

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

**(1) CRA S-1895-SB of 2015.**  
Date of Decision: 24.03.2017.

Manjot Singh @ Moti Pal and another

... Appellants  
Versus  
State of Punjab  
... Respondent

**(2) CRA S-1906-SB of 2015.**  
Date of Decision: 24.03.2017.

Neeraj Masih  
... Appellant  
Versus  
State of Punjab  
... Respondent

**(3) CRA S-1907-SB of 2015 (O&M)**

Gulshan Masih @ Gushi  
... Appellant  
Versus  
State of Punjab  
... Respondent

**(4) CRA S-1926-SB of 2015.**  
Date of Decision: 24.03.2017.

Baj Singh @ Baja  
... Appellant  
Versus  
State of Punjab  
... Respondent

**(5) CRA S-2193-SB of 2015.**  
Date of Decision: 24.03.2017.

Surinder Singh  
... Appellant  
Versus  
State of Punjab  
... Respondent

**CORAM : Hon'ble Mr. Justice Jitendra Chauhan**

Present : Mr. Vipin Mahajan, Advocate,  
for the appellants in CRA S-1895-SB of 2015.

Mr. M.S. Saini, Advocate,  
for the appellant in CRA S-1906-SB of 2015.

Mr. Karan Chaudhary, Advocate,  
for the appellant in CRA S-1907-SB of 2015.

Mr. Sandeep Arora, Advocate,  
for the appellant in CRA S-1926-SB of 2015.

Mrs. G.K. Mann, Advocate,  
for the appellant in CRA S-2193-SB of 2015.

Mr. Luvinder Sofat, AAG Punjab.

**JITENDRA CHAUHAN.J.**

This judgment shall dispose of afore-mentioned five appeals bearing CRA S-1895-SB of 2015, CRA S-1906-SB of 2015, CRA S-1907-SB of 2015, CRA S-1926-SB of 2015 and CRA S-2193-SB of 2015 as they have arisen out of common judgment and order dated 26.03.2015 passed by Judge Special Court, Gurdaspur vide which the accused-appellants were convicted and sentenced as under:-

**Neeraj Masih, Gulshan Masih and Surinder Singh**

| Offence        | Sentence        | Fine    | In default      |
|----------------|-----------------|---------|-----------------|
| 21 of NDPS Act | RI for 10 years | One lac | RI for one year |

**Manjot Singh, Ajmer Singh and Baj Singh**

| Offence        | Sentence        | Fine    | In default      |
|----------------|-----------------|---------|-----------------|
| 29 of NDPS Act | RI for 10 years | One lac | RI for one year |

In brief the case of the prosecution as mentioned in the judgment passed by the trial Court is as under:-

“In brief, the case of the prosecution is that on 14.12.2009, Inspector Arvinder Singh along with the police party was present at Bridge Hansali, Bank Colony, Batala in connection with Nakabandi and at 9.15 a.m., one Tata Indica car without number came towards Hansali bridge from north-east corner of the bridge, which was signaled to stop and the occupants were directed to come out of the car; on enquiry, the driver of the car disclosed his name as Neeraj Masih and other occupants disclosed their names as Gulshan Masih and Surinder Singh; In the meantime, one Karam Singh came there who was joined in the police party; The investigating Officer told to all the three persons one by one about his apprehension that they were in possession of some narcotic substance and apprised them of their right to be searched before him or some gazetted officer or the Magistrate; All the accused consented to be searched by the gazetted officer and their non-consent memos were prepared; Thereafter, investigating officer sent message to DSP Manohar Lal, who reached at the spot with the police party and introduced himself to all the three accused and apprised them of their legal right to be searched by him or the Magistrate; The accused reposed faith

in the DSP and their consent memos were prepared; On the direction of DSP, investigating officer conducted the search of accused turn by turn; from the search of accused Neeraj Masih, two polythene packets, one of red colour and other of white colour were recovered, which were found containing heroin; out of each packet, two samples of 5 grams each were separated and put into small boxes; the remaining bulk of red packet on weighing came to 1 kg 42 grams which was put in a plastic box; The white packet on weighing came to be 780 grams, which was also put in a plastic box; The plastic box containing red polythene was marked as R-1 and its samples as S1A and S1B whereas plastic box containing white polythene was marked as R-2 and its samples as S2A and S2B; All the parcels were sealed with AS and ML of DSP; From the search of accused Gulshan Masih one polythene envelope containing heroine was recovered, out of which two samples of 5 grams each were separated and remaining bulk on weighing came to be 1 kg 42 grams, which were put in separate plastic containers; the plastic container containing the bulk was marked as R-3 and the samples as S3A and S3B; All the containers were converted into parcels

