

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

CRA-S-382-SB-2007 (O&M)

Date of pronouncement: 21.09.2022

Sarabjit Singh @ Kalu

...Appellant

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S. MADAAN

Present: Mr. Ashok Giri, Advocate for the appellant.

Mr. G.S. Dhillon, AAG, Punjab.

H.S. MADAAN, J.

1. Appellant Sarabjit Singh @ Kalu son of Mangal Singh along with Kaka Singh, both of them being accused in FIR No.174 dated 02.09.2004, for an offence under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the Act'), registered with Police Station Shahkot, were tried by Judge, Special Court, Jalandhar on the allegations that on 02.09.2004 in the area behind the godown of Cooperative Focal Point, Bhullran, they were found in possession of 700 kg of poppy husk without any license or permit.

On conclusion of the trial, vide judgment dated 08.01.2007, both the accused were convicted for an offence under Section 15 of the Act and in terms of the order passed on 09.01.2007, they were sentenced to undergo rigorous imprisonment for a period of 10 years each and to

pay a fine of Rs.1 lakh each; in default of payment of fine, to further undergo RI for one year and six months each.

2. Briefly stated facts of the case, as per prosecution story are that on 02.09.2004, SI Pritam Singh [hereinafter referred to as the Investigating Officer/IO] along with SI Sarup Singh, ASI Joginder Singh from Police Station Shahkot, District Jalandhar had laid a naka in front of Government Rest House, Shahkot during the course of patrolling and checking of bad characters; there the IO received a secret information that accused Sarabjit Singh @ Kala and his co-accused Kaka Singh were indulging in sale of poppy husk and smuggling of contraband in a big way and they had parked a truck containing poppy husk covered with tarpaulin behind godown of Cooperative Focal Point, Bhullran and if a raid was conducted, they could be apprehended and recovery effected; finding the information to be credible, the IO sent ruqa to the police station on the basis of which formal FIR was recorded; the IO had requested Sh. Harinderjit Singh, DSP by sending a message on mobile phone to reach at the spot; thereafter, the police party proceeded towards the disclosed place and on the way, Gurdev Singh, an independent witness was joined with the police party; accused Kaka Singh sitting on the driver seat and Kala @ Sarabjit Singh sitting on the front seat besides him in the truck were apprehended; the IO informed the accused that he suspected that there was some contraband in the truck and wanted to search the same, however, the accused had a right to get the search conducted in the presence of some Gazetted Officer or a Magistrate; the

accused opted to get search carried out in the presence of a Gazetted Officer; separate memos in that regard were prepared; Sh. Harjinderjit Singh, DSP also arrived at the spot and he after disclosing his identity to the accused apprised them regarding their legal right of search being carried out before him or some Magistrate or any other Gazetted Officer; the accused, however, reposed confidence in the said DSP and a consent memo in that regard was prepared.

Thereafter, under directions of DSP, the IO carried out search of the truck, which was having registration No.RJ-13-IG-0497 and 20 bags of poppy husk were recovered from the tool box, which had been got fabricated by the accused with the help of wooden planks and covered with tarpaulin; the IO took out sample of 250 gm each from each of the bag and on being weighed, the remaining poppy husk in each bag came out to be 34 kg 750 gm; the bags were numbered as Sr. No.1 to 20; the samples were also given such numbers; the samples and the bags containing residue poppy husk were converted into parcels, sealed with seal of DSP having impression 'HS'; sample seal impressions were taken on a chit; the seal after use was retained by DSP himself.

Thereafter, the truck along with its RC and other documents, sample parcels, bulk parcels, sample seal impressions chit were taken into police possession, vide different recovery memos; the IO prepared rough site plan of the place of recovery and recorded statements of witnesses; both the accused were accordingly arrested in this case as per rules and requisite documents in that regard were prepared; intimation regarding

arrest of the accused was given to their family members.

On return to the police station, the IO deposited the case property with MHC and put the accused in the lockup.

On the next day, the IO produced the accused along with case property in the Court of Judicial Magistrate, Nakodar; two representative samples of 500 gm each were drawn from the bulk parcels, sealed with seal having impression 'KS'; proceedings in the Court of Judicial Magistrate, Nakodar were photographed; the IO had filed an application under Section 52-A of the Act before learned Judicial Magistrate, Nakodar who passed the requisite orders thereon; thereafter, on return to the police station, the IO redeposited the case property with MHC.

During the course of investigation, sample parcels were sent to the office of Chemical Examiner, Punjab, Chandigarh and as per report Ex.PR received there from, the samples were found to be those of poppy heads; on completion of investigation and other formalities, challan against the accused was prepared and filed in the Court.

3. On receipt of the challan, the trial Court of Special Judge, Jalandhar supplied copies of documents relied upon in the challan to the accused free of costs as provided under Section 207 Cr.P.C., and then finding a prima facie case, charge for an offence under Section 15 of the Act was framed against the accused, to which they pleaded not guilty and claimed trial.

