

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

CRA-S-349-SB-2006(O&M)

Date of decision:-6.9.2022

Gurdial Singh alias Gehla and another

...Appellants

Versus

State of Punjab

...Respondent

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

Present: Appeal qua appellant No.2 Ram Singh @ Gaggi
stands abated vide order dated 16.8.2022.

Mr.Akshay Jain, Advocate
for appellant No.1 - Gurdial Singh alias Gehla.

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

H.S. MADAAN, J.

1. Appellant No.1 - Gurdial Singh @ Gehla and appellant No.2 Ram Singh @ Gaggi (since deceased), both residents of village Kotli Kalan were tried by learned Judge, Special Court, Mansa in case FIR No.119 dated 24.11.2000 for an offence under Section 15 of Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'the Act'), registered with Police Station Sadar, Mansa, on the allegations that on 24.11.2000 in the area near drain bridge within the revenue limits of village Bhaini Bagha, they were found in possession of 51.200 kgs. of

poppy husk without any licence or permit. The trial ended in their conviction and vide judgment dated 3.1.2006, they were convicted in that case for the offence for which they were booked and in terms of order passed on that very date, they were sentenced to undergo rigorous imprisonment for ten years each and to pay a fine of Rs.1,00,000/- each and in default thereof to undergo further rigorous imprisonment for a period of 1 year each.

2. In nutshell, the case of the prosecution is that on 24.11.2000, ASI Gurtej Singh of Police Station Sadar, Mansa (hereinafter referred to as the Investigating Officer/IO) along with other police officials of that police station was present near bus stand of village Bhaini Bagha in connection with patrolling; one Darshan Singh came across the police party and he was joined therewith; when the police party had reached near drain bridge within revenue limits of village Bhaini Bagha, accused Gurdial Singh @ Gehla and Ram Singh alias Gaggi (since deceased) were found sitting on two bags having contents, on the bank of drain; on seeing the police party, they tried to slip away but they were apprehended on the basis of suspicion; their names and other particulars were inquired about, which they disclosed; the IO told the accused that he suspected the gunny bags in possession of the accused to have some narcotic substance and wanted to search the same and that the accused had a legal right to be searched in presence of a gazetted officer or a Magistrate; both the accused opted to get their search conducted in presence of a gazetted officer; separate consent memos in that regard were prepared.

3. The IO sent a request for calling some gazetted officer to the

spot. Accordingly, DSP Balwinder Singh Ramana came there. The the accused were produced before the DSP Balwinder Singh Ramana, who disclosed his identity to both the accused stating that he was a gazetted officer of Punjab Government and further he intended to search the bags in possession of both the accused, however the accused had a right to be searched before some other gazetted officer or a Magistrate. Both the accused reposed confidence in that DSP; consent memos in that regard executed by both the accused were prepared. Then on instructions of DSP Balwinder Singh Ramana, the IO searched the two bags, which were found to contain poppy husk; two samples of 100 grams each were separated from each of the two bags and thereafter on being weighment, one of the bag weighed 35 kgs. and other 16 kgs; two mugs one of half kilogram capacity and other of one kilogram capacity were found present near the gunny bags; the samples and bags containing residue poppy husk were converted into parcels; then such parcels were sealed with the seal of Investigating Officer bearing impressions 'GS'; the sample seal impression was taken on a chit; the seal after use was handed handed over to independent witness Darshan Singh. The case property was taken into police possession vide a recovery memo.

4. Both the accused were arrested in this case as per rules. Requisite documents were prepared. The IO sent ruqa to the police station, on the basis of which formal FIR was recorded by ASI Pritam Singh. The IO prepared the rough site plan of the place of recovery and recorded statements of witnesses.

5. On return to the police station, the Investigating Officer

produced the accused along with the case property and witnesses before SI Kessar Singh, SHO of the Police Station Sadar, Mansa, who verified the facts and thereafter affixed his own seal having inscription 'KS' on sample parcels as well as bulk parcels. He prepared specimen seal impression and kept the case property in his custody. He also sent special report to the higher police officers.

