- and in case of default to pay fine to further undergo RI for one year vide order of sentence dated 07.04.2005.

15. Hence the present appeal.

SUBMISSION OF LEARNED COUNSEL FOR THE PARTIES

16. Learned counsel for the appellant contends that mandatory provisions of the Act were not complied with and even the sample seal alongwith sample parcels was not sent to the office of chemical examiner. He further contends that no independent witness was joined by the prosecution when the alleged place of recovery is shown to be the bridge of seepage drain at Bughipura to Buhana link road and the abadi from the place of recovery is not far away. Therefore, he prays for setting aside of judgment of conviction dated 06.04.2005 and order of sentence dated 07.04.2005.

17. *Per contra*, learned counsel for the respondent-State argues on the lines of judgment dated 06.04.2005 and contends that the appellant has been rightly convicted and sentenced.

18. We have heard the learned counsel for the appellant as well as learned State Counsel and perused the whole record of the case in hand.

ANALYSIS OF THE RECORD

19. On 26.08.2002, SHO P.S.Mehna deposited the case property in the Judicial Malkhana, details of the same is reproduced as under:-

*“State Vs. Avtar Singh s/o Hazara Singh Caste Mazbi Sikh r/o
Gaggrh, P.S Kot Ise Khan*

FIR No.63, dated 25.08.2002 of Police Station Mehna



CRA-D-307-DB-2005 (O&M)

-9-

Subject:- For depositing the case property in the Judicial Malkhana.

Sir,

It is submitted that 40 gunny bag parcels each containing 34 Kg-750 grams of poppy-husk, and 40 sample parcels each weighing 250 grams, duly sealed with seals J.S & N.S. and M.S, recovered from the accused in the aforesaid case, alongwith the specimen seal, personal search of accused, are produced before you in the Court. This case property may kindly be ordered to be deposited in the Judicial Malkhana. Truck No.PB-04-2867 and tarpaulin are also sent along.

*Forwarded please.
26.08.2002*

*Sd/- (in Punjabi)
S.H.O P.S. Mehna.
26.08.02*

Present:- Mr. Rattan Singh APP for State with ASI Chamkaur Singh, P.S.Mehna.

The police has produced 40 bags of jute bags each containing 34 Kgs 750 gm of poppy husk and 40 sample parcels each containing 250 gm, duly sealed with seals intact bearing letters JS, NS and MS. The same has been seen and initialed by me. The case property is ordered to be kept in the Malkhana of Police Station Mehna, under rules.

*Sd/-
J.M.I.C Moga
26.08.02"*

20. **Ex.P/C** is the recovery memo of poppy-husk. The same is reproduced as under:-

**CRA-D-307-DB-2005 (O&M)****-10-**

“State Versus Avtar singh and another.

FIR No.63 dated 25.8.02.

Police station Mehna.

U/s 15/61/85 of the NDPS Act.

Recovery Memo of Poppy Husk.

In the presence of the below-noted witnesses, Sh. Nachattar Singh DSP(SD) Moga, while disclosing his identity, told Avtar Singh aforesaid that he was posted as DSP in sub Division Moga and was a Gazetted Officer. Then with the consent of Avtar Singh and in the presence of the DSP and on his directions, I the SI conducted the search of gunny bags, lying under the tarpaulin, in the body of truck no. PB-04-2867, under the rules. 40 gunny bags containing the poppy husk were recovered. Each recovered bag was weighed on weighing machine and each bag came to be 35 Kg. The recovered bags were marked serial number from 1 to 40. From each of the gunny bag, 250 grams of poppy husk was taken out as sample with the help of weighing scale made of iron, and separate parcels from 1 to 40 were prepared. The bags containing the poppy husk were also made into separate parcels and the bags and the sample parcels were sealed by me the SI with my seal bearing letters JS and by the DSP with his seal bearing letters NS and taken into police possession vide this memo along with the tarpaulin. The specimen seal was separately prepared. I handed over my seal after use to PW Gant Singh. The DSP kept his seal with him. The DSP attested the specimen seal, the sample parcels and the recovered bags containing poppy husk.



CRA-D-307-DB-2005 (O&M)

-11-

Witness
Sd/-
Shri Nachattar Singh
DSP (SD) Moga”

Sd/- Jasbir Singh, SI
CIA Moga,
25.08.02.

21. **Ex.P/F** is the statement of C Ramesh Kumar, which is reproduced as under:-

“State Versus Avtar singh and another.

FIR No.63 dated 25.8.02.
Police station Mehna.
U/s 15/61/85 of the NDPS Act.

In the Court of Muneesh Arora, JMIC Moga.

Affidavit of C. Ramesh Kumar 873/Moga, Police Station Mehna.

1. *I. C. Ramesh Kumar No.873/Moga police station Mehna do solemnly affirm and declare that on 2-9-02, I was posted on general duty in Police Station Mehna.*

2. *I, C Ramesh Kumar no.873, do solemnly affirm and declare that on 2-9-02 MHC Gurmit singh no. 140 had handed over to me 40 parcels containing poppy husk, weighing 250 grams each, duly sealed with seal M.S. N. S., J.S. along with the specimen seal, for depositing them in the office of Chemical Examiner, Punjab Chandigarh, after taking them out from the Malkhana of the police station, vide road no.202/02, with the direction to get, at first, the docket dispatched from the office of SSP Moga and then to deposit in the office of Chemical Examiner, Punjab, Chandigarh*

3. *I, C Ramesh Kumar no.873, do solemnly affirm and declare that as per the direction of MHC Gurmit Singh no, 140, I had got the*



CRA-D-307-DB-2005 (O&M)

-12-

docket dispatched from the office of SSP Moga and then I had deposited the 40 parcels of the aforesaid case, containing poppy husk, weighing 250 grams each, duly sealed with seal MS,NS and JS in intact condition, on 3-9-2002, in the office of Chemical Examiner, Punjab, Chandigarh and on return I had handed over the receipt to MHC Gurmit Singh, which he had placed on record.

4. *I, C Ramesh Kumar No.873, do solemnly affirm and declare that so long as the samples of the aforesaid case remained in my possession, I did not tamper with them nor allowed anyone else to do so.*

*Sd/- Ramesh Kumar C/873.
Deponent.
09.09.03*

I, C Ramesh Kumar No.873 do solemnly affirm and declare that the contents of para Nos.1,2,3 and 4 of this affidavit are true and correct to the best of my knowledge. Nothing has been kept concealed therefrom nor any part of it is false.

