

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

447

**CRA-S-290-SB-2005 (O&M)
Date of Decision: 10.03.2023**

Joginder Singh

...Appellant

Versus

State of Haryana

... Respondent

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

Present : Mr. Munish Kamboj, Advocate
for the appellant.

Ms. Sheenu Sura, DAG, Haryana.

N.S.SHEKHAWAT, J.

By filing the present appeal, the appellant has assailed the impugned judgment of conviction dated 19.01.2005 and order of sentence dated 21.01.2005 passed by the learned Additional Sessions Judge, Fatehabad, whereby, he was convicted for the commission of offence under Section 15 (b) of the Narcotic Drugs & Psychotropic Substances Act, 1985 (hereinafter to be referred as '**the NDPS Act**') and sentenced to undergo rigorous imprisonment for a period of three years and to pay a fine of Rs. 10,000/- alongwith default stipulation.

The story of the prosecution, in brief, is that on 12.10.2000 SI Virender Singh was present in the area of village Padalgarh, alongwith other police officials and in the meantime, Sahab Singh resident of Mehmara met them and they started the conversation. In the meantime, the accused was seen coming on a scooter from the side of village Mehmara and was having a gunny bag on the rear seat of the scooter. On noticing the police party, he turned back the scooter and in the process, the scooter stopped on its own. The accused was apprehended with the help of the police officials. Since the police party suspected some contraband in his bag, ASI Virender Singh served a notice under Section 50 of the NDPS Act upon the accused to the effect that the police party suspected some

contraband and, in case, he wished, he could get the search conducted in the presence of a gazetted officer or a Magistrate. The contents of the notice were read over and explained to the accused, who had put his thumb impression in the presence of Balwant Singh and Sahab Singh. The accused reposed full faith in the police party and had put his thumb impression on the memo in this regard.

After this, ASI Virender Singh conducted the search of the gunny bag and it was found containing crushed poppy straw. Sample of 100 gms of poppy husk was separated from the said bag and the remaining poppy husk on weighing was found to be 40.900 kgs. The sample as well as the residue quantity were converted into sealed parcel and were sealed with the seal impression of "VS". The case property was taken into possession by the police vide separate memo, which was duly attested by HC Balwant Singh and Sahab Singh. A *rukka* was sent to the police station and a formal FIR was registered in this regard. The initial investigation was conducted by the police team at the spot.

After returning to the police station, the Investigating Officer produced the witnesses, accused and the case property before Jai Pal, SI/SHO, who also verified the facts from the accused and the witnesses and had affixed his seal on sample parcels as well as the remaining quantity of poppy straw. The Investigating Officer also submitted separate reports under Section 55/57 of the NDPS Act in this regard, which was also endorsed by the SHO. As per the directions of the SHO, the IO handed over the case property and the samples to the MHC and the accused was formally arrested. The

sample was sent to the office of chemical examiner for analysis and as per the report received from the FSL Madhuban, the sample was identified as poppy straw (*choora post*). After completion of the necessary investigation, the final report under Section 173 Cr.P.C. was presented in the Court. Finding a *prima-facie* case, vide order dated 12.03.2001, the learned trial Court ordered framing of charge under Section 15 of the NDPS Act against the present appellant/accused for keeping in his possession 40 kgs of poppy straw without permit or licence, to which, the accused pleaded not guilty and claimed trial.

In order to prove the charge, the prosecution examined seven witnesses and, thereafter, the prosecution evidence was closed by order.

The prosecution examined PW1 HC Chhattar Pal Singh, who had recorded the formal FIR Ex.P2 on receipt of the information Ex.P1 from ASI Virender Singh. He was posted as MHC in the Police Station on 12.10.2000, he had deposited the case property alongwith sample seal. On 08.11.2000, he handed over the sample of the case to Constable Mewa Singh for depositing with FSL alongwith sample seal. Constable Mewa Singh handed over the receipt of FSL to him after depositing the parcel of the samples with the FSL. SI Vijay Singh, SHO was examined as PW2, who had prepared the final report under Section 173 Cr.P.C. on conclusion of the evidence of the present case. Kuldip Singh was examined as PW3, who had sold the scooter to Sajjan Singh in the year 1998 and Sajjan Singh further sold this scooter to Joginder Singh, appellant/accused. Further, HC Om

