

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

(1) CRA-S-2709-SB-2013 (O&M)

Kuldip Singh

...Appellant

Versus

State of Punjab

...Respondent

(2) CRA-S-2165-SB-2012 (O&M)

Balwan Singh

...Appellant

Versus

State of Punjab

...Respondent

Date of pronouncement: 09.09.2022

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

Present: Mr. Navneet Jindal, Legal Aid Counsel for the appellant
in CRA-S-2709-SB-2013.

Mr. Harish Kumar Verma, Advocate for the appellant
in CRA-S-2165-SB-2012.

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

H.S. MADAAN, J.

1. By this judgment, I intend to dispose of above mentioned two appeals arising out of the same judgment. Appeal No.CRA-S-2709-SB-2013 has been filed by appellant-accused Kuldip Singh whereas, appeal No.CRA-S-2165-SB-2012 has been filed by appellant-accused

Balwan Singh.

Appellant Kuldip Singh and Balwant Singh, both of them being accused in FIR No.9 dated 07.03.2010, for offences under Sections 15 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the Act'), registered with Police Station Kathgarh faced trial by Judge, Special Court, SBS Nagar on the allegations that on 07.03.2010 at about 1.30 pm in the area of turning point of village Chahla, they were found in conscious possession of 70 kgs of poppy husk without any permit or license. Vide judgment dated 08.05.2012, both the accused were convicted for an offence under Section 15 of the Act and in terms of the order passed on that very day, they were sentenced to undergo rigorous imprisonment (RI) 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 1 ½ years each.

2. Briefly stated the facts of the case, as per prosecution story are that on 07.03.2010, ASI Gurdial Singh (hereinafter referred to as the Investigating Officer/IO) along with HC Parshotam Lal, HC Kuldip Singh, HC Shinder Pal and HC Surjit Singh from Police Station Kathgarh, District SBS Nagar, while travelling in official vehicle having registration No.PB-32D-6715 being driven by Constable Narinder Singh were present at turning point of village Chahla in connection with patrolling and checking of suspicious persons; in the meanwhile, one Daulat Ram son of Parkash Ram resident of village Rattewal, came and he was joined with the police party; at about 1.30 pm, a truck bearing

registration No.PB-32-F-9831 came from the side of turn of Kathgarh; despite a signal having been given by the police party to stop the truck, its driver turned it towards village Chahla, however, the truck was intercepted; on being enquired, the person driving the truck disclosed his name as Kuldip Singh son of Hazara Singh resident of Majra Jattan, whereas the person sitting on the front seat besides the driver disclosed his name as Balwan Singh son of Jaimal Singh, R/o Kalesar, District Gurdaspur; two bags having contents were found to be lying on the seat of the truck; the IO disclosed his identity to the accused, telling them that he suspected two bags lying on seat of the truck to be containing some contraband and wanted to search the same; he apprised the accused of their legal right to get the search conducted in the presence of a Gazetted Officer or a Magistrate; however, both the accused reposed faith in the IO; consent statements of both the accused were recorded; such statement of accused Kuldip Singh being Ex.PW3/A signed by him and that of accused Balwan Singh Ex.PW3/B also signed by such accused; both the statements were attested by HC Parshotam Lal and Daulat Ram; thereafter, the IO searched the two bags lying on the seat of the truck; the bags were found to contain poppy husk; the IO took out two samples of 250 gms each from two bags, converting those into parcels, whereas, the residue poppy husk in each bag came out to 34 kgs 500 gms; those bags were also converted into parcels; two bulk parcels and four sample parcels were sealed by the IO with his seal having impression 'GS'; specimen seal impression was taken on chit Ex.PW3/C; Form No.29

Ex.PW3/D was partly filled up at the spot; the accused could not produce any license or permit for possession of 70 kgs of poppy husk; the case property and truck in question were taken into police possession, vide recovery memo Ex.PW3/E attested by witnesses; the IO handed over seal after use to HC Parshotam Lal.

