

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

CRA-S-951-SB-2006 (O&M)

Date of pronouncement: 25.08.2022

Raj Kumar

...Appellant

Versus

State of Haryana

...Respondent

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

Present: Mr. Rajat Dogra, Advocate for the appellant.

Mr. Brijesh Sharma, Assistant Advocate General,
Haryana.

H.S. MADAAN, J.

1. This appeal is directed against judgment dated 04.05.2006, passed by Special Judge, Panipat, vide which on conclusion of trial against appellant/accused Raj Kumar son of Ramji Lal, in FIR No.396 dated 19.08.2005, for an offence under Section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the Act'), registered with Police Station City, Panipat on the allegations that on 19.08.2005, in the area of GT Road Bus Stand, Panipat he was found in conscious possession of 1 kg of opium; the accused was convicted for the offence for which he was booked and vide order of the even date, he was sentenced to undergo rigorous imprisonment for a period of 04 years and to pay a fine of Rs.40,000/-; in default of payment of fine, to further undergo RI for one year.

2. Briefly stated facts of the case, as per prosecution story are that on 19.08.2005, a police party from Police Station City Panipat headed by ASI Jai Narain [hereinafter referred to as the Investigating Officer (IO)] was present at Bus Stand Queue Shelter, GT Road, Panipat in connection with patrolling and crime detection and an independent witness namely Samim son of Niyaz Mohd. was joined with the police party; in the meanwhile, the accused alighted from bus coming from the side of Delhi; he was holding a plastic thela (bag) in his right hand; on seeing the police party, the accused felt nervous and took a turn and started walking at a fast pace; he was apprehended on the basis of suspicion; the IO enquired from him his name and other particulars, which he disclosed; the IO informed the accused that he suspected the accused to be carrying some contraband and wanted to carry out the necessary search; the IO served a notice Ex.PC under Section 50 of the Act upon the accused; the accused did not opt to get the search conducted in the presence of some Gazetted Officer or a Magistrate, and rather reposed faith in the IO; the IO accordingly searched the plastic bag being carried by the accused which was found to contain 1 kg of opium wrapped in a wax paper; the IO took out 02 samples of 50 gm each from the recovered opium and thereafter, the samples and bag containing residue opium were converted into parcels duly sealed with seal of IO having inscription 'JN'; the sample parcel and bulk parcel were taken into possession, vide recovery memo Ex.PD; specimen of seal impression was also prepared; ruqa was sent to the police station on the basis of which

FIR Ex.PF in question was recorded; rough site plan of the place of recovery was prepared; accused was accordingly arrested in this case as per rules, preparing necessary documents; statements of witnesses were recorded.

On return to the police station, the IO produced the accused along with case property and witnesses before Inspector Lachhman Singh, SHO, Police Station City, Panipat who verified the investigation and put his seal having impression 'LS' on all the parcels; under instructions of Inspector Lachhman Singh, the IO deposited the case property with MHC of the police station; necessary compliance of Section 57 of the Act was made by sending notice Ex.PH.

During the course of investigation, a sample parcel was sent to Forensic Science Laboratory, Haryana at Madhuban and as per report Ex.PB received there from, it was found to be that of opium; on completion of investigation and other formalities, challan against the accused was prepared and filed in the Court.

2. On presentation of the challan, 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 18 of the Act was framed against the accused, to which he pleaded not guilty and claimed trial.

3. During the course of prosecution evidence, prosecution examined 05 witnesses as detailed below:-

PW1 HC Dharam Pal, PW2 ASI Jai Narain, PW3 NHC Sewa

Ram, PW4 Inspector Lachhman Singh, PW5 EHC Chand Singh and thereafter, the prosecution evidence got concluded.

4. Statement of the accused was recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing in prosecution evidence against the accused were put to him but he denied the allegations contending that he was innocent and has been falsely implicated in this case. As a matter of fact, no recovery was effected from him.

5. During his defence evidence, the accused examined Samim son of Niyaz Mohammad as DW1, an independent witness joined with the police party, who rather supported the defence version, stating that no contraband was recovered from the accused in his presence. The accused thereafter closed his defence evidence.

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

7. Feeling aggrieved by the judgment of his conviction and order of sentence, the accused has filed the present appeal, notice of which was given to the State, which has put in appearance. The appeal was taken up on 19.05.2006 when it was Admitted for regular hearing and vide order dated 28.08.2006, the application under Section 389 Cr.P.C., filed by the appellant/accused was accepted and his remaining sentence was ordered to be suspended subject to his furnishing requisite bonds to the satisfaction of Chief Judicial Magistrate, Panipat.

Now the appeal has come up for final hearing.

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

9. In this case, to prove the recovery of contraband from conscious possession of the accused, the prosecution had examined PW2 ASI Jai Narain and PW-3 NHC Sewa Ram. Both the PWs supported the prosecution story on material aspects. Although, they were cross-examined at length on behalf of the accused but they could not be shattered on any material point, rather they deposed in a natural and convincing manner and account given by them inspire confidence. There is nothing on record to show that these PWs had any previous enmity with the accused prompted by which they might have involved the accused falsely or deposed against him to secure his conviction.

