

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

428

CRA-S-3025-SB-2011 (O&M)
Date of decision: 18.03.2026

Jog Raj and another ...Appellants (s)

VERSUS

State of Punjab ...Respondent(s)

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

Present :- Mr. Parampreet Singh Paul, Advocate for the appellants.

Mr. Mohit Kapoor, Sr. DAG Punjab.

VINOD S. BHARDWAJ, J. (Oral)

1. The appellants have challenged the judgment of conviction and order of sentence dated 19.11.2011 passed by the learned Judge, Special Court (NDPS), Roopnagar whereby they were convicted in case bearing FIR No.89 dated 09.08.2007 registered under Section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 at Police Station Anandpur Sahib, 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.2,000/- each.	Imprisonment for a period of 30 days each.

2. At this stage, Mr. Parampreet Singh Paul, Advocate, enters appearance and files vakalatnama on behalf of the appellants today in the Court and the same is taken on record.

3. Briefly summarized, the facts of the present case are that on 9.8.2007, SI Bhupinder Singh alongwith HC Avtar Singh and other police officials was present at T point Bhullar Dump in the area of village Garha for patrolling duty. At about 4 pm, a Motorcycle without number which was being driven by a clean shaven person arrived there from the side of Anandpur Sahib and one lady was also sitting on the pillion of motorcycle. He stopped the said motorcycle on suspicion and enquired about the name and address of the person sitting on the motorcycle and at that same time, the lady sitting on the pillion threw away the opium from her bag. Her name and address was also enquired by him. Lady C. Sushila Devi was also called at the spot. From the recovered opium, he took out two samples of 20 grams each and the remaining, on weighing came out to be 210 grams. Both the samples were put in plastic box and the bulk was put in a tin box and the same were converted into parcels and sealed with his seal bearing impression "BS". Sample seal was separately prepared. All the three parcels and sample slip were taken into possession vide recovery memo Ex.PW7/A, which was signed by HC Avtar Singh and private witness Gurbachan Singh and Lady C. Sushila Devi. IO prepared the personal search memos of both the accused and their personal memos are Ex.PW7/B and PWG/C. IO also took into possession the said motorcycle without number vide recovery memo Ex.PW7/C. Then the IO sent Ruqa Ex.PW7/D through C. Rupesh Kumar on the basis of which FIR Ex.PW7/E was recorded by SHO Surinderpal Singh. Then the IO prepared site plan Ex.PW7/F at the spot and also recorded the statements of the witnesses and on return to police station, he produced the entire case property along with the accused and the

witnesses before SHO Surinderpal Singh. The SHO verified the facts from the witnesses as well as from the accused and after being satisfied with the facts of recovery, he also put his seal bearing impression SPS on all the three parcels and the sample slip which is Ex.PW7/G. Then SHO himself deposited the case property with the MHC and the accused were put in the police lock up.

4. On completion of investigation and filing of the final report under Section 173 Cr. P.C., the charge was framed. To prove its case, the prosecution examined the following witnesses:-

PW-1	HC Balbir Singh.
PW-2	C. Chuhar Singh.
PW-3	Dharam Pal (who is stated to be the owner of the motorcycle)
PW-4	Sohan Singh, Photographer.
PW-5	Gurbachan Singh (Ex. Sarpanch of village Lodhipur).
PW-6	L/C Sushila Devi.
PW-7	Bhupinder Singh, Line Officer.
PW-8	ASI Balwinder Kumar.
PW-9	HC Avtar Singh.
PW-10	SI Surinderpal Singh (the then SHO Police Station Anandpur Sahib).

5. After the prosecution concluded its evidence, all the incriminating evidence was put to the accused. Both the accused/appellants took up the defence that they are innocent and have committed no offence.

No recovery was effected from them as alleged by the prosecution and a false case has been registered against them. Their daughter Pooja was abducted by Makhan Singh son of Piara Singh, Harijan of village Chanauli Bassi and they conducted court marriage. They protested as their daughter was minor and married out of caste. In order to put pressure upon them, this false case was registered against them. A case under the SC/ST Act was also filed against them by said Piara Singh. However, no evidence was led by them to substantiate their case.

6. Parties were heard at length and upon consideration thereof, vide judgment dated 19.11.2011, the appellants were convicted for commission of offence under Section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985. Vide order of sentence of the same date, the appellants were ordered to undergo RI for a period of 04 months with a fine of Rs.2,000/- and in default thereof, to undergo further imprisonment of 30 days. Aggrieved thereof, the instant appeal had been filed.

7. Counsel appearing on behalf of the appellants has vehemently argued that the mandatory provisions of the Narcotic Drugs and Psychotropic Substances Act, 1985 have not been complied with. He contends that the prosecution has failed to prove the conscious possession of the recovered contraband. There are two versions of prosecution regarding handing over of the seal as can be seen from the deposition of PW-5/Gurbachan Singh and PW-9/Avtar Singh. Further, there is a delay of 06 days in sending the samples to chemical examiner. The independent prosecution witness has not supported the case of the prosecution. It is also

pointed that the statement of L/C Sushila Devi was recorded in the Police Station instead of at the spot.

8. State counsel, on the other hand, contends that the case against the appellants has been fully established. The prosecution examined as many as 10 witnesses and adduced documentary evidence. All the mandatory provisions of the Narcotic Drugs and Psychotropic Substances Act, 1985 were duly complied with.

