

2025:PHHC:074535



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CRA-S-707-SB-2000

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

**CRA-S-707-SB-2000
Reserved on:12.05.2025
Pronounced on: 19.05.2025.**

Jasbir Singh

.....Appellant

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Rahul Verma, Advocate (Legal aid counsel)
for the appellant (s).

Ms. Navreet Kaur Barnala, AAG, Punjab.

ANOOP CHITKARA J.

FIR No.	Dated	Police Station	Sections
93	1997	B Division, Amritsar	18 of the NDPS Act

Case No.	Sessions Case No.77 of 1998 Date of decision: 25.05.2000
Names of accused/ convicts/ appellants	Jasbir Singh
Conviction under	Section 18 of the NDPS Act
Sentence imposed	RI for 10 years with a fine of Rs 1 lac

1. Appellant-accused Jasbir Singh, who was convicted and sentenced by the trial court for possessing 1 kg 500 grams of opium exceeding the limit established for personal use, filed the present appeal in this court in 2000.

2. By order dated 09.11.2000, a coordinate Bench of this Court admitted the appeal, and by order dated 23.11.2001, another coordinate Bench suspended the sentence of the appellant-accused and released him on bail.

3. On 16.09.1997, Investigator ASI Kishori Lal (PW3) was traveling from Chowk Ghee Mandi towards GT Road, Amritsar, when he covered a distance of 50 yards, he then noticed a person, Appellant Jasbir Singh, holding a bag in his right hand. On noticing the

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police, the said person flustered and turned back. The appellant's perplexed conduct raised suspicion, and he was subsequently apprehended.

4. The investigator told him that he had a suspicion that the appellant had some incriminating articles. During this period, the investigator claimed to have joined Sukhwant Singh as an eyewitness. The investigator informed the accused that he has the right to have his bag searched by a Gazetted Officer or Magistrate.

5. To this, the accused requested his search from a Gazetted Officer. Consequently, a consent memo was prepared, which was signed by the accused (present appellant) ASI Balbir Singh (PW-5) and an independent witness, Sukhwant Singh. He gave the accused the option under Section 50 of the NDPS Act, to which the accused expressed his willingness to undergo a search by ASP Parveen Kumar.

6. Subsequently, the accused was searched, and opium wrapped in glazed paper was recovered, and its weight was found to be 1 kg 500 grams. One sample of 10 grams was taken, and the remaining bulk of opium was also taken into possession. As per the translated copy of the FIR, a sample of 10 grams was put in a small tin box, and the remaining opium was put in a big tin box. The investigator recorded a seizure memo, claimed to have complied with the procedural requirements, and then arrested the accused. Further, the investigation was handed over to ASI Balbir Singh (PW-5).

7. To comply with Section 55 of the NDPS Act, the case property was handed over to Inspector Joga Singh, SHO of the concerned Police Station. After the investigation was completed, prosecution was launched against Jasbir Singh. Charges were framed on 04.02.1998 for commission of an offence punishable under Section 18 of the NDPS Act, to which he denied, and claimed trial.

8. I have heard counsel for the parties and gone through the record, and its analysis would lead to the following outcome.

EVIDENCE ABOUT WEIGHT AND SCALES NOT PROVED:

9. PW3-Kishori Lal stated that he had only small-scale weights, which were procured from nearby shopkeepers, and the Constable sent to bring the weights had to be examined. It would have been better to have the shopkeeper and the constable who brought the weights as independent witnesses. It was more important because when he had agreed to hand over the weight and scale, he would have had no difficulty standing as an eyewitness, which was not done.

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10. Investigator PW3-ASI Kishori Lal testified that weights and scales were already with them. However, he clarified that they had a small scale, but the weights were brought from the nearby shop. In the cross-examination, he did not disclose the name of the shop but stated that Hardev Singh brought the weights and scales. However, Hardev Singh was not examined. No reason has been mentioned why he was not examined. Thus, the prosecution withheld the examination of Hardev Singh, whose testimony was material to prove the name of the shopkeeper and the name of the shop from which the weights and scales were taken.

INDEPENDENT WITNESS WAS NOT EXAMINED:

11. PW5-ASI Balbir Singh testified that on 16.09.1997, he was a member of the police party. In his cross-examination, PW-5 also corroborated the version of PW-3 that they had left the police station between 1:30 PM and 1:45 PM. According to PW5, the independent witness, Sukhwant Singh, arrived at the spot approximately 4-5 minutes after apprehending the accused.

