

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

**CRA-S-1968-SB-2004 (O&M)
Date of Decision: 30.01.2023**

Jaswant Singh @ Bant	Versus	...Appellant
State of Punjab		... Respondent

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

Present : Mr. Vishal Deep Goyal, Advocate
for the appellant.

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

N.S.SHEKHAWAT, J.

The present appeal is directed against the judgment of conviction and order of sentence dated 21.09.2004 passed by the Court of learned Judge, Special Court, Sangrur, whereby, the appellant was convicted under Section 18 of Narcotics Drugs and Psychotropic Substance Act, 1985 (in short, '**the NDPS Act**') and was sentenced to undergo rigorous imprisonment for 1 ½ years and to pay a fine of Rs. 5,000/- alongwith default stipulation.

The facts of the case in brief are that ASI Parkash Chand and other police officials were present on private scooters in connection with patrolling on 26.09.2001 and were proceeding from village Bagarina to village Banbhaura, on the pavement of the canal. After some time, Parkash son of Bawa Singh met them and the police officials started talking to him. In the *interregnum*, one person was seen coming from the side of village Banbhaura, who was holding a bag in his right hand and on noticing the police officials, he turned towards the right side and started walking. He was apprehended by the police on suspicion and on enquiry, he disclosed his name and

address to be Jaswant Singh @ Bant son of Hardial Singh, resident of Bhullaran, Police Station, Amargarh. ASI Parkash Chand informed him that they suspected some intoxicant substance in the bag held by him and if he desired, he could get search conducted in the presence of a gazetted officer or a Magistrate, who could be called at the spot. Jaswant Singh opted to get his search conducted in the presence of a gazetted officer and his separate statement was recorded in this regard, which was signed by him and was attested ASI Dev Raj and Parkash Singh. A wireless message was sent and Balbir Singh, DSP, Dhuri, reached at the spot in the official vehicle. Again, DSP, disclosed his name and designation to him and the accused reposed confidence in him. A separate memo was recorded in this regard, which was signed by the accused and was attested by the witnesses and the DSP. The search was conducted at the instance of Balbir Singh, DSP, and the opium was found in the bag held by the accused, in a glazed paper and two samples of 10 grams each were separated and converted into parcels after putting the same into two small plastic boxes. The remaining quantity of opium weighed 1 kgs and the same was put in plastic bag and was made into a parcel. All three parcels were sealed with the seal impressions 'PC'. Sample seal chit was separately prepared and seal after use was handed over to independent witness Parkash Singh. The DSP also affixed his seal impression 'BS' and retained his seal with himself. The case property, sample seal chit and bag were taken into possession by the police vide recovery memo Ex.PC and *rukka* was sent to the police

station through Constable Harbhajan Singh and on the basis of the same, formal FIR was registered. From the personal search of the accused, nothing was recovered and a memo was prepared in this regard. After initial investigation, the IO produced accused/PWs and case property before the SHO Rajwinder Singh, who verified the investigation and further sealed the case property with his seal 'RS' and also attested the same. On the directions of the SHO, the IO deposited the case property with MHC Bikkar Singh and after taking the case property from the MHC on the next day, the same was taken to the concerned Magistrate and was produced in the Court. Thereafter, the IO deposited the case property with MHC Bikkar Singh. The report of the chemical examiner Ex.PK was received and it was found to be containing opium. After necessary investigation, the challan was presented in the Court.

Finding a prima facie case, the learned trial Court ordered framing of charge under Section 18 of the NDPS Act against the accused, to which, he did not plead guilty and claimed trial.

In order to bring home the guilt, the prosecution examined six prosecution witnesses.

The prosecution examined PW1 SI Parkash Singh, who narrated the entire prosecution case, as mentioned in the FIR. The prosecution further examined PW2 MHC Bikkar Singh, who tendered his affidavit Ex.PL and his statement was recorded. Constable Naib Singh was examined as PW3, who tendered his affidavit Ex.PM. PW4 ASI Dev Raj, who was part of the police team with ASI Parkash

Singh was examined as PW4 and he had also supported the case of the prosecution. He was accompanying the IO and was a signatory to the various memos prepared during the course of investigation and proved the same during the course of the trial. SI/ SHO Rajwinder Singh, was examined as PW5, who verified the facts of the case, after the arrest of the accused and the accused, witnesses and the case property were produced before him and after verifying the facts of the case, he had directed the IO to deposit the case property with MHC Bikkar Singh with the seal intact. The prosecution further examined PW6 Balbir Singh, DSP, Dhuri, who supported the case of the prosecution.

