

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

Crl. Appeal No.S-412-SB of 2016 (O&M)

Date of Decision: August 16, 2016

Gurcharan Singh alias Sonty

...Appellant

VERSUS

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.P.P.S.Tung, 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 and order of sentence dated 18.01.2016 passed by learned Judge, Special Court, Patiala, whereby the appellant along with co-accused Hari Singh was held guilty and convicted and sentenced to undergo rigorous imprisonment for a period of four months and to pay a fine of ₹1500/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of two weeks 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, Patiala, are as under:-

“2. The material facts, of the case are that, on 04.12.2013, ASI Joginder Singh, along with his police party, while traveling in private car in connection with patrolling, was present at 'T' Point, Sirhind Bypass, Patiala. There he received secret information to the effect that accused Gurcharan Singh and Hari Singh were in the habit of selling poppy husk 2 by

bringing the same from Rajasthan, and on that day also the said suspect while traveling in Tavera car No. PB-11-AH-9274, were bringing poppy husk in the said car and if a nakabandi is held, they can be apprehended red handed. In pursuance to the secret information, nakabandi was held. Efforts were made to join some independent witness but nobody became ready for fear of animosity. After sometime vehicle No. PB11-AH-9274 was seen coming. On seeing the police party, its driver tried to turn back. But in the process, the vehicle broke down. Both the occupants of the car were apprehended. On inquiry, the driver of the vehicle disclosed his name 'Gurcharan Singh' while the other occupant disclosed his name as 'Hari Singh. Both of them also disclosed their other particulars. Then ASI Joginder Singh disclosed his identity to the aforesaid persons and also told them that, he suspected them to be carrying some narcotic substance for which he intended to conduct their search as well as search of the said car. He also apprised them of the right to get the search conducted in the presence a Gazetted Officer or a Magistrate, who can be called at the spot. However, the accused reposed confidence in ASI Joginder Singh, upon which their consent memos were separately recorded. 3. Then, ASI Joginder Singh conducted search of the car of the accused, which led to recovery of one loaded bag containing poppy husk kept in between the seats of both the persons. Two samples of 100 grams each were separated. On weighment, the residue poppy husk weighed to be 9 kgs. 800 grams. Separate parcels of the samples and the 3 bag containing residue poppy husk were prepared and were sealed with the seal bearing impression "JS" of ASI Joginder Singh . Sample seal was separately prepared. Seal after use was handed over to ASI Sukhdev Singh. All the aforesaid parcels and sample seal were taken into possession vide recovery memo. Car and its RC along with one affidavit sworn by Gurpreet Singh son of Hardev Singh about sale of the vehicle to Harjinder Kaur wife of Gurcharan Singh and driving license of Gurcharan Singh were taken into possession vide separate memo. Ruqa was sent to the police station on the basis whereof, case was registered against accused. Various other proceedings were conducted at the spot. On return to the police station, the accused and the case property were produced before SI Jagdish Kumar, officiating SHO, who verified the fact of recovery and counter sealed the parcels and the sample seal with his seal bearing impression 'JK' and thereafter deposited the case property with MHC. 4. On 5.12.2013, accused and the case property were produced before the learned Ilaqa Magistrate and then the case property was deposited in Judicial Malkhana, CJM, Patiala, in consonance with the directions of the learned Magistrate. During the course of investigation, one sample parcel separated from each bag was sent to the office of the Chemical Examiner and the latter declared the contents of the

same to be 'chura poppy heads'. On completion of investigation, challan was presented against accused."

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 15/25 of the NDPS Act, to which he pleaded not guilty and claimed trial.

In support of its case, prosecution examined PW-1 ASI Sukhdev Singh, PW-2 MHC Bishamber Singh, PW-3 ASI Joginder Singh, PW-4 SI Jagdish Kumar and PW-5 HC Kuldeep 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 and also tendered documents Mark D1 to Mark D7.

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 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 2013. He is first offender and only bread earner of the family. He further contended that as per order dated 12.02.2016 suspending the sentence of the accused-appellant, he has already undergone

about 1 month and 21 days of actual sentence till 11.02.2016.

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 2013 i.e. for the last about 3 years and further in view of the fact that appellant has already undergone actual sentence of about 1 month 21 days out of the total sentence till 11.02.2016 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 will remain the same. As argued, fine has already been paid.

Accordingly, present criminal appeal stands partly allowed.

Since appellant Gurcharan Singh @ Sonty is on bail, his bail/surety bonds stand discharged.

August 16, 2016
Vgulati

(INDERJIT SINGH)
JUDGE