

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

**CRA-S No.1582-SB of 2005 (O&M)
Decided on: 13.07.2018**

Darshan Singh

....Appellant

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. P.S. Sekhon, Advocate
for the appellant.

Ms. Simran Grewal Randhawa, AAG, Punjab.

ARVIND SINGH SANGWAN, J.

Prayer in this appeal is for setting-aside the judgment of conviction and order of sentence dated 09.09.2005 vide which the appellant was held guilty for offence punishable under Section 15 of the Narcotic Drug and Psychotropic Substances Act, 1985 (in short 'the NDPS Act') for possessing 12 Kgs. of poppy husk and was sentenced to undergo rigorous imprisonment for a period of 06 months and to pay a fine of Rs.1,000/- and in default of payment of fine to further undergo rigorous imprisonment for a period of 02 months in FIR No.181 dated 15.08.2002 registered at Police Station Bhawanigarh.

Brief facts of the case are that on 15.08.2002, the police party headed by ASI Surjit Singh in which HC Hans Raj were present on a private vehicle in connection with patrolling were going from Bhawanigarh towards village Balial and when the police party reached

near the godowns on Balial Road, Bhawanigarh, then Piara Singh son of Chhota Singh, resident of village Balial met and after joining him, the police party was going on the pattri of the minor canal and when they reached near kacha path leading towards village Balial, then from the side of village Balial, the accused was seen coming having a plastic bag on his head and on seeing the police party, he became perplexed and tried to turn back but he was apprehended on suspicion. After obtaining his consent, the search of the bag was carried out, which was found containing poppy husk. Out of that, two samples of 250 gms each were separated and made into parcels and the remaining poppy husk, on weighment, came to 11 kgs and 500 gms, which was put into the same bag and made into parcel. All the parcels were sealed by the Investigating Officer with his seal bearing impression 'SS'. The seal after use was handed over to Piara Singh and all the said articles along with the scooter were taken into possession vide Ex.P3. Personal search memo of the accused was prepared vide Ex.P4 and the grounds for his arrest was intimated to the accused vide memo Ex.P5. The Investigating Officer sent a ruqa Ex.P10 to the Police Station, on the basis of which FIR Ex.P11 was recorded against the accused. Rough site plan was prepared vide Ex.P12 and after obtaining the report Ex.P13 of the Chemical Examiner and after completion of the investigation, the challan against the accused was presented in the Court.

Thereafter, the trial Court on finding a prima facie case against the appellant/accused framed charge under Section 15 of the Act, to which he did not plead guilty and claimed trial.

Thereafter, the trial Court recorded statement of the prosecution witnesses. PW1 – HC Hans Raj, who has deposed as per the version given in the FIR. PW2 – HC Gamdoor Singh tendered his affidavit Ex.P8 regarding deposit of the sample parcel before the chemical examiner. PW3 – Piara Singh, an independent witness, who was joined by the police party was declared a hostile witness and did not fully supported the prosecution version. PW4 – SI Satpal Singh stated that on 15.08.2002 ASI Surjit Singh produced the accused before him along with the witness and the case property sealed with a seal 'SS'. After verification of the same, he has put his own seal 'SPS' on all the articles and attested the sample seal chit Ex.P1. He has further stated that he deposited the case property with MHC Pritpal Singh – PW6. PW5 – ASI Surjit Singh, the Investigating Officer stated that on 15.08.2002, he was heading the police party on a patrol duty and on reaching near godowns on Balial road, Bhawanigarh, the independent witness Piara Singh met them and when they proceeded further on a kacha path leading towards village Balial, the accused was seen coming carrying a plastic bag on his head and on seeing the police party, he became perplexed and tried to turn back but was apprehended on suspicion. Thereafter, this witness after recording his consent memo Ex.P1, attested by the witnesses carried out the search of the bag and found the poppy husk. Thereafter, he has drawn 02 samples of 250 gms each and completed the investigation at the spot. The scooter was taken in possession vide memo Ex.P3, personal search memo of accused was prepared as Ex.P4. The grounds intimating the arrest of the accused was

prepared vide memo Ex.P5 and a ruqa was sent to the Police Station vide Ex.P10 for registration of the FIR on the basis of which formal FIR Ex.P11 was recorded. The rough site plan was prepared as Ex.P12. After the report of the chemical examiner Ex.P13 was received the report under Section 173 Cr.P.C. was presented before the Court. PW6 – MHC Pritpal Singh, tendered his affidavit Ex.P14 regarding deposit of the case property with him.