*Sd/- Ramesh Kumar C/873.
Deponent.
09.09.03*

*I know the deponent personally
who has signed in my presence*

*Sd/-
A.D.A Moga
9.9.03*

*Sd/-
JMIC., Moga
9.9.03”*

Constable Ramesh Kumar was examined as PW-5. His statement and

his cross-examination are reproduced as under:-



CRA-D-307-DB-2005 (O&M)

-13-

“PW-5 On S.A.

Statement of Sh. Ramesh Kumar, Constable No.873, P.S. Mehna.

I tender into evidence my duly attested affidavit Ex.P.F. It may be read as part of my evidence.

Xxxxxxxx Sh. K.S.Bath, Adv. Counsel for Surjit Singh.

I took to analysis laboratory 40 sample parcels and 40 sample seals of different cases. I did not get myself checked samples and sample seal in office of SSP to any police officer. All sample parcels were in the form of bulk tied in piece of cloth. It is wrong to suggest that I have sworn false affidavit.

Xxxxxxxx Sh. Arjan Singh, Adv, for Avtar Singh.

Nil opportunity given.

*RO&AC
14.11.2003*

*Sd/-
Special Judge, Moga*

*Sd/- (English)
C. Ramesh Kumar”*

22. **Ex.PG/1** is the special report u/s 57 of the N.D.P.S Act, which is reproduced as under:-

*“State Vs. Avtar Singh s/o Hazara Singh r/o Gaggrh and
Surjit Singh s/o Narain Singh r/o Daulewala.*

*FIR No.63 dated 25.8.2002 Police Station Mehna, U/s 15/61/85 of the
NDPS Act.*

Special Report u/s 57 of the N.D.P.S. Act.

It is submitted that on 25-8-02 I the SI along- with ASI

Shamsher Singh, ASI Balwinder Singh and other police officials, on

**CRA-D-307-DB-2005 (O&M)****-14-**

Govt. Tata sumo was going towards Bughipara, Bahona, Mehron etc. in connection with patrolling and search of suspected persons. When the police party reached Ludhiana bye-pass at Moga, Gant Singh s/o Bihari Singh, r/o sahibzada Ajit Singh Nagar, Moga met us and after joining him in the party, I proceeded further. When the police party reached on the turning of link road, Bahona in village Bughipura, a special secret informer got the vehicles stopped and informed that Avtar Singh s/o Hazara singh resident of V-Gagarh and Surjit Singh s/o Narain Singh r/o Daulewala deal in the sale of poppy husk in heavy quantity and on that day also, they are standing with their truck No.PB-04-2867 on the embankment, near the bridge of seepage drain in the area of village Bahona, in which gunny bags of poppy husk are loaded and if the raid is conducted immediately, they can be apprehended with the poppy husk. The information being reliable, I the SI sent ruqa to the police station Mehna for the registration of a case u/s 15/61/85 NDPS Act against Surjit Singh and Avtar Singh. I sent a separate special report in respect of the secret information, to the Halqa DSP. Then I the SI along with the co-officials conducted the raid on the stated place and found that truck no. PB-04-2867 was lying parked on the southern embankment of the seepage drain, on the Eastern side of the road, with face on the Eastern side of the direction, in the body of which a person was sitting in the tarpaulin. After surrounding him, I the SI asked him his name and address. He disclosed his name as Avtar Singh aforesaid. I the SI told him that the

**CRA-D-307-DB-2005 (O&M)****-15-**

truck in his possession was suspected to contain the poppy husk bags and to keep them in possession a legal offence, and he had right under the law to get his search and that of his truck conducted in the presence of a Magistrate or a Gazetted Officer. Then Avtar Singh replied that he wants to get his search and that of his truck conducted in the presence of a Gazetted officer. Upon this the consent memo was prepared. Then Sh. Nachattar Singh, DSP Sub Division Moga reached the spot, on receipt of information. He disclosed his identity to Avtar Singh and told him that he was a gazetted officer. Then with the consent of Avtar Singh and on the instruction of the DSP., I the SI conducted the search of the truck under the rules and from the body of the truck, 40 gunny bags containing poppy husk were recovered from beneath the tarpaulin and each bag on weighment, came to be 35 Kgs. Out of the recovered bags, 250 grams of poppy husk was taken out as sample from each of the gunny bag and their parcels were prepared. The bags were also made into parcel. The gunny bag parcels and the sample parcels were sealed by me the SI with my seal bearing letters J.S. and by the DSP with his seal bearing letters N. S. and taken into police possession along with the tarpaulin, vide a separate memo. The sample seals were separately prepared. I handed over my seal, after use, to PW Gant Singh and the DSP kept his seal with him. Truck no. PB-04-2867 along with the spare-wheel, deck, RC which is in the name of Surjit Singh s/o Narain singh r/o Daulewala, route permit, insurance certificate and photo copy of driving licence of Avtar Singh

**CRA-D-307-DB-2005 (O&M)****-16-**

aforesaid were taken into police possession vide a separate memo. On conducting the personal search of Avtar Singh, currency notes worth Rs.570/- were recovered from the purse of black colour, kept by him in the right pocket of the pant worn by him, which were taken into police possession along with the purse, vide a separate memo. The memo was got attested from the witnesses. The DSP attested the sample parcels, gunny bag parcels and the specimen seal. Statements of the witnesses were recorded at the spot. On reaching police station Mehna, the case property and the accused were produced before SI Mukhtiar Singh, SHO, P.S. Mehna, who, after enquiry, sealed 40 gunny bags containing poppy husk and 40 sample parcels with his seal bearing letters M.S. and took them in his own possession along with the truck and other case property, vide a memo. The accused was lodged in the lock up of the police station Mehna under the rules. Today on 26-8-02 the SHO Police station Mehna produced the case property and the accused Avtar Singh, through ASI Chamkaur Singh, in the court of Sh.K.K.Bansal, JMIC, Moga. The Magistrate remanded the accused till 29-8-02 and ordered the case property to be deposited with the MHC of the Police Station.

The Special report is put up before you.

