

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

CRA-S-608-SB-2009 (O&M)

Date of decision : 28.10.2017

Kaka Gill

...Appellant

Versus

State of Punjab

...Respondent

**CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL**

Present: Mr. Amaninder Preet Singh, Advocate for the appellant.

Ms. Simranjeet Kaur, Assistant Advocate General, Punjab.

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**ANIL KSHETARPAL, J. (ORAL)**

The appellant-Kaka Gill is in appeal against the judgment of conviction dated 05.02.2009 and order of sentence dated 06.02.2009.

Accused has been convicted under Section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter to be referred as 'the Act of 1985) and sentenced to undergo rigorous imprisonment for a period of 10 years and to pay a fine of ₹1,00,000/- under Section 18(b) of the Act of 1985, in default of payment of fine, further undergo rigorous imprisonment for a period of one year.

In brief, the case of the prosecution is that on 15.02.2005, SI Jaspal Singh, SHO of Police Station Khuian Sarwar alongwith Head Constable Baltej Singh and other police officials went in connection with special *nakabandi* on a private car and a scooter. Police team held

*nakabandi* in the area of Jandwala Hanumanta.

It is further the case of the prosecution that at 6:30 AM, accused came on a scooter from the side of Village Jandwala Hanumanta. He was signaled to stop but he tried to run away from the place. Thereafter, Head Constable Surinder Singh gave a signal with torch light to stop the scooter. When the scooter reached near the place where SI Jaspal Singh was holding *naka*, they have compelled the accused to stop the scooter bearing No.PB-29-B-4725. The accused was apprehended. Smell of opium was coming out from the front dicky of the scooter. On choice being given, Jaspal Singh opted to have him searched before a Gazetted Officer. Non-consent memo was prepared which is thumb-marked by the accused. Thereafter, DSP Narinder Pal Singh was called through wireless, who alongwith his staff came on the spot at 7:30 AM. The aforesaid Deputy Superintendent of Police disclosed his identity and thereafter accused agreed to get a search conducted in his presence. Consent memo Ex.P2 was prepared which is thumb-marked by the accused. It is stated that on the apprehension of the Deputy Superintendent of Police, SI Jaspal Singh conducted the search of the dicky of the scooter and some opium like substance was found wrapped in a glaze paper which was further put in a plastic bag. 20 gm of the aforesaid substance was separated to serve as a sample and put into a parcel and the remaining quantity of alleged opium was found to 5 Kg 980 grams which was put in a separate plastic bag. Both the parcels were sealed by SI Jaspal Singh with his seal bearing impression JS. Deputy Superintendent of Police also sealed the parcels with his seal bearing impression NPS. On further search of the dicky of the scooter,

driving licence No.29402 of the accused and registration certificate Ex.P3/B which was in the name of one Bhola Singh son of Kartar Singh were recovered and taken into possession. From the personal search of the accused, a sum of ₹500/-, a wrist watch make Titan were recovered and taken into possession. Thereafter, SI Jaspal Singh sent information Ex.P6 to the Police Station on the basis of which formal FIR Ex.P7 was registered by Moharrir Head Constable Manjit Singh. On the same day, SI Jaspal Singh produced the accused before the Illaqa Magistrate and moved an application Ex.P10 and Illaqa Magistrate passed the order Ex.P11.

Thereafter the challan was prepared and the copies of the same were provided to the accused. The evidence of the prosecution was recorded and the appellant was convicted as referred to above.

Learned counsel for the appellant has submitted as under:-

1. No information was sent to the Superior Officials, once it is proved on the file that SI Jaspal Singh had a prior information and pursuant thereto, he had laid *nakabandi*.
2. The information for registration of the FIR was sent at 9:15 AM, whereas accused was apprehended at 6:30 AM.
3. Form for sending the sample to Central Forensic Science Laboratory (CFSL) was not filled at the spot and the sample as well as the alleged opium recovered was not deposited in the *Malkhana* and kept by SI Jaspal Singh in his own possession till the sample was sent on 22.02.2005. The remaining opium was deposited with the *Malkhana*. No evidence had come on record that remaining opium was deposited with the *Malkhana*.

