

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

Crl. Appeal No.S-4132-SB of 2016 (O&M)

Date of Decision: November 10, 2017

Jasvir Singh and another

...Appellants

VERSUS

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Rajdeep Singh Gill, Advocate for
Mr.P.S.Sekhon, Advocate
for the appellants.

Ms.Simranjeet Kaur, Asstt. Advocate General, Punjab
for the respondent-State.

INDERJIT SINGH, J.

The present appeal has been filed by the appellants against State of Punjab, challenging the judgment of conviction and order of sentence dated 04.11.2016 passed by learned Judge, Special Court, Bathinda, whereby the appellant was held guilty and convicted and sentenced to undergo rigorous imprisonment for a period of one year and to pay fine of ₹10,000/- and in default of payment of fine, to undergo simple imprisonment for a period of one month under Section 18(c) of the NDPS Act.

The brief facts of the prosecution case as noted down in the judgment passed by learned Judge, Special Court, Bathinda, are as under:-

“2. Prosecution story, in brief, is that on 11.3.2013, ASI Buta

Singh, who was posted as In/charge at Singo Boulder, along with police party, was going on Govt. vehicle No.PB-12H-7235 being driven by HC Gurcharan Singh, in connection with patrolling and checking of suspected persons and when they were present at the bus stand of village Singo, then ASI Nahar Singh along with C. Kulveer Singh of Counter Intelligence were joined in the police party and thereafter when the police part reached 1.5 Km., ahead of village Singo, towards village Behman Kaur Singh, then a car bearing RC No. HR-10N-2000 was spotted coming from the front side and its driver on seeing the police party turned the said car which raises suspicion and the IO apprehended the occupants of the said car. The driver of the car disclosed his name as Jasvir Singh @ Seeru while the other person who was sitting on seat adjoining the driver seat gave his name as Gurpreet Singh @ Pita. One transparent polythene bag was lying in the open dash board which was situated in between both the front seats and opium was visible in the same and its mouth was open. On checking opium was recovered from it and the IO separated 10 grams of opium as sample and remaining opium on weighment came out to be 440 Gms. The sample as well as bulk opium were converted into sealed parcels by the IO with his seal impression BS and sample seal was prepared separately. The parcels of the case property were taken into police possession vide recovery memo along with car and its RC. The IO handed over his seal after its use to ASI Nahar Singh. The accused were personally searched. Since the accused failed to produce any licence or permit for possessing the above said contraband as such the IO sent ruqa to police station, on the basis of which formal FIR was registered against the accused. The accused were arrested. The IO also prepared rough site plan of the place of recovery and recorded statements of witnesses. On return to police station the IO retained the case property in his possession, being officiating SHO, while the accused were put behind bars. On the next day, the officiating SHO produced the accused along with entire case property and sample seal chit before Area Magistrate. As per the orders of the learned Magistrate, the bulk parcel of the case property, was deposited in the NDPS Godown and sample parcel was sent to the office of Chemical Examiner, Kharar for analysis. On receipt of report of the Chemical Examiner and on completion of investigation, final report Us 173 Cr.P.C. was furnished against the accused, in the Court.”

On presentation of challan against accused-appellants, copies of
challan and other documents were supplied to them under Section 207
Cr.P.C. Finding prima facie case, the accused-appellants were charge-

sheeted under Section 18 of the NDPS Act, to which they pleaded not guilty and claimed trial.

In support of its case, prosecution examined PW-1 Head Constable Jagroop Singh, PW-2 Head Constable Gurcharan Singh, PW-3 ASI Buta Singh, Investigating Officer, PW-4 ASI Nahar Singh and PW-5 Sukhjinder Singh, Clerk, office of DTO.

At the close of prosecution evidence, the accused-appellants were examined under Section 313 Cr.P.C. They were confronted with the evidence of the prosecution and they denied the correctness of the evidence and pleaded themselves as innocent and also pleaded that they have been falsely implicated. In defence, accused-appellant examined DW-1 Constable Kuldeep Singh and DW-2 Constable Parvinder Singh.

The learned trial Court, after appreciation of the evidence, convicted and sentenced the accused-appellants as stated above.

At the time of arguments, learned counsel for the appellants argued that no independent witness was joined by the police party and there are only testimonies of police officials, which cannot be believed. In the alternative, learned counsel for the appellants, prayed for reduction of sentence.

On the other hand, learned State counsel argued that case of the prosecution has been duly proved by the PWs. The PWs have consistently deposed regarding the prosecution version. Link evidence is complete. He further argued that all the mandatory provisions of the NDPS Act have been complied with. Learned State counsel, therefore, argued that there being no merit in the appeal, the same should be dismissed.

After hearing learned counsel for the appellants as well as

learned State counsel and after going through the record, I find that it is settled law that the testimony of police official is as good as of any other witness unless some enmity or motive of the police official to falsely implicate the accused is alleged and proved. In the present case, no such enmity of the police officials against the accused has been alleged. The recovery from the accused-appellant is sudden and by chance. No material contradictions or discrepancies have been pointed out in the statements of the PWs at the time of arguments. The PWs have consistently deposed regarding the prosecution version. Even, there is nothing in their cross-examinations, which may make their statements unreliable. All the mandatory provisions of the NDPS Act have been complied with. Link evidence is also complete.

In view of the above discussion, I find that the prosecution has duly proved its case by leading cogent evidence beyond reasonable doubt. Therefore, the judgment of conviction dated 04.11.2016 passed by learned Judge, Special Court, Bathinda, is correct, as per law and does not require any interference from this Court.

As regarding the alternative prayer for reducing the sentence, learned counsel for the appellants contended that appellants are only bread earners of their families and the recovery from the appellants falls under non-commercial quantity and they have undergone actual sentence of about six months. He further contended that the appellants are suffering from the criminal proceedings since 2013.

Keeping in view the facts and circumstances of the present case and in view of the fact that appellants are stated to be only bread earners of their families and further in view of the fact that appellant Jasvir Singh has

undergone actual sentence of 6 months 1 day whereas appellant Gurpreet Singh @ Pita has already undergone actual sentence of 5 months and 2 days as on 23.03.2017 and they are suffering from long protracted criminal proceedings since 2013 i.e. for the last four years, and keeping in view the fact the recovery from the accused-appellants falls under non-commercial quantity i.e. 450 grams opium, the sentence imposed upon the appellants is reduced to the sentence already undergone by them. However, the sentence of fine and in default thereof, shall remain the same. The appellants are directed to pay the fine within one month from receiving the certified copy of the order, if already not paid, otherwise, the trial Court is directed to take necessary action as per law.

Accordingly, present criminal appeal stands partly allowed.

Since, appellants Jasvir Singh and Gurpreet Singh @ Pita are on bail, their bail/surety bonds stand discharged.

November 10, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No