

**208+594 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CRA-D-320-DB-2011 (O&M)
Date of Decision: January 30, 2023**

GURDEV SINGH

....Appellant(s)

VERSUS

STATE OF PUNJAB

....Respondent(s)

**CORAM: HON'BLE MR. JUSTICE G.S. SANDHAWALIA
HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN**

**Present: Mr. R.S. Sekhon , Advocate
for the appellant.**

Mr. Navneet Singh, Sr. DAG, Punjab. Civil

HARPREET KAUR JEEWAN, J.

1. By way of filing the present appeal, appellant-Gurdev Singh has assailed the findings of the trial Court whereby he has been convicted and sentenced vide judgment and order dated 01.02.2011 under Section 21 of the NDPS Act (hereinafter called "the Act") and Section 25 of the Arms Act by Special Judge, Ferozepur.

2.1 Prosecution story in brief is that on the intervening night of 2/3.07.2009 at about 11 PM, the appellant Gurdev Singh along with his co-accused Hardeep Singh @ Kala was travelling in Alto car bearing registration No.PB-30-D-6665, and was seen coming from the side of Khai Phame Ke and was signalled to stop by a Police party headed by Inspector Sarabjit Singh of CIA Staff Ferozepur. The appellant was sitting on the front seat whereas his co-accused was driving the car. After informing them of their rights under Section 50 of the Act, DSP Raghbir Singh was called at the spot as the appellant and his co-accused wanted to get the search conducted in the presence of a gazetted officer. The search of the car led to recovery of six

packets of heroin wrapped in a polythene from underneath the car seat of the appellant whereas another six packets of heroin wrapped in a polythene was recovered from underneath the seat of the co-accused Hardeep Singh. In addition, a 30 bore pistol was recovered from the appellant whereas 32 bore pistol was recovered from the co-accused Hardeep Singh @ Kala. Six live cartridges were also recovered from the appellant whereas 14 live cartridges were recovered from co-accused-Hardeep Singh. Two samples each weighing 10 grams were separated from each packet and these were numbered as 1 to 12 and 1(a) to 12(a) and these were converted into separate parcels. The remaining heroin weighing 980 grams in each packet was also converted into separate parcels. All the samples and the bulk parcels were sealed by the Investigating Officer with the seal bearing impression 'SS' and by the DSP with his seal bearing impression 'RS'. The entire case property i.e. car, bulk parcels and sample parcels were taken into possession by preparing a separate recovery memo. The pistol recovered from the appellant as well as from his co-accused Hardeep Singh @ Kala and the live cartridges recovered from the said pistols were also converted into separate parcels which were sealed and were taken into possession by preparing separate memos. The accused were informed of the grounds of arrest and memos to this effect were prepared. On return to the police station, the entire case property and the accused were produced before Inspector Sarabjit Singh, who also verified the facts of this case and affixed his seal on the parcels bearing impression 'SS' and took the entire case property in his possession by preparing a separate recovery memo.

2.2 Inspector Sarabjit Singh (PW-1) produced the accused and the case property before the Illaqa Magistrate and moved applications in compliance of the provisions of Section 52-A(4) of the Act and the Illaqa

Magistrate passed three separate orders on the said applications.

2.3 On 09.07.2009, SHO handed over the samples, sealed samples and CFSL form to Head Constable Gajpal Nath for depositing the same in the office of the Chemical Examiner, Amritsar. On 16.07.2009, Inspector Sarabjit Singh after removing the objections again handed over the samples to Head Constable Gajpal Nath, who deposited the same in the office of Chemical Examiner Kharar. As per the report of the Chemical Examiner, the contents of the sample were found to be that of heroin. After completion of the investigation, challan against the accused was presented in the Court.

2.4 After compliance of the Provisions of Section 207 Cr.P.C., the charge under Section 21 of the Act and under Section 25 of the Arms Act was framed against both the accused to which they pleaded not guilty and claimed trial.

2.5 In order to prove its case, prosecution examined PW-1 Inspector Sarabjit Singh Investigating Officer, PW-2 DSP Raghbir Singh, PW-3 SI Atma Ram, recovery witness, PW-4 HC Surinder Pal, PW-5 HC Gajpal Singh, PW-6 HC Kedar Singh, Inspector Sarabjit Singh, PW-8 Jagjit Singh, PW-9 Gagandeep Singha and the remaining evidence of the prosecution was closed by order of the Court dated 15.12.2010.

2.6 Accused persons when examined under Section 313 Cr.P.C. had denied the incriminating circumstances appearing against them and claimed innocence and pleaded that no incriminating evidence was recovered from them. However, they led no evidence in their defence.

2.7 After hearing the Public Prosecutor, learned defence counsel and perusal of the evidence on record, the trial Court convicted the appellant as well as Hardeep Singh under Section 21 of the Act and they were sentenced to undergo rigorous imprisonment for 12 years and to pay a fine of Rs.1.50 lacs, and to undergo further rigorous imprisonment of 3 years in case of default in

payment of fine. They were also convicted under Section 25 of the Arms Act and, however, both were sentenced to undergo RI of 03 years and to pay a fine of Rs.2000/- and further to undergo rigorous imprisonment of 06 months in default of payment of fine. Both the sentences were ordered to run concurrently.

3. The State has contested the present appeal upon notice.

4. Hardeep Singh, co-accused of the appellant filed separate CRA-D-291-DB-2001 during the pendency of the appeal. He was reported to have expired. Copy of the death certificate was furnished by the State and proceedings against Hardeep Singh @ Kala were abated as per separate order of the even date passed in the said appeal.