Both the accused were accordingly arrested in this case as per rules, preparing requisite documents; the IO sent ruqa Ex. PW3/K to the police station through Head Constable Kuldip Singh on the basis of which formal FIR Ex.PW3/L was recorded; rough site plan Ex.PW7/A of the place of recovery was prepared; statements of witnesses were recorded.

On return to the police station, the IO produced both the accused along with case property, form No.29 and truck in question before SHO Vinod Kumar, who verified the facts and affixed his seal having impression 'VK' on all the parcels; specimen seal impression of seal of SHO Vinod Kumar was prepared and form No.29 was completed; on instructions of SHO, the IO deposited the case property with MHC; accused was lodged in lockup.

On the next day, the IO took the case property from MHC of the police station and produced the same along with accused before SDJM, Balachaur; he had submitted various applications in the Court, one of such application seeking police remand being Ex.PW7/B, another for compliance of Section 52-A of the Act Ex.PW7/C, application for presenting the case property before learned SDJM for his perusal Ex.PW7/D in the Court; one representative sample of 250 gms each was

drawn from two bulk parcels, then the parcels were sealed with seal 'VK' of SDJM, Balachaur; on instructions of SDJM, Balachaur, the IO deposited the case property in the judicial malkhana; the order passed by learned SDJM, Balachaur perusing the case property being Ex.PW7/E; the IO had given intimation to the higher police officer under Section 57 of the Act on 07.03.2010 as Ex.PW7/F; during the course of investigation, sample parcels were sent to the Office of Chemical Examiner, Punjab Kharar and as per report Ex.PW4/B received therefrom, it was found to be that of poppy husk.

On completion of investigation and other formalities, challan against the accused was prepared and filed in the Court.

3. On presentation of the challan before Judge, Special Court SBS Nagar, copies of documents relied upon therein were supplied 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 accused, to which they pleaded not guilty and claimed trial.

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

PW-1 HC Hussan Lal, who was working as MHC of Police Station Kathgarh with whom the case property had been deposited on 07.03.2010 by IO and on the next day, he had handed over the case property to the said IO for producing the same before SDJM, Balachaur in his affidavit Ex.PW1/A deposed in that regard, contending that ASI Gurdial Singh, the IO after producing the case property before SDJM had

again deposited with him four sample parcels sealed with seals having impression 'GS' and 'VK' and two representative samples of 250 gms each and on 12.03.2010, he had handed over two sample parcels of 250 gms each along with docket to Constable Charan Dass for taking those to the office of Chemical Examiner, Kharar. Constable Charan Dass accordingly did so and on return handed over receipt to him. He has contended that so long as the case property remained in his possession, neither he tampered with the same nor he allowed anybody else to do so.

PW-2 Constable Charan Dass, since promoted as Head Constable, the carrier of sample parcels to the office of Chemical Examiner, Punjab Kharar, a formal witness in his affidavit Ex.PW2/A testified that during the period the sample parcels remained with him, no tampering therewith had taken place.

PW-3 ASI Parshotam Lal a witness of recovery supported the prosecution story on material aspects.

PW-4 Sh. Surinder Mohan Sharma, JA, DTO Office, Nawanshahr had brought the summoned record regarding NDR No.4300 dated 13.12.2004 issued by their office in the name of Kuldip Singh son of Hazara Singh, resident of Mazara Jattan, District SBS Nagar for scooter LMV valid upto 12.12.2007 and that on 16.04.2010, the police had submitted an application regarding verification of the license on which he had made endorsement Ex.PW4/A.

PW-5 SI Vinod Kumar before whom the IO had produced the accused along with case property and witnesses after recovery and who

after verification had put his own seal on the sample parcels and bulk parcels deposed regarding his part as detailed earlier, stating that on completion of investigation, he had prepared the challan against the accused for the purpose of filing that in the Court.