10. Inspector Lachhman Singh before whom the IO had produced the accused along with the case property and witnesses at Police Station City Panipat after effecting the recovery and who had put his own seal on all the three parcels, getting the case property deposited with MHC of the police station deposed in that regard and so the prosecution story stands corroborated.

Further the prosecution by examining remaining witnesses PW-1 HC Dharam Pal, PW-5 EHC Chand Singh and proving on record documents has successfully established that no tampering of seals had taken place with the case property during the period it remained deposited in the malkhana of the police station and during the span of time when sample parcel after being collected from MHC was taken to

FSL, Madhuban. Report from FSL Ex.PB goes to show that the sample parcel had reached there with seals intact and on analysis, the sample was found to be that of opium.

The investigation in this case has been conducted in a fair and impartial manner and does not come out to be tainted in any manner.

11. Although, learned counsel for the appellant have made submissions trying to find faults with the prosecution story but his such contentions are almost the same which had been put-forward before the trial Court and met with and disposed of in a proper and appropriate manner by the trial Court.

As regards the first contention that there was non-compliance of Section 50 of the Act, it needs to be mentioned here that Section 50 of the Act is applicable in case of personal search and not when some bag or other article being carried by the accused is to be searched. The trial Court has dealt with that aspect in detail referring to various judgments. Therefore, this argument is rejected.

12. With regard to another argument that the prosecution case hinges upon depositions of official witnesses only and the independent witness namely Samim was not examined by the prosecution rather he appeared as a witness for the accused denying that any recovery was effected in his presence, that gives a big jolt to the prosecution story and under the circumstances, it should not be believed and conviction and sentence of accused on the basis of statements of official witnesses should not be sustained.

Here again, I find little merit in this contention. As already observed, there is nothing on record to show that the official witnesses had any previous enmity with the accused, prompted by which they might have involved him in this case wrongly or deposed against him to secure his conviction. They have stood the test of cross-examination well. Therefore, their depositions are to be taken at par with the independent witnesses.

13. A Single Judge of this Court while dealing with such aspect in judgment **Krishan Kumar Vs. State of Punjab, 2016(2) RCR (Crl.) 707**, had observed that testimonies of the official witnesses carry the same evidentiary value as that of any other witness and their statements cannot be discarded simply on account of their official designation.

14. Furthermore a Division Bench of this Court in judgment **Sucha Singh Vs. State of Punjab**, 2015 (4) RCR (Crl.) 25, dealing with a similar situation in a case under NDPS Act when the independent witness joined the police party during search and recovery had appeared as a defence witness denying his having joined the police party or any recovery of contraband having taken place from the accused stating that his signatures were procured on blank papers when he had visited police station in drunkard condition, it was observed that it cannot be believed that numerous signatures on various papers having different writing material could be signed by a witness on blank papers. The recovery of contraband otherwise stood proved by consistent, reliable testimonies of IO and DSP who were present at the spot. Such independent witness who

had appeared as a defence witness was held to be unreliable witness whose testimony was rightly discarded by the trial Court.

Therefore, this contention of learned counsel for the appellant is also rejected.

15. Another argument put-forward by learned counsel for the appellant was with regard to certain variations between the statements of two official witnesses of recovery regarding time when accused was apprehended, the time when recovery was effected from him, the distance of place of recovery from Police Station City Panipat, the time when the police party had left the place of recovery etc. The trial Court has dealt with this contention in detail in para No.10 and 11 of the judgment and I do not see any reason to disagree with the trial Court on this point. These small contradictions and variations are natural and bound to occur on account of lapse of memory, due to passage of time and as a result of difference in power of observation and perception of various individuals, that rather goes to show that witnesses are truthful, unlike tutored witness who depose in a parrot like manner.

16. 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. The prosecution had successfully proved its charge against the accused beyond a shadow of reasonable doubt. The accused had failed to render any reasonable or plausible explanation for his alleged false implication in this case. He could not account for his possession of one kg of opium without any

license or permit. Therefore, he is to be taken in conscious possession of the contraband. Since the accused for a pecuniary benefit indulged in drug paddling putting lives and health of various persons of the area to a risk by providing easy supply of drugs to them, no leniency can be shown to him in the matter of sentence. His act and conduct shows that any leniency shown to him would be rather counterproductive and after indulging in grave crime of dealing in drugs, his plea of leniency for the reason of his poverty and not being a previous convict cannot be accepted. The order of sentence does not call for any interference.

The appeal is found to be without merit and same is hereby dismissed.

17. The appellant/accused who is on bail as per order passed by this Court, is directed to surrender before Chief Judicial Magistrate, Panipat within a week from today, failing which learned CJM, would issue warrants of arrest to secure his presence and send him to jail to undergo the remaining sentence. Necessary intimation be sent to the Court concerned for information and compliance.

25.08.2022
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(H.S. MADAAN)
JUDGE

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