

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

CRA-D No.455-DB of 2017

Date of Decision: 02nd December, 2021.

Kishori Lal & Another

...Appellants

Versus

State of Haryana

...Respondent

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA**

Present: Mr. Rahul Deswal, Advocate,
for the appellants.

Mr. Ankur Mittal, Additional Advocate
General, Haryana with Mr. Saurabh Mago, AAG, Haryana.

* * * *

MEENAKSHI I. MEHTA, J.

Feeling aggrieved by the judgment dated 07.03.2017 and order on sentence dated 09.03.2017 passed by learned Additional Sessions Judge, Faridabad, in the criminal case arising out of the FIR bearing No.324 dated 06.06.2015 registered at Police Station Sector-7, Faridabad, under Section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the Act') whereby both the appellants have been held guilty for committing the offence under Section 20 of the Act and each of them has been sentenced to undergo rigorous imprisonment for a period of 12 years and also to pay the fine to the tune of Rs.01 (one) lac and in case of default in the payment of fine, to further undergo rigorous imprisonment for two

months, they have joined hands to prefer the instant criminal appeal.

2. Shorn and short of unnecessary details, the allegations, as levelled by the prosecution against the appellants, are that on 06.06.2015, SI Ram Avtar, along-with some other police officials, was present near the Government Tubewell in Sector 11-D, Faridabad, in connection with crime checking and patrolling duty. There, he received a secret information that one Anil son of Ajab Singh, who was employed as driver on the truck bearing Registration No.HR-38A-9296 and belonging to M.A.Transport, had been indulging in the trade of narcotic drugs and on that day, he had parked the above-said vehicle in a vacant ground near the market of Sector 11-B. Then, the above-named SI prepared a raiding party and they reached at the spot, as disclosed by the secret informer. At about 9:00 A.M, one Bolero vehicle bearing Registration No.RJ05-UA-3225 came there and two persons alighted from the same. One of them entered into the cabin of the said truck and started shifting the packets from the same to the Bolero vehicle with the help of his companion standing there. They were apprehended by the police party and the person present in the cabin, disclosed his name as Ajay @ Anil, i.e appellant No.2 and the other person revealed his name as Kishori Lal, i.e. appellant No.1.

3. Separate notices under Section 50 of the Act were served to both the appellants and they opted for getting the search conducted in the presence of a gazetted officer. Then, the Assistant Commissioner of Police, Ballabgarh reached at the spot and directed the afore-said SI to conduct the search of the vehicles. Six packets were recovered from the Bolero vehicle whereas 25 packets were found loaded in the said truck and the same were

found to be containing '*ganja*' and each packet weighed 10 kg. After separating out two samples of 100/100 grams from each of these packets, the samples as well as the remaining '*ganja*' were packed and converted into the parcels and were sealed and these parcels as well as both the above-said vehicles were taken into possession vide the separate memos. During further investigation, it was revealed that said Anil son of Ajab Singh had brought the truck at the spot and one Gholu Ram @ Dharamveer was also involved in the crime but however, they could not be apprehended and therefore, the Challan was presented only against both the appellants. On 15.10.2015, the charge was framed against them for commission of the offence under Section 20 of the Act and they pleaded not guilty to the same and claimed trial.

4. To substantiate its allegations against the appellants (accused), the prosecution examined as many as 15 witnesses namely Shyam Singh Photographer as PW-1, MHC Jitender Singh as PW-2, Mrs. Neetika Bhardwaj, JMIC, Faridabad as PW-3, Sarwan Kumar Draftsman as PW-4, EHC Rajbir Singh as PW-5, C. Udaivir Singh as PW-6, Nissar Ahmed as PW-7, C. Hopinder Singh as PW-8, ASI Mohd. Ayub as PW-9, Inspector Mahender Singh as PW-10, Gajender Kumar DSP as PW-11, SI Ram Avtar as PW-12, SI Naresh Kumar as PW-13, SI Sanjay Parshad as PW-14 and Sandeep Kumar as PW-15 and the documents Exhibited as PA to PL and the photographs Exhibits PB/1 to PB/86 were tendered in evidence. Thereafter, the appellants were examined under Section 313 Cr.P.C to explain the circumstances appearing against them in the prosecution evidence on the record wherein they pleaded innocence while stating that they had been

falsely implicated in this case. However, they did not lead any evidence in their defence despite having been afforded sufficient opportunities for this purpose. Then, after hearing the Public Prosecutor for the State as well as the defence counsel, the trial Court recorded the conviction of both the appellants and also awarded the sentence to them as described in the opening para of this judgment.

5. We have heard learned counsel for the appellants as well as learned State counsel in the present appeal and have also perused the record thoroughly.

6. Learned counsel for the appellants has referred to Exhibits PW12/A and PW12/B, i.e the notices as issued to both the appellants under Section 50 of the Act and he has pointed out that the appellants have not been given the option therein to get the search conducted by a Magistrate and have only been asked as to whether they wanted to get the search conducted by a gazetted officer or not and he has contended that this lacuna in the said notices is fatal to the prosecution version and the appellants are entitled to their acquittal on this score alone.

