

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

1. **CRA-S-783-SB-2003 (O&M)**  
**Reserved on :-09.12.2022**  
**Date of Decision: 07.02.2023**

|                     |        |                |
|---------------------|--------|----------------|
| Satpal Singh @ Kala | Versus | ...Appellant   |
| State of Punjab     |        | ... Respondent |

2. **CRA-S-806-SB-2003 (O&M)**

|                        |        |                |
|------------------------|--------|----------------|
| Kaka Singh and another | Versus | ...Appellant   |
| State of Punjab        |        | ... Respondent |

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

Present : Mr. Puneet Bali, Advocate  
as Amicus Curiae for the appellants.

Mr. Vipin Pal Yadav, Addl. A.G. Punjab.

**N.S.SHEKHAWAT, J.**

This judgment shall dispose off the above mentioned two criminal appeals, which are directed against the judgment of conviction and order of sentence dated 21.03.2003 passed by the learned Judge, Special Court, Rupnagar, whereby, the appellants in these two appeals had been convicted under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short, '**the NDPS Act**') and were sentenced to undergo rigorous imprisonment for ten years and to pay a fine of Rs. 1 lac each alongwith default stipulations.

The brief facts, which are necessary for the just and effective disposal of the matter are that on 29.06.1999, SI Parvinder Singh alongwith other police officials was present at the bridge of village Kurali on their official vehicle, a truck was seen coming from the side of SYL canal at 05.00 a.m., which was signalled to stop with

the help of the torch light. Five occupants of the truck started running away, after alighting from the same. The police party followed them and three persons were apprehended at the spot and the two persons succeeded in escaping from the spot. The persons, who were apprehended at the spot disclosed their names as Kaka Singh son of Raghbir Singh and Gurmel Singh son of Raghbir Singh (appellants in Criminal Appeal No. 806-SB of 2003) and Satpal Singh son of Kaka Singh (appellant in Criminal Appeal No. 783-SB of 2003). The names of the persons, who had fled away were known to be Gurdayal Singh driver and Surjit Singh @ Pappu. The police party raised the suspicion that the bags lying in the truck were having poppy husk and the accused could get the search conducted in the presence of the gazetted officer or the Magistrate. The consent memo in this regard was reduced into writing, which was duly attested by the witnesses and signed by the accused. On getting the telephonic call, Jagdish Singh, DSP, Morinda, reached at the spot and disclosed his identity to the accused. On instructions by Jagdish Singh, DSP, the search was conducted by the police party and it was found that 42 bags were loaded on the truck containing poppy husk. Two samples of 250 gms each were taken from the bags and a separate memo was prepared in this regard. 84 samples as well as 42 bag of poppy husk were separately taken into possession vide recovery memo after affixing the seals of IO and DSP and the *rukka* was sent to the police station for registration of the FIR. The *rukka* was sent and on the basis of the same, the FIR was registered in the instant case. The samples were

sent to the office of chemical examiner, who declared the same to be containing poppy husk. After completion of the investigation, the challan under Section 173 Cr.P.C., was presented against the accused for having 15 quintals 44 kgs of poppy husk in his possession without any permit or licence.

Finding a prima facie case, the charge under Section 15 of the NDPS Act was ordered to be framed against the present appellant, to which, he pleaded not guilty and claimed trial.

In order to bring home the guilt of the accused, the prosecution examined five witnesses. Shamsheer Singh, MHC, was examined as PW1, who stated that on 29.06.1999, he was posted as MHC in Police Station Chamkaur Sahib and he tendered his evidence by way of his affidavit Ex.PA. PW2 Constable Jaswinder Singh tendered his affidavit as Ex.PB and his testimony was formal in nature. Jagdish Singh DSP appeared as PW3, who was called at the spot on 29.06.1999 and he reached at the spot and the search was conducted in his presence. He directed SI Parminder Singh to conduct search of the bags lying in the truck and poppy husk was found in 42 bags. The total weight of the bags came to be 15 quintals 44 kgs. The bags were sealed with the seal of 'PS' and the case property was taken into possession vide separate memo, which was attested by the witnesses and the DSP. The seal after use was handed over to SI Satpal. SI Parvinder Singh, SHO Police Station Chamkaur Sahib was examined as PW4. He was heading a raiding team and also completed the formalities at the spot. He supported the case of the

prosecution as narrated in the FIR. The prosecution further examined PW5 SI Satpal, who was part of the police team headed by SI Parvinder Singh. He deposed on similar lines and had supported the case of the prosecution.

After the closure of the prosecution evidence, the statements of the accused were recorded under Sections 313 Cr.P.C. Kaka Singh stated that the case was false and he had been falsely implicated in the instant case as he had filed a writ petition before this Court against the SHO, Police Station Khamano, who was friend of SHO Morinda. Even, Gurmel Singh accused stated that Kaka Singh had filed a writ petition against the SHO, Police Station Khamano in the year 1998 and SI Parvinder Singh is friend of Rajinder Singh and they were taken from the brick kiln on 25.06.1999 and were falsely implicated. Satpal Singh accused also raised a defence on similar lines.

To rebut the prosecution case, Bhupinder Singh was examined as DW1, who was working as clerk on the brick kiln for the last four years. He stated that on 25.06.1999, all the accused were present alongwith other persons with him for settling the accounts of their wages and in the meantime, police came in the gypsy. One police official asked Rajinder Pal Singh as to who was the person who had filed writ petition against him. Rajinder Pal pointed towards the accused and, accordingly, the police lifted those persons and they were taken away by the police. Bhupinder Singh alongwith other persons tried to trace out accused from Police Station Morinda and

Chamkaur Sahib, but could not find them. Ultimately, they reported the matter to the Office of S.S.P., Rupnagar, who informed that a case has been registered against the accused on 29.06.1999. The accused examined Surjit Singh as DW2, who was the Panch of village Amrali. He stated that in 1998, Rajinder Pal Singh, SHO, Police Station Khamano had apprehended Gurmel Singh accused from their village. Surjit Singh alongwith other villagers went to the SHO, who told him that a case was to be registered against Gurmel Singh. In fact, Kaka Singh had filed a writ petition before this Court and warrant officer was appointed by this Court and Gurmel Singh was recovered by the warrant officer. On 25.06.1999, the accused were lifted by the police and this fact came to their knowledge after 2/3 days and later on they came to know that the present case was registered against them falsely.

