

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

CRA-S-1249-SB of 2017

DATE OF DECISION :- September 05, 2022

Satnam Singh

...Appellant

Versus

State of Punjab

...Respondent

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

Present:- Mr. H.S. Oberoi, Advocate and Mr. Rau P.S. Girwar, Advocate
for Mr. Vikram Rana, Advocate for the appellant.

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

1. Briefly stated the facts of the case as per prosecution story are that on 24.7.2013, a police party from police station Tripuri, Patiala headed by ASI Parkash Masih, while travelling in a private vehicle was doing patrolling and checking of suspicious persons. When the vehicle carrying police party was at Sirhind Rajpura bypass, Patiala then one Manjit Singh son of Sohan Singh, resident of Deep Nagar, Patiala arrived there on a motorcycle. The investigating officer started having conversation with Manjit Singh. Then accused Satnam Singh riding a Pulsar motorcycle came from Village Jhill side and was proceeding towards Patiala. On seeing the police party the accused got nervous and tried to turn back. He was apprehended on the basis of suspicion and on being enquired he disclosed his name and other particulars. The investigating officer disclosed his identity to the accused informing him that he suspected that the accused was carrying some narcotic substance as such he wanted to conduct his search and that of his Pulsar motorcycle having Registration No. PB-10-DP-1281

and that the accused had a right to get the search conducted in presence of some Gazetted Officer or a Magistrate who could be called to the spot as per his option. After some thought the accused reposed confidence in ASI Parkash Masih. The consent memo in that regard was prepared which was signed by the accused and attested by witnesses. Then search of person of Satnam Singh and his motorcycle was conducted. From underneath the seat of motorcycle, a black polythene bag was recovered containing intoxicant powder of white colour. Two samples of 10 gm each were separated from the recovered contraband and on being weighed the residue came out to 380 gms. The samples drawn as well as residue powder were converted into parcels sealed with the seal of investigating officer having impression 'PM'. Specimen seal impression were taken and then the seal was handed over to the private witness Manjit Singh.

2. Thereafter three parcels, specimen seals and motorcycle having registration No.PB-10-DP-1281 were taken into police possession vide recovery memo duly attested by the witnesses. Satnam Singh accused was accordingly arrested in this case. Requisite memos were prepared as per law. Ruqa was sent to police station for registration of formal F.I.R.

3. On 24.7.2013, the case property was produced before Inspector Shaminder Singh, who put his own seal having impression 'SS' on the parcels. Thereafter, the case property was deposited with MHC Bishamber Singh. On 25.7.2013 the case property was produced before learned Judicial Magistrate, Ist Class Patiala. Thereafter one sample parcel and bulk parcel were deposited in the judicial Malkhaha. On 8.8.2013 vide No. 140 dated 8.8.2013, a sample was sent to the office of chemical examiner Kharar for testing and as a result of report received therefrom the sample was found to

contain Methamphetamine 14.82%.

4. On completion of investigation and other formalities, challan against the accused was prepared and filed in the Court and the accused was supplied copies of documents relied upon therein free of cost as provided under Section 207 Cr.P.C. Charge for offence under Section 22 of the Narcotic Durgs and Psychotropic Substances Act (hereinafter referred to as the Act) was framed against accused to which he pleaded not guilty and claimed trial.

5. During the course of prosecution evidence, it examined following prosecution witnesses :-

PW1 HC Manpreet Singh, a witness of recovery supported the prosecution story on material aspects. PW2 ASI Parkash Masih, the investigating officer of this case toed the line of prosecution deposing about the recovery of contraband from possession of accused on the date, time and place as propounded by the prosecution as well as investigation carried out by him in this case. He proved various documents also. PW3 MHC Bishamber Singh, a formal witness tendered his affidavit Ex.PW3/A with regard to safe custody of the case property, PW4 HC Kuldeep Singh, carrier of sample parcel to the office of Chemical Examiner, Punjab in affidavit Ex.PW4/A contended that so long as the case property remained in his possession no tampering therewith had taken place. PW5 Inspector Shaminder Singh, SHO police Station Tripuri supported the prosecution case with regard to counter sealing of parcels by him and deposit of case property with MHC on 24.7.2013 and also with regard to his preparing inventory on the next day, PW6 Paramjit Kaur, Clerk of the office of DTO Patiala brought the record pertaining to motorcycle PB10-DP-1281 proving

endorsement Ex.PL/1 stated that Gurwinder Singh son of Balbir Singh is registered owner of the motorcycle as per record. She proved the registration certificate in that regard as Ex.PN. Manjit Singh son of Sohan Singh an independent witness was, however, given up by the public prosecutor for the reason of his having been won over by the accused whereas HC Tarsem Singh, PHC Lakhbir Singh and ASI Pavittar Singh were given up being unnecessary. The prosecution relied upon various documents.

