

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

CRA-S-1047-SB-2006(O&M)

Date of decision:-14.9.2022

Jaswinder Kaur

...Appellant

Versus

State of Punjab

...Respondent

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

Present: Mr.Sanjeev Sharma, Legal Aid Counsel
for the appellant.

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

H.S. MADAAN, J.

1. Appellant/accused Jaswinder Kaur was tried by learned Special Judge, Fatehgarh Sahib in case FIR No.24 dated 3.2.2005 for an offence under Section 15 of Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as '**the Act**'), Police Station Gobindgarh and vide judgment dated 26.4.2006, she was convicted in that case for the offence for which she was booked and in terms of order passed on that very date, she was sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs.1,000/- and in default thereof to further undergo rigorous imprisonment for a 15 days.

2. Briefly stated, the facts of the case, as per the prosecution version are that on 3.2.2005, a police party headed by ASI Balbir Singh

from Police Station Mandi Gobindgarh (hereinafter referred to as the Investigating Officer/IO) was present at chowk of village Mughal Majra in connection with patrolling; there the IO received a secret information that a woman in the age group of 30-32 years was selling poppy husk by spreading it on a *palli* (sheet of jute strings) at a passage leading to village Badinpur near gas godown and wire factory and two bags were lying near her and if a raid was conducted, she could be caught red handed while selling the poppy husk; finding the information to be reliable, the IO asked MHC of Police Station Mandi Gobindgarh telephonically to send a lady police official; the IO sent ruqa to the Police Station Mandi Gobindgarh, where formal FIR was recorded by SI Gurmail Singh; the IO then organized a raiding party and proceeded to conduct a raid; one independent witness, namely, Sudesh Kumar, who had come across the police party was joined therewith; the police party proceeded towards the disclosed place; the accused was found to be there with poppy husk spread on the *palli* and two bags made of raxion were lying near her; she was apprehended; the IO informed the accused that he wanted to carry the search of the bags in her possession and that the accused had a statutory right to get the search conducted in presence of a gazetted officer or a Magistrate; however, the accused reposed faith in the IO; her consent statement in that regard was recorded executed by the accused and attested by the witnesses; the accused could not produce any licence or permit for possession of the poppy husk, which she had spread on the jute palli; the IO took out two samples of 100 grams each from the same and on being weighed, the remaining poppy husk came out to be 20 kgs.; that

contraband was then put in two bags; the samples and the bags containing residue poppy husk were converted into parcels duly sealed with the seal of IO having impressions 'BS'; specimen seal impression was prepared; then the entire case property was taken into police possession vide a recovery memo attested by HC Inderjit Singh and independent witness Sudesh Kumar.

3. The accused was accordingly arrested in this case as per rules. Her jamatalashi was got conducted from Lady Constable Surinder Kaur, which resulted in recovery of Rs.220/-. Those were taken into police possession vide a separate memo. The IO prepared rough site plan of the place of recovery and recorded statements of witnesses.

4. On return to the police station, the Investigating Officer produced the case property along with the accused and witnesses before Inspector/SHO Harbans Singh, who verified the facts and put his own seal having impressions 'HS' on the case property and sample seal impression chit. Then the case property was deposited by Inspector/SHO Harbans Singh with MHC Baljinder Singh.

5. The IO received the case property from the concerned MHC on the next day and produced the same before learned Illaqa Magistrate, Amlah and thereafter it was redeposited with MHC at Police Station Gobindgarh. On receipt of the report from the Chemical Examiner and conclusion of investigation, challan against the accused was prepared and filed in the Court by SHO of the Police Station Mandi Gobindgarh.

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 15 of the Act was disclosed against the accused, she was charge-sheeted accordingly, to which, she pleaded not guilty and claimed trial.

8. During the course of its evidence, the prosecution examined PW1 ASI Balbir Singh, PW2 HC Pritam Singh, PW3 Inspector Harbans Singh, PW4 HC Baldev Singh and PW5 HC Baljinder Singh.

The prosecution relied upon various documents and closed the prosecution evidence.

9. Statement of the accused was recorded under Section 313 Cr.P.C., in which all the incriminating circumstances in the prosecution evidence appearing against her were put to her but she denied the allegations contending that the officials of Excise Department were checking the bus at Octroi Post Mandi Gobindgarh; she along with one lady and two male persons were taken into custody and the bag was recovered from the bus; officials from Excise Department handed over all of them to the police of Police Station Mandi Gobindgarh; other two persons were let off and she was falsely implicated in this case.

