



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

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CRA-S-1655-SB-2011

Date of decision: 28.04.2026

BRIJ NANDAN @ MALI

.....Appellant

VERSUS

STATE OF PUNJAB

.....Respondent

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present: - None for the appellant.

Dr. (Ms.) Savi Nagpal, Asst. A.G. Punjab.

VINOD S. BHARDWAJ, J. (Oral)

The present appeal has been preferred against the judgment of conviction and order of sentence dated 03.06.2011 passed in NDPS File No. 177 dated 29.11.2006 arising out of FIR No. 83 dated 21.07.2006 registered under Section 15 of the Narcotic Drugs & Psychotropic Substances Act, 1985 at Police Station Maur where the appellant had been convicted and sentenced to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs. 5,000/- and to further undergo rigorous imprisonment for one month in default of payment of fine.

2. There is no representation on behalf of the appellant. The position was the same on the last date of hearing as well. The Registry was

directed to inform the Counsel for the appellant about the hearing. It has been reported by the office that intimation in this regard was sent to the Counsel for the appellant; however, no one has chosen to appear on behalf of the appellant. The appeal pertains to the year 2011. Further wait is not justified. The appeal is thus being decided on merits without waiting for the presence of the Counsel.

3. Briefly summarized, the facts of the present case are that on 21.07.2006, ASI Harjit Singh, along with HC Baldev Singh and other police officials, was proceeding in a Govt. vehicle from village Maur Charat Singh to Mari, in connection with patrolling. Independent witness Kaur Singh son of Mansa Singh, resident of Maur Kalan, was joined in the police party at the bus stand of the village Maur. Thereafter, when the police party reached 1.5 KM ahead of village Maur Charat Singh towards village Mari, the accused was spotted coming from the side of village Mari. He was carrying a plastic bag on his head, and on seeing the police party, he tried to run towards the fields after throwing the bag. On suspicion, the accused was apprehended by ASI Harjit Singh with assistance from other police officials. Due to the bag's fall, some poppy husk scattered on the ground, and it was repacked in the same bag. After making arrangements for weighing material, one sample of 100 grams was separated from the recovered poppy husk and the residue on weighing came to be 9 Kgs. 900 Grams. Sample parcel as well as bulk case property were sealed by the investigating officer ASI Harjit Singh, with his seal impression HS. Sample seal Ex.P1 was separately prepared, and the seal after use was handed over to independent witness Kaur Singh. Case property, i.e. sample parcel and bulk parcel, was taken into police possession vide memo Ex.PA, which was attested by the witnesses.

Ruqa was sent for registration of the case, based on which the FIR was registered against the accused. Personal search of the accused was conducted for the purpose of jamatalashi. The site plan of place of recovery was prepared. The accused was arrested after being informed of the grounds of arrest, and statements of witnesses were recorded.

4. Charge was later framed for commission of offence under Section 15 of the NDPS Act, 1985, to which the appellant-accused pleaded not guilty and claimed trial. The prosecution was thereafter called to lead evidence.

5. The prosecution examined as many as 04 prosecution witnesses and thereafter closed its evidence. The entire incriminating evidence was put to the appellant-accused under Section 313 Cr. P.C., to which he denied the prosecution version and alleged false implication. It was submitted by him that the Police had arrested him from his house on 20.07.2006, and nothing was recovered from his possession. Being an outsider, a false case had been planted against him for getting a promotion. No evidence was, however, led by him to establish his defence.

6. After hearing learned Counsel appearing on behalf of the parties and having gone through the documents available on record, the appellant herein was convicted for the commission of an offence under Section 15 of the NDPS Act for being in possession of 10 kilograms of Poppy husk. Vide order dated 03.06.2011, a sentence of 01 year rigorous imprisonment was imposed upon him along with a fine of Rs. 5,000/-.

7. The grounds on which the present appeal had been preferred were that no independent witness had been examined by the prosecution,

and the entire case rested upon the testimonies of the police officials only. One Kaur Singh had even though been joined as an independent witness; however, he was not led by the prosecution to depose. With-holding of the independent witness thus creates a serious dent in the prosecution case. It is further argued that the sample parcel and the seal remained in the custody of the police officials and that the CFSL form was not prepared on the spot which creates a doubt with regard to the integrity of the sample parcel and the seized material. Further, there was a delay of 4-5 days in sending the sample to the office of the Chemical Examiner and no explanation has been put forth for the delay of 05 days in sending the same.

