

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRA-S-756-SB-2001 (O&M)

Reserved on: 07.04.2025

Pronounced on: 29.04.2025

Darshan Singh & another

.....Appellant(s)

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Ms. G.K. Mann, Senior Advocate with
Mr. Gursewak Singh, Advocate
for the appellant (s).

Mr. Sukhdev Singh, AAG, Punjab.

ANOOP CHITKARA J.

FIR No.	Dated	Police Station	Sections
101	4.6.1999	Dera-Bassi	18 NDPS Act

Case No.	SC No.50T/26.8.1999 Date of Decision: 14.06.2001
Names of accused/ convicts/ appellants	1. Darshan Singh, 2. Gursewak Singh
Conviction under	Section 18 of the NDPS Act
Sentence imposed	R.I. for 10 years and a fine of Rs. 1,00,000/- each

1. Appellants-accused Darshan Singh (A-1) and Gursewak Singh (A-2), who were convicted and sentenced by the trial court for possessing opium exceeding the limit established for personal use, filed the present appeal in this court in 2001.
2. Vide order dated 13.07.2001, a coordinate Bench of this Court had admitted the appeal, and vide order dated 11.04.2002, another coordinate Bench had suspended the sentence of the appellants-accused and released them on bail. Subsequently, vide order dated 22.11.2011, another coordinate Bench of this Court upheld the conviction; however, the Court reduced the sentence to the period already undergone by them, i.e., 2 years and 9 months, and the fine was also reduced to Rs. 10,000/- each.
3. The State challenged the judgment dated November 22, 2011, before the Honorable Supreme Court. In its judgment dated June 8, 2023, the Supreme Court set aside the judgment of this Court and remanded the matter back to this Court. Hon'ble Supreme Court held that the sentence awarded by the trial Court was a minimum mandatory sentence, which could not have been further reduced. Thus, the matter was

remanded back to this Court, and the appeal was ordered to be decided afresh on its merits. The appellants-accused were directed to surrender within four weeks and to apply for bail before this Court again. Subsequently, this Court, in an order dated January 16, 2025, suspended the sentence of the appellants after a total custody of 3 years, 3 months, and 28 days.

4. Learned counsel for the appellants argued that the link evidence is missing in the present case. The recovery of the alleged contraband was made on 4.6.1999, whereas Form No.29 was not prepared at the spot, and the same was filled only on 7.6.1999. Further, the seal was not handed over to any independent witness, and no independent witness was examined.

5. On the other hand, the State's counsel supports the conviction and argues that there is clinching evidence against the convicts; the statements of police officials are legally admissible, and their testimony cannot be thrown away, because there is no rule of law that police officials cannot be competent to be witnesses.

6. On 4.6.1999, SI Jassa Singh (PW-2), who was posted as SHO, Police Station Dera Bassi, had erected a barricade in Village Bhudha. He was accompanied by PW-4 ASI Tarsem Lal and five more police officials on a private Gypsy. At about 6-30 p.m., they noticed two persons coming on a scooter. They got suspicious and made the scooter stop, and on inquiry, the said persons disclosed their names as Darshan Singh (A-1) and Gursewak Singh (A-2). Gursewak Singh was driving the scooter, and Darshan Singh was the pillion rider. The investigator got suspicious about their carrying some contraband, and on being confronted, the accused confessed that they were carrying the contraband. The police conducted a search of the scooter and recovered opium. The recovery memo (Ex.PC) was duly prepared. As per the prosecution, the laboratory also tested the contraband as opium. After completion of the investigation, prosecution was launched against both the accused. At the time of consideration of charges, the trial Court framed a charge under Section 18 of the NDPS Act, to which the accused pleaded not guilty and claimed trial.

