

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-D-506-DB-2011 (O&M)

Date of decision: 24.08.2018

Sukhjinder Singh

.....Appellant

versus

Narcotics Control Bureau, Chandigarh

.....Respondent

CRA-D-512-DB-2011 (O&M)

John Kennedy

.....Appellant

versus

Narcotics Control Bureau, Chandigarh

.....Respondent

CRA-D-525-DB-2011 (O&M)

Baljinder Singh

.....Appellant

versus

Narcotics Control Bureau, Chandigarh

.....Respondent

CORAM: Hon'ble Mr.Justice A.B.Chaudhari
Hon'ble Mr.Justice Kuldeep Singh

Present: Ms.Tanu Bedi and Ms.Vibhu Agnihotri, Advocates
for the appellants in CRA-D-506-DB-2011 and
CRA-D-525-DB-2011
Mr.Varun Baanth, Advocate for the appellant in
CRA-D-512-DB-2011
Mr.D.D.Sharma, Advocate for the respondent-NCB

1. Whether Reporters of Local newspapers may be allowed to see the judgment ?

2. To be referred to the Reporters or not ?

3. Whether the judgment should be reported in the Digest?

Kuldip Singh, J.

By this common judgment, we shall dispose of three connected Criminal Appeals bearing CRA-D-506-DB-2011, CRA-D-512-DB-2011 and CRA-D-525-DB-2011, filed by Sukhjinder Singh son of Baljinder Singh, his father Baljinder Singh son of Darshan Singh and John Kennedy Uzoigwe son of Uzoigwe against the judgment of conviction dated 29.3.2011 and order of sentence dated 31.3.2011 passed by learned Judge, Special Court, Chandigarh, vide which, accused-appellants were convicted under Section 21(C) read with Section 8 of Narcotic Drugs and Psychotropics Substances Act, 1985 (for short, “NDPS Act”) and sentenced to undergo Rigorous Imprisonment for 12 years and fine of Rs.one lakh each, in default thereof, to undergo further RI for one year each.

Facts of the case are that on 10.12.2007 at about 12 noon, Hardeh Kumar, Intelligence Officer of Narcotic Control Bureau, Chandigarh, Zonal Unit (for short, “NCB”) received a secret information (Ex.P28/A) to the effect that three persons, which includes one Nigerian are involved in drug trafficking and they are likely to make a deal of “Heroin” near roundabout of Sectors 43-44, Chandigarh at about 22.30 hours in a Maruti Swift steel grey colour car bearing registration number UA-07-T-3804. The information was reduced into writing and put up before Balwinder Kumar, Superintendent, NCB, who directed the Investigating Officer to constitute a team and undertake surveillance operation. Thereafter, Investigating Officer obtained search authorization (Ex.P3) from the Superintendent, NCB. Thereafter, a team comprising of Ganesh Baluni, Intelligence Officer, Gurdas Ram, Intelligence Officer, Gurdev Singh, Driver, Rajesh Kumar Sepoy, Ramesh Kumar Sepoy and Balwinder Singh

Sepoy, including Hardesh Kumar was constituted and proceeded towards roundabout of Sectors 43-44, Chandigarh. Near bus stand Sector 43, Hukam Chand and Iqbal residents of village Khuda Alisher were joined as independent witnesses, after issuing them due notices under law. At about 9.00 p.m., a Naka was laid near roundabout of Sectors 43-44, Chandigarh towards the side of Sector 51, Chandigarh. It was noticed that at about 10.30 p.m. a Nigerian national stepped out of an auto and walked towards roundabout of Sectors 43-44. After five minutes, a Maruti Swift car of Grey colour came from the side of Mohali and on reaching near roundabout of Sectors 43-44 slowed down and gave dipper. The said car stopped and Nigerian national stepped into the car from rear door. Thereafter, the person sitting adjoining to the seat of driver, took out a packet underneath the seat and handed over the same to said Nizerian national. The NCB team accompanied by the independent witnesses, immediately surrounded the vehicle. On questioning, it was found that the driver of the car was Sukhjinder Singh aged 26 years and the person sitting by his side was his father Baljinder Singh aged 53 years. Both residents of House No.179, Ward No.3, Shaheed Bhagat Singh Nagar, Machhiwara road, Tehsil Samrala, District Ludhiana. Nigerian national disclosed his identity as John Kennedy Uzoigwe aged 33 years son of Uzoigwe, resident of Nigeria. The NCB team disclosed their identity to all the accused. They were shown the search authorization (EX.P3). Thereafter, notices under Section 50 of NDPS Act (Ex.P24 to P26) were served upon them, which was also witnessed by the independent witnesses Hukam Chand and Iqbal. Accused were given option of search before a Magistrate or Gazetted Officer but accused reposed faith in NCB team. Hardesh Kumar also offered for the