6. On the next day, the SHO produced the accused and the case property before CJM, Mansa along with an application for inventory and learned CJM, Mansa passed necessary orders for safe custody of the case property. Since sufficient space was not available in judicial malkhana, SI Kesar Singh kept the case property in his own custody and on 27.11.2000 handed over the sample parcels, sample seal impression chits and Form No.29 to Constable Kulwant Singh for depositing such articles in FSL, Punjab, Chandigarh. Constable Kulwant Singh did the needful on 28.11.2000 after getting the docket prepared from the office of SSP, Mansa and brought the receipt therefrom, which he handed over to SI Kesar Singh. As per report received from FSL, Punjab, Chandigarh, on analysis the samples were found to be those of poppy husk. After completion of investigation and other formalities, challan against the accused was prepared and filed in the Court.

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

8. Then on observing that prima facie charge for an offence under Section 15 of the Act was disclosed against both the accused, they were charge-sheeted accordingly, to which, they pleaded not guilty and

claimed trial.

9. During the course of its evidence, the prosecution examined Constable Kulwant Singh as PW1, Inspector Kesar Singh as PW2, HC Sukhmander Singh as PW3 and ASI Gurtej Singh (IO) as PW4.

Since the prosecution had failed to conclude its evidence despite availing of ample opportunities, the same was closed by order.

10. Statements of the accused were recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing in the prosecution evidence against them were put to both the accused but they denied the allegations contending that they were innocent and had been falsely involved in this case.

11. The accused did not lead any evidence in their defence.

12. After hearing arguments, learned trial Court convicted and sentenced both the accused as mentioned above, which left them aggrieved and they had filed the present appeal, which was taken up on 10.8.2006, when it was admitted for regular hearing and recovery of fine was ordered to remain stayed. On an application under Section 389 Cr.P.C. having been filed by the appellants/accused for suspension of their sentence of imprisonment during the pendency of appeal, the same was allowed on 9.2.2007 (order was corrected on 23.2.2007) and remaining sentence of appellants/accused was suspended during the pendency of the appeal and they were ordered to be released on bail on furnishing requisite bonds to the satisfaction of CJM, Mansa.

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

14. It may be mentioned here that appellant No.2 – Ram Singh

@ Gaggi had expired during the pendency of the appeal and vide order dated 16.8.2022, the appeal qua him stood abated. However, the present appeal survives as far as appellant No.1 - Gurdial Singh @ Gehla only.

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

16. Here the witnesses of recovery namely PW3 HC Sukhmander Singh and PW 4 ASI Gurtej Singh have fully supported the prosecution story with regard to the 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 any material point. No previous enmity between them and the accused – convicts has been alleged or proved prompted by which they might have involved the accused in this case wrongly and deposed against them falsely to secure their conviction. The account given by these PWs come out to be worthy of reliance.

17. Requisite link evidence in this case has been provided in the form of testimony of PW1 Constable Kulwant Singh, the carrier of the sample parcels along with other articles to FSL, Punjab, Chandigarh and PW2 Inspector Kesar Singh, the then SHO of Police Station Sadar, Mansa. From their statements coupled with the report Ex.PE/1 of FSL, Punjab, Chandigarh, it comes out that no tampering with the case property had taken place after its seizure by the police and further that the sample parcels had reached the office of FSL, Punjab, Chandigarh with seals intact. As mentioned in the report Ex.PE/1, the seals on the sample parcels tallied with sample seal impressions. In terms of this very report,

on analysis the samples were found to be those of poppy husk. The accused have failed to account for their possession of the poppy husk, therefore, in terms of Sections 35 and 54 of the Act, they were to be taken in conscious possession of the contraband.

18. Learned counsel for the appellants has put forward various pleas in support of his contention that the impugned judgment of conviction and sentence against the appellant/accused is not sustainable. His first ground of attack was that there was non-compliance of Section 52-A of the Act, rendering the prosecution case doubtful.

19. However, I do not find any merit in this contention. Section 52-A of the Act deals with disposal of seized narcotic drugs and psychotropic substances. For ready reference, this provision is reproduced as under:

(1) The Central Government may, having regard to the hazardous nature of any narcotic drugs or psychotropic substances, their vulnerability to theft, substitution, constraints of proper storage space or any other relevant considerations, by notification published in the Official Gazette, specify such narcotic drugs or psychotropic substances or class of narcotic drugs or class of psychotropic substances which shall, as soon as may be after their seizure, be disposed of by such officer and in such manner as that Government may from time to time, determine after following the procedure hereinafter specified.

