

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

CRA-D-280-DB-2013

Date of decision: 26.05.2017

Hira Singh

.....Appellant

Versus

State of Punjab and another

.....Respondents

**CORAM : HON'BLE MR.JUSTICE T.P.S. MANN
HON'BLE MR.JUSTICE H.S. MADAAN**

Present: Mr. Amar Singh Sandhu, Advocate
for the appellant.

Dr. Deipa Singh, Addl. A.G., Punjab.

Mr. D.D. Sharma, Advocate as
Standing Counsel for the Directorate of Revenue
Intelligence.

H.S. MADAAN, J.

This appeal has been preferred against impugned judgment of
conviction and order of sentence dated 17.10.2012 passed by the Court of

learned Judge, Special Court, Amritsar vide which he had convicted accused-Hira Singh for an offence under Section 21 read with Section 8 of the Narcotic Drugs and Psychotropic Act, 1985 ("the Act"- for short) and had sentenced him to undergo rigorous imprisonment for fifteen years and to pay fine of ₹1,50,000/-, in default of payment of fine, to further undergo rigorous imprisonment for three years.

The accused-convict, who is appellant before this Court prays that the appeal filed by him be accepted, the impugned judgment of conviction and order of sentence be set aside and he be acquitted of the charge framed against him.

Briefly stated, the prosecution story is that Intelligence Officer, Directorate of Revenue Intelligence (Sub Unit) M-I/C, Green Avenue, Amritsar ("DRI"- for short) had brought a complaint under Sections 21, 23, 25, 28, 29 and 60 of the Act against Hira Singh-accused. *Inter alia* in the complaint it is contended that on 23.03.2009 in the area near Chheharta Sahib Gurudwara, Amritsar, at about 8:00 p.m. a Bajaj Chetak scooter No.PB-02-AA-1130 was spotted coming from Baba Budha Sahib side, which was intercepted by a raiding team of DRI, which was keeping surveillance on the said road having specific intelligence. The time was about 8:00 p.m., the scooter was being driven by accused-Hira Singh. On being questioned, accused-Hira Singh admitted that he was carrying ten packets of narcotic substance in a cloth Vansali placed on the front portion of the scooter on the floor mat near the foot brake. Sh. Ramesh Sharma, Senior Intelligence Officer disclosed his identity to the

accused telling him that he was a Gazetted Officer. Notice under Section 50 of the Act was served upon accused-Hira Singh in the presence of witnesses namely Wilsy son of Picky and Rocky son of Kingnobel informing him about his legal right to get his personal search as well as search of scooter conducted in the presence of a Gazetted Officer or a Magistrate. Accused-Hira Singh opted to get his search and that of scooter conducted before any Gazetted Officer. He gave that option in writing on the notice itself. He had requested DRI Officer that his personal search and that of his scooter be conducted at a safer place, keeping in view high value of contraband and threats to his life since place of interception was a public place. Accordingly, Hira Singh-accused alongwith his scooter and *Panch* witnesses were taken to DRI Office at M-1/C, Green Avenue, Amritsar. Personal search of Hira Singh-accused was conducted there in the presence of Sh. Ramesh Sharma, Gazetted Officer as well as *Panch* witnesses and one Nokia mobile phone with No.97815-19151 alongwith SIM was found. Thereafter, scooter of accused bearing registration No.PB-02-AA-1130 was conducted. From front dickey of the scooter, some packets of Indian Currency, which on counting were of the value of ₹4 lacs were found, besides, registration certificate of the scooter. A blue colour long cloth Vansali placed on front portion of the scooter on the front mat of it near the foot brake was recovered, which was found to be stitched on one end and the other end was found to be tied with the help of small jute string was untied and blue colour long cloth Vansali was found to contain packets wrapped in yellow

