

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

CRA-S-1321-SB-2006(O&M)

Date of decision:-14.9.2022

Jarnail Singh

...Appellant

Versus

State of Punjab

...Respondent

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

Present: Mr.R.S. Sekhon, Advocate
for the appellant.

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

H.S. MADAAN, J.

1. Appellant/accused Jarnail Singh was tried by learned Special Judge, Ferozepur in case FIR No.362 dated 30.11.2003 for an offence under Section 15 of Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as '**the Act**'), Police Station Sadar, Fazilka and vide judgment dated 2.5.2006, he was convicted in that case for the offence under Section 15(c) and in terms of order dated 4.5.2006, he was sentenced to undergo rigorous imprisonment for ten years and to pay a fine of Rs.1,00,000/- and in default thereof to further undergo rigorous imprisonment for a period of one year.

2. Briefly stated, the facts of the case, as per the prosecution version are that on 30.11.2003, SI Gurpiar Singh, Incharge Police Post Roranwali, Police Station Sadar, Fazilka (hereinafter referred to as the Investigating Officer/IO) was heading a police party and they were present in the area of village Ghatianwali Bodla, where one Mithu Singh

son of Mukhtiar Singh met the IO and he was joined with the police party; when the police party proceeded further in connection with patrolling and had reached the bridge of canal minor in the area of Ghatianwali Jattan, accused Jarnail Singh was spotted coming on a motorcycle from the side of village Mahuana; on seeing the police party, the accused tried to turn back but he was intercepted; on being inquired about, the accused told his name and other particulars; the IO told the accused that he suspected some intoxicant material being carried on his motorcycle, therefore wanted to search the same and that the accused had a right to get his search conducted either in presence of some gazetted officer or a Magistrate; the accused gave his option that search be got conducted in presence of a gazetted officer; a memo in that regard was prepared, thumb marked by the accused and attested by the witnesses; accordingly DSP Swarandeeep Singh was summoned to the spot, who reached there along with staff and gave his introduction to the accused stating that he was a gazetted officer posted at Fazilka and that the accused had a legal right to get his search conducted in presence of some other gazetted officer or a Magistrate; however, the accused reposed faith in DSP Swarandeeep Singh, regarding which a consent memo was prepared, thumb marked by the accused and attested by the witnesses.

3. Thereafter, on instructions of DSP Swarandeeep Singh, IO conducted search of the two bags, which were loaded on the motorcycle of the accused; those were found to contain poppy straw; the accused could not produce any licence or permit for possession of the contraband.

The IO took two samples of 250 grams each from each of bag, preparing

four separate parcels thereof; the remaining poppy straw in each bag was found to be 25 kgs.; those bags were also converted into parcels, then all the six parcels were sealed by the IO with his seal bearing impressions 'GS'; DSP Swarandeeep Singh also put his seal having inscription 'SDS' on all the parcels; samples seal impressions of the IO and DSP Swarandeeep were taken on a chit; DSP Swarandeeep Singh kept his seal with himself, whereas the IO after use handed over the seal to private witness Mithu Singh; then the entire case property was taken into police possession vide a recovery memo.

4. The Investigating Officer sent ruqa to the police station, on the basis of which formal FIR was recorded. Accused was accordingly arrested in this case as per rules, preparing requisite documents. The Investigating Officer prepared rough site plan of the place of recovery and recorded statements of witnesses.

5. On return to the police station, the Investigating Officer handed over the entire case property to ASI Lal Singh, the officiating SHO of the police station, who sealed the case property with his seal having impressions LS, preparing sample seal impressions. Then the case property and the accused were produced before learned Magistrate, who passed authentication order. During the course of investigation, the sample parcels were sent to the office of Chemical Examiner, Punjab, Chandigarh and as per report received therefrom, those were found to be that of poppy straw. After completion of investigation and other formalities, challan against the accused was prepared and filed in the Court.

6. On presentation of the challan, copies thereof were supplied to the accused free of costs, as envisaged under Section 207 Cr.P.C.

