

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

CRA-S-2388-SB-2004  
Reserved on 18.12.2023  
Date of decision: 22.12.2023

Kirpal Singh

...Appellant

Versus

State of Punjab

...Respondent

**CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH**

Argued by: Mr. M.K. Sood, Advocate for the appellant.

Mr. Vinay Kumar Gupta, AAG, Punjab.

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**KARAMJIT SINGH, J. (ORAL)**

1. The above-noted appeal has been directed against judgment of conviction and order of sentence dated 08.11.2004 whereby the appellant was convicted and sentenced to undergo rigorous imprisonment for a period 10 years and to pay fine of Rs.1 lac and in default of payment of fine to further undergo rigorous imprisonment for a period of 2 years under Section 15 of NDPS Act by Judge Special Court, Patiala.

2. The brief facts of the case of prosecution are that on 07.06.2003 police party headed by ASI Harmanpreet Singh was on patrolling duty and secret information was received by the said police official to the effect that appellant Kirpal Singh was indulging in drug trafficking and at that time he was bringing poppy husk in a Esteem Car No. DL-1830 of white colour. On the basis of the said secret information ruqa Ex.P-K was dispatched and resultantly, FIR Ex.PK/1 was registered. Then raid was conducted in the

area near Pakhar brick kiln situated on Talwandi Malik-Kahangarh Road. On the way, independent witness Rattan Khan was associated in the police party. On reaching near the spot appellant was found sitting on certain gunny bags. On seeing the police officials appellant fled away from the spot, while leaving behind four gunny bags. He was identified as Kirpal Singh by members of the police party, but he managed to escape from the spot. On checking of the above said four bags they were found to be containing poppy husk. Two samples of 250 grams each were drawn from each of the four bags. The remaining bulk in each bag was found to be 29.5 kg. Eight samples and four bags containing bulk were converted into sealed parcels which were sealed by ASI Harmanpreet Singh with his seal having impression HS. Separate sample seal impression Ex.P-1 was also prepared. After use, the investigating officer handed over the seal to independent witness Rattan Khan at the spot. The entire case property was taken into possession by the police vide memo Ex.P-A. On completion of investigation at the spot, the police team along with the entire case property returned to police station where SHO/Inspector Jassa Singh inspected the case property and after verifying the facts of the case, appended his seal bearing impression JS on the entire case property including the slip bearing sample seal impression of the investigating officer. The case property was deposited with the MHC of the police station. On the next day i.e. 08.06.2003, the case property was produced before the Duty Magistrate along with police request Ex.P-H, on which the Duty Magistrate passed appropriate order Ex.P-H/1 for deposit of the case property and on return to police station the entire case property was deposited with the MHC. Later on, one sample parcel relating

to each of the four bags were sent for their analysis to the office of Chemical Examiner and on analysis, report of Chemical Examiner Ex.P-J was received. In the meantime, appellant was arrested by the police on 25.08.2003. On completion of investigation, the challan was presented against the appellant.

3. The trial Court framed charge under Section 15 of NDPS Act, to which appellant pleaded not guilty.

4. In order to prove its case prosecution examined PW-6 ASI Harmanpreet Singh who being investigating officer reiterated the prosecution version in his examination in chief and proved recovery memo Ex.P-A, sample seal impression slip Ex.P-1, police request Ex.P-H, order passed by Duty Magistrate Ex.P-H/1, ruqa Ex.P-K, FIR Ex.P-K/1. PW-1 HC Amrik Singh being member of the police party corroborated the statement of PW-6 and further stated that the person who managed to fled away was Kirpal Singh, who was already known to him. PW-2 ASI Piara Lal deposed that he moved police request Ex.P-C, on 22.08.2003 to get arrest warrants of appellant. That on 25.08.2003 appellant was produced before him by Gulab Singh Ex. Sarpanch and immediately thereafter, appellant was arrested vide memo Ex.P-B/1 and information to that effect was given to his family members vide Ex.P-B/2. PW-5 Inspector Jassa Singh deposed that on 07.06.2003 he was SHO Police Station Samana and on that day ASI Harmanpreet Singh produced case property relating to this case bearing seal impression HS along with independent witness Rattan Khan and sample seal impression slip Ex.P-1. The case property was found to be intact and then, he affixed his seal bearing impression JS on the entire case property

including sample seal slip Ex.P-1. Then on his direction, the case property was deposited with the MHC by the investigating officer. That on 08.06.2003, the case property along with police request Ex.P-H was handed over to the investigating officer, who produced the same before Illaqa Magistrate on which the Illaqa Magistrate passed order Ex.P-H/1 and then on return to police station, the entire case property was deposited with the MHC. He also proved report of Chemical Examiner Ex.P-J and second samples relating to each bag as Ex.P-2 to Ex.P-5 and four bags containing remaining bulk as Ex.P-6 to Ex.P-9. PW-3 MHC Harinder Singh who at the relevant time was working as MHC in the concerned police station tendered his affidavit Ex.P-F. PW-4 Constable Lakhbir Singh who took sealed samples to the office Chemical Examiner tendered his affidavit Ex.P-G. The Additional PP gave up C-II Gurdev Singh being unnecessary witness, Gulab Singh and Rattan Khan independent witnesses as having been won over by the appellant.

