

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

CRA-S No.1301-SB of 2004 (O&M)

Decided on: 16.01.2019

Gurmeet Singh @ Budhi

....Appellant

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. Kamal Kumar Yogi, Advocate (Legal Aid Counsel)
for the appellant.

Mr. Sidakmeet Singh Sandhu, AAG, Punjab.

ARVIND SINGH SANGWAN, J.

Prayer in this appeal is for setting-aside the judgment of conviction dated 21.05.2004 convicting the appellant for offence punishable under Section 15(b) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'the NDPS Act') as well as the order of sentence dated 22.05.2004 vide which the appellant was sentenced to undergo rigorous imprisonment for a period of 01 year and to pay a fine of Rs.5,000/- and in default of payment of fine to further undergo rigorous imprisonment for a period of 01 month.

Brief facts of the case are that on 11.04.2002, ASI Kundha Singh alongwith his co-officials on private scooters was going from Takhtuwala towards village Mudarpur Sanghera while on patrol duty and when the police party reached near dam of river in the area of village Sanghera, they saw a man coming ahead who was carrying a bag containing something on his head. On seeing the police party, he became perplexed and tried to turn back and on suspicion, ASI Kundha

Singh apprehended him with the help of his co-officials. Thereafter, he disclosed his name as Gurmeet Singh @ Budhi son of Shingara Singh resident of Mudarpur. In the meantime, Baru Ram son of Sant Ram resident of Boghewala came from the side of village Sanghera and ASI Kundha Singh joined him in the police party. ASI Kundha Singh told Gurmeet Singh that in the bag carried on his head, some intoxicating substance was suspected and its search was to be conducted. He further informed him that he had as right to be searched before a Gazetted Officer or Magistrate but the accused – Gurmeet Singh reposed confidence in him and thereafter, consent memo of accused was prepared and the same was thumb marked by accused and witnessed by witnesses. Thereafter, on search of the bag, poppy straw was found. Sample of 250 grams was drawn from poppy straw and its parcel was prepared and the remaining poppy straw on being weighed came to 10 Kgs. And thereafter, its parcel was prepared. Parcel of sample and of remaining poppy straw were sealed by ASI Kundha Singh with his seal 'KS' and separate sample seal was also prepared. Thereafter, the seal was entrusted to HC Kashmir Singh. The entire case property alongwith sample seal was taken into possession vide recovery memo. Personal search memo of the accused was also prepared. ASI Kundhan Singh had prepared ruqa and the same was sent to Police Station and thereafter, FIR was registered. Rough site plan of place of recovery was prepared. Accused was formally arrested and his arrest memo was prepared. On return from place of recovery, accused and items of the case property were produced before SI Satpal Singh, SHO. P.S. Kot Ise Khan, who had sealed both the parcels with his seal 'SS'. He had also

put impression of his seal on sample seal. He took items of case property and sample seal in his possession and the accused along with the case property was produced before the Court. Thereafter, sample was sent to Analysis Laboratory and on receiving the report, the challan under Section 173 of the Code of Criminal Procedure (in short 'Cr.P.C.') was submitted before the trial Court.

On presentation of the challan, charge under Section 15 of the NDPS Act was framed against the accused on 29.08.2002, to which he did not plead guilty and claimed trial.

The prosecution examined PW1 – Satpal Singh, SHO, Police Station Kot Ise Khan, before whom accused and case property were produced, PW2 – HC Kuldeep Singh with whom case property was deposited, PW3 – Amarjit Singh, a formal witness, PW4 ASI Kundha Singh, the Investigating Officer. PW5 – C. Sukhpal Singh who had carried the sample to Analysis Laboratory, PW6 – HC Kashmir Singh, the recovery witness. PW – Baru Ram, was given up, being won over by accused and PW – ASI Ranjeet Singh being unnecessary.

Besides oral evidence, the documentary evidence, which was led in prosecution evidence are Ex. PA memo vide which SI Satpal Singh SHO, P.S Kot Ise Khan took items of case property in his possession, Ex.PB application moved before the Court for obtaining order regarding custody of case property, Ex. PB/A order of the Court passed there on, Ex.PC Analysis Report, Ex.PD affidavit of MHC Kuldeep Kumar, Ex.PE affidavit of C. Amarjit Singh, Ex.PF affidavit of C. Sukhpal Singh, Ex.PG consent memo of accused, Ex.PH recovery memo of poppy straw, Ex.PI personal search memo of accused, Ex.PG

consent memo of accused, Ex.PK rough site plan of place of recovery, Ex.PL ruqa, Ex.PM copy of FIR, Ex.PN special report, Ex.PN/1 endorsement of DSP (D) Dharamkot on special report and Ex.Pl sample seal. Parcel of remaining poppy straw has also been led in prosecution evidence as MO1.

After the conclusion of the evidence of prosecution, the statement of appellant/accused was recorded under Section 313 Cr.P.C. and the entire incriminating evidence, which the prosecution produced against him, was put to him to tender explanation for the same. The appellant/accused denied the allegation of prosecution and pleaded that he has been falsely implicated in the case. However, no defence evidence has been led by the appellant/accused.

The trial Court, after hearing learned counsel for the parties and after appreciating the evidence on record, convicted and sentenced the appellant/accused under Section 15(b) of the NDPS Act.

Feeling dissatisfied with the judgment of conviction dated 21.05.2004 and order of sentence dated 22.05.2004, the accused/appellant has preferred the present appeal, which was admitted on 05.07.2004. Thereafter, the sentence of the appellant/accused was also suspended by this Court vide order dated 26.07.2004.

Counsel for the appellant has argued that the appellant was not produced before the Gazetted Officer or the Magistrate in terms of Section 50 of the NDPS Act and at no point of time, the second Investigating Officer was called at the spot and the entire investigation including the recovery was conducted by the same Investigating Officer, therefore, the investigation carried out by ASI Kundha Singh is

not legal. Counsel for the appellant has placed reliance on the judgment ***“Mohan Lal vs State of Punjab”, 2018(4) RCR (Criminal) 101***, to submit that the informant and the Investigating Officer cannot be the same person. It is further submitted that the appellant has undergone 08 months of actual sentence out of 01 year rigorous imprisonment awarded by the trial Court. The FIR pertains to the year 2002 and the sentence of the appellant was suspended by this Court during the pendency of the present appeal and he has never misused the concession of suspension of sentence. It is further submitted that the appellant is a poor person and has his own family to support and the appellant has faced the agony of protracted trial for a period of about 17 years, therefore, by taking a lenient view, the sentence awarded to the appellant be reduced to the period already undergone by him.

Counsel for the State has not disputed the fact that the appellant has undergone 08 months of actual sentence out of 01 year rigorous imprisonment awarded by the trial Court.

After hearing the counsel for the parties, I uphold the judgment of conviction passed by the trial Court, however, considering the fact that the appellant has faced the agony of protracted trial for a period of about 17 years; the appellant has undergone 08 months of actual sentence and while his sentence was suspended in the year 2004 for a period of about more than 15 years, he is not involved in any other case which shows that he has improved his character and has joined the mainstream of the society and also in view of the fact that he is a poor person and has his own family to support, the present appeal is ***partly allowed*** and the sentence awarded to the appellant is reduced to the

period already undergone by him i.e. 08 months.

Disposed of accordingly.

(ARVIND SINGH SANGWAN)
JUDGE

16.01.2019
yakub

Whether speaking/reasoned	Yes/No
Whether reportable:	Yes/No