

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

Crl. Appeal No.S-4726-SB of 2015 (O&M)

Date of Decision: October 10, 2017

Banta Singh

...Appellant

VERSUS

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.O.P.Kamboj, Advocate
for the appellant.

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

INDERJIT SINGH, J.

The present appeal has been filed by the appellant Banta Singh against State of Punjab, challenging the judgment of conviction dated 07.09.2015 and order of sentence dated 08.09.2015 passed by learned Judge, Special Court, Fazilka, 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 ₹10,000/- and in default of payment of fine, to undergo simple imprisonment for a period of four 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, Fazilka, are as under:-

“2. The brief facts of the case of the prosecution are that on

16.04.2014 ASI Ramesh Kumar along with HC Bhupinder Singh, No.59, HC Sher Singh, No.994, Constable Kuljeet Singh, No.1030 was on patrolling duty on private car, which was being driven by ASI Ramesh Kumar and the police party was going from village Dane Wala Satkosi to Chowk Roop Nagar in connection with patrolling and checking of suspected persons and when the police party reached near the Sem drain, one person was seen coming carrying a Gatta plastic in his right hand, on seeing the police party he got nervous and all of a sudden, turned towards his left hand pavement of Sem drain. On suspicion, ASI Ramesh Kumar apprehended the accused with the help of other police officials, who disclosed his name as Banta Singh son of Sona Singh, resident of Dhani Visakha Singh Dakhli Arni Wala, Police Station Arni Wala. Then ASI Ramesh Kumar informed the said person that he is having suspicion that there is some intoxicant substance in the gatta plastic carried by the accused in his right hand. ASI Ramesh Kumar also made him aware of his legal right to get himself and his Gatta plastic searched in the presence of some Gazetted Officer or Magistrate but the accused reposed confidence in the I.O. Then ASI Ramesh Kumar prepared consent memo of accused separately, which was signed by the accused in Punjabi script. ASI Ramesh Kumar, I.O. tried to join a public witness in the police party but none was available. Then on search of the Gatta plastic, Poppy husk was recovered. The I.O. separated 250 grams of Poppy husk as sample and 250 Grams of Poppy husk as additional sample and prepared its separate parcels and the remaining Poppy husk, on measurement, came out to be 09 Kgs 500 Grams. The bulk was also converted into a separate parcel. All the sample parcels and bulk parcel were sealed by the I.O. with his seal bearing impressions "RK". Form M-29 was prepared at the spot. Seal after use was handed over to HC Bhupinder Singh. The entire case property was taken into police possession vide separate recovery memo. On personal search of accused, currency notes worth Rs.150/- were recovered from the right pocket of trouser worn by the accused, which was taken into police possession vide separate recovery memo. Ruqa was sent to the police station through Constable Kuljeet Singh, No.1030 for registration of the case, as against the accused Banta Singh. Investigation was initiated. Site plan of the place of recovery was prepared. Accused was arrested in the present case. Statements of the witnesses were recorded under section 161 Cr.P.C. After completion of investigation, challan against the accused was presented in the court."

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 PW-1 Ramesh Kumar, Investigating Officer, PW-2 Constable Davinder Singh, Sample Carrier, PW-3 Sudarshan Kumar, Retired Inspector and PW-4 Head Constable Bhupinder Singh, Recovery witness.

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 did not dispute the findings regarding conviction and only prayed for reduction of sentence of the appellant. Learned counsel for the appellant contended that poppy husk weighing 10 kgs. has been recovered from the accused-appellant, which falls under non-commercial category. He also contended that the appellant is poor person, first offender, sole bread earner of the family and is suffering from criminal proceedings since 2014. Learned counsel for the appellant next contended that appellant has already undergone more than three months 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 07.09.2015 passed by learned Judge, Special Court, Fazilka, 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 poor person, first offender, sole bread earner of the family and suffering from long protracted criminal proceedings since 2014 i.e. for the last about 3 years and further in view of the fact that appellant has already undergone actual sentence of more than three months and keeping in view the fact the recovery from the accused-appellant falls under non-commercial category i.e. 10 kgs. of poppy husk, the sentence imposed upon the appellant is reduced to the sentence already undergone by him. The sentence of fine is also reduced and he is directed to pay fine of ₹5000/- instead of ₹10,000/- and in default of payment of fine, to undergo simple imprisonment for a period of four months. The appellant is directed to pay the fine within one month 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, present criminal appeal stands partly allowed.

Since, appellant Banta, is on bail, his bail/surety bonds stand discharged.

October 10, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No