

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

**CRA-D No. 598-DB of 2010 (O&M)
Date of decision: 01.03.2017.**

Avtar Singh alias Tari and another Appellants.

Versus

Narcotics Control Bureau Respondent.

CORAM: HON'BLE MR. JUSTICE S.S. SARON
HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr. K.S. Dhaliwal, Advocate, for the appellants.

Mr. D.D. Sharma, Advocate,
for the respondent - Narcotics Control Bureau, Chandigarh.

Ms. Amarjit Kaur Khurana,
Additional Advocate General, Punjab.

S.S. Saron, J.

This appeal has been filed by Avtar Singh alias Tari and Jassa Singh alias Dodhi (appellants) against the judgment and order dated 08.12.2009 passed by the learned Judge, Special Court, Ferozepur, whereby the appellants have been held guilty and convicted for the offence punishable under Section 21 (c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS Act' - for short). By a separate order passed on the same day, they have been sentenced to undergo imprisonment for fifteen years; besides, pay a fine of Rs.2,00,000/- (Rs. Two lac only) each and in default of payment thereof, undergo further rigorous imprisonment for three years.

Ravi Kant Pawar, Intelligence Officer of the Narcotics Control Bureau ('NCB' - for short) filed a complaint dated 19.06.2006 in the Court

of learned Judge, Special Court for NDPS cases at Ferozepur. On the basis of the complaint that was filed, the learned Judge, Special Court at Ferozepur, on 21.08.2006, framed charge against the appellants which is to the effect that on 23.12.2005 at 0620 hours, i.e. 06:20 a.m., in the area of Mor Sadak Usmanwala on Arifke Mutthianwala road, the appellants were found in conscious possession of 26 kgs of heroin without any valid permit or licence for keeping the same in their possession. Thereby they committed an offence punishable under Section 21 (c) of the NDPS Act. The appellants were directed to be tried by the learned Court. The contents of the charge were read over and explained to them. They understood the same and pleaded not guilty, and claimed trial.

The prosecution, in order to establish its case, examined as many as five witnesses; besides, tendered documents in evidence.

The incriminating evidence that was brought on record was put to the appellants in terms of Section 313 of the Code of Criminal Procedure ('Cr.P.C.' - for short). In their defence, both the appellants stated that they were innocent and no incriminating article was recovered from them. They were picked up from their respective houses and this case was planted on them. In defence, HC Mohinder Singh (DW1) was examined by the appellants. He brought an application dated 11.12.2003 filed by Avtar Singh alias Tari accused (appellant No.1). Copy of which is Ex. D1. A copy of Ex. D1 was forwarded to the Director General of Police (DGP - for short) , Punjab, which was referred by the DGP, Punjab to the Senior Superintendent of Police, Ferozepur. Besides, Bakhshish Singh, Sarpanch of village Usmanwala (DW2) was examined who stated that about three or

four years prior to 23.12.2005, police officials and officials of police from Chandigarh came to their village in a large number. They included high police officials. Some of the villagers of their village were detained by them for questioning; besides, for three or four days prior to 23.12.2005 raids were conducted by them in many houses of their village. From a vacant land outside the village, bags were recovered which contained illegal materials. Thereafter, Jassa Singh and Avtar Singh accused (appellants) were taken from their houses and falsely implicated in the present case. In cross-examination, he stated that he was not a summoned witness and he himself had come to depose in Court. He had been informed by relatives of the appellants to come to the Court on that day. Both the appellants were his co-villagers and were cordial with him. No resolution was passed by the Panchayat of the village regarding false implication of the accused (appellants) in the present case. No representation was made regarding false implication of the accused (appellants) to higher police officials.

On the basis of evidence and material on record, as already noticed, the appellants have been convicted for the offence punishable under Section 21 (c) of the NDPS Act and sentenced to undergo imprisonment for fifteen years; besides, pay a fine of Rs.2,00,000/- each and in default of payment thereof, undergo further rigorous imprisonment for three years.

