

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

CRA-S-2373-SB-2006 (O&M)

Date of pronouncement: 21.09.2022

Karnail Singh

...Appellant

Versus

State of Punjab

...Respondent

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

Present: Mr. Rahul Vats, Advocate for the appellant.

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

H.S. MADAAN, J.

1. Appellant Karnail Singh son of Bagicha Singh, an accused in FIR No.76 dated 12.03.2005, for an offence under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the Act'), registered with Police Station City, Tarn Taran was tried by Judge, Special Court, Amritsar on the allegations that on 12.03.2005 in the area of turning of village Rataul, he was found in possession of 59 kg of poppy husk without any license or permit. The trial ended in conviction of the accused for an offence under Section 15 of the Act, vide judgment dated 16.09.2006 and in terms of the order passed on that very day, he was sentenced to undergo rigorous imprisonment for a period of 10 years and to pay a fine of Rs.1 lakh; 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 12.03.2005, a police party from Police Station City, Tarn Taran led by SI/SHO Naurang Singh [hereinafter referred to as the Investigating Officer/IO] was proceeding from village Behla to Village Daburji in connection with general checking; when the police party reached near turning of village Rataul, the accused was spotted coming from the opposite side, riding a scooter bearing No.PB-33-A-4929 carrying two gunny bags having contents on the scooter; on seeing the police party, he became nervous and tried to turn back abruptly; he was apprehended on the basis of suspicion and his name and other particulars were enquired about, which he disclosed; the IO told the accused that he suspected the accused to be carrying some narcotic substances in the gunny bags placed on his scooter and wanted to search the same and further the accused had a right to get the search conducted in the presence of some Gazetted Officer or a Magistrate; the accused opted to get search carried out in the presence of a Gazetted Officer; a memo in that regard was prepared as Ex.PF.

Thereafter, the IO sent a wireless message; in response thereto, Sh. Jatinder Singh, DSP, Sub Division Tarn Taran reached at the spot; in the meanwhile, two witnesses namely Gurdial Singh son of Sohan Singh R/o village Bughe and Natha Singh son of Surain Singh R/o Village Manochahal Kalan also came to the spot and they were joined with the police party; on reaching the spot, the DSP gave his introduction to the accused telling him that the accused had a right to get the search

carried out by him or by some other Gazetted Officer, however, the accused reposed confidence in the DSP; a consent memo in that respect was prepared as Ex.PD; thereafter on directions of the DSP, the IO conducted search of the two gunny bags placed on the scooter of the accused; those bags were found to contain poppy husk; the IO took out sample of 250 gm each from each of the gunny bags, converting those into parcels; on being weighed, the remaining poppy husk in one gunny bag came out to be 29 kg 750 gm and in the second bag 28 kg 750 gm; the gunny bag containing residue poppy husk were also converted into parcels; then the two sample parcels and two bulk parcels were sealed with the seal of IO having impression 'NS'; Sh. Jatinder Singh, DSP also affixed his seal having impression 'JS' on all those parcels; sample seal impressions were taken on a paper; thereafter, the case property in the form of two sample parcels, two bulk parcels and specimen seal impressions were taken into police possession, vide recovery memo Ex.PE; the scooter along with RC was also taken into custody, vide recovery memo Ex.PE/1; after use the IO handed over his seal to Sh. Natha Singh, independent witness whereas the seal after use was retained by DSP himself; HC Vinod Kumar had prepared video movie with regard to whole proceedings of the recovery; accused was accordingly arrested in this case; while arresting him, his personal search was conducted and Rs.20/- recovered were taken into police possession, vide memo Ex.PE/2 and he was furnished grounds of arrest, vide memo Ex.PE/3 respectively; requisite documents were prepared in that regard; the IO sent ruqa Ex.PG

to the police station on the basis of which formal FIR Ex.PG/1 was registered; the IO prepared rough site plan of the place of recovery as Ex.PH.

On return to the police station, the accused was lodged in the lockup, whereas, the case property was kept in double lockup.

On the next day, the IO produced the accused along with case property in the Court of SDJM, Tarn Taran, moving an application Ex.PI on which the learned SDJM, Tarn Taran passed the requisite order Ex.P1/1; thereafter, the case property was handed over to the IO, who kept the same in double lockup.

On 17.03.2005, the IO handed over two sample parcels and specimen seal impression duly sealed along with docket to Constable Jasbir Singh for the purpose of depositing those in the office of Chemical Examiner, Punjab, Chandigarh, who deposited such articles as per direction and on return handed over receipt to the IO; as per report Ex.PJ received from the office of Chemical Examiner, Punjab, Chandigarh, the samples were found to be those of poppy head; on completion of investigation and other formalities, challan against the accused was prepared and filed in the Court.

