

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

(i) Crl. Appeal No.S-629-SB of 2016 (O&M)

Karandeep Singh @ Harry

...Appellant

VERSUS

State of Punjab

...Respondent

(ii) Crl. Appeal No.S-656-SB of 2016 (O&M)

Jagdeep Singh

...Appellant

VERSUS

State of Punjab

...Respondent

Date of Decision: April 18, 2017

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Rishu Mahajan, Advocate
 for the appellant (in CRA No.S-629-SB of 2016).

 Mr.J.S.Thind, Advocate
 for the appellant (in CRA No.S-656-SB of 2016).

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

INDERJIT SINGH, J.

The present appeals have been filed by the appellants against State of Punjab, challenging the judgment of conviction and order of sentence dated 15.01.2016 passed by learned Judge, Special Court, Amritsar, whereby the appellants were held guilty and convicted and

sentenced to undergo rigorous imprisonment for a period of three years and to pay fine of ₹5,000/- and in default of payment of fine, to undergo rigorous imprisonment for a period of three months each under Section 21 of the NDPS Act. However, they were acquitted of the charge under Section 414 IPC.

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

“2. Brief facts of the prosecution case are that on 21.08.2013, Inspector Sukhwinder Singh SHO alongwith ASI Ranjit Singh, HC Kanwardeep Singh, HC Surjit Singh, HC Jaswinder Singh, HC Surinderpal Singh, C. Hardeep Singh, HC Narinder Singh, HC Bikramjit Singh were present near Bharawan Da Dhaba in connection of patrolling and search of bad elements on a government Vehicle bearing no.PB02-BL-1872 where he received a secret information that Harry s/o Kashmir Singh, Jagdeep Singh s/o Gulzar Singh and Amar Nath @ Chutka son of Pawan Kumar are indulged in selling the contraband and they have also connection with the international smugglers and they used to purchase Heroin from the said smugglers on cheap rate and further sell the same in the Amritsar city on higher rate and Harry, Jagdeep Singh and Amarnath Chhutka are coming from the side of Tarn Taran on a Motorcycle Hero Honda Black in colour without number towards Bus Stand Amritsar for delivery of heroin and if Nakabandi be held at Chowk Ghee Mandi and checking of the vehicles to be started, they can be apprehended. Being information reliable, the intimation in this regard was given to Harjit Singh ACP Centre Amritsar. The ruqa was prepared and send the same to the police station through HC Surinderpal Singh for registration of the case. Inspector Sukhwinder Singh alongwith the police officials reached at Ghee Mandi Chowk and after nakabandi the checking of vehicles was started. After some time, three persons on Motorcycle Honda of black colour were seen coming and Inspector Sukhwinder Singh signaled them to stop the Motorcycle but driver of the Motorcycle tried to fled away. They were apprehended and on enquiry, driver of Motorcycle disclosed his name as Amar Nath and the person who was sitting next to him disclosed his name as Jagdeep Singh and last pillion rider disclosed his name as Karandeep Singh. Before the checking, efforts were made to join an independent witness but no body was ready. Inspector Sukhwinder Singh disclosed his identity to all the accused one by one and stated that he is Inspector Sukhwinder Singh posted as SHO PS Kotwali and worn uniform and number plate is affixed thereon