7. In the trial, the prosecution examined PW-2 SI Jassa Singh, who was posted as SHO, Police Station Dera Bassi and testified about his presence at the spot along with police officials and the fact that they noticed a scooter on which two persons were riding and on stopping them, they suspected them of having some contraband, to which they admitted. Then he had called PW-5 DySP Harcharan Singh Bhullar at the spot, in whose presence, the recovery memo Ex.PC was prepared. From the search of the dicky of the scooter, opium was recovered, which was wrapped in glazed paper. After separating two samples of 10 grams each of the contraband, the remaining opium weighing 980 grams was also sealed in another tin box (Ex. P1). Subsequently, on all three parcels were affixed with the seal impressions 'HSBR' of the seal of PW-5 Harcharan Singh Bhullar, DSP, and with the impression 'J.S.' of SHO, the same were handed over to PW-4 ASI Tarsem Lal. After that, both the accused were arrested, and Grounds of Arrest of Accused

were prepared as Ex.PG and Ruqa Ex.PH was sent to the police station for registration of FIR, based on which MHC Surinder Singh recorded FIR PH/1. The investigator prepared the site plan, Ex. PJ. PW-2 SI Jassa Singh further stated that on reaching the police station, he deposited the case property along with seals with MHC Surinder Singh.

8. PW-4 ASI Tarsem Lal, the member of the police team, corroborated the statement of PW-2, SI Jassa Singh. He stated on the lines of PW-2 SI Jassa Singh and admitted that he had received the seals after they were used. He further stated that the scooter was also taken into possession vide Ex.PC and RC of the scooter as Ex.P4. In his cross-examination, he stated that he did not remember the number of the Gypsy, but it was a private Gypsy, and he also did not know the name of its owner of the Gypsy, because it was procured by the SHO. He also showed his ignorance about the place from where the Gypsy was taken. He further admitted that as per the registration certificate, none of the accused was the owner of the scooter.

9. PW-5 DySP Harcharan Singh Bhullar testified that on receiving a wireless message from SI Jassa Singh, he reached the spot and stated about giving of options and recovery of opium, taking of samples, etc., on the lines of PW-2 Jassa Singh and PW-4 Tarsem Lal.

10. In addition to the witnesses at the spot i.e. PW-2 Jassa Singh, PW-4 Tarsem Lal and PW-5 DySP Harcharan Singh Bhullar, the prosecution also examined other formal witnesses to complete the chain of link evidence.

11. PW-1 C. Kanwarpal Singh tendered in evidence Ex.PA, in which he stated that on 7.6.1999, MHC Surinder Singh had given a parcel of opium weighing 10 grams, sealed with the seal 'J.S.' and 'H.S.B.R.' as sample case property, after taking it out from the Malkhana, for chemical examination. On the same day, he had handed over the same for chemical examination, and he did not tamper with it.

12. After completion of investigation, the prosecution's case was put to both the accused separately under Section 313 CrPC, to which they denied all the allegations and in answer to the last question, they stated that no recovery was effected from their possession and that they were arrested from their house and falsely implicated.

13. To prove their version, the accused examined DW-2 Mehar Singh, who stated that appellant No.2 was the brother-in-law of Gurcharan Singh, and worked as a mason. He had visited the house of Gursewak Singh, where Darshan Singh was also sitting, and at that time, PW-2 SHO Jassa Singh came there and took them.

14. A perusal of the cross-examination of PW-2 Jassa Singh does not make even a single averment that he had visited the house of the accused, from where they were brought, and he was not cross-examined on this aspect. Thus, in the absence of cross-examination of PW-2 Jassa Singh, the version of the defence appears to be an afterthought, and no relevance can be placed on the testimony of DW-2 Mehar Singh.

15. To legally analyze the defence version, another impediment that sprouts is that the Defence counsel did not put any such suggestion explicitly to PW-2 Jassa Singh nor to

the other two spot witnesses, PW-4 Tarsem Lal and PW-5 DySP Harcharan Singh Bhullar, at the time of the recording of their testimonies in the trial. Thus, the rule of *audi alteram partem* would come into play, and its benefit shall go to the prosecution. It is for the reason that no person can be condemned unheard, and the rule would not cease to apply when the witnesses are police officials.

16. The defence also examined DW-1 HC Surinder Singh, to prove the ownership of the scooter. However, in the facts and circumstances of the present case, the ownership of the scooter is irrelevant for the reason that, as per the prosecution's case, recovery of opium had taken place when both the accused were found sitting on the scooter by police officials. The only question is whether both the accused were in joint and conscious possession of the dickey of the scooter, from where the police had recovered opium, or only the scooter driver was in exclusive and conscious possession?