search of his person, which was declined by the accused. Thereafter, the search of the car was done, upon which, a backpack (pithu bag) of blue colour was found lying underneath the adjoining seat of driver, where accused Baljinder Singh was sitting. Seven packets containing powder and granule type contents were recovered from the said backpack. One packet was recovered from Nigerian national John Kennedy. In total eight packets were recovered. On questioning Baljinder Singh accused disclosed that the packets contained 'Heroin' and same was purchased by him from a person Chhotu of village Sultanpur for Rs.35 lakhs and they had come to Chandigarh to deliver the same to Nigerian national for Rs.40 lakhs. Ganesh Baluni, Intelligence Officer, on the instructions of Haradesh Kumar, Investigating Officer, took out small quantity of suspected material from all the eight packets and carried out test with the drug detection kit. The test was found positive for 'Heroin'. The said packets were weighed and each packet came to one kilogram and thus, total weight of said packets came to eight kilograms. The said packets were taken into possession through recovery-cum-seizure memo (Ex.P4), which was signed by the accused and the independent witnesses. As it was getting midnight and not feasible to undertake further proceedings at the spot, therefore, NCB team along with recovered contraband and independent witnesses left for NCB office situated at House No.80, Sector 2, Chandigarh. The vehicle used by the accused was also brought to NCB office. In the NCB office, all the eight packets were checked and it was noticed that there was no mark on any packet. All the polythene packets were cut opened and entire substance was transferred to bigger polythene packet and then it was mixed homogeneously. Two samples of 5 grams each were taken out from the said

homogeneous mixture and put in small polythene pouches and then heat sealed. Thereafter same were put in a white paper envelope. A paper was pasted on the opening side of envelope so that same cannot be opened. Four seals bearing inscriptions "NARCOTICS CONTROL BUREAU-06" were affixed on the four corners of each sample parcel. The residue contraband was kept in polythene bag and also heat sealed and put inside a markene cloth and after sewing, three above noted seals were affixed. Packing material was separately sealed. After use, seals were returned to Balwinder Kumar, Superintendent. Car bearing No. UA-07-T-3804 used in the crime was also taken into possession. Panchnama was prepared. Fascmile of seal was also affixed on the Panchnama. Notices under Sections 67 of NDPS Act (Ex.P9, Ex.P11 and Ex.P13) were served upon the accused and their statements were accordingly recorded. Thereafter, personal search of the accused was conducted. From the personal search of accused Baljinder Singh, a revolver along with three live cartridges was recovered. From the personal search of Sukhjinder Singh, one revolver along with three live cartridges was recovered. Personal search of accused John Kennedy was also conducted. Intimation regarding arrest of John Kennedy was forwarded to Ministry of External Affairs. Information regarding arrest and seizure under Section 57 of NDPS Act was given to Superintendent NCB, vide Ex.P35, which was received by him. Thereafter, Hardeish Kumar, Investigating Officer along with Gurdev Singh, Driver and Rajesh Kumar, Sepoy went to the house of the accused Baljinder Singh and Sukhjinder Singh in the morning of 11.12.2007. There two independent witnesses Pinder Singh and Sukhwant Singh were associated after giving them notices (Ex.P38 and P39). After the house search, Panchnama (Ex.P40) was

prepared, which was signed by the independent witnesses as well as Balbir Kaur, Karanjit Kaur, Navjit Kaur and Jaskirat Kaur. Accused were also taken to General Hospital, Sector 16, Chandigarh for medical examination and after their medical examination, they were produced before Magistrate on 11.12.2007 along with the case property. The samples were sent to CRCL, New Delhi through Intelligence Officer Gurdas Ram. Vide test report (EX.P29) contents of the sample parcel were found to be 'Heroin' with the percentage of diacetylmorphine at 32.6%.

