

CRA-S-2427-SB-2009 (O & M)

2025:PHHC:025602



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

(202)

CRA-S-2427-SB-2009 (O&M)
Date of Decision: 21.02.2025

Nishan Singh and anr.

... .Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Ms. Parbeen Kumari Dhawal, Advocate,
for Mr. Amit Kumar Jain, Advocate,
for the petitioner.

Mr. Dharampal, DAG, Haryana.

JASJIT SINGH BEDI, J.

The present appeal has been filed impugning the judgment of conviction and order of sentence dated 05.10.2009 passed by the Additional Sessions Judge, Fatehabad whereby the accused-appellants have been convicted.

2. The FIR in the present came to be registered on 21.01.2007. The judgment of conviction and order of sentence was passed on 05.10.2009 by the Additional Sessions Judge, Fatehabad. The instant appeal was filed on 13.10.2009 and has come up for final hearing now i.e. after a period of almost 18 years from the date of registration of the FIR.

3. Brief facts of the prosecution case are that on 21.01.2007, SI Bijender Singh Investigating Officer alongwith HC Ramesh Kumar, HC Bhagat Singh, C. Ram Kumar was on patrolling duty in the area of canal



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bridge Nagpur-Ganda Road. In the meanwhile, two young boys were seen coming from village Nagpur on foot. A gunny bag was jointly kept in their hands. On seeing the police party the accused tried to turn back. On suspicion, they were apprehended and on enquiry, they disclosed their names as Nishan Singh son of Sohan Singh and Sucha Singh son of Jagtar Singh, both residents of village Ganda. Suspected that of contraband was being carried in the bag, SI Bijender Singh Investigating Officer served a notice to both the accused to the effect that he intended to search their bag and if both the accused so desired, search could be conducted before a Gazetted Officer or a Magistrate. Vide reply both the accused reposed confidence in the police party. Notice as well as reply was thumb marked by both the accused after admitting the contents of the same. HC Ramesh Kumar and EHC Bhagat Singh attested both the documents. Thereafter, search of the bag was conducted and it was found to contain poppy husk. Two samples of 100 grams each were separated as sample and converted into the parcels. The remaining on weighment was found to be 11 kg. 800 grams. All the samples parcels and the residue were converted into sealed parcels and sealed with the seal of RK. All the parcels were taken into possession vide separate recovery memo. Seal after its use was handed over to HC Ramesh Kumar. The Investigating Officer carried out all the investigation at the spot. He prepared the rough site plan, recorded the statements of the witnesses and prepared other documents. Thereafter, he returned to the police station and produced the accused, the case property



and the witnesses along with report before SHO Kulwant Singh, who verified the facts from both the accused and the witnesses and affixed his seal on each of the parcel and directed the Investigating Officer to deposit the case property with the MHC and to put both the accused in police lock up. The Investigating Officer did so. On completion of investigations, challan was filed against the accused in the Court.

4. Charges were framed against the accused under Section 15 of the NDPS Act. They pleaded not guilty and claimed Trial.
5. In order to prove its case, the prosecution examined as many as seven witnesses whose names and nature of their respective testimonies are being mentioned below in brief:-

Sr. No.	Name of the witness(es)	Nature
PW-1	SI Bijender Singh	Main Investigating Officer
PW-2	HC Ramesh Kumar	Recovery witness
PW-3	HC Dalip Singh	Qua deposit of case property with him by SI Bijender Singh for safe custody.
PW-4	C. Sheo Karan	Was entrusted with the case property for being delivered in the FSL at Madhuban.
PW-5	ASI Prem Kumar	Recorded formal FIR Ex.P14
PW-6	ASI Niranjan Singh	Proved the signature of DSP Shri Satender Kumar on the report under Section 55/57 of the NDPS Act at point A.
PW-7	SHO Kulwant Singh	Verified facts of the case from the witnesses and prepared report u/s 57 of NDPS Act.

Thereafter, the PP closed the prosecution evidence after tendering the report of the FSL Ex.P16.



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6. The entire evidence and the incriminating circumstances brought on the file were put to the accused when they were examined under Section 313 Cr.P.C. The accused denied the same and pleaded innocence.

7. Based on the evidence led, both the accused came to be convicted and sentenced vide judgment of conviction and order of sentence dated 05.10.2009 as under:-

Offence under Section	Sentence RI	Fine	SI in default of payment of fine
15(b) of the NDPS Act	RI 06 months each	Rs. 2,000/- each	01 month each

4. The aforementioned judgment is under challenge in the present appeal.

6. During the pendency of the instant appeal, the sentences of the accused-appellants were suspended vide order dated 24.10.2009.

7. The learned counsel for the appellants contends that the place of recovery is doubtful and there are major discrepancies in this regard, as per the statement of PW-1/SI Bijender Singh and PW-2/HC Ramesh Kumar. There is violation of Section 50 of the NDPS Act inasmuch as the search was conducted by the police party which did not include any Gazetted Officer or a Magistrate. No independent witness was examined in support of the prosecution case. She, therefore, contends that the impugned judgment was liable to be set aside and the accused ought to be acquitted of the charges framed against them.



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7. The learned counsel for the State, on the other hand has filed separate custody certificates of the accused dated 19.02.2025. As per the custody certificates, accused-Nishan Singh Rana is an under Trial in two other cases of a similar nature and a convict in one case whereas the accused-Sucha Singh is a first time offender. He contends that the offence stands established beyond reasonable doubt. The witnesses of search and seizure have supported the case of the prosecution in material particulars and the mere absence of an independent witness would not weaken the prosecution case as there is nothing to suggest that the police party was inimical to either of the accused. Section 50 of the NDPS Act was not required to be complied with as a search was of the bag and not the person of the accused. He, therefore, contends that the appeal was liable to be dismissed.

8. I have heard the learned counsel for the parties.

9. The argument that there is a discrepancy regarding the place of recovery as per PW-1/SI Bijender Singh and PW-2/HC Ramesh Kumar, cannot be accepted. It cannot be stated by mathematical precision what was the exact place from where the recovery came to be effected. The police party apprehended both the accused and the recovery was effected from a bag which they had in their possession. Therefore, the prosecution case cannot be doubted only on this discrepancy.

10. As regards the alleged violation of Section 50 of the NDPS Act, it would be pertinent to note here that the provisions of Section 50 of



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the NDPS Act would apply to a search of the person of the accused and not to the search of a bag. Therefore, as the recovery in the present case was from a bag, there is no violation of Section 50.

11. As regards the absence of any independent witness, it would be relevant to note that in cases of this kind, it is unlikely that an independent witness would depose in favour of the prosecution so as not to incur the wrath of the accused and his family members. Further, there is no presumption that official witnesses would falsely implicate the accused. Even otherwise, there is nothing on record to suggest that the police party or any member thereof was inimical to either of the accused. On the contrary, their depositions are quite consistent as to how the recovery came to be effected.

12. A cumulative effect of the aforementioned discussion is that the prosecution has established its case beyond reasonable doubt and therefore, finding no merit in the present appeal, the same stands dismissed.

13. The pending applications, if any, stand disposed of accordingly.

February 21, 2025
sukhpreet

(JASJIT SINGH BEDI)
JUDGE

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No