3. On receipt of the challan, the trial Court of Special Judge, Amritsar supplied copies of documents relied upon in the challan 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 15 of the Act was framed against the accused, to which he pleaded not guilty and

claimed trial.

4. During the course of prosecution evidence, prosecution examined the following witnesses:-

PW-1 Constable Jasbir Singh, the carrier of sample parcels to the office of Chemical Examiner, Punjab, Chandigarh, had furnished his affidavit Ex.PA to the effect that during the period, the sample remained in his possession, no tampering therewith had taken place.

PW-2 HC Vinod Kumar, Photographer, CIA Staff Tarn Taran deposed that on 12.03.2005 he was posted as such and on that day, on receipt of wireless message from SHO Naurang Singh, he reached at the spot and had prepared video movie of all the proceedings with regard to recovery of contraband from the possession of the accused Karnail Singh; that after preparing VCD of the proceedings, he produced the same before SHO/IO who prepared parcel of the VCD, sealing it with his seal having impression 'NS' and took the same into police possession, vide recovery memo Ex.PB, attested by him and ASI Balwinder Singh.

PW-3 Prem Kumar, Clerk, SDM Office, Nakodar had brought the record of registration of vehicles, stating that in terms of that record, scooter No.PB33-A-4929 stands in the name of Smt. Charan Kaur wife of Lahori Singh of Village Toti. He proved RC of the scooter as Ex.PC.

PW-4 Sh. Jatinder Singh, DSP, Sub Division, Tarn Taran under whose directions the gunny bags being carried by the accused on his scooter were searched which were found to contain poppy husk

testified in that regard in detail.

PW-5 SI Naurang Singh, a witness of recovery and Investigating Officer deposed regarding his role, proving several documents.

The prosecution relied upon various documents. Thereafter, its evidence was closed.

5. 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 had been falsely involved in this case. No recovery had been effected from him and a false recovery had been planted upon him.

6. During his defence evidence, accused examined HC Gurbachan Singh from PS City, Tarn Taran as DW1, who had brought the summoned record i.e. register No.19 and 21 of PS City Tarn Taran, stating that as per register No.19, on 12.03.2005, CFSL form was not deposited along with case property. He proved photocopy of entry as Ex.DW1/A. He further stated that as per register No.21, when the case property was sent for chemical examination, CFSL form was not sent along with the sample. He proved photocopy of entry as Ex.DW1/B.

With that, the defence evidence was closed.

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

8. Feeling aggrieved by the judgment of his conviction and

order of sentence, the appellant had preferred an appeal before this Court which was Admitted for regular hearing on 30.11.2006, and on an application having been filed under Section 389 Cr.P.C., the remaining sentence of the appellant was suspended during the pendency of the appeal on 30.05.2009. Now the appeal has come up for final arguments.

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

10. In this case, the witnesses of recovery namely PW-4 Sh. Jatinder Singh, DSP and PW-5 SI Naurang Singh fully supported the prosecution story with regard to the accused having been found in conscious possession of 59 kg of poppy husk on 12.03.2005 in the area of village Rataul without any permit or license. Both these PWs were subjected to lengthy cross-examination on behalf of the accused but they stuck to their guns and could not be shattered on any material point. Both of them deposed in a natural and convincing manner and the account given by them inspire confidence. No previous enmity between these PWs and the accused has been alleged or proved prompted by which they might have involved the accused in this case wrongly or deposed against him to secure his conviction. The entire incident had been got video graphed from HC Vinod Kumar, office photographer and VCD in that regard has been proved in evidence. That goes a long way in lending credence to the prosecution version and the allegations made by the accused in his statement under Section 313 Cr.P.C., of having been involved in this case wrongly and a false recovery having been planted

upon him fall flat.

From statement of PW-1 Constable Jasbir Singh, the carrier of sample parcels to the office of Chemical Examiner, Punjab, Chandigarh and statement of PW-5 SI Naurang Singh, it comes out that the case property was not tampered with at any stage and the sample parcels had reached the office of Chemical Examiner, Punjab, Chandigarh in an intact condition. Report there from Ex.PJ goes to show that the sample parcels were received there with seals intact and the seals tallied with the specimen seals impressions. As mentioned in the report itself, the parcels remained in safe custody of Assistant Chemical Examiner, Punjab, Chandigarh after their receipt till the time those were analyzed. After analysis, the opinion given was that the samples were of poppy heads. The prosecution had successfully proved its charge against the accused beyond a shadow of reasonable doubt.

