

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

Crl. Appeal No.S-2130-SB of 2016 (O&M)

Date of Decision: August 22, 2016

Jaswinder Singh alias Nikki

...Appellant

VERSUS

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.A.S.Sekhon, Advocate
for the appellant.

Mr.D.S.Virk, Asstt. Advocate General, Punjab
for the respondent-State.

INDERJIT SINGH, J.

The present appeal has been filed by the appellant against the judgment of conviction and order of sentence dated 03.05.2016 passed by learned Judge, Special Court, Faridkot, whereby the appellant along with co-accused 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 three months under Section 15 of the NDPS Act.

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

“2. Briefly the case set-up by the prosecution is that on 18.08.2014, ASI Jarnail Singh alongwith ASI Rajinder Singh, HC Balwinder Singh alongwith other police officials were going on official vehicle Balero bearing registration No.PB04-

J-3589 being driven by HC Laxmi Narain and were present by holding special Nakabandi in the chowk of Village Romana Albel Singh. At about 4.10 p.m, one Scooter bearing registration No.PB11-N-2022 Bajaj Chetak of grey colour with two youngmen was spotted to be coming from City Kotkapura. They both were carrying a plastic bag (white in colour) in between them. On seeing the police party, they both became perplexed. On the basis of suspicion, they were apprehended. During interrogation, driver of the scooter told his name as Jaswinder Singh @ Nikki son of Amar Singh resident of Kotkapura whereas the pillion rider told his name as Jagdeep Singh @ Gori son of Jagroop Singh @ Natha, resident of Bariwala, District Muktsar Sahib. Investigating Officer (hereinafter referred to as IO) tried to join an independent witness, but no one was ready. ASI/Investigating Officer apprised Jaswinder Singh @ Nikki about his name, rank, profile and occupation and stated that the police party is suspicious that the plastic bag transported by them consisted of some intoxicant substance and they want to get the search conducted. Accused were apprised about their right to get the search of the bag conducted from any Gazetted Officer or a Magistrate. Jaswinder Singh @ Nikki reposed confidence and stated that he has no objection if his search and search of plastic bag transported by them in between him and Jagdeep Singh @ Gori be conducted by them. He does not want to call any Magistrate or Gazetted Officer. Consent memo Ex.PA was prepared, which was duly signed by the accused Jaswinder Singh @ Nikki alongwith other attesting witnesses. Thereafter, Investigating Officer disclosed his rank, name, profile and occupation to Jagdeep Singh @ Gori and re-iterated that since the police party is suspicious that the plastic bag consisted of some contraband, so they want to get the search of the same conducted. After apprising the accused about his legal right, Jagdeep Singh @ Gori reposed confidence on Investigating Officer and waived off his legal right to get the search conducted from any Gazetted Officer or a Magistrate. Thereafter, consent memo Ex.PB was prepared, which was duly signed by the accused alongwith other attesting witnesses. Investigating Officer (IO) unloaded the plastic bag of white colour and opened the mouth. Poppy husk was found to be consisted in it. Representative samples of 250-250 grams each were drawn separately. On weighment, the remaining poppy husk comes to be 9 Kilograms and 500 grams. Samples were sealed in separate parcels. Bulk Parcel was prepared accordingly, which was sealed by the Investigating Officer with his seal bearing impression 'JS'. Sample seal in triplicate was prepared on form M-29. Seal after use was handed over to ASI Rajinder Singh. Three parcels alongwith form M-29 and scooter bearing registration No.PB11-N-2022 of grey in colour were taken into possession vide separate recovery memo Ex.PD. Since Jaswinder Singh @ Nikki and Jagdeep

