

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

Crl. Appeal No.S-2713-SB of 2016 (O&M)

Date of Decision: August 19, 2016

Gurdial Singh

...Appellant

VERSUS

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Dilpreet Singh Gandhi, Advocate
for the appellant.

Ms.Shivali, 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 dated 02.07.2016 and order of sentence dated 04.07.2016 passed by learned Judge, Special Court, Amrtisar, whereby the appellant was held guilty and convicted and sentenced to undergo rigorous imprisonment for a period of six months and to pay a fine of ₹5,000/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of one month under Section 15(b) of the NDPS Act.

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

“1. On 25.3.2014, PW1 Assistant Sub Inspector Ravail Singh along with Sub Inspector Gurmail Singh, Head Constable Balwant Singh, Head Constable Maninderpal Singh, Head Constable Harjinder Singh, Head Constable Ranjit Singh on Govt. vehicle No.PB02-AS-2828, with Head Constable

Jaswinder Singh working as driver, as per directions of Sub Inspector Sanjeev Kumar, Incharge, Anti Narcotic Staff, Special Branch Amritsar (Rural), were going from CIA Staff towards Village Bhagtupura, Chatiwind, Gurwali, Mandiala, Sanghna, etc. When the police party reached a little ahead of Village Sanghna, accused was seen coming on foot from the side of Village Jagatpura, who was carrying a big polythene bag of black colour in his right hand. Accused on seeing the police party, on the pretext of urinating, sat down on the left hand side of the road and tried to throw the polythene bag in the fields of wheat. He was apprehended by Assistant Sub Inspector Ravail Singh with the help of other police officials. On inquiry, accused disclosed his name as Gurdial Singh alias Hira son of Jagtar Singh, resident of Lahian, Police Station Sarai Amanat Khan, District Tarn Taran. When asked about the contents of the polythene bag, accused stated that it contained his clothes. On checking the polythene bag, it was found containing poppy husk.

2. It is further case of the prosecution that out of the recovered poppy husk, 250 grams was separated as sample which was put into a separate plastic container, which was converted into a parcel. The remaining bulk poppy husk on being weighed came out to be 2 kilograms 500 grams, which was also put into a separate plastic container and also converted into a parcel. Both the parcels were sealed by Assistant Sub Inspector Ravail Singh with his seal bearing impression 'RS'. Sealed parcels were taken in police possession vide separate Memo Exhibit PA. Form M-29 was filled at the spot. Sample seal was separately prepared. Seal after use was handed over to PW3 Sub Inspector Gurmail Singh. Accused could not produce any license or permit to keep in his possession 2 kilogram 750 grams of poppy husk.

3. PW1 Assistant Sub Inspector Ravail Singh scribed ruqa Exhibit PB, which was sent to Police Station Chatiwind through Head Constable Ranjit Singh, which led to registration of First Information Report Exhibit PC, which was recorded by Sub Inspector Harpal Singh.

4. Assistant Sub Inspector Ravail Singh prepared rough site plan of place of recovery Exhibit PD. Accused was arrested vide memo Exhibit PE. Personal search of the accused was conducted vide memo Exhibit PF. On reaching Police Station Chatiwind, Assistant Sub Inspector Ravail Singh handed over both the parcels along with Form M- 29, sample seal and custody of the accused to PW4 Sub Inspector Mukhwinder Singh, Station House Officer vide Handing Over Memo Exhibit PG and also disclosed the complete facts of the case to him.

5. PW4 Sub Inspector Mukhwinder Singh after verification of facts put his own seal bearing impression 'MS' on the parcels and kept the same in double lock of the Malkhana. Sample seal was also prepared. On the next day i.e. 26.3.2014, Sub Inspector Mukhwinder Singh handed over the accused, parcels

along with documents to the Investigating Officer, who produced the same before the Illaqa Magistrate Shri SS Jossan, Addl. Chief Judicial Magistrate, Amritsar for certification of correctness of inventories by moving application Exhibit PH and the court passed the order Exhibit PJ. A representative sample of 250 grams was also drawn in the court from the bulk parcel as per rules. After certification, the case property was given back to Assistant Sub Inspector Ravail Singh, who was directed to deposit the case property in the Judicial Malkhana as per rules, who on return to the Police Station again deposited the case property with the Station House Officer Mukhwinder Singh, who kept the same in the double lock.

6. On 28.3.2014, PW4 Station House Officer Mukhwinder Singh handed over the sample parcel along with sample seals, Form M- 29 Exhibit PK to PW2 Head Constable Narinder Singh for depositing the same in the Office of Chemical Examiner, Kharar. Head Constable Narinder Singh deposited the sample parcel in the Office of Chemical Examiner and brought back a receipt, which he handed over to Station House Officer Mukhwinder Singh. It was on 29.3.2014 that the Station House Officer gave the parcel containing bulk quantity and the representative sample parcel to the Investigating Officer for its deposit in the Judicial Malkhana, who deposited the same in the Judicial Malkhana vide receipt Mark A. 7. On receipt of report of Chemical Examiner Exhibit PL, according to which sample parcel contained powder poppy heads and on completion of other investigation, challan was filed.”

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 SI Ravail Singh, Investigating Officer, PW-2 Head Constable Narinder Singh, PW-3 Sub Inspector Gurmail Singh, PW-4 Sub Inspector Mukwinder Singh, and PWs Head Constable Maninder Pal Singh, Moharrir Head Constable Jagir Singh and Sub Inspector Harpal Singh were given up.

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 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 2 kgs. 750 grams 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 is young person of 26 years, first offender and only bread earner of the family. He further contended that accused-appellant has already undergone about 2 months and 8 days 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 young man of 26 years, 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 about 2 months and 8 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. 2 kgs. 750 grams 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 Gurdial Singh, 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 19, 2016
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No