and sealed with seal AS and ML of DSP. From the search of accused Surinder Singh, one polythene packet containing heroin was recovered, out of which, two samples of 5 grams each were taken out and remaining bulk on weighing came to be 886 grams, which were put in plastic containers; The bulk was marked R-4 and samples as S4A and S4B; All the containers were converted into parcels, sealed with seals AS and ML of DSP; The investigating officer handed over his seal to SI Sucha Singh and DSP kept his seal with him; Sample seals were also prepared; The entire case property was taken in police possession vide a memo, Ruqa was sent to the police station through HC Vijay Kumar for registration of the case, on the basis of which formal FIR was registered by Darshan Lal SI; Visual site plan was prepared with its correct marginal notes; The accused were arrested and intimation was given to their relatives; Personal search of all the three accused was conducted; The car Indica was taken in police possession vide a memo; Later on, the samples were sent to the Chemical Examiner, Kharar; During the investigation, accused Neeraj Kumar suffered disclosure statement to the effect that the whole of

this business was being operated by accused Manjot Singh alias Motipal who was lodged in Central Jail, Gurdaspur on the mobile phone and his brother Ajmer Singh used to make the payments to them for transportation of heroin; The call details were procured; Manjot Singh accused also suffered a disclosure statement; vide Rapt No.17 dated 22.12.2009, the offence under Section 29 of the Act was enhanced and accused Manjot Singh, Ajmer Singh and Baj Singh were nominated for the same; On receipt of report of chemical examiner and after the completion of investigation and other necessary formalities, challan against the accused was presented in the Court by SHO.”

On the presentation of challan, copies of documents as required under Section 207 Cr.P.C were supplied to the accused free of cost.

Charge under Section 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short “the Act”) was framed against accused Neeraj Masih, Gulshan Masih, Surinder Masih and charge under Section 29 of the Act was framed against accused Manjot Singh, Ajmer Singh and Baj Singh. The accused pleaded not guilty and claimed trial.

In order to prove its case, the prosecution examined

PW-1, HC Kulwinder Singh, PW-2, Inspector Sucha Singh, PW-3 Inspector Puran Chand, PW-4, Jatinderjit Singh, PW-5, HC Kashmir Singh, PW-5 Sukhpal Singh, PW-6 Inspector Arvinder Singh, PW-7 SP Manohar Lal and thereafter closed its evidence.

The statements of accused were recorded under Section 313 Cr.P.C in which all the incriminating circumstances appearing in the prosecution evidence were put to the accused which the accused denied and pleaded false implication.

In defence, the accused examined DW-1, HC Sukhwinder Singh, DW-2 Yashpal Pagana Moharrir, DW-3 Sanjeev Kumar MC and tendered into evidence copy of FIR Ex.DX and thereafter closed the defence evidence.

After appraisal of the evidence, the trial Court vide impugned judgment and order dated 26.03.2015, convicted and sentenced the accused as narrated above.

Feeling aggrieved against the judgment and order dated 26.03.2015, passed by the trial Court, the accused have filed the instant five appeals.

On behalf of accused-appellants Manjot Singh @ Moti Pal and Ajmer Singh @ Banti, it is contended that Karan Singh, witness to the recovery memo (Ex.PW-2/A) has not been examined by the prosecution. During investigation, disclosure statement of co-accused Neeraj Masih was recorded wherein, the appellant's name had been mentioned however, the statement did not lead to any recovery,

therefore, the same cannot be read against and relied upon by the prosecution. It is further contended that as per PW-2, Sucha Singh, DSP Manohar Lal was present on the spot whereas, the disclosure statement was neither signed nor attested by him. He further refers to the cross-examination of IO, PW-6 Sub Inspector Arvinder Singh to contend that when Neeraj Masih was taken on remand, the factum of recovery was not mentioned. As per the disclosure statement of accused Neeraj Masih, the whole of the business was being operated by accused Manjot Singh who had been lodged in Central Jail, Gurdaspur on the mobile phone, however, neither any phone call nor details of phone number were produced on record. Even the location of the phone calls made have not been brought on record. He further refers to the statement of PW-5 Sukhpal Singh, Clerk, Central Jail, Gurdaspur. PW-5 deposed that "It is correct that the entry dated 01.06.2009 of one Neeraj Kumar visitor mentioned in front of the name of Moti Lal has been inserted in the serial No.34 which has been written twice in the register." It is, therefore, the learned counsel argues that there is interpolation and the entry No.34 has been inserted later on to project that Neeraj Masih visited Central Jail, Gurdaspur on 01.06.2009 to meet Moti Lal. In support of the contentions, reliance has been placed on **(i) Union of India vs. Bal Mukund and others 2009(2) RCR(Criminal) 574 and; (ii) Din Dayal vs. State of Punjab 2014(1) RCR (Criminal) 502.**

On behalf of accused Neeraj Masih, it is contended

that (i) there is non-compliance of the provisions of Section 42 of the Act because it is a case of secret information, therefore, intimation to the higher officers was required to be sent; (ii) the link evidence in the case is missing. In this regard, he refers to the statement of PW-2, Sucha Singh, witness of recovery. PW-2 deposed that “The separate seal impression was prepared by the IO. The seal was handed over to me after use and DSP kept his seal impression with him.” It is contended that the seals remained with the respective officers. The contraband was also with the police upto 18.12.2009; the form No.29 was not prepared on the spot; (iii) though, an independent witness, namely, Karan Singh was joined during recovery proceedings, however, he was not examined by the prosecution for the reasons best known to it; (iv) the accused has been falsely implicated at the instance of one BJP MLA. He relies upon authority **Mukhtiar Singh vs. State of Punjab 2014(1) RCR (Criminal) 705.**

On behalf of accused Surinder Singh, it is contended that there was non-compliance of Section 50 of the Act as a joint offer was given to the accused for being searched in the presence of investigating officer, or a gazetted officer, or a Magistrate, therefore, the search proceedings are defective and the entire recovery proceedings in pursuance of the search stand vitiated.

