

327 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-2076-SB-2003
Reserved on: 30.11.2022
Pronouncement on: 20.12.2022

Baldev Singh ...Appellant

VS.

State of Punjab ...Respondent

Coram : Hon'ble Mr. Justice N.S.Shekhawat

Present : Mr. Swarn Kumar Sandhir, Advocate
as Amicus Curiae for the appellant.

Mr. Vipin Pal Yadav, Additional Advocate General, Punjab.

N.S.Shekhawat J.

The present appeal has been directed against the judgment of conviction dated 29.07.2003 and order of sentence dated 30.07.2003, passed by the Learned Judge Special Court, Bathinda, whereby the appellant was held guilty and convicted under Section 15 of the Narcotic Drugs and Psychotropic substance Act, 1985 (for short 'NDPS Act) and sentenced to undergo rigorous imprisonment for ten years and to pay a fine of Rs.1 Lac, in default of payment of fine, to further undergo rigorous imprisonment for a period of two years.

The facts of the case are that on 20.01.2002, Des Raj, Inspector along with other police officials was on duty in connection with patrolling and Darshan Singh met the police party at the crossing of village Sukhladi and when the police party reached 3 kms ahead of the village Tarkhanawala, a person was seen sitting on three bags, in between the two heaps of earth. The said person noticed the police and tried to run away. However, the police party got

suspicious and he was apprehended. The police party suspected that he was carrying some contraband and he was apprised of his right of being searched either before the Magistrate or a Gazetted Officer and he consented for his search before a Gazetted Officer. After getting his consent, the wireless messages were sent to DSP Raghbir Singh Chahal, who reached at the spot and after disclosing his identity to the accused, he apprised him of his right of search. However, he got his consent statement Ex.PA recorded and reposed confidence in DSP Raghbir Singh Chahal and stated that he wanted to get his search conducted in his presence. On the directions of the DSP, all three bags were searched, which were in possession of the accused and the same were found containing poppy husk. Samples of 250 grams from each bag were taken out and the remaining poppy husk in each bag weighed to be 33 kgs and 750 grams. Three parcels as well as three bags containing the remaining poppy husk were sealed separately and taken into possession by the police vide memo Ex.PB and the sample seal was prepared. The personal search memo Ex.PC was prepared and the ruqa was sent to the police station, on the basis of which, FIR Ex.PC/1 was recorded. The rough site plan Ex.PF was prepared. The grounds of arrest were disclosed to the accused and various witnesses were examined by the police. On his return, Investigating Officer sent the special report to his superior officers. On 21.01.2002, the accused alongwith case property was produced before the Area Magistrate and on 23.01.2002, the sample parcels were sent to the office of Chemical Examiner and on receipt of the report Ex.PL and the completion of the investigation, challan was presented against the accused.

Vide order date 11.05.2002, the Court of learned Special Judge, Bathinda ordered framing of charge under Section 15 of the NDPS Act against the present appellant to which he pleaded not guilty and claimed trial.

In support of the charge, the prosecution examined three witnesses. The prosecution examined PW-1 Raghbir Singh Chahal DSP, who was posted as DSP Talwandi Sabo on 20.01.2002. On getting the wireless message from PS Raman to reach the spot, he alongwith his gunman reached there. He gave the option to the accused that he has a right to get the search conducted before any other Gazetted Officer or Magistrate, however, the accused opted to get the search conducted in his presence and his consent memo Ex. PA was recorded. Ex.PA was signed by the accused and was attested by the police officials as well as Darshan Singh, independent witness. In his presence, Inspector Des Raj conducted the search of three gunny bags in possession of the accused and after taking out the sample of 250 grams of poppy husk from each bag, the remaining poppy husk was weighed from each bag and it was found to be 33 kgs and 750 grams in each bag. The sample as well as the remainder quantity of poppy husk was taken into possession by the police. The prosecution further examined Inspector Des Raj as PW-2, who alongwith other police officials found the accused and he supported the case of the prosecution completely. The prosecution further examined HC Balwant Singh as PW-3, who was posted at Police Station Raman on 23.01.2002. He stated that on 23.01.2002, Inspector Des Raj, SHO, Police Station, Raman handed over to him three parcels sealed with seal DR and the sample seal bearing seal impression 'DR' of this case alongwith a road certificate and a docket and directed him to deposit the sample parcels and the sample seal in the office of Chemical Examiner, Patiala. On

24.02.2002, he deposited the sample parcels and the sample seal in the office of Chemical Examiner and obtained the receipt. He did not tamper with the sample parcels and the sample seal, nor allowed anyone to do so.

After recording of the prosecution evidence, the statement of the accused under Section 313 Cr.P.C. was recorded and he pleaded innocence. He stated that he had been arrested from Village Norang in the presence of Sundhura Singh, Member and Lachhman Singh, Sarpanch and nothing was recovered from him. He wanted to lead the defence evidence, however, he did not examine any witness to support his case and ultimately, the defence evidence was ordered to be closed.

