

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

**CRA-S-2413-SB-2004
Decided on : 22.11.2022**

Gurmail Singh @ Geli

. . . Appellant(s)

Versus

State of Punjab

. . . Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

Argued by: Mr. PKS Phoolka, Advocate for
Mr. AS Virk, Advocate
for the appellant(s).

Mr. AS Sandhu, AAG, Punjab.

SANJAY VASHISTH, J.

Appellant – Gurmail Singh @ Geli has filed present appeal, challenging his conviction under FIR No. 78, dated 24.06.1995, under Section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred as 'NDPS Act'), registered at Police Station Bhawanigarh, District Sangrur, which was tried as Sessions Case No. 48 of 04.09.1995, by the Court of Ld. Special Court, Sangrur.

On 24.06.1995, Inspector Gurmail Singh, Incharge CIA, Bhawanigarh, was present at CIA Staff, where, he received a secret information that one Gurmail Singh @ Geli s/o Hoshiar Singh, r/o Sangan, Police Station Sadar Kaithal (Haryana) had sold opium in the area of villages Masavi, Kala-Jhar etc. falling within the jurisdiction of Police Station Bhawanigarh. It was further informed that today, he (Gurmail Singh @ Geli) was to come from Patiala by bus carrying opium, and if nakabandi was done at Kala-Jhar and Masavi bus-stand, a large quantity of opium could be recovered from his possession. Information being trustworthy, Inspector

Gurmail Singh sent ruqa to Police Station through Constable Leela Singh for registration of the case, and requested the DSP on telephone to reach at the spot. Inspector Gurmail Singh along with other police officials in a Govt. vehicle make Tata driven by Constable Sukhdarshan Singh, started doing nakabandi and checking. When Inspector Gurmail Singh along with other police party reached at Truck Union Bhawanigarh, then DSP Indermohan Singh, along with his gunmen met him there. Entire facts were explained to the DSP. In the meantime, Sukhdev Singh s/o Chet Singh, r/o Chehla Patti, Bhawanigarh, met them, who was also made to join the police party. Under the supervision of DSP, they all started towards bus-stand Kala-Jhar for manning a naka. When they were short of some distance from bus-stand Kala-Jhar, then a bus came from the side of Patiala and stopped at bus-stand Kala-Jhar.

A person got down from the bus, who was carrying a bag in his right hand. He started going to village Kala-Jhar on link road, but on seeing the police vehicle, he increased his pace. On suspicion, said person was apprehended. He disclosed his name as Gurmail Singh @ Geli s/o Hoshiar Singh, r/o village Sangar, PS Sadar Kaithal (Haryana). On search done by Inspector Gurmail Singh under the supervision of DSP Indermohan Singh, opium, wrapped in a polythene paper was recovered. On weighing it was found to be 2.00 kg, and thereafter, two samples of 10 grams each were prepared in two separate plastic bags. After preparing the samples, remaining 1.980 kg opium was put into another plastic box, and a separate parcel was prepared. After doing the necessary technical formalities, aforementioned FIR was registered at the Police Station and matter was investigated.

After completion of investigation, and receipt of report of

Chemical Examiner, final report under Section 173 Cr.PC was submitted.

Ld. Trial Court framed the charges vide order dated 18.09.1995, under Section 18 of the NDPS Act, 1985. Prosecution examined Constable Surinder Singh as PW-1, DSP Indermohan Singh as PW-2, but, thereafter accused absconded and was declared proclaimed offender vide order dated 31.05.2002.

After re-arrest of the accused, supplementary challan was filed and process of recording of evidence was started again. Accordingly, remaining witnesses in the shape of PW-3 Gurmail Singh (retired DSP), PW-4 DSP Shamsher Singh, PW-5 Hardial Dass, PW-6 ASI Baljinder Singh, and PW-7 SI Sampuran Singh, were examined. Thereafter, other formal witnesses were given up being unnecessary and witness Sukhdev Singh was not examined being won over by the accused.

While recording statement under Section 313 Cr.PC, accused took a specific stand that he was arrested from the bus-stand Bhawanigarh, when he was going to village Dhandrian. On 23.06.1995, an altercation took place between him and Inspector, who was there in civil uniform. Due to said altercation, prosecution has lodged a false case by planting opium against him.

Challenging the conviction, Mr. PKS Phoolka, Advocate, appearing on behalf of the appellant, argues that prosecution has failed in proving charge against the appellant. Alleged recovery took place in presence of one Sukhdev Singh, but said witness was not examined before trial Court. Mere giving up a witness by saying that he/she has been won over by the accused cannot be of any help to the prosecution until said witness is given a chance to depose to bring the true picture on the file.

