

CRA-845-DB-2004 and connected matter

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

CRA-845-DB-2004 (O&M)

Reserved on : January 28, 2020

Date of Decision: August 27, 2020

Punjab Singh

...Appellant

Versus

State of Punjab

...Respondent

and

2.

CRA-867-DB-2004 (O&M)

Paramjit Singh alias Pamma

...Appellant

Versus

State of Punjab

...Respondent

**CORAM: HON'BLE MR. JUSTICE RAJIV SHARMA,
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU**

Present: Mr. Veneet Sharma, Advocate
for the appellant in CRA-845-DB-2004.

Mr. Vipul Aggarwal, Advocate
for the appellant in CRA-867-DB-2004.

Mr. H.S.Grewal, Additional Advocate General, Punjab.

HARINDER SINGH SIDHU, J.

1. Since common questions of law and facts are involved in the aforesaid appeals these are taken up together and disposed off by a common judgment.

2. Criminal Appeal No.845-DB of 2004 has been filed by Punjab Singh. Criminal Appeal No.867-DB of 2004 has been filed by Paramjit Singh. Both the

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appeals are instituted against the judgment and order dated 19/21.08.2004 rendered by the Special Judge, Ferozepur in Sessions Case No.108 of 2002, whereby, the appellants, who were charged with and tried for offence punishable under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'NDPS Act'), have been convicted and sentenced to undergo rigorous imprisonment for a period of Twelve Years and to pay fine of Rs.1,25,000/-, each, and in default to further undergo rigorous imprisonment for a period of one year.

3. The case of the prosecution in a nutshell is that on 22.03.2002, Sub-Inspector Major Singh, Incharge CIA Staff headquarter Ferozepur along with other police officials was present on Nakabandi duty and search of suspected persons near grain market situated in the area of village Mansoorwal Kalan. At about 5.00 AM, a truck bearing No.RJ-13G-4745 was seen coming from the side of village Mansoorwal Khurd. SI Major Singh signalled it to stop with the help of torch. The driver stopped the truck at a distance of 18-20 karams from the Police party. SI Major Singh went near the truck. The driver disclosed his name as Paramjit Singh alias Pamma. In the meantime, another person jumped out from the body of the truck from back side and started running towards fields. He was identified by ASI Rachhpal Singh in the torch light as Punjab Singh son of Sarwan Singh, as he was previously known to ASI Rachhpal Singh. SI Major Singh asked driver Paramjit Singh that he suspects there was some intoxicating material concealed under the bags in the truck. Option to be searched in the presence of some Magistrate or Gazetted Officer was given to Paramjit Singh, who gave his consent memo Ex.P5 for search by some senior Gazetted Officer. On a wireless message, Gurmit Singh DSP Sub Division Zira reached at the spot at about 6.30 am. He asked the name and address of accused Paramjit Singh and then introduced

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himself as Gazetted Officer DSP, Zira. He told Paramjit Singh that some intoxicating material was suspected to be in his possession and that search of the truck was to be conducted. Consent memo Ex.P1 was prepared, which was signed by Paramjit Singh and attested by the witnesses and the DSP. Investigating Officer SI Major Singh conducted the search and unloaded bags of powder, under which 50 bags of poppy husk were kept concealed. After arranging weighing material and small packets of clothes, the Investigating Officer numbered the bags from 1 to 50. He then separated two samples of poppy husk, each weighing 200 grams, from each bag and prepared their parcels. The parcels were also numbered. Thereafter, remaining poppy husk contained in the bags was weighed. Each bag contained 39 Kg. 600 grams of poppy husk. Separate parcels of these bags were prepared. The parcels were sealed by the Investigating Officer with the seal 'MS'. The DSP also affixed his seal 'GS'. Thereafter, all the parcels along with the truck were taken into possession vide recovery memo Ex.P2, which was attested by the witnesses. Currency notes of Rs.210 were also recovered from the Jamatalashi of accused Paramjit Singh. Search of the cabin of the truck was also conducted and RC of the truck, one bill and one challan recovered from there were taken into possession vide recovery memo Ex.P12. Accused Paramjit Singh was formally arrested. Ruqa Ex.P7 was sent to the Police Station, on the basis of which formal FIR Ex.P8 was registered. Necessary formalities regarding the site plan of the place of recovery, statements of the witnesses were also conducted at the spot. Sample parcels were sent to Chemical Examiner, which vide its report Ex.P20 declared the contents of the sample parcels as 'poppy husk'. After completion of the investigation, challan against the accused – appellants was presented.

4. The prosecution examined number of witnesses in its support. The

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statements of the accused under Section 313 Cr.P.C. were recorded. They denied the allegations. Both the accused pleaded that they are supporters of Akali leader Hari Singh Zira MLA and always supported him in his election against the Congress party and that they have been falsely implicated in the case. They pleaded that they were picked up from their village in the presence of Mukhtiar Singh, Paramjit Singh and Ranjit Singh and then implicated in the false case at the instance of the Congress Party. However, they did not lead any evidence in their defence.

