



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

366

CRA-S-1762-SB-2011 (O&M)
Date of decision: 10.04.2026

Deepak Kumar ...Appellant(s)

VERSUS

State of Punjab ...Respondent(s)

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

Present :- Mr. Sandeep Saini, Advocate for
Mr. Deepak Bhardwaj, Advocate for the appellant.

Dr. (Ms.) Savi Nagpal, AAG Punjab.

VINOD S. BHARDWAJ, J. (Oral)

1. The appellant has challenged the judgment of conviction and order of sentence dated 05.07.2011 passed by the Judge, Special Court (NDPS), Roopnagar, whereby he was convicted in case bearing FIR No.67 dated 21.06.2007 registered under Section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 at Police Station Anandpur Sahib, Rupnagar, and sentenced as under:-

Section	Sentence and Fine	In default thereof
18 of the N.D.P.S. Act	RI for a period of 04 months and a fine of Rs.3,000/-.	RI for a further period of 01 month.

2. Briefly summarized, the facts of the present case are that on 21.6.2007, ASI Jaswant Singh was posted as Incharge, Police Post Kiratpur Sahib, and on that date, he, along with C. Bal Kishan and other police

officials was present in the area of T point Gajur, Kotla Power house in connection with patrolling and checking of bad elements on scooters. At about 7 AM, one Ram Kishan came there and struck up a conversation with him. During this time, the accused came from the side of Kotla, carrying a plastic bag in his right hand, and he put something from the bag into his mouth. On seeing the police party, he became perplexed and tried to turn towards the left. He was apprehended with the help of other police officials and questioned about his name and whereabouts. The plastic bag, which was in his hand, was open, and on search, opium was found lying in the bag. ASI Jaswant Singh took out two 20-gram samples and converted them into parcels by placing them in a plastic box, and the remaining weight on weighing came out to be 110 gm, which was also put into a separate plastic box along with the plastic envelope. All three parcels were sealed by him with his seal bearing the impression JS. The sample seal was separately prepared, and the seal after use was handed over to witness Ram Kishan. He took possession of the said parcels along with a sample slip vide recovery memo Ex. PW5/A, which was attested by C. Bal Kishan and Ram Kishan. He then sent ruqa Ex.PW5/B through C. Balbir Singh, based on which FIR Ex.PW5/C was recorded by SI Kishan Singh, whose signature he identified. He prepared the site plan, Ex. PW5/D at the spot. He arrested the accused vide arrest memo Ex. PW5/E. His personal memo is Ex. PW5/F. The information memo regarding his arrest is Ex. PW5/G. Arrest report under Section 58 Cr.P.C. is Ex.PW5/H. He recorded the statements of the witness. Then he came back to the Police Station Anandpur Sahib, where he produced the entire case property along with the accused and the witness

before the SHO, who verified the facts from him (accused) and also the witnesses. After satisfying himself about the facts of the case, he also sealed the parcels with his seal bearing the impression RS and also put his seal on the sample slip. Then he deposited the case property with MHC Balbir Chand, and the accused was put in the Police lock-up.

3. On completion of the investigation and filing of the final report under Section 173 Cr. P.C., the charge was framed. The prosecution led its evidence, on conclusion whereof, the statement under Section 313 Cr.P.C was recorded. The appellant denied the allegations. No defence evidence was, however, led by the appellant/accused.

4. Parties were heard at length and upon consideration thereof, vide judgment dated 05.07.2011, the appellant was convicted for the commission of an offence under Section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985. Vide order of sentence of the same date, the appellant was ordered to undergo RI for a period of 04 months and pay a fine of Rs.3,000/- and in default thereof, to undergo further imprisonment of 01 month. Aggrieved thereof, the instant appeal had been filed.

5. Counsel appearing on behalf of the appellant has vehemently argued that there was a delay of 07 days in sending the samples to the CFSL Laboratory, and the provisions of Section 50 of the Narcotic Drugs and Psychotropic Substances Act, 1985 have also not been complied with. It is contended that no offer had been made to the appellant for his search by any Gazetted Officer or Magistrate. He further contends that there are material discrepancies in the testimony of prosecution witnesses and that the

appellant has no other criminal antecedents.

6. State counsel, on the other hand, contends that the case against the appellant has been fully established. The prosecution examined as many as 06 witnesses and adduced documentary evidence. All the mandatory provisions of the Narcotic Drugs and Psychotropic Substances Act, 1985, were duly complied with. Besides, there is no ill-will or false motive on the part of any person to indict the appellant in a false case. She contends that the conviction is thus based upon proper appreciation of the evidence that had been adduced.