After completion of investigation, complaint was presented in the Court. Accused were charge sheeted under Section 21 read with 8, Section 27-A and 29 of NDPS Act, to which they pleaded not guilty.

To support its case, the prosecution examined, PW1 Hukam Chand, PW2 Gurdas Ram, Intelligence Officer, PW3 V.P. Bahuguna, Assistant Chemical Examiner, PW4 Hardesh Kumar, Intelligence Officer and thereafter, the prosecution evidence was closed.

When examined under Section 313 Cr.P.C., accused Sukhjinder Singh denied as incorrect the evidence led against him and put up the following defence:-

“I am innocent. I have been falsely implicated in this case. I was picked up by NCB officials near from office of Air India/ light points of Sector 17 on 10.12.07 at 3.00 pm when I had come to confirm the air ticket of my sister Karanjit Kaur. I was tortured in the NCB office and unable to move about. I was asked to give location of my father Baljinder Singh. On the same night I was taken to house at Samrala where our house was ransacked by officials of NCB. Money and valuables were

taken away by NCB officials the details of which have been reflected in writ petition and other applications filed by my mother before higher authorities and High Court. My father was picked up from the house itself and was also tortured. Rs.1 crore was demanded for our release which we did not pay. One Surinder Singh @ Chhinda was having dispute in respect of sale of financed truck to my father and to settle the score he got us implicated in this false case after striking a deal with NCB officials who had recovered contraband from the car of his wife. He was asked by Zonal Director to give names of some NRI/ rich person so that they could extort money in this case. We are victim of false accusations and tainted investigation. Nothing was recovered from us.”

His father, accused Baljinder Singh, while denying the prosecution evidence as incorrect, pleaded as under:-

“I am innocent. I have been falsely implicated in this case by lifting from my house at Samrala. I was tortured by the officials of NCB. My house was ransacked. Money and valuables were taken away by NCB. My son was already in illegal captivity of NCB officials who was whisked away by the NCB officials at 3.00 pm on 10.12.07 from near Air India Office where he had come to confirm the air ticket of his sister Karanjit Kaur NRI. My son Sukhjinder Singh was subjected to third degree torture by the officials of NCB namely Balwinder Kumar, Hardesh Kumar and Saji Mohand and Jaswinder Singh. He was tortured to the extent that he was to be

hospitalized in GMCH Sector 32 Chandigarh. He was unable to move about. The contraband was planted upon us at the behest the husband of owner of the car namely Surinder Singh @ Chhinda with whom we have strained relations on account of business terms as he had sold one truck to me and there was dispute regarding finance of the truck. The car which was intercepted by NCB alongwith contraband was of Surinder Singh @ Chhinda. A deal was struck with Surinder Singh Chhinda and he was asked to give the name of one known rich person or NRI so that money could be extorted. Accordingly since Surinder Singh was knowing that my son is at Chandigarh for the purpose of confirming air ticket so at his instance he was whisked away and later on I was also involved in this false case. We had made many representations to higher authorities including Ministry of Home Affairs, DGP, NCB, Prime Minister of India. Apart from this wife had also filed a writ petition in Hon'ble High Court narrating the aforesaid facts. I and my son are victim of false accusations and tainted investigation. Real culprits have been set free after striking a deal and I was also pressurized by Saji Mohan & Balwinder to part with an amount of Rs.1 crore which we did not pay and highlighted the matter to higher authorities.”

Accused John Kennedy also denied as incorrect the prosecution evidence and pleaded as under:-

I am innocent. I have been falsely implicated in this case, just to give a touch of international drug trafficking. I was picked

up from Sector 67 Mohali. The NCB party which picked me also took my belongings including cash and mobile phone nokia 1600 with sim card No.9899776760 at around 8.15 pm. The NCB team was in one gypsy and one qualis and they straightway took me to NCB office in Sector 2 Chandigarh. NCB officials forced me to sign on blank papers and blank printed proforma. On my refusal to sign they gave me severe beatings and threatened to kill me and they forcibly took my signatures on several papers. On the next day early morning the NCB officials brought Baljinder and Sukhjinder Singh the co-accused in this case. The NCB officials also asked them to sign on blank papers and printed proformas and were given severe beatings when they refused. I have not made any statement u/s 67 of NDPS Act. My signatures on Ex.P14 was taken forcibly and after giving beatings to me. I have given application mark D1 dated 22.12.07 stating therein that nothing was recovered from me and my signatures were obtained on blank papers. I was medically examined with regard to my injuries and MLR to that effect is Ex.DC. I have been falsely implicated just to show the detection of crime and to get applause from their senior officers.”