5. The appellants were convicted and sentenced as referred to above. Hence, these appeals.

6. We have heard learned counsel for the parties and have gone through the judgment and record.

7. PW1 Gurmit Singh, DSP Muktsar deposed that on 22.03.2002 he was posted as DSP Zira. At about 6.00 am he received wireless message from SI Major Singh that he should reach the spot in the area of village Mansoor Wai in connection with the search of a truck. On this he immediately reached the spot at about 6.45 am. He found that Paramjit Singh accused was under the custody of police party of SI Major Singh alongwith truck No. RJ-13G-4745. He introduced himself to accused Paramjit Singh as a DSP and Gazetted Police Officer and told the accused that some intoxicating material is suspected to be in his possession and search of the truck was to be conducted and that the accused had a legal right to be searched in his presence or before any other Gazetted Officer or a Magistrate. The accused expressed that he had no objection to be searched in his presence. To this effect consent memo Ex.P1 was prepared which was also signed and attested by him. On this when SI Major searched the said truck in his presence and in the

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presence of ASI Rachhpal Singh and ASI Jaswant Rai ASI. During the search 50 bags containing poppy husk were found lying concealed under 162 bags of some type of powder. From the contents of each of said 50 bags of poppy husk two samples each weighing 200 grams i.e. 100 samples in all were separated as representative samples. They were sealed by SI Major Singh with his seal bearing impression 'MS'. He also affixed his seal 'GS' on the said 100 sample parcels. Each of the said 50 bags on weighment were found to be containing 39.6 kgs of poppy husk inclusive of the weight of the bag. The bags were packed and sealed into parcels by SI Major Singh with his seal 'MS'. He also affixed his seal 'GS' on the same. The bags along with the sample parcels were taken into police possession through recovery memo Ex.P2 by SI Major Singh which was attested by him and said Jaswant Rai and Rachhpal Singh ASI. Cash of Rs. 210/- found on the person of accused were also seized vide recovery memo Ex.P3. The 162 bags of powder were also taken in possession vide memo Ex.P4. The truck was also seized vide said memo Ex.P2.

8. PW2 SI Major Singh SHO, PS Zira deposed that on 22.3.2002 he was posted as Incharge CIA Staff Ferozepur. On that day, he alongwith ASI Rachhpal Singh, ASI Jaswant Rai and other police officials were present in connection with nakabandi in the area of Mansoor Wal Kalan. At about 5.00 am, one truck No. RJ-13G-4745 came from the side of Mansoor Wal Khurd. On suspicion, the truck was signalled to stop with the light of torch but that truck was stopped by its driver 18-20 karams behind. With the help of the other police officials he apprehended the accused Paramjit Singh. Punjab Singh succeeded in fleeing away. He was identified by ASI Rachhpal Singh in the torch light. As it was suspected that accused Paramjit Singh was having contraband material in the truck so he was

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asked that he had a legal right to be searched in the presence of Gazetted Officer or Magistrate. The accused expressed that he be searched in the presence of a Gazetted Officer. Regarding this consent memo Ex.P5 was prepared which was signed by the accused. Then Gurmit Singh DSP, Zira was called through wireless message. The DSP reached the spot on his official Gypsy. The DSP disclosed his identity to the accused as DSP Zira and Gazetted Officer and told the accused that some intoxicating material is suspected to be in his possession and search of the truck was to be conducted and that the accused had a legal right to be searched in his presence or before any other Gazetted Officer or a Magistrate. The accused reposed confidence in him vide consent memo Ex.1. Then he conducted the search of the truck which led to the recovery of 50 bags of poppy husk from under the bags of powder (162 in number). After arranging the weights and scale, two samples each weighing 200 grams (100 in number) from each of the 50 bags were taken out. Each of the said 50 bags on weighment were found to be containing 39.6 kgs of poppy husk inclusive of the weight of the bag. Then all the 100 parcels and 50 bags of remaining poppy husk were sealed by him with his seal 'MS'. DSP Gurmit Singh also affixed his seal 'GS' on all the samples and 50 bags of poppy husk. The entire case property was taken into possession vide recovery memo Ex.P2 alongwith the truck seized from accused. Seal after use was handed over by him to ASI Rachhpal Singh. Rs.210/- found on the person of accused were seized vide memo Ex.P3. Then, he scribed and sent ruqa Ex.P7 to the police station on the basis of which formal FIR Ex.P8 was registered by ASI Gurjant Singh. 162 bags of powder were also taken into possession vide memo Ex.P4. Documents i.e. RC Ex.P9, one billity Ex.P10, one challan Ex.P11 were taken into possession vide memo Ex.P12. Accused was informed of the grounds of arrest