7. Counsel for the appellant has been asked to refer to any evidence on record on the basis whereof it may be assumed that the sanctity of samples was in any way compromised with, during the said period. He is not in a position to refer to any evidence.

8. He has also failed to refer to the documentary evidence to establish non-compliance of Section 50 of the Narcotic Drugs and Psychotropic Substances Act, 1985 or to any material contradictions in the testimonies of the prosecution witnesses. Thus the arguments are not corroborated from record or any legal precedent applicable to the facts of this case.

9. Counsel for the appellant at this juncture contends that he gives up his challenge to his conviction and to the judgment passed by the Judge, Special Court, Roopnagar, to the above extent and confines the submission with respect to the sentence to be considered. He contends that the Judge, Special Court, Roopnagar, had awarded a sentence of RI for a period of 04 months. The appellant has undergone a total sentence of 02 months and 13

days and is not involved in any other case. It is further contended that the FIR pertains to the year 2007, and almost 19 years have already elapsed. The appellant has already faced the agony of a protracted criminal prosecution. Besides, there is no subsequent involvement of the appellant in any other criminal case as well. He submits that the sentence of the appellant was suspended vide order dated 29.08.2011, passed by this Court

10. Learned State counsel does not dispute the aforesaid aspects.

11. I have heard the learned counsel for the respective parties and have gone through the documents as well as the judgment of the Court.

12. Insofar as the argument about the delay in sending of samples is concerned, the said argument is devoid of merit since the Trial Court gave a categorical finding that all the samples and the case property had been sealed at the spot and that the seals tallied with the specimen seals.

13. Considering the facts noticed above and the challenge to conviction having been given up, no case is thus made out for interfering with the finding of conviction recorded by the Judge, Special Court, Roopnagar. The appeal to the extent of the judgment of conviction dated 05.07.2011 is accordingly dismissed.

14. The same thus leads to the next issue as to whether sufficient mitigating circumstances have been made out by the amicus for the appellant for reducing the sentence.

15. The following aspects attain significance for consideration of the said prayer:-

- (i) The incident in question pertains to the year 2007 and almost 19 years have already elapsed since the

commission of the offence, and the appellant has faced the agony of criminal prosecution for that period.

- (ii) The appellant is not involved in any other criminal case after the grant of bail in the present case.
- (iii) The appellant has already undergone an actual sentence of 02 months 13 days out of the total sentence of 04 months.
- (iv) The appellant would currently be at an advanced stage of his life and career. Detention of the appellant for undergoing the remaining sentence would invariably have serious implications not only for his life but also for that of his family as well. It would thus upset the entire life of the appellant.
- (v) The quantity of contraband recovered from the appellant falls under the category of 'intermediate quantity' and seemingly was not for further trade and might have been used for self-consumption.
- (vi) Seemingly, the appellant has already overcome the addiction as may be inferred from the fact that he has not been involved in any other case during the entire period of almost 19 years.

16. The object of law being not only retributive but also reformatory, the purpose would be defeated in case some benefit is not extended to an accused who has shown reformatory tendencies.

17. On the issue of reduction of sentence to the period already

undergone, the judgment in *S.K. Sakkar @ Mannan vs. State of West Bengal, (2021) 4 SCC 483*, is being referred to wherein the accused was convicted under Section 20 of the Act and Hon'ble Apex Court reduced the sentence of five years to 2 years, 4 months and 16 days, by considering that the occurrence took place in 1997 and he was not a habitual offender, rather a first-time convict.

18. The circumstances noticed above, and the position in law referred to above, support the case of the appellant for reduction in sentence, noticing that a total sentence of 02 months and 13 days out of the total 04 months has already been undergone by the appellant.

19. Considering that the appellant has already suffered the agony of a long-protracted trial, successfully warded off his crime proneness, an evident learning of a lesson, his socio-economic circumstances and detention period, this Court finds sufficient mitigating factors. Thus, ends of justice would be served by reducing his sentence to the period already undergone. However, the fine imposed by the Trial Court is kept intact along with the punishment in default thereof.

20. In view of the above, the present appeal is ***partly allowed***. While upholding the conviction, the order of sentence is modified. The sentence is reduced to the period undergone, and the sentence of fine and custody in default thereof is maintained.

(VINOD S. BHARDWAJ)
JUDGE

10.04.2026

Mangal Singh

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