4. Central Forensic Science Laboratory (CFSL) had initially returned the sample written objections, however, those objections have not been produced before the Court and withheld.
5. Seals on the package of the sample and the remaining opium were not put in accordance with law. Seals were put on a separate sheet of paper which was then pasted on the sample. The seals were found to be torn and the tikky of the samples seals was put on the CFSL form.
6. No independent witness was joined. Even no effort was made by the police officials to join any independent witness.

On the other hand, Assistant Advocate General, Punjab has supported the judgment passed by the learned Special Judge, Ferozepur.

It is clear from the reading of the evidence that SI Jaspal Singh had a prior intimation about the movement of the narcotics. He had constituted a team and laid *Naka*. However, it is admitted fact that he did not sent any prior information to his Superiors. It is normal practice that once the police official is having prior information about the movement of the narcotics and he was looking for a private car and a scooter, he ought to have sent prior information to his superiors.

Still further, no explanation has come on record to satisfy the Court as to why the information was not sent to the Police Station at the moment when the appellant was apprehended and the police officials had felt the smell of the opium. It has come in the evidence that SI Jaspal Singh on apprehension gave option to the appellant for search. On his refusal, Deputy Superintendent of Police was requested to come over. Deputy Superintendent of Police reached at the spot at 7:30 AM. Still the

information was not sent to the Police Station for registration of the formal FIR. The information was sent only at 9:15 AM which is after 2 hours and 45 minutes from the moment when the accused was apprehended and 1 hour 45 minutes after Deputy Superintendent of Police had reached at the spot.

It is really strange that the sample prepared was not properly sealed. The samples seals were put on a separate sheet of paper and pasted on the container. This is not the procedure which is to be followed by the official while sealing the samples. Container or the sample is to be sealed to ensure that there is no tampering. If the seal is being put in such a manner that it can be removed at any stage then there is no purpose of sealing the same.

Still further, it is admitted case that when originally the sample was sent to Central Forensic Science Laboratory (CFSL), it had raised certain written objections. The prosecution has not produced those objections. No reason has come forth why those written objections have not been produced. It was the duty of the prosecution to prove the case beyond reasonable doubt. Once written objections had been raised by the Central Forensic Science Laboratory (CFSL), the prosecution should have been fair in bringing forth the aforesaid material before the Court.

Further neither the sample nor the remaining portion of the opium was not immediately deposited with the *Malkhana*. Investigating Officer Jaspal Singh kept the sample in his possession. That itself proves that SI Jaspal Singh was not fair in the investigation of the case. If he had prepared a sample on the same day and properly sealed the sample, there was no reason left why sample was not deposited in the *Malkhana*. The

action of the Investigating Officer becomes doubtful in the facts and circumstances of the case.

Learned counsel for the appellant has further submitted that Deputy Superintendent of Police also kept his seal with himself. He did not hand over the seal to the police party or deposited it in the *Malkhana*.

Last submission of the learned counsel is that no independent witness was associated. He has submitted that no effort was made to associate any independent witness.

Although, it is true that the prosecution case cannot fail solely on the basis of non-joining of the independent witness, however, taking into consideration the facts and circumstances of the case and particularly when strong doubts are being expressed, it is necessary in this case that the prosecution at least should have made an effort to join the independent witness.

Taking into consideration facts available on the file, the judgment passed by the learned Special Judge, Ferozepur cannot be sustained.

Appeal accepted.

Appellant is already on bail. The bail bonds shall stand discharged. The appellant is acquitted of the charge.

**28.10.2017**

*Pawan*

**(ANIL KSHETARPAL)  
JUDGE**

**Whether speaking/reasoned:- Yes/No**

**Whether reportable:- Yes/No**