Seen

Sd/-

N.Singh

DSP/SD/Moga

26.08.2002

Sd/-Jasbir Singh, SI

C.I.A. Staff, Moga

26.08.02”



CRA-D-307-DB-2005 (O&M)

-17-

23. **Ex.P1** is the memo regarding transfer of case property under Section 57 of the NDPS Act, 1985. The same is reproduced as under:-

“ *State Vs. Avtar Singh and Another*

FIR No.63 dated 25.8.2002 Police Station Mehna,

U/s 15/61/85 of the NDPS Act.

Memo regarding transfer of case property

In the presence of the below noted witnesses, SI Jasbir Singh, CIA/Moga produced before me in intact condition, the property of the aforesaid case viz a truck no.PB-04-2867. L.P colour, NP colour, alongwith the spare wheel, deck, tarpaulin, and 40 gunny bag parcels containing poppy husk, each weighing 34 $\frac{3}{4}$ Kg and 40 sample parcels containing poppy husk, each weighing 250 grams, duly sealed with seal JS and NS alongwith the specimen seal, a purse of black colour and currency notes worth Rs.570/- of personal search alongwith accused Avtar Singh. After enquiry I found that facts correct and sealed 40 gunny bag parcel send 40 sample parcels containing poppy husk with my seal bearing letters MS and took them in possession alongwith truck, spare wheel, deck, tarpaulin and Rs.570/- and purse of personal search vide this memo. Specimen seal was prepared. The Parcels were attested. The memo regarding transfer of case property has been prepared.

Witness

Sd/-

Jasbir Singh S.I

C.I.A/Moga

Witness

Sd/-

ASI Shamsher Singh,

CIA/Moga

Sd/- (in Punjabi)



CRA-D-307-DB-2005 (O&M)

-18-

Mukhtiar Singh
SHO P.S.Mehna 25.08.02.

24. **Ex.P-1** is Form No.29. The same is reproduced as under:-

“ *State Vs. Avtar Singh and Another*

FIR No.63 dated 25.8.2002 Police Station Mehna,
U/s 15/61/85 of the NDPS Act.

Statement showing details of suspected articles forwarded to the
Chemical Examiner:-

Weight of quantity : 40 sample parcels containing poppy
straw of 250 grams each sealed with
the seal of J.S, N.S and M.S.

Sample parcels sent by Head C. Ramesh Kumar No.873

Certified that the articles are intact in good condition
and have been carefully packed in my presence each bottle of article
being wrapped.

No.272/Ex.

Dt:02.09.02

Sd/-Mukhtiar Singh
SI/SHO P.S.Mehna
Dt-02.09.02

Forwarded to the Chemical Examiner of Govt. Punjab at
Chandigarh for favour of analysis

SI/for
Sr.Supdt. of Police
Moga.02.09.2002”

25. **Ex.PJ** is the Chemical Laboratory Report, which is reproduced as under:-

“ *State Vs. Avtar Singh and Another*

FIR No.63 dated 25.8.2002 Police Station Mehna,
U/s 15/61/85 of the NDPS Act.

CHEMICAL LABORATORY



CRA-D-307-DB-2005 (O&M)

-19-

Report on the analysis of the samples of poppy Head, forwarded by S.S.P. Moga referred to in his endst no. 2721/Ex dated 2.9.02.

The exhibits marked here 12-P-Sept-02 to 51-P-Sept-02 were received on 3.9.02 with the particulars overleaf. The seals of the exhibits were intact on arrival and agreed with the specimen seal sent. The exhibits remained in my safe custody after its receipt, till the time its analysis was started.

The analysis of the samples marked here 12-P-Sept-02 to 51-P-Sept-02 are as under.

The analytical date is enclosed herewith.

OPINION: The analysis indicates that the contents of the exhibits marked here 12-P-Sept-02 to 51-P-Sept-02 are of Poppy Head.

*SHO Mehana
for immediate compliance
Sd/for
Sr. Supdt/- of Police
Moga*

*Sd/- Sushobhita Kumari Deputy
Chemical Examiner to, Govt
Punjab, Chandigarh
(Govt-Notification No.4957-2HB-11-74/
10602 dated 29th/30th April 1974, As
Asstt. Chemical Examiner to Govt.
Punjab) Sd/- (in English) 02.09.02*

*Deputy Chemical Examiner
To Govt. Punjab
S E A L
Chandigarh”*

26. **Ex.P/L** is the affidavit of MHC Gurmit Singh, which is reproduced at as under:-

“State Versus Avtar Singh and another.

FIR No.63 dated 25.8.2002 of Police Station Mehna.

U/S 15/61/85 of the NDPS Act.

**CRA-D-307-DB-2005 (O&M)****-20-**

Affidavit of MHC Gurmit Singh No.140 Moga, Police Station Mehna.

1. *I HC Gurmit Singh no.140 do solemnly affirm and declare that on 25-8-02 I was posted as MHC in police Station Mehna and the charge of the Malkhana of the Police Station was with me.*

2. *I HC Gurmit Singh no.140 do solemnly affirm and declare that on 26-8-2002 ASI Chamkaur Singh, on the direction of SI Mukhtiar Singh, SHO, P.S Mehna, had deposited with me in the Malkhana, the property of the aforesaid case and 40 parcels each containing 250 grams of sample poppy husk, duly sealed with seal J.S, NS., and M.S. alongwith the specimen seal.*

3. *I HC Gurmit Singh no.140 do solemnly affirm and declare that on 2-9-02 I had handed over the aforesaid 40 sample parcels alongwith specimen seal bearing letters JS, NS and MS, vide RC No. 202/02 to C. Ramesh Kumar no.873, for depositing them in the office of Director, Chemical Examiner Punjab, Chandigarh, with the direction to get, at first, the docket forwarded and despatched from the office S.S.P.Moga and then to deposit in the office of Chemical Examiner, Punjab, Chandigarh.*

4. *I HC Gurmit Singh no.140 do solemnly affirm and declare that as per my direction, C.Ramesh Kumar no.873 had got the docket forwarded and despatched from the office of SSP Moga on the same day and on 3.9.02 he had deposited the aforesaid parcels in intact condition in the office of Chemical Examiner, Laboratory,*



CRA-D-307-DB-2005 (O&M)

-21-

Chandigarh alongwith the specimen seal, and on return, he handed over the road-receipt to me, which I had placed on record.