7. Then on observing that prima facie charge for an offence under Section 15 of the Act was disclosed against the accused, he was charge-sheeted accordingly, to which, he pleaded not guilty and claimed trial.

8. During the course of its evidence, the prosecution examined the following witnesses:

PW1 HC Gurdev Singh, the carrier of sample parcels and sample seal impressions to the office of Chemical Examiner, Punjab, Chandigarh deposed that so long as the articles remained in his possession, no tampering therewith had taken place.

PW2 ASI Lal Singh, the officiating SHO of the police station on 30.11.2003, deposed regarding his part stating that on arrival at the police station, the IO had produced the accused along with the case property before him and he had sealed the case property with his seal having inscription 'LS' preparing specimen seal impression and thereafter took into police possession the entire case property vide handing over memo; on the next day, he produced the accused and entire case property before Magistrate obtaining authentication order. He had sent sample parcels and samples of seals to the office of Chemical Examiner, Punjab, Chandigarh through HC Gurdev Singh and so long as the case property remained in his possession neither he tampered with the same nor he allowed anybody else to do so.

PW3 ASI Surinder Singh, who during the course of

investigation had recorded statements of a few witnesses deposed in that regard.

PW4 DSP Swarandeep Singh in whose presence the bags in possession of the accused had been searched resulting in recovery of contraband, PW5 Constable Sukhpal Singh, a witness of recovery and PW6 SI Gurpiar Singh, IO, who was heading the police party, which had apprehended the accused and effected recovery from him, supported the prosecution story on material aspects especially with regard to the recovery of contraband from the possession of the accused. In addition PW6 SI Gurpiar Singh deposed regarding the investigating conducted by him proving various documents.

The prosecution relied upon several documents including report from the office of Chemical Examiner, Punjab, Chandigarh as Ex.P14 and closed the prosecution evidence.

9. Statement of the accused was recorded under Section 313 Cr.P.C., in which all the incriminating circumstances in the prosecution evidence appearing against him were put to him but he denied the allegations contending that he was innocent and had been falsely involved in this case.

10. The accused did not lead any evidence in his defence.

11. The trial Court had formulated the following points for determination:

(i) What is the effect of non-examining of the only independent witness of recovery by the prosecution?

(ii) Whether the link evidence is complete?

(iii) Whether the presence of DSP Swarandeeep Singh at the place of recovery is proved beyond reasonable doubt?

(iv) What is the effect of non-filing of CFSL form at the spot?

12. After hearing arguments, learned trial Court convicted and sentenced the accused as mentioned above, which left him aggrieved and he had filed the present appeal, which was taken up on 14.11.2006, when it was admitted for regular hearing and recovery of fine was stayed during the pendency of the appeal. On an application under Section 389 Cr.P.C. having been filed by the appellant/accused for suspension of his sentence of imprisonment during the pendency of appeal, the same was allowed vide order dated 3.5.2007 and remaining sentence of the appellant was suspended during the pendency of the appeal and he was admitted to bail, to the satisfaction of learned CJM, Ferozepur.

13. Now the appeal has come up for final hearing.

14. I have heard learned counsel for the appellant – accused – convict, learned AAG for the State of Punjab besides going through the record.

15. Here the witnesses of recovery namely PW4 DSP Swarandeeep Singh, PW5 Constable Sukhpal Singh and PW6 SI Gurpiar Singh have fully supported the prosecution story with regard to accused having been found in conscious possession of contraband. They were cross-examined at length on behalf of the accused but they stuck to their guns and could not be shattered on any material point. No previous enmity between them and the accused – convict has been alleged or proved prompted by which they might have involved the accused in this

case wrongly and deposed against him falsely to secure his conviction.

The account given by these PWs come out to be worthy of reliance.

16. From the statements of other witnesses i.e. PW1 HC Gurdev Singh and PW2 ASI Lal Singh, it comes out that the case property had remained in safe custody and the sample parcels had reached the office of Chemical Examiner, Punjab, Chandigarh with seals intact. Report of the office of Chemical Examiner, Punjab, Chandigarh also goes to show that in addition to reflecting that on analysis the sample parcels were found to be those of poppy straw.