5. The appellant was examined under Section 313 of Cr.P.C. The entire incriminating evidence was put to him but he denied the same and pleaded innocence and false implication. The appellant examined DW-1 Prem Chand in his defence who stated that on 25.08.2003 police took away appellant from his house situated in village Shermajra Tehsil and District Patiala.

6. After hearing the counsel for the appellant and the State counsel, the learned trial Court convicted and sentenced to imprisonment, the appellant as has been detailed in the first paragraph of this judgment.

7. The appellant, being aggrieved, has filed the present appeal

against the judgment and order dated 08.11.2004 passed by the learned trial Court.

8. The counsel for the appellant has at the outset contended that as per prosecution version, the person who was found sitting on the gunny bags, managed to escape. That it was dark at that time and the prosecution has failed to establish the identity of the appellant who was later on arrested on 25.08.2003 by the police. It has been further argued that there is no independent corroboration to the testimony of official witnesses and further the seal after use was handed over to alleged independent witness who was not examined by the prosecution. It has been further contended that in the present case link evidence is missing as no inventory was prepared by the investigating officer as per the mandate of Section 52-A of NDPS Act. It has been further argued that there was also delay in sending of the samples which further weakens the prosecution case. In support of his contentions, the counsel for the appellant has placed reliance on the judgment of this Court in ***Tara Ram @ Tara Vs. State of Punjab 2013 (2) RCR (Criminal) 734.***

9. The State counsel while supporting the impugned judgment and order passed by the trial Court has argued that appellant who fled away from the spot, on seeing the police officials, was already known to PW-1 HC Amrik Singh and as such the identity of the appellant stands fully proved. The State counsel has further contended that four bags containing poppy husk were found from the spot, out of which two samples each were separated while the remaining bulk was found to be 29.5 kg in each of the four bags and the said samples and bags containing remaining bulk were

sealed by PW-6 with his seal HS and separate sample seal impression Ex.P-1 was prepared and the entire case property was taken into possession vide memo Ex.P-A. That on return to police station, the entire case property was produced before PW-5 Inspector/SHO Jassa Singh who after verifying the facts of the case appended his seal bearing impression JS on the entire case property including Ex.P-1. The State counsel has further contended that on the next day the entire case property was produced before Duty Magistrate who passed order Ex.P-H/1. That it is also evident that one sealed parcel from each of the four bags was sent for examination and the report of Chemical Examiner is Ex.P-J as per which all the four gunny bags were containing poppy husk. The State counsel has further argued that the case property was also produced and proved in the Court by PW-5. That in order to prove the link evidence prosecution also examined PW-3 and PW-4. That PW-2 deposed about the arrest of the appellant which was effected on 25.08.2003. It was further argued that no ground is made out to discard impeccable and consistent statements of the prosecution witnesses. It was further contended that the prosecution case was fully established during the trial against the appellant and the trial Court rightly convicted and sentenced the appellant.

10. I have considered the submissions made by counsel for the appellant and the State counsel and also gone through the record of the trial Court.

11. As per the prosecution version, the appellant managed to fled away from the spot while leaving behind four gunny bags. It is the plea of the prosecution that the appellant was already known to PW-1 HC Amrik

Singh who while appearing in the witness box simply stated that Kirpal Singh was already known to us. In his testimony PW-1 failed to clarify and explain as to how appellant Kirpal Singh was earlier known to him. In the present case no test identification parade was conducted to establish the identity of the appellant. Further from the perusal of the recovery memo Ex.P-A coupled with the admissions made by PW-1 and PW-6, it appears that it was dark, at the time when the appellant managed to slip away. Prosecution has failed to explain as to how PW-1 or any other member of the police party was able to identify the person who fled away from the spot, on seeing the police officials as there was dark at that time. Further, there is nothing on the record to show that any attempt was made by the police officials to chase the appellant in order to apprehend him. Further it is also not clear as to who made any such effort to catch the appellant. Furthermore, as per testimony of PW-2, the vehicle used by the appellant to escape from the spot was not recovered. However, no other prosecution witness had stated before the trial Court that the appellant escaped in a car.

12           It cannot be laid as general rule that every witness must be examined, but witness whose evidence is material to unfold the case of prosecution must be examined. From the evidence led by the prosecution it appears that the recovery of contraband was effected in presence of independent witness Rattan Khan and after use the investigating officer handed over his seal to the said independent witness. However, the said independent witness was not examined during trial and was given up being won over by the accused. In the given circumstances, I am of the view that the said independent witness should have been examined to elucidate the

truth and to clarify as to when he returned the seal to the investigating officer. This aspect is also significant, in light of the fact that no inventory was prepared by the investigating officer as per the provisions of Section 52-A of NDPS Act. In this regard, reference be made to police request Ex.P-H wherein the Duty Magistrate passed order dated 08.06.2003 Ex.P-H/1 which is as follows:-

*Present SI Jassa Singh for the State.*

*Accused in custody.*

*Prosecution has produced the case property and sample. Seals were found intact. Accused is stated to have absconded. Case property is ordered to be kept in safe custody. Paper be sent to the concerned Court.*

As per the law laid down by Hon'ble Supreme Court in ***Union of India Vs. Mohan Lal and another 2016 (1) RCR (Criminal) 858*** the process of drawing of samples has to be in presence and under the supervision of the Magistrate and the entire exercise has to be certified by him to be correct. However, from the perusal of the aforesaid order dated 08.06.2003 passed by the Duty Magistrate, it is apparent that no samples were separated in presence of the Magistrate and even the Magistrate did not append his seal on the case property and thus, sampling was not done as per the statutory requirements and mandate of law as cited above.