In defence, the accused examined, DW1 Bhupinder Singh, DW2 Sukhwant Singh, DW3 Ram Kishan Negi, Assistant Manager, Air India Office, Chandigarh, DW4 Smt.Amarjit Kaur Dhillon, DW5 Kuldeep Singh Chaudhary, Advocate and closed the defence evidence.

We have heard learned counsel for the appellants, learned State

counsel and have also carefully gone through the file.

Gurdas Ram, Intelligence Officer (PW2) as well as Hardesh Kumar, Intelligence Officer (PW4) have made the statements as per version put forward in the complaint, as stated above and need not to be repeated over again. Hukam Chand (PW1) is the independent witness. He also supported the prosecution case, stating that he did join the police party and that the recovery was effected in his presence in the manner stated by Gurdas Ram and Hardesh Kumar, Intelligence Officers.

Learned counsel for the appellants has vehemently argued that two independent witnesses Hukam Chand and Iqbal are stock witnesses of NCB and that in fact they were not present as claimed by them. It has been argued that recovery was allegedly effected on the roundabout of Sectors 43-44, Chandigarh, whereas both the said witnesses belong to village Khuda Ali Sher, Chandigarh, which is at some distance from the PGI, Chandigarh. In this way, place of recovery and the village of two witnesses Hukam Chand Iqbal is at great distance within Chandigarh itself. They are stated to have joined the raiding party around 1.45 pm. Learned counsel has also argued that according to Hukam Chand, he had parked car in the parking of bus stand and was waiting for a friend, whereas, according to NCB officials, he he was sitting in the car.

We are of the view that such minor discrepancies are to be ignored, particularly, when the witnesses are examined after a lapse of time.

According to Hukam Chand (PW1), notice under Section 67 of NDPS Act was served upon the accused in his presence and their statements were recorded. The overall effect of the statement of Hukam Chand will be examined in the light of the defence evidence to see as to what part is to be

believed and what part is not to be believed.

In this case, independent witness was joined at around 2.00 p.m. and the recovery was effected at 10.30 p.m. Though there is a story of NCB officials going next morning i.e. 11.12.2007 to the house of the accused Baljinder Singh and Sukhjinder Singh and conducting search there.

Learned counsel for the appellants Sukhjinder Singh and Baljinder Singh has argued that in fact the revolver and cartridges were picked up from the house of the accused and shown to have been recovered from the Jamatalashi, which was allegedly, conducted in NCB office. It has been further contended that in fact raid on the house of the accused was conducted on the intervening night of 10/11.12.2007 and that Baljinder Singh father of Sukhjinder Singh-accused was picked up from his house and falsely involved in this case. Regarding Sukhjinder Singh, it is stated that he had gone to prepone the ticket of his sister Karamjit Kaur NRI in Sector 17, Chandigarh on 10.12.2007. He was picked up from outside of Air India Office at about 3.00 p.m. on that day and he was tortured and his signatures were obtained on blank papers.

Gurdas Ram has maintained in his cross-examination that Sukhjinder Singh was not having any injury when he was arrested. Same is the statement of Baljinder Singh. However, Kuldeep Chaudhary, Advocate (DW5), who was counsel for the accused, had stated that he was engaged in this case on 14.12.2007. At about 2.10 p.m., he had moved an application on behalf of Amarjit Kaur before the Court of learned Additional Sessions Judge, Chandigarh, on which, directions were issued to the Jail Superintendent to provide medical assistance as per law. At about 3.00 p.m., accused was brought by the police officials to Government Medical

College and Hospital, Sector 32, Chandigarh for treatment. On the request of Amarjit Kaur, relative of the accused, he visited the hospital. Though initially, he was not allowed to see the accused but on showing identity card, at about 5.45 p.m. he was allowed to meet the injured –accused. Sukhjinder Singh was in pain and was unable to move properly. He told the counsel that he was picked up from Sector 17 on 10.12.2007 near the office of Air India by the officials of NCB and was thrashed badly by Hardeh Kumar and Balwinder Kumar on the directions of Saji Mohan. He clicked two photographs of the injured Sukhjinder Singh. He was having injuries on both legs from buttocks to ankles. He also prepared video clip with his mobile phone, showing the injury caused to Sukhjinder Singh and Same were converted into Compact Disk. Photographs and Compact Disk were produced in Court in sealed condition.