17. Learned counsel for the appellant has attacked the impugned judgment on various grounds. First being that Section 52-A of the Act has not been complied with, causing prejudice to the accused.

18. However, after going through the record, I do not find myself in agreement with the learned counsel for the appellant. From the evidence brought on record by the prosecution, it comes out that after recovery, the accused along with the case property had been produced before learned Magistrate, who had authenticated the case property and that the case property had remained in safe custody till the sample parcels reached the office of Chemical Examiner, Punjab, Chandigarh in an intact condition.

19. Another argument advanced by learned counsel for the appellant was that it is not clear whether weight of the bag has been included or excluded. In any case, I find that it is the consistent case of the prosecution that 51 kgs. of poppy husk had been recovered from the possession of the accused. If the accused so wanted, he could have got a

clarification from the IO in that regard but it was not so done. The weight of the bag in this case is not of much relevance. 50 kgs. of the poppy husk comes within definition of commercial quantity and by no stretch of imagination, it can be stated that weight of bags was more than 1 kg bringing the quantity of contraband recovered to be less than 50 kgs i.e. non-commercial quantity. Even otherwise, in terms of Section 15 of the Act, where the contravention involves quantity lesser than commercial quantity but greater than small quantity, then the offence is punishable for the imprisonment, which may extend to 10 years and fine, which may extend to Rs.1 lakh. Even if, it is taken that the weight of recovered contraband could be less than 50 kgs. but that does not bring the case within definition of small quantity. Therefore, that carries punishment up to RI for 10 years and fine of Rs.1 lakh. This is precisely the punishment imposed by the trial Court in this case. Therefore weight of the bags being more than 1 kg or less than that does not make much difference.

20. Pointing to the recovery memo learned counsel for the appellant states that interline spacing is much less in the lower portion of the memo than of the upper portion, that renders the document doubtful.

21. After perusing the document, I find that though the space between the lines is not evenly spread but keeping in view the totality of the circumstances, the document cannot be discarded since the recovery of the contraband from the conscious possession of the accused stands established. Similarly, it has been pointed out that thumb impressions of the accused appear on the writing on the consent memo. The accused should have got necessary clarification from the IO when he appeared in

the Court during the trial.

22. In ***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.

23. The prosecution has proved its charge against the accused conclusively and affirmatively. The accused could not render any reasonable or plausible explanation for his alleged false implication nor could he account for possession of the contraband without any licence or permit thereby showing that he was in conscious possession of the contraband.

24. As regards the sentence part, the accused was sentenced to undergo rigorous imprisonment for ten years, which is the minimum prescribed sentence for possession of commercial quantity of the contraband. Even otherwise, the appellant/accused for a pecuniary benefit opted to play with lives and health of people of the area by making them addict to taking drugs. The drug peddlers have successfully destroyed the social fabric of our society and led youth to the wrongful path. Such type

of persons need to be dealt with firmly and sternly and no sympathy can be shown to them lest that should prove to be counter productive and result in increased drug trafficking. Therefore, the sentence awarded to the appellant/accused is not found to be on very high side and does not call for any reduction.

25. The impugned judgment of conviction and order of sentence passed by the trial Court are well reasoned one, based upon proper appraisal and appreciation of evidence and correct interpretation of law. There is no illegality or infirmity therein. The said judgment of conviction and order of sentence are upheld whereas the appeal is found to be without any merit and the same is dismissed accordingly.

26. It is relevant to mention here that due to non-appearance of the accused either in person or through counsel, his non-bailable warrants were ordered to be issued. As per the report received, he has since been arrested and lodged in Sub Jail, Fazilka.

27. Learned Chief Judicial Magistrate, Fazilka is directed to verify this fact and then take further necessary action in the matter so as to make the appellant-accused undergo the remaining sentence.

A copy of this judgment be sent to CJM, Fazilka for necessary compliance.

14.9.2022
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : No / Yes

Whether reportable : No / Yes