

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

CRA-S-2501-SB-2006(O&M)

Date of decision:-31.8.2022

Rohtash

...Appellant

Versus

State of Punjab

...Respondent

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

Present: Ms.Sushma Verma, Advocate
for the appellant.

Mr.Sandeep Vermani, Addl.A.G., Punjab.

H.S. MADAAN, J.

1. Appellant/accused was tried by learned Judge, Special Court, Patiala in case FIR No.281 dated 14.7.2001 for an offence under Section 18 of Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as '**the Act**'), Police Station Patran and vide judgment dated 4.12.2006, he was convicted in that case for the offence for which he was booked and in terms of order passed on that very date, he was sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs.5,000/- and in default thereof to undergo further rigorous

imprisonment for a period of 6 months.

2. In nutshell, the case of the prosecution is that on 14.7.2001, a police party from P.S. Patran, District Patiala led by Inspector Amarjit Singh, SHO of the said Police Station (hereinafter referred to as the Investigating Officer/IO) was present at bus stand, Tharua in official vehicle Allwyn Nissan bearing No.PB11C-9682, in connection with patrolling and checking of bad elements; one Mihaan Singh son of Saun Ram of village Tharua came there and he was joined with the police party; the police party along with Mihaan Singh proceeded further and when they were about 1.5 kms. ahead of village Tharua within the revenue limits of village Sagra, the accused was spotted coming from the opposite side; he was carrying a bag in his right hand; on seeing the police party, he tried to slip away but he was apprehended on the basis of suspicion; his name and other particulars were inquired about, which he disclosed; the Investigating Officer told the accused that he suspected that he was carrying some contraband and wanted to conduct his search and he had a legal right to get the search conducted in presence of a gazetted officer or a Magistrate; the accused opted to get the search carried out in presence of a gazetted officer; a memo in that regard Ex.PB was prepared; a wireless message was sent to Police Station Patran to request Sh.Ashish Kapur, DSP to reach the spot, who accordingly arrived at the spot; then he disclosed his identity to the accused informing him that he was a gazetted officer and if the accused wanted his search to be carried out before some other gazetted officer, then needful could be done, however, accused gave his consent to get his search conducted before Sh.Ashish Kapur, DSP;

consent memo executed by the accused Ex.PC was prepared in that regard; thereafter on instructions of Sh.Ashish Kapur, DSP, the Investigating Officer searched the bag being carried by the accused and it was found to contain opium wrapped in a glazed paper.

3. The Investigating Officer took out two samples of 10 grams each from the recovered opium and on being weighed, the residue came out to be 1 kgs.480 grams; the samples and residue opium were converted into parcels and sealed by the Investigating Officer with his seal having impressions AS; specimen seal impression chit was also prepared; DSP Ashish Kapur had also affixed his seal having inscription AK on all the parcels and sample seal chit; the seal after use was handed over to Mihaan Singh, an independent witness; whereas DSP Ashish Kapur had retained his seal with himself and the case property was taken into police possession.

4. The accused was accordingly arrested in this case. His personal search was conducted; memo of jamatalashi Ex.PF was prepared in that regard; the grounds of arrest memo Ex.PG was also prepared. Ruqa Ex.PE was sent to the police station on the basis of which formal FIR Ex.PE/1 was recorded there. The Investigating Officer had prepared rough site plan of the place of recovery as Ex.PH. Statements of witnesses were recorded.

5. On return to the police station, the Investigating Officer deposited the case property with MHC Surinderpal Singh, whereas the accused was put in the lock up. On the next day, the Investigating Officer produced the case property before the Illaqa Magistrate, Samana by

moving an application Ex.PJ. The Illaqa Magistrate passed order Ex.PJ/1 for safe custody of the case property. During the course of investigation, a sample parcel was sent to the office of Chemical Examiner, Punjab and as per report Ex.PK received therefrom the sample was found to be that of opium. 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 18 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 HC Surinder Pal as PW1, Inspector Amarjit Singh as PW2, HC Satnam Singh as PW3 and SI Hukam Chand as PW4.

The prosecution relied upon several documents and then its evidence was closed.

9. Statement of the accused was recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing in the prosecution evidence against such accused were put to him but he denied the allegations contending that he was innocent and had been falsely involved in this case further stating that he along with his father runs a confectionary shop at village Julani Khera; on 12.7.2001, he had gone to village Sagra in Punjab to collect money from Om Parkash son of Lachhman on account of confectionary items sold to him; Om Parkash

did not meet him on that day, therefore he stayed at village Sagra in the house of Gurcharan Singh; on 13.7.2001, he collected payment from Om Parkash and when he was returning to his village and was present between village Sagra and Tharua, he signalled a jeep to stop; the jeep came to a halt near him; the police officials were travelling in that vehicle; they gave him lift; currency notes were visible in his pocket; the police officials took him to the police station and took away a sum of Rs.10,000/- from him; they also put him in illegal custody for one day and on 14.7.2001 falsely involved him in this case; this incident was witnessed by Ram Phal son of Jaggu Ram and Murti Devi wife of Ram Phal, both residents of village Sagra.