MLR of Baljinder Singh, shows that when he was medico legally examined on 11.12.2007, he had following three injuries:-

- 1. Contusion 8 cm x 5cm on postereolateral aspect of left arm.
Reddish brown.*
- 2. Contusion 9 cm x 4cm over postereolateral aspect of right arm. Reddish brownish.*
- 3. Contusion on posterior aspect left forearm extends to wrist.
Reddish brownish*

Nature of injuries was simple and duration is of injuries was 12 hours to 36 hours.

Accused Sukhjinder Singh was having the following injuries:-

- 1. Contusion on interior and lateral aspect of left leg. Reddish brownish in colour covering almost middle 2/3rd of left leg.*

2. *Abrasion interior aspect left knee*
3. *Linear contusion over back of lower limb with intervening normal area as shown covering posterior and part of lateral and medial aspect as shown reddish bluish in colour.*

The probable duration of injuries was 12 hours to 16 hours. Injuries were simple in nature. Injuries show the several linear contusions and abrasions from just below the buttock right up to the lower part of the legs showing that he was badly beaten up.

The medical examination of John Kennedy shows the following injuries:-

1. *Contusion 3 cm x 1 cm over dorsum of right hand. Reddish.*
2. *Abrasion 1 cm x 1 cm over dorsum of right ring finger.*
3. *Abrasion 1 cm x 1cm on occipital region reddish over upper contusion 3 cm x 3 cm. Reddish.*

Injuries were simple in nature and within 24 hours. The MLRs are Ex.D-A to D-C. The injuries on the person of the accused shows that accused Sukhjinder Singh was badly thrashed, while in NCB custody, as the duration of injuries is within 12 hours to 36 hours, as recorded on 11.12.2007. When he was arrested on 10.12.2007 at 10.30 a.m., there were no injuries. This is what is claimed by Gurdas Ram and Haradesh Kumar, Intelligence Officer. It goes to show that the statement of Intelligence Officer regarding their quite arrest cannot be believed. Accused Sukhjinder Singh was either badly beaten up just before his arrest or immediately after his arrest. The other two accused namely, Baljinder Singh and John Kennedy were also thrashed, though injuries on their person were not as brutal as in the case of Sukhjinder Singh. Since, Sukhjinder Singh was

tortured and it is claimed by NCB officials that all the three accused were arrested together, therefore, two accused, though having minor injuries, would be terrorized. Therefore, statements made to the NCB officials under Section 67 of NDPS Act cannot be called voluntarily and have to be discarded.

The result is that now, the prosecution is required to prove its case without the aid of the statements of the accused recorded under Section 67 of NDPS Act.

In the light of the above noted injuries and statements of the witnesses, now, we will examine as to whether the case against Baljinder Singh, father of the accused Sukhjinder Singh is proved?

According to the witnesses, when car was stopped near roundabout of Sectors 43-44, Sukhjinder Singh was sitting on the driver seat of the car and Baljinder Singh was sitting on the side of the driver seat. Both the accused are residents of Shaheed Bhagat Singh Nagar, Machhiwara road, Tehsil Samrala, District Ludhiana, which is at the distance of 65 kms from Chandigarh.

Now, the statement of DW3 Ram Kishan Negi, Assistant Manager, Air India Office, Sector 34, Chandigarh shows that on that date, Sukhjinder Singh has visited the Air India Office, Sector 17, Chandigarh. NCB officials had come to his office to verify about Sukhjinder Singh. It goes to show that Sukhjinder Singh had visited the Air India Office for the change of ticket around noon. At 12 noon secret information stated to have been received by NCB officials and they had proceeded for raid at 2 p.m., where they joined independent witness. The accused were arrested at 10.30 p.m.

Accused has examined Bhupinder Singh as DW1, who has stated that on the night of 10.12.2007, accused Sukhjinder Singh was brought in the company of the officials who told them that Sukhjinder Singh accused has caused the accident. Sukhjinder Singh was also having problem in walking. It was about 1.00/1.15 am (midnight). His signatures were obtained on blank papers. While going they took away Baljinder Singh with them.

