

CRA-D-184-DB-2005

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
(331)

CRA-D-184-DB-2005 (O & M)

Reserved on: 30.01.2025

Date of Pronouncement:05.02.2025

Mander Singh

.... Appellant

V/s

State of Punjab

...Respondent

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

Present: Mr. Chirag Girdhar, Advocate for
Mr. R.K. Girdhar, Advocate, for the appellant.

Mr. Harkanwar Jeet Singh, AAG, Punjab.

JASJIT SINGH BEDI, J.

The present appeal has been filed against the judgment of conviction and order of sentence dated 04.08.2004 passed by the Special Judge, Muktsar.

2. The instant FIR came to be registered on 30.11.1996. The accused-appellant came to be convicted vide judgment of conviction and order of sentence dated 04.08.2004. The present appeal against the conviction was filed on 18.02.2005. The matter has come up for final hearing now after more than 28 years of the registration of the FIR.

3. The prosecution story, in brief, is that on 30.11.1996 SHO Kirpal Singh, Police Station, Lambi alongwith ASI Gurdip Singh, HC Chander Mohan, LC Gurmej Singh, LC Gurjant Singh, C. Bhajan Singh,

SPO Sukhdev Singh, PHGs Buta Singh, Santokh Singh, Shinderpal Singh,

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C. Bhupinder Singh and SPO Khushkaran Singh gunman on a Govt. Canter bearing No.PB-04B-9568 which was being driven by C.Amar Nath, under the leadership of Baljit Singh Buttar DSP (HQ), Muktsar, were going to villages Lohara, Ghumiara etc. in connection with patrol duty and for checking the hiding places of terrorists. When the police party reached Bus Stand Ghumiara, Ranga Singh son of Kapoor Singh, Ex-panch was joined in the police party. When the police party reached 01 km. ahead from village Ghumiara towards village Middu Khera, on the bridge of the water course at about 12-00 noon near the bridge on the right side of the road on the search of one abandoned room, the accused was found sitting on a heap of poppy husk on plastic paper. He was apprehended on suspicion and he disclosed his name as Mander Singh s/o Gobind Singh r/o Ghumiara. SHO Kirpal Singh asked the accused that he had a suspicion and that he wanted to get his search conducted. He further stated that he (accused) had a right to get his search conducted in their presence or in the presence of a Magistrate or a Gazetted Officer. The accused said that his search could be conducted in the presence of Ranga Singh independent witness and the DSP, who were already with the police party. A consent memo of the accused-Mander Singh was prepared, which was thumb marked by the accused and witnessed by Ranga Singh and the DSP and also by ASI Gurdip Singh. Then the SHO lifted the polythene paper. From the heap, poppy husk was recovered and from all the four sides, some poppy husk was taken as samples. Total 250 grams of poppy husk was separated and made into a parcel. The remaining

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poppy husk, on weighment, came out to be 350 kgs., which was put into 10 bags, each containing 35 kgs. of poppy husk. Then all the ten bags were made into parcels. Then all the ten bags and the sample parcel were sealed with the seal bearing 'BSB' of the DSP. The sample seal was separately prepared and the seal after use was handed over to Baljit Singh Buttar DSP. Thereafter, all the bags, sample parcel and sample seal, were sealed by Kirpal Singh SHO with his seal bearing impression 'KS' and the seal after use was handed over to ASI Gurdip Singh. The case property was taken into police possession vide separate memo. The accused could not produce any permit or licence for keeping the said poppy husk in his possession. Ruqa Ex. PB was prepared and sent to the police station, on the basis of which a formal FIR Ex.PB/1 was recorded by SI Dharam Singh. Rough site plan of the place of occurrence was prepared with correct marginal notes. Statements of the witnesses were recorded. The accused was made aware of the grounds of arrest and a separate memo to this effect was recorded which was thumb marked by the accused and signed by the witnesses. On his personal search, currency notes of Rs.50/- were recovered, which were taken into police possession vide separate memo Ex.PG. After completion of the investigation at the spot and on receipt of the FIR No., the same was incorporated in the documents. On return to the police station, the accused was lodged in the lock up and the case property was kept in his custody by SHO Kirpal Singh. On 01.12.1996, ASI Baldev Singh produced the case property and the accused before the Illaqa Magistrate, who directed to