5. *I HC Gurmit Singh no.140 do solemnly affirm and declare that so long as the parcels of the aforesaid case, duly sealed with seal J.S., N.S. and M.S. and the specimen seal remained deposited with me in the Malkhana. I did not tamper with them nor allowed anyone else to do so.*

*Sd/-Gurmit Singh
HC/140 Deponent
Dt: 13.12.2003*

I, HC Gurmit Singh no.140 do solemnly affirm and declare that paras no. 1, 2, 3 and 5 of my aforesaid affidavit are true and correct to the best of my knowledge and para no.4 to the best of my belief. I have not kept anything concealed therefrom nor any part of it is false.

*Sd/-Gurmit Singh
HC/140 Deponent
Dt: 13.12.2003*

*I know the deponent personally
Who signed in my presence*

*Sd/-
A.D.A. , Moga
13.12.2003*

*Judl. Magistrate, Ist Class
SEAL
Moga (P.B)*

*Sd/-
JMIC, Moga (D)
13.12.2003”*

27. This Court in **CRA-S-5190-SB-2015** titled as “**Deepak Kumar Vs. State of Punjab**” along with other connected appeals, decided on 18.09.2024, held as under:-



“6. Before proceeding to render an answer to the substantial question of law (supra), the making of allusion(s) to the standing order No.1/89, as drawn by the Government of India, Ministry of Finance (Department of Revenue), is of utmost importance. In clause 2.3 and 2.4 thereof, clauses whereof becomes extracted hereinafter, it becomes elucidated that the quantity to be borne in each sample, thus for a chemical test becoming made thereons at the laboratory concerned, shall not be less than 5 grams in respect of all narcotic drugs and psychotropic substances.

“2.3 The quantity to be drawn in each sample for chemical test shall not be less than 5 grams in respect of all narcotic drugs and psychotropic substances save in the cases of opium, ganja and charas (hashish) where a quantity of 24 grams in each case is required for chemical test. The same quantities shall be taken for the duplicate sample also. The seized drugs in the packages/containers shall be well mixed to make it homogeneous and representative before the sample (in duplicate) is drawn.

2.4 In the case of seizure of a single package/container, one sample in duplicate shall be drawn. Normally, it is advisable to draw one sample (in duplicate) from each package/container in case of seizure of more than one package/container.”

7. However, it has been further elucidated therein, that if seizure of opium, ganja and charas (hashish) takes places, thereupon the sample to be derived from the bulk is to be weighing 24 grams, thus for the same becoming sent for testings to the laboratory concerned.



Similarly, for the duplicate sample also, the same or similar quantities become envisaged therein. Moreover, the seized drugs in the packages/containers, become thus prior to the samples (supra) becoming drawn from the bulk, rather ordained to become well mixed or being homogeneously mixed. However, in case of the seizure taking place of a single package or container, thereupon it is contemplated in the above extracted provisions, that only one sample in duplicate shall be drawn.

8. *Furthermore, the Government of India, Ministry of Finance (Department of Revenue), has issued a notification, on 23.12.2022, wherein, in Chapters II and III thereof, certain provisions are carried in Clauses 4 to 11 thereof. The said clauses become extracted hereinafter.*

“4. Designation of godowns. – (1) The godowns for storage of narcotic drugs, psychotropic substances, controlled substances, conveyance and other articles seized under the Act shall be designated by,-

(a) the department and agencies of the Central Government whose officers have been delegated powers of an officer-in-charge of a police station under section 53 of the Act;

(b) The State Police and the department and agencies of the State Government whose officers have been delegated powers of an officer-in-charge of a police station under section 53 of the Act.

(2) Godowns referred to in sub-rule (1) shall be identified taking into consideration the security aspect and juxtaposition to court of law and such godowns shall



be placed under the over-all supervision and charge of an officer of Gazette rank of the department and agencies referred to in sub-rule (1).

5. Deposit in godowns. – (1) *All seized materials referred to in sub-rule (1) of rule 3, after seizure under the Act shall be deposited by the seizing officer in the nearest godown designated under rule 4 within forty-eight hours from the time of seizure alongwith a forwarding memorandum in Form-1:*

Provided that the said time period may be relaxed by further twenty-four hours after providing of reasonable justification by the officer to whom the seized material has been forwarded under sub-section (3) of Section 52 of the Act.

(2) *The officer in-charge of a godown, before giving an acknowledgement of receipt in Form-2, shall satisfy himself that the seized materials are properly packed, sealed and in conformity with the details mentioned in Form-1.*

(3) *The officer, who had seized the material, shall hand over the acknowledgement of receipt of seized material in Form-2, along with all other documents relating to the seizure, to the Investigating Officer for further proceedings.*

6. Storage of seized material in godown. – (1) *After receipt of the seized material, the officer in-charge of the godown shall ensure that the seized material is properly arranged, case-wise, for quick retrieval.*

(2) *The officer in-charge of a godown shall maintain a register of material received in the godown in Form-3.*

(3) *All seized material, excluding the conveyances, shall be stored in safes and vaults with double lock.*



7. Inspection of godown. – (1) The department and agencies referred to in rule 4 and the State Police shall designate an Inspecting Officer for each godown, who shall be higher in rank to that of the officer in-charge of the godown.

(2) The Inspecting Officer referred to in sub-rule (1) shall make periodical inspection of the godown, at least once in every quarter, and shall record his remarks in the godown register in Form-3 with respect to security, safety and early disposal of the seized material.

(3) The departments and agencies, referred to in rule 4 and the State Police shall maintain periodical reports and returns to monitor the safe receipt, deposit, storage, accounting and disposal of seized materials under the Act.

8. Application to Magistrate. – After the seized material under the Act is forwarded to the officer-in-charge of the nearest police station or to the officer empowered under section 53 of the Act or if it is seized by such an officer himself, he shall prepare an inventory of such material in Form-4 and apply to the Magistrate, at the earliest, under sub-section (2) of section 52A of the Act in Form-5.

9. Samples to be drawn in the presence of Magistrate. – After application to the Magistrate under sub-section (2) of section 52A of the Act is made, the Investigating Officer shall ensure that samples of the seized material are drawn in the presence of the Magistrate and the same is certified by the magistrate in accordance with the provisions of the said-sub-section.

10. Drawing the samples. – (1) One sample, in duplicate, shall be drawn from each package and container seized.



(2) When the packages and containers seized together are of identical size and weight bearing identical marking and the contents of each package give identical results on colour test by the drugs identification kit, conclusively indicating that the packages are identical in all respects, the packages and containers may carefully be bunched in lots of not more than ten packages or containers, and for each such lot of packages and containers, one sample, in duplicate, shall be drawn:

Provided that in the case of ganja, poppy straw and hashish (charas) it may be bunched in lots of not more than forty packages or containers.