17. The prosecution's case regarding possession is that they noticed two persons coming on a scooter, and the police got suspicious and made the scooter stop, and on inquiry, the said persons disclosed their names as Darshan Singh (A-1) and Gursewak Singh (A-2). Gursewak Singh was driving the scooter, and (A-1) Darshan Singh was the pillion rider. As per the recovery memo, Ext. PC, the opium was recovered from the dickey of the Scooter. The investigation is silent about the scooter's dickey being locked or unlocked. Even if it is taken as unlocked, still, the scooter was being driven by Gursewak Singh, and as such, he would be in its exclusive possession, except if something was kept by the pillion rider, i.e., Darshan Singh, which is not the prosecution's case. Given the above, the prosecution did not prove even an iota of evidence to establish the conscious possession of the pillion rider, and thus, there is no relevant fact to link the alleged recovered opium with the pillion rider (A-1) Darshan Singh. Consequently, a doubt has crept in about the possession and/or knowledge of the co-accused/convict Darshan Singh (A-1) about the presence of opium in the dickey of the scooter, of which he was not a driver but a pillion rider and is accordingly acquitted by extending to him the benefit of a reasonable doubt.

18. An analysis of the other evidence in the facts and circumstances peculiar to this case would lead to the following outcomes.

(i) There is no evidence that any DDR was registered about leaving the police station by the police party that too in a private gypsy.

(ii) No attempt was made by PW-2 SHO Jassa Singh and PW-5 DySP Harcharan Singh Bhullar, to bring any independent witness, although it was summer's time at around 6.30 p.m. when days are longer and the alleged recovery was made from a public place which was visited by the villagers of two villages quite frequently.

(iii) PW-2 SI Jassa Singh, during his cross-examination, acknowledged that they remained at the spot for 4½ hours. He admitted that Village Bhodha and Shatabgarh were near the recovery site, and both villages had panchayats. He also conceded that they did not attempt to summon any individuals from these villages. Furthermore, he confirmed

that Constable Iqbal Singh was dispatched to obtain a scale and weights, and was instructed to bring independent witnesses; however, no one was willing to associate in the investigation. Despite this, SI Jassa Singh did not record Constable Iqbal Singh's statement in this regard. The prosecution did not examine Constable Iqbal Singh as a witness to clarify how many people were approached to participate in the investigation, their social or official positions, and the reasons for their reluctance to be involved.

(iv) PW-4 Tarsem Lal also admitted that the place of recovery was a thoroughfare and was frequently visited by the public. Village Bhudha was near to the place of recovery and no Panchayat member or Sarpanch was called from the village to stand as independent witness. However, he clarified that SHO might be aware of this fact.

(v) In his cross-examination, PW-5 DySP Harcharan Singh Bhullar testified that the place of recovery was a thoroughfare, but it was not frequently used. He remained at the spot for 2½ hours, but no person had passed during that period. He further stated that the weights and scale were procured from Village Pudda through a constable.

(vi) The person from whom the weights and scale were brought was not arraigned as witness nor examined, who could have testified not only about handing over the weights and scale but also the time and presence of the accused and police officials at the spot, along with contraband.

(vii) A cumulative analysis of the facts and circumstances of the case lead to the outcome that the investigator, who was an SHO, despite the presence of DySP, intentionally did not join any independent witness, nor did the DySP made any efforts to associate them. The prosecution did not establish by leading with any cogent evidence through Constable Iqbal Singh regarding people's reluctance to join. They also did not resort to the provisions of S. 160 CrPC, 1973. and they could have easily called any Panchayat member or passerby or even the person from whom the weighing scale or weights were brought, which creates doubt in the prosecution's case.

(viii) The concern that protrudes is the intentional improvements regarding the reasons for which the scooter was stopped without there being any prior information, or secret information, or lead about the concealment of opium or any contraband in its dickey or with its occupants. Initially, in FIR, no reasons were mentioned; however, the prosecution gradually and deliberately started making improvements to address this gap and to fill in the material lacuna. And they did it from the statement of the spot witness, PW-4 Tarsem Lal.

(ix) PW-4 Tarsem Lal corroborated the initial version of PW-2 SI Jassa Singh. However, he made an addition by stating that on seeing the police party, the scooter rider tried to slip back, but they were apprehended. A perusal of the Ruqa (ExPH/1) does not mention the suspicion having arisen because of the conduct of the accused. There is nothing that on seeing the police party, the accused had flustered. Thus, PW-4 Tarsem Lal tried to bring improvement to the prosecution's case and justify initial suspicion of the police party, without any prior information that the accused were having some

contraband.

