

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

**Crl. Appeal No.S-1133-SB of 2016 (O&M)**  
**Date of Decision: May 09, 2016**

Balwant Singh alias Bant

...Appellant

**VERSUS**

State of Punjab

...Respondent

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

Present: Mr.D.S.Gill, Advocate  
for the appellant.

Mr.Varun Sharma, Asstt. Advocate General, Punjab  
for the respondent-State.

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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 01.03.2016 passed by learned Judge, Special Court, Sri Muktsar Sahib, whereby the appellant was held guilty and convicted and sentenced to undergo rigorous imprisonment for a period of two years and to pay a fine of ₹5,000/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of two months under Section 22 of the NDPS Act.

The brief facts of the prosecution case as noted down in the judgment passed by learned Judge, Special Court, Sri Muktsar Sahib are as under:-

*“The facts, as put forth by the prosecution, are to the effect that on 27.05.2012, a police party headed by SI Mohan Lal was going from village Singhewala, Fatuhiwala to village Killianwali in connection with patrolling and checking of suspects. When the police party reached near*

*the brick kiln situated on the GT road of Dabwali to State versus Balwant Singh Malout, accused Balwant Singh was seen coming carrying a plastic bag in his right hand near the wall of brick kiln, who on seeing the police party got perplexed and tried to retreat but, was apprehended on suspicion. On enquiry by the IO, he disclosed his name, address and parentage. SI Mohan Lal told the accused that he suspects some intoxicating substance in the bag, and whether he wanted to be searched in the presence of Gazetted Officer or Magistrate, but the accused reposed confidence in the police party itself. The consent memo Ex.P12 of the accused was reduced into writing, which was thumb marked by the accused, attested by the witnesses. On search of the bag, intoxicating powder was recovered from the bag, out of which 10 grams was separated as sample and reduced into a parcel, while the remaining intoxicating powder weighing 360 grams was also reduced into a bulk parcel. Both the parcels were sealed by the IO at the spot with his seal bearing impressions 'ML'. Specimen seal chit Ex.P13 was prepared on the spot. The seal after use was handed over to ASI Baljinder Singh. The entire case property was taken into possession vide recovery memo Ex.P14, which was attested by the aforesaid PWs. A Ruqa Ex.P15 was sent to the police station and on its basis formal FIR Ex.P16 was recorded. The accused was arrested and memo of grounds of arrest Ex. P18 was also prepared. Rough site plan Ex.P20 of the place of recovery was prepared at the spot, with correct marginal notes. Statements of witnesses were recorded. On return to the police station, SI Mohan Lal produced the case property and the accused before ASI Duli State versus Balwant Singh Chand, SHO, who verified the investigation, and sealed the case property with seal bearing impressions 'DC' and took the case property in his possession. On the next day, the accused along-with entire case property was produced in the court of learned Ilaqa Magistrate. On return to the police station, the case property was deposited with MHC Pritpal Singh with seals intact. A detailed report Ex.P9 was sent to the Ilaqa DSP. On receipt of report of Forensic Science Laboratory Ex.P22 and completion of necessary investigation, challan was presented against the accused in the Court."*

On presentation of challan against accused-appellant, copies of challan and other documents were supplied to him under

Section 207 Cr.P.C. Finding prima facie case, the accused-appellant

was charge-sheeted under Section 22 of the NDPS Act, to which he pleaded not guilty and claimed trial.

In support of its case, prosecution examined PW-1 SI/SHO Duli Chand, who mainly deposed regarding the verification of the case. PW-2 MHC PritpalSingh, is formal witness, who tendered into evidence his affidavit Ex.PW11. PW-3 SI Mohan Lal, Investigating Officer, deposed regarding investigation conducted by him in the present case and also deposed regarding recovery from the accused-appellant. PW-4 ASI Baljinder Singh, recovery witness, supported and corroborated the prosecution version. PW-5 Head Constable Rajvir Singh, is also formal witness, who tendered into evidence his affidavit Ex.PW5/A.

At the close of prosecution evidence, the accused-appellant was examined under Section 313 Cr.P.C. He was confronted with the evidence of the prosecution and he denied the correctness of the evidence and pleaded himself as innocent.

In defence, accused examined DW-1 Hansa Singh, who mainly deposed that false case has been registered against the accused-appellant and he is of good character and is a farmer.

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 mainly on one point that no independent witness was joined by the police party and there are only testimonies of police officials, which cannot be believed. In the alternative, learned counsel for the

appellant, prayed for reduction of sentence.

On the other hand, learned State counsel argued that case of the prosecution has been duly proved by the PWs. The PWs have consistently deposed regarding the prosecution version. Link evidence is complete. He further argued that all the mandatory provisions of the NDPS Act have been complied with. Learned State counsel, therefore, argued that there being no merit in the appeal, the same should be dismissed.

After hearing learned counsel for the appellant as well as learned State counsel and after going through the record, I find that it is settled law that the testimony of police official is as good as of any other witness unless some enmity or motive of the police official to falsely implicate the accused is alleged and proved. In the present case, no such enmity of the police officials against the accused has been alleged. No defence evidence has been produced by the accused. The police party was on patrolling duty and the recovery from the accused is sudden and by chance. There was no opportunity with the police party to join the independent witness. No material contradictions or discrepancies have been pointed out in the statements of the PWs at the time of arguments. The PWs have consistently deposed regarding the prosecution version. Even, there is nothing in their cross-examinations, which may make their statements unreliable. All the mandatory provisions of the NDPS Act have been complied with. Link evidence is also complete.

In view of the above discussion, I find that the prosecution

has duly proved its case by leading cogent evidence beyond reasonable doubt. Therefore, the judgment of conviction dated 01.03.2016 passed by learned Judge, Special Court, Sri Muktsar Sahib, is correct, as per law and does not require any interference from this Court.

As regarding the alternative prayer for reducing the sentence, learned counsel for the appellant contended that appellant is first offender, only bread earner of the family and the recovery from the appellant falls under non-commercial quantity.

Keeping in view the facts and circumstances of the present case and in view of the fact that appellant is suffering from long protracted criminal proceedings since 2012 i.e. for the last about 4 years and further in view of the fact that appellant has already undergone imprisonment of seven months and seven days out of the total sentence and keeping in view the fact the recovery from the accused-appellant falls under non-commercial quantity i.e. 370 grams intoxicant powder, the sentence imposed upon the appellant is reduced to the sentence already undergone by him. However, the sentence of fine and default thereof shall remain the same.

Accordingly, present criminal appeal stands partly allowed.

Appellant Balwant Singh alias Bant, who is in custody, be released forthwith, if his custody is not required in connection with any other case, subject to payment of fine, if already not paid.

**May 09, 2016**  
Vgulati

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