5. We have heard the learned counsel for the appellant and learned counsel for the State. At the onset of the arguments, the learned counsel for the appellant submitted that he does not raise any challenge to the findings of conviction and only prays for taking a lenient view in the order of sentence. It was submitted that the appellant is in custody since the registration of the FIR and as per the custody certificate, the appellant has already undergone a period of 11 years 08 months and 10 days. He has already suffered a lot and the ends of justice would meet if the appellant is sentenced to a period which he has already undergone.

6. We have considered the evidence on record and the reasons recorded by the trial Court while passing the judgment of conviction. The recovery of 12 kg of heroin and a pistol along with live cartridges has been proved to have been effected from the appellant along with his co-accused Hardeep Singh @ Kala by the testimony of PW-1 Inspector Sarabjit Singh who is the Investigating Officer and by the testimony of PW-3 SI Atma Singh. The statement of the Investigating Officer is further corroborated by PW-2 DSP

Raghbir Singh who was called at the spot and the recovery of 12 kg of heroin and the pistol along with the cartridges were effected in his presence. PW-1 Inspector Sarabjit Singh has stated about the identity of the appellant, the manner in which the recovery was effected from him. He has proved various documents i.e. non-consent memo of both the accused Ex.P1 & Ex.P2, consent memos of accused Ex.P-3 and Ex.-P-4, recovery memo Ex.P-6, personal search memos of the accused Ex.P-7, Ex.P-8, recovery memo Ex.P-11 personal search memo Ex.P-12 and Ex.P-13, recovery memos Ex.P-23, original RC of the car Ex.P-24, recovery memo Ex.P-25. Apart from this, the car (MO1) from which the recovery was effected was also produced. The bulk parcels (MO2 to MO13), sample parcels (MO14 to MO25), parcel containing pistol and cartridges (MO26 and MO27) were also produced from trial Court. PW3- SI Atma Singh has testified regarding the said recoveries having been effected in his presence and also proved various documents Ex.P-1 to Ex.P-8, Ex.P-11 to Ex.P-13 and Ex.P-15 to Ex.P-16.

7. Perusal of the paper-book indicates that initially when the appellant along with his co-accused Hardeep Singh was apprehended, he had stated that he wants to get his search done in the presence of a gazetted officer and a memo Ex.P-9 was prepared by the Investigating Officer (PW-1). As per the testimony of the PW-1, he called DSP Raghbir Singh (PW-2) at the spot and the appellant gave consent for his search to be conducted before DSP Rashbir Singh. The consent memo to this effect was prepared which has been proved on record as Ex.P-2. The testimony of Inspector Sarabjit Singh (PW-1), DSP Raghbir Singh (PW-2) and the aforesaid memos indicate that the compliance of provisions Section 50 of the Act was made before the search was conducted. Apart from the oral testimony of the said witnesses and the testimony of SI Atma Singh (PW-3), in whose presence the recovery was

effected, the memo Ex.P-7 proved the recovery of the contraband from the appellant as well as from his co-accused Hardeep Singh. The memo Ex.P-7 proved the recovery of the pistol 30 bore along with six live cartridges.

8. As per the provisions of Section 52A(4) of the Act, the order passed by the Magistrate is a primary evidence and there is nothing on record to contradict the said evidence. The inventory report prepared under Section 52A(4) of the Act Ex.P-38, the order passed by Sh. Vinod Kumar Goyal, Chief Judicial Magistrate, Ferozepur Ex.P-41 and Ex.P-42 proves that the SHO of the Police Station produced the case property before the Chief Judicial Magistrate on 03.07.2009 along with the inventory. The order passed by the Chief Judicial Magistrate further indicate that the case property was bearing seal with impression 'SS', 'RS' and 'SS' and the seals were found intact. Thereafter, vide order dated 03.07.2009 Ex.P-42, the case property was ordered to be deposited with the Judicial Malkhana.

9. The report of the chemical examiner (Ex.P-30) indicates that the contents of the sample were found to be that of heroin. So far as the recovery of the pistol is concerned the same was also found to be in working condition as per the report Ex.P-33 and further the cartridges were found to be live.

10. In view of ample evidence on record and the fact that the appellant was apprehended at the spot and immediately thereafter the recovery of the contraband as well as of the pistol and live cartridges was effected in the presence of a gazetted officer who was called at the spot as desired by the appellant, there is nothing on record to contradict the said evidence. As such the trial Court has rightly appreciated the evidence on record while recording conviction of the appellant-Gurdev Singh under Section 21 of the Act.

11. We have considered the submissions made by the learned

counsel for the appellant for taking a lenient view regarding the sentence. The appellant is in custody since the registration of the FIR. He remained in custody during the trial and even after that he remained in custody throughout. Total period undergone in custody is 11 years 08 months and 10 days. Considering the period he has already undergone, we are of the considered opinion that the ends of justice would meet if the order of sentence is modified by reducing the sentence of the appellant as 10 years instead of 12 years awarded under Section 21(c) of the Act and 03 years as awarded under Section 25 of the Arms Act. Both the sentences shall run concurrently. The default clause for payment of fine of Rs.1.5 lakhs is reduced from 03 years to 1 ½ year.

12. The appellant has already undergone the said period of 11 ½ years, as per his custody certificate dated 28.01.2023, filed today, which shows he has undergone actual period of 11 years 08 months and 10 days. The present appeal is accordingly dismissed with aforesaid modification in the order of sentence. Trial Court shall send modified conviction warrant to the jail and if the appellant is not required in any other case, he shall be released.

(G.S. SANDHAWALIA)
JUDGE

(HARPREET KAUR JEEWAN)
JUDGE

30.01.2023
sangeeta

Whether reasoned/speaking:
Whether reportable:

Yes/No
Yes/No