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**(207) IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****CRA-S-3177-SB-2010 (O&M)****Date of Decision: 24.02.2025****JARNAIL SINGH @ JAILA****... Appellant****Versus****STATE OF PUNJAB****...Respondent****CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI**

Present: Mr. Naveen K. Sheoran, Legal Aid Counsel
for the appellant.

Mr. Harkanwar Jeet Singh, Asstt. A.G., Punjab.

JASJIT SINGH BEDI, J.

The present appeal has been filed against the judgment of conviction and order of sentence dated 01.12.2010 passed by the Judge, Special Court, Patiala.

2. The FIR was registered on 08.03.2009, the judgment of conviction and order of sentence passed by the Judge, Special Court, Patiala is dated 01.12.2009, the appeal was filed on 18.12.2010 and the matter is being taken up for hearing now i.e. after a period of more than 15 ½ years from the date of registration of the FIR.

3. The brief facts of the case are that on 8.03.2009, SI Mohinder Singh along with a police party was proceeding from main road Rajpur-Patiala towards Gobindpura in connection with patrolling duty. At about 12.10 p.m., about 200 yards away from the main road, one person was seen

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coming who was carrying a plastic bag on his head. On seeing the police party, he at once, turned back and started walking swiftly. On suspicion, SI Mohinder Singh apprehended the said person with the help of his police companions. On inquiry, the person disclosed his name as Jarnail Singh and also disclosed his other particulars. Then, HC Balbir Singh was dispatched to associate a private person, who returned after 10/15 minutes along with one person namely Narain Bharti. The said independent witness was apprised of the factual position. Then, SI Mohinder Singh stated to Jarnail Singh that he suspected him to be carrying some narcotics substance in the plastic bag carried by him and he wanted to conduct the search of the plastic bag. He also apprised Jarnail Singh of his right to get the search conducted in the presence of a Gazetted Officer or a Magistrate, who could be called to the spot. However, Jarnail Singh reposed confidence in SI Mohinder Singh and expressed his desire to get the search conducted from him, upon which, a consent memo was separately prepared.

Thereafter, SI Mohinder Singh conducted a search of the plastic bag of the accused, which led to the recovery of poppy husk. Two samples of 100 grams each were separated and residue poppy husk weighed 11 kgs. 800 grams. Separate parcels of the samples and residue poppy husk were prepared and were sealed with the seal bearing impression "MS". Sample seal was separately prepared, and the same, after use, was handed over to Narain Bharti. Thereafter, all the aforesaid parcels along with the sample seal were taken into possession vide a separate memo. A Ruqa was sent to the police

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station, on the basis whereof, a case was registered against the accused U/s 15 of the NDPS Act and thereafter other proceedings were conducted at the spot. On return to the police station, the accused and the case property were produced before Inspector/SHO Gurdev Singh, who verified the factum of recovery and counter sealed the parcels and sample seal with his seal bearing impression "GS". Thereafter, the case property was deposited in intact condition with MHC Sahib Singh. During the course of investigation, one sample parcel was sent to the office of the Chemical Examiner and the latter, vide his report, opined that the contents of the sample were "Chura Poppy Heads". On completion of the investigation, the accused was sent up to face trial for the commission of the offence U/s 15 of the NDPS Act.

4. Charges were framed against the accused under Section 15 of the NDPS Act.

5. The prosecution examined five witnesses besides adducing documentary evidence. The gist of these statements are as under:-

SI Mohinder Singh, who was investigation officer of the present case was examined as PW1 and deposed about the mode and manner of interception of the accused and option qua search having been extended to the accused. However, the accused reposed confidence in him, upon which, consent memo Ex.PA was prepared. He further deposed about conducting of the search of the plastic bag of the accused, which led to the recovery of poppy husk. He deposed about the manner of conducting of the search and further deposed about drawing of samples, presentation of parcels of the

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samples and the residue and the preparation of sample seal, all of which were taken into possession vide recovery memo Ex.PB. He also deposed about the dispatch of Ruqa Ex.PC on the basis whereof, formal FIR Ex.PC/1 was got registered against the accused. He deposed about preparation of various other documents such like personal search memo Ex. PD, grounds of arrest/intimation memo Ex.PF, site plan Ex.PG. He deposed about production of the accused and the case property before SHO/Inspector Gurdev Singh on return to the police station, who, verified the fact of recovery and counter-sealed the parcels as well as sample seal with his seal bearing impression "GS" and then deposited the case property with MHC Sahib Singh. Report U/s 57 of the NDPS Act is Ex. PX and endorsement of the DSP upon the same is Ex. PX/1. This witness further deposed about production of the case property and the accused before the Magistrate, on the next day of recovery. Inventory report is Ex.PJ. Application for production of case property is Ex.PK and the order passed by the Magistrate is Ex. PK/1. Then, the case property was deposited in consonance with the directions of the Magistrate.

PW2-HC Chet Ram and PW3-MHC Sahib Singh tendered into evidence their affidavits Ex.PL and Ex.PM with regard to the safe custody of the case property in the Malkhana and safe conveyance of the sample parcel to the office of the Chemical Examiner.

PW4-Inspector Gurdev Singh, who was SHO on the relevant day deposed about production of the accused and the case property before him by SI Mohinder Singh and he had verified the factum of recovery. He had



counter-sealed all the parcels with his seal bearing impression "GS". Then, he deposited the case property with MHC Sahib Singh in an intact condition.

