

**CRA-D-1390-DB-2014 (O&M) AND
CRA-D-414-DB-2014 (O&M)**

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

Date of decision : 20.11.2019

1. CRA-D-1390-DB-2014 (O&M)

Satnam Singh @ Satti

... Appellant

Versus

State of Punjab

... Respondent

2. CRA-D-414-DB-2014 (O&M)

Harjinder Singh @ Sonu

... Appellant

Versus

State of Punjab

... Respondent

**CORAM: HON'BLE MR. JUSTICE AJAY TEWARI
HON'BLE MRS. JUSTICE ALKA SARIN**

Present: Mr. Rishu Mahajan, Advocate; and
Mr. Rajinder Mathur, Advocate
for the appellant in CRA-D-1390-DB-2014.

Mr. D.S. Pheruman, Advocate
for the appellant in CRA-D-414-DB-2014.

Mr. H.S. Sullar, DAG, Punjab.

AJAY TEWARI, J. (ORAL)

1. This order shall dispose of above mentioned two appeals since common questions of law and facts are involved therein, the same are being decided by the instant common order. For the sake of convenience the facts are being taken from CRA-D-1390-DB-2014.

2. These appeals have been filed against the conviction and sentence of the appellants, in case FIR No.14 of 17.04.2010 registered under

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Sections 21, 25, 29 of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act') and 25 of the Arms Act, at Police Station State Special Operation Cell, Amritsar. Vide judgment and order dated 12/13.12.2013, the appellants were convicted as under:-

Sr. No.	Name of the accused	Offence Under Section Sentence	Sentence
1	Harjinder Singh alias Sonu	21 of NDPS Act	Rigorous Imprisonment for twenty years and fine of ₹2,00,000/- and in default of fine, rigorous imprisonment for two years
		Section (1) A.A. of the Arms Act	Rigorous Imprisonment for seven years and fine of ₹5,000/- and in default of fine, rigorous imprisonment for six months
2.	Satnam Singh alias Satti	21 of NDPS Act	Rigorous Imprisonment for fifteen years and fine of ₹1,50,000/- and in default of fine, rigorous imprisonment for one and half years

3. Both the sentences were ordered to be run concurrently.

4. As per the prosecution, on 17.04.2010, Inspector Harvinderpal Singh, SHO, Police Station, State Special Operation Cell, Amritsar, had received secret information regarding smuggling activities by two persons and was further informed that they were present near a filling station near village Heir and if a raid is conducted immediately, they can be

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apprehended with huge quantity of contraband. The information was immediately brought to the notice of Manminder Singh, PPS, SP, Anti Smuggling, Amritsar. They proceeded to the spot along with police party. As soon as the police party reached near petrol pump and two persons were noticed standing near the motor cycle and on seeing the police party, they tried to board the motorcycle, but were apprehended. Investigating Officer expressed his apprehension that there might be some objectionable substance in their possession and also informed them about their right to get a personal search conducted either in the presence of gazetted officer or a Magistrate. Both the appellants expressed their desire to get their search conducted in the presence of gazetted officer. On being summoned, DSP Raj Pal Singh, arrived and on his direction, Investigating Officer conducted search of their plastic urea bag, which was being carried by the appellant-Harjinder Singh, in his lap, while sitting on the pillion seat of the motor cycle and recovered six packets of heroin and one A.K. 47 assault rifle with 100 live cartridges. During the interrogation, he disclosed that he had kept concealed 2 packets of heroin under the manger (*khurli*) situated in the walled enclosure meant for cattle, at his residence and that was also subsequently recovered.

5. In the course of the trial, as many as 10 prosecution witnesses were examined. The accused-appellant(s) were examined under Section 313 Cr.P.C., in the course of which, they took the plea of being falsely implicated, in the offence alleged and made a statement that they were innocent.

6. During the evidence, the following witnesses were examined:-

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PW1	Shital Singh
PW2	HC Sukhanbir Singh
PW3	Inspector Harvinderpal Singh
PW4	Gurinderpal Singh
PW4	Chaman Lal
PW5	Hardev Singh
PW6	Wassan Singh
PW7	DSP Rajpal Singh
PW8	Ashwani Kumar
PW9	SI Harjinder Singh
PW10	SI Nirmal Singh

7. No defence evidence was led.

8. At the conclusion of the trial, the learned trial Court, on consideration of the evidence and material on record, passed the impugned judgment and order, convicting and sentencing the appellants, as mentioned above. Hence, the present appeal.

9. We have gone through and considered the judgment and order under challenge and the evidence of the prosecution witnesses apart from hearing the learned counsel for the appellants and learned Deputy Advocate General, Haryana. The important witnesses being PW3, PW4, PW7 and PW9, their testimony would require a close scrutiny.

10. PW3-Harvinderpal Singh, Investigating Officer, deposed that on 17.04.2010, both the accused were intercepted at the given place. From the gunny bag (*torra*), which was in possession of Harjinder Singh and kept in his lag, 6 packets of heroin, one AK-47 assault rifle, four magazines and 100 live cartridges of AK-47 rifle, were recovered. On the next day i.e. 18.04.2010, accused Harjinder Singh, on the basis of his disclosure statement, got recovered 2 packets of heroin, which was concealed by him

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at his residence.

11. PW4-SI Gurvinderpal Singh & PW9-SI Harjinder Singh, who were the witnesses to the recovery, duly corroborated the version of Investigating Officer, Harvinderpal Singh-PW3.