7. However, we do not find this contention to be tenable because the above-mentioned packets, containing '*ganja*', were not recovered during the personal search of the appellants and rather, as discussed earlier, the same were recovered from the Bolero vehicle and the truck and therefore, the compliance of Section 50 of the Act was not required at all in view of the recent observations as made by the Apex Court in **Kallu Khan vs. State of Rajasthan LL 2021 SC 731** to the effect that "*the seizure of the contraband was made during the search of the motor-cycle at public place*

and not from the person of the accused and therefore, the compliance of Section 50 of the Act was not attracted in the case.” Resultantly, the above-raised contention pales into insignificance.

8. Learned counsel for the appellants has also referred to Exhibit D-1, i.e notice as given by the first Investigating Officer under Section 42 of the Act and he has pointed out that the FIR number of the case finds mention in the same whereas such notice was required to be sent before conducting the search of both the said vehicles and he has contended that this fact shows that the provisions of Section 42 of the Act have not been actually complied with in this case and this infirmity eats into the vitals of the entire case of the prosecution and makes it a highly doubtful one.

9. Again, this contention does not hold much water because a bare perusal of notice Exhibit D-1 shows that the factum of the receipt of the information regarding the intoxicant substance and the said vehicles, has categorically been mentioned therein and a request had also been made to reach at the spot while further specifying that the concerned officer had been informed on the mobile phone number detailed therein. As regards the fact that the FIR number and other particulars have been mentioned in the same, it is worth-while to mention here that during his cross-examination, PW-12 Ram Avtar SI has deposed that he had mentioned the FIR number on the said notice later-on at the police station. PW-11 Gajender Kumar, DSP (posted as ACP, Ballabgarh at the relevant time) has also made the similar depositions during his cross-examination. This fact does suffice to explain the mentioning of the FIR number etc. in Exhibit D-1.

10. Learned counsel for the appellants has further pointed out that

as per Exhibit PA, i.e the report of FSL, the parcels containing samples, as received there, bore the seal having impression 'RP' whereas as per the prosecution version, the said parcels had been sealed with the seals having inscriptions 'RA' and 'SP' and he contends that this discrepancy goes to the roots of the case and casts a shadow of doubt on it.

11. However, this contention is also devoid of any force because though initially, the samples, as drawn at the spot, were sealed with the seals bearing impressions 'RA' and 'SP' but PW-3 Mrs. Neetika Bhardwaj, the then Judicial Magistrate Ist Class, Faridabad, has deposed that the case property and the accused were produced before her on 07.06.2015 and she had passed orders Exhibits PD and PE on that day. Exhibit PD is the certificate given by her specifically mentioning therein that the samples and the other parcels bearing seals, having inscriptions 'RA' and 'SP', were produced before her by the Investigating Officer along-with an application under Section 52-A of the Act and the seals were checked and were found intact and then, all these parcels were again sealed with the seal bearing impression 'RP'. These facts also find mention in the order Exhibit PE. The above-discussed evidence clarifies/explains the factum of the said parcels, as sent to FSL, Madhuban, bearing the seal having inscription 'RP'.

12. Lastly, learned counsel for the appellants has attempted to make out a case for reduction in the substantive sentence of 12 years as awarded to the appellants while contending that the same is quite harsh and the appellants are not previous convicts. He has placed reliance upon **Balwinder Singh vs. Asstt. Commissioner (2005) 4 SCC 146 (SC); Satnam Singh @ Satti & Anr. vs. State of Punjab 2020(2) RCR (Crl.) 49 (P&H);**

Mahipal & Anr. vs. State of Haryana 2016(2) RCR (CrL.) 232 (P&H);
Chande Ram @ Chander Negi vs. State of HP 2011(14) RCR (CrL.) 801
(HP) and *Rais Ahmed Habib Ahmed vs. State of Gujrat 2008 Cri.L.R.*
(Guj.) 793 in this regard.

13. However, the observations, as made in the afore-cited cases, do not further the cause of the appellants because in those cases, the substantive sentence as awarded to the appellants ranged from 14 to 20 years whereas in the present case, the trial Court has already taken the relevant factors into consideration while awarding sentence of rigorous imprisonment for 12 years although the maximum punishment prescribed for the offence extends up to 20 years and the minimum one is 10 years. Moreover, while rejecting the plea of the appellants to reduce the sentence of rigorous imprisonment of 15 years, Hon'ble Supreme Court has recently observed in *Gurdev Singh vs. State of Punjab 2021(6)SCC 558* that “*while awarding the sentence/punishment in case of NDPS Act, the interest of the society as a whole is also required to be taken in consideration. Therefore, while striking the balance between the mitigating and aggravating circumstances, public interest, impact on the society as a whole will always be tilt in favour of the suitable higher punishment*”. In view of these observations, the appellants do not deserve the concession of reduction in the substantive sentence awarded to them.

14. As a sequel to the fore-going discussion, it follows that the impugned judgment and order on sentence as handed down by the trial Court do not suffer from any illegality, infirmity, irregularity or perversity. Hence, the same are upheld. Resultantly, the appeal in hand, being *sans*

any merit, stands dismissed.

(RITU BAHRI)
JUDGE

(MEENAKSHI I. MEHTA)
JUDGE

02.12.2021.
seema

Whether speaking/reasoned?	Yes
Whether Reportable?	Yes