I have heard learned counsel for the parties and with their able assistance, I have gone through the records of the case.

Learned counsel for the appellants vehemently argued that in the instant case, there was non-compliance of the provisions of Section 50 of the NDPS Act. Learned counsel submitted that the offer was joint and it was a partial offer as no offer was made for search before a Magistrate. Learned counsel further submitted that the consent memo was recorded by the Investigating Officer before calling DSP, which was Ex.PD on the trial Court record and in the said memo, there was mention of a Magistrate and a gazetted officer. In the memo, the offer has been jointly given to all the accused and

this could never be termed as the sufficient compliance of the provisions of Section 50 of the NDPS Act. On the other hand, learned State counsel contended that it was a case of recovery from the truck and the provisions of Section 50 of the NDPS Act would not be applicable. I find that the arguments raised by the learned State counsel have sufficient force. In the present case, the recovery was effected from the truck and the poppy husk was found in 42 bags, total weighing 15 quintals 44 kgs and the bags were taken into possession by the police vide recovery memo Ex.PC. Further, no recovery of the contraband was effected from the persons of the accused or from the clothes born by them. Rather the recovery was effected from the bags, which were being carried in the truck in question. In fact, bare reading of Section 50 of the NDPS Act shows that it applies only in the cases of personal search of a person. It does not extend to the search of a vehicle or a container or a bag or premises. The language of this Section is implicitly clear that the search has to be in relation to a person as contrast to search of the premises, vehicle or articles. This position was settled beyond doubt by the Hon'ble Supreme Court in the case of **State of Punjab Vs. Baldev Singh 1999 (6) SCC 172** after exhaustive consideration of several judgments of the Hon'ble Apex Court. Consequently, it is apparent that Section 50 of the NDPS Act has no application on the facts and circumstances of the present case as the poppy husk was recovered from the bags, which were loaded in the truck.

Learned counsel for the appellants further submitted that the entire case hinges on the testimonies of the official witnesses and in spite of sufficient opportunity, no independent witness was either joined or examined by the prosecution. The prosecution could join any independent witnesses as village Dugri and Boora Majra were very close to the place of recovery, which was also admitted by PW3 Jagdish Singh, DSP. Thus, in absence of independent corroboration, the case of the prosecution was liable to be rejected. The said submission has been opposed by the learned State counsel. In fact, there is no merit in the submissions made by the learned counsel for the appellants. No doubt, the prosecution should normally join independent witnesses as a rule of caution, but absence of the same would be no ground to discard the testimonies of official witnesses. Rather, the Court must scrutinize the testimonies of official witnesses with care and caution. I have perused the testimonies of various official witnesses and they had no reason to falsely involve the present appellants in a criminal case. The learned defence counsel wrongly alleged that a false case was planted on the accused at the instance of one Rajinder Pal Singh SHO Police Station Khamano and the accused were lifted from the brick kiln. In fact, in case the police wanted to falsely involve the accused in a criminal case, the police could register a criminal case under other provisions of the Indian Penal Code or some other provisions of law and there was no necessity for the police to arrange such a huge quantity of 15 quintals 44 kgs of poppy husk to falsely involve the present appellants.

Further, the statements of various official witnesses inspire confidence and the findings recorded by the learned trial Court are liable to be upheld.

The learned defence counsel further submitted that the recovery had taken place on 29.06.1999 and the samples were sent to the chemical examiner on 01.07.1999, however, there is hardly any substance in the arguments raised by the learned counsel for the appellants. No doubt, there was delay of two days in sending the samples to the FSL but the samples were received in the office of chemical examiner with the seals intact. The case property as well as the samples were deposited with PW1 MHC Shamsheer Singh and as per him, there was no tampering with the samples from 29.06.1999 to 01.07.1999. The samples were kept in the safe custody and the delay in sending the samples to the chemical examiner would not serve as a ground for acquitting the accused. Even, the appellants alongwith two others were carrying huge quantity of poppy husk in the truck and they were apprehended at the spot.

Learned counsel for the appellants vehemently argued that the conscious possession of the appellants could not be proved in the instant case. However, again the said argument is without any merit. If the appellants were the innocent passengers in the truck, they had no reason to run away from the spot. Rather on noticing the police party, the appellants alongwith other two accused tried to run away from the spot and this clearly shows that they were well aware of the fact that the poppy husk was loaded in the truck. However, due

to timely action by the police, they were apprehended at the spot and the recovery was effected from them. No other point was raised during the course of arguments.

In view of the above discussion, there are no grounds for interfering the judgment of conviction and order of sentence dated 21.03.2003 passed by the learned Judge, Special Court, Rupnagar and the same are liable to be upheld by this Court. Accordingly, the appeal is without any merit and is dismissed.

The appellants/accused are directed to surrender within 15 days from today, failing which, the CJM concerned shall issue non bailable warrants against the present appellants/accused and shall commit them to custody to serve the remaining sentence of imprisonment.

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.

In the end, I record my appreciation for Mr. Puneet Bali, learned Amicus Curiae, who had rendered able assistance to this Court.

**07.02.2023**  
amit rana

**(N.S.SHEKHAWAT)**  
**JUDGE**

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