Sukhwant Singh (DW2), who is also resident of the same area, also stated that he was contacted on the midnight on 10/11.12.2007. At that time, Sukhjinder Singh was with them. His signatures were obtained on blank papers. In cross-examination, he stated that NCB officials visited him on 11.12.2007 at 9.30 p.m. Pinder Singh was not with him. He was alone. Pinder Singh had taken to the house of the accused.

Amarjit Kaur Dhillon (DW4) wife of Baljinder Singh accused and mother of Sukhjinder Singh accused stated that her son Sukhjinder Singh had come to Chandigarh to change air ticket of her daughter Karanjit Kaur in the office of the Air India, Sector 17, Chandigarh on 10.12.2007. He left Samrala in the morning but did not return till night. They tried to contact him but his cell phone was switched off. Then he came along with 6-7 unidentified persons in the midnight. He was having injuries on his person and was not able to move properly. They were told that Sukhjinder Singh has caused an accident. The said team ransacked their house and threatened them and took away their valuables including cash, jewellery, electronic items. She has also filed Writ Petition No.19495 of 2007 titled as Amarjit Kaur vs. UT and others. She further stated that their neighbours Rupinder Singh and Sukhwant Singh came there and their signatures were

obtained on blank papers. Her husband Baljinder Singh was also taken away by the said team along her son Sukhjinder Singh. On the next morning i.e. 11.12.2007, they reported the incident to local police. The police simply visited their house but nothing was done. On account of fear, they could not report the matter to the police at midnight. On 12.12.2007, they came to know from the press that her husband and son have been involved in a case by NCB officials at Chandigarh. They visited Model Jail, Burail on 13.12.2007 and found that her son Sukhjinder Singh is in injured condition. Her husband, who was heart patient was already shifted to hospital on account of cardiac arrest. On her application, her son was medico legally examined on 14.12.2007 in the hospital, where Chaudhary Kuldeep Singh, Advocate clicked some photographs and also prepared video. In the writ petition, she has highlighted the atrocities committed upon her son. In cross-examination, she reiterated that the officials had visited her house on 11.12.2007 at about 12.30 a.m. i.e. midnight of 10/11.12.2007. She further stated that Sukhwant Singh and Bhupinder Singh reached her house at 2.30/3.00 a.m. She called Pinder Singh @ Bhupinder Singh and other witness Sukhwant Singh was called by those officials. She stated that she does not know that FIR No.92 of 23.5.2006 was registered against her son Sukhjinder Singh under Sections 341, 325, 506, 148 and 149 IPC at Police Station Samrala (Punjab). However, she admitted that FIR under Section 302 IPC was registered against her husband Baljinder Singh at Police Station Samrala vide FIR No.66 dated 12.4.2007, though she claimed that it was a false FIR.

If the defence evidence as well as prosecution evidence is examined, it becomes doubtful whether Baljinder Singh was arrested at the

spot? It appears that Sukhjinder Singh and John Kennedy were arrested with contraband and Sukhjinder Singh was badly tortured and then his statement under Section 67 of NDPS Act was extracted. Then at midnight he was taken to his home at Samrara, which is at a distance of 65 kms. from Chandigarh. There search was conducted and that Baljinder Singh was picked up from his home and also shown to be present at the spot in the car. It is to be noted that when the accused were arrested and the contraband was recovered from the spot on the roundabout of Sectors 43-44, Chandigarh, NCB officials should have conducted personal search of the accused to see whether they are carrying any other contraband or any other article with them, which could be a weapon. This was to ensure that accused do not react to the recovery. However, surprisingly, no personal search of the accused was allegedly conducted at the spot and was conducted only when they were taken to NCB office. There one revolver each along with three cartridges each were recovered from Sukhjinder Singh and Baljinder Singh. Therefore, the possibility is that said revolver and cartridges were picked up from their house and later on shown to be recovered from the personal search.

Under these circumstances, as a matter of abundant precaution and in view of brutal torture of Sukhjinder Singh, we are of the view that the story of prosecution qua accused Baljinder Singh is not beyond shadow of reasonable doubts. Consequently, Baljinder Singh is to be granted benefit of doubt.