(3) In case of drawing sample from a particular lot, it shall be ensured that representative sample in equal quantity is taken from each package or container of that lot and mixed together to make a composite whole from which the samples are drawn for that lot.

11. Quantity to be drawn for sampling. – *(1) Except in cases of opium, ganja and charas (hashish), where a quantity of not less than twenty-four grams shall be drawn for each sample, in all other cases not less than five grams shall be drawn for each sample and the same quantity shall be taken for the duplicate sample.*

(2) The seized substances in the packages or containers shall be well mixed to make it homogeneous and representative before the sample, in duplicate, is drawn.

(3) In case where seized quantities is less than that required for sampling, the whole of the seized quantity may be sent.”

9. *Tritely put, in the above extracted statutory provisions, it has been mandated, that the representative sample to be derived from the*



bulk rather is required to be so drawn only after the entire seized bulk becoming homogeneously mixed. Moreover, thereins also exist, thus provisions relating to the apposite quantities becoming enclosed in the sealed cloth parcels, besides exist provisions with respect to prompt dispatches being made of the apposite samples for therebys testing being made at the laboratory concerned. Moreover it also becomes ordained therein, that expeditious testings, thus are required to be made by the Chemical Examiner concerned, vis-a-vis the stuff enclosed in the samples parcels, as become sent to him, for analyses thereons becoming made. Imperatively also thereins becomes underlined the necessity of remnants of samples becoming returned with reference to the test memo, to the office from where the samples were received, but within three months after analysis becoming made thereovers at the Laboratory concerned.

10. *However, immediately after acceptance of the test report by the Court of the Magistrate, the duplicate sample held by the Investigating Officer becomes ordained to become deposited in the godown referred to in Rule 5 along with the remnants of the sample.*

11. *The inference(s) is to be drawn therefrom are that, the said above extracted provisions, relate to the inventory becoming drawn in terms of Section 2 of Section 52A of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as “the Act”), thus in the presence of the Magistrate, by the investigating officer concerned. The said provisions becomes extracted hereinafter.*



“[52A. Disposal of seized narcotic drugs and psychotropic substances.—[(1) xxx

(2) Where any [narcotic drugs, psychotropic substances, controlled substances or conveyances] has been seized and forwarded to the officer-in-charge of the nearest police station or to the officer empowered under section 53, the officer referred to in sub-section (1) shall prepare an inventory of such [narcotic drugs, psychotropic substances, controlled substances or conveyances] containing such details relating to their description, quality, quantity, mode of packing, marks, numbers or such other identifying particulars of the [narcotic drugs, psychotropic substances, controlled substances or conveyances] or the packing in which they are packed, country of origin and other particulars as the officer referred to in sub-section (1) may consider relevant to the identity of the [narcotic drugs, psychotropic substances, controlled substances or conveyances] in any proceedings under this Act and make an application, to any Magistrate for the purpose of—

(a) certifying the correctness of the inventory so prepared; or

(b) taking, in the presence of such magistrate, photographs of [such drugs, substances or conveyances] and certifying such photographs as true; or

(c) allowing to draw representative samples of such drugs or substances, in the presence of such magistrate and certifying the correctness of any list of samples so drawn.



(3) Where an application is made under sub-section (2), the Magistrate shall, as soon as may be, allow the application.

(4) Notwithstanding anything contained in the Indian Evidence Act, 1872 (1 of 1972) or the Code of Criminal Procedure, 1973 (2 of 1974), every court trying an offence under this Act, shall treat the inventory, the photographs of 1[narcotic drugs, psychotropic substances, controlled substances or conveyances] and any list of samples drawn under sub-section (2) and certified by the Magistrate, as primary evidence in respect of such offence.]”

12. *Though, the said reference does not cover the subject relating to the creation of storage facilities in the police malkhana concerned, nor the subject reference relates to prompt dispatches being made of the samples to the laboratories concerned, rather for ensuring that the stuff enclosed therein becoming promptly examined nor also though the subject appertains to expeditious testings being made vis-a-vis the stuff inside the sample parcels. Moreover, though the subject at hand also does not relate to the return of the tested sample to the office wherefrom it became received nor does it deal with the said returned parcels, thus enclosing therein the stuff examined, becoming produced before the Court concerned along with the test report.*

13. *Nonetheless, even if the above aspects do not fall within the subject reference, but the alluded to (supra) provisions existing in the notification (supra) do beget striking conclusion qua:*



a) *There being an imperative necessity of testings being made of the stuff inside the sample parcels.*

b) *The inventory as becomes prepared in the presence of Magistrate concerned, in terms of Section 52A of the Act, but without testings of the stuff enclosed in the sample parcels, thus being made at the laboratory concerned, rather per se not acquiring the utmost evidentiary vigor.*

14. *Moreover, thereins as an obligation becomes cast upon the police department concerned, to ensure the creations of adequate storage facilities in the malkhanas concerned, as well, as an obligation becomes cast upon the investigating agencies, to make prompt dispatches of the samples to the laboratories concerned, so that, the enclosed thereins stuff becomes examined.*

15. *Tritely also the return, of the examined stuff inside the said parcels, to the police malkhana concerned, thus subsequent thereto apposite production in Court along with the test report becomes enshrined therein, to be an imperative obligation made upon all concerned, whereafters, thus on conclusion of trial the produced in Court case properties is to be ordered to be deposited in the godown concerned.*

16. *In paragraph 35 of the judgment rendered by the Hon'ble Apex Court in "Noor Aga V. State of Punjab and another" Criminal Appeal No.1034 of 2008, decided on 09.07.2008, paragraph whereof becomes extracted hereinafter, it has been enshrined that the alluded*



to (supra) necessities are the required to be proven sine qua non, thus for the charge drawn against the accused becoming declared to become unflinchingly proven.

“35. The High Court proceeded on the basis that non-production of physical evidence is not fatal to the prosecution case but the fact remains that a cumulative view with respect to the discrepancies in physical evidence creates an overarching inference which dents the credibility of the prosecution. Even for the said purpose the retracted confession on the part of the accused could not have been taken recourse to.”

