

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

I. CRA-D-188-DB-2018 (O&M)
Date of decision: 11.12.2023

Happy Singh Appellant

Versus

State of Punjab Respondent

II. CRA-D-207-2019 (O&M)

Sukhjit Singh Appellant

Versus

State of Punjab Respondent

**CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL
HON'BLE MR. JUSTICE GURBIR SINGH**

Present: Mr. D.N. Ganeriwala, Advocate and
Mr. Kanisth Ganeriwala, Advocate,
for the appellant.

Mr. Amit Rana, Senior DAG, Punjab.

GURBIR SINGH, J.

1. This order shall dispose of two appeals, one filed by Happy Singh, **CRA-D-188-DB-2018** and other filed by Sukhjit Singh, **CRA-D-207 of 2019**, as both appeals have arisen from the same case i.e. FIR No.132, dated 07.11.2012 registered under Section 22 of Narcotic Drugs and Psychotropic Substance Act, 1985 (for short, NDPS Act) at Police Station Raman, District Bathinda.

2. Both the appellants, namely, Happy Singh and Sukhjit Singh, have filed the respective appeals against judgment of conviction dated 23.01.2018 vide which they were convicted under Section 22 of NDPS Act by learned Judge, Special Court, Bathinda and vide separate order of sentence dated 25.01.2018, they were sentenced to undergo rigorous imprisonment for a period of 12 years and to pay fine of Rs.1,20,000/- each and in default of payment of fine, to further undergo imprisonment for one year.

3. In brief, on 07.11.2012, ASI Balbir Singh alongwith HC Daljit Singh and other police officials, in a private vehicle, was present at Bagha Shekho Chowk, in connection with checking of suspected persons. At that time, one motorcycle bearing registration No.PB-10CT-9142, black colour, was noticed coming from the side of Village Shekhu. Two youth were riding the motorcycle. On seeing the police party, they tried to turn back. On suspicion, they were apprehended by ASI Balbir Singh, Investigation Officer, with the help of other police officials. On enquiry, the person, who was driving the motorcycle, disclosed his name as Happy Singh and the pillion rider disclosed his name as Sukhjit Singh. The pillion rider was carrying one transparent polythene bag in his hand and on checking, 10 vials of Rexcof and 20 strips of injections containing five each, total 100 injections, 15 strips of Capsule Spasmo Proxyvon containing 8 capsules each, total 120 capsules, were recovered. The IO separated one vial of Rexcof containing 100 ml, one strip of injections containing five injections and one strip of capsule spasmo proxyvon containing 8 capsules as sample and these were converted into three separate parcels and remaining vials,

injections and capsules were also converted into parcels. All the parcels were sealed by the IO with his seal bearing impression “BS” and sample seal Chit Ex.P1 was prepared separately. RC and affidavit were also recovered from the motorcycle. All the case property alongwith RC, affidavit and motorcycle were taken into police possession vide memo Ex.P-2. Since the accused did not produce any permit or licence regarding the recovered drugs, ruqa Ex.P-3 was sent to the police for registration of the case and accordingly, FIR Ex.P4 was registered by ASI Jagdev Singh. Personal search memo Ex.P5 was prepared. Accused were arrested vide arrest memo Ex.P6. Rough site plan Ex.P7 was prepared. Statements of witnesses were recorded. On return to the police station, the IO produced the case property along with the accused before the officiating SHO Darshan Singh, who, after verifying the facts, put his seal on the case property bearing impression “DS” and the same was taken into his possession and thereafter, deposited the same in malkhana. The accused were put up in the lock up. On the next day, case property along with the accused and the inventory report Ex.P9 and the application to dispose of the case property Ex.P11 were produced before the Illaqa Magistrate and the court passed orders Exs.P12, P13 and P14. On return to the police station, case property was deposited with NDPS godown except sample parcel, form No.29 and sample seal chit and motorcycle was deposited with MHC. On 15.11.2012, the IO send the sample parcels through HC Iqbal Singh for depositing in the FSL, SAS Nagar, Mohali.

4. After completion of investigation, challan against the accused was presented in the Court. Finding a prima facie case under Section 22 of the NDPS Act, the accused were charge-sheeted, to which, they pleaded not

guilty and claimed trial.

