

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

Crl. Appeal No.S-148-SB of 2017 (O&M)
Date of Decision: March 23, 2017

Gurdeep Singh

...Appellant

VERSUS

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Rajdeep Singh Gill, Advocate for
Mr.L.S.Sekhon, Advocate
for the appellant.

Mr.K.S.Aulakh, Asstt. Advocate General, Punjab
for the respondent-State.

INDERJIT SINGH, J.

The present appeal has been filed by the appellant against State of Punjab, challenging the judgment of conviction and order of sentence dated 29.11.2016 passed by learned Judge, Special Court, Sangrur, whereby the appellant was held guilty and convicted and sentenced to undergo rigorous imprisonment for a period of two years and to pay fine of ₹20,000/- and in default of payment of fine, to undergo rigorous imprisonment for a period of six months 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, Sangrur, are as under:-

“2. Succinctly, the prosecution version is that on 27.6.2013, ASI Nirmal Singh alongwith other police officials were going from Channo to Munshiwalla on the pavement of canal. When the police party reached near bridge on the canal minor

leading to village Lasoi from village Munshiwala, at about 6.30am, accused was seen coming from the opposite direction on motorcycle carrying one plastic bag on the same. He became befuddled on seeing the police party and stopped his motorcycle. Accused Gurdeep Singh was apprehended on the basis of suspicion by ASI Nirmal Singh with the held of police party. Accused disclosed his name as Gurdeep Singh. ASI Nirmal Singh also disclosed his identity, address and designation to him. ASI Nirmal Singh also conveyed him that he was having suspicion that accused was carrying some intoxicating substance in the plastic bag carried by him and wanted to conduct the search of the same. ASI Nirmal Singh also told the accused that he was having legal right to get his search conducted from some Gazetted officer or Magistrate, who could be called at the spot. However, accused reposed confidence in him regarding which his consent statement Ex.PA was recorded which was attested by HC Sukhjinder Singh and SC Bhindeer Singh. Thereafter plastic bag was searched and same was found to be containing poppy husk, out of which two samples of 250 gram were extracted and remaining poppy husk on weighment came to 17 ½ kg. The samples were converted into parcels, while the remaining 17 ½ kg poppy husk was converted into bulk parcels, in the same plastic bag. Sample parcels and bulk parcel was sealed by ASI Nirmal Singh with his seal bearing impression NS. Sample seal chit Ex.P1 was prepared on form no.29 and seal after use was handed over to HC Sukhjinder Singh. The entire case property along with sample seal on form no.29 and motor cycle were taken into possession vide recovery memo Ex.PB which was attested by HC Sukhjinder Singh and SC Bhinder Singh. Ruqa Ex.PC was sent through HC Ram Singh to the police station on the basis of which FIR Ex.PC/1 was registered and investigation was started. ASI Nirmal Singh also took into possession RC of the motorcycle and affidavit dated 30.5.2016 in favour of accused vide memo Ex.PD. Personal search memo Ex.PE of the accused was conducted on which recovery of Rs. 60/- was effected from the accused. Arrest cum intimation memo Ex.PF was also prepared and intimation of the arrest of the accused was given to his wife Manjit Kaur on mobile. Rough site plan Ex.PG, special report Ex.PH were also prepared. Accused, case property and witnesses were produced before the Inspector/SHO Sanjiv Goyal, who verified the contents of the case from the accused and other witnesses. Thereafter, case property was deposited by ASI Nirmal Singh with Malkhana Munshi, as per the direction of SHO. The case property was taken from MHC, Malkhana Munshi on 28.6.2013 and was produced before the learned CJM vide application Ex.PJ. Learned CJM returned the case property, samples and motorcycle for depositing the same in judicial malkhana and passed the order in this regard vide Ex.PJ/1. ASI Nirmal Singh also moved application Ex.PK before the

learned CJM for depositing the same in judicial malkhana which was allowed vide order Ex.PK/1. Thereafter bulk parcel and two sample parcels were deposited in judicial malkhana vide entry no.613. ASI Nirmal Singh again moved an application Ex.PN for taking one sample parcel of 250 gram of poppy husk for sending the same to chemical examiner, which was deposited with MHC Darshan Singh alongwith motorcycle Discover bearing registration no. PB-42C-2578. The ownership of motorcycle was also verified from DTO,Patiala by moving application Ex.PM on which order Ex.PM/1 was passed by the Dealing Assistant of DTO,Patiala. Inspector/SHO Sanjiv Goyal presented the challan after investigation. SI Pritpal Singh moved an application for taking the representative sample from bulk parcel as per the order dated 19.6.2016 Ex.PN/1. Thereafter case property was destroyed under section 52A of NDPS vide order dated 15.2.2016 Ex.PO. Report from CFSL Ex.PP was also received.”

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

In support of its case, prosecution examined PW1 Constable Jagseer Singh, PW-2 Head Constable Darshan Singh, PW-3 Inspector Sanjeev Goyal, PW-4 Vinod Kumar Bindal Advocate, PW-5 Loku Ram, PW-5 ASI Nirmal Singh, Investigating Officer and PW-6 HC Sukhjinder 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 his false implication in the present case.

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 prayed for reduction of sentence only. Learned counsel for the appellant contended that 18 kgs. of poppy husk been recovered from the accused-appellant, which falls under non-commercial quantity. He also contended that the appellant is suffering from criminal proceedings since 2013. He further contended that the appellant is first offender and only bread earner of the family. Learned counsel for the appellant next contended that appellant has already undergone 7 months and 29 days of actual sentence.

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.

In view of the evidence, I find that the prosecution has duly proved its case by leading cogent evidence beyond reasonable doubt. Therefore, the judgment of conviction dated 29.11.2016 passed by learned Judge, Special Court, Sangrur, is correct, as per law and does not require any interference from this Court.

However, keeping in view the facts and circumstances of the present case and in view of the fact that appellant is stated to be first offender, only bread earner of the family and is suffering from long protracted criminal proceedings since 2013 i.e. for the last about 4 years and

further in view of the fact that appellant has already undergone actual sentence of 7 months and 29 days and keeping in view the fact the recovery from the accused-appellant falls under non-commercial quantity i.e. 18 kgs. poppy husk, the sentence imposed upon the appellant is reduced to the sentence already undergone by him. The sentence of fine is also reduced to ₹10,000/- and in default of payment of fine, the appellant shall undergo rigorous imprisonment for a period of 2 months.

Accordingly, present criminal appeal stands partly allowed.

Appellant Gurdeep Singh, who is in custody, be set at liberty forthwith, if his custody is not required in connection with any other case, subject to payment of fine, if already not paid.

March 23, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No