13. From the perusal of the testimony of PW-3 and PW-5 coupled with report of Chemical Examiner Ex.P-J, it is evident that sealed sample parcels were sent to the office of Chemical Examiner on 16.06.2003. So there was delay in sending the samples for their analysis which has not been properly explained by the prosecution. As per instructions issued by

Narcotic Control Bureau vide standing order No.1 dated 15.03.1988, such samples are required to be sent to Chemical Examiner within 72 hours of their seizure. This Court in *Malkit Singh @ Kala Vs. State of Punjab 2009 (1) RCR (Criminal) 353* while placing reliance upon on the judgment of the Hon'ble Supreme Court in *State of Rajasthan Vs. Gurmail Singh 2005 (2) RCR (Criminal) 58* held that the delay of 5 days in sending the sample to the office of Chemical Examiner remained unexplained and as such the possibility of tampering with the same, until the same reached the laboratory could not be ruled out.

14. It is clear from the evidence available on the record that there are certain other material contradictions/discrepancies in the statements of the prosecution witnesses, which further raises a serious suspicion with regard to prosecution story. In this regard, reference is made to para No.3 of the affidavit Ex.P-F of PW-3 HC Harminder Singh wherein he stated that on 08.06.2003 he handed over eight sealed sample parcels and four sealed gunny bags containing bulk to ASI Harmanpreet Singh for their production before the Magistrate concerned. However, in the said affidavit Ex.P-F, there is no mention that along with the aforesaid four sealed samples and four sealed bags, he also handed over sample seal impression slip Ex.P-1 to the investigating officer, at that time to produce it before the Magistrate concerned. Further as per PW-5 SHO/Inspector Jassa Singh, he deputed PW-6 ASI Harmanpreet Singh to produce case property before the Magistrate concerned on 08.06.2003. Even PW-6 also stated so while appearing in the witness box. However, from the perusal of order Ex.P-H/1 passed by the Duty Magistrate concerned, it appears that it was PW-5 SHO/Inspector Jassa

Singh who produced the case property before him. Furthermore, PW-1 stated that Kirpal Singh escaped from the spot and even PW-6 deposed that Kirpal Singh ran away from there. Both theses PWs nowhere stated that accused managed to escape in a car. However, PW-2 stated that the vehicle in which the accused fled away from the spot was not recovered. It being so, the prosecution has failed to clarify as to whether the appellant managed to escape by running away or sped away from the spot in his car.

15. It is settled law that testimony of official witnesses cannot be rejected on the ground of non corroboration by independent witness, as has been held by Hon'ble Supreme Court in ***Surender Kumar Vs. State of Punjab (2020) 2 SCC 563***. However, in the instant case non examination of independent witness Rattan Khan, also throws serious doubt on the veracity of prosecution case, as has already been discussed in para no.12 of this judgment.

16. As per prosecution version, appellant managed to escape from the spot of recovery in presence of five police officials which also included PW-6 ASI Harmanpreet Singh, which seems to be improbable, thus creating further doubt in the prosecution story. Police also failed to make any investigation as to how four bags each containing 30 kg of poppy husk were transported to place of incident. Admittedly, the appellant was not apprehended from the place of recovery, which was an open space and thus, prosecution is unable to prove that the said contraband was recovered from conscious possession of the appellant. Reference in this regard may be made to judgment of the Hon'ble Supreme Court in ***State of Punjab Vs. Balkar Singh 2004 (3) SCC (Criminal) 838*** wherein the acquittal of accused was

upheld on the ground that there was no evidence to prove that the accused were in conscious possession of 100 bags of poppy husk each weighing 40 kg, recovered by the police and mere failure to give any satisfactory explanation by the accused for being present on that place itself does not prove that they were in possession of these articles.

17. It is well established that as the sentence provided under the NDPS Act is very severe, the prosecution is under duty to prove its case beyond shadow of reasonable doubt against the appellant.

18. Keeping in view the totality of facts and circumstances, as are discussed above, this Court is of the view that the prosecution has failed to prove its case beyond doubt against the appellant.

19. Consequently, the judgment and order dated 08.11.2004 passed by Judge, Special Court, Patiala are hereby set aside. The appellant is acquitted of all the charges, while giving him a benefit of doubt. The appellant was already released on bail during the pendency of this appeal. His bail bonds are discharged.

**22.12.2023**

*Yogesh*

**(KARAMJIT SINGH)  
JUDGE**

**Whether speaking/reasoned:-  
Whether reportable:-**

**Yes/No  
Yes/No**