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vide memo Ex.P13 which was signed by accused. Then he prepared rough site plan Ex.P14 with correct marginal and recorded the statements of witnesses. On return to the police station he produced accused as well as case property before SHO Kuldip Singh who sealed the case property with his seal 'KS' and attested the sample seal impression and verified the investigation. He took the case property into possession vide memo Ex.P15. He recorded the statement of ASI Kuldip Singh. On 20.06.2002 he arrested accused Panjab Singh who was produced by Baj Singh Sarpanch of village Arafke. Rs. 90/- found on the person of accused Panjab Singh on his personal search were seized vide memo Ex.P16. Accused was conveyed the grounds of arrest vide memo Ex.P17. Accused Panjab Singh was also got medically examined vide police application Ex.P18 by the doctor. On receipt of report of Chemical Examiner Ex.P20 challan was filed against the accused. He identified the case property MO-1 to MO-50. The truck being not in working condition was lying in PS Zira.

9. During cross examination he stated that Panjab Singh was resident of Valtaha, District Amritsar. He did not know Panjab Singh earlier. Only ASI Rachhpal Singh knew him. When he lighted the torch on the accused ASI Rachhpal Singh immediately told him that Panjab Singh was son of Sarwan Singh r/o Debipura. Paramjit Singh was driving the truck. Panjab Singh was sitting in the body of the truck. He came to know during investigation that Panjab Singh was owner of the truck.

10. PW3 ASI Rachhpal Singh, CIA Staff, Ferozepur deposed that on 22.03.2002 he was posted at CIA Staff Ferozepur. On that day, he joined police party. SI Major Singh Incharge CIA Staff alongwith other police officials was present near Grain Market Mansoorwala in connection with nakabandi. One

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truck came from the side of Mansoor Wala which was signalled to stop by SI Major Singh. The truck was stopped by its driver 18-20 karams behind. The police party went there. They apprehended Paramjit Singh alias Pamma who was driving the truck. He tried to apprehend the other person who was sitting in the body of truck but he succeeded in fleeing. He identified him as Panjab Singh son of Swaran Singh resident of Debipur P.S. Valtoha and he knew him earlier. SI Major Singh suspected that accused Paramjit Singh was having a contraband matter in the truck. He offered him if he intended to be searched in the presence of a Gazetted Officer or a Magistrate. Paramjit Singh expressed to be searched before a Gazetted Officer. Regarding this consent memo Ex.P5 was prepared. Then through wireless message Gurmit Singh, DSP Zira was asked to reach there. DSP Gurmit Singh reached the spot. He disclosed his identity to accused as DSP as well as Gazetted Police Officer. He asked the accused if he has any objection to be searched in his presence. Accused reposed confidence in him vide memo Ex.P1. Then SI Major Singh conducted the search of the truck which led to the recovery of 50 bags of poppy husk lying under the 162 bags of powder. He further deposed regarding taking out samples each weighing 200 grams from the 50 bags, weighing the bags and taking them into possession. Rs. 210/- found on the person of accused Paramjit Singh were taken into possession vide memo Ex.P3, 162 bags of powder were taken into possession vide memo Ex.P4, documents RC, bility and challan were taken into possession vide memo Ex.P12.

11. In cross examination, he stated that he knew Panjab Singh earlier as his native village Duhal Kohna was situated near the village of Panjab Singh. He had to pass through Dibi Pura the native village of Panjab Singh to reach his village. However he had no other relationship with Panjab Singh.

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12. PW4 SI Kuldip Singh, P.S. Sadar, Ferozepur deposed that on 22.03.2002 he was posted as SHO PS Zira. That day SI Major Singh of CIA Staff produced before him accused Paramjit Singh along with case property, sample seal bearing seals MS, GS and truck along with Jama Talashi. He verified the investigation, interrogated accused, sealed the case property with his seal 'KS' and attested sample seal impression and took the same into possession vide memo Ex.P15. The accused was lodged in police lock up. On 23.03.2002 he proceeded on VIP duty and handed over case property of this case to ASI Gurjant Singh and directed him to produce accused along with case property in the Court vide application Ex.P21 on which the court made the order Ex.P22. On his return to police station, ASI Gurjant Singh handed over the case property along with samples to him. On 25.03.2002 he handed over the samples to Constable II Baljinder Singh for depositing in the office of Chemical Examiner Jalandhar but he returned them to him on 27.03.2002 with some objection of the laboratory. Then on 01.04.2002 he handed over these samples again to C-II Baljinder Singh who after depositing the same handed back the receipt to him. So long as the case property remained with him he did not tamper with same nor allowed anybody else to do so. After completion of investigation, accused was challaned by him.

