

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

**CRA-S-364-SB-2004
Date of decision :26.10.2017**

Suraj Bhan son of Walaiti Ram

..... Appellant

Versus

State of Punjab

..... Respondent

CORAM : HON'BLE MR.JUSTICE H.S. MADAAN

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

Ms. Samina Dhir, DAG, Punjab

H.S. MADAAN, J.

This appeal has been filed against judgement dated 30.01.2004 passed by Judge, Special Court, Patiala vide which he had convicted accused Suraj Bhan s/o Walaiti Ram for an offence under Section 15 of the Narcotic Drugs & Psychotropic Substances Act, 1985 (“NDPS Act” - for short) sentencing him to undergo rigorous imprisonment for one year and to pay fine of ₹2,000/- and in default of payment of fine to undergo further rigorous imprisonment for two months.

The appellant – accused prays that the appeal filed by him be accepted and the impugned judgment of his 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 on 21.12.2000, a police party from Police Station Patran headed by ASI Karnail Singh was on patrol duty proceeding towards Ghaggar river side vide *Kacha* path from village Shutrana, when the police party had reached about one kilometer of village Shutrana accused was spotted coming from the opposite side on foot carrying a bag on his head; that on seeing the police party the accused tried to make good his escape but he was apprehended on the basis of suspicion and on being enquired he disclosed his name as Suraj Bhan son of Walaiti Ram resident of village Hans Dehar Police Station Garhi, Tehsil Narwana, District Jind, in the meanwhile an independent witness namely Buta Singh arrived at the spot and he was joined in the investigation by ASI Karnail Singh (hereinafter to be referred as “Investigating Officer”); that the Investigating Officer informed the accused about his right of search being conducted in the presence of some Gazetted Officer or a Magistrate, however the accused reposed confidence in the Investigating Officer, who accordingly recorded consent memo of accused Ex.PA, which was signed by the accused, thereafter the bag being carried by the accused was searched and it was found to contain poppy husk; that the accused could not produce any permit or licence for possession of such contraband; that the Investigating Officer took out two samples of 250 grams each from the poppy husk in the bag and on being weighed, the remaining poppy husk in the bag came out to be 33.500 Kgs., which was re-transferred in the same bag; that the remaining poppy husk and two small bags containing the samples of 250 grams each were converted into parcels sealing those with

seal of ASI Karnail Singh having impression “KS”; that the sample seal chit was prepared, the case property was taken into possession, personal search of accused was conducted, which resulted in recovery of ₹50/-, memo Ex.PC in that regard was prepared; that the Investigating Officer sent ruqa Ex.PB to the police station which formed basis for registration of the FIR Ex.PH/1; that the matter was investigated, rough site plan of place of recovery Ex.PJ was prepared, accused was formally arrested in this case and grounds of arrest Ex.PD were served upon him; that on return to the police station, the Investigating Officer produced the accused along with prosecution witnesses and case property before SI/SHO Krishan Kumar, who after verifying the facts affixed his seal having impression “KK” on the case property and on the sample seal chit; that the case property was deposited by the Investigating Officer with MHC Surinderpal as directed by SI/SHO Krishan Kumar.

On the following date the case property was produced before Illaqa Magistrate by SI Krishan Kumar by moving application Ex.PK, where on the Illaqa Magistrate passed order Ex.PK/1 directing that case property be deposited in *Malkhana*. During course of investigation, samples were sent to Forensic Science Laboratory and vide report received therefrom Ex.PL, it was found to be that powder of poppy husk. On completion of investigation and other formalities challan against the accused was prepared and presented in the Court by SI/SHO Krishan Kumar.

On presentation of the challan in the Court, copies of documents were supplied to the accused free of cost as provided under Section 207 Cr.P.C.. Then a prima facie case under Section 15 of the Act

was found against the accused and he was charge-sheeted accordingly, to which he pleaded not guilty and claimed trial.

During the course of prosecution evidence, prosecution examined HC Jasbir Singh as PW-1, Karanbir Singh as PW-2, HC Surinder Pal as PW-3, Inspector Krishan Kumar as PW-4 and ASI Karnail Singh as PW-5. With that the prosecution concluded its evidence.

Statement of accused was recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against the accused was put to him, but he denied the same contending that he is innocent and has been falsely involved in this case after bringing him from the village.

The accused did not lead any evidence in defence.

After hearing argument trial Court convicted the accused as mentioned above, which left him aggrieved and he has filed the instant appeal.

I have heard learned counsel for the parties, besides, going through the record. Here from the evidence adduced by the prosecution it stands adequately proved that on 21.12.2000 at about 8:20 p.m. in the area of Shutrana the accused was found in possession of 34 Kgs. of poppy husk without any licence or permit. ASI Karnail Singh appearing as PW-5 and HC Jasbir Singh as PW-1 have fully supported the prosecution story in that regard. Although they were cross-examined at length by the accused, but they could not be shattered on any material point. No previous enmity between these witnesses and the accused has been alleged or proved promoted by which, they might have deposed falsely against the accused. Their depositions come out to be convincing and reliable. As regards

independent witness Buta Singh, he was given up by prosecution as having been won over by accused. His non-examination does not have any affect on the merits of the prosecution case. Independent corroboration is a rule of prudence and not the requirement of law. In this case both the official witnesses are to be taken at par with the independent witnesses, since they had no reason to depose falsely against the accused. It stands further established on the record that no tampering of seals had taken place, during the period the case property was deposited with MHC. Sample was sent to Forensic Science Laboratory for testing. As per report received therefrom sample was found to be powder of poppy husk. The remaining evidence on record corroborates the prosecution story. The accused have been unable to render any reasonable or plausible explanation for his alleged false implication in this case. Therefore, the prosecution had successfully proved its case against accused under Section 15 of the NDPS Act and he was rightly convicted by Judge Special Court in that regard.

As far as sentence part is concerned, he has been awarded sentence of one year rigorous imprisonment. As per the custody certificate placed on record the accused has undergone five months and six days of actual sentence. He has faced trial for about 17 years. No previous conviction is alleged or proved against him. As per custody certificate, he is not involved in any other criminal case, he is stated to be aged about 50 years and sole bread winner of his family. He is not alleged to have committed any crime after being released on bail as result of suspension of his sentence by this Court. In my opinion ends of justice shall be properly met if the appellant is sentenced to imprisonment already undergone by him

while in custody in the present case, whereas the part of sentence relating to payment of fine is kept as intact. Therefore, the impugned judgment is upheld as regards conviction part qua appellant.

However, as far as sentence part is concerned, the same is modified and he is sentenced to imprisonment already undergone by him in this case. Whereas the sentence regarding payment of fine remains intact.

With such modification appeal stands disposed of. The appellant be released from the custody if not required in any other case.

The trial Court may recover fine from the appellant as per law.

(H.S. MADAAN)
JUDGE

26.10.2017

Gaurav Sorot

1. Whether reportable? **No**
2. Whether speaking / reasoned? **Yes**