Parkash was examined as PW4, who had received report Ex.P4 under Section 55/57 of the NDPS Act in the Office of DSP Fatehabad and had made an endorsement Ex.P5 on the same. He had placed the report before Ram Kumar DSP, who had gone through the report and had put his signatures at point 'A' of the report. Still further, HC Balwant Singh was examined as PW5, who was part of the police team, which apprehended the accused and seized the contraband from him. He supported the case of the prosecution, as explained in the FIR. The prosecution further examined PW6 Jai Pal Singh, Inspector, who was posted as SI/SHO in Police Station Ratia on 12.10.2000. On that day, the accused as well as the case property were produced before him. He further verified the facts from the accused and the witnesses and directed the Investigating Officer to deposit the case property with MHC of the Police Station. He had also put his seal bearing impression "JS" and directed the IO to deposit the case property with MHC and formally arrest the accused. Mewa Singh Constable was examined as PW7, who tendered his affidavit Ex.P10 before the learned trial Court as a part of his statement. The prosecution further examined PW8 Virender Singh SI who was the main witness of the prosecution. He supported the case of the prosecution in all material particulars. He also supported the case of the prosecution and was the most material witness produced by the prosecution.

After the closure of the evidence by the prosecution, the statement of the accused was recorded under Section 313 Cr.P.C. and he pleaded his false implication. He clearly stated that nothing was recovered from his possession by the police. He had no connection

whatsoever with scooter, which was used for the commission of the crime. He had been running a Kiryana shop since last several years. On 12.10.2000, he was sitting in his shop and the police came there and took him to the police station in the presence of other witnesses. He further stated that he had been falsely implicated in the instant case on the basis of his political rivalry.

To prove the case of the defence, Sahab Singh, independent witness was examined as DW1. He stated that he did not know the accused present in the Court and he had seen him for the first time in the Court. On 12.10.2000 ASI Virender Singh did not recover anything in his presence from the possession of the accused. However, in his cross-examination, he admitted that he had seen Ex.P6 and Ex.P7 and he further admitted that Ex.P8 was also bearing his thumb impression. He further admitted that he was earlier also summoned as witness in the Court. The accused further examined DW2 Bhola Singh, co-villager of the accused. He stated that in the year 2000, the accused was running a Kiryana shop in the village and his fields are situated in front of the shop of Joginder Singh. On 12.10.2000, he alongwith his brother Banta Singh @ Balwant Singh was present in their fields and the police came at the shop of Joginder Singh and took him away from his shop. Nothing was recovered from Joginder Singh and later on he came to know that Joginder Singh had been falsely implicated in the present case. Thereafter, the defence evidence was closed.

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

Learned counsel for the appellant vehemently argued that he was falsely involved in the instant case. As per the prosecution, the accused was apprehended in the presence of Sahab Singh and entire search and seizure proceedings were completed in his presence. However, during the course of trial, the prosecution opted not to examine him as a witness and he appeared as a defence witness to the contrary. DW1 Sahab Singh categorically deposed that nothing was recovered from his possession in his presence. His testimony was duly supported by DW2 Bhola Singh, a co-villager and he also stated that on the date of alleged offence, the accused was present at his shop and was booked by the police illegally and later on falsely involved in the present case. Learned counsel contended that the learned trial Court did not appreciate the defence evidence in correct prospective and the same is at par with the prosecution evidence. The said submissions have been opposed by the learned State counsel by contending that DW1 Sahab Singh was won over by the accused and was examined as a defence witness. However, reading of the testimony of DW1 in between lines clearly suggests that he had accepted the prosecution case. Still further, the accused had produced two false witnesses to prove his case and their testimonies have been rightly discarded by the learned trial Court. Having considered the rival submissions, this Court is of the considered view that the testimonies of both the defence witnesses did not advance the case of the accused in any manner. DW1 Sahab Singh clearly admitted in his cross-examination that the memos Ex.P6, Ex.P7 and Ex.8 were bearing his thumb impressions. It is apparent that the said witness had

tacitly admitted his presence at the time of search and seizure and also the fact that he was a witness to the said proceedings. The said witness never deposed that signatures had been obtained on blank papers nor he ever made a complaint to any higher police authority regarding taking his signatures on the said memos. Apart from that, in case, an independent witness is won over by the accused, the Court is bound to scrutinize the testimonies of official witnesses with care and caution. However, it is no ground to reject their testimonies, in case, the same are otherwise found to be credible and trustworthy. Apart from that, the accused also examined DW2 Bhola Singh his co-villager. DW2 Bhola Singh made a very vague and apparently false statement in the Court. He stated that the accused was allegedly taken away by the police from the shop and was later on falsely implicated in the instant case. However, the said witness did not make any complaint to the police officers. Thus, the learned trial Court was perfectly justified in not relying upon testimonies of defence witnesses.