(2) Where any narcotic drug or psychotropic substance has been seized and forwarded to the officer-in-charge of the nearest police station or to the officer empowered under section 53, the officer referred to in sub-section (1) shall prepare an inventory of such narcotic drugs or psychotropic substances containing such details relating to their description, quality, quantity, mode of packing, marks, numbers or such other identifying particulars of the narcotic drugs or psychotropic substances or the packing in which they are packed, country of origin and other particulars as the officer referred to in sub-section

(1) may consider relevant to the identity of the narcotic drugs or psychotropic substances in any proceedings under this Act and make an application, to any Magistrate for the purpose of

(a) certifying the correctness of the inventory so prepared; or

(b) taking, in the presence of such Magistrate, photographs of such drugs or substances and certifying such photographs as true; or

(c) allowing to draw representative samples of such drugs or substances, in the presence of such Magistrate and certifying the correctness of any list of samples so drawn.

(3) Where an application is made under sub-section (2), the Magistrate shall, as soon as may be, allow the application.

(4) Notwithstanding anything contained in the Indian Evidence Act, 1872 (1 of 1872) or the Code of Criminal Procedure, 1973 (2 of 1974), every court trying an offence under this Act, shall treat the inventory, the photographs of narcotic drugs or psychotropic substances and any list of samples drawn under sub-section (2) and certified by the Magistrate, as primary evidence in respect of such offence].

The purpose of enacting this provision was to avoid the hassles of storing huge quantity of recovered contraband for a considerable time since the conclusion of trial and disposal of appeal usually takes a long time. In this case, there does not come out to be any non-compliance of this provision. SI Kesar Singh had filed an application Ex.PA before CJM, Mansa with regard to deposit of the case property in the judicial malkhana. Learned CJM, Mansa had passed order Ex.PB/1 on the application to the effect that four parcels of samples and two of remaining contraband had been produced by SI Kesar Singh, SHO of Police Station Sadar, Mansa and all those parcels were bearing seal impressions of 'GS' and 'KS', which on comparison were found to tally.

The parcels were directed to be kept in judicial malkhana, Mansa. Inventory memo Ex.PC was also submitted before learned CJM, Mansa. Although it has come in evidence that the case property was not deposited in the judicial malkhana but remained in custody of SHO SI Kesar Singh, but then adequate explanation for that has been given that it for the reason that there was not enough space in judicial malkhana. Even otherwise, in view of detailed discussion above, it comes out that no tampering with the sample parcels had taken place after their seizure till those reached in the office of FSL, Punjab, Chandigarh. Therefore, there could not be any question of any link evidence missing in this case.

20. With regard to the objection that joint consent memos of two accused had been prepared by the IO as well as DSP Balwinder Singh Ramana, resulting in non-compliance of Section 50, I find that this objection is without any force because a perusal of record shows that two separate memos had been prepared, when the accused were informed of their right to get their search conducted in presence of a gazetted officer or a Magistrate and they had opted to get the search carried out in presence of a gazetted officer. Ex.PG is such memo with regard to accused Ram Singh @ Gaggi and Ex.PH is the memo with regard to accused Gurdial Singh @ Gehla. Both the memos are thumb marked by the respective accused and attested by the witnesses. Similarly DSP Balwinder Singh Ramana had also prepared separate memos regarding both the accused. Ex.PI was with respect to accused Gurdial Singh @ Gehla and Ex.PJ was with respect to accused Ram Singh @ Gaggi, which were thumb marked by the respective accused and attested by the

witnesses. Therefore, it cannot be said that Section 50 was violated in any manner. It needs to be mentioned here that as per the settled law, Section 50 of the Act applies to personal search of the accused and not to the search of the bag or any other carrier in his possession. Therefore, since in this case two bags in possession of the accused had been searched, there could not be any question of violation of Section 50 of the Act under such circumstances.

21. One more argument put forward by learned counsel for the appellants was that both the accused were illiterate and contents of the memos were not explained to them.

22. Again this argument is misconceived. PW3 HC Sukhmander Singh categorically stated that ASI Gurtej Singh told both the accused one by one that he suspected the gunny bags in their possession to have some narcotic substance and wanted to search the same and that the accused had a legal right to be searched in presence of a gazetted officer or a Magistrate and both the accused one by one opted to get the search conducted in presence of a gazetted officer. He proved memos in that regard, which were thumb marked by the respective accused and attested by him as well as DSP Balwinder Singh Ramana. Going further, this witnesses stated that after DSP Balwinder Singh Ramana reached at the spot, he had disclosed his identity to both the accused one by one and stated that he was a gazetted officer and had inquired from both the accused one by one that whether they wanted to get the search conducted in presence of some other gazetted officer or Magistrate and both the accused reposed confidence in DSP Balwinder Singh Ramana and opted

to get their search conducted in presence of DSP Balwinder Singh Ramana. In that respect, consent memo Ex.PI is of accused Gurdial Singh @ Gehla and consent memo Ex.PJ is of accused Ram Singh @ Gaggi, which were thumb marked by him and attested by witnesses. Therefore, it cannot be said that the contents of the memos were not explained to the accused.