It is further argued by learned counsel for the appellant that had

Sukhdev Singh been present at the spot, undoubtedly seal after test use would have been handed-over to said Sukhdev Singh. Therefore, safely, it can be inferred that Sukhdev Singh was never present on the spot. Learned Counsel further argues that it was a case of secret information and prosecution was required to comply with the provisions of Section 42 of the NDPS Act. Further, no offer was given by DSP in any manner i.e. oral or in written to the appellant to take him to a gazetted officer. Thus, there is a clear violation of Section 50 of the NDPS Act also. He further argues that there is no independent witness examined by the prosecution, thus, case of the prosecution is again under doubt.

On the other hand, Mr. AS Sandhu, AAG, Punjab, submits that as per settled law, statements of the police officials cannot be discarded merely because they are from Police Department. Thus, if private witness, if any, is won over by the accused, case of prosecution cannot be allowed to fall down/shutter down, in the absence of such evidence. Learned State counsel also refers that there are several instances, wherein, Hon'ble High Courts have upheld the conviction despite there being no statement given by private witness.

Ld. Trial Court held the accused guilty for committing of offence under Section 18 of the NDPS Act, and sentenced him for a period of three years along with sentencing him for paying fine of Rs.10,000/-. In case of default of fine, further rigorous imprisonment for six months. Thus, now appellant is in appeal before this Court.

This Court has noticed the statements addressed by prosecution and the defense counsel both, and is able to reach to the conclusion that recovery of 2.00 kg of opium was effected from the accused on 24.06.1995. Statement of Investigating Officer DSP (Retd.) Gurmail Singh (then

inspector) was recorded on 02.12.2003, and statement of DSP Shamsheer Singh (PW-4), who was then SHO of Police Station was recorded on 13.01.2004. Thus, minor discrepancies, if any, have arisen due to the long gap between the recovery and the deposition of said witnesses. Moreover, there is no such major discrepancy or inconsistency, which may make the accused entitled to draw benefit for seeking acquittal.

Relying upon the case of **Sarabjit Singh Vs. State of Punjab, 2001(2) RCR 775**, this Court is also of the view that all the three witnesses deposed in a fair & satisfactory manner, and there is nothing much for accused to rely upon for extracting any benefit out of it.

Now, as far as aspect of not serving any notice under Section 50 of NDPS Act is concerned, in view of the judgment rendered in **Gurbax Singh Vs. State of Haryana, 2001 Current Law Journal 1166**, serving of notice was not required because the search was effected from the bag carried by the accused, from which recovery of opium was effected. As far as compliance of Section 42 of NDPS Act is concerned, it would be worth noticing that in the case in hand, there was no time with the police to waste, because the bus in which suspect was travelling reached just before completion of installing of naka.

From the report submitted by Chemical Examiner also, it becomes clear that the recovered contraband is 2.00 kg of opium, which undoubtedly is non-commercial quantity. Therefore, in view of submissions made by respective counsel for the parties, and the statements of the witnesses, which this Court has deeply examined, this Court do not find any substantial ground in the appeal and same is hereby dismissed by upholding the judgment of conviction dated 19.11.2004.

Further, learned State counsel has produced the custody

certificate dated 21.11.2022 in Court today, which is taken on record.

As per custody certificate, in actual, appellant has undergone total period of sentence as 01 year, 08 months & 25 days. Trial Court has already awarded sentence of RI for 03 years considering the recovered contraband to be of non-commercial quantity of opium.

In the said custody certificate, this Court notices that recovery of 2.00 kg of opium in the case in hand was effected from the appellant on 24.06.1995 i.e. about 27 years back, and thereafter, nothing adverse is recorded in regard to his character and antecedents, as there is no mention of registration of any other case against him including that of NDPS Act.

This Court realizes that there is nothing much to interfere, but from custody certificate, it seems that appellant might have changed his mind after being convicted by the trial Court, and has adopted the path of reformation for himself. This Court is of the view that nothing would be achieved if now again after the gap of about 27 years, appellant is sent back to jail for undergoing his remaining period of sentence.

Thus, the order of sentence dated 19.11.2004 is modified to the extent that the sentence imposed upon the appellant is reduced to the sentence already undergone by him. However, sentence *qua* fine would remain intact.

Accordingly, appeal is disposed of with aforesaid modification.

(SANJAY VASHISTH)
JUDGE

November 22, 2022

J.Ram

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No