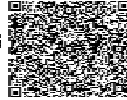


2025:PHHC:023183



**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

CRA-S-1981-SB-2010(O&M)

Date of Decision:-18.02.2025

Sham Lal @ Shama.

.....Appellant.

Vs.

State of Punjab.

.....Respondent.

CORAM:- HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present:- Mr. Najar Singh, Advocate (Legal Aid Counsel)
for the appellant.

Mr. Harkanwar Jeet Singh, AAG Punjab.

JASJIT SINGH BEDI, J.(ORAL)

The present appeal has been preferred against the judgment dated 09.08.2010 passed by Judge Special Court, Jalandhar whereby the accused/appellant was convicted of the charges framed against him.

2. The FIR in the present case came to be registered on 26.01.2009. The judgment of conviction was passed on 09.08.2010 by the Judge Special Court, Jalandhar. The instant appeal was filed on 23.08.2010 and has come up for final hearing now i.e. after a period of 15 years from the date of registration of the FIR.

3. In brief, as per the prosecution story, on 26.01.2009 ASI Daler Singh and his police party was going from Qazi Mandi towards Ajit Nagar and when it reached near the brick kiln of Roshan Lal, ASI saw the accused

coming from the opposite direction. On seeing the police party, the accused got scared and took out a polythene envelope from his pocket, threw it on the ground and tried to run away. He was apprehended and was asked about his name and parentage. An attempt was made to join a public witness but no one was ready. The polythene envelope appeared to contain some narcotic substance. The accused was apprised about his right and when he consented for his search, the polythene envelope was opened and it was found to contain 10gms of Smack. 5 gms of Smack was separated as sample and both the sample as well as the bulk were sealed at the spot and taken into possession. The accused was arrested. Further, investigations were conducted and after completion of investigations, challan against the accused was presented in court for trial.

4. Finding a prima facie case the accused, he was charge sheeted under section 21 of NDPS Act to which he pleaded not guilty and claimed trial.

5. In order to prove its case, the prosecution examined HC Kishore Kumar as PW1, recovery witness HC Charanjit Singh as PW2, HC Kulwinder Singh as PW3, IO ASI Daler Singh as PW4 and SI/SHO Balbir Singh as PW5 and thereafter the evidence of the prosecution was closed.

6. After closure of the prosecution evidence, the accused was examined U/s 313 Cr.P.C, in which all the incrimination evidence appearing in the statements of various prosecution witnesses was put to him, so as to apprise him of the Incriminating evidence, but the accused refuted all the allegations. He pleaded his false implication by submitting that he had been falsely implicated as nothing had been recovered from him. He further submitted that he wanted to lead evidence in defence but despite availing many opportunities, no evidence in defence was lead by the accused.

7. Based on the evidence led, the accused/appellant came to be convicted and sentenced by the Judge Special Court, Jalandhar vide judgment and order of sentence dated 09.08.2010 as under:-

Offence Section	under	Sentence RI/SI	Fine	RI/SI in default of payment of fine
21 NDPS Act		RI for 03 Months	Rs.300/-	RI for 10 Days

8. The accused/appellant has filed the instant criminal appeal impugning the aforementioned judgment of conviction.

9. During the pendency of the instant appeal, the sentence of the accused/appellant was suspended vide order dated 24.08.2010.

10. The Counsel for the accused/appellant contends that the judgment of acquittal passed by the Trial Court is based on conjectures and surmises. The case is based on the testimony of official prosecution witnesses. No independent witness was examined in support of the prosecution case. The appellant could not be said to be in conscious possession in as much as the packet containing the contraband was thrown on the ground. He, therefore, contends that the present appeal be allowed and appellant be acquitted of the charges framed against him.

11. The Counsel for the State on the other hand has filed custody certificate dated 17.02.2025 as per which the appellant is an accused in more than 12 cases. He contends that the offence has been established beyond reasonable doubt. All the PWs, though official in nature have deposed consistently as to the manner in which the occurrence took place and the recovery came to be effected. Mere non examination of the independent witness could not demolish the prosecution case as the official witnesses had no reason to forcibly implicate the appellant. He, therefore, contends that the present appeal was liable to be dismissed.