deposit the case property with the MHC and the accused was sent to the judicial lock up. SHO Kirpal Singh then sent a report under Section 57 of the Act to DSP Malout which was received by DSP on 01.12.1996. After completion of investigation and on receipt of the report of the Chemical Examiner, the challan against the accused was presented in the Court.

4. Charge under Section 15 of the Narcotic Drugs and Psychotropic Act, Substances 1985 (for short 'the act') was framed against the accused. He pleaded not guilty and claimed trial.

5. In order to prove it's case, the prosecution examined PW-1/LC Gurmej Singh, PW-2/SI Dharam Singh, PW-3/ASI Baldev Singh, PW-4/Nirbhai Singh, Reader to DSP, Muktsar, PW-5/ SI Kirpal Singh I.O. of the case and PW-6/Baljit Singh DSP. The report of the Chemical Examiner Ex.PN was tendered into evidence.

6. After closure of the prosecution evidence, the statement of the accused was recorded under Section 313 Cr.P.C. in which he denied all the incriminating evidence appearing against him and pleaded innocence. He stated that the police had come to his house. Nothing incriminating was recovered from his person or house search conducted in the presence of Ajmer Singh and Karnail Singh members of the panchayat and an altercation took place between him and the police on forcibly taking him away to the police station. After illegal detention, he was falsely implicated in this case. Ranga Singh or his father Kapoor Singh had never been members of the



village panchayat. In his defence, he examined DW-1/Ajmer Singh and closed the defence evidence.

7. Based on the evidence led, the accused-appellant/Mander Singh came to be convicted and sentenced by the Court of the Special Judge, Muktsar, vide judgment of conviction and order of sentence dated 04.08.2004 as under:-

Offence U/S	Sentence RI/SI	Fine	RI/SI in default of payment of fine
15 of the NDPS Act	RI for 12 years	Rs.1,00,000/-	RI 02 years

8. The aforementioned judgment of conviction dated 04.08.2004 passed by the Special Judge, Muktsar, is under challenge before this Court.

9. The learned counsel for the appellant contends that there is non-compliance of Section 50 of the Act. As per the case of the prosecution, the appellant was found sitting in an abandoned room with the contraband in question. However, the ownership of the land on which the *kotha* was built has not been established. Therefore, the accused could not be said to be in conscious possession. There are material discrepancies in the statements of witnesses which is fatal to the case of the prosecution. He, therefore, contends that the impugned judgment was liable to be set aside.

10. The learned counsel for the State, on the other hand, contends that the offence stands established beyond reasonable doubt. When the police party was on patrolling duty, they saw an abandoned *kotha* and on approaching the same, it was found that the was sitting inside on a heap of

poppy husk. The recovery of 350 kgs. and 250 kgs. of poppy husk was



effected which cannot be planted. Minor discrepancies in the statements of prosecution witnesses which are recorded after a considerable period of time, cannot be said to be fatal to the prosecution case. He, therefore, contends that the present appeal was liable to be dismissed.

11. We have heard the learned counsel for the parties and gone through the record.

12. The recovery in the present case is not from the personal search of the accused but from an abandoned *kotha* where the accused was found sitting on the heap of poppy husk. Therefore, Section 50 of the Act has no application. It had been so held in '***State of Punjab versus Balbir Singh and others 2004(4) RCR (Criminal) 999***'. Be that as it may, PW-6/Baljit Singh who was a Gazetted Officer was a part of the police party.