13. PW5 HC Balwinder Singh tendered in evidence his affidavit Ex. P 23 deposing that on 25.03.2002 he was posted at police station Zira. On that day, SHO Police Station Zira handed over to him 50 samples of poppy husk weighing 200 gram each sealed with seal bearing impression KS, MS, GS, sample seals alongwith docket No. RC 58/21 dated 25.3.2000 for depositing the same in the office of Forensic Science Laboratory, Chandigarh. On the same day after getting the docket numbered and forwarded from the office of SSP Sahib, he reached the

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office of Science Laboratory Chandigarh on 26.03.2002. He was told that the samples were to be deposited at Jalandhar. On 27.03.2002 he came back to the police station and handed over the abovesaid samples of poppy husk and docket to SHO Kuldeep Singh, Police Station Zira. On 01.04.2002 he reached Chemical Examiner Jalandhar, deposited 50 samples of poppy husk of the case each weighing 200 grams duly sealed along with sample seal in the office of Chemical Examiner Jalandhar, obtained the road receipt. On coming back to the police station, he handed over the receipt to the SHO. So long as the sample parcels remained in his custody, neither he tampered with them nor allowed any body else to do so.

14. PW6 ASI Gurjant Singh stated that on 23.03.2002 he was posted at PS Zira. On that day SI Kuldeep Singh SHO of PS Zira had handed over to him case property of this case and accused for production of same before the learned Illaqa Magistrate, Zira. He moved application Ex.P21 before the learned Illaqa Magistrate and produced accused along with case property on which the Court passed order Ex.P22. On return to the police station he handed over the same to SI Kuldeep Singh the same day. So long as the case property remained with him, he did not tamper with the same nor allowed anybody else to do so.

15. As per report Ex.P20 of the Chemical Examiner Jalandhar the samples were of coarse powder poppy head. Morphine and Meconic Acid were present in each sample.

16. From the above evidence, it is clear that on 22.03.2002 PW2 SI Major Singh SHO, PS Zira alongwith ASI Rachhpal Singh, ASI Jaswant Rai and other police officials were present in connection with nakabandi in the area of Mansoor Wal Kalan. At about 5.00 am, one truck No.RJ-13G-4745 came from the side of

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Mansoor Wal Khurd. On suspicion, the truck was signalled to stop with the light of torch but that truck was stopped by its driver 18-20 karams behind. With the help of the other police officials SI Major Singh apprehended accused Paramjit Singh who was driving the truck. Punjab Singh who was sitting in the body of the truck succeeded in fleeing away. He was identified by ASI Rachhpal Singh in the torch light. The arrested accused was appraised of his legal right to have the search conducted in the presence of a Gazetted Officer or Magistrate. He opted to be searched in the presence of a Gazetted Officer. DSP Gurmit Singh was called to the spot. He again appraised the accused of his legal to be searched in his presence or before any other Gazetted Officer or a Magistrate. The accused expressed that he had no objection to be searched in his presence. Consent memo Ex.P1 was prepared. During the search 50 bags containing poppy husk were found lying concealed under 162 bags of some type of powder. After arranging the weights and scale, two samples each weighing 200 grams (100 in number) from each of the 50 bags were taken out. Each of the said 50 bags on weighment were found to be containing 39.6 kgs of poppy husk inclusive of the weight of the bag. Then all the 100 parcels and 50 bags of remaining poppy husk were sealed. On return to the police station SI Major Singh produced accused as well as case property before SHO Kuldip Singh who sealed the case property with his seal 'KS' and attested the sample seal impression and verified the investigation. On 20.06.2002 SI Major Singh arrested accused Panjab Singh who was produced by Baj Singh Sarpanch of village Arafke. He was conveyed the grounds of arrest vide memo Ex.P17.

17. The link evidence is complete through the evidence of PW 4 SI Kuldeep Singh, PW 5 HC Balwinder Singh and PW 6 ASI Gurjant Singh. There is

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proper compliance with all procedural and legal formalities.

18. As per report Ex.P20 of the Chemical Examiner Jalandhar the samples were of coarse powder poppy head. Morphine and Meconic Acid were present in each sample.

19. The identity of Panjab Singh has been duly established. PW3 ASI Rachhpal Singh had identified him at the spot in the torch light. In cross examination he stated that he knew Panjab Singh earlier as his native village Duhal Kohna was situated near the village of Panjab Singh. He had to pass through Dibi Pura the native village of Panjab Singh to reach his village. It has also come in evidence that Panjab Singh was the owner of the truck.

20. Other than making a bald statement that they have been implicated due to political rivalry being supporters of Akali MLA there is no evidence to support that plea. There is nothing on record to establish that any of the PWs was inimical to the accused.

21. The case against the accused has been proved beyond reasonable doubt. There is no reason to interfere with the well reasoned findings of the Ld. Trial Court.

22. Accordingly, these appeals are dismissed.

(RAJIV SHARMA)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

August 27, 2020
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Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No