12. I have heard Counsel for the parties.

13. As per prosecution story, when upon a chance meeting, the accused out of fear threw a polythene envelope on the ground and when after apprehending the accused, the polythene envelope thrown on the ground was opened, it was found to contain 10gms of smack. To prove the above said recovery, the prosecution has examined IO ASI Daler Singh as PW4, who in his statement on oath reiterated the above said version and deposed further that after overpowering the accused, his name and parentage was asked from him. As the polythene packet appeared to contain contraband and as he wanted to search it, he asked to the accused by apprising him about his right to get his search conducted from some Gazetted Officer or a magistrate but the reposed faith in him regarding which his consent memo Ex P1 was scribed. When searched the polythene packet was found to contain 10 gms of Smack, 5gms of smack was separated as a sample and thereafter both the sample as well as the bulk parcel were sealed by him with his seal bearing impressions 'DS'. Sample seal EX P2 was prepared and affixed on the FSL form EX PX and the recovered contraband was taken into police possession vide memo Ex P3. He handed over his seal after use to HC Charanjit Singh. Personal search of the accused was conducted regarding which personal search memo EX P4 was prepared. The accused was arrested vide arrest memo EX P%. He also proved site plan of the recovery EX P6, Ruqa EX P& and FIR Ex P8.

He further stated that after return to the police station, he produced the accused as well as the recovered case property before Inspector/SHO Balbir Singh, who after verifying the facts, put his own seal upon the case property bearing impression BS and also prepared a sample seal EX P2 and affixed it upon the CSFL form and deposited the case

property with MHC Kishore Kumar and on the next day, he produced the case property before Ms. Rashmi sharma, JMIC who passed order EX PW10/A. Report of the chemical examiner was proved as Ex PZ.

14. The above said statement made by the IO finds due support and corroboration from the testimony of PW2 HC Sharanjit Singh, who had been accompanying the IO throughout. In his statement on oath, besides affirming the facts leading to the recovery of contraband, HC Charanjit Singh also testified witnessing the various memos which were prepared by the IO at the spot. HC Charanjit Singh has thus corroborated the testimony of IO ASI Daler Singh.

15. The Prosecution also examined SI/SHO Balbir Singh as PW5. In his statement the SI/SHO Balbir Singh affirmed that on 26.01.2009, when he was working as an SHO at Police Station Division No.8, ASI Daler Singh produced before him the accused as well as two sealed packets of smack sealed with seal 'DS'. After verifying the facts, he affixed his own seals and deposited the case property with the IO. Bulk case property was also produced in the Court for its material exhibition as MO-1. Statement made by SI/SHO Balbir Singh further provides support and corroboration to the testimony of the IO.

16. EX PZ is the report of the Chemical Examiner, who found 59.04% of diacetylmorphine in the sample sent to it for analysis. It was further opined that it was smack/ heroin. In order to link the above said FSL report Ex Pz with the rest of the version of the prosecution, the prosecution has examined both MHC Kishorre Kumar as PW 1 an HC Kulwinder Singh as PW3 and thus, has connected the report of FSL with the rest of the version of the prosecution.

All the above said witnesses were cross-examined at length but

no material discrepancy could be culled out from their testimonies.

18. As regards the absence of any independent witness and the entire story of the prosecution being based upon the testimonies of official witnesses it would be pertinent to note that the recovery of contraband occurred upon a chance meeting from a secluded place. In the Ruqa Ex P7, it has been mentioned that an attempt was made by the IO to join an independent PW but nobody was willing to join him. Mere absence of any independent PWs cannot demolish the prosecuton case particularly when the official PWs have deposed consistently regarding the search and seizure and there is nothing by way of defence evidence to suggest that the official witnesses were inimical to the accused. In these circumstances, non-joining of an independent witness in itself cannot vitiate the trial.

19. Keeping in view the aforementioned discussion, I find no merit in the present appeal and the same stands dismissed.

(JASJIT SINGH BEDI)
JUDGE

February 18, 2025
Vinay

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