Learned counsel for the appellant submitted that he had been falsely implicated in the instant case. He submitted that as per the consent memo Ex.PD, only partial offer was given to the present appellant as the IO had only given the offer that he could get his search conducted by some Gazetted Officer. Still further, the recovery was made at a public place and the prosecution had not joined any independent witness despite availability. Even Darshan Singh was a stock witness and even he was not examined. Still further, the link evidence in the instant case was not complete and there was no conscious possession of the appellant and he was liable to be acquitted. Apart from that, the samples were sent for chemical examination after unexplained delay of three days and there were glaring discrepancies in the statements of the prosecution witnesses, which strike at the root of the matter.

The submissions made by learned counsel for the appellant had been vehemently opposed by the learned State counsel. Learned State counsel submitted that all the mandatory provisions of the NDPS act had been complied

with and the impugned judgment passed by the learned Special Court was liable to be upheld.

I have heard learned counsel for the parties and with their able assistance, I have gone through the lower Court record carefully.

Learned counsel for the appellant had submitted that in the instant case, the requirements of Section 50 of the NDPS Act were not complied with and the appellant was liable to be acquitted on the sole ground alone. However, from a perusal of the evidence, it is apparent that the recovery was effected from the three bags, on which the appellant/accused was sitting and not from his personal search and as such there was no necessity for the police to comply with the provisions of Section 50 of the NDPS Act. The scope of the provisions of Section 50 of the NDPS Act was examined by the Hon'ble Supreme Court in the matter of "*Jarnail Singh Vs. State of Punjab*", 2011 AIR (Supreme Court) 964 and held as follows:-

"12. The next submission made by Mr. Ujjal Singh is that there has been non compliance of Section 50 of the Narcotic Drugs and Psychotropic Substances Act, in that requisite option was not given to the appellant, as to, whether he wanted to be searched in the presence of a Gazetted Officer or a Magistrate. We are unable to accept the aforesaid submission. Inspector Ram Pal (PW4) has clearly stated that the option was duly given to the appellant. The appellant had, in fact, signed on the consent statement expressing his confidence to be searched in presence of the aforesaid witness. Similarly, Satpal Singh PW5 has also stated that before affecting the search, the accused/appellant was given the necessary option as to

whether he wanted to be searched before a Gazetted Officer or a Magistrate. This witness also stated that the appellant reposed his confidence in Inspector Rampal. In such circumstances, it cannot be held that there was non compliance with Section 50 of the Narcotic Drugs and Psychotropic Substances Act.

12.1 This apart, it is accepted that the narcotic/opium, i.e., 1 kg. and 750 grams was recovered from the bag (thaili) which was being carried by the appellant. In such circumstances, Section 50 would not be applicable. The aforesaid Section can be invoked only in cases where the drug/narcotic/NDPS substance is recovered as a consequence of the body search of the accused. In case, the recovery of the narcotic is made from a container being carried by the individual, the provisions of Section 50 would not be attracted. This Court in the case of Kalema Tumba v. State of Maharashtra, 1999(4) RCR (Criminal) 575: (1999) 8 SCC 257 discussed the provisions pertaining to 'personal search' under Section 50 of the Narcotic Drugs and Psychotropic Substances Act and held as follows;

"..... if a person is carrying a bag or some other article with him and narcotic drug or psychotropic substance is found from it, it cannot be said that it was found from his person."

*Similarly, in the case of **Megh Singh v. State of Punjab**, 2003(4) RCR (Criminal) 319 : 2004(1) Apex Criminal 482 : (2003) 8 SCC 666 this Court observed that;*

"A bare reading of section 50 shows that it applies in case of personal search of a person. It does not extend to a search of a vehicle or container or a bag or premises."

*The scope and ambit of Section 50 was also examined by this Court in the case of **State of Himachal Pradesh v. Pawan Kumar**, 2004(4) RCR (Criminal) 543 : 2004(3) Apex*

Criminal 618 : (2005) 4 SCC 350. In paragraphs 10 and 11, this Court observed as follows:-

"10. We are not concerned here with the wide definition of the word "person", which in the legal world includes corporations, associations or body of individuals as factually in these type of cases search of their premises can be done and not of their person. Having regard to the scheme of the Act and the context in which it has been used in the section it naturally means a human being or a living individual unit and not an artificial person. The word has to be understood in a broad commonsense manner and, therefore, not a naked or nude body of a human being but the manner in which a normal human being will move about in a civilised society. Therefore, the most appropriate meaning of the word "person" appears to be -- "the body of a human being as presented to public view usually with its appropriate coverings and clothing". In a civilised society appropriate coverings and clothings are considered absolutely essential and no sane human being comes in the gaze of others without appropriate coverings and clothings. The appropriate coverings will include footwear also as normally it is considered an essential article to be worn while moving outside one's home. Such appropriate coverings or clothings or footwear, after being worn, move along with the human body without any appreciable or extra effort. Once worn, they would not normally get detached from the body of the human being unless some specific effort in that direction is made. For interpreting the provision, rare cases of some religious monks and sages, who, according to the tenets of their religious belief do not cover their body with clothings, are not to be taken notice of. Therefore, the word "person" would mean a human being with appropriate coverings and clothings and also footwear.