19. In *Krishan Chand vs. State of Himachal Pradesh*, (2018) 1 SCC 222, Hon'ble Supreme Court holds,

[21]. From the evidence which has come on record, it is quite clear that the place, where the accused is alleged to have been apprehended, cannot be said to be an isolated one as the house of Govind Singh DW-2 is situated on the edge of Patarna Bridge. Thus the version of the complainant PW-6 that independent witnesses could not be associated as it was an isolated place does not inspire confidence. Moreover, from the evidence of Govind Singh PW-2 the case of the prosecution regarding apprehension of the accused, at Patarna bridge, while being in possession of bag containing 7 kgs of charas, becomes highly doubtful because had he been so apprehended, by the police, this fact was to come to his notice, for the reason, that his house is situated at the edge of the bridge in which he resides, along with his family.

20. Overall, the following contradictions are key and material in the facts and circumstances of the present case. Firstly, absence of entry of the police party leaving the police station that too, in a private gypsy and secondly, the person from whom the weighing scale and weights were brought, not arrayed or examined and thirdly, despite availability, independent witnesses were neither associated nor Constable Iqbal Singh was examined to explain their reluctance to join, non issuance of directions under S. 160 CrPC, 1973 asking the witnesses to associate in the investigation and lastly as per the prosecution initial version, the scooter rider had not flustered and there was no reason for any suspicion, based on which the police had suspected that the scooter had drugs in it. Later on, the prosecution improved their version in the statement of PW-4 Tarsem Lal, where he mentioned that on seeing the police officials, the accused had flustered and tried to return back but they were apprehended. This is a material improvement, which was initially not mentioned in ruqa Ex. PH.

21. In *Noor Aga v. State of Punjab*, 2008(16) SCC 417, Supreme Court observed,

[16]. The provisions of the Act and the punishment prescribed therein being indisputably stringent flowing from elements such as a heightened standard for bail, absence of any provision for remissions, specific provisions for grant of minimum sentence, enabling provisions granting power to the Court to impose fine of more than maximum punishment of Rs. 2,00,000/- as also the presumption of guilt emerging from possession of Narcotic Drugs and Psychotropic substances, the extent of burden to prove the foundational facts on the prosecution, i.e., 'proof beyond all reasonable doubt' would be more onerous. A heightened scrutiny test would be necessary to be invoked. It is so because whereas, on the one hand, the court must strive towards giving effect to the parliamentary object and intent in the light of the international conventions, but, on the other, it is also necessary to uphold the individual human rights and dignity as provided for under the UN Declaration of Human Rights by insisting upon scrupulous compliance of the provisions of the Act for the purpose of upholding the democratic values. It is necessary for giving effect to the concept of 'wider civilization'. The courts must always remind itself that it is a well settled principle of criminal jurisprudence that

more serious the offence, the stricter is the degree of proof. A higher degree of assurance, thus, would be necessary to convict an accused.

22. In *State of Himachal Pradesh v. Trilok Chand*, (2018) 2 SCC 352, Supreme Court holds,

[13]. ...It is imperative that the law the Court should follow for awarding conviction under the provisions of N.D.P.S. Act is "stringent the punishment stricter the proof." In such cases, the prosecution evidence has to be examined very zealously so as to exclude every chance of false implication...."

23. Thus, not only does the evidence have to be appreciated by keeping the mandates mentioned above, but even the law has to be applied in the light of these binding precedents.

24. In view of the aforesaid discussion, this Court finds that the view taken by the trial Court is not sustainable because of lack of discussions on the above mentioned counter contradictions. Thus, this Court has no other option but to give benefit of doubt to both the convicts, the pillion rider on two counts and the driver of the scooter based on the reasoning arisen from the preceding analysis.

25. Consequently, the appeal is allowed, and the judgment of conviction and sentence, mentioned above, is set aside. Both the appellants are acquitted of the charges. Bail bonds furnished by the appellants-accused are discharged. All pending miscellaneous applications, if any, stand disposed of.

**(Anoop Chitkara),
Judge**

29.04.2025
AK/Jyoti-II

Whether speaking/reasoned:	Yes
Whether reportable:	Yes