9. Adverting now to the argument raised by the counsel for the appellant about a delay of 06 days in sending the samples for analysis to the Chemical- Examiner. Counsel has not been able to highlight as to what prejudice has been sustained or as to what illegality crept in the case of prosecution by a delay of 06 days. Unless it is brought out from the delay that the sanctity of the sample has been compromised or any valuable right has been lost, a simplicitor delay would not be fatal to the case of the prosecution. The core idea behind prompt dispatch of sample is to avoid tempering with case property or any damage to the chemical properties due to prolonged storage. The same is thus a principle of caution and prudence and not a mandatory statutory compliance, the breach whereof may vitiate the trial. Counsel is not in a position to advert to any prejudice being caused or refers to any reliable evidence to infer that the sanctity of the sample being tempered with. The argument thus deserves to be rejected.

10. The argument of the counsel about variation in the deposition of PW-5/Gurbachan Singh and PW-9/Avtar Singh about handing over the seal after use. The reasons referred to in the proceedings para are also the underlying objective behind the handing over the same. Not every variation

in the deposition become fatal. Such discrepancies should have a material bearing on the case of the prosecution rendering the prosecution narration and/or proof-suspect. A discrepancy or the contradiction that does not dwell upon any material fact or impact steals an edge of an argument.

11. The same now leads to the objection as to whether the prosecution has been able to prove conscious possession of the recovered contraband or not. The argument is seemingly embedded in the fact that the alleged glazed envelope containing opium had been thrown by the appellant and was thereafter picked.

12. The requirement of an accused being in conscious possession has been a much emphasized judicial doctrine. 'Consciousness' is a stage of 'awareness' about the possession of the contraband. The defence has construed the "consciousness" of possession only when contraband is recovered from the person. The said interpretation does not flow from a meaningful reading of the statutory provision and requirements. The consciousness of possession is to be ascertained from the totality of circumstances. The unimpeached evidence about the appellant throwing the contraband shows that the appellant was aware of the nature of possession by her. Besides, Section 35 of the Narcotic Drugs and Psychotropic Substances Act, 1985 creates a statutory presumption of a culpable mental state and even though the presumption is rebuttable, however, such onus is to be discharged primarily by the accused before the burden can be put on the prosecution. The Section 35 elucidates the culpable mental state through its explanation.

13. An objective reading thereof, in light of the fact and undisputed

circumstances, establishes the culpable mental state of the appellants. Hence the arguments raised above, to challenge the conviction, are rejected. The prosecution has been able to establish its case against the appellants-accused.

14. In so far as the argument about recording of secret information in writing is concerned, the said argument is devoid of merits since it is a case of chance recovery and interception was not based upon any secret information.

15. The case is thus not made out for interfering with the finding of conviction recorded by the Judge, Special Court, Rupnagar. The appeal to the extent of the judgment of conviction is accordingly dismissed.

16. Counsel for the appellants at this juncture contends that since this Court does not find sufficient grounds for setting aside the judgment of conviction passed by the Judge, Special Court, Roopnagar, the submission with respect to the sentence may be considered. It is contended by him that the Judge, Special Court, Roopnagar had awarded a sentence of RI for a period of 04 months. The sentence of the appellants was suspended vide order dated 14.12.2011 after noticing that the appellants had already undergone an actual sentence of 01 month and 01 day. It is further contended that the FIR in question pertains to the year 2007 and a period of nearly 19 years has elapsed since then. The appellants have already faced the agony of a protracted criminal prosecution. Besides, there is no subsequent involvement of the appellants in any other criminal case as well.

17. Learned State counsel does not dispute the same.

18. I have heard the learned counsel for the respective parties, on the quantum of sentence as well, and have gone through the documents as

well as the judgment of the Court.

19. The same thus leads to the next issue as to whether sufficient mitigating circumstances have been made out by the counsel for the appellants for reduction in sentence.

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

- (i) The FIR in question pertains to the year 2007 and a period of nearly 19 years has already elapsed since the commission of the offence and the appellants has faced the agony of criminal prosecution for that period.
- (ii) The appellants were not involved in any other criminal offence and even after suspension of sentence in the present case, there is no involvement of the appellants in any other criminal case.
- (iii) The appellants has already undergone an actual sentence of 01 months 01 days out of the total sentence of 04 months.
- (iv) The appellants would currently be in advance stages of their life and career. Detention of the appellants for undergoing the remaining sentence would invariably have serious implications on not only their life but also that of their family as well. It would thus upset the entire life of the appellants.
- (v) The quantity of contraband recovered from the appellants falls under the category of 'intermediate quantity' and

seemingly was not for the purposes of further trade and might have been used for self consumption.

- (vi) Seemingly, the appellants have already overcome the addiction as may be inferred from the fact that they have not been involved in any other case during the entire period of more than 16 years.

21. 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 .

22. 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.

23. 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]”.

24. The circumstances noticed above and the position in law referred to above support the case of the appellants for reduction in sentence and noticing that already a period of 01 month and 01 day out of the total sentence of 04 months has already been undergone by the appellants.

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

26. In view of the above, the present appeal is ***partly allowed***. While upholding the conviction, the order of sentence is modified and the order of sentence dated 19.11.2011 is modified and sentence is reduced to the period undergone and the sentence of fine and custody in default thereof is maintained.

(VINOD S. BHARDWAJ)
JUDGE

18.03.2026

Mangal Singh

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