

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

**Crl. Appeal No.S-487-SB of 2012**  
**Date of Decision: December 02, 2015**

Jaspal Singh

...Appellant

**VERSUS**

The Narcotics Control Bureau, Chandigarh

...Respondent

**CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH**

Present: Mr.Subhash Godara, Legal Aid counsel  
for the appellant.

Mr.D.D.Sharma, Standing Counsel  
for the respondent.

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**INDERJIT SINGH, J.**

The present appeal has been filed by the appellant against the judgment of conviction and order of sentence dated 11.11.2011 passed by learned Judge, Special Court, Tarn Taran, whereby he was held guilty and convicted and sentenced to undergo rigorous imprisonment for a period of ten years and to pay a fine of ₹1 lac and in default of payment of fine, to further undergo rigorous imprisonment for a period of six months under each Section 21 and 23 of the NDPS Act. Both the sentences were ordered to run concurrently.

The brief facts of the complainant's/prosecution case as mentioned in the impugned judgment are as under:-

“On 09.04.2008 on receipt of the information of crossing of narcotics drugs in the AOR, BOP Jhugian Noor Mohd.,

130 Bn. BSF from DC (G), BSF Range, Hqs Ferozepur, which was reduced into writing and sent to Senior Officers of the department, additional troops were sent in the area from Bn. Hqs on 9.4.2008. All the troops were commanded and briefed by Sardar Singh, DC/Adjutant 130 Bn. BSF alongwith D.K. Singh, DC (G) B.S.F. Range HQs Ferozepur and his team. Naka was laid under the supervision of N.S. Choudhary, Comdt. 130 Bn. B.S.F. in the suspected area. On the same date at 23 hours, Lorros sentry observed the moments of six Pak Nationals near IB between BP No.174/7. They were having three gunny bags and two plastic pipes. N.S.Choudhary, Comdt. and Sardar Singh DC/ Adjutant went to Lorros room and personally observed the moments of Pak Nationals and directed to Inspector Ashish Behl, the officiating Coy Comdr, 'A' Coy to lay additional depth ambush to cordon the suspected area and deploy troops to readjust their location and thereafter command the whole operation.

It is further stated in the complaint that on 10.4.2008 at about 0150 hours, two Indian smugglers were detected on Indian side. Coy Comdr Inspector Ashish Behl immediately alerted Naka no.22 and all other parties. Pak smugglers cleared the consignment through BS fence and Indian smugglers received the same. The party challenged the smugglers upon which the smugglers on both the sides tried to flee. 18 rounds of AKM were fired by BSF troops to stop the smugglers of both the sides but taking advantage of darkness and wheat crop, Pak smugglers managed to escape and Indian smugglers lied down in wheat field. The BSF party also fired Illu Bombs to illuminate the area. On the same day at about 0240 hours, the above said party apprehended the said Indian smugglers who were later on identified as Kanwalraj Singh son of Sarwan Singh Resident of village Bhangala, PS Valtoha, Tehsil Patti and Jaspal Singh son of Kandhari Lal resident of village Toot, Post Office Bhangala, Tehsil Patti. Two cloth bags (pipe shaped) having 12 packets and 8 packets respectively of suspected heroin total 20 packets, each of approximately 1 kg, 1 Nokia Mobile with Spice SIM and three additional Pak SIM were seized from their possession.

It is further stated in the complaint that on the telephone message from BSF officer on the same date i.e. 10.04.2008 that they have apprehended two Indian Nationals on the Indo Pak Border Fencing at BOP J.N. Mohd. Coy Hqrs 130 Bn. with 20 packets of suspected narcotics drugs in their possession and BSF authorities want to hand over the said accused along with suspected

