

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

**CRA-S No.995-SB of 2004 (O&M)
Decided on: 02.08.2019**

Satnam Singh

....Appellant

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. Abhimanyu Kalsy, Advocate (Legal Aid Counsel)
for the appellant.

Mr. Joginder Pal Ratra, DAG, 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 01.04.2004, vide which the appellant was convicted for an offence punishable under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'the NDPS Act') and he was sentenced to undergo rigorous imprisonment for a period of 10 years and to pay a fine of Rs.1,00,000/- and in default of payment of fine to further undergo rigorous imprisonment for a period of 01 year.

It is relevant to note here that the appellant has already undergone 04 years and 02 days of sentence, which includes more than 15 months after conviction, when his sentence was suspended by this Court on 20.08.2008.

Brief facts of the case are that on 03.12.2000 at about

08:00 PM, SI Sukhdev Singh along with his police party held nakabandi in the area of village Jangpura bus stand where Amarjit Singh PW met them and he was joined in the police party. SI Sukhdev Singh was talking with him and in the meantime, a Maruti car bearing registration No.HR-03-4604 came from Rajpura side and it was signaled to stop. Three young men alighted from the car and tried to run away. Three bags were lying in the car. The accused Satnam Singh was apprehended and he disclosed names of other occupants of the car as Babu Ram Bania and Balwinder Singh @ Billu son of Karnail Singh resident of village Sonkran. The accused Billu was also known as Ranjit Singh. SI Sukhdev Singh told accused Satnam Singh that he wanted to conduct the search of the bags lying in the car and apprised the accused of his right to get his personal search conducted in the presence of a Gazetted Officer or a Magistrate vide memo Ex.PF. Thereafter, the Deputy Superintendent of Police R.K. Sharma of Rajpura was called to the spot by giving a wireless message. On reaching the spot, the DSP disclosed his identity to the accused as DSP, Rajpura and Gazetted Officer. The accused reposed confidence in DSP. Then on the direction of the DSP, SI Sukhdev Singh conducted search of the bags after taking out the same from the car and these were found to contain chura poppy heads. On weighment, each bag was found to contain 40 Kgs of chura poppy heads i.e. 1 Qtl. 20 Kgs. Two samples of 250 grams each from all the bags were separated. The remaining chura poppy heads weighing 39Kgs 500 gms were put in the same bags. Parcels of samples and bags were prepared and sealed with the seal of DSP bearing impression 'RK' and of SI Sukhdev Singh was handed

over to PW Amarjit Singh while the DSP retained his seal with him. The case property including car bearing registration No.HR-03-4604 was taken into possession vide recovery memo Ex.PG. Ruqa Ex.PH was sent to the Police Station through C. Gurcharan Singh, whereupon formal FIR Ex.PH/1 was recorded by SI Karmit Singh. Rough site plan of the place of recovery Ex.PJ was prepared. The accused was formally arrested and supplied the grounds of his arrest vide memo Ex.PK. On personal search of the accused nothing was recovered and memo to this effect Ex.PL was prepared. On return to the Police Station, SI Sukhdev Singh produced the case property before Inspector Paramjit Singh, SHO, P.S. Banur, who verified the factum of recovery and found it to be correct. He also affixed his seal bearing impression 'PS' on the case property and on Ex.P1. Then, on the direction of the SHO, he i.e. SI Sukhdev Singh, deposited the case property with MHC Ravinder Krishan with seals intact. On the next day, SI Sukhdev Singh took the charge of the case property from MHC Ravinder Krishan and produced the same before the Illaqa Magistrate vide request Ex.PF and on which orders passed by the Illaqa Magistrate is Ex.PF/1. On return to the Police Station, SI Sukhdev Singh re-deposited the case property with MHC Ravinder Krishan. Thereafter, on 05.02.2001 SI Sukhdev Singh was present at bus stand Banur where Sushil Kumar, resident of village Marwah produced the accused Babu Ram. The accused Babu Ram produced the R.C. of the car Ex.PC, which was taken into possession vide memo Ex.PM. Babu Ram was arrested and conveyed grounds of arrest vide memo Ex.PN. From the personal search of the accused Babu Ram, nothing was recovered and a memo Ex.PO was prepared.