adhesive type. Packets were taken out from the cloth Vansali which were 10 in numbers, those were serially marked as A to J for the purpose of identification and were weighted one by one, it was found that final packing of each was of transparent polythene and each packet was containing off-white granules/powder. The polythene packing on being opened, pungent smell came out of the contents. The DRI Officer after taking a pinch of off-white granules/powder from each of the ten packets tested the contents of each of the packet one by one with the drug testing kit which gave positive indication for presence of Heroin. The contents of each packets when weighted come out to be 10.012 kg. On being inquired, the accused disclosed that 10 packets containing the contraband were handed over to him by two persons on 23.03.2009 for further transporting and handing over to a person by name of Hari Singh, who was known to him. Hira Singh-accused further informed that he was to be paid ₹50,000/- by Hari Singh after the contraband was delivered to him. He had not been paid any money till then. As regards amount of ₹4 lacs recovered from scooter, Hira Singh told that money was handed over to him by Hari Singh for onwards delivery to the persons from whom narcotic drugs were to be taken but those persons did not accept the money saying that the same was short and told him to keep the same in his scooter and asked him to move alongwith narcotic drugs and ₹4 lacs in his scooter towards Chheharta and they would follow him on separate scooters and would accept this money only after meeting and talking with Hari Singh. The value of the seized contraband i.e. Heroin was assessed

to be around ₹50,06,000/-. The DRI Officer drew two representative samples of 5 grams from each packets which were marked A1-A2, B1-B2 so on upto J1-J2 corresponding to number marked on the mother packets, from which, these were drawn. The sample of 5 grams Heroin was placed in a transparent press lock ploythene envelope which was kept in white paper envelopes and sealed with seal of "DIRECTORATE OF REVENUE INTELLIGENCE ASR" over the paper slips bearing signatures of Panchs, DRI Officer and thumb impression of Hira Singh-accused. The Officer then repacked the contents of each of above ten packets by transferring it back into the same mother packing from which it had been taken out for weighing and testing purposes and were sealed with the same seal impressions in the same manner. The packets were then placed in a tin box which was properly locked. The packets were further wrapped and sealed with the same seal. The DRI officer also seized Indian currency notes on the reasonable belief that same were consideration money for carrying/transporting/handling the seized Heroin and were also taken into custody. Necessary documents were prepared, statement of Hira Singh-accused was recorded under Section 67 of the Act, in which, he admitted the mode and factum of recovery of the above contraband alongwith currency notes and explained other things regarding his acquaintance with Hari Singh etc. Seized Heroin and currency notes alongwith representative samples were deposited with Customs House Malkhana, Amritsar on 25.03.2009 with seals intact. As a follow up action, search of Hira Singh's residential house at his village was carried out but nothing

incriminating could be recovered. One of the samples was sent by hand through Swaran Singh, Hawaldar DRI to the CRCL, New Delhi and report therefrom was received as per following details:-

Sample No.	% of Diacetylmorphine	Quantity of Heroin based on purity % (in grams)
Sample marked as A-1	71.8	0.717 kg.
Sample marked as B-1	77.8	0.787 kg.
Sample marked as C-1	73.2	0.731 kg.
Sample marked as D-1	81.8	0.818 kg.
Sample marked as E-1	87.4	0.844 kg.
Sample marked as F-1	84.2	0.842 kg.
Sample marked as G-1	81.6	0.814 kg.
Sample marked as H-1	84.2	0.842 kg.
Sample marked as I-1	86.6	0.866 kg.
Sample marked as J-1	85.9	0.845 kg.
Total		8.106 kgs.

The scooter in question was found to be registered in the name of one Lakhwinder Singh son of Partap Singh, resident of village 26, Panjwar, Tehsil Tarn Taran. It was found that in the month of March 2009, the scooter had been purchased by Hira Singh-accused. In the complaint, it was alleged that Hira Singh-accused had committed offences under Sections 21, 23, 25, 28, 29 and 60 of the Act, as such, complaint had been filed against him.