Thereafter, the statement of the appellant/accused was recorded under Section 313 of the Code of Criminal Procedure (in short 'Cr.P.C.') and all the incriminating evidence was put to him to which he pleaded false implication and stated that he was arrested from his house and nothing was recovered from him.

In defence, the accused/appellant examined DW1 – HC Balwinder Singh and proved copies of FIR Ex.D1 and Ex.D2 to prove that the independent witness PW3 – Piara Singh was also a witness in these FIRs and thus was a stock witness.

Thereafter, the trial Court vide impugned judgment dated 09.09.2005 convicted the appellant and sentenced him to undergo rigorous imprisonment for a period of 06 months and to pay a fine of Rs.1,000/- and in default of payment of fine to further undergo rigorous imprisonment for a period of 02 months.

Counsel for the appellant has argued that the independent witness PW3 has not fully supported the prosecution version. It is further stated that on the same day, one another FIR was registered against one Sukhwinder Singh by the same police party and he was

acquitted by the Court which show that the appellant has been falsely implicated. It is further argued that PW3 is a stock witness of the police as is apparent from 02 FIRs Exs.D1 and D2 produced by DW1 – HC Balwinder Singh and, therefore, he is not a reliable witness. Counsel for the appellant has further submitted that there is an unexplained delay of 06 days in sending the samples to CFSL and no form 29 was filled at the spot.

Counsel for the appellant has also submitted that since the appellant is facing the trial since 2002 and has remained in judicial custody for a period of 02 months and 06 days out of 06 months and subsequent to his conviction in the year 2005, he is not involved in any other case, he is the only bread earner of the family and during the trial as well as during the pendency of the appeal, he was on bail and has never misused the concession of the same, thus, considering his conduct, the sentence awarded to the appellant be reduced to the period already undergone by him.

In reply, counsel for the State has filed the Custody Certificate of the appellant and as per the Custody Certificate, he has undergone 02 months and 06 days of total sentence and is not involved in any other case. It is further submitted that the trial Court has passed a well reasoned judgment after appreciating the evidence led by the prosecution which has proved the guilt of the appellant.

After hearing the counsel for the parties, I find that the trial Court has rightly recorded a finding that the prosecution has been able to prove the guilt of the appellant as from the statement of the official

witnesses, it is proved that after giving a notice to the appellant, giving an option to be searched before the Gazetted Officer or the Magistrate, search was conducted and recovery of 12 Kgs of poppy husk was effected. It is also proved that the Investigating Officer, after arresting the accused and recovering the contraband produced him before the SHO Satpal Singh, who after verifying the facts and case property has put his own seal and thereafter, the same was handed over to MHC and the sample seal parcel was sent to the chemical examiner and as per the report Ex.P13, the same was found to be containing meconic acid morphine.

However, considering the mitigating circumstances in the case i.e. the age of the appellant, who is presently aged about 70 years as on the date of recording his statement under Section 313 Cr.P.C. i.e. dated 04.11.2003, he was 46 years of age; recovery is of non-commercial quantity; the FIR pertains to the year 2002 and he is facing the litigation since then and has never misused the concession of bail granted to him during the trial as well as during the pendency of the appeal as it is apparent from the Custody Certificate, he is not found involved in any other FIR subsequent thereto and also in view of the fact that he has undergone substantive sentence of 02 months and 06 days out of 06 months rigorous imprisonment awarded by the trial Court and being the first offender, I deem it appropriate that the sentence awarded to the appellant be reduced to the sentence already undergone by him, however, the payment of fine is upheld and the appellant is granted 08 weeks time to deposit the fine of Rs.1,000/-, in

case, the same is not deposited with the trial Court/Successor Court.

With the aforesaid modification in the order of sentence,
this appeal is disposed of.

13.07.2018

yakub

(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable:

Yes/No