Thereafter, the samples were sent for analysis before the Forensic Science Laboratory, Chandigarh and on receiving the report Ex.PP, 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, to which he did not plead guilty and claimed trial.

The prosecution examined HC Ravinder Krishan as PW1, Balbir Singh as PW2, MHC Bud Singh as PW3, C. Jhujhar Singh as PW4, Inspector Paramjit Singh as PW5, SI Sukhdev Singh as PW6 and HC Kehar Singh as PW7 and thereafter, closed the evidence.

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 but he denied the allegation of the prosecution and pleaded that he has been falsely implicated in the case. In defence evidence, the accused examined Mann Singh as DW1 and Jasbir Singh as DW2.

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 of the NDPS Act while acquitting the co-accused Babu Ram.

Feeling dissatisfied with the judgment of conviction as well as the order of sentence dated 01.04.2004, the accused/appellant has preferred the present appeal, which was admitted on 13.07.2004. Thereafter, the sentence of the appellant/accused was also suspended by

this Court vide order dated 20.08.2008.

Counsel for the appellant has argued that as per the statement of PW6 – SI Sukhdev Singh, on 03.12.2000, he stopped one Maruti car bearing registration No.HR-03-4604, in which 03 young persons were traveling. They alighted from the car and tried to run away and the appellant – Satnam Singh was apprehended and he disclosed the name of other 02 occupants as Babu Ram Baniya and Balwinder Singh @ Billu, who was also known as Ranjit Singh. Thereafter on suspicion, he gave a notice to the appellant informing him about his right to be searched before a Gazetted Officer or a Magistrate, on which a dissenting statement of the appellant (Ex.PF) was recorded. Thereafter, he sent a message to the DSP R.K. Sharma, who arrived at the spot and after the accused reposed confidence in him, the search of the bags was conducted and it was found to be carrying chura poppy heads. On weighment, each bag was found to be containing 40 Kgs of chura poppy heads i.e. 120 Kgs. Two samples of 250 gms. each from all the bags were separated and the residue was put in the same bag. Thereafter, he prepared the sample parcels and sealed with seal bearing impression 'RK' of DSP and 'SS' of himself. A specimen seal Ex.P1 was also prepared. The car was seized vide memo Ex.PG and thereafter, a Ruqa Ex.PH was sent to the Police Station, on the basis of which an FIR Ex.PH/1 was recorded by SI Karmit Singh. Thereafter, he prepared the site plan Ex.PJ and conveyed the grounds of arrest vide Ex.PK. In the personal search of the accused vide Ex.PL, nothing was recovered.

Counsel for the appellant has further submitted that this

witness further deposed that on return to the Police Station, he produced the case property and the accused with Paramjit Singh, SHO Police Station Banur, who put his seal impression as 'PS' on the case property and he handed over the case property and the seal Ex.P1 to the MHC Ravinder Krishan. On the next day, he produced the accused and the case property before the Illaqa Magistrate vide Ruqa Ex.PF and the Illaqa Magistrate vide order Ex.PF/1, directed to deposit the case property with MHC and remanded the accused in judicial custody.

Counsel for the appellant has further argued that in cross-examination, this witness has stated that the accused was apprehended around 05:30 PM on a naka laid by the police party. The DSP was called at the spot at 06:40 PM and he reached there at around 07:00 PM. After the recovery was effected, Ruqa was sent to the Police Station at about 09:30 PM when the formal FIR Ex.PH/1 was recorded. Counsel for the appellant with reference to the documents (Ex.PF) has stated that it bears the signatures of a witness Amarjit Singh, however, he was never examined. It is further argued that at the time, when the dissenting statement of the appellant (Ex.PF) was recorded, neither the search of the car was conducted nor the personal search of the appellant was conducted and therefore, mentioning of complete details of FIR No.206 dated 03.12.2000 under Section 15/61/85 of the NDPS Act Police Station Banur, makes it highly doubtful that these documents were prepared subsequently or with an intention to falsely implicate the appellant as without conducting the search neither the Ruqa was sent to the Police Station nor the FIR was registered prior to sending of the Ruqa.

