

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

CRA-S-99-SB-2017 (O&M)
Date of decision : 02.02.2018

Gurjant Singh @ Bunt

...Appellant

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. Yash Pal Malik, Advocate for the appellant.

Ms. Samina Dhir, DAG, Punjab.

ANIL KSHETARPAL, J.

Gurjant Singh @ Bunt son of Major Singh, resident of Bharo Patti, Nagra, Tehsil Bhawanigarh, District Sangrur has filed the present appeal against the judgment of conviction and order of sentence dated 01.12.2016 in a case arising out of FIR No.95 dated 19.10.2014 under Sections 18/61/85 of the Narcotics Drugs and Psychotropic Substances Act, 1985 (hereinafter to be referred as "the NDPS Act, 1985"). The appellant has been convicted and sentenced to undergo rigorous imprisonment for a period of 1 ½ years (i.e. 18 months) and to pay a fine of ₹10,000/- and in default of payment of fine, further undergo rigorous imprisonment for additional period of three months.

As per the prosecution story, on 19.10.2014, Major Singh, Assistant Sub Inspector alongwith Karamjit Singh, Assistant Sub Inspector

and other police officials were going from Village Bhindran to Village Ghabdan on a private vehicle in connection with patrolling and checking of the suspected persons. When the police party reached at Canal Bridge at about 4:45 PM of Village Bhindran, one person was seen coming from the side of Village Ghabdan, carrying a plastic bag in his right hand. On seeing the police party, he became perplexed and turned towards the pavement of the canal. Major Singh, Assistant Sub Inspector became suspicious and got stopped the vehicle, apprehended the person with the help of the other police officials. On inquiry, the person disclosed his name as Gurjant Singh son of Major Singh, resident of Bharo Patti, Nagra, Tehsil Bhawanigarh, District Sangrur.

Major Singh, Assistant Sub Inspector disclosed his identity to the appellant and informed him that he suspects some intoxicant substance in the plastic bag being carried by him and he wanted to conduct a search of the same. The appellant was also apprised of his legal right of search in the presence of some Gazetted Officer or some Magistrate who could be called at the spot by the Investigating Officer but the appellant reposed faith in him. The consent memo was recorded, signed by the appellant and witnessed by Karamjit Singh, Assistant Sub Inspector, and Ranjit Singh, Head Constable. Thereafter, the Investigating Officer conducted the search of the plastic bag which led to the recovery of opium wrapped in a polythene envelope. Two samples of 10 gms each were drawn from the recovered opium and put into two small plastic boxes and converted into the parcels. On weighing the remaining opium alongwith polythene bag came to be 580 gms, which were put into a separate plastic box and converted into a

parcel. Both the sample parcel and bulk parcel were sealed by the Investigating Officer with his seal bearing impression 'MS'. Specimen seal chit was prepared on Form-29 and seal after use was handed over to the Assistant Sub Inspector, Karamjit Singh. The entire case property was taken into police possession and a recovery memo was prepared. A ruqqa was sent to the police station through Head Constable Jagtar Singh. On the basis whereof, FIR was registered. From the personal search of appellant, ₹110/- were recovered. The appellant was arrested and information was sent to the Ex-Sarpanch Balvir Singh resident of Village Nagra on his mobile.

After completing the formalities, police party alongwith appellant came to the police station and Investigating Officer produced the appellant, witnesses and the case property, before the Station House Officer Deep Inderpal Singh. He verified the facts from the appellant and witnesses and after satisfaction, he further sealed the case property, the sample as well as the Form-29 with his seal bearing impression 'DP'. On the directions of the Station House Officer, the case property was deposited by the Investigating Officer in *malkhana*. Next day, the Investigating Officer after taking out the case property from warehouse produced the same alongwith the appellant before the Additional Chief Judicial Magistrate, Sangrur. One representative sample of 10 gms of opium was drawn after breaking up the seals "MS/DP" from the bulk and representative sample parcel and bulk parcel were again sealed with the seal of the Court bearing impression 'BSR'. On the directions of the Additional Chief Judicial Magistrate, Sangrur, the case property was deposited with the Judicial *Malkhana*, Sangrur.

After completion of the investigation, the challan was presented.

The prosecution, in order to prove its case, examined Constable Devinder Singh as PW1, Karamjit Singh, Assistant Sub Inspector as PW2, Inspector, Deep Inderpal Singh as PW3, Head Constable Amrik Singh as PW4 and Major Singh, Assistant Sub Inspector as PW5. Thereafter, the prosecution evidence was closed. The statement of the appellant was recorded under Section 313 Cr.P.C., wherein the entire incriminating circumstances were put to him and the appellant pleaded that he is innocent having committed no offence. He has further stated that nothing has been recovered from him and he has been falsely implicated.

After discussing the evidence produced by the prosecution, Special Court, Sangrur, convicted the appellant.

The appellant was released on bail vide order dated 21.02.2017.

This Court has heard the arguments of the learned counsel for the appellant and learned counsel representing the State of Punjab and with their able assistance gone through the judgments passed by the Courts below and the records.

Learned counsel for the appellant has vehemently contended that the appellant has been falsely implicated and the evidence produced by the prosecution is not reliable. He has further submitted that the witnesses of the alleged recovery are police officials and their testimonies cannot be treated as reliable as they are interested witnesses. He has submitted that no independent witness from the public was joined during the alleged recovery. He has pointed out that the Investigating Officer, Major Singh, Assistant

Sub Inspector who appeared as PW5 has admitted this fact. He has submitted that non-joining of the independent witness is fatal to the case of the prosecution.

This Court has carefully considered the submissions. However, do not find any substance in it. In the absence of the independent witnesses from the public, the Court is to scrutinized the evidence with more care and caution to arrive at a conclusion whether the evidence produced by the prosecution is reliable or trustworthy or not. On examination of the evidence produced by the prosecution does not show that the appellant has been falsely implicated. It is proved on the file that the police party on arriving at the police station alongwith the appellant produced the samples and bulk packet before the Station House Officer and the Station House Officer, after verifying the facts from the appellant, witnesses, had put his seal on the sample parcel and bulk parcel. Apart from Form-29, all the material was immediately deposited with the *malkhana*. On the next day, i.e. on 20.10.2014, the appellant was produced before the Additional Chief Judicial Magistrate who got one representative sample of 10 gm opium drawn from the bulk parcel after breaking open the previous seals and the representative sample parcel and bulk parcel were again sealed with the seal of Additional Chief Judicial Magistrate, Sangrur as 'BSR'.

Learned counsel for the appellant could not point out any major contradiction in the oral evidence produced by the prosecution.

Counsel for the State of Punjab has pointed out that the appellant is involved in two other cases under “the NDPS Act, 1985”, being FIR No.46 of 11.06.2015 and FIR No.7/2014.

A look at the report of the Forensic Science Laboratory Ex.PX proves that one parcel sealed with two seals, one each of 'MS' and 'DP' were received and on analysis, it was found that it was containing opium and the quantity of morphine was found 2.85%. The seals on the parcel were found intact and matched with the specimen seal impression. The sample parcel was received by the Forensic Science Laboratory, Punjab, SAS Nagar, Mohali on 27.10.2014.

In view of the aforesaid discussion, this Court does not find that any interference is required in the judgment passed by the Special Court, Sangrur. Hence, finding no merits. Appeal is dismissed.

02.02.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No