13. The Hon'ble Supreme Court in the case of '***Rakesh Kumar Raghuvanshi versus The State of Madhya Pradesh, Criminal Appeal No.1953 of 2014 decided on 16.01.2025***', in the context of conscious possession has held as under:-

14. Thus, before the Court holds the accused guilty of the offence under the NDPS Act, possession is something that the prosecution needs to establish with cogent evidence. If the accused is found to be in possession of any contraband which is a narcotic drug, it is for the accused to account for such possession satisfactorily, if not, the presumption under Section 54 comes into place.

15. Section 54 of the NDPS Act being relevant in the context on hand is extracted hereunder for convenient reference:



“54. Presumption from possession of illicit articles.

—In trials under this Act, it may be presumed, unless and until the contrary is proved, that the accused has committed an offence under this Act in respect of —

(a) any narcotic drug or psychotropic substance or controlled substance;

(b) any opium poppy, cannabis plant or coca plant growing on any land which he has cultivated;

(c) any apparatus specially designed or any group of utensils specially adopted for the manufacture of any narcotic drug or psychotropic substance or controlled substance; or

(d) any materials which have undergone any process towards the manufacture of a narcotic drug or psychotropic substance or controlled substance, or any residue left of the materials from which any narcotic drug or psychotropic substance or controlled substance has been manufactured, for the possession of which he fails to account satisfactorily.”

16. Therefore, as envisaged by the provision itself, unless and until the contrary is proved in trials of cases involving offences coming within the purview of the NDPS Act, it may be presumed that the accused has committed an offence under the Act in respect of any articles prohibited to be possessed by him and for the possession of which, he failed to account satisfactorily. Therefore, it is the burden of the prosecution to establish that the contraband was seized from the conscious possession of the accused. Only when that aspect has been successfully proved by the prosecution, the onus will shift to the accused to account for the possession legally and satisfactorily.



17. We looked into the evidence as regards possession and are convinced that the appellant was found to be in conscious possession of the three cartons containing poppy husk. The defence put forward by the appellant that he had no idea about the three cartons and that he got down from the coach alongwith the three cartons only because the officers asked him to come out of the coach is something which is not palatable to us.

18. We have looked into the further statement of the accused. We do not find any satisfactory reply or explanation as to how come he was sitting on one of the cartons and the other two cartons were closely placed next to him.

19. In such circumstances, Section 54 referred to above, comes into play and the court would be justified in drawing the presumption that the accused was in conscious possession.

20. Section 35 of the NDPS Act deals with the presumption of culpable mental state. It states that in any prosecution under the NDPS Act, the court shall presume that the accused had the requisite mental state, including intention, knowledge, and motive, unless the accused can prove otherwise. This shifts the burden of proof onto the accused to demonstrate that they lacked knowledge or intent regarding the possession of the drugs.

21. Conscious possession refers to a scenario where an individual not only physically possesses a narcotic drug or psychotropic substance but is also aware of its presence and nature. In other words, it requires both physical control and mental awareness. This concept has evolved primarily through judicial interpretation since the term “conscious possession” is not explicitly defined in the NDPS Act. This Court through



various of its decisions has repeatedly underscored that possession under the NDPS Act should not only be physical but also conscious. Conscious possession implies that the person knew that he had the illicit drug or psychotropic substance in his control and had the intent or knowledge of its illegal nature.

22. In Abdul Rashid Ibrahim Mansuri v. State of Gujarat reported in 2000 (2) SCC 513, this Court highlighted that once the prosecution proves physical possession, the burden shifts to the accused to explain how he came into possession of the contraband and prove that he was not aware of its presence or nature. The Court ruled that a person who admits that drugs were found in his possession must prove that he had no knowledge of the illicit nature of the substance.