12. PW7-DSP Rajpal Singh, in whose presence recovery was effected, while furnishing the detail of the mode and manner of the recovery, identified the accused and duly proved the factum of compliance with the provisions of Section 50 of the NDPS Act.

13. The first argument of learned counsel for the appellants is that offer made to the accused by the Investigating Officer was clearly illegal. We are of the opinion that illegality of the offer would depend on the response of the accused. In case, on being made an illegal offer, accused opts to get searched from the unauthorized Officer, it may have a very important effect on a case, but where in response to even illegal offer, accused claims that he must be searched by a Gazetted Officer and Gazetted Officer is called, then illegality of the offer would pale into insignificance.

14. The second argument of learned counsel for the appellants is that so-called independent witness did not appear. This argument has been raised in various cases and the Courts have responded by noticing that it is not unknown for private persons to be reluctant to give evidence in such cases and if otherwise, the testimony of the Government witnesses is credible, the omission to examine the independent witness would not be fatal to the case of the prosecution. We have been taken through the testimony of the police officials, they were all subjected to cross-examination, but having gone through their testimony, we are of the opinion

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that it is credible and sufficient to prove the guilt of the appellants beyond reasonable doubt.

15. Faced with this situation, learned counsel for the appellants have fallen back on the arguments of sentence. Learned counsel for the appellant-Satnam Singh has argued that no recovery was made from Satnam Singh and he had no other criminal history and therefore, the sentence of fifteen years was excessive. Likewise, learned counsel appearing on behalf of the appellant-Harjinder Singh has argued that there was no justification for sentencing Harjinder Singh to twenty years, as the case did not fall within the parameters laid down in Section 32-B of the NDPS Act.

16. Learned Deputy Advocate General, Punjab, has argued that Section 32-B of the NDPS Act is not based only on the parameters, which are mentioned therein, but also envisages other special reasons and in the present case, the trial Court has pointed out to the heavy recovery as being sufficient cause for imposition of higher sentence.

17. Section 32-B of the NDPS Act was inserted by the Act 9 of 2001. The statements of objects and reasons of Amendment Act 9 of 2001 are as under:-

"STATEMENT OF OBJECTS AND REASONS:- Amendment Act 9 of 2001:- The Narcotic Drugs and Psychotropic Substances Act, 1985 provides deterrent punishment for various offences relating to illicit trafficking in narcotic drugs and psychotropic substances. Most of the offences invite uniform punishment of minimum ten years' rigorous imprisonment which may extend up to twenty years. While the Act envisages severe punishments for drug traffickers, it envisages reformative approach towards addicts. In view of the

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general delay in trial it has been found that the addicts prefer not to invoke the provisions of the Act. The strict bail provisions under the Act add to their misery. Therefore, it is proposed to rationalise the sentence structure so as to ensure that while drug traffickers who traffic in significant quantities of drugs are punished with deterrent sentences, the addicts and those who commit less serious offences are sentenced to less severe punishment. This requires rationalisation of the sentence structure provided under the Act. It is also proposed to restrict the application of strict bail provisions to those offenders who indulge in serious offences.”

18. Section 32-B of the NDPS Act was introduced in order to rationalise the sentencing structure as well as for enumerating various factors, which may be taken into account for imposing a higher punishment than the minimum term of imprisonment provided. A perusal of Section 32-B of the NDPS Act, clearly lays down that the Court, in addition to such factors as it may deem fit, may take into account the factors enumerated in the said Section for imposing a punishment higher than the minimum term of imprisonment, therefore, on a plain reading, it is clear that a Court may consider such factors in addition to those enumerated as it may deem fit. In the present case, the heavy recovery of heroin from the appellant-Harjinder Singh, has weighed with the Court to award him imprisonment for twenty years and for the appellant-Satnam Singh, imprisonment of fifteen years. We are of the considered opinion that sentence of imprisonment awarded is rather harsh. The very objects and reasons given in the Amendment Act 9 of 2001 lays down that Section 32-B of the NDPS Act is to provide rationalization of sentence structure. Their Lordship of the Apex Court in

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the case of “Rafiq Qureshi V/s Narcotic Control Bureau, Eastern Zonal Unit” 2019 (6) SCC 492, have held that in a case where a higher punishment than the minimum is awarded without advertent to the factors enumerated under Section 32-B of the NDPS Act, award of sentence of higher than minimum punishment, can be interfered with. We find that ends of justice would be sub-served in reducing the sentence under the NDPS Act only.

19. In view of the factual matrix of the case, while maintaining the conviction of the appellants, the appellant-Satnam Singh is sentenced to undergo 15 years of rigorous imprisonment with a fine of ₹2,00,000/- and in default of payment of such fine, the appellant-Satnam Singh shall further undergo simple imprisonment of 02 years. Appellant-Harjinder Singh is sentenced to undergo 10 years of rigorous imprisonment with a fine of ₹1,50,000/- and in default of payment of such fine, the appellant-Harjinder Singh shall further undergo simple imprisonment of one and a half years.

20. With the aforesaid modification in the sentence under the NDPS Act only, the appeals are dismissed.

21. Since the main cases have been decided, pending applications, if any, stands disposed of.

**(AJAY TEWARI)
JUDGE**

**(ALKA SARIN)
JUDGE**

20.11.2019
Yogesh Sharma

Whether speaking/reasoned	Yes/ No
Whether Reportable	Yes/ No