4. During the course of prosecution evidence, prosecution

examined the following witnesses:-

PW-1 HC Balraj Singh stated that on 02.09.2004, while he was posted as MHC at Police Station Shahkot, on that day, SI Pritam Singh, SHO of the Police Station had deposited 20 samples and 20 bags of poppy husk duly sealed with seal having mark 'HS' along with sample seal impression chit with him and on the next day, he had handed over the case property and sample seal impression chit to SI Pritam Singh who produced such articles in the Court of Illaqa Magistrate; learned Illaqa Magistrate had perused the case property and had got drawn two samples of 500 gm each from the bulk parcels which were sealed by the Magistrate with his seal having inscription 'KS'; photographs were also taken and on return, SI Pritam Singh, SHO of the police station had deposited the case property along with samples drawn by the Court with him; he further stated that on 09.09.2004, he had handed over 20 samples duly sealed with seal having impression 'HS' along with a docket to HC Baldish Singh with a direction to deposit those in the office of Chemical Examiner, Punjab, Chandigarh; HC Baldish Singh accordingly did so and on return to the police station, he handed over the receipt to him; this witness stated that so long as the case property remained in his possession, neither he nor anybody else tampered with the same.

PW-2 CI Baldish Singh, the carrier of the sample parcels also stated that on 08.09.2004, on being given 20 parcels of poppy husk duly sealed with seal 'HS' along with docket and specimen seal impressions by MHC Balraj Singh, he went to the office of Chemical Examiner, Punjab,

Chandigarh and handed over such articles there; on return submitted the receipt to MHC Balraj Singh. He stated that so long as the sample parcels remained with him, neither he tampered with the same nor he allowed anybody else to do so.

PW-3 SI Sarup Singh, a witness of recovery supported the prosecution story on material aspects.

PW-4 Sh. Mahesh Kataria, Clerk, DTO, Ganganagar (Rajasthan) had brought the summoned record, stating that truck No.RJ-13-IG-0497 is registered in the name of Jaswinder Singh son of Nirmal Singh and Kaka Singh son of Kartar Singh, R/o V & PO Bhundri, Tehsil Jagraon, District Ludhiana with temporary address as Ward No.24, Setia Farm, Ganganagar. He proved RC of the truck as Ex.PG.

PW-5 SI Pritam Singh, the IO of this case who on receipt of secret information had arranged a raid, apprehended the accused, effecting recovery from them deposed in that regard, besides the other investigation conducted by him, detailed in earlier part of the judgment. He proved various other documents prepared by him in connection with the investigation.

PW-6 Sh. Harinderjit Singh, DSP under whose instructions, the search had been conducted and recovery effected deposed regarding his part.

PW-7 Nirmal Singh, Ahlmad attached to the Court of JMIC, Nakodar stated that he was working as Ahlmad in the Court of Sh. Kuldeep Singh, JMIC, Nakodar in the year 2004 and on 20.10.2004, Sh. Kuldeep

Singh had seen and certified three photographs taken in the Court. He proved the photos as Ex.P11 to P13 and negatives Ex.P14 to P17.

With that, the prosecution evidence got concluded.

5. Statements of the accused were recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing in prosecution evidence against the accused were put to them but they denied the allegations contending that they were innocent and the police had planted a false case upon them. Appellant/accused Sarabjit Singh @ Kala stated that he was going from his village to Talwan and on the way, he was picked up by the local police. The panchayat of his village represented to the DSP and other police officers regarding his false implication. A resolution was also passed by the Gram Panchayat in his favour. He further stated that he has no connection with the truck in question and was not in conscious possession of any narcotic drug. He had no connection with the recovered contraband.

6. During their defence evidence, the accused examined four witnesses as detailed below:-

DW-1 Amarjit wife of Mohinder Pal, Sarpanch of village Dhakara, Tehsil Phillaur, stated that Sarabjit @ Kalu is resident of her village and he was apprehended by the police in a case, however, they have not seen him doing any wrong thing. He was doing work of loading sand. She further stated that she did not appear before any police officer concerning Sarabjit Singh @ Kalu.

DW-2 Bahadur Ram son of Nazar Ram, stated that he is

Ex.Sarpanch of his village which is at a distance of 1 ½ km from village Jhakara. He knows Sarabjit Singh @ Kalu who is doing work of loading sand and when he was apprehended by the police, they had appeared before the police authorities and they were given the assurance that he would be released but it was not so done.