23. In Madan Lal v. State of Himachal Pradesh reported in (2003) 7 SCC 465, this Court was dealing with a case where all the accused persons were travelling in a vehicle when they were nabbed and recoveries were made from them. The relevant extracts from the said judgment are set out below:

“19. Whether there was conscious possession has to be determined with reference to the factual backdrop. The facts which can be culled out from the evidence on record are that all the accused persons were travelling in a vehicle and as noted by the trial court they were known to each other and it has not been explained or shown as to how they travelled together from the same destination in a vehicle which was not a public vehicle.

20. Section 20(b) makes possession of contraband articles an offence. Section 20 appears in Chapter IV of the Act which relates to offences for possession of such articles. It is submitted that in order to make the possession illicit, there must be a conscious possession.”



24. In the overall view of the matter, we are convinced that the High Court committed no error in dismissing the appeal and thereby affirming the judgment and order of conviction passed by the Trial Court.

25. In view of the aforesaid, the appeal fails and is hereby dismissed.

14. As per the prosecution case, the accused was found sitting on the heap of poppy husk alone in an abandoned *kotha* knowing fully well that he was sitting on the heap of the poppy husk. He has not explained how and why he was sitting there. The recovery has been effected from him and a memo in that regard was prepared. Consent memo of the accused was also prepared. The proceedings were conducted under the supervision of PW-6/DSP Baljit Singh. Therefore, it cannot be said that the conscious possession of the accused is not established or that the evidence of the prosecution witnesses is not worthy of credit.

15. As regards discrepancies, the same are minor in nature and have no bearing on the merits of the case. Though, PW-5/SI Kirpal Singh has stated that the *kotha* was abandoned and having no door and that he did not know that the place was owned by the Govt. or any Deptt. and PW-6/DSP Baljit Singh has stated that the place on which the *kotha* was constructed, was owned by the Govt., these discrepancies are minor in nature and do not effect the substructure of the case or make the recovery effected from the accused doubtful. Similarly, the discrepancies with regard to doing the



writing work partly in the day light and partly in the light of the Canter and taking a ruqa in a private jeep will not effect the merits of the case.

16. The link evidence is also complete. The case property was produced immediately before the Illaqa Magistrate who verified the case property. This fact is evident from application Ex.PC dated 01.12.1996 and the order passed by the Illaqa Magistrate Ex.PC/1 dated 01.12.1996. The sample and bags were found duly sealed and they were ordered to be deposited with the MHC, Police Station Lambi. So, it cannot be said that in the said circumstances, the link evidence is missing or that non-entrustment of seal to Ranga Singh has any effect.

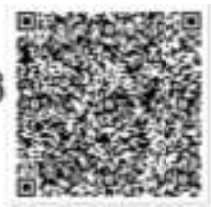
17. In the instant case, the recovery was effected on 30.11.1996 and the witnesses were examined in the Court on 23.12.2002 i.e. after about 06 years. So, minor discrepancies are likely to crop in due to lapse of time. Even otherwise heavy quantity of poppy husk had been recovered from the possession of the accused which cannot be planted. There was no enmity of the prosecution witnesses with the accused to falsely implicate him with such a heavy quantity and therefore, the testimonies of the official witnesses cannot be disbelieved.

18. In view of the aforementioned discussion, we find no merit in the present appeal and the same stands dismissed.

19. As regards the imposition of sentence, it may be pertinent to mention here that the occurrence pertains to the year 1996. The appellant came to be convicted vide judgment of conviction and order of sentence

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dated 04.08.2004. The instant appeal was filed in the year 2005. As many as 28 years have elapsed after the registration of the FIR, therefore, the appellant has suffered a protracted Trial. He is also a first time offender as is borne out from the custody certificate dated 30.01.2025. Therefore, while upholding his conviction, we deem it appropriate to modify the sentence of the appellant-Mander Singh as under:-

Offence under Sections	Sentence	Fine	In default of payment of fine
Section 15 NDPS Act	RI for 10 years	Rs.1,00,000/-	RI 02 years

(GURVINDER SINGH GILL)
JUDGE

(JASJIT SINGH BEDI)
JUDGE

05.02.2025
sukhpreet

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No