11. Learned counsel for the appellant has attacked the impugned judgment on various grounds, which are discussed here under one by one.

12. The first ground was that only one sample had been drawn from each bag instead of two samples as required. However, learned counsel could not point out as to what prejudice has been caused to the appellant in the process. As discussed already, the sample parcel had reached the office of Chemical Examiner, Punjab, Chandigarh in an intact condition. It is not the case of the appellant that he wanted another sample to be sent for chemical examination but since no such second sample was available, he could not do so in the process he got prejudiced.

Therefore, this objection is without merit.

13. The second ground raised by learned counsel for the appellant was that recovery was effected on 12.03.2005, whereas, the samples had been sent to the office of Chemical Examiner, Punjab, Chandigarh on 17.03.2005 i.e. after a delay of 05 days, which cast a doubt in the mind as to whether the samples had reached the office of Chemical Examiner, Punjab, Chandigarh without tampering.

This contention is also without any force. As already discussed, the sample parcels had reached the office of Chemical Examiner, Punjab, Chandigarh in an intact condition and 05 days delay in sending the sample parcels does not merit much. The Apex Court in **Hardip Singh Versus State of Punjab, 2008 (4) RCR(Criminal)97** while dealing with a case relating to recovery of 7 kgs of opium when samples were sent to chemical examiners after 40 days of recovery, however, there was no evidence that samples were tampered with or any prejudice was caused to the accused, the delay was not held to be fatal to the case.

14. The next objection raised by learned counsel for the appellant was that PW-1 Constable Jasbir Singh had not narrated all the facts in his examination-in-chief and had furnished affidavit Ex.PA stating that the same be read as part of his examination in-chief. I find this objection without any head or tail. Constable Jasbir Singh being a formal witness could have validly tendered in evidence his affidavit which he did. He was subjected to cross-examination on behalf of the

accused. Though, in his cross-examination, he stated that there are some cuttings in his affidavit which have not been attested but after perusing the affidavit, I find that cuttings are not with regard to any material fact and learned JMIC, Amritsar had attested the affidavit that the contents had been sworn before him by the deponent.

The accused is to be taken as in conscious possession of the contraband in terms of Sections 35 and 54 of the Act, since he has failed to show otherwise and his culpable mental state for commission of the offence also can be safely presumed.

15. As regards the next objection that two independent witnesses namely Gurdial Singh and Natha Singh have not been examined by the prosecution in support of its case. In my considered view, this objection also does not carry any weightage. As has been discussed in detail above, two official witnesses of recovery did not have any motive to depose falsely against the accused and the account given by them has been found to be worthy of reliance. Non-examination of independent witnesses does not affect the merits of the case. Furthermore, independent corroboration is just a rule of caution and not requirement of any law. It is nowhere provided that in the absence of independent corroboration, the account given by the official witnesses is to be discarded.

16. A Single Judge of this Court 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.

17. As regards another objection put-forward by learned counsel for the appellant that Form No.29 was not prepared at the spot. It is to be kept in mind at best it could be termed as a procedural omission. Learned counsel for the appellant could not point out as to how the accused was put at loss for the said reason.

In judgment *Khet Singh Versus Union of India* by the Supreme Court in Appeal (Crl.) 31 of 2000, it was observed that law on the point is very clear that even if there is any sort of procedural illegality in conducting the search and seizure, the evidence collected thereby will not become inadmissible and the Court would consider all the circumstances and find out whether any serious prejudice had been caused to the accused. If the search and seizure was in complete defiance of the law and procedure and there was any possibility of the evidence collected likely to have been tampered with or interpolated during the course of such search or seizure, then, it could be said that the evidence is not liable to be admissible in evidence.

18. The impugned judgment of conviction passed by the trial Court is quite detailed, well reasoned, does not suffer from any illegality or infirmity. It is based upon proper appraisal of evidence and correct interpretation of law. There is no illegality or infirmity therewith, which might have called for interference by this Court while exercising appellate jurisdiction.

The sentence awarded to the appellant is the minimum

prescribed. Neither it can be reduced as per law nor the appellant deserves to be granted any such concession, keeping in view the substantial quantity of the contraband recovered from him. As such the impugned judgment of conviction and order of sentence are upheld.

The appeal is found to be without merit and is dismissed accordingly.

19. The appellant/accused is directed to surrender before Chief Judicial Magistrate, Amritsar 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.

21.09.2022
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(H.S. MADAAN)
JUDGE

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