8. The State Counsel, however, contends that the arguments raised in the appeal do not impact the final verdict. The trial Court has noticed the legal position and effect of the non-examination of independent witness, delay in sending of sample to CFSL or retention of the seal in Police custody after use and then returned its finding of conviction. The said findings thus need no interference as there is no semblance of prejudice or travesty of justice.

9. I have gone through the appeal as well as the judgment under challenge and the arguments raised by the State. s

10. It is evident from a perusal of the judgment that, insofar as the submission in defence that no independent witness had been examined is concerned, the same was specifically discussed by the trial Court. It was held that the submission was devoid of merit since Kaur Singh, the independent witness, had been given up as having been won over by the defence. The Public Prosecutor for the State got his statement recorded to this effect on 12.06.2009. Hence, non-examination of the said witness would

not render the case of the prosecution suspect. Reliance was placed by the trial Court on the judgment of the Division Bench of this Court in **Roop Singh versus State of Punjab**, reported as 1996(1) RCR 146, to the effect that no adverse inference can be drawn against the prosecution when the only independent witness was given up by the prosecution on the ground of the same having been won over. The aforesaid point of view was a consistent position in law flowing from the precedents prior thereto. Thus, merely because the prosecution is based upon testimony of the official witnesses and the independent witness was not examined, the same would not render the prosecution bad and liable to be set aside. The appellant had an ample opportunity to cross-examine the remaining witnesses and to adduce evidence in his defence. The prosecution witnesses, who are official witnesses, have no personal axe to grind against an accused person or a suspect and there was no reason for false implication. Their trustworthiness or credibility could not be doubted merely because of their official status, more-so when they were discharging their duties earnestly.

11. Insofar as the submission of the appellant that there was a delay in sending the case property to the custody of the Chemical Examiner and the case property was possibly tampered with is concerned, the same is without any substantive basis. It was held that a mere delay in sending the samples to the office of the Chemical Examiner does not by itself lead to an inference that the samples had been tampered with. Once the sanctity of the samples remained intact during the custody of the police officials, a delay by itself would not render the proceedings bad. The report of the Chemical Examiner does not specifically show that the seals of the samples were not intact or that they did not match the specimen seals sent. The said report is,

per se, admissible under Section 293 Cr.P.C., and the same has thus rightly been accepted. Hence, a mere delay, which is not accompanied by any evidence reflecting tampering of the case property and not mere suspicion, would not render the case of the prosecution liable to fail. Accordingly, both the arguments had been fully considered and rejected.

12. There is no other issue raised in the grounds of appeal on the basis whereof the judgment recording conviction against the appellant herein could be faulted, or it could be inferred that the judgment suffers from any perversity or misappreciation of facts.

13. The challenge to the judgment dated 03.06.2011 passed by the Judge, Special Court, Bathinda is accordingly dismissed, and the judgment of conviction passed against the appellant is affirmed. Having held so, the next question which arises for consideration of this Court is as to the quantum of sentence to be awarded.

14. Vide order dated 03.06.2011, the appellant herein had been sentenced to undergo rigorous imprisonment for a period of one year. The sentence in question was suspended by this Court vide order dated 20.07.2011 after noticing that against the total sentence of 01 year, he had already undergone a sentence of nearly 02 months.

15. The custody certificate has been produced by the State, and the same has been perused. It is evident that the appellant was 52 years of age at the time of conviction. The appeal in question pertains to the year 2011, and already a period of 15 years has elapsed since then. Hence, by most conservative methodology, the appellant herein is now 67 years of age, and he is thus in advanced stages of his life. Besides, the custody certificate also

shows that the petitioner has not indulged in any other criminal activity thereafter and had no criminal antecedents prior to the registration of the said FIR as well. The appellant has thus seemingly reintegrated into the mainstream of society and has taken to reformation. Sending the petitioner to undergo the remaining sentence would be harsh for the appellant in his final stages of life. Consequently, the present appeal is **partly allowed**. While the judgment of conviction of the appellant is upheld, the sentence awarded to the appellant vide order dated 03.06.2011 is reduced to the period already undergone.

APRIL 28, 2026

Vishal Sharma

(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No