Learned counsel for the appellants has vehemently argued that authorization under Section 41 of NDPS Act is not valid.

We are of the view that the Superintendent of NCB is duly

authorized under the said Section to authorize search. Notice under Section 51 of NDPS Act was given to the accused before conducting the search and thereafter, search was conducted. 8 kgs. 'Heroin' is unlikely to be planted by NCB officials from their pocket. The fact that due to night, after the recovery, the contraband was taken to NCB office, does not mean that any tampering was done. Since, after the initial test with the kit, the proper test was got conducted from the laboratory, therefore, it was not necessary to examine the officials, who conducted the preliminary test at the spot. Report of the laboratory is very clear. It was found to be 'Heroin'.

Learned counsel for the appellants has further argued that in this case, the NCB officials did not try to trace the origin of the contraband nor they try to find out as to how the Car which does not belong to the accused and belongs one Charanjit Kaur was used. Charanjit Kaur has tried to take the car on superdari but later on she did not take any action.

We are of the view that the mere fact that police did not go after Chotu, who is stated to have supplied the contraband and did not try to go after Charanjit Kaur, owner of the car for one or the other reason, does not absolve the accused of their liability, for being found in possession of contraband. Charanjit Kaur claimed in the application that her car was borrowed by Baljinder Singh for few days and has not been returned.

Learned counsel for the appellants has further argued that no moment register was produced and that Balwinder Kumar Superintendent was not examined to prove the proper custody. Therefore, possibility of tampering cannot be ruled out. In this case, the entire version was not given in the first application for remand.

We are of the view that NCB has its own procedure. There is

nothing on file to show that the contraband was ever tampered with. The proper procedure was followed. The mere non-examination of Balwinder Kumar, Superintendent is immaterial since the recovery is proved beyond all reasonable doubts.

Learned counsel for the appellants has vehemently argued that in this case Rs.500/- were recovered from John Kennedy along with 20 Niara (Nizerian Currency). Rs.200/- were recovered from Sukhjinder Singh and Rs.500/- from Baljinder Singh. The deal was stated to be for Rs.40 lakhs. If deal was to be done, some money should have been found to pay for the 'Heroin'.

On behalf of NCB, it is stated that the accused had disclosed that though the contraband is to be handed over at the spot but payment was to be made after two days. The possibility of payment before or after the delivery is there, which can be one of the *modus operandi* of the smugglers.

Learned counsel for the NCB has also argued that NCB officials are empowered with power under Section 53 of the NDPS Act. Recovery is proved. Therefore, presumption under Section 54 of NDPS Act is raised.

On behalf of the accused John Kennedy, it has been contended that there was no conscious possession. The auto driver was not examined. In fact accused John Kennedy had overstayed in India and has been falsely implicated. His residence was never stated to have been searched and that he was also tortured in the police custody.

We are of the view that there is no motive on the part of the NCB to falsely implicate John Kennedy. Therefore, the prosecution story qua accused John Kennedy and Sukhjinder Singh inspires confidence and

can be believed.

In view of the foregoing discussion, we are of the view that the case against accused Baljinder Singh could not be proved beyond all reasonable doubts and possibility of his false implication cannot be ruled out. Therefore, he is granted benefit of doubt and is acquitted.

We also find that there is no illegality or infirmity in the findings recorded by the trial Court regarding recovery of 8 kgs. 'Heroin' from accused Sukhjinder Singh and John Kennedy. Accordingly, their conviction under Section 21(C) read with Section 8 of NDPS Act by the trial Court is upheld. However, considering the period already undergone by the accused without remissions and also considering the facts and circumstances, the sentence of Rigorous Imprisonment for 12 years passed on accused Sukhjinder Singh and John Kennedy is reduced to Rigorous Imprisonment for 10 years each, while the sentence of fine is maintained.

Consequently, appeal qua Baljinder Singh bearing CRA-D-525-DB-2011 is allowed. He be released forthwith, if not required, in any other case. Appeals qua accused Sukhjinder Singh and John Kennedy bearing CRA-D-506-DB-2011 and CRA-D-512-DB-2011 are dismissed with modification in sentence.

(A.B.Chaudhari)
Judge

(Kuldip Singh)
Judge

24.08.2018

gk

Whether speaking/ reasoned:	Yes
Whether Reportable:	Yes