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

7. During the course of his defence evidence he examined as many as four witnesses as below :-

DW1 Satpal Singh stated that he is member Panchayat of Village Salempur and on 23.7.2013 at 5 P.M the accused had been taken away by the police to Patiala and subsequently he produced resolution passed by the village Gram Panchayat in respect of alleged false implication given Ex.D1 stating that the resolution bear his signatures.

DW2 Balbir Singh, a resident of Village Salempur, another member Panchayat of Village deposited on similar lines as that of DW1 Satpal Singh.

DW3 Rajni, Sarpanch of Village Salempur testified with regard to innocence of accused referring to a resolution passed by village Gram Panchyat Ex.D1. She stated that they had made met the SSP requesting for

release of accused but it was not so done.

DW4 Lal Singh, Lambardar of village Salempur supported the defence version with regard to innocence of the accused and referred to resolution Ex. D1 passed by the village Gram Panchayat bearing his signatures. With that the defence evidence stood closed.

8. After hearing arguments, learned trial Court vide judgment dated 15.2.2017 convicted the accused for an offence under Section 22 of the NDPS and in terms of order passed on that very day sentenced him to undergo rigorous imprisonment for 10 years and to pay a fine of Rs.1 lakh and in default of payment of fine to undergo further rigorous imprisonment for a period of two years.

9. Feeling aggrieved by the judgment of his conviction and order of sentence, accused convict had approached this Court by way of filing an appeal which was taken up on 28.3.2017, when it was Admitted for regular hearing. Recovery of fine was ordered to remain stayed during pendency of the appeal. Further on an application under Section 389 Cr.P.C. having being filed by the appellant vide order dated 31.7.2017, remaining sentence of appellant-accused was suspended and he was ordered to be released on bail subject to his furnishing requisite bonds to the satisfaction of Chief Judicial Magistrate, Patiala.

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

11. I have heard learned counsel for the appellant and learned State counsel besides going through the record.

12. In this case, the witnesses of recovery namely PW1 HC Manpreet Singh and PW2 ASI Parkash Masih have fully supported the prosecution story as regards recovery of 400 gm intoxicant powder being

carried in a black polythene bag itself underneath the motorcycle PB10-DP-1281 being driven by the accused while being in area of Sirhind Rajpura Bypass, Patiala.

13. Both the witnesses of recovery were subjected to lengthy cross-examination on behalf of the accused but they stuck to their guns and their credibility could not be shattered on any material point. No reason has been suggested for which they might have involved the accused wrongly. It is not case of the accused that he had any previous enmity with the prosecution witnesses, more particularly, with witnesses of recovery. It being so, their statements are to be taken at par with those of independent witnesses. The link evidence has been provided by PW4 HC Kuldeep Singh, carrier of the sample to the office of Chemical Examiner, Punjab, who has furnished affidavit Ex.PW4/A. PW3 MHC Bishamber Singh, with whom the case property had been deposited. From affidavit as well as the report Ex.PM received from the office of Chemical Examiner, which goes to show that the seals on the sample parcel were intact when reached there. It comes out that the case property had been in the safe custody and sample parcel had reached the office of Chemical Examiner in intact condition. Further, from report Ex.PM it comes out that on analysis, sample was found to be that of intoxicant powder containing Methamphetamine, which is punishable under Section 22 of the Act. The remaining evidence adduced by the prosecution corroborates its version on important aspects.

14. As regards the arguments advanced by learned counsel for the appellant, the first one was with regard to non-examination of the independent witness Manjit Singh. According to learned counsel for the appellant non-examination of Manjit Singh puts a question mark over

truthfulness of prosecution story giving rise to a doubt in the mind about the truthfulness of prosecution version and as per law benefit of doubt is to be given to the accused, as such he should be acquitted of the charge framed against him. Whereas this contention has been contested by learned State counsel stating that accused was able to won over Manjit Singh, as such for that reason he was given up by learned APP as per application moved by the investigating officer ASI Parkash Masih. Non examination of Manjit Singh does not affect the credibility of prosecution case which stands otherwise proved. He has referred to judgment Sucha Singh Versus State of Punjab 2015(4) R.C.R (Criminal) 25 passed by a Division Bench of this Court wherein 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 story.