Counsel for the appellant has also argued that as per the statement of PW5, the appellant was arrested at 05:30 PM and after recording the non-consent memo Ex.PF, the DSP was called at the spot and at 06:40 PM but he reached at the spot at 07:00 PM and on completion of the investigation, Ruqa was sent at around 09:30 PM and thereafter, the FIR was registered, therefore, the prosecution has failed to explain in what circumstances, the document Ex.PF i.e. non-consent memo of the appellant, which was recorded in between 05:30 PM and 06:40 PM i.e. prior to effecting recovery, how the FIR number is mentioned, which was recorded subsequently at 09:00 PM as per own statement of PW5. It is further submitted that even in the other documents prepared at the spot prior to registration of the FIR i.e. Ex.PG, the recovery memo, FIR number is mentioned though it was prepared much before registration of the FIR.

Counsel for the appellant has further referred to the Ruqa Ex.PH, in which the time is mentioned as 08:00 PM, and at the bottom, the Karamjit Singh, ASI has given a note that FIR No.206 is registered, therefore, counsel for the appellant has argued that all the other documents i.e. the Site Plan Ex.PJ, grounds of arrest Ex.PK and the personal search memo of the appellant Ex.PL, which was prepared much prior to sending the information to the Investigating Officer has already put a case number, which raises a reasonable suspicion.

Counsel for the appellant has relied upon the judgment of the Hon'ble Supreme Court ***“Kamaljit Singh @ Pappu vs State of Punjab”***, 2019(4) Scale 18, to submit that the Hon'ble Supreme Court has held that in such circumstances, where the prosecution has failed to

explain the mentioning of FIR number prior to its registration, the accused was acquitted.

Counsel for the appellant has further argued that the Gazetted Officer i.e. the DSP R.K. Sharma, was called at the spot, however, he was not examined as a prosecution witness, which raises a serious suspicion about his presence at the spot. Counsel for the appellant has also referred to the documents Ex.PG, the recovery memo to submit that only this document was signed by the DSP and the other documents which were prepared by the Investigating Officer at the spot in DSP's presence i.e. the personal search memo Ex.PL and grounds of arrest Ex.PK, do not bear the signatures of the DSP, which also raises a suspicion about his presence at the spot. Counsel for the appellant has further referred to the recovery memo Ex.PG, upon which there are interpolations regarding the Engine number and Chasis number of the car with a different pen which is visible and the signatures of the independent witness Amarjit Singh, are also in a different ink as is visible from the naked eye. Counsel for the appellant has, thus, submitted that in the absence of recording the statement of the DSP that the search of the car and the personal search of the appellant was conducted in his presence, the memos prepared at the spot, which do not bear his signatures, raises a suspicion about his presence.

Counsel for the appellant has next argued that even the application moved before the Illaqa Magistrate Ex.PF is defective as the complete details of the recovery effected is not given and therefore, the same has been moved before the Illaqa Magistrate in violation of the mandatory provisions of Section 52 of the NDPS Act. He has referred

to the order passed by the Illaqa Magistrate Ex.PF/1, which reads as under:-

“4.12.2K. Pr. APP for the State.

Accused in police custody.

Request for police remand made. Heard. The police wants to know about the involvement of the other accused in this case. It is a serious offence. The police has yet to complete the investigation. Request is hence allowed. Accused is sent to police custody and be produced in the Court on 7.12.2000.

Case property and samples duly sealed are produced. The samples are signed. Case property is ordered to be kept in safe custody in the Malkhana in the police station.

Sd/-

JMIC”

Counsel for the appellant has further referred that neither any representative sample was drawn by the Magistrate at the time of presentation nor it is mentioned that at the time of presentation of the case property, the sample parcels bears the seal of the Investigating Officer, SHO and the DSP. It is only stated that the samples are duly sealed. Even no direction has been issued to send the sample parcels to the FSL. Counsel for the appellant has also submitted that the order (Ex.PF/1) is further silent about re-sealing of the case property by the Magistrate.