narcotics drugs to NCB Chandigarh and requested that NCB team may proceed immediately to 130 Bn. BSF for undertaking further legal proceedings and investigation of the case. The information was reduced into writing and was submitted to the Superintendent NCB Chandigarh. As per directions of the Superintendent on 10.04.2008, a team consisting of R.S.Sethi, Intelligence Officer, Hardesh Kumar, Intelligence Officer, Rajesh Kumar, Driver-cum-Sepy and Balwinder Singh Sepoy was formed, who proceeded from Chandigarh to 130 Bn. BSF and the aforesaid team reached there on the same date about 1815 hours, who associated two independent witnesses namely M.P.Singh, 2<sup>nd</sup> Incharge, 130 Bn. BSF Khem Karan and Pritam Chand, Inspector, 130 Bn. BSF Khem Karan. R.S.Sethi, introduced himself and other members of the team to the witnesses and Sardar Singh DC/Adjutant 130 Bn. BSF Khem Karan. Thereafter, said Sardar Singh handed over Kanwalraj Singh and Jaspal Singh with two pipe shaped cloth bags containing 12 polythene packets in one bag and 8 polythene packets in another bag of suspected narcotics drugs, one Nokia Mobile Phone with Spice SIM and three Pakistant SIMs, incident report and recovery inventory and R.S.Sethi, Intelligence Officer acknowledged the same. The contents of all the twenty packets were weighed with the weighing machine carried by the NCB team and the same were found to be 1 kg. each and 20 kgs. in total.”

Hardesh Kumar, Intelligence Officer, conducted the test for each packet with the help of drug detection kit carried out of NCB team and on such test, the contents of all the 20 packets tested positive for heroin. Samples were taken out and sealed sample parcels were prepared as per law. Panchnama was prepared. The recovered heroin was taken into possession. Hardesh Kumar recorded the statement of accused Kanwalraj Singh under Section 67 of the NDPS Act on 11.04.2008 after serving notice under Section 67 of the NDPS Act, who made his statement voluntarily, without any duress, coercion, influence or promise. Statement of accused Jaspal Singh under Section 67 of the NDPS Act was also recorded and same

procedure was adopted. Statements of independent witnesses M.P.Singh and Pritam Chand were recorded. Accused were arrested. Accused along with case property and case file were produced before learned JMIC, Patti on 12.04.2008. The case property was authenticated by learned JMIC, Patti and court samples of 5 grams each were drawn from each lot in the presence of the Court and entire process of authentication was photographed. R.S.Sethi gave information under Section 57 of the NDPS Act in writing to Superintendent, NCB on 13.04.2008.

Finding prima facie case, the accused-appellant along with co-accused was charge-sheeted under Sections 21 and 23 of the NDPS Act, to which they pleaded not guilty and claimed trial.

In support of its case, complainant examined PW-1 Sardar Singh, Deputy Commandant, PW-2 R.S.Sethi, PW-3 Ashish Behl, PW-4 Balwinder Kumar, Superintendent, NCB and PW-5 Hardesh Kumar and they deposed as per complainant's version.

At the close of complainant's evidence, the accused-appellant was examined under Section 313 Cr.P.C. and he denied the correctness of the evidence and pleaded himself as innocent. He further stated that he has been falsely implicated in this case. The NCB officials obtained his signatures on blank papers and later on same were converted into his statement under Section 67 of the NDPS Act. He also stated that nothing was recovered from him and the alleged recovery is planted one.

No witness was examined in defence.

The learned trial Court, after appreciation of the evidence, convicted and sentenced the accused-appellant as stated above.

At the time of arguments, learned counsel for the appellant argued that case of the complainant is doubtful as secret information was not shared with the local police. Even after the arrest of the present appellant, no information was given to the police. He next argued that though it is a case of the complainant that 19 shots of AKM were fired but none was injured. He further argued that the witnesses from Narcotics Control Bureau (NCB) have not seen the recovery from the accused. Learned counsel for the appellant next contended that the occurrence took place at about 2.40 A.M. on 10.04.2008 and the NCB team reached at 6.15 P.M. on the same day and the operation started on 09.04.2008 as per complainant's version. Therefore, the witnesses PW-2 R.S.Sethi, Intelligence Officer, PW-4 Balwinder Kumar, Superintendent NCB and PW-5 Haradesh Kumar, Intelligence Officer, who accompanied R.S.Sethi's NCB team, did not prove the recovery. He argued that benefit of doubt should be given to the accused. Learned counsel for the appellant, therefore, argued that there being merit in the appeal, the same should be allowed and accused-appellant should be acquitted.