On behalf of accused, Gulshan Masih @ Gushi and Baj Singh @ Baja, it is contended that the accused have been falsely implicated in the present case. They adopt the arguments as advanced

on behalf of accused Neeraj Masih and Manjot Singh @ Moti.

On the other hand, the learned State counsel contends that the prosecution has successfully established its case against all the accused. The Court below has rightly convicted and sentenced all the accused/appellants. It is further submitted that as per the FIR, it is a case of chance recovery, therefore, Section 42 of the Act is not attracted to the facts of the present case. He further refers to the statement of PW-2, Sucha Singh to contend that seal after use was handed over to him. Even as per the report of chemical examiner, it was found that the seals were intact. The accused were given offer to be examined either in the presence of a gazetted officer or a Magistrate. However, they declined the offer. On declining the offer, the DSP was called. The accused understood the offer and chose not to be searched before a Magistrate. The accused were not misled. It is further contended that the NDPS Act has been enacted to curb social evil. As per the provisions of Section 54 of the Act, if recovery of contraband is effected from the possession of the accused, the Court shall draw a presumption that the accused has committed the offence unless the contrary is proved. The accused have simply taken the stand that they have been falsely implicated. No complaint was moved by the accused that they have been falsely implicated. There is no mandate of law that the DSP has to sign the disclosure statement. At the stage of obtaining remand, the factum of recovery of contraband is not to be necessarily mentioned. As regards, non-examination of attesting witness, it is

submitted that the IO has proved the case of prosecution to the hilt. The testimony of IO is unbroken. Hence, the prosecution has proved its case against the accused beyond reasonable shadow of doubt.

I have heard the learned counsel for the parties and have gone through the case file.

A perusal of the FIR (Ex.PW-6), reveals that on 14.12.2009, the police party headed by IO Inspector Arvinder Singh was present at bridge Hansli Bank Colony, Batala on patrolling duty. At about 9.15 a.m. One Tata India car without number came towards Hansli bridge from the side of north east corner of the bridge. The IO gave a signal to the driver of the car to stop. The accused were searched on the basis of suspicion. To the same effect is the statement of PW-6, IO, Inspector Arvinder Singh, who has deposed that it was a case of chance recovery, therefore, the provisions of Section 42 of the Act are not attracted to the facts of the present case. Further, PW-2, Sucha Singh deposed that the seal after use was handed over to him. Even as per the report of chemical examiner (Ex.PW-6/F), it was found that the seals were intact. That being so, this Court holds that there was no tampering with the case property. All the accused were given offer to be examined either in the presence of a gazetted officer or a Magistrate. However, they declined the offer. Then the DSP was called. This Court is of the opinion that the accused understood the offer and chose not to be searched before a Magistrate. Therefore, no prejudice can be said to have been caused to the accused. Learned counsel for the appellants has

failed to point out any provision of law whereby DSP is obliged to sign the disclosure statement. It is not necessary that at the stage of taking remand, the factum of recovery of contraband is to be mentioned. The IO has proved the case of prosecution with minor details so, non-examination of attesting witness is not fatal to the case of the prosecution. The prosecution has proved on record that accused Neeraj Masih, Gulshan Masih and Surinder Singh were found in possession of 1 kg 52 gms + 790 grms, 1 kg 52 gms and 896 gms of heroin on 14.12.2009 in the area of Hansali Bridge, Bank Colony, Batala.

However, it is to be noticed that during recovery proceedings, Neeraj Masih, Gulshan Masih and Surinder Singh were present. The accused Manjot Singh and Ajmer Singh were lodged in Central Jail, Gurdaspur in some other case. The disclosure statement of accused Manjot Singh was recorded by the Police however, no recovery in pursuance of the statement was effected. The phone call allegedly made by accused Manjot Singh were not collected. Apart from the disclosure statement, there is no evidence against accused Manjot Singh, Baje Singh and Ajmer Singh.

In view of the observations made above, the conviction and sentence of accused Neeraj Masih, Gulshan Masih @ Gushi and Surinder Singh are upheld and the appeals filed on their behalf are dismissed whereas, the accused Manjot Singh @ Moti Pal, Baje Singh @ Baja and Ajmer Singh @ Banti are acquitted of the charges framed against them. The appeals filed by Manjot Singh @

Moti Pal, Baje Singh @ Baja and Ajmer Singh @ Banti are accepted  
and the impugned judgment and order are set aside qua them.

24.03.2017.  
SN

**(JITENDRA CHAUHAN)**  
**JUDGE**

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