

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

368

CRA-S-2034-SB-2004 (O&M)

Date of Decision: 11.01.2023

Balvinder Singh

...Appellant

Versus

State of Haryana

... Respondent

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. Ashwani Verma, Advocate for the appellant.

Ms. Sheenu Sura, DAG, Haryana.

N.S.SHEKHAWAT, J.

The present appeal challenges the impugned judgment of conviction dated 08.10.2004 and order of sentence dated 11.10.2004 passed by the learned Additional Sessions Judge, Fatehabad, whereby, the present appellant was convicted under Section 15 (b) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter to be referred as '**the NDPS Act**') and sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs. 10,000/- alongwith default stipulation.

The case of the prosecution in brief is that on 24.04.2000, SI Jai Pal Singh was present alongwith certain police officials on a Government vehicle and Pehalwan Singh met him there and they

were talking to each other. In the meantime, Balwinder Singh accused, was seen coming from the side of Gaghar Nali and he was having one small sack of plastic on his right shoulder. On suspicion, the accused was arrested. The police had suspected that he was carrying some contraband and as a consequence, a notice under Section 50 of the NDPS Act was served upon the accused. He was apprised of his right that his search could be conducted in the presence of a Magistrate or a gazetted officer after calling him at the spot. However, the accused reposed confidence in the police party itself and after search, poppy straw was found in the bag. A sample of 200 grams was separated as sample and was converted into a sealed parcel and was duly sealed and the remaining quantity was found 9.800 kgs, which was put into same bag and was converted into a parcel and the seals were duly affixed on the same. After recovery and arrest, the police party produced the accused, witnesses and the case property before SHO Sandeep Singh alongwith his report under Section 57 of the NDPS Act. The SHO verified the facts from the accused as well as witnesses and had affixed his additional seal on the parcels and the case property was handed over to the MHC for depositing the same and to put the accused in the lockup.

The sample was sent to the office of chemical examiner for analysis. After necessary investigation, the final report under Section 173 Cr.P.C., was presented against the accused in the competent Court.

After due consideration of the material, the accused was charge-sheeted for the commission of offence punishable under Section 15 of the NDPS Act for keeping 10 kgs of poppy husk in his possession without any permit or licence, to which, he pleaded guilty and claimed trial.

During the course of trial, the prosecution examined six witnesses.

Prosecution examined HC Om Parkash MHC, who stated that report under Section 55/57 of the NDPS Act Ex.P1 was received by the DSP. He was working as a reader to the DSP Fatehabad at that time. HC Ram Kishan was examined as PW2 who tendered his affidavit Ex.P2 and his deposition was formal in nature. HC Ram Phal was examined as PW3 who tendered his evidence by way of affidavit Ex.P3. He received the sample parcel, sample seal and docket on 16.05.2000 and deposited the sample parcel and sample seal to the chemical examiner on 17.05.2000. The prosecution further examined HC Sher Singh as PW4, who was part of the police party on 24.04.2000 and had supported the case of the prosecution in totality. Inspector Jaipal Singh was examined as PW5, who was also part of the police party, which had arrested the accused/appellant. He also stated the facts relating to the search and seizure procedure and supported the case of the prosecution. SI/SHO Sandeep Singh was examined as PW6, who was posted as SHO Police Station Ratia on 24.04.2000. On that day, the accused, case property and the witnesses were produced before him. He verified the facts from the accused and

had affixed his seal 'SS' on all the sample parcels. Even the IO had submitted a report under Section 57 of the NDPS Act Ex.P1 to him.

After closure of the prosecution evidence, the entire incriminating material was put to the accused under Section 313 Cr.P.C., and the accused pleaded his false implication. He stated that he was Lamberdar of the village Lamba and Jai Pal Singh Inspector was annoyed with him as he wanted the information of smugglers of poppy husk and on his denial, he was apprehended from his house and a false case was planted on him.

No defence evidence was led by the accused.

I have heard learned counsel for the parties and perused the trial Court record with their able assistance.