23. Another argument raised by learned counsel for the appellants was that while being examined under Section 313 Cr.P.C., no question had been asked from the accused that they were in conscious possession of the contraband, causing great prejudice to them.

24. Again I find this argument to be lacking merit. When an accused is examined under Section 313 Cr.P.C, all the incriminating circumstances appearing against him in the prosecution evidence are to be put to such an accused. The ingredients of an offence are not required to be put to an accused. It is for the Court to see whether ingredients of an offence get completed or not. In this case, specific questions were put to the accused that they were found in possession of the contraband. Then there is presumption under Section 35 of the Act that the Court shall presume the existence of such mental state. In terms of Section 35 of the Act, it is provided that in any prosecution for an offence under this Act which requires a culpable mental state of the accused, the Court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

25. In terms of Section 54 of the Act, it may be presumed, unless

and until the contrary is proved, that the accused has committed an offence under this Act in respect of any narcotic drug or psychotropic substance or controlled substance etc., for the possession of which he fails to account satisfactorily. Therefore, such presumption, which to be drawn by the Court considering the facts and circumstances of the case and no prejudice in this case is shown to have been caused to the accused in any manner.

26. Learned counsel for the appellants has further argued that weight of the contraband including weight of the bags was 51.200 kgs. and if weight of the bags is deducted, then it could be taken below 50 kgs., which is non-commercial quantity.

27. However, I do not find myself in agreement with learned counsel for the appellants on this point. In absence of any substantive evidence available on record, it would just be a matter of presumption and assumption that if the weights of the bags is deducted then the contraband recovered would come out to be less than 50 kgs. As the things stand, the contraband recovered was more than 50 kgs., which comes within the definition of commercial quantity.

28. As regards the another ground of attack by learned counsel for the appellants that Darshan Singh an independent witness was not examined, making the prosecution story doubtful, that is also without any force. A Division Bench of this Court in case **Sucha Singh Versus State of Punjab 2015(4) RCR (Criminal)25** 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, had observed that 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. Even otherwise, the depositions of official witnesses are at par with that of independent witness. Furthermore, independent corroboration is a rule of prudence and not requirement of law. It is nowhere provided in any statute that independent corroboration is a must and in absence thereof, the case of the prosecution is to be rejected outrightly.

29. The prosecution has proved its charge against both the accused conclusively and affirmatively. The accused could not render any reasonable or plausible explanation for their alleged false implication nor could they account for joint possession of the contraband without any licence or permit thereby showing that they are in conscious possession of such contraband.

30. As regards the sentence part, the trial Court had observed that the persons like the present convicts are spoiling youth of the society by

making them fall a prey to intoxicants and shuttering the economy of the nation. The judgment of the Apex Court i.e. **Union of India Versus Kuldeep Singh, AIR, 2004 Supreme Court 827** has been relied upon, wherein it was observed that offence relating to narcotic drugs or psychotropic substance is more heinous, than a culpable homicide because the latter affects only an individual while the former affects and leaves its deleterious impact on the society besides shattering the economy of the nation as well. The accused/appellants were sentenced to undergo rigorous imprisonment of ten years each and to pay a fine of Rs.1,00,000/- each and in default thereof to undergo further rigorous imprisonment for a period of 1 year each, which is the minimum prescribed sentence for possession of commercial quantity of the contraband. Even otherwise, the appellants/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 appellants/accused is rather on somewhat lower side and there is no scope for reduction therein.

31. 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.

32. Appellant No.1 - Gurdial Singh @ Gehla is stated to be on bail granted to him by this Court. His bail is cancelled. Chief Judicial Magistrate, Mansa is directed to issue arrest warrants to get him arrested so as to make him undergo the remaining sentence.

Necessary intimation be sent to the quarter concerned.

6.9.2022
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : No / Yes

Whether reportable : No / Yes