On filing the above complaint, copies of documents relied therein were supplied to the accused free of cost as provided under Section 207 Cr.P.C..

On finding a prima facie case, charge for the offence under Sections 21, 23 read with Section 8 of the Act was framed against the accused, to which he pleaded not guilty and claimed trial. Thereafter, the case was fixed for evidence of prosecution.

At trial, prosecution has examined PW1 Swaran Singh, Hawaldar; PW-2 Raj Kumar Saini, Intelligence Officer, DRI, Amritsar, complainant/seizing officer; PW-3 Paramjit Singh, Inspector Customs; PW-4 Ramesh Sharma, Senior Intelligence Officer posted at DRI, Amritsar. Thereafter the Special Public Prosecutor of the complainant closed the recording of prosecution evidence.

Statement of accused was recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against the accused were put to him, but he denied the allegations contending that he is innocent and had been falsely involved in this case;

Further he took up a plea that no recovery was effected from him; that alleged signatures also not belonging to him; that he was picked up from his house and later on got implicated in this case; that he is an illiterate person and that he was forced to append his thumb impressions on the documents which were blank and DRI officer scribed the matter on the said documents later on and misused his thumb impressions.

During his defence evidence accused examined Bagicha

Singh-DW-1 and then closed his defence evidence.

After hearing arguments, learned trial Court convicted and sentenced accused-appellant-Hira Singh as mentioned above. Accused/convict-Hira Singh felt aggrieved by the impugned judgment of conviction and order of sentence and as such, he has approached this Court and filed the present appeal.

We have heard learned counsel for the appellant/accused-convict, learned standing counsel for the Directorate of Revenue Intelligence and learned Additional Advocate General, Punjab, besides, going through the record and we find that there is no infirmity or illegality with the impugned judgment as well as conviction of the accused for offences under Section 21 read with Section 8 of the Act is concerned.

PW-2 Raj Kumar Saini, Intelligence Officer, DRI, Amritsar, Seizing Officer who happened to be the complainant supported the prosecution story on material aspects proving various documents i.e. intelligence report Ex.P4, notice served upon accused Ex.P5, consent memo written by Kashmir Singh, driver, DRI Ludhiana at the dictation of Hira Singh to the effect that his search and search of his vehicle be conducted before a Gazetted Officer Ex.P5/A, details of Indian currency recovered from the accused Ex.P6, registration certificate of the scooter Ex.P7, detail of weighment Ex.P8, Panchnama Ex.P9, rough site plan of place of recovery Ex.P10, statement of accused-Hira Singh recorded under Section 67 of the Act before Sh. Ramesh Sharma, Senior Intelligence Officer Ex.P11, arrest memo Ex.P12, Fard Jamatalasi Ex.P13, intimation

regarding arrest of accused given to his relatives Ex.P14, receipt of telegram Ex.P15, special report sent to Joint Director, DRI Ludhiana Ex.P17, Inventory Ex.P18, report of Sarpanch of village of accused Ex.P19. This witness further stated that accused alongwith case property and representative samples produced before the Duty Magistrate Sh. K.K. Jain by moving application Ex.P20, on which, Court passed order Ex.P20/A. Report of Chemical Examiner Ex.P21 was received, whereas Ex.P21/A was quantitative test from CRCL, New Delhi, Ex.P22 inventory with regard to rampant sample and Ex.P23 being complaint.

PW-3 Paramjit Singh, Inspector Customs, LCS Attari Rail, Amritsar supported the case of prosecution adding that on 25.03.2009, he was posted as Incharge, Malkhana Customs House, Amritsar. On that day, Sh.R.K. Saini, Intelligence Officer, DRI Amritsar, deposited one tin box wrapped with white cloth and sealed with seal of "Directorate Of Revenue Intelligence Asr" said to contain 9.912 kgs of Heroin and 10 representative samples sealed with the same seal and one envelope containing Indian currency notes of value of ₹4 lacs. He proved the inventory Ex.P18. He further added that on 09.06.2009 Sh. R.K. Saini, deposited with him one yellow envelope said to be containing 10 rampant samples sealed with seal of "Central Revenue Control Laboratory, New Delhi" and yellow envelope sealed with the seal of "Directorate of Revenue Intelligence, Asr". He proved the inventory Ex.P22 stating that till the case property and the sample remained in his possession, neither he tampered with it nor allowed anybody to do so.