Mr. K.S. Dhaliwal, Advocate appearing for the appellants initially submitted that the present case is one of false implication as is brought out and the appellants have been wrongly convicted and sentenced. However, during the course of hearing, he submitted that the appellants in

fact, according to the order of the learned trial Court itself, were only the carriers of the contraband and it is the case of the prosecution itself that the appellants had picked up the contraband that was thrown from across the border. They were to deliver it to a person who was to come from Delhi to the house of Jassa Singh alias Dodhi (appellant No.2) and they were to receive Rs.2,50,000/- from him. It is further submitted that in para No. 23 of the judgment of the learned trial Court, the learned trial Court itself has held the appellants to be carriers of the contraband and no efforts were made by the NCB officials to trace out as to who was at the back of this recovery and to whom the consignment was to be delivered. It is also contended by learned counsel for the appellants that Ravi Kant Pawar, Intelligence Officer (PW2) has himself been convicted in another case of corruption though the said fact is not on record. Besides, it is submitted that the appellants are not previous convicts and, therefore, the sentence that has been imposed is unduly harsh and is liable to be reduced.

In response, Mr. D.D. Sharma, Advocate appearing for the NCB - respondent has submitted that the contraband was recovered from the conscious possession of the appellants and the quantity being quite substantial, the appellants even if they were carriers are liable to undergo fifteen years of imprisonment as has been imposed and their sentence is not liable to be reduced.

Ms. Amarjit Kaur Khurana, Additional Advocate General, Punjab, has filed affidavits of Mr. Ajmer Singh, Superintendent, Central Jail, Ferozepur, mentioning the periods of imprisonment undergone by the appellants. The affidavits are taken on record.

We have given our thoughtful consideration to the matter and have gone through the records with the assistance of learned counsel for the parties.

The limited issue that is involved in the appeal is regarding quantum of sentence. The prosecution case is that a secret specific information was received by Ravi Kant Pawar, Intelligence Officer (PW2) on 22.12.2005 at about 10:30 p.m. that the appellants were to transport a huge consignment of narcotic drugs/heroin for some unknown destination. The contraband was to be transported on a black colour TVS Centra motorcycle. They were to pass through Aarifke-Mutthianwala road Ferozepur before 06:30 a.m. on 23.12.2005. The information that was received was reduced into writing and put up before the Superintendent, NCB. The Superintendent, NCB informed the Zonal Director and he directed the Intelligence Officer (PW2) to constitute a team and reach Ferozepur. The Ferozepur police was also asked to be associated to set up a check-post ('naka') on the Aarifke-Mutthianwala road. The complainant (PW2) along with Balvinder Kumar, Intelligence Officer; Rajesh Kumar, Sepoy-cum-Driver and Ramesh Kumar, Sepoy reached Police Station Sadar Ferozepur. The Intelligence Officer - Ravi Kant Pawar (PW2) shared the information with the SHO, Police Station Sadar Ferozepur - Balvinder Kumar (PW3). A joint team of the NCB including the complainant and officials of the Punjab Police set up a check-post ('naka') at about 06:00 a.m. on the Aarifke-Mutthianwala road at 'Mor Sadak' Usmanwala. There was fog in the area and no other local person was available. Ravi Kant Pawar, Intelligence Officer (PW2) requested SI Palwinder Singh (PW3) and

SI Lakhwinder Singh verbally and in writing so as to associate them as witnesses.

The officials of the NCB and the police of Ferozepur at about 06:20 a.m. observed lights of a two-wheeler coming from Mutthianwala towards Aarifke. As the vehicle reached near, Ravi Kant Pawar, Intelligence Officer (PW2) signaled it to stop. Two persons were ridding on a black colour TVS Centra motorcycle, which was without a registration number. It was being driven by a young man aged about 25-26 years wearing a 'patka' (small headwear). A middle aged Sikh was ridding pillion and he was holding a green colour plastic bag in his hand. The bag had been kept between him and the driver. On stopping the motorcycle, both the persons got down from it and the bag was kept on the ground. The words 'Pankaj, a cow, Cattle Feed Mallanwala, IND etc.' were printed on the bag. Ravi Kant Pawar, Intelligence Officer (PW2) introduced himself and the team to the two motorcycle riders. On inquiry, the driver disclosed his name as Avtar Singh alias Tari (appellant No.1) aged 27 years. The person, who was riding pillion, disclosed his identity as Jassa Singh @ Dodhi (appellant No.2). The Intelligence Officer (PW2) disclosed the reasons and his intentions to search the persons riding the motorcycle and also the baggage.