Learned counsel for the appellant vehemently argued that the mandatory provisions of Section 50 of the NDPS Act have not been complied with in the instant case. The accused/appellant was not apprised of his right to get his search conducted in the presence of a gazetted officer or a Magistrate. Only a simple question was put to him as to whether he wanted to get his search conducted from the Magistrate or a gazetted officer or not. Thus, serious prejudice has been caused to the present appellant. The argument raised by the learned counsel for the appellant has been opposed by the learned State counsel on the ground that the provisions of Section 50 of the NDPS Act would not be applicable to the facts of the instant case. I have considered the rival submissions made by the learned counsel for the parties and find no substance in the argument raised by the

learned counsel for the appellant. From a perusal of the facts of the case, it is apparent that the recovery of 10 kgs of poppy husk was made from the small sack of plastic which was kept by the accused on his right shoulder. The right of the accused to be search in the presence of a gazetted officer or a Magistrate is available only when the accused is to be searched personally and not when the recovery is made from vehicle, conveyance, house and bags etc.

Still further, the learned counsel for the appellant vehemently argued that in the instant case, Pehalwan Singh, an independent witness was joined at the time of search and seizure, however, the prosecution failed to examine the said witness. However, I find no substance in the argument raised by the learned counsel for the appellant. The testimony of the official witnesses cannot be rejected merely because of their status. Even, no motive or enmity has been attributed qua the police officials to falsely involve the accused in a criminal case. Still further, it is apparent that Pehalwan Singh, who was an independent witness was not examined by the prosecution as he was won over by the accused. In the instant case, I have perused the testimonies of various official witnesses and their testimonies inspire confidence and the learned trial Court has correctly placed reliance on their testimonies. Still further, learned counsel for the appellant argued that there was delay in sending the samples to the FSL and the appellant was liable to be acquitted. I have considered the said submissions and the same is bereft of any merit. The prosecution examined PW2 HC Ram Kishan who tendered his

evidence as Ex.P2. He was posted as MHC in the concerned police station. He stated in his affidavit that on 24.04.2000, the case property alongwith the sample seals were deposited with him in the Malkhana and on 16.05.2000, he handed over the same to HC Ram Phal for depositing the same with the FSL Madhuban. So long as the parcels remained in his possession, there was no tampering of any kind with the parcels. Still further, HC Ram Phal was examined as PW3, who had deposited the case property with the FSL Madhuban and he also stated that till the parcels remained in his possession, there was no tampering with the parcels. Even, the FSL report was duly placed on record and the report shows that the poppy husk was recovered from the accused.

No other submission was raised by the learned counsel for the appellant.

In view of the above discussion, I find no merit in the present appeal and is, accordingly, dismissed.

The impugned judgment of conviction dated 08.10.2004 and order of sentence dated 11.10.2004 passed by the learned Additional Sessions Judge, Fatehabad, are affirmed and upheld.

However, this Court can not lose sight of the fact that the alleged recovery was effected from the present appellant on 24.04.2000 and as per the statement under Section 313 Cr.P.C., he was aged about 35 years on 12.05.2003. He is facing the agony of trial/appeal for the last about 23 years and as per the custody certificate produced by the learned State counsel, no other case was

registered/pending against the present appellant. Still further, the quantity of poppy husk recovered from the present appellant was non-commercial in nature. Further, he had undergone an actual sentence of 03 months and 22 days, out of total sentence of one year. Thus, ends of justice will be suitably met, if the sentence of imprisonment of the present appellant is reduced to the period already undergone by him. However, the sentence of fine of Rs. 10,000/- shall remain the same. He is directed to deposit the amount of fine within a period of 03 months from today, if not already paid. In case of default of payment of fine, he shall undergo rigorous imprisonment for three months as observed by the trial Court.

All pending applications, if any, are disposed of, accordingly.

The case property, if any, may be dealt with as per the rules after expiry of period of limitation for filing the appeal.

Records of the Court below be sent back.

11.01.2023
amit rana

(N.S.SHEKHAWAT)
JUDGE

Whether reasoned/speaking : Yes/No
Whether reportable : Yes/No