12. PW-4 ASP Parveen Kumar Sinha testified that Sukhwant Singh was already present at the spot when he arrived. He further testified that opium was taken into possession as per Ex. PB, which was attested by PW-4 Parveen Kumar, ASI Balbir Singh, and Sukhwant Singh, and that the seals KL and PKS were handed over to Sukhwant Singh.

13. Once the independent witness, Sukhwant Singh, was present, there was no reason not to examine him. However, without offering any explanation, Sukhwant Singh was not examined and was subsequently dropped as a witness

14. In the answer to question No.17, put to the accused under S. 313 CrPC, Jasbir stated that he was picked up from his house on 15.09.1997 at noon and his wife had sent telegrams, that he runs a shop of Kamani Manufacturer and regarding this, even the neighboring shopkeepers have given application for false implication. No recovery had taken place from him, but the police implicated him because of his father's bad record.

15. PW-3-ASI Kishori Lal, in his cross-examination, denied the defense suggestion that the accused was brought from his home a day earlier and his wife had sent the telegram to the Chief Justice of Punjab and Haryana High Court and the SSP, Amritsar. He further denied that the wife of the accused had sent a telegram to the Chief Justice of this Court and SSP, Amritsar, and for that reason, he was implicated in the false drugs case. PW5-ASI Balbir Singh denied the suggestion of the defence that the accused, who is a shopkeeper, was arrested because of the bad record of his father, Bakshish Singh. PW6-Inspector Joga

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Singh denied the defense suggestion of receiving any telegram from Paramjeet Kaur/wife of the accused, representing that nothing was recovered from the accused. He showed ignorance regarding the telegram, Mark A and Mark B. PW-6 not only denied receiving any telegram but also stated that the accused does nothing but sells opium to truck drivers and earns a livelihood out of that. He further stated that on the day of the occurrence, opium was meant to be given to a truck driver of Rajasthan who did not come.

16. In *Krishan Chand vs. State of Himachal Pradesh*, (2018) 1 SCC 222, the Hon'ble Supreme Court holds,

[21]. From the evidence which has come on record, it is quite clear that the place, where the accused is alleged to have been apprehended, cannot be said to be an isolated one as the house of Govind Singh DW-2 is situated on the edge of Patarna Bridge. Thus the version of the complainant PW-6 that independent witnesses could not be associated as it was an isolated place does not inspire confidence. Moreover, from the evidence of Govind Singh PW-2 the case of the prosecution regarding apprehension of the accused, at Patarna bridge, while being in possession of bag containing 7 kgs of charas, becomes highly doubtful because had he been so apprehended, by the police, this fact was to come to his notice, for the reason, that his house is situated at the edge of the bridge in which he resides, along with his family.

17. Just because a Gazetted officer is present at the scene, it does not mean that an investigation conducted in the presence of a Gazetted Officer is an absolute truth, and there is no need to examine independent witnesses in trial.

LINK EVIDENCE- SAFE CUSTODY:

18. To establish the chain of link evidence, PW-6 Inspector Joga Singh testified that he had received the samples from PW-3, ASI Kishori Lal, which he deposited in the Malkhana on 16 September 1997. The next day, i.e., 17.09.1997, he had produced the case property along with the accused before the Illaqa Magistrate. After that, he retained the case property in his custody at the Malkhana (The police station's storage facility).

19. PW6-Inspector Joga Singh SHO in his cross-examination admitted that he had not deposited the sample seal, case property, and sample of this case to MHC on 16.09.1997, and he had first deposited the same to MHC on 17.09.1997.

20. PW6-Inspector Joga Singh admitted in his cross-examination that the key of the main door of the Malkhana remains with MHC, and on 30.09.1997, the key was also with MHC. There was only one key to the double lock in Malkhana, which was with him. He also admitted that on his direction, MHC would open Malkhana on any date at any time. PW6 Inspector Joga Singh, SHO, had admitted that when the case property was handed over to

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him by Kishori Lal (PW3), he had retained it with him from September 16, 1997, to September 17, 1997.