A notice in terms of Section 50 of the NDPS Act was issued to both the persons informing them of their right to be searched before a Magistrate or a gazetted officer. Both the accused (appellants), however, volunteered to be searched by the Intelligence Officer - Ravi Kumar Pawar (PW2). They put their signatures and thumb impressions on the memos in

this regard in token of their correctness and also in token of having received a copy of the same. These were duly attested by the witnesses. The Intelligence Officer - Ravi Kumar Pawar (PW2) offered himself for search and also offered the search of his team. The same was, however, declined by the appellants. Thereafter, a search was conducted. On opening the bag, another jute bag containing some 'khaki' colour packets were found. The contents of the same were asked to be emptied on the ground. On doing so, almost identical twenty-six packets packed with 'khaki' tape adhesive were recovered from the bag. Eight packets had a black tape strip while seven had a white strip on them and some of the packets were of light 'khaki' colour. During inquiry, the appellants disclosed that all the twenty-six packets contained heroin which they were bringing from village Muttianwala from the house of Avtar Singh (appellant No.1) for further concealing it in the house of Jassa Singh (appellant No.2) at village Usmanwala. From the personal search of Avtar Singh alias Tari (appellant No.1), one silver colour pistol No. 67120, CAL 30 MOUSER made in China by NORIN Co. with five live cartridges in the magazine was recovered.

During preliminary investigation by the Intelligence Officer - Ravi Kant Pawar (PW2), the appellants disclosed that both of them were involved in drug trafficking for quite some time. They had received twenty-six packets of heroin, pistol and cartridges which were thrown by Pakistani smugglers across the fencing of the Indo-Pak border near Hussainiwala on the night of 22.12.2005 at about 01:00 a.m. under the cover of darkness and fog. A person from Delhi was to come to the house of Jassa Singh

(appellant No.2) on 23.12.2005 to collect the drug consignment. They were to receive a commission of Rs.2,50,000/- from him. The same person had collected drug consignments in a similar manner in the past and paid them their commission. The pistol and cartridges recovered were to be kept by Avtar Singh (appellant No.1) for his personal use. During further search, nothing incriminating was recovered either from the person of the accused (appellants) or the vehicle. Later, at about 07:00 a.m. due to other reasons like lack of proper light, dense fog, extreme cold, no proper place for work being available and above all the security and safe custody of recovered drugs and accused (appellants), the Intelligence Officer with the consent of witnesses decided to complete further proceedings at Police Station Sadar Ferozepur. The joint team of NCB and Punjab Police including the witnesses and the accused (appellants) along with the recovered contraband reached Police Station Sadar Ferozepur at about 08:00 a.m. The Intelligence Officer - Ravi Kant Pawar (PW2) started further proceedings at about 09:00 a.m. in a separate room. The details of the contraband that were recovered were noted and other formalities were carried out. The accused (appellants) were produced before the Duty Magistrate at Ferozepur along with the case property and relevant documents for authentication on 24.12.2005. They were remanded to the custody of NCB till 28.12.2005. They were sent to judicial custody on completion of NCB remand on 28.12.2005.

During investigation that had been conducted, it was brought out that an unregistered black colour TVS Centra motorcycle, which was being driven by Avtar Singh (appellant No.1), was recovered while

transporting heroin. The motorcycle was purchased by him in his name from M/s Zamindara Engineering and Auto Pvt. Ltd., Ferozepur on 31.03.2005.

The result of the Chemical Examiner, CRCL, New Delhi, were to the effect that;

“on the basis of chemical and chromatographic examinations it is concluded that each of the six samples under reference answers positive test for 'diacetylmorphine' (heroin)”.

It is also mentioned in the complaint that due to lack of proper identification and address of Barha Singh, he could not be traced and no action could be taken.

It is to be noticed that the appellants made their statements under Section 67 of the NDPS Act, i.e. statement Ex. P12 was made by Avtar Singh (appellant No.1) and statement Ex. P13 was made by Jassa Singh (appellant No.2). They disclosed the name of one Barha Singh, who was to supply the drugs. Said Barha Singh used to talk directly with Shaunka and Waris, who are stated to be smugglers from Pakistan side. However, the NCB could not trace Barha Singh at Delhi.

