

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

CRA-S No.464-SB of 2004 (O&M)

Reserved on: 17.01.2019

Decided on: 21.01.2019

Satnam Singh @ Satta

....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 as well as the order of sentence dated 21.02.2004 vide which the appellant was convicted for offence punishable under Section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'the NDPS Act') and was sentenced to undergo rigorous imprisonment for a period of 06 months and to pay a fine of Rs.500/- and in default of payment of fine to further undergo rigorous imprisonment for a period of 15 days.

Brief facts of the case are that on 15.06.2002, ASI Mukhwinder Singh accompanied with his co-officials was going towards village Angarh and met ASI Shiv Darshan Singh alongwith his police party near Gate Hakima, Amritsar and there a secret information was received to the effect that some persons were selling opium to truck drivers near Oil Dump and a raid could lead to their apprehension and

recovery of the contraband. Thereafter, the police contingent set out for the disclosed place and PW – Ashok Kumar was also joined in the raid. When the police party approached the Indian oil Dump, two persons, on the sight of the police posse, tried to sneak away and they were apprehended by ASI Mukhwinder Singh. One person caught by ASI Mukhwinder Singh, disclosed his name as Satnam Singh @ Satta. ASI Mukhwinder Singh told the accused that he was suspected of carrying some narcotics and his personal search was to be conducted. He further informed him that he had a right to be searched before a Gazetted Officer or a Magistrate and a memo was accordingly prepared. The Deputy Superintendent of Police Chaman Lal (PW) having been so requested on wireless reached the spot and revealed his identity before the accused as Deputy Superintendent of Police and a Gazetted Officer. While apprising accused of his right in law to have his personal search got conducted either before him or before any other Gazetted Officer or a Magistrate. The accused reposed faith in him and opted to get his personal search conducted in his presence. A memo was recorded in this respect. Under the directions of the said Deputy Superintendent of Police Chaman Lal, personal search of the accused was conducted by the Seizing Officer i.e. ASI Mukhwinder Singh and from the right hand side pocket of the Pyzama, worn by the accused, opium wrapped in a glazed paper was recovered. Out of it, a sample weighing 10 grams was separated and the remaining contraband weighed as 290 grams. The sample and the remaining contraband were made into 02 separate parcels which were sealed with seal bearing impression "MS". Sample seal was separately prepared. Sample parcel, the remaining contraband

and the sample seal were taken into police possession. The seal after use was handed over to ASI Jagjit Singh. The accused could not produce any permit or license to keep the contraband with him. A "Ruqa" was written and the same was sent to Police Station, upon which a formal FIR was recorded. Site plan of the place of recovery was prepared and statements of witnesses were also recorded. The accused was formally arrested.

On return to the police station, the accused and the case property were produced before SI/SHO Harjinder Singh who, after verification of the facts, put his own seal bearing impression "HS" on the case property and sample seal and kept the case property. Thereafter, the accused along with the case property was produced before the Area Magistrate. The sample drawn from the contraband, so recovered from the accused was sent to Forensic Science Laboratory, Punjab, Chandigarh on 25.06.2002 for analysis through C. Dilbagh Singh and on receiving the report from the FSL, the challan under Section 173(2) of the Code of Criminal Procedure (in short 'Cr.P.C.') was presented before the trial Court.

On presentation of the challan, charge under Section 18 of the NDPS Act was framed against the accused, to which he did not plead guilty and claimed trial.

The prosecution examined the Seizing Officer, ASI Mukhwinder Singh as PW1, the Deputy Superintendent of Police Chaman Lal as PW3, SI/SHO Harjinder Singh as PW4 and C. Dilbagh Singh as PW2. PWs ASI Jagjit Singh, HC Gurcharan Singh and C. Yusaf Masih have been given up being unnecessary while PW Ashok

Kumar was given up, having been won over by the accused.

After conclusion of the evidence of the 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 the prosecution and pleaded that he has been falsely implicated in the case.

In defence, the appellant has examined HC Lubhaya Ram as DW1.

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 18 of the NDPS Act.

Feeling dissatisfied with the judgment of conviction dated and order of sentence dated 21.02.2004, the accused/appellant has preferred the present appeal, which was admitted on 27.02.2004. Thereafter, the sentence of the appellant/accused was also suspended by this Court vide order dated 26.03.2004.

Counsel for the appellant has submitted that the appellant has undergone 01 month and 27 days of actual sentence out of 06 months rigorous imprisonment awarded by the trial Court.

Counsel for the appellant has also 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 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 also 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 01 months of actual sentence out of 06 months 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 01 month 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. 01 month.

Disposed of accordingly.

(ARVIND SINGH SANGWAN)
JUDGE

21.01.2019
yakub

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