

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

Crl. Appeal No.S-884-SB of 2017 (O&M)

Date of Decision: April 18, 2017

Harjinder Singh @ Rinku

...Appellant

VERSUS

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Kawaljyot Singh, 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 08.02.2017 passed by learned Judge, Special Court, Jalandhar, whereby the appellant along with co-accused was held guilty and convicted and sentenced to undergo rigorous imprisonment for a period of two years and to pay fine of ₹5,000/- and in default of payment of fine, to undergo rigorous imprisonment for a period of two months under Section 15(b) of the NDPS Act.

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

“2. Brief facts of the prosecution case are that on 06.09.2013, ASI Raghubir Singh (herein-after referred to as Investigating

Officer) along with other police officials was going from village Chuharwali to Alawalpur via village Lesriwal in connection with patrol duty. When the police party crossed Pepsi Nursery and reached near the Shahpur-Lesriwal Chowk, Alawalpur, then one car of silver colour make Indigo bearing registration No.PB-10BS-5289 was seen coming from the side of Alawalpur. Investigating Officer signaled the said car to stop, but the driver of the said car tried to run away from the spot by accelerating the speed of the car, but the police party managed to stop the car. On inquiry, the person who was driving the car disclosed his name as Sukhpal and the person who was sitting on adjacent seat of driver disclosed his name as Parvinder Singh @ Pindu, whereas the person sitting on the rear seat of the car disclosed his name as Harjinder Singh @ Rinku. Investigating Officer also disclosed his own identity to them and apprised them about their legal right one by one to get conducted their own search as well as the search of their car from a Gazetted Officer or Magistrate as he has a suspicion of possessing some intoxicant substance by them, but all the accused reposed confidence in him. Their consent memos were recorded separately in this regard. Before conducting search of the accused, Investigating Officer tried to join an independent witness from the public, but no one became ready to join the police party. Thereafter, on search of the Dicky of the car, two plastic bags, the mouth of which were tied, were recovered and on opening the same, the same were found containing poppy husk. Two samples of 250 grams poppy husk each were drawn from the first bag and remaining poppy husk on weighing came out 26 Kgs, which were marked as 'A'. Two samples of 250 grams poppy husk each were drawn from the second bag and remaining poppy husk on weighing came out 25 Kgs, which were marked as 'B'. All the above said samples and remaining bulk of poppy husk were sealed by the Investigating Officer with his seal bearing impression 'RS' in six different parcels. Separate Form M-29 was prepared at the spot. Seal after use was handed over to HC Sewa Dass. The above said sample parcels, bulk parcels and Form M-29 were taken into possession vide separate recovery memo in the presence of witnesses. Ruqa was sent to the police station for registration of case against the accused, on the basis of which a formal FIR was recorded. Rough site plan of the place of recovery was prepared at the spot and statements of witnesses under Section 161 Cr.PC were recorded. On coming back to the police station, sample parcels and bulk parcels along with Form M-29 were produced before Inspector/SHO Malkiat Singh, who after checking the bulk parcels and sample parcels sealed the same with his seal bearing impression 'MS' and also affixed his seal on Form M-29. The above said case property was deposited by him with MHC for safe custody. On the next day, sample parcels and bulk parcels along with accused were produced before Ld. Illaqa Magistrate by Investigating

Officer, who after verifying the case property made his endorsement 'seen' and signed the same and passed an order to return the case property to Investigating Officer, who redeposited the same with MHC for safe custody and accused were sent to judicial custody. Above said car was also taken into police possession. During investigation, sample parcel was sent to the office of Chemical Examiner, Kharar for Chemical analysis. After receiving report of chemical examiner and completing the investigation, instant challan was presented in the court against the accused."

On presentation of challan against accused-appellant 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-appellant along with co-accused was charge-sheeted under Section 15(c) of the NDPS Act, to which he pleaded not guilty and claimed trial.

In support of its case, prosecution examined PW-1 Head Constable Sewa Dass, PW-2 Constable Manpreet Singh, PW-3 ASI Raghbir Singh, PW-4 Head Constable Niranjana Singh and PW-5 Inspector Malkiat 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 along with co-accused, 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 25 kgs. 500 grams of poppy husk has been recovered from the accused-appellant, which falls under non-commercial quantity. He also contended that the appellant is poor person, only bread of the family and suffering from criminal proceedings since 2013. Learned counsel for the appellant next contended that appellant has already undergone 10 months and 10 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 08.02.2017 passed by learned Judge, Special Court, Jalandhar , 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, only bread earner of the 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 has already undergone actual sentence of 10 months and 10 days and that the recovery from the accused-appellant falls

sentence imposed upon the appellant is reduced to the sentence already undergone by him. However, the sentence of fine and in default thereof, shall remain the same.

Accordingly, present criminal appeal stands partly allowed.

Appellant Harjinder Singh @ Rinku, 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.

April 18, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No