*17. Now the above referred to notification(s) issued by the Government of India, appear to also become aprobated by the Hon’ble Apex Court, in a judgment rendered case titled as **“Gaunter Edwin Kircher V. State of Goa, Secretariat Panji, Goa”, Criminal Appeal No.642 of 1991, decided on 16.03.1993.** The above appears to be in tandem with the verdict rendered by the Hon’ble Apex Court in **“Noor Aga V. State of Punjab and another” Criminal Appeal No.1034 of 2008, decided on 09.07.2008,** relevant paragraph whereof becomes extracted hereinafter.*

“J. Narcotic Drugs and Psychotropic Substances Act, 1985, Sections 52A and 53 – Customs Act, 1962, Section 110(IB) – Physical evidence – Case Property – Recovery of heroin from accused – Case property destroyed and not produced – Physical evidence relating to three samples taken from the bulk amount of heroin were also not produced – Bulk quantity was destroyed the samples were essential to be produced and proved as primary



evidence for the purpose of establishing the fact of recovery of heroin as envisaged under Section 52A of the Act.”

18. *The ire point relating to the unneccessity, of laboratory testing being made of the entire recovered stuff, but is grooved in the factum, that the hereinabove alluded to provisions as carried in the notification (supra), do cast an obligation upon all concerned, to ensure that only after the entire seizure becoming homogeneously mixed, qua thereafters from the bulk rather residue samples becoming drawn but in the mode, manner and quantities detailed hereinabove.*

19. *It appears that given the immensity of the weight of the apposite bulk seizure, that therebys after the concerned, thus homogeneously mixing the bulk seizure, hence evidently of an immense weight, whereafters the concerned become enjoined to draw samples from the bulk. Reiteratedly, the immensity of the weight of the apposite seizure is curable by the drawings of residue samples from the bulk, but only when prior thereto rather the entire bulk becomes homogeneously mixed. Consequently, therebys the constraining factor of inadequacy of spaces within the laboratory concerned, whereby the laboratory concerned, may on account of shortage of spaces there, thus may become precluded to examine the entire bulk, thus appears to become eased. As such, to avoid the immense load of the entire bulk seizure travelling to the laboratories concerned, that derivative samples from the bulk are envisaged but only after such derivation taking place*



rather from the bulk but only after all concerned, reiteratedly homogeneously mixing the entire bulk seizure, otherwise not.

20. *Conspicuously, the hereinabove extracted respective standing order and notification become declared by a judgment rendered by the Hon'ble Apex Court in case titled as "Noor Aga V. State of Punjab and another" Criminal Appeal No.1034 of 2008, decided on 09.07.2008, to be holding a mandatory character and also become ordained therein to be requiring completest adherence. Contrarily on breach thereof becoming made, therebys may be the accused would become entitled to an acquittal.*

21. *Furthermore, in case the entire bulk is homogeneously mixed and derivative samples are derived therefroms, resultantly the effect thereof would be that, the incriminatory finding as become recorded on the stuff inside the sample parcels as sent to the laboratory concerned, thus would acquire a presumption of truth, irrespective of the fact that the entire bulk wherefrom the derivative samples are borrowed, but after the entire seizure becoming homogeneously mixed, rather not becoming sent for analyses thereovers, being made at the laboratory concerned. Contrarily, in case the entire bulk seizure remains not homogeneously mixed, thereupon the charge drawn against the accused appertaining to the weight of the entire weight of the seizure, de hors affirmative results being made in respect of the stuff inside the residue sample parcels, as, sent to the*



laboratory concerned, rather would come under a cloud of doubt, whereupon benefit thereof would accrue to the accused.

22. *As an illustration, if the 08 packets were allegedly recovered from the appellant and only two packets were having contraband substance and rest 6 packets did not have any contraband; though all may be of the same colour, when we mix the substances of all 8 packets into one or two; then definitely, the result would be of the total quantity and not of the two pieces. Therefore, the process adopted by the prosecution creates suspicion. In such a situation, as per settled law, the benefit thereof should go in favour of the accused. It does not matter the quantity, but proper procedure has to be followed, without which the results would be negative.*

23. *Reiteratedly, in case, the derivative samples from the bulk are drawn but without the entire bulk seizure becoming homogeneously mixed, thereupon the laboratory examination of the stuff inside the sample cloth parcels rather would not prove the charge relating to the weight of the entire bulk seizure taking place, at the crime site, thus from the alleged conscious and exclusive possession of the accused.*

24. *Contrarily, in case the entire bulk seizure is not homogeneously mixed or when the narcotic drug(s) or psychotropic substance, does become carried in different vials or in different packets, besides upon the said mode(s) of carryings of (supra), becomes not homogeneously mixed, thereupons, even if a fragment or a portion thereof becomes extracted from one vial or only from one packet, thus for creating a*



residue parcel, it would beget the ill consequence of the accused becoming entitled to an acquittal. Resultantly, when despite the evident absence of apposite homogeneous mixings of the entire bulk, be it borne in packets, containers or be it being carried in different vials, besides when only a part of the fragment or portion of the seizure or only one or two of the vials, yet the said extracted fragment becomes sent for examination to the laboratory concerned, but the apposite affirmative laboratory examination as becomes made vis-a-vis the stuff inside the sample parcels, rather would not make the charge drawn against the accused, thus for his allegedly exclusively and consciously possessing, the entire seizure, thus also becoming efficaciously proven.

25. *Conspicuously when for the drawing of an effective conclusion, that the charge drawn against the accused for his allegedly consciously and exclusively possessing, the entire bulk, but requires that only after homogeneous mixing of the bulk seizure, taking place, be it of psychotropic substance, in vials or in any other mode or be it with respect of narcotic drugs carried in whatsoever mode, rather residues therefrom becoming drawn, whereafter an affirmative finding on the stuff inside the residues, is required to be made by the Chemical Examiner concerned.*

Sample procedure in respect of psychotropic substance

26. *In case no batch number is mentioned, in the recovered psychotropic substance, thus carried in the form of tablets/strips,*



thereupon at least one of the tablets from all the relevant strips rather is to be extracted, as residue sample and the same is required to be sent for testings being made thereovers, at the laboratory concerned. However, in case batch number is mentioned in all the recovered bulk strips, thereupon only one of the tablets in the entire haul is required to be sent for testings being made thereovers, at the laboratory concerned. However, the quantity of the sample to be derived from the bulk is to be in terms of the provisions (supra), but with a further safeguard that not only vis-a-vis the entire bulk but also vis-a-vis the sample parcel, the relevant batch number is required to be made on the covers of each of the sealed cloth parcels.