Counsel for the appellant has also argued that though the recovery was effected on 03.12.2000, however, the sample parcels were sent on 13.12.2000 after a delay of 10 days without any explanation by any of the prosecution witnesses, though under the Rules, the same is

required to be sent within a period of 78 hours. It is further submitted that as per the statement of PW1 – HC Ravinder Krishan, no independent witness was present when the case property was deposited in the Police Station at 04.12.2000 at about 01:00 AM and similar statement has been made by PW5 Inspector Paramjit Singh that there was no independent witness when the case property was produced before him in the Police Station. He has also referred to the statement of PW6 SI Sukhdev Singh where it is stated that after the seal was used, it was handed over to the independent witness Amarjit Singh, who has signed certain memos at the spot. Counsel for the appellant has, thus, argued that even the presence of this independent witness is doubtful as his signatures on the memo are with a different pen/ink and in a different hand-writing, which again raises a suspicion that his signatures were taken later on. It is also submitted that even this independent witness has not been examined so as to confront him with the aforesaid situation and was given up by the prosecution.

Counsel for the appellant has also submitted that the appellant has lead defence evidence to prove that PW6 SI Sukhdev Singh had enmity with one Mann Singh, a close relative of the appellant, which is proved from the documentary evidence. Counsel for the appellant in order to elaborate this arguments has relied upon the statement of DW1 Mann Singh and DW2 Jasbir Singh, who have stated that Mann Singh was earlier falsely implicated in a case by SI Sukhdev Singh in which he has filed and bail application and later on, a contempt petition was filed by this witness against SI Sukhdev Singh, however, the trial Court has not dealt with the defence evidence

properly.

Counsel for the appellant has submitted that it is not the case of the prosecution that the appellant was owner of the car and during the investigation, the Investigating Officer has not verified about the ownership of the car. Even Form No.29 was not prepared at the spot and rather the same is not exhibited on record to prove the link of sending the sample parcel to FSL. Even the *Roznamcha* in Register No.19 of the Police Station regarding the production of the appellant before the SHO and the deposit of the case property with MHC are not produced on record, which again raises a doubt on prosecution version.

Counsel for the appellant has relied upon the judgment ***“Union of India vs Mohanlal and another”*, 2016(1) RCR (Criminal) 858**, to argue that it is held by the Hon'ble Supreme Court that where the representative samples are not drawn by the Magistrate by following the procedure under Section 52-A of the Act, the conviction of the appellant is not sustainable. He has further relied upon the judgment ***“Pargat Singh vs State of Haryana”*, 2008(4) RCR (Criminal) 596**, wherein this Court has held that when the prosecution has failed to explain the delay in sending the sample to the FSL, it is fatal. Counsel for the appellant has, thus, argued that in the present case there is a delay of 10 days in sending the sample, which is not explained by any of the prosecution witness.

Counsel for the appellant has further referred to the judgment ***“State of Rajasthan vs Gurmail Singh”*, 2005(2) RCR (Criminal) 58**, to submit that if the seized articles kept in *Malkhana* for 15 days and the *Malkhana* Register is not produced, no satisfactory

evidence has come on record and the accused are liable to be acquitted.

He has also relied upon the judgment *“Tarsem Singh vs State of Punjab”*, 2005(4) RCR (Criminal) 300, to submit that where the recovery is from a vehicle and the accused is neither the owner nor the driver of the vehicle, in the absence of any such evidence, it cannot be informed that the accused was exercising the possessory right over the contraband. It is argued that the other occupant of the car namely Babu Ram, who was also in the vehicle and ran away from the spot stands acquitted by the trial Court on the same set of allegations and therefore, the appellant is also entitled to be acquitted.

Counsel for the appellant has lastly argued that the appellant has undergone 04 years, 01 month and 19 days of total sentence including remission out of 10 years rigorous imprisonment and he is not involved in any other case. 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 15 years.

In reply, counsel for the State has argued that the trial Court has passed a well-reasoned judgment, after considering all the aspects of the case as the recovery from the appellant fall in the commercial quantity, thus, he was rightly convicted. Counsel for the State has further submitted that the mandatory requirement of Section 50 of the NDPS Act has been duly complied with as the personal search of the accused was conducted in the presence of a Gazetted Officer i.e. the DSP R.K. Sharma.

Counsel for the State has also submitted that merely

because the independent witness Amarjit Singh and the DSP R.K. Sharma, were not examined, do not make a dent in the prosecution version as all the official witnesses have supported the prosecution case.

Counsel for the State has not disputed the fact that the appellant has undergone 04 years, 01 month and 19 days of total sentence including remission out of 10 years rigorous imprisonment and he is not involved in any other case.

