



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

368**CRA-S-1836-SB-2011 (O&M)****Date of decision: 10.04.2026**

Jitender Singh @ Kala

...Appellant(s)

VERSUS

State of Haryana

...Respondent(s)

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

Present :- Mr. Ish Puneet Singh, Advocate for the appellant.

Mr. Onkar Singh Wahla, Sr. DAG Haryana.

VINOD S. BHARDWAJ, J. (Oral)

1. The appellant has challenged the judgment of conviction and order of sentence dated 20.07.2011/21.07.2011 passed by the Judge, Special Court, Ambala, whereby he was convicted in case bearing FIR No.123 dated 26.07.2010 registered under Section 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985 at Police Station Sadar Ambala, Ambala, and sentenced as under:-

Section	Sentence and Fine	In default thereof
21 of the N.D.P.S. Act	RI for a period of 01 year and a fine of Rs.2,000/-.	RI for a further period of 01 month.

2. Briefly summarized, the facts of the present case are that on 26.07.2010, SI/SHO Randhir Singh, with HC Radhey Sham and HC Raj Pal, was present at Jamitgarh road in the area of Ram Dass Nagar in connection with routine patrolling and checking of light vehicles. Constable Charan

Singh and Constable Vijender Singh were also with him as the driver of the government vehicle no.HR-01-T-0500. In the meantime, a young boy was seen coming from the Kalu Majra side on foot. On seeing the police party, he turned back and started walking swiftly. But he was apprehended by SI/SHO Randhir Singh with the help of other police officials. The said boy took out something from the pocket of his Kaipri (trousers) and threw the same on the ground. SI/SHO Randhir Singh lifted the same and found it to be a packet of polythene. When checked in the light of a torch, smack was found in the packet. The boy disclosed his name to be Jitender Singh @ Kala. The passersbys were requested to join the investigation, but they expressed their inability to do so. On weighing, the quantity of smack came to be 17 gm, out of which two samples of 2 gm each were separated and the same were converted into separate parcels. Residue smack was also converted into a separate parcel. All the parcels were sealed with the seal of RS, and a sample seal was also prepared. After use, the seal was handed over to HC Radhey Sham. All the parcels and the sample seal were taken into police possession, and ruqa was sent to the police station, based on which a formal FIR was got registered. The accused was arrested, and on completion of the investigation, challan was prepared against the accused and presented in the Court for his trial under Section 21 of the Act.

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 20.07.2011, the appellant was convicted for the commission of an offence under Section 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985. Vide order of sentence dated 21.07.2011, the appellant was ordered to undergo RI for a period of 01 year and pay a fine of Rs.2,000/-. 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 a false case has been registered against the appellant, and the prosecution had failed to prove its case. The judgment of conviction and order of sentence have been passed without appreciation of the evidence. The provisions of Section 55 of the Narcotic Drugs and Psychotropic Substances Act, 1985, have also not been complied with, and the case property was tampered with. No independent witness was joined by the Police party, and no recovery was effected from the conscious possession of the appellant. It is contended that the Court, in its judgment itself, had held that there were only minor discrepancies. He further contends that there are material discrepancies in the testimony of prosecution witnesses and that the appellant has no other criminal antecedents.

6. Counsel for the appellant has been asked to refer to the evidence on record, on the basis whereof it may be assumed that there was tampering of the case property, while in Police possession or in the *Malkhana*. He has however not been able to refer to any such evidence on record. He was also asked to refer to the prejudice and illegality leading to

travesty of justice that has occurred as a result of failure to join an independent witness. He has not been able to pin-point the same. It has also been put to the counsel as to whether failure to join an independent public witness would vitiate the trial or render the testimony of official witnesses liable to be discarded? He fairly submits that a consistent testimony of even Police/official witnesses is credible in law.

7. While advertng to the issue of 'conscious possession' he has been confronted with the circumstances as consistently deposed and established in prosecution evidence coupled with Section 35 of the Narcotic Drugs and Psychotropic Substances Act, 1985 in reference to the culpable mental state. He failed to offer any further argument.

8. State counsel, on the other hand, contends that the case against the appellant has been fully established. The prosecution examined as many as 08 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. He contends that the conviction is thus based upon proper appreciation of the evidence that had been adduced.

9. Counsel for the appellant at this juncture contends that he gives up his challenge to the conviction on merits and that he may be heard on the quantum of sentence. He contends that the Judge, Special Court, Ambala, had awarded a sentence of RI for a period of 01 year. The appellant has undergone a total sentence of 03 months and 06 days and is not involved in any other case. It is further contended that the FIR pertains to the year 2010,

and nearly 16 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 19.09.2011 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 integrity of the sample being tainted is concerned, the said argument is devoid of merit since the Trial Court recorded a specific finding after going through the FSL report that the seals on one sealed cloth parcel were intact and tallied with the specimen seal as per the forwarding authority's letter. The Trial Court also rightly observed that a conviction could be sustained even in cases where there were no independent witnesses if the testimonies of official witnesses were trustworthy.

13. In any case, challenge to the conviction on merits has been given up by the counsel for the appellant. No case is thus made out for interfering with the finding of conviction recorded by the Judge, Special Court, Ambala. The appeal, to the extent of the judgment of conviction, 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 2010, and a period of nearly 16 years has already elapsed since the commission of the offence, and the appellant has faced the agony of criminal prosecution for that period.
- (ii) The appellant was not involved in any other criminal offence, even after the grant of bail in the present case.
- (iii) The appellant has already undergone an actual sentence of 03 months 06 days out of the total sentence of 01 year.
- (iv) The appellant would currently be in advanced stages 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 nearly 16 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. Hon'ble Supreme Court in ***Satish @ Sabbe vs. State of U.P., (2021) 14 SCC 580***, had observed that, *"Whilst it is undoubtedly true that society has a right to lead a peaceful and fearless life, without free roaming criminals creating havoc in the lives of ordinary peace loving citizens. But equally strong is the foundation of reformatory theory which propounds that a civilised society cannot be achieved only through punitive attitudes and vindictiveness; and that instead public harmony, brotherhood and mutual acceptability ought to be fostered. Thus, first time offenders ought to be liberally accorded a chance to repent their past and look forward to a bright future". [Maru Ram v. Union of India, (1981) 1 SCC 107 : 1981 SCC (Cri) 112]*".

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 already a custody period of 03 months and 06 days out of the total 01 year 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 dated 21.07.2011 is

modified, the sentence is reduced to the period undergone and the sentence of fine and custody in default thereof is maintained.

10.04.2026

Mangal Singh

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(VINOD S. BHARDWAJ)

JUDGE