15. After hearing the rival contentions, I find that non examination of Manjit Singh in this case does not create any dent in the prosecution story

because if a witness joined with the police party succumbs to the pressure exerted by the accused in any form may be some pecuniary benefit, threat, coercion or other allurements that does not mean that for that reason the prosecution case which is otherwise proved should be disbelieved. The Judgment referred to by learned State counsel Sukhminder Singh @ Happy versus State of Punjab 2015(4) R.C.R (Criminal) 25 is very clear in that regard. In this case also the deposition of official witness has been found to be worthy of reliance in absence of any motive to falsely implicate the accused therefore this objection of learned counsel for the appellant is rejected.

16. Coming to his next ground of attack that no independent witness from the area was joined with the police party despite easy availability of people there that puts a question mark over the truthfulness of the prosecution case. That objection is also without any merit. Since Manjit Singh, an independent witness was already there with the police party, it was not necessary to associate any other independent person from the area. Further more independent corroboration is a rule of prudence and not requirement of any law. No provision of law dilates that the independent corroboration to the account given by the official witnesses is a must and in absence thereof the depositions of the official witnesses are to be rejected. Even otherwise it is a matter of common knowledge that normally people hesitate to join the police in search and seizure nursing an apprehension that their such action may result in inviting annoyance and wrath of the criminals which may cause harm to them or their family members. The people are also weary of going to the Police Stations and Courts after joining the search and seizure as a witness.

17. One more argument put forward by learned counsel for the appellant was that the motorcycle on which the appellant accused was said to be riding and from where the recovery was effected did not belong to the appellant and as stated by PW6 Paramjit Kaur, Clerk of the office of DTO Patiala it stands in the name of one Gurwinder Singh son of Balbir Singh; therefore, the accused is not connected with the recovery. This arguments is too without any weightage, The main thing to be seen is the possession of the contraband and the ownership of the motorcycle does not matter much. The accused might have borrowed the motorcycle from its owner or even committed theft thereof. There could also be possibility of the accused having purchased the motorcycle without getting his name entered in the Registration Certificate. The thing to be seen is as to whether he was driving the motorcycle at that time and that fact stands adequately proved on record by the prosecution by producing evidence in the form of examination of PW1 HC Manpreet Singh, PW2 ASI Parkash Masih. The motorcycle in question had been taken into police possession by the police party from the accused. Since accused was riding the motorcycle, he is to explain as to how intoxicant powder was placed below the seat of the motorcycle. He has failed to render any such explanation therefore he is to be taken in conscious possession of contraband in terms of Sections 35 and 54 of the Act.

18. All the necessary ingredients of offence under Section 22 of the Act are established against the accused. With regard to the evidence adduced by the accused in defence, in view of the overwhelming evidence adduced by the prosecution the contention of the accused in defence to show that he as a matter of fact had been picked from his house by the

police and a false recovery had been planted upon him and that the Gram Panchayat had passed resolution in that regard does not help him in any way. The DWs being co-residents of Village of accused obviously have a soft corner for him and they can go to any extent to help him in earning acquittal in this case. There is nothing on record to show that accused or DWs had submitted any representation to the higher officers of the police or other wings of administration complaining against the alleged false implication of the accused in this case which would have been natural act on their part if the accused had been hauled up wrongly.

19. The judgment passed by the trial Court is quite detailed, well reasoned, based upon proper appraisal and evidence and correct interpretation of law. There is no illegality or infirmity there with. The prosecution had proved its charge against the accused beyond the shadow of reasonable doubt. The accused was rightly convicted for the offence under Section 22 of the Act.

20. As far as sentence part is concerned, the contraband recovered from possession of the accused comes under definition of commercial quantity. The trial Court has been quite lenient with the appellant accused in imposing minimum prescribed punishment upon the accused in terms of Section 22(C) of the Act. There is no scope for further reduction in the sentence. Even otherwise the accused is a drug peddler, who for a pecuniary benefit put lives and health of several persons of the area in danger by making the drugs easily available to them, does not deserve any sympathy.

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

22. Appellant Satnam Singh is stated to be on bail granted to him

by this Court. His bail is cancelled. The Chief Judicial Magistrate, Patiala is directed to issue arrest warrants to get him arrested so as to make him undergo the remaining sentence.

(H.S. MADAAN)
JUDGE

September 05, 2022
p.singh

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