After hearing the counsel for the parties, I find merit in the present appeal for the following reasons:-

(a) The presence of DSP R.K. Sharma, at the spot is highly doubtful. Firstly, this witness is not examined in the Court and secondly, except for the recovery memo, he has not signed any other documents which were prepared in his presence as per the statement of PW6, though in the ordinary course when DSP was part of the investigation, he was supposed to sign all the memos prepared at the spot.

(b) Even the presence of independent witness Amarjit Singh at the spot is also doubtful. This witness was also not examined in the Court and a perusal of the Lower Court record show that in some of the memos, he has signed with a different pen. Though, PW6 has stated that after sealing the sample parcel and the case property, he has handed over the seal to this witness but there is no evidence to corroborate this version. Since this witness was not examined, the accused was not given a right to cross-examine him on this point to confront with his defence.

(c) Rather the statement of PW1 HC Ravinder Krishan and PW5 SHO/Inspector Paramjit Singh is clear

that no independent witness was present when the case property was deposited in the Police Station and was produced before the SHO which belies the statement of PW6/the Investigating Officer.

(d) A perusal of the statement of PW6 show that he had laid a naka at 05:30 PM and after the appellant was apprehended and he was served with a notice under Section 50 of the NDPS Act qua which he recorded a dissent note Ex.PF, that he want his search to be conducted before the Gazetted Officer, then a message was sent to the DSP at 06:40 PM. This witness further stated that the DSP reached around 07:00 PM and then the search was conducted and recovery was effected and thereafter, a Ruqa was sent to the Police Station, which bears the time as 08:00 PM, therefore, in the non-consent memo, which was recorded prior to calling the DSP as well as effecting the recovery, the mentioning of complete detail of FIR No.206 makes this document doubtful. Even on some other memos which were prepared before sending the Ruqa at around 08:00 PM i.e. Site Plan Ex.PJ, grounds of arrest Ex.PK and personal search memo of the appellant Ex.PL also bears the complete detail of FIR No.206. None of the prosecution witness has explained this fact as to how this FIR number came on these documents, which were prepared much prior to registration of the FIR, therefore, in view of the judgment Kamaljit Singh @ Pappu's case (supra), the appellant is liable to be acquitted.

(e) A perusal of the application Ex.PF (this exhibit is numbered twice as dissent memo is also exhibited as Ex.PF) submitted by the Investigating Officer before the Illaqa Magistrate under Section 52 of the NDPS Act is totally defective and do not bear the complete details of the case property as required under

Section 52 of the NDPS Act. Even the order passed by the Illaqa Magistrate on 04.12.2000, show that it is not mentioned that the case property and sample parcel bear the seal 'SS' of the Investigation Officer 'RK' of DSP or 'PS' of the SHO, what is stated is that the parcels are duly sealed. Even no representative sample was drawn and the Magistrate himself did not affix his seal, to certify the same, therefore, in view of the judgment of Union of India's case (supra), the case of the prosecution is doubtful.

(f) Even during the investigation, the police has not collected any evidence regarding the ownership of the car as the appellant was not found to be owner or driver of the car.

(g) A perusal of the statement of PW6 show that neither Form No.29 was prepared at the spot nor the same was exhibited on the trial Court record to prove the link between the sample parcels and the residue parcel.

(h) The prosecution has even failed to produce the excerpt of Register No.19 of the Police Station regarding production of the appellant and the case property before the SHO and deposit of the case property with the MHC.

(i) There is an unexplained delay of 10 days in sending the sample to the FSL, which was recovered on 03.12.2000 and the same was sent to the FSL on 13.12.2000, therefore, the case of the prosecution is again doubtful in view of the judgment of Pargat Singh's case (supra) and Gurmail Singh's case (supra).

(j) As per the Custody Certificate, the appellant has undergone 04 years, 01 month and 19 days of total sentence and since 2000, he is not involved in any other case.

In view of the above, the present appeal is **allowed**; the

judgment of conviction as well as the order of sentence dated 01.04.2004 awarded to the appellant is set-aside and the appellant is acquitted of the charges framed against him.

Bail/surety bonds of the appellant stands discharged.

Disposed of accordingly.

(ARVIND SINGH SANGWAN)
JUDGE

02.08.2019
yakub

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