On the other hand, learned counsel for the respondent-Narcotics Control Bureau argued that case of the complainant/prosecution has been duly proved by leading cogent evidence. No reasonable doubt exists in the complainant's version.

The recovery has been effected by the BSF. He next argued that PW-

1 Sardar Singh, Deputy Commandant supervised the whole operation but PW-3 Ashish Behl, Company Commandant led the operation and apprehended present appellant along with co-accused Kanwalraj Singh, who died during the trial. He further argued that under Section 54 of the NDPS Act, it can be presumed during trials, where the narcotics etc. have been found in possession of person, who fails to account satisfactorily. Learned counsel for the respondent next contended that statements of the accused were also recorded under Section 67 of the NDPS Act and statement of present appellant Jaspal Singh also proves the case of the complainant. He further contended that PWs have consistently deposed regarding the complainant's version. There are no material contradictions or improvement in their statements. Link evidence is complete and mandatory provisions of the NDPS Act have been complied with. Learned counsel for the respondent, therefore, argued that there being no merit in the appeal, the same should be dismissed.

I have heard learned counsel for the parties and have gone through the record.

From the record, I find that it is not necessary or mandatory to share the secret information received by the BSF regarding smuggling from the International Border of India and Pakistan. If the information is shared with the local police or any other investigating agency, there are chances of leaking of such secret information and then the whole operation would be of no use. The information was received and the persons on the Pakistan side were

seen as per the information. Then the BSF launched the operation and recovered 20 kgs. of heroin and the present appellant along with co-accused was apprehended. Even otherwise, by that time, local police or any other person is not supposed to go close to the International Border, which is guarded/managed by the BSF. After the apprehension of the appellant, the information was given to NCB Chandigarh and request was made to send the senior officers. So, by not giving the information to the local police after the arrest of the present appellant, does not create any doubt. The NCB team was not present at the time of recovery and they are also not supposed to be present there at that time. PW-2 R.S.Sethi, PW-4 Balwinder Kumar and PW-5 Hardesh Kumar, who also accompanied R.S.Sethi, have duly supported and corroborated the complainant's version. The complainant version has been duly proved by PW-3 Ashish Behl, Company Commandant, Incharge of the operation, who apprehended the present appellant and by PW-1 Sardar Singh, Deputy Commandant, who supervised and controlled the whole operation. Such a huge recovery of 20 kgs. of heroin cannot be falsely planted upon the appellant. Furthermore, as per the complainant's case, Jaspal Singh and other accused laid down on the ground and that is the reason that they have not received any injury. Therefore, on this ground also, no reasonable doubt exists in the complainant's version.

The statement of present appellant under Section 67 of the NDPS Act has been recorded, which also supports and corroborates the complainant's version. The presumption under

Section 54 of the NDPS Act has also not been rebutted by leading any cogent evidence. Otherwise also, the appellant has also not led any evidence as to what he was doing near the International Border at night time, which is a prohibited area. There is nothing on the record that BSF authorities of NCB have any enmity or motive against the appellant to falsely implicate him. There is also nothing on the record to disbelieve the statements of the witnesses.

Further, I find that PWs have consistently deposed regarding the complainant's case. No material contradictions or improvements have been pointed out, which may go to the root of the case. There is also nothing in the cross-examination of the PWs, which may make their statements unreliable. The mandatory provisions of NDPS have been complied with. Link evidence is complete.

In view of the above discussion, I find that complainant's case has been duly proved by leading cogent evidence beyond any reasonable doubt. The judgment of conviction and order of sentence dated 11.11.2011 passed by learned Judge, Special Court, Tarn Taran, is correct, as per law and do not require any interference from this Court.

Therefore, finding no merit in the present appeal, the same is dismissed.

**December 02, 2015**  
Vgulati

**(INDERJIT SINGH)**  
**JUDGE**