21. Thus, despite PW-6 admitting in cross-examination that there was a Malkhana in the police station, which could have been opened on his direction on any date at any time. Still, he had not deposited the case property in the Malkhana, and no explanation has been offered. Given the above, the custody of the case property with SHO-Inspector Joga Singh, without depositing it in the Malkhana, is unjustified, and no explanation has been provided for this.

22. To fill up the lacunae, the MHC Palwinder Singh, PW-7, testified that on 16.09.1997, when he was posted at MHC, on that day, he received samples seal, case property along with sample seals from Inspector-Joga Singh which were bearing the seals KL, JS and PKS and it was kept in double lock. MHC PW-7 made a material improvement in the prosecution case by stating that Joga Singh had deposited the case property with him on 16.09.1997, whereas Inspector Joga Singh had categorically denied handing over the case property to MHC, Palwinder Singh, on 16.09.1997.

23. The prosecution did not tender in evidence the extracts of Register No.19. It is not a case where the attention of the witness was not drawn to the Malkhana Register. Despite a specific cross-examination regarding the absence of entries in the Malkhana, still, the prosecution did not file any application under Section 311 CrPC to tender in evidence the extracts of entries from Register No. 19, i.e., the Malkhana Register, nor did they do so through the remaining witnesses or by recalling the witnesses.

24. The best evidence was the entries of the Malkhana Register, which were withheld. Thus, presumption under Section 114(e) & 114(g) of the Indian Evidence Act is automatically rebutted for the reason that the concealment of the Malkhana Register is intentional, willful, and without any explanation. If the case property had actually been deposited in the Malkhana, then the best evidence would be an official record, which is maintained in the course of official business and attaches a presumption of truth. There was no reason for the prosecution and investigation not to take a copy of the Malkhana Register, but it was not done. The only inference this Court can draw from the concealment of the Malkhana Register record is that nothing was deposited in the Malkhana on 16.09.1997 by SHO (PW6), and the statement made by MHC PW7 was to fill up the lacuna and to cover up Inspector Joga Singh. As such, the statement made by PW7, Palwinder Singh, is incorrect, false, and lacks corroborating evidence.

**CRA-S-707-SB-2000****POSSIBILITY OF CASE PROPERTY BEING TAMPERED WITH CANNOT BE RULED OUT:**

25. In the FIR, it was explicitly mentioned that the seized opium was put in a tin box, and the tin box was put in a cloth parcel. Similarly, even the 10-gram sample was placed in a small tin box, which was then covered with cloth parcels, and both these cloth parcels were sealed as aforesaid. The report of the chemical examiner is Ex. PF, in which descriptions of seals are not mentioned. The laboratory report is annexed as PF, where the original PF is Form No. 29, and sample seals (KL, PKS, and JS) were affixed to the sample. According to the laboratory report, the quantity received was 10 grams; however, there is no mention of a tin box. Further above the seal of the Assistant Chemical Examiner, there is a stamp indicating that the seals of the exhibits were intact and agreed with the samples sent separately. However, there is no mention of the tin box. This assumes significance, but when the case property was opened in court and tendered in evidence as Ex. PB in the statement of PW3, ASI Kishori Lal, at that time, there was also no mention of any box.

26. It shall be appropriate to refer to testimony of the following witnesses:-

27. PW5-ASI Balbir Singh:-

“...ASI Kishori Lal had not checked the bag in possession of the accused in order to give wireless message to ASP P.K. Sinha. ASP P.K. Sinha had no talk with Sukhwant singh0PW parcel cloth and tin were arranged but I do not know who had brought the same at the spot.”

28. I deem it appropriate to refer to the following portion of the translated copy of FIR, which reads as follows:-

“...From which opium wrapped in a glaze paper was recovered. 10 gram of opium was taken out from the recovered opium as sample and the remaining opium was weighed which comes to 1 kg 490 grams. Sample opium and remaining opium 1 kg 490 grams were put in separate boxes. Sample opium was put in small tin box and remaining opium was put in big tin box and parcels of the same were prepared separately.”

29. It would be appropriate to extract the portion of the examination-in-Chief of PW-3, which reads as follows: -

“...Then ASP asked me to search the accused. Opium wrapped in glazed paper was recovered from the bag Ex.P1. Sample of 10 grams was separated and the remaining opium was found to be one kgs and 490 grams. Two sample parcels and the remaining opium Ex.P2 were prepared at the spot and sealed with my seal KL and of AS, PKS. The seal after use was handed over to Sukhwant Singh PW.”