Singh @ Gori had failed to produce licence or permit for retaining 10 Kilograms of poppy husk, so, both of them committed an offence punishable under section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985. Ruqa Ex.PE was sent to the police station, on the basis of which FIR Ex.PE/1 was registered. After interrogation, arrest of the accused Jaswinder Singh @ Nikki was effected. On his personal search, currency notes of the denomination of 70/- were recovered and on personal search of accused Jagdeep Singh @ Gori, currency notes of the denomination of Rs.110/- were recovered. Personal search memos Ex.PF and Ex.PG were prepared accordingly. Memo to seek legal advice of Jagdeep Singh @ Gori Ex.PH and of Jaswinder Singh @ Nikki Ex.PI were prepared. Grounds of arrest and intimation regarding rank of the Investigating Officer was given vide memos Ex.PJ & Ex.PK. Physical verification of Jagdeep Singh @ Gori was conducted vide memo Ex.PL and of Jaswinder Singh @ Nikki was conducted vide memo Ex.PM. Intimation regarding arrest of the accused Jagdeep Singh was given vide memo Ex.PN and intimation regarding arrest of the accused Jaswinder Singh was given vide memo Ex.PO. Investigating Officer prepared rough site plan Ex.PP. Statements of the witnesses were recorded under section 161 Cr.P.C. on return to the police station, accused were sent to police lock up and investigating Officer himself kept the case property in his possession. On 19.08.2014, accused and case property were produced before Mrs. Kiran Bala, Id. Additional Chief Judicial Magistrate, Faridkot. On the basis of application under section 52-A of the NDPS Act Ex.PR, inventory proceedings were carried out and the correctness of the seals was certified vide order Ex.PT. Case property was ordered to be confiscated and deposited in Malkhana vide order Ex.PU. Accused were sent to judicial lock up vide order Ex.PV. After sending the accused in judicial Lock up and after retaining one sample parcel along-with form M-29, the remaining case property i.e. bulk parcel and sample parcel were got deposited before the MHC Balkaran Singh. Special Report under section 57 of the N.D.P.S.Act Ex.PW was sent to the Deputy Superintendent of Police, Sub Division, Jaitu. On 25.08.2014, vide road No.147 dated 25.08.2014, sample was sent through C Lakhwinder Singh No.846 for depositing the same in the office of Forensic Science Laboratory, Mohali. During the investigation, scooter No.PB11-N-2022 Bajaj Chetak was found to be the ownership of Balwinder Kaur wife of Yadwinder Singh, who sold vide affidavit dated 16.05.2014 in favour of Jaswinder Singh @ Nikki, who intentionally had not got transferred on his name. So, Balwinder Kaur was found to be innocent. After the completion of the investigation challan was presented against the accused under section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985. ”

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 15 of the NDPS Act, to which he pleaded not guilty and claimed trial.

In support of its case, prosecution examined PW-1 ASI Jarnail Singh, Investigating Officer, PW-2 Constable Lakhwinder Singh, PW-3 ASI Rajinder Singh, recovery witness, PW-4 Head Constable Balkaran Singh and PW-5 Head Constable Jagsir Singh.

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.

No witness was examined in defence.

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

At the time of arguments, learned counsel for the appellant did not dispute the findings regarding conviction and only prayed for reduction of sentence of the appellant. Learned counsel for the appellant contended that 10 kgs. of poppy husk has been recovered from the accused-appellant, which falls under non-commercial quantity. The appellant is suffering from criminal proceedings since 2014. He further contended that the appellant is first offender and only bread earner of the family. He further contended that accused-appellant has already undergone more than 5 months of actual

sentence.

On the other hand, learned State counsel argued that case of the prosecution has been duly proved by the PWs. There is nothing on the record to show false implication of the accused in the present case. He next argued that PWs have consistently deposed regarding the recovery from the accused. Learned State counsel, therefore, argued that there being no merit, the present appeal should be dismissed.

I have heard learned counsel for the appellant as well as learned State counsel and have gone through the record.

Keeping in view the facts and circumstances of the present case and in view of the fact that appellant is first offender, only bread earner of the family and is suffering from long protracted criminal proceedings since 2014 i.e. for the last about 2 years and further in view of the fact that appellant has already undergone actual sentence of more than 5 months out of the total sentence and keeping in view the fact the recovery from the accused-appellant falls under non-commercial quantity i.e. 10 kgs. of poppy husk, the sentence imposed upon the appellant is reduced to the sentence already undergone by him. However, the sentence of fine and in default thereof shall remain the same.

Accordingly, present criminal appeal stands partly allowed.

Appellant Jaswinder Singh alias Nikki, who is in custody, be set at liberty forthwith, if his custody is not required in connection with any other case, subject to payment of fine, if already not paid.

August 22, 2016
Vgulati

(INDERJIT SINGH)
JUDGE