PW-6 Sh. Naveen Kumar stated that he is owner of the truck No.PB32-F-9831 where he had employed Kuldip Singh son of Hazara Singh as a driver whereas Balwan Singh son of Jaimal Singh was cleaner on that truck. He further deposed that he paid Rs.3000/- per month as salary to driver Kuldip Singh and Rs.1500/- per month to Balwan Singh. Going further, this witness stated that on 01.03.2010, the aforesaid driver and cleaner had loaded plastic roll in the truck from Anson. Such articles belong to Max India and were to be taken to Gujarat. On 07.03.2010, they had brought baardana for the Ambuja cement. He identified both the accused present in the Court, stating that his statement was recorded and in that had brought the truck in question which was parked in the Court Complex. He was cross-examined on behalf of the accused.

Subsequently, an application U/s 311 Cr.P.C. was filed on behalf of accused Balwan Singh for recalling of PW-6 Naveen Kumar and two more witnesses, which was accepted and Naveen Kumar was summoned for his cross-examination on behalf of accused Balwan Singh. He had put in appearance in the Court. On 09.01.2012, when he made a summersault from his earlier deposition in the Court, stating that he did not know accused Balwan Singh and he had not employed him as a cleaner on his truck. At request of Addl. PP, he was declared a hostile

witness and permission was granted to Addl. PP to cross-examine the witness, which he availed of.

PW-7 SI Mohd. Umair Saquib, who had registered the formal FIR on the basis of ruqa sent by ASI Gurdial Singh deposed in that regard, stating that after registration of FIR, he had sent a copy of FIR along with ruqa back to ASI Gurdial Singh through HC Kuldip Singh besides sending special report to higher police officer and Illaqa Magistrate through Constable Charan Dass. He stated that on 29.03.2010, the investigation of the case was entrusted to him, during the course of which, he had recorded statements of various witnesses including owner of the truck and that on receipt of report of Chemical Examiner Ex.PW4/B, SI/SHO Vinod Kumar had prepared the challan against the accused.

PW-8 Sh. Ravi Dutt, Clerk, DTO Office, SBS Nagar brought the record with regard to ownership of truck bearing No.PB-32-F-9831, stating that it stands in the name of Naveen Kumar son of Ram Parkash, R/o H.No.32, Ward No.9, Balachaur and on police verification, he had made report in that regard, vide his endorsement.

PW-9 ASI Gurdial Singh who was heading the police party which had intercepted the truck and found the accused in conscious possession of the contraband deposed in that regard, supporting the prosecution story on material aspects, proving various documents. He further deposed with regard to the investigation conducted by him in this case.

PW Daulat Ram was given up as having been won over by the accused by Addl. PP for the State.

With that, the prosecution evidence got concluded.

5. Statements of both 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 had been falsely involved in this case.

Accused Kuldip Singh raised a plea that a false case has been planted upon him after picking him up from his house at 11.30 am and no recovery had been effected from him, whereas plea taken up by Balwan Singh was that a false case has been foisted upon him and no recovery was effected from him. He had taken lift from Ropar to Balachaur (Nawanshahr) in truck in question. He had no knowledge that as to what was lying in the truck and he had no relation with the owner and driver of the truck. His house was situated at 200 kms from Balachaur and he had come to meet his relative near Ropar.

6. During their defence evidence, accused Balwan Singh examined one Surinder Singh son of Jaspal Singh as DW-1. This witness stated that he know accused Balwan Singh son of Jaimal Singh, resident of Kalesar, District Gurdaspur and on 07.03.2010, accused Balwan Singh had taken lift on a truck at Ropar at about 2 pm; Balwan Singh had come to meet him in the morning at his village; Balwan Singh was his close friend and he was with Balwan Singh at the time when he took lift from

Ropar to Nawanshahr. He stated that he did not know the owner or driver of the truck.

With that, the defence evidence of the accused stood closed.

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

8. Feeling aggrieved by the said judgment of their conviction and order of sentence, accused/appellants had approached this Court by way of filing the appeals. Notice of appeals was given to the State, which has put in appearance. The appeals were Admitted for hearing. On applications under Section 389 Cr.P.C., having been filed, remaining sentence of the appellants was suspended on their furnishing requisite bonds to the satisfaction of CJM, SBS Nagar.