DW-3 Devi Lal son of Ujjagar Ram, R/o village Phooda stated that he is an agriculturist and sarpanch of the village. The land of Sarabjit @ Kalu is at a distance of one and half km from his house. He knows Kalu for the last 20-25 years, who is a labourer and on 02.09.2004, Kalu was going to Talwan from his village, on the way, he was caught by the police and taken away. They had appeared before SHO, Police Station Shahkot enquiring about Kalu and SHO told them that they were verifying certain facts and he would be released on the next day but subsequently, Kalu was implicated in this case.

DW-4 Ujjagar Singh stated that he is Ex.Sarpanch of village Bhudhri and knows accused Kaka Singh personally who belongs to his village; on 02.09.2004 at about 6 am, the police took Kaka from his house; they met the police but the police told them that they had suspicion on him and they would release him after 1-2 days. This witness stated that nothing was recovered from Kaka Singh in his presence and in his view, a false case had been planted upon Kaka Singh.

With that, the defence evidence was closed.

7. After hearing arguments, the trial Court convicted and sentenced the accused as mentioned supra.

8. Feeling aggrieved by the judgment of his conviction and order of sentence, appellant Sarabjit Singh @ Kalu had preferred an appeal before this Court which was Admitted for regular hearing on 22.02.2007, and on an application having been filed, the remaining sentence of the appellant was suspended during the pendency of the appeal on 01.02.2010. Now the appeal has come up for final hearing.

9. I have heard learned counsel for the appellant/accused, learned State counsel besides going through the record.

10. Learned counsel for the appellant has attacked the impugned judgment on various grounds, which are discussed here under one by one:-

i. Conscious possession of contraband by the accused not established.

According to learned counsel for the appellant, the appellant is not owner of the truck in question and simply for the reason that he was sitting on the front seat besides Kaka Singh, co-accused, no conclusion can be drawn that he was in conscious possession of the contraband which was found to be there in the truck.

This contention of learned counsel for the appellant is without any force. The prosecution by bringing enough cogent and convincing evidence on record has been able to establish that accused was sitting on the front seat of the truck, whereas his co-accused Kaka

Singh was sitting on the driver seat. As a result of search being conducted, the truck was found loaded with bags containing poppy husk. The weight of total recovered contraband being 700 kg, which is a huge quantity. The accused was present in the truck from where the recovery was effected and he being unable to render any plausible or convincing explanation for his presence there leads to natural inference that he along with his co-accused Kaka Singh were in conscious possession of the contraband.

A Single Judge of this Court in judgment **Krishan Kumar Vs. State of Punjab, 2016(2) RCR (Crl.) 707**, dealing with this aspect has observed that once it is established that the appellant was in possession of the contraband, it was for him to show that he was not in conscious possession thereof, since Section 54 of the Act creates a legal fiction and presumes that the person in possession of illicit article could have committed the offence in case he fails to account for the possession. It was further observed that in terms of Section 35 of the Act, an inference can be drawn that accused in possession of the contraband, had culpable mental state and had committed the offence.

ii. The sample parcels and bulk parcels do not bear seal of the Investigating Officer or other member of the raiding

party, giving rise to chances of tampering with the case property.

This argument is also without merit. After recovery, the sample parcels and bulk parcels had been sealed with seal of Sh. Harjinderjit Singh, DSP having impression 'HS' and after use, he had retained the seal with himself. Thereafter on reaching the police station, the IO had deposited the case property with MHC of the police station. On the next day, the case property was produced before Judicial Magistrate, Nakodar who had found seals on the parcels to be in intact condition. Learned Magistrate himself drew two samples of 500 gm each from the bulk parcels, sealing those with his seal having impression 'KS'. Thereafter, the IO had redeposited the case property with MHC with seals intact. There is enough evidence adduced by the prosecution to show that the case property had remained in safe custody and sample parcels had reached office of Chemical Examiner, Punjab, Chandigarh without any tampering. Therefore, merely because of this reason credibility of the prosecution story is not affected.

iii. Seal had been retained by the DSP and not given to the independent witnesses.

DSP being a Gazetted Officer is be required to use

his seal quite often after the case property was sealed, the same had been taken away by the IO to the police station and thereafter deposited with the MHC. Thus there was no occasion for the tampering of seal on the sample parcels and bulk parcels and as a matter of fact when produced in the Court on the next day, the seals had been found to be intact. Therefore non handing over of seal by the DSP to any member of the police party or independent witness does not create any suspicious circumstance.

iv. Gurdev Singh independent witness was not examined by the prosecution making the prosecution case doubtful.

This contention is not convincing. The official witnesses of recovery are not shown to have any motive to involve the accused in this case falsely or to depose against them and the version given by them is worthy of reliance. Therefore, their statements are to be treated at par with the independent witnesses. Non-examination of Gurdev Singh independent witness does not lead to any adverse inference qua the prosecution story.

In judgment **Krishan Kumar** (supra), dealing with such aspect, it was observed that testimonies of the official witnesses carry the same evidentiary value as that

of any other witness and their statements cannot be discarded simply on account of their official designation. Even otherwise, independent corroboration is just a rule of caution and not requirement of any law.

v. Accused did not try to run away on seeing the police party.