Learned counsel for the appellant further submitted that there was delay in sending the samples to the FSL. In the instant case, the recovery of the contraband had allegedly taken place on 12.10.2000 and the samples were handed over to PW7 Constable Mewa Singh on 08.11.2000 for depositing the same with the FSL. Constable Mewa Singh returned the receipt back on 13.11.2000. Thus, there were material contradictions in the link evidence. The learned State counsel has rebutted the said submissions by contending

that the link evidence was complete in all respects and has been rightly relied upon by the learned trial Court.

I have considered the rival submissions made by the learned counsel for the parties. As per DW1 HC Chhattar Pal Singh, on 12.10.2000 ASI Virender Singh deposited with him the case property alongwith sample seal and it was handed over to Constable Mewa Singh on 08.11.2000 for depositing with the FSL alongwith sample seal vide road certificate No. 1270. Constable Mewa Singh handed over the receipt of FSL to him on 13.11.2000 after depositing the sample parcel with the FSL. HC Chhattar Pal Singh clearly stated that as far as the case property remained in his custody nobody tampered with the case property including him. Similarly, Constable Mewa Singh was examined as PW7 and he had tendered his affidavit Ex.P10, duly sworn before JMJC Fatehabad. Even, he clearly stated that he had deposited the sample parcel with FSL Madhuban and till the time parcels remained in his custody, neither he nor any other person tampered with the parcels. Apart from that, the FSL report has been duly exhibited as EX. P14 and it clearly shows that the sample was duly sealed with the seals of "JS" and "VS". After chemical examination, it was found that the sample was identified as poppy straw. Thus, the said submission is of no help to the case of the accused.

Apart from that, this Court has considered the evidence led by the prosecution in the instant case to prove the charge. Eight prosecution witnesses have been examined by the prosecution and have been subjected to lengthy cross-examination, but the testimonies

of the said witnesses could not be shaken in any manner. PW5 HC Balwant Singh and PW8 SI Virender Singh have supported the case of the prosecution in totality. SI Virender Singh was the initial Investigating Officer, who had followed the mandatory procedure of search and seizure as provided by the NDPS Act. Even, this Court has carefully scrutinized the trial Court record and found that all mandatory provisions of the NDPS Act had been complied with by the prosecution and the learned defence counsel could not point out any illegality in the same. Thus, it is held that the learned trial Court has recorded well reasoned findings and the impugned judgment of conviction is ordered to be upheld. No other submission has been raised by the learned counsel for the appellant.

Now adverting to the order of sentence, it is observed that at the time of conviction, i.e. on 21.01.2005, the present appellant was aged about 33 years. He was sentenced to undergo rigorous imprisonment for a period of 03 years and to pay a fine of Rs. 10,000/- for commission of the offence punishable under Section 15(b) of the NDPS Act. The learned State counsel has filed the custody certificate and as per the custody certificate, the present appellant has undergone about 11 months and 27 days of actual sentence. Further, as per the custody certificate, the appellant is on bail since 15.03.2005 and in the last eighteen years, no other criminal case was registered against him. Still further, he is not a previous convict. Apart from that, he has faced the agony of trial/appeal for the last about 22 years and no purpose will be served by sending him

behind the bars. Even, the recovery of the contraband from the present appellant was non-commercial in nature.

Consequently, the sentence imposed on the appellant is reduced to the period already undergone by him. However, the amount of fine is enhanced from Rs. 10,000/- to Rs. 30,000/-, which shall be deposited by the appellant in the Punjab and Haryana High Court Bar Association Lawyer's Family Welfare Fund within a period of three months from today. In case, the appellant does not deposit the said fine, as indicated above, he shall undergo rigorous imprisonment for a period of six months.

With the above modifications, the appeal is partly allowed and the impugned judgment of conviction is upheld, whereas the order of sentence is modified to the extent that the sentence imposed on the present appellant is reduced to the period already undergone by him. However, the amount of fine is enhanced to Rs. 30,000/-, as indicated above, which shall be deposited by him within a period of three months from today.

All pending applications, if any, are disposed off, 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.

10.03.2023
amit rana

(N.S.SHEKHAWAT)
JUDGE

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