



CRA-S-1