The appellant/accused cannot take advantage of this fact. If they had tried to run away on observing the police personnel, that would have definitely led to an adverse inference against them. Nevertheless the fact that they kept sitting in the truck on seeing the police party does not result in drawing any conclusion with regard to their innocence. Their conscious possession of the contraband is adequately established on record as has been discussed in detail above.

vi. CFSL form not prepared at the spot.

This could at best be termed as a procedural lapse which does not vitiate search and seizure. Even otherwise in judgment *Khet Singh Versus Union of India* by the Supreme Court in Appeal (Crl.) 31 of 2000, it was observed that law on the point is very clear that even if there is any sort of procedural illegality in conducting the search and seizure, the evidence collected thereby will not become inadmissible and the Court would consider all the

circumstances and find out whether any serious prejudice had been caused to the accused. If the search and seizure was in complete defiance of the law and procedure and there was any possibility of the evidence collected likely to have been tampered with or interpolated during the course of such search or seizure, then, it could be said that the evidence is not liable to be admissible in evidence.

vii. 20 days delay in sending sample to the office of Chemical Examiner, Punjab, Chandigarh.

This objection also does not carry any weightage. Since the prosecution has successfully proved that after search and seizure, the case property had remained in safe custody and the sample parcels had reached the office of Chemical Examiner, Punjab, Chandigarh in an intact condition. In judgment **Krishan Kumar** (supra), while dealing with such aspect, it was observed that when established that the case property remained intact throughout and was never tampered with at any point of time, then mere delay of 14 days in sending the sample parcels to the Chemical Examiner is of no legal consequence.

In judgment *Sucha Singh Versus State of Punjab 2015(4) RCR (Criminal)25*. It was a case when an independent witness had been joined during the search and recovery of contraband. He had appeared as a witness for

the defence stating that his signatures were procured on blank papers when he had visited the police station in drunken condition. As such, contention was not accepted holding that it cannot be believed that numerous signatures on various papers having different written material could be signed by a witness on blank papers. The testimony of that witness was held to be unreliable and was discarded. In that very judgment, credibility of official/police witnesses was considered and it was observed that when there is no allegation of any enmity against the police officials to falsely implicate the appellants and there was no reason for them to depose against the appellants, the trial Court had rightly concluded that non-examination of independent witness of search and recovery being won over by the accused does not raise any doubt in the prosecution case. The aspect of delay in sending the sample to the office of Chemical Examiner was also discussed holding that when the samples were not sent to the office of Chemical Examiner within 72 hours, the prosecution and conviction cannot be vitiated on that ground since there was no specific provision in the Act in that regard and the instructions/standing orders in that respect were only the guidelines to regulate and control their internal working of

Narcotic Control Bureau.

viii. Plausible defence version not accepted by the trial Court.

As regards the defence version set up by the accused, the same does not come out to be plausible and satisfactory in view of overwhelming incriminating oral and documentary evidence adduced by the prosecution to show that the appellant/accused along with his co-accused Kaka Singh have been found in conscious possession of 700 kg of poppy husk. Such a huge recovery of contraband rules out the possibility of false plantation. In judgment **Krishan Kumar** (supra) it was observed that when 35 bags containing 35 kgs poppy husk in each bag were recovered from the possession of the appellant and his co-accused, such a huge quantity of the contraband could not be planted by the police from its own source, that too, just for the false implication, the conviction and sentence of the accused given by the trial Court was upheld.

11. I find the impugned judgment of conviction passed by the trial Court is quite detailed, well reasoned, does not suffer from any illegality or infirmity. It is based upon proper appraisal of evidence and correct interpretation of law. There is no illegality or infirmity therewith, which might have called for interference by this Court while exercising appellate jurisdiction.

As regards the sentence part, the trial Court has already shown leniency to the accused by awarding sentence of 10 years imprisonment only when it could have gone upto 20 years. The recovery involved in this case is so huge that no leniency can be shown to the appellant/accused who for a pecuniary benefit make people take drugs, ensuring easy supply thereof in the process affecting their health, endangering their lives, resulting in unrest and disturbance of peace and tranquility in the society. The sentence awarded to the appellant is the minimum prescribed for the offence. It cannot be reduced any further as per law and appellant/accused does not deserve any reduction in sentence either.

The appeal is found to be without merit and is dismissed accordingly.

12. The appellant/accused is directed to surrender before Chief Judicial Magistrate, Jalandhar within a week from today, failing which learned CJM, would issue warrants of arrest to secure his presence and send him to jail to undergo the remaining sentence. Necessary intimation be sent to the Court concerned for information and compliance.

21.09.2022

sumit.k

(H.S. MADAAN)
JUDGE

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