10. During his defence evidence, the accused examined Om Parkash as DW1, HC Sahib Singh as DW2 and Ram Phal as DW3 and closed his evidence after tendering some documents.

11. 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 14.12.2006, when it was admitted for regular hearing and recovery of fine was ordered to remain stayed and 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 and remaining sentence of appellant/accused was suspended during the pendency of the appeal and he was ordered to be released on bail on his furnishing requisite bail bonds/surety bonds to the satisfaction of the CJM, Patiala.

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

13. I have heard learned counsel for the appellant/accused/convict, learned Addl.A.G., for the State of Punjab besides going through the record.

14. Here both the witnesses of recovery namely PW2 Inspector Amarjit Singh and PW4 SI Hukam Chand have fully supported the prosecution story with regard to accused having been found in conscious possession of contraband without any permit or licence. They were cross-examined at length on behalf of the accused but they stuck to their guns and could not be shattered on material points. 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.

15. The necessary link evidence was provided by PW1 HC Surinder Pal, a formal witness, who tendered in evidence his affidavit duly sworn as Ex.PA and PW3 HC Satnam Singh, who tendered in evidence his duly sworn affidavit Ex.PK. Thus, it comes out that the case property had remained in safe custody and no tampering therewith had taken place. From the report from the office of Chemical Examiner, Punjab Ex.PK, it comes out that on analysis, it was found to be that of opium and further that when the sample parcel was received there seals were intact.

16. As regards the plea taken by the defence and the witnesses examined by the accused in support thereof, it has to be noticed that the

defence version does not come out to be convincing and plausible. The trial Court had rightly observed that if according to the accused, he took a lift in the police vehicle that would show that police was rather generous in giving lift to a private person in their vehicle and there was no necessity to falsely implicate the accused. Further, there is no evidence that actually Rs.10,000/- were snatched from the accused. The observation by the trial Court to the effect that accused did not make any complaint regarding snatching of the money by the police, at the earliest opportunity and his later plea in this regard does not help the accused, is quite appropriate and I do not see any reason to disagree with that. The defence witnesses examined by the accused in support of the plea do not inspire confidence.

17. Although learned counsel for the appellant has argued that there was non-compliance of Section 50 of the Act but I do not find myself in agreement with her on this point since by now the law is well settled that Section 50 is applicable to personal search only and in this case, the contraband was recovered from the bag being carried by the accused and the accused was not carrying the contraband on his body or in his wearing clothes.

18. With regard to the second contention that seal was kept by the DSP with him, no fault can be found with the same. There is overwhelming evidence adduced by the prosecution that no tampering with the case property had taken place after search and seizure. Therefore, this contention is without merit.

19. With regard to delay of 4 days in sending sample to the

office of Chemical Examiner, Punjab, since it has been established on the record that no tampering with the case property had taken place and it remained in safe custody and further the sample parcel had reached to the office of Chemical Examiner, Punjab with seals intact, such delay does not make any difference. The Apex Court in **Hardip Singh Versus State of Punjab, 2008(4) RCR(Criminal)97** while dealing with a case relating to recovery of 7 kgs. of opium when samples were sent to chemical examiners after 40 days of recovery, however, there was no evidence that samples were tampered with or any prejudice was caused to the accused, the delay was not held to be fatal to the case.

20. With regard to the objection that DSP Ashish Kapur was not examined by the prosecution, that also does not affect the merits of the prosecution story because the prosecution by examining the Investigating Officer and another official witnesses have successfully proved the recovery of contraband from the conscious possession of the accused. Therefore, non-examination of DSP Ashish Kapur does not make any difference.

21. Learned counsel for the appellant could not show violation of any mandatory provision, which might caused some prejudice to the appellant/accused.

22. 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 in possession of the opium without any licence or permit thereby showing that he was in conscious possession of such

contraband.

23. As regards the sentence part, keeping in view the quantity of the contraband recovered to the extent of 1.500 kgs. of opium, which is quite substantial, the accused was sentenced to undergo rigorous imprisonment for 2 years and to pay a fine of Rs.5,000/- and in default thereof to undergo further rigorous imprisonment for a period of 6 months, which cannot be said to be on higher side. 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 increase 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.

24. 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.

25. Appellant Rohtash is stated to be on bail granted to them by this Court. His bail is cancelled. Chief Judicial Magistrate, Patiala is directed to issue arrest warrants to get him arrested so as to make him undergo the remaining sentence.

Necessary information be sent to CJM, Patiala.

31.8.2022
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : No / Yes

Whether reportable : No / Yes