Now the appeals have come up for final hearing.

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

10. The main thrust of the argument by learned counsel for the appellant Balwan Singh was that PW-6 Naveen Kumar, owner of the truck during his cross-examination on behalf of accused Balwan Singh had stated that he does not know Balwan Singh and had not employed him as cleaner on his truck, therefore, the story set up by the prosecution that Balwan Singh was there on the truck at the time of recovery in the capacity of a cleaner becomes doubtful and the version that he had taken lift in the truck which is duly proved from statement of DW-1 Surinder Singh should be accepted and he be acquitted of the charge framed

against him.

Whereas learned counsel for appellant Kuldip Singh had stated that Kuldip Singh is not proved to be working as a driver of the truck in view of the statement of Sh. Surinder Mohan Sharma, JA, DTO Office, Nawanshahr. The driving license issued to Kuldip Singh authorizes him to drive scooter and LMV only. It being so, there is no question of the owner of truck having employed him as a driver on truck which is a heavy vehicle and as a matter of fact, Kuldip Singh had been picked up by the police from his house and thereafter, involved in this false case.

Whereas, learned State counsel has countered the argument stating that the involvement of both the accused in the case and that they were in a joint conscious possession of the contraband recovered from them stands duly proved and no second thought in the matter is possible.

After considering the rival contentions, I do not find any merit in the arguments advanced by learned counsel for the appellants. During the course of investigation, the police had recorded statement of Naveen Kumar, owner of the truck who had categorically stated that he had employed Kuldip Singh as a driver and Balwan Singh as a cleaner on his truck. When his statement was recorded in the Court for the first time, he had stood by the statement made by him to the police categorically deposing in that regard. He had been cross-examined on behalf of accused by Sh. H.K. Bhambi, Advocate on behalf of the accused, in which he had stated that he had not maintained any record showing

accused to be his driver and conductor or payment of salary to them. He had denied the suggestion that he had deposed falsely. However, it appears that accused somehow managed to influence Naveen Kumar in making statement favourable to them and when for a technical reason, he was recalled for cross-examination on behalf of accused Balwan Singh, he made a summersault and stated that he does not know Balwan Singh accused, present in the Court and had not employed him.

After being declared as a hostile witness, when he was cross-examined by Addl. PP for the State, he admitted himself to be owner of the truck bearing No.PB32-F-9831 from which the contraband had been recovered. He admitted having appeared as a witness in the Court on 02.09.2011 but denied having stated that he had employed Balwan Singh as a cleaner. When he was confronted with part of his statement where he had stated so, he denied having made such statement. The conduct of such type of person who denies having made statement in the Court deserves condemnation but he deserves to be dealt with strictly. It is really surprising that after appearing in the Court and getting his statement recorded, he had the guts to deny having made such statement. That shows his utter disrespect and disregard for the Court. Even otherwise, it comes out that he had denied having employed Balwan Singh as a cleaner for some extraneous reason and when his statement is seen in whole, it comes out that Balwan Singh was in his employment and was present in the truck in his capacity as a cleaner. The story that he had taken a lift from Ropar to Nawanshahr is least convincing and seems

to have been fabricated, just to escape the criminal liability. The statement of DW1 in support of such version also does not inspire confidence. He comes out to be procured witness owed to help accused Balwan Singh in the matter. If the defence version was so truthful on coming to know about the arrest of accused Balwan Singh in this case, the natural conduct of Surinder Singh would have been to make representations to the higher police officers or meet them in company of other respectables to agitate that Balwan Singh had just taken a lift on the truck and had been wrongly involved in this case but as admitted by him in his cross-examination, he did not do so. It seems highly unlikely that a person belonging to Gurdaspur district coming to meet his friend at village Singh Bhagwantpur would take a lift from Ropar to Nawanshahr in a truck instead of boarding a bus or other passenger vehicle for returning to his residence.