27. *Therefore, the sampling procedure in respect of bulk seizure of the apposite psychotropic substance, ordains that the making of the bulk seizure, besides derivation of a sample parcel, therefroms would be vitiated unless adherence becomes made to the hereinafter extracted underlined canons.*

“(v) It has also come in the evidence that there was no batch number, name of manufacturer or other details given on the bottles of Rexcof syrup and therefore, the sample of one bottle taken, was also not in accordance with the procedure laid down under the aforesaid standing order. In view of the judgment of this Court in Harjinder Singh (supra), the sealed sample cannot be held to be a representative parcel of the entire bulk allegedly recover from the appellant”



28. Relevant portion of the judgment dated 06.04.2005 passed by the Special Judge, Moga is reproduced as under:-

“8. From the discussion held before this court and from the perusal of the file, it has surfaced as to whether recovery had been effected from accused of 14 Qunintals of poppy husk and whether second accused Surjit Singh owner of truck is liable to be convicted under Section 25 of the N.D.P.S.Act as per the case of the prosecution.

9. Learned Additional Public Prosecutor had argued that all the witnesses had materially supported the prosecution version. He further contended that it is fairly proved that Avtar Singh was found in possession of and that the truck owned by recovered poppy husk; Surjit Singh had allowed it to be used by Avtar singh for carrying contraband material. The minor discrepancies and irregularities are bound to occur because of considerable lapse of time between the date of occurrence and examination of the witnesses. He had prayed that verdict of suit be returned to the accused and they be held guilty and convicted.

10. On the other hand, learned counsel for the accused Avtar Singh namely Shri Jasbir Singh Advocate (Legal Aid Counsel) had argued at outset that ruqa itself is doubtful i.e. the endorsement is Ex.PA/2. He had argued that writing on the ruqa and the signatures of Chamkaur Singh is with different pen and different ink. It is further argued that as Per PWL AS I Chamkaur singh, the ruqa had been sent by Jasbir Singh through C Gumail singh while the prosecution



version is that it has been sent through C Baldev Singh. This discrepancy although, there but it is not contended as to whether accused had been prejudiced on account of this discrepancy which has surfaced. It can safely be attributed to memory lapses between the date of recovery and date of recording oral testimony of witness. PW 1 AS I Chamkaur Singh has further testified in his cross-examination that he does not know as to how many malkhanas are there in police station Mehna. He had also testified that in the request letter Ex.PB written for the proceedings under Section 52 A of the N. D.P. S. Act, the description of currency note is not specifically mentioned. He had also admitted that engine and chasis number is not mentioned in the said request EX.PB. Learned Judicial Magistrate Ist Class had only signed on the samples and not on the gunny bags while Learned Illaqa Magistrate had undisputedly signed on sample parcels as well as gunny bags. In view of heavy commercial quantity, this discrepancy pointed out cannot be considered to be of potential to throw away case of the prosecution.

11. Further, it is argued that PW 3 Nachhattar singh, DSP had not proved the con sent memo alleged to have been proved. His statement is that he had introduced himself to the accused Avtar Singh present in the court being DSP Sub Division, Moga and that he is Gazetted Officer of the Punjab Government. He further told that accused Avtar Singh is likely to be searched. Accused Avtar reposed confidence in him, then at his direction SI Jasbir Singh Investigating Officer



conducted search of the bags which led to recovery of the said contraband material in the form of poppy husk. The contention of learned defence counsel is repelled by learned Addl. Public Prosecutor that in the cross-examination of the witness no suggestion has been put to him regarding non-preparing of consent memo or its consequent effect neither it has been put to him as to what prejudice has been caused to the accused. Further, learned Addl.P.P has argued that consent memo is only required Under Section 50 which concerns only personal search of the accused and it does not attracted in the instant trial which is not the case of personal search.

12. Further presence of Shamsher singh PW4 is alleged to be doubtful because he had remained silent about his going to SHO from the spot. He had also shown his ignorance about the consent memo and he does not know as to whom seal was handed over. He had also revealed in his cross-examination that ownership of the nearby agricultural fields were not verified nor any one had given information about such ownership and his statement was recorded at Police Station Mehna. All these discrepancies are contended to create suspicion as to whether PW 4 ASI Shamsher singh was present at the spot or not. He had not been cross-examination about material version of the recovery of the case property from Avtar Singh. The marginal factors regarding which he could not answer properly had been tried to be high-lighted. These discrepancies and infirmities in the oral testimony of PW4 ASI Shamsher singh cannot led this court



that he was not present on the spot, only considering these over highlighted discrepancies and ignoring this major part of convincing oral testimony.

13. *Much stress has been laid down that independent witness who was alleged to be joined, has not been examined. Further that only witness joined Gant Singh is stock witness and in order to press upon this contention, learned defence counsel had relied upon documents Ex. D4 to Ex. DB. On the other hand, learned Additional Public Prosecutor had argued that unless person is not condemned to be stock witness by any court, he cannot be labelled to be so by this court only because of the fact that he had been arranged as an independent witness in more than one case. The explanation given by the prosecution is plausible.*

14. *PW 5 is C Ramesh Kumar Constable No.873. It has been vehemently contended by learned defence counsel that this witness had said that 40 samples and 40 sample seals different cases were taken to Forensic Science Laboratory while prosecution case is that only one sample seal was prepared. The version regarding taking 40 sample seals of different cases by one constable is implausible and it appears to be slip of the tongue because it is no where the case of defence that samples had been tampered. Therefore, no benefit could be allowed to be derived from the slip of tongue of formal witness PW- 5 Ramesh Kumar.*



15. It has also been argued that as per version of PW2 ASI Shamsher Singh, the ownership of the neighbouring fields had not been verified from any person. So as contended by learned defence counsel it remained unexplained as to how it has been mentioned to be the agricultural fields around the spot of recovery are that of one Gurdev Singh son of Narain Singh, Bakhtaur Singh son of Balwant Singh, Pritam Singh son of Lachhman Singh in the site plan Ex.PG which remained unexplained.

xxxx xxxxx xxxxx

18. In this manner, the recovery from possession of accused Avtar Singh (who was found to be sitting on it), had been established beyond shadow of reasonable doubt. Minor discrepancies are to be ignored in view of the huge recovery of about 14 quintals which cannot be safely said to be planted. This inference will also be same because there is no enmity of the local police with Avtar Singh to rope him in false recovery case.

xxxx xxxxx xxxxx

21. In view of the above discussion accused Surjeet Singh is acquitted of the charge framed against him. Accused Avtar Singh had been proved to found in possession of 40 bags of poppy husk beyond shadow of reasonable doubt, therefore, he is held guilty of possessing huge commercial quantity of poppy husk without any permit or licence and accordingly he is convicted under Section 15(C) of the Narcotic Drugs & Psychotropic Substances Act, 1985.”



