

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

(PROCEEDINGS THROUGH V.C.)

Date of Decision: 20.12.2021

(i) CRA-D-1049-DB-2016 (O&M)

Balkar Singh @ Kaka ..Appellant

Versus

State of Punjab ..Respondent

(ii) CRA-D-891-DB-2016

Didar Singh ..Appellant

Versus

State of Punjab ..Respondent

**CORAM:- HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MR. JUSTICE ASHOK KUMAR VERMA**

Present: Mr. Jagdish Rai, Advocate
for the appellant in CRA-D-1049-DB-2016.

Mr. M.S. Bedi, Senior Advocate with
Ms. Gagandeep Kaur, Advocate
for the appellant in CRA-D-891-DB-2016.

Mr. H.S. Grewal, Addl. A.G. Punjab
for the respondent-State.

ASHOK KUMAR VERMA, J.

1. This order will dispose of aforesaid two appeals being involved common questions of law and facts. These appeals have been filed against the judgment of conviction dated 09.09.2016 and order of sentence dated 14.09.2016 passed by learned Judge Special Court, Patiala.

2. Brief facts relevant for disposal of the present appeals are that on 31.07.2013 ASI Mohan Singh along with other police officials had conducted a nakabandi at Patiala Cheeka Road T Point in the revenue limits of village Mazal Khurd. At about 3:00 p.m. a car was seen coming from the side of Village Mazal Khurd and on seeing the police party, the driver of the car tried to turn back and escape from the spot but suddenly the engine of the car was stopped. Accused Angrej Singh, sitting on the rear seat of the car, fled from the spot and accused Didar Singh and Balkar Singh @ Kaka apprehended on the spot. On conducting search by the police officials, six bags containing 180 kilograms of poppy husk were recovered from their car. Accordingly, FIR No.137 dated 31.07.2013 under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the NDPS Act') was registered at Police Station Sadar, Patiala. Accused Angrej Singh was also arrested on 17.10.2013 and the accused were charge-sheeted. The prosecution has examined witnesses PW-1 to PW-7 and the accused persons led their defence witnesses.

3. Statements of the accused/appellants under Section 313 of the Code of Criminal Procedure (for short 'the Cr.P.C.') were recorded in which all the incriminating circumstances appearing in the prosecution evidence were put to them, with a view to seek their explanation thereon, which were denied as incorrect and the accused/appellants pleaded false implication stating that no recovery has been effected from them.

4. Vide judgment of conviction dated 09.09.2016 and order of sentence dated 14.09.2016 passed by the trial Court, co-accused Angrej Singh was acquitted and the appellants Balkar Singh @ Kaka and Didar Singh were held guilty under Section 15 of the NDPS Act and sentenced to undergo rigorous imprisonment for a period of 11 years and pay fine of Rs.1,00,000/- each and in case of default of payment of fine to further undergo simple imprisonment for a period of 06 months.

5. Aggrieved against the above-said judgment of conviction and order of sentence, the appellants have filed the present appeals.

6. Learned counsel for the appellants have submitted that the appellants have been falsely implicated in the present case. There are discrepancies in the investigation. The contraband was recovered from the car which does not belong to the appellants. The appellants have nothing to do with the alleged recovery. Since the individual quantity of contraband recovered from the appellants were not explained, the alleged recovery cannot be termed to be a commercial quantity. Mandatory provisions of Section 50 of the NDPS Act have not been complied with. No independent witness was examined during trial.

7. Learned counsel for the appellants have further submitted that the minimum punishment provided in Section 15 of the NDPS Act is 10 years. As per Section 32B of the NDPS Act where a minimum term of imprisonment or amount of fine is prescribed for any offence committed under the NDPS Act, the Court may in addition to such factors, as it may deem fit, take into account the factors which are mentioned in Section 32B for imposing a punishment higher than the

term of imprisonment or amount of fine. Therefore, while imposing the punishment higher than the minimum term of imprisonment in the present case R.I. for 11 years, the Trial Court has to take into consideration the factors mentioned in Section 32B of the NDPS Act but the Trial Court has failed to assign any reasons while imposing the punishment higher than the minimum term of imprisonment.

8. Per contra, learned State counsel has submitted that the appellants have been rightly convicted and sentenced by the trial court. There is cogent evidence on record to show that the appellants were involved in the commission of the offence under the NDPS Act. The prosecution has examined 07 witnesses to prove its case. After appreciation of the evidence on record, the Trial Court has rightly convicted and sentenced the appellants.

9. We have given our thoughtful consideration to the submissions made by learned counsel for the appellants and learned State Counsel and gone through the paper-book.