11. As far as Kuldeep Singh is concerned, Naveen Kumar had stated that he had employed him as a driver. Kuldeep Singh and Balwan Singh when apprehended, Kuldeep Singh was driving the truck and Balwan Singh was sitting on the front seat. The story set up by Kuldeep Singh that he had been picked up from his house and a false case was planted upon him also does not come out to be worthy of acceptance. No evidence has been led by such accused in support of that contention. It is not the case of any of the accused that they had any previous enmity with the official witnesses of recovery who might have ganged up against them to plant a false case upon such accused and depose in the Court to

secure their conviction.

The prosecution by bringing enough cogent, convincing, reliable evidence has been able to prove its charge against the accused beyond a shadow of reasonable doubt. The defence version set up by the accused does not come out to be acceptable. The plea raised on behalf of appellant/accused Kuldip Singh that he holds license only for driving a scooter or LMV only and therefore could not have been employed as a driver puts owner of the truck in a dock on that score as to how he had handed over his truck to a person who was not authorized to drive that type of vehicle.

12. Learned counsel for appellant Kuldip Singh had referred to judgment **Naresh Kumar @ Nitu Vs. State of Himachal Pradesh** (2017) 3 RCR (Criminal) 852. That judgment is not applicable due to different facts and circumstances. Both the accused have failed to account for possession of contraband and in terms of Sections 35 and 54 of the Act. They are to be taken in conscious possession of 70 kgs of poppy husk recovered from the truck in which Kuldip Singh was driver and Balwan Singh was cleaner. Both of them have failed to account for possession of contraband. Similarly the other judgment **Hanif Khan Vs. Central Bureau of Narcotics**, (2019) 4 RCR (Criminal) 250 does not find application in the present case.

13. With regard to judgments referred to on behalf of accused Balwan Singh, **Nirmal Singh Vs. State of Punjab**, 2003(4) RCR (Criminal) 132, **Jagtar Singh Vs. State of Punjab**, 2008 (4) RCR

(Criminal) 708, Mella Singh Vs. State of Punjab, 2003 (3) RCR (Criminal) 762, Sorabkhan Gandhkhan Pathan & Anr. Vs. State of Gujarat, (2004) 13 SCC 608 and Sanjeet Kumar Singh @ Munna Kumar Singh Vs. State of Chhattisgarh in CRA-871-2021 decided on 30.08.2022. Those are also not applicable since in view of the detailed discussion above, it has been concluded that Balwan Singh was employed on the truck as a cleaner and story set up by him that he had taken a lift for going from Ropar to Nawanshahr his highly unconvincing, as such not acceptable.

14. The impugned judgment of conviction passed by the trial Court is quite detailed, well reasoned, based upon proper appraisal of evidence and correct interpretation of law. There is no illegality or infirmity therein. The accused were rightly convicted for offence under Section 15 of the Act, keeping in view the fact that the contraband recovered from conscious possession of the appellant amounts to commercial quantity.

The trial Court has awarded minimum punishment to them which is prescribed for the offence. There is certainly no scope for reduction in the sentence and further, the act and conduct of the accused in indulging in drug trafficking and having been found in conscious possession of the huge quantity of contraband does not make them entitled to any leniency.

15. The appeals are found to be without merit and same are hereby dismissed accordingly.

16. As a result, the orders passed by this Court suspending their sentence and grant of bail during pendency of the appeals come to an end and are withdrawn. The appellants/accused are ordered to surrender before Chief Judicial Magistrate, SBS Nagar within a week from today, failing which learned CJM, would issue warrants of arrest to secure their presence and send them to jail to undergo the remaining sentence. Necessary intimation be sent to the Court concerned for information and compliance. The trial Court/its successor is directed to initiate proceedings under Section 340 read with Section 195 Cr.P.C. or other relevant provisions of against PW Naveen Kumar, owner of the truck. A copy of the judgment be sent to successor of the trial Court through District & Sessions Judge, SBS Nagar, Nawanshahr for necessary compliance.

09.09.2022

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(H.S. MADAAN)
JUDGE

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