5. In support of the case, the prosecution examined PW1-ASI Balbir Singh, Investigating Officer; PW2-HC Iqbal Singh, sample carrier, PW3-Jiwan Parkash, Advocate-cum-Notary Public; PW4-ASI Daljit Singh, recovery witness; PW5 Balbir Singh; PW6-Paramjit Kaur, Clerk, DTO Office, Ludhiana. Thereafter, the learned Additional Public Prosecutor for the State tendered into evidence FSL report Ex.P16 and closed the prosecution evidence.

6. Statements of the accused under Section 313 Cr.P.C. were recorded. They pleaded false implication and innocence. In defence, the accused examined Gurwinder Singh as DW1 and C. Premjit Singh as DW2- and closed the evidence.

7. Learned counsel for the appellants submits that recovery from the spot, as per recovery memo, does not match with the contraband received by FSL. It is the specific case of the prosecution that the recovered contraband including samples were produced before the SHO Darshan Singh, who put his seal on the parcels as well as sample chit bearing impression “DS”, but parcels which were sent to FSL were having only one seal of “BS” and having some other property in the said parcels. He further submits that there is delay in sending the samples to the Chemical Examiner.

8. Learned State counsel has submitted that it is a case of chance recovery. The vials of Rexcof, injections and capsules were visible and the same were taken into possession. The case property was produced before the learned Magistrate who attested inventory and samples were duly analyzed by the FSL. Well reasoned judgment has been passed by the trial Court and

the appellants deserve no concession.

9. We have heard the submissions of learned counsel for the appellants, learned State counsel and have gone through the case file.

10. It is the specific case of the prosecution, as mentioned in the recovery memo Ex.P2, that 10 vials of Rexcof, each vial 100 ml, 20 strips of injections Buprenorphine, each strip containing 5 injections, total 100 injections and 15 strips Spasmo Proxyvon capsules, each strip containing 8 capsules, total 120 capsules from it. On asking, the accused could not produce any licence or permit for keeping in his possession intoxicant capsules, injections and vials. Whereon, after taking out one vial of Rexcof as sample separately from recovered vials, converted it into parcel. Then after taking out one strip containing total 5 injections as sample separately from recovered injections, converted it into parcel and then after taking out one strip containing total 8 capsules as sample separately, converted in into parcel and after putting remaining 9 vials of Rexcof, 19 strips of intoxicant injections Buprenorphine, total 95 injections and 14 strips of intoxicant capsules Spasmo Proxyvon, total 112 capsules in the same transparent envelope, converted it into parcel and then the IO sealed all the above mentioned four parcels with his seal bearing impression "BS". It is the case of the prosecution that SHO Darshan Singh put his seal bearing impression "DS" on the case property and sample parcels and ASI Balbir Singh, Investigating Officer, also made the statement to that effect. As per FSL report Ex.P.16, in the column 'Articles Received', it is mentioned as under:-

"Three parcels marked 1 to 3 in this laboratory each sealed with one seal of 'BS' alleged to contain intoxicating material.

Seals on the parcels were found intact and tallied with the specimen seal impression.

On opening the parcels were found to contain the following:-

Parcel No.1- Eight capsules of blue colour in strip labelled as Parvon.

Average weight 635 mg/cap.

Parcel No.2- Five glass injection ampoules each labelled as Lupigesic and each containing 2 ml of colourless liquid material.

Parcel No.3- One plastic bottle labelled as Rexcof and containing 100 ml of orange colour liquid material.”

Since there was only one seal “BS” and it is not the case of the prosecution that capsules Parvon and injections Lupigestic were recovered but Spasmo Proxyvon capsules and injections Buprenorphine were recovered, so prosecution has failed to prove beyond doubt that what was recovered was actually sent to the Forensic Laboratory Science for the purpose of analysis. Thus, the recovery effected in this case has become suspicious.

11. The court below failed to take note of the fact that the property which was analysed is not the same which was recovered. Since FSL report is not anyway connected with the recovered intoxicating material, so the prosecution failed to prove the charge against the appellants beyond shadow of reasonable doubt. The benefit of doubt must go to the appellants. The impugned judgment is not sustainable in the eyes of law. Both the appeals

are allowed and the accused are acquitted and ordered to be released in this case forthwith. Case property be disposed off as per rules after the expiry of period of limitation for challenging this judgment in higher court.

12. Pending application, if any, shall also stand disposed of.

(GURVINDER SINGH GILL)
JUDGE

(GURBIR SINGH)
JUDGE

December 11, 2023

sanjeev

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