The learned Judge, Special Court, Ferozepur, in his judgment and order dated 08.12.2009 observed that during preliminary investigation conducted by the NCB, both the accused (appellants) disclosed that they had received twenty-six packets of heroin, pistol and cartridges, which were thrown by Pakistani smugglers from across the fencing of Indo-Pak border near Hussainiwala on the night of 22.12.2005 at about 01:00 a.m. under the cover of darkness and fog. A person from Delhi was to come to the house of

Jassa Singh (appellant No.2) on 23.12.2005 to collect the drug consignment. They were to receive a commission of Rs.2,50,000/- from him. The pistol and cartridges were to be kept by Avtar Singh (appellant No.1) for his personal use. Thereafter, in para No. 23 of the judgment, it was observed by the learned Judge, Special Court, Ferozepur, that by going through the entire evidence of this witness, i.e. PW3 SHO Palvinder Singh, nothing came on record which could show that huge recovery was planted on the accused (appellants). However, it had come on record that accused (appellants) were carriers. There was nothing on record to show that the NCB officials, who were under Central Government of India, tried to trace the origin of the heroin and they never tried to trace as to who was at the back of this recovery and to whom the consignment was to be delivered. It was found strange that in those days when there were daily news about the drugs abuse in Punjab and other parts of India but still the officials of NCB never tried to know about the origin of the heroin for the reasons best known to them. It was also noticed that it was generally seen in majority of cases that the recovery was effected from the carriers, but no effort was ever made by the Border Security Force or the NCB to trace the origin of heroin.

It may be noticed that the origin of the heroin is from Pakistan side, however, what the learned Judge, Special Court, Ferozepur intended to convey was that the destination where the heroin was to be delivered and further distributed had not been traced out. In the circumstances, there is no dispute to the position that the appellants were carriers who had taken consignment to deliver it further. In the statements under Section 67 of the NDPS Act though they had stated that earlier they had collected drug

consignments in a similar manner in the past and received commission for the same, however, the evidentiary value of the same before the officials of the NCB is not of much consequence in view of the judgment of Hon'ble the Supreme Court in Nirmal Singh Pehalwan v. Inspector, Customs, (2011) 12 SCC 298.

In terms of the affidavits that have been filed by the learned Additional Advocate General, Punjab, it is to be noticed that Avtar Singh alias Tari (appellant No.1) has undergone actual imprisonment of nine years, eleven months and five days as on 27.02.2017. He has availed of parole for a period of one year, two months and twenty-three days. However, he did not misuse the concession of parole that was granted. He was also convicted for the offence under Section 25 of the Arms Act in the same transaction and he filed criminal appeal, i.e. CRA-S No. 1180-SB of 2010, in this Court and he has undergone his sentence in the said case. There is no other case registered against him.

Jassa Singh alias Dodhi (appellant No.2) has undergone actual imprisonment of nine years, nine months and nine days as on 27.02.2017. He has availed of parole for a period of one year, four months and nineteen days. The concession of parole that was granted to him was not misused by him. There is no other case registered against him. No remission has been given to the appellants in view of the provisions of Section 32 of the NDPS Act. Therefore, the period of imprisonment that is mentioned is actual imprisonment and despite being in custody for a long period, the appeal of the appellants could not mature for hearing.

Therefore, keeping in view the facts and circumstances of the

case and the fact that the appellants were only carriers and have not been involved in any other case and during imprisonment they did not misuse the concession of parole that was granted, besides, their appeal has not matured for hearing even though they have undergone substantial period of their imprisonments, it would be just and expedient to reduce their sentences of imprisonments to eleven years and the amount of fine to Rs.1,00,000/- each and in default of payment thereof, undergo further rigorous imprisonment for one year.

In view of the aforesaid discussion, the appeal is disposed of and the conviction of the appellants is maintained. However, the sentence of imprisonments that has been imposed on the appellants are modified and reduced to eleven years and the amount of fine payable by the appellants is reduced to Rs.1,00,000/- each and in default of payment thereof, the convict who defaults in the payment shall undergo further rigorous imprisonment for one year. The contraband, which is stated to be lying at the 'Malkhana' of NCB be disposed of in accordance with law and compliance report be filed before the Judge, Special Court, Ferozepur.

(S.S. SARON)
JUDGE

(DARSHAN SINGH)
JUDGE

01.03.2017
Ramesh

Note:

1.	Whether reasoned/speaking	:	Yes
2.	Whether reportable	:	Yes