PW5-SI Thura Ram, who accompanied the Investigation Officer on the day of recovery also deposed about the mode and manner of interception of the accused and recovery of poppy husk from his possession. He also deposed regarding preparation of various documents which were attested by him as a witness. His statement is similar to the testimony of the investigating officer.

6. Report of the Chemical Examiner is Ex.PN.
7. On closure of the prosecution evidence, all the incriminating circumstances appearing in the prosecution evidence were put to the accused in his statement U/s 313 Cr.PC. However, the accused denied those allegation and pleaded innocence. He claimed that the police had falsely implicated him. However, no evidence was lead in defence.
8. Based on the evidence led, the accused/appellant came to be convicted and sentenced by the Court of Judge, Special Court, Patiala vide judgment and order of sentence dated 01.12.2010 as under:-

Offence under Section	Sentence RI/SI	Fine	RI/SI in default of payment of fine
302 IPC	RI for 09 months	Rs.500/-	RI for 15 days

9. It is the aforementioned judgment, which is under challenge, in the present appeal.
10. The learned counsel for the appellant contends that though one Narain Bharti was associated as independent witness at the time of the alleged

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recovery, however, he was not examined by the prosecution. There was a delay in dispatch of the sample parcels to the FSL. The CFSL form was not filled at the spot. He thus, contends that the impugned judgment was liable to be set aside and the accused acquitted of the charges framed against him.

11. On the other hand, the learned State counsel has filed a custody certificate of the accused/appellant dated 24.02.2025 and the same is taken on record. As per the custody certificate the appellant is a convict in one other case bearing FIR No.201 dated 05.05.2007 U/s 15 of the NDPS Act, P.S. Sadar Patiala. He contends that the offence stands established beyond reasonable doubt. There is no requirement that an independent witness has to be examined to support the version of the official witnesses especially in cases where no enmity has been established between the accused and the police party. Though, the CFSL form was not filled at the spot, however, the sample seal was prepared at the spot on a separate piece of paper disclosing complete particulars of the case. The sample seal was also deposited with the MHC as is apparent from the evidence on record. Therefore, there is no merit in this argument. As regards delay in the dispatch of the sample parcel, he states that in view of the evidence available on record, the delay is not sufficient to dislodge the prosecution case. He thus contends that the present appeal was liable to be dismissed.

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

13. Much emphasis has been laid on the non-examination of independent witness Narain Bharti. Undisputedly, Narain Bharti, who was

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associated as an independent witness, has not been examined by the prosecution. However, the record would reveal that the State gave up the said witness as having been won over by the accused on the basis of a separate application moved at the instance of the Investigating officer. It is a matter of general knowledge that people are generally hesitant to associate with the police party and even if they join the prosecution, they later on, are hesitant to depose in favour of the prosecution as they succumb to social pressures and also on account of the hostility likely to arise against them by the accused. Therefore, there is plausible reason coming forth for the non-examination of Narain Bharti who in any case had been won over. Therefore, non-examination of this independent witness is not fatal to the prosecution case.

14. As regards the argument that the CFSL form was not prepared at the spot and it was not deposited with MHC and this proves fatal to the prosecution case, it may be pointed out that it has been held by the Court that the prosecution is duty bound to explain the safe custody of the sample parcel from the stage of seizure till it reaches the office of the Chemical Examiner. Undisputedly, as admitted by the prosecution witness in cross-examination, in the instant case, the CFSL form was not filed at the spot. However, it is pertinent to mention that the sample seal was prepared at the spot on a separate piece of paper, upon which, complete particulars of the case were mentioned. This sample seal was also deposited with the MHC as is evident from the affidavit of the MHC as well as the testimony of the Investigating officer. It is also established from the other evidence on record that this



specimen seal prepared on a separate sheet was in fact, affixed with the CFSL form, which was then filed and was dispatched to the office of the Chemical Examiner. In the light of same, when the specimen seal was not prepared on the CFSL form itself, its non-preparation at the spot does not impact the prosecution case significantly.

15. As regards the delay in dispatch of the sample parcel, no doubt there is delay as the alleged recovery was effected on 08.03.2009 and the sample parcel was dispatched on 16.03.2009 however, this delay is to be considered in the backdrop of other evidence brought on record and the delay alone is not sufficient to dislodge the case of the prosecution. In such circumstances, the Court is required to take into consideration the entire evidence brought on record. If after in depth analysis of the evidence produced by the prosecution, the court comes to the conclusion that the delay in sending the sample had not affected the merits of the case, then the said delay pales into insignificance. In the instant case, cogent, convincing and trust-worthy evidence of the prosecution witnesses who have been subjected to in depth scrutiny would establish that the case property remain intact to when it reached the office of the Chemical Examiner. The report of the Chemical Examiner, Ex.PN, endorses safe reaching of the sample parcel. It contains a certificate, thereby, certifying that the seals of the exhibits were intact and agreed with the sample seal sent. Under these circumstances as the sample had reached the destination in an intact condition, even if there was

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some delay in dispatch of sample parcel, that does not significantly impact the prosecution case.

16. In view of the aforementioned discussion, I find no merit in the present appeal. Therefore, the same stands dismissed.

17. The appellant is directed to surrender forthwith to serve out his remaining sentence.

(JASJIT SINGH BEDI)
JUDGE

24.02.2025

JITESH

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