PW-4 Sh. Ramesh Sharma, Senior Intelligence Officer, DRI, Amritsar in whose presence the recovery/seizure was made and as such, proceedings took place and statement of accused under Section 67 of the Act was recorded, deposed in that regard.

Thus from the cogent and convincing evidence brought on file by the complainant, accused having been found in possession of 10.012 kgs of Heroin on 23.03.2009 in the area near Chheharta Sahib, Gurudwara, Amritsar at 8:00 p.m. stands established. From statement of PW-1 Swaran Singh, Hawaldar who on 25.03.2009 had taken 10 samples of the case alongwith test memo Ex.P1 and authority letter Ex.P2 for depositing the same in the office of CRCL, New Delhi and on return handed over receipt to Sh. R.K. Saini as well as statement of PW-3 Paramjit Singh, Inspector Customs, who was In-charge of Malkhana, Customs House, Amritsar at relevant time, it comes out that no tampering of seals had taken place during the period the case property remained in their possession. From report received from CRCL, New Delhi, the samples were found to be those of *Diacetylmorphine (Heroin)*.

Admittedly, there had been no previous enmity between the accused and the complainant spurred by which the complainant might have involved accused in this case wrongly. Furthermore, keeping in view the heavy quantity of recovery involved, the chance of false implication is ruled out.

The plea taken by accused in his defence of false implication does not seem to be convincing. The evidence adduced by him in defence

also does not inspire any confidence. Accused in his statement recorded under Section 67 of the Act has admitted the mode and manner of recovery of the contraband. The plea of his thumb impression having been taken on blank papers which were converted into statements etc. and valuable documents does not sound convincing since he is not shown to have agitated the matter bringing it to the notice of the Court during remand proceedings or otherwise or to the higher officer of the Department in that regard. No violation of any mandatory provision is shown to have been taken place, rather the recovery and seizure proceedings are shown to have been conducted strictly in accordance with law without violating any provision.

As regards non-joining of independent witnesses, the recovery had taken place at late evening hours, even then two independent witnesses had been joined at that time. Though they had not been examined during the trial but that does not make any difference. Learned defence counsel for the appellant/accused could not point out any procedural lapse or violation of any mandatory provisions of law which might have rendered the proceedings vitiated or seizure doubtful.

Therefore, the prosecution had successfully proved its case against the accused beyond a shadow of reasonable doubt. The judgment of conviction passed by the trial Court is well reasoned one, based upon proper appraisal and appreciation of evidence and correct interpretation of law. There is no illegality or infirmity therein. The said judgment of conviction is upheld.

As far as the sentence part is concerned, keeping in view the facts and circumstances of the case and the plea put forward on behalf of the accused that he is a poor person and only bread winner of his family; furthermore, he is behind bars since 23.03.2009 i.e. more than 8 years and that he is not a previous convict, we take somewhat lenient view and reduce the sentence from 15 years of rigorous imprisonment and ₹1.5 lacs fine to rigorous imprisonment for 10 years and to pay fine of ₹1 lac and in default of payment of fine to further undergo rigorous imprisonment for three years.

With such modification in the sentence part, the appeal stands disposed of.

Necessary directions be issued to the quarter concerned.

26.05.2017
Gaurav Sorot

(T.P.S.MANN)
JUDGE

(H.S. MADAAN)
JUDGE

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| 1. | Whether reportable? | Yes |
| 2. | Whether reasoned / speaking? | Yes |