10. During her defence evidence, the accused examined ASI Amrik Singh as DW1

11. After hearing arguments, learned trial Court convicted and sentenced the accused as mentioned above, which left her aggrieved and she had filed the present appeal, which was taken up on 29.5.2006, when it was admitted for regular hearing and on an application under Section 389 Cr.P.C. having been filed by the appellant/accused for suspension of

her sentence of imprisonment during the pendency of appeal, the same was allowed on the same day and remaining sentence of the appellant was suspended during the pendency of the appeal and she was ordered to be released on bail to the satisfaction of learned CJM, Fatehgarh Sahib on her depositing fine at the time of furnishing requisite bail bond.

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

13. I have heard learned Legal Aid Counsel for the appellant – accused - convict, learned AAG for the State of Punjab besides going through the record.

14. Here both the witnesses of recovery namely PW1 ASI Balbir Singh and PW4 HC Baldev Singh have fully supported the prosecution story with regard to accused having been found in conscious possession of contraband. 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 her falsely to secure her conviction. The account given by these PWs come out to be worthy of reliance.

15. From the remaining evidence adduced, it comes out that the case property remained in safe custody and sample parcel had reached the office of Chemical Examiner, Punjab, Chandigarh with seals intact and on analysis sample was found to be that of poppy heads.

16. Learned counsel for the appellant has contended that the appellant belongs to Phillaur, which is at a distance of about 100 kms.

from Mandi Gobindgarh, the place from where the accused/appellant was apprehended and recovery effected from her as per the prosecution story. It is highly unlikely that a woman would travel such a long distance and then sell the contraband openly, therefore, the prosecution story put forward is doubtful and should be rejected.

17. However, I do not find myself in agreement with learned counsel for the appellant on this point. Many persons prefer to commit crime at a place far away from their residential place since they give the impression of a good law abiding citizens in the area, where they reside or nearby and commit crime at a place at a distance from their place of residence where the people do not know them so as to avoid adverse publicity of involvement in criminal activities. Furthermore, many criminals have dare devil approach, who do not care much for the law enforcement agencies and indulge in crime openly, rather than doing it in a secretive manner.

18. One more argument put forward by learned counsel for the appellant was that all the witnesses of recovery examined during the trial happened to be police officials and no independent witness was joined with the police party at the time of search and seizure.

19. Again this contention does not carry any weightage. Here in this case the official witnesses are not shown to have any previous enmity with the accused prompted by which they might have involved the accused in this case wrongly and deposed against her falsely to secure her conviction. Although one independent witness was joined with the police party namely, Sudesh Kumar but his non examination does not result in

giving rise to any adverse effect against the prosecution. 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.

20. Learned counsel for the appellant has further contended that the witnesses of recovery had given different names of the independent witness. One of them telling his name as Krishan Kumar and other giving name as Sudesh Kumar. However, this is not such a point creating doubt in the mind about the truthfulness of the prosecution story. A few minor contradictions in their statements do not go to the root of matter since those are bound to occur due to difference in power of perception, observation and retention of events in various persons and so also due to lapse of memory due to passage of time.

21. One more argument put forward by learned counsel for the appellant was that lady Constable Surinder Kaur was not examined by the prosecution. Again that does not make any difference. Since the accused happened to be a lady, joining of the lady official with the police party was necessary more particularly when the jamatalashi of the accused was to be conducted. The non-examination of Lady Constable Surinder Kaur as a witness does not create any dent in the prosecution story. All these points were raised before the trial Court, which has dealt with the same in a very fine and proper manner rejecting all these contentions. I do not see any reason to disagree with the trial Court on those points.

22. The prosecution has proved its charge against the accused

conclusively and affirmatively. The accused could not render any reasonable or plausible explanation for her alleged false implication nor could she account for possession of the contraband without any licence or permit thereby showing that she was in conscious possession of the contraband.

23. As regards the sentence part, the accused was sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs.1,000/- and in default thereof to further undergo rigorous imprisonment for a 15 days. 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 not found to be on very high side and does not call for any reduction.

24. 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.

25. Appellant Jaswinder Kaur is stated to be on bail granted to her by this Court. Her bail is cancelled. Chief Judicial Magistrate,

Fatehgarh Sahib is directed to issue arrest warrants to get her arrested so as to make her undergo the remaining sentence.

26. As per the status report in the form of affidavit by DSP Circle, Amloh, District Fatehgarh Sahib, appellant Jaswinder Kaur is lodged in Central, Kapurthala undergoing sentence in a case FIR No.172 dated 14.11.2016, under Section 22 of NDPS Act, P.S. Goraya, District Jalandhar. Learned CJM, Fatehgarh Sahib on verification of this fact may act accordingly to ensure that the appellant undergoes remaining sentence awarded to her in this case.

14.9.2022
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : No / Yes

Whether reportable : No / Yes