and he has information that you all the accused possessed some intoxicant substance and it is your legal right to be searched before any gazetted officer and or any Magistrate or by him but all the accused opted to get their search conducted in the presence of gazetted officer. Non consent memos of accused were prepared. Thereafter, Harjit Singh PPS, ACP Centre, Amritsar, was requested to come at the spot and he reached at the spot alongwith his staff. ACP Harjit Singh apprised his identity to all the accused and further stated that there is information against them of having some intoxicant substance and you have legal right to be searched before him or in the presence of Magistrate. All the accused reposed faith upon ACP Harjit Singh. ACP Harjit Singh prepared consent memo of all the accused one by one. Thereafter, on the instruction of ACP Harjit Singh, Inspector Sukhwinder Singh conducted the search of the accused Karandeep Singh and one polythene bag was recovered from the right pocket of his wearing pant. On checking the said polythene bag black in colour, one other transparent polythene bag was recovered containing Heroin. 10 grams of heroin was separated as sample and put into a plastic container and converted into a parcel and on weighing the remaining heroin came to be 140 grams which was put into a different plastic container and converted into a parcel. Inspector Sukhwinder Singh and ACP Harjit Singh affixed their seals bearing impressions SS and HS respectively upon both the said parcels and prepared M29 form and recovery memo of heroin was prepared. Inspector Sukhwinder Singh handed over his seal to ASI Ranjit Singh after use and ACP retained his seal with himself. Thereafter, on the instruction of ACP Harjit Singh, Inspector Sukhwinder Singh conducted the search of the accused Jagdeep Singh and one polythene bag was recovered from the right pocket of his wearing pant. On checking the said polythene bag black in colour, one other transparent polythene bag was recovered containing Heroin. 10 grams of heroin was separated as sample and put into a plastic container and converted into a parcel and on weighing the remaining heroin came to be 190 grams which was put into a different plastic container and converted into a parcel. Inspector Sukhwinder Singh and ACP Harjit Singh affixed their seals bearing impressions SS and HS respectively upon both the said parcels and prepared M29 form and recovery memo of heroin was prepared. Inspector Sukhwinder Singh handed over his seal to ASI Ranjit Singh after use and ACP retained his seal with himself. From the search of accused Amar Nath nothing incriminating was recovered. The motor cycle recovered from the possession of accused and chassis no.MBLHA10EZBHC and Engine number was tampered with, was taken into police possession. Accused were arrested and arrest memos, intimation memos, personal search memos were prepared. On arrival to the police station, Inspector Sukhwinder Singh kept the said parcels in the double

lock malkhana. On 22.8.2013, Inspector Sukhwinder Singh produced the accused, case property, sample parcel and sample seal in the Court of Smt. Vipandeep Kaur, JMIC, Amritsar and Court seen the sample parcels sealed with seals SS and HS and as per section 52-A of NDPS Act, took out 10/10 grams of heroin from both the bulk parcels and converted them into representative parcels and Court affixed the seal VK upon both the representative parcels and both the bulk parcels. As per the order of the court, both the bulk parcels and both the representative parcels were deposited in the judicial malkhana. On 23.8.2013, two sealed sample parcels SS and HS alongwith docket and sample seal handed over to HC Balkar Singh vide rode no.218/21 for depositing the same in the office of chemical examiner, Kharrar. On completion of investigation, the challan was presented in the court for trial of the accused.”

On presentation of challan against accused-appellants and co-accused, copies of challan and other documents were supplied to them under Section 207 Cr.P.C. Finding prima facie case, the accused-appellants along with co-accused were charge-sheeted under Sections 21, 29 of the NDPS Act and 414 IPC, to which they pleaded not guilty and claimed trial.

In support of its case, prosecution examined PW-1 Head Constable Balkar Singh, PW-2 ASI Ranjit Singh, PW-3 Inspector Sukhwinder Singh and PW-4 Harjit Singh ACP Crime.

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 their false implication in the present case. In defence, accused examined DW-1 Rajpal Singh.

The learned trial Court, after appreciation of the evidence, convicted and sentenced the accused-appellants, as stated above. Co-accused Amarnath @ Shutka was acquitted of the charges framed against

At the time of arguments, learned counsel for the appellants did not dispute the findings regarding conviction and only prayed for reduction of sentence of the appellants. Learned counsel for the appellants contended that 150 grams of heroin has been recovered from the appellant Karandeep Singh @ Harry, whereas from appellant Jagdeep Singh, 200 grams of heroin has been recovered, which falls under non-commercial quantity. They also contended that the appellants are poor persons, only bread earners of the family and suffering from criminal proceedings since 2013. Learned counsel for the appellants next contended that appellant Karandeep Singh @ Harry has already undergone 9 months and 25 days and appellant Jagdeep Singh has already undergone 2 years 7 months and 4 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 appellants 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 15.01.2016 passed by learned Judge, Special Court, Amritsar , 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 appellants are stated to be poor persons, only bread earners of their respective family and 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 Karandeep Singh @ Harry has already undergone 9 months and 25 days and appellant Jagdeep Singh has already undergone 2 years 7 months and 4 days of actual sentence and keeping in view the fact the recovery from the accused-appellants falls under non-commercial quantity i.e. 150 grams of heroin from appellant Karandeep Singh @ Harry and 200 grams of heroin from appellant Jagdeep Singh, 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 two months from the date of 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, both the criminal appeals stand partly allowed.

Since, appellants Karandeep Singh @ Harry and Jagdeep Singh, are on bail, their bail/surety bonds stand discharged.

April 18, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No