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30. It appears that the bulk was never opened in the Court. Without opening, the same parcel was exhibited as P2. The trial Court did not see the contents of P2. Furthermore, there is no evidence that when the accused and case property were initially produced before the Judicial Magistrate on 17 September 1997, the Judicial Magistrate opened the case property. Thus, whether 1 kg 490 grams of substance was opium or not is not proved by any evidence except the statement of police officials. Although a representative sample was taken, to connect the representative sample with the bulk, the trial Court and the prosecution needed to open the parcel (P2) and at least observe its contents. The trial Court believed the story of the investigation that opium lies in P-2. The same was presumed without opening the parcel and observing the contents. The trial Court did not mention whether the seals on the cloth parcel from KL, PKS, and JS were intact or not. It is not a case where bulk had been destroyed at the Court's orders. In fact, during the trial, bulk was produced before the Court and tendered as evidence, marked as P2. But what is inside P-2 has not been proved.

31. The trial Court did not even observe that Ext. P-2 contains a box. It is common knowledge that if Ext. P-2 had a tin box, which further contained the opium; then the shape and hardness of the tin box could have been easily inferred by touch, but no such evidence had been proved.

32. This assumes some significance because it is not a case of prior information where the investigator had the information about the accused carrying 1.5 kg of opium; as such, he had arranged a tin box of a size which could have contained 1 kg 500 grams of opium.

33. The case set up by the prosecution, which has been testified to in the Court not only by ASI Kishori Lal but also by a Gazetted officer, ASP Parveen Kumar, is that everything was done at the spot; however, they are silent about who brought the tin box. Although PW-3 stated that they arranged scales and weights from a nearby location, there is no mention of procuring a tin box, in which the bulk of 1.490 grams was placed.

34. The difficulty for the prosecution is that even in the chemical examiner's report, there is no mention of small boxes. The Chemical Examiner Report is silent that opium was taken from the tin box, and regarding bulk, there is no such observation in the Court. All this has created a dent in the prosecution's case.

35. Given the contradictions mentioned above, the prosecution has failed to prove its case beyond a reasonable doubt.

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36. In *Noor Aga v. State of Punjab*, 2008(16) SCC 417, the Hon'ble Supreme Court observed,

[16]. The provisions of the Act and the punishment prescribed therein being indisputably stringent flowing from elements such as a heightened standard for bail, absence of any provision for remissions, specific provisions for grant of minimum sentence, enabling provisions granting power to the Court to impose fine of more than maximum punishment of Rs. 2,00,000/- as also the presumption of guilt emerging from possession of Narcotic Drugs and Psychotropic substances, the extent of burden to prove the foundational facts on the prosecution, i.e., 'proof beyond all reasonable doubt' would be more onerous. A heightened scrutiny test would be necessary to be invoked. It is so because whereas, on the one hand, the court must strive towards giving effect to the parliamentary object and intent in the light of the international conventions, but, on the other, it is also necessary to uphold the individual human rights and dignity as provided for under the UN Declaration of Human Rights by insisting upon scrupulous compliance of the provisions of the Act for the purpose of upholding the democratic values. It is necessary for giving effect to the concept of 'wider civilization'. The courts must always remind itself that it is a well settled principle of criminal jurisprudence that more serious the offence, the stricter is the degree of proof. A higher degree of assurance, thus, would be necessary to convict an accused.

37. In *State of Himachal Pradesh v. Trilok Chand*, (2018) 2 SCC 352, the Hon'ble Supreme Court holds,

[13]. ...It is imperative that the law the Court should follow for awarding conviction under the provisions of N.D.P.S. Act is "stringent the punishment stricter the proof." In such cases, the prosecution evidence has to be examined very zealously so as to exclude every chance of false implication...."

38. Given the discussion above, this Court finds that the view taken by the trial Court is unsustainable to the extent mentioned above. Thus, this Court has no other option but to give the benefit of doubt to the accused.

39. Consequently, the appeal is allowed, and the judgment of conviction and order of sentence mentioned above are set aside. Bail bonds & surety bonds furnished by the appellants-accused are discharged.

**(Anoop Chitkara),
Judge**

19.05.2025

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Whether speaking/reasoned: Yes
Whether reportable: YES.