

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

CRA-S-2043-SB-2014(O&M)

Date of decision:-26.8.2022

Gurjant Singh @ Janti

...Appellant

Versus

State of Punjab

...Respondent

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

Present: Mr.Kartar Singh, Advocate for the appellant.

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

H.S. MADAAN, J.

1. Appellant Gurjant Singh @ Janti was tried by learned Judge, Special Court, Sangrur in case FIR No.10 dated 28.1.2011 for an offence under Section 18 of Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as '**the Act**'), Police Station Dirba and vide judgment dated 24.1.2014, he was convicted in that case for the offences for which he was booked and in terms of order passed on that very date, 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 undergo further rigorous imprisonment for a period of 1 year.

2. In nutshell, the case of the prosecution is that 28.1.2011, a

police party from Police Station Dirba headed by Inspector Gurdev Singh, SHO of that police station (hereinafter referred to as the Investigating Officer/IO) was going towards village Toorbanjara in connection with patrolling in the official vehicle; at about 2:30 p.m., when the police party reached near a police *NAKA* in the area of village Dirba, the accused was spotted coming from the side of Gurudwara Sahib Bassiana on the katcha pavement of the distributory, carrying a bag of yellow colour in his hand; when the accused was to take katcha path from the pavement, on observing the police vehicle, he took a turn; however he was apprehended on the basis of suspicion and his name and other particulars were inquired about, which he disclosed; in the meanwhile, a person on Pletina motorcycle of red colour, who disclosed his name as Ajaib Singh son of Teja Singh came; he was apprised about the facts of the case and joined with the police party; the SHO gave his introduction to the accused and informed him that he suspected some contraband in the bag being carried by the accused and wanted to search the same and further telling the accused that he had a legal right to be searched in presence of a gazetted officer or a Magistrate; the accused opted to get the search conducted in presence of a gazetted officer; a memo in that regard was prepared; the SHO sent wireless message.

3. On receipt of message DSP Harjinder Singh came to the spot, reaching there at about 3:15 p.m. in his Govt. vehicle No.PB13T-1271; the accused along with the bag in his hand were produced before the DSP Harjinder Singh, who disclosed his identity to the accused stating that he was a gazetted officer of Punjab Government and further he intended to

search the bag but the accused had a right to be searched before some other gazetted officer or a Magistrate; however, the accused reposed confidence in that DSP; consent memo in that regard was prepared, which was executed by the accused; then on instructions from Sh.Harjinder Singh, DSP, the bag being carried by the accused was searched and it was found to contain opium wrapped in glazed paper; the Investigating Officer drew two samples of 10 grams each from the recovered opium and on being weighed, the remainder came out to 3 kgs. 400 grams; the samples and the residue opium were converted into parcels and sealed with the seal of Investigating Officer bearing impressions GS; the seal after use was handed over to independent witness Ajaib Singh, DSP Harjinder Singh put his seal on all the three parcels having inscription HS; sample seal impressions was also prepared.

4. The accused was arrested in this case as per rules. Requisite documents were prepared. Ruqa was sent to the police station, on the basis of which formal FIR was recorded. The Investigating Officer 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 deposited the case property with MHC and put the accused in the lock up. On the next day, he withdrew the case property from the MHC and took the accused out of lock up and then the accused along with the case property was produced before the Area Magistrate. Learned Area Magistrate after verifying the parcels directed the Investigating Officer to deposit the case property in Judicial Malkhana. It was done accordingly.

During the course of investigation, a sample parcel was sent to the office of Chemical Examiner, Punjab and as per report received therefrom, it 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 SC Jiwan Singh as PW1, HC Gurmeet Singh as PW2, Harinder Singh as PW3, Inspector Gurdev Singh as PW4, Parveen Kumar, Head Copyist as PW5 and SI Gurjant Singh as PW6.

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 him were put to such accused 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 defence.

11. Learned trial Court had formulated the following point for determination:

“Whether on 28.1.2011 at about 2:30 p.m., in the area of village Dirba, the accused was found in possession of 03 kilo 420 grams of opium without any permit or licence, as has been alleged by the prosecution?

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 10.11.2014, when it was admitted for regular hearing. 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 on 27.7.2015 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 adequate bail bonds/surety bonds to the satisfaction of the CJM/Duty Magistrate, Sangrur.