10. In the present case PW-4 ASI Mohan Singh, the Investigation Officer of the case, has testified that on 31.07.2013 he along with other police officials conducted nakabandi at Patiala Cheeka Road T Point and apprehended the accused/appellants on the spot, however, co-accused Angrej Singh fled from the spot. After apprehending the accused/appellants he apprised the accused/appellants that they have a right to get themselves searched either in the presence of some Gazatted Officer or a Magistrate, who can be called at the spot, but the accused/appellants reposed faith in him. On search 180

kilograms of poppy husk was allegedly recovered from their car. Two samples of 250 grams each from each bag were separated and the remaining poppy husk weighed to be 29 kgs. 500 grams of each bag total weighing 180 kgs. and separate parcels of all the samples and bulk were prepared and sealed with seal bearing impression 'MS'. He has further testified that the formal FIR was registered on the basis of the ruqa sent through HC Devinder Singh and rough site plan was prepared. The entire case property was produced before SI Surinderpaljit Singh the officiating SHO who verified the facts of the case and witnesses and put his counter seal bearing impression 'SS' on all the parcels and on the specimen seals. The testimony of PW-4 ASI Mohan Singh was corroborated by the testimony of PW-5 HC Balkar Singh and PW-6 ASI Sukhdev Singh, the recovery witnesses who were accompanied with PW-4 ASI Mohan Singh. In his testimony PW-2 SI Surinderpaljit Singh has testified about the production of the accused (the appellants) along with case property and the witnesses before him by the Investigating Officer on the day of recovery itself. In their testimony PW-3 HC Rachhpal Singh the then MHC and PW-1 C. Mandip Singh have testified that the case property was deposited in the Malkhana and samples were deposited to the office of Chemical Examiner in intact condition. As per report of Chemical Examiner Ex.PW-4/9 it is also proved that the material recovered from the car is *poppy husk* which was carried by the accused/appellants without any licence or permit.

11. The Trial Court has recorded that nothing has come on record during cross-examinations of PWs which may shake their credibility and, thus, their testimonies are a reliable piece of evidence.

12. As far as non-compliance of Section 50 of the NDPS Act is concerned, Hon'ble Supreme Court in the cases of ***Vijaysinh Chandubha Jadeja vs. State of Gujarat : (2011) 1 SCC 609*** and ***State of Punjab vs. Baljinder Singh : (2019) 10 SCC 473*** observed that in the case of personal search only, the provisions of Section 50 of the NDPS Act is required to be complied with but not in the case of vehicle as in the present case. However, from the consent memos of the accused/appellants Ex.PW-4/A and Ex.PW-4/B it is proved that ASI Mohan Singh apprised the accused/appellants that they have right to get themselves searched in the presence of some Gazatted Officer or a Magistrate but they reposed full faith in him and had allowed him to conduct search. Accordingly, the argument of non-compliance of Section 50 of the NDPS Act advanced by the counsel is hereby repelled.

13. So far as non-examination of independent witness is concerned, Hon'ble Supreme Court in the case of ***Surinder Kumar Vs. State of Punjab : (2020) 2 SCC 563*** held that merely because independent witnesses were not examined, the conclusion could not be drawn that accused was falsely implicated. Therefore, the said issue is also well settled and in particular, looking to the facts of the present case, when the conduct of the accused was found suspicious and a chance recovery from the vehicle used by them is made from public

place and proved beyond reasonable doubt, the appellants cannot avail any benefit on this issue.

14. So far as non-consideration of Section 32B of the NDPS Act is concerned, the aforesaid Section provides for factors to be taken into consideration while imposing higher than the minimum punishment. Section 32B of the NDPS Act reads as under:-

“Section 32B. Factors to be taken into account for imposing higher than the minimum Punishment. – Where a minimum term of imprisonment or amount of fine is prescribed for any offence committed under this Act, the court may, in addition to such factors as it may deem fit, take into account the following factors for imposing a punishment higher than the minimum term of imprisonment or amount of fine, namely:-

- (a) the use or threat of use of violence or arms by the offender;*
- (b) the fact that the offender holds a public office and that he has taken advantage of that office in committing the offence;*
- (c) the fact that the minors are affected by the offence or the minors are used for the commission of an offence;*
- (d) the fact that the offence is committed in an educational institution or social service facility or in the immediate vicinity of such institution or faculty or in other place to which school children and students resort for educational, sports and social activities;*
- (e) the fact that the offender belongs to organized international or any other criminal group which is involved in the commission of the offences; and*
- (f) the fact that the offender is involved in other illegal activities facilitated by commission of the offence.”*

15. Keeping in view the provisions of Section 32B of the NDPS Act and peculiar facts and circumstances of the present case, this Court is of the considered opinion that rigorous imprisonment of 11

years awarded to the appellants under Section 15 of the NDPS Act is on the higher side which requires to be modified. Accordingly, sentence of 11 years awarded by the Trial Court is reduced to 10 years and the order of sentence dated 14.09.2016 passed by learned Judge, Special Court, Patiala is modified to that extent and the fine as awarded by the Trial Court is maintained accordingly.

16. In view of the above and subject to the aforesaid modification in case of sentence, these appeals shall stand dismissed.

(ASHOK KUMAR VERMA)
JUDGE

(RITU BAHRI)
JUDGE

20.12.2021
MFK/Kothiyal

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether Reportable</i>	<i>Yes</i>