29. A perusal of the record as referred to above shows that there is no homogeneous mixing of the poppy-husk, which was in 40 bag parcels.

30. There is no compliance of Section 52(A) of the Narcotic Drugs and Psychotropic Substances Act, 1985. Section 52(A) of NDPS Act is reproduced as under:-

“52A. Disposal of seized narcotic drugs and psychotropic substances.-- [(1) The Central Government may, having regard to the hazardous nature, vulnerability to theft, substitution, constraint of proper storage space or any other relevant consideration, in respect of any narcotic drugs, psychotropic substances, controlled substances or conveyances, by notification in the Official Gazette, specify such narcotic drugs, psychotropic substances, controlled substances or conveyance or class of narcotic drugs, class of psychotropic substances, class of controlled substances or conveyances, which shall, as soon as may be after their seizure, be disposed of by such officer and in such manner as that Government may, from time to time, determine after following the procedure hereinafter specified.]

(2) Where any³[narcotic drugs, psychotropic substances, controlled substances or conveyances] has been seized and forwarded to the officer-in-charge of the nearest police station or to the officer empowered under section 53, the officer referred to in sub-section (1) shall prepare an inventory of such³[narcotic drugs, psychotropic substances, controlled substances or conveyances] containing such details relating to



their description, quality, quantity, mode of packing, marks, numbers or such other identifying particulars of the³[narcotic drugs, psychotropic substances, controlled substances] or conveyances or the packing in which they are packed, country of origin and other particulars as the officer referred to in sub-section (1) may consider relevant to the identity of the³[narcotic drugs, psychotropic substances, controlled substances or conveyances] in any proceedings under this Act and make an application, to any Magistrate for the purpose of--

(a) certifying the correctness of the inventory so prepared; or

(b) taking, in the presence of such magistrate, photographs of⁴[such drugs, substances or conveyances] and certifying such photographs as true; or

(c) allowing to draw representative samples of such drugs or substances, in the presence of such magistrate and certifying the correctness of any list of samples so drawn.

(3) Where an application is made under sub-section (2), the Magistrate shall, as soon as may be, allow the application.

(4) Notwithstanding anything contained in the Indian Evidence Act, 1872 (1 of 1972) or the Code of Criminal Procedure, 1973 (2 of 1974), every court trying an offence under this Act, shall treat the inventory, the photographs of⁵[narcotic drugs, psychotropic substances, controlled substances or conveyances] and any list of



samples drawn under sub-section (2) and certified by the Magistrate, as primary evidence in respect of such offence.”

A perusal of Section 52A (2) shows that it is mandatory for the officer referred to in sub Section (1) to prepare the inventory of such narcotic drugs, psychotropic substances, controlled substances or conveyances containing such details relating to their description, quality, quantity, mode of packing, marks, numbers or such identifying particulars of the narcotic drugs, psychotropic substances, controlled substances or conveyances or the packing in which they are packed, country of origin and other particulars as the officer referred to in sub-section(1) may consider relevant to the identity of the narcotic drugs, psychotropic substances, controlled substances or conveyance in any proceedings under the act and further to make an application to any Magistrate for the purpose of certifying the correctness of inventory so prepared or taking in the presence of such magistrate, photographs of such drugs, substances or conveyance and certifying such photographs as true. Further, it is mandatory for the officer referred to in sub-Section (1) to allow to draw representative samples of such drugs or substances, in the presence of such magistrate and certifying the correctness of any list of samples so drawn.

Whereas in the present case no such inventory is prepared by the officer concerned.

CONCLUSION

31. After perusing the whole record of this case, this Court finds the following discrepancies/lack of investigation as per the statutory provisions and law laid down by this Court as well as by the Hon’ble Supreme Court:-

**CRA-D-307-DB-2005 (O&M)****-45-**

- i) A perusal of the record as referred to above shows that there is no homogeneous mixing of the poppy-husk, which was in 40 bag parcels.
- ii) There is no compliance of Section 52A(2) of the Narcotic Drugs and Psychotropic Substances Act, 1985
- iii) A perusal of FSL report as referred to above does not reveal the number of seals and number of sample receipts and there is no return by chemical examiner by further sealing it with English alphabet.
- iv) A perusal of record further shows that all the sample parcels as stated by C Ramesh Kumar PW-5 were in the form of bulk and tied in a piece of cloth whereas in the FSL report there is no examination of the stuff inside the cloth parcel. There is nothing in the FSL report regarding seal impressions on the cloth parcel, number of seals with English alphabets, in terms mention in the recovery memo Ex.P/C.
- v) Further, there is non-production of parcel containing residue as separated from the bulk, at the crime site before the learned Trial Court along with FSL report.

Since there are grave lapses in the prosecution case, therefore, the benefit of doubt is liable to be given to the accused/appellant.

FINAL ORDER

32. In view of the above discussion this Court finds merit in the present appeal and is constrained to allow it. Consequently, the present appeal is allowed.



Impugned judgment dated 06.04.2005 and order dated 7.04.2005 convicting and sentencing the appellant by learned trial Court are set aside.

33. The appellant is acquitted of the charges framed against him. The fine amount, if any, deposited by him, be refunded to him in accordance with law.
34. The personal and surety bonds of the accused shall stand forthwith cancelled and surety stands discharged.
35. The case property be dealt with in accordance with law, but after the expiry of period of limitation for filing of an appeal or revision if any.
36. Records of the learned trial Court be sent down forthwith.
37. The appellant, if in custody, and, if not required in any other case, be forthwith set at liberty. Release warrants be prepared accordingly.
38. Pending applications, if any, also stand disposed of.

(SURESHWR THAKUR)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

October 21, 2024
tripti

Whether speaking/non-speaking : Speaking
Whether reportable : Yes