After closure of the evidence, the statement of the accused was recorded under Section 313 Cr.P.C. and he pleaded his false implication. He stated that nothing was recovered from his house and the police had arrested him from his house in the presence of Sarpanch Jarnail Singh and other panchayat members. On 25.09.2001, the police party had raided his house and he objected to the same. There was exchange of abuses between him and the police party and he was falsely implicated in the instant case. He also submitted telegrams to the Hon'ble Chief Justice of Punjab and Haryana High Court and other higher police officers, but the IO falsely implicated him in a criminal case.

The accused examined two witnesses to prove his defence. Parshotam Lal was examined as DW1, who stated that on 25.09.2001, he was member panchayat of their village. Jarnail Singh

was Sarpanch at that time and on 25.09.2001 accused was apprehended by the police party in the presence of the Sarpanch and other persons of the village. There was an altercation between the accused and the police and no recovery was effected from him. Charanjit Singh son of the accused was examined as DW2, who supported the deposition made by DW1 Parshotam Lal and deposed on similar lines.

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 submitted that in the instant case, the mandatory provisions of Section 50 of the NDPS Act were not complied with, by the police. Even apart from the bag, the personal search of the accused was also conducted, even though, the same did not lead to any recovery of the contraband. He further submitted that since the personal search of the accused was also conducted, it was incumbent upon the prosecution to comply with the provisions of Section 50 of the NDPS Act, which was mandatory in nature. The said submission has been vehemently opposed by the learned State counsel. I find no merit in the submission made by the learned counsel for the appellant. In fact, the police has raised a suspicion that the accused was carrying some contraband in a bag, which was held by him in the right hand. Even though the personal search was also conducted, but nothing was recovered during the personal search of the accused. Thus, it is apparent that the recovery of opium had taken place from the bag of the accused in his right

hand and since the contraband has been seized from the bag and not from the personal search, there was no need to comply with the mandatory provisions of Section 50 of the NDPS Act and the said submission is liable to be rejected.

Learned counsel for the appellant further submitted that form No. 29 was not filled at the spot and was subsequently filled. Again, the said submission is merit-less. First of all, it is not the mandatory requirement of law. Still further, there was no substance to prove the said submission made by the learned counsel for the appellant. Apart from that, if there was delay in preparing the form No. 29, the case of the prosecution cannot be thrown out only on the said ground. Further, the recovery had taken place in the presence of an independent witness and the police had no enmity with the present appellant.

Apart from that, learned counsel for the appellant further submitted that the appellant was picked from his home and was falsely involved in a criminal case as a fight had taken place between him and the police. Due to this, he was falsely involved in the present case. Again, I find no substance in the submission made by the learned counsel for the appellant. In the instant case, the appellant could not point out any violation of any statutory provision of the NDPS Act. Still further, in the instant case, the samples were examined by the FSL and after examining the contraband, it was opined that the same was carrying the opium. Thus, it is apparent that

the impugned judgment does not suffer from any illegality, irregularity or perversity and is liable to be upheld by this Court.

However, this Court cannot lose sight of the fact that the FIR in the instant case was registered on 26.09.2001 and the present appellant is facing the agony of trial/appeal since last about 22 years. Even, as per the trial Court record, he was aged about 50 years at the time of recording of his statement under Section 313 Cr.P.C., i.e. 14.05.2003 and is aged about 70 years at present. The learned State counsel had filed the custody certificate before this Court and as per the said custody certificate, the appellant had undergone 06 months and 14 days of actual sentence out of total sentence of 1 ½ year and is not involved in any other criminal case. Even the recovery of the contraband from the appellant is non-commercial. Thus, the ends of justice will be suitably met, if his sentence is reduced to the period already undergone by him. However, the amount of fine is enhanced from Rs. 5,000/- 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, failing which, the appellant shall undergo further rigorous imprisonment for a period of four months, as observed by the learned trial Court.

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 observed, which shall be deposited by him within a period of three months from today, as observed above.

The appeal stands disposed off accordingly.

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.

30.01.2023
amit rana

(N.S.SHEKHAWAT)
JUDGE

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