11. A bag, briefcase or any such article or container, etc. can, under no circumstances, be treated as body of a human being. They are given a separate name and are identifiable as such. They cannot even remotely be treated to be part of the body of a human being. Depending upon the physical capacity of a person, he may carry any number of items like a bag, a briefcase, a suitcase, a tin box, a thaila, a jhola, a gathri, a holdall, a carton, etc. of varying size, dimension or weight. However, while carrying or moving along with them, some extra effort or energy would be required. They would have to be carried either by the hand or hung on the shoulder or back or placed on the head. In common parlance it would be said that a person is carrying a particular article, specifying the manner in which it was carried like hand, shoulder, back or head, etc. Therefore, it is not possible to include these articles within the ambit of the word "person" occurring in Section 50 of the Act."

It has come in evidence that although the body search of the appellant was conducted but no recovery of any narcotic was made. The body search only led to the recovery of Rs. 25/- from his pocket."

In view of the above discussion, it is held that since the recovery was effected from the three bags and not from the personal search, there was no need to comply with the provisions of Section 50 of the NDPS Act. Still vide memo Ex.PD, the appellant/accused was given an offer that he could get his search conducted in the presence of a Gazetted officer or a Magistrate and on this, he offered to get his search conducted in the presence of a Gazetted Officer. Even PW-1 DSP Raghbir Singh Chahal was also called at the spot and the appellant/accused reposed confidence in him and the search was conducted in the

presence of PW-1 DSP Raghbir Singh Chahal. Thus, the findings recorded by the learned trial Court are liable to be upheld on this issue.

Learned counsel for the appellant further submitted that at the time of recovery, Darshan Singh, an independent witness was with the police party, who had witnessed the alleged recovery and had also signed various memos. However, the said witness Darshan Singh was not examined, being won over by the accused and this is prejudice the case of the present appellant. However, I find no substance in the said submission. Simply because of the fact that the prosecution had not examined any independent witness, would not necessarily lead to the conclusion that the appellant had been falsely implicated. It is a case, where the police officials had associated an independent witness, but unfortunately, before he was examined, he was won over by the accused. Still further, even the official witnesses had no enmity with the accused nor any such defence has been taken by the accused in his statement under section 313 Cr.P.C. A huge recovery of commercial quantity of poppy husk has been effected from the present appellant and it was impossible for the police to plant such a huge recovery on the appellant. Thus, the non-examination of the independent witness Darshan Singh will have no effect on the prosecution case as the testimonies of various official witnesses inspire confidence and the judgment passed by the learned trial Court is well reasoned in this regard.

Still further, the learned counsel for the appellant submits that there were minor inconsistencies between the testimonies of PW-1 Raghbir Singh Chahal and PW-2 Des Raj, Inspector. However, during the course of argument, no such discrepancies were pointed out. Even otherwise, when the witnesses depose after a long gap, some minor variations are generally noticed in the

testimonies of various prosecution witnesses and the Courts ought to overlook such minor variations. Still further, the learned counsel further submitted that there was a delay of three days in sending the sample to the chemical examiner and this casts a doubt on the prosecution case. In fact, the said contention raised by learned counsel for the appellant is without any substance. On examination of the entire material, there was sufficient evidence produced by the prosecution regarding the completion of link evidence. Simply because there was delay of three days in sending the sample to the chemical examiner, would not be sufficient to conclude that the samples had been tampered with. Even there was sufficient evidence to indicate that the delay, if any, was wholly unintentional and the said contention is untenable in law.

Having considered the rival contentions made by learned counsel for the parties, and on a careful perusal of the trial Court record, I have arrived at the conclusion that there is no merit in the instant case and is accordingly, ordered to be dismissed.

The impugned judgment of conviction dated 29.07.2003 and order of sentence dated 30.07.2003, passed by the Learned Judge Special Court, Bathinda are well reasoned and do not suffer from any perversity or illegality and are liable to be upheld by this Court.

The appeal is, accordingly, dismissed.

Since the appellant is on bail in this case, his bail/surety bonds stand cancelled. Requisite intimation be sent to the concerned Chief Judicial Magistrate for issuance of warrant of arrest against the appellant to undergo his remaining sentence.

All pending applications, if any, are also disposed off, accordingly.

Case property, if any, be dealt with, and destroyed after the expiry of period of limitation for filing the appeal, in accordance with law. The trial court record be sent back.

In the end, I record my appreciation for Mr. Swarn Kumar Sandhir, learned Amicus Curiae, who had rendered able assistance to this Court.

20.12.2022
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(N.S.SHEKHAWAT)
JUDGE

Whether speaking/reasoned	:	Yes
Whether reportable	:	Yes