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

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

15. Here the witnesses of recovery namely PW4 Inspector Gurdev Singh, PW3 DSP Harjinder Singh and PW6 SI Gurjant Singh 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 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. PW1 SC Jiwan Singh had furnished his affidavit Ex.PA stating that sample parcel and sample seal impressions were given to him on 31.1.2011 for depositing the same in the office of Chemical Examiner, Punjab after getting the formalities completed from the office of SSP, Sangrur. He did so on 1.2.2011, brought receipt therefrom and gave it to HC Gurmeet Singh on 2.2.2011. He stated that so long as the case property remained with him neither he tampered therewith nor allowed anybody else to do so. PW2 HC Gurmeet Singh, the custodian of the case property furnished his affidavit Ex.PW2/A deposed with regard to deposit of the case property with him on 28.1.2011 by Inspector Gurdev Singh, which was withdrawn by him on 29.1.2011 for producing the same before the Court and that Inspector Gurdev Singh after depositing the case property in the Judicial Malkhana had brought one sample parcel of 10 grams of opium, sealed with the seal bearing impressions GS/HS and deposited the same with him along with sample seal impression and he had given sample parcel and sample seal impression to SC Jiwan Singh on 31.1.2011 for the purpose of depositing the same in the office of Chemical Examiner, Punjab who did so and deposited receipt with him on 2.2.2011 and so long as the case property remained in his custody neither he tampered therewith nor allowed anybody to do so. PW5 Parveen

Kumar, Head Copyist vide his affidavit Ex.PW5/A testified with regard to depositing of the case property with him as per orders of CJM, Sangrur. In terms of the report received from the office of Chemical Examiner Ex.PW4/H, the sample had reached there in intact condition and on being analyzed, it was found to be that of opium.

17. Although learned counsel for the appellant has contended that the procedure as prescribed under Section 52-A of the Act was not strictly followed in this case rendering the prosecution story doubtful and in that regard, he has referred to judgment ***Union of India Versus Mohanlal & Anr., 2016(1) RCR(Criminal) 858***. But I find that adequate precautions were taken in this case by the Investigating Officer besides the case property had been produced before learned Magistrate on the next day of recovery, who had then passed an order directing that it be kept in Judicial Malkhana and as discussed in detail above, no tampering with the case property had taken place and the sample parcel had reached the office of Chemical Examiner, Punjab in intact condition. No prejudice of any kind is shown to have been caused to the appellant. Therefore, such plea is not available to the appellant/accused.

18. Learned counsel for the appellant has tried to find faults with the affidavits furnished by the formal witnesses showing that in the verification, it has not been specified as to which portion of the affidavit was based upon their personal knowledge and which portion on the basis of information derived by them. Again this objection is without any merit since those witnesses had got their statements recorded during the trial tendering their affidavits and then the accused was given an opportunity

to cross-examine such witnesses, any question with regard to the verification or otherwise could have been asked from the witnesses. Therefore, the affidavits furnished by the official witnesses cannot be discarded for such a technical reason.

19. Learned counsel for the appellant has further submitted that the accused does not come out to be in conscious possession of the contraband in question, therefore, he cannot be convicted for offence under Section 18 of the Act. In support of this contention, he has referred to judgment **Baldev Singh Versus State of Punjab, 2005(1) RCR(Criminal)823**. This judgment is distinguishable having different facts and circumstances. Here the accused has been found to be in possession of the contraband. Since he has failed to render any explanation for possession of contraband in terms of Section 35 and 54 of the Act, he is to be taken as in conscious possession of the contraband and he cannot simply wash off his hands stating that he was not aware as to what was there in the bag being carried by him.

20. One more argument raised by learned counsel for the appellant was that CFSL form was not filed up at the spot. He has referred to judgment **Jaswinder Singh Versus State of Punjab, 2009(1) RCR(Criminal)425** in that regard. However, I do not find any merit in this contention. In judgment **Wazir Singh Versus State of Haryana, 2010(1) RCR(Criminal)480** by a Co-ordinate Bench of this Court while dealing with the aspect of CFSL Form not filled on the spot, it was observed that there is no rule of evidence or procedural rule under Criminal Procedure Code or NDPS Act and every document must be

prepared at the spot of recovery and since no prejudice is shown to have been caused to the accused by this procedural lapse, he cannot take advantage of this fact.

21. With regard to non-joining of independent witness, since in view of detailed discussion above, it has been found that the official witnesses did not have any enmity with the accused prompted by which they might have planted a false case upon the accused or depose against him wrongly to secure his conviction. 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.

22. Learned State counsel has further placed reliance upon judgment *Sucha Singh Versus State of Punjab 2015(4) RCR (Criminal)25*. It was a case 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. 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.

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

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

25. As regards the sentence part, the accused was sentenced to undergo rigorous imprisonment for ten years each, 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 rather on somewhat lower side.

26. 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.

27. Appellant Gurjant Singh @ Janti is stated to be on bail granted to him by this Court. His bail is cancelled. Chief Judicial Magistrate, Sangrur is directed to issue arrest warrants to get him arrested so as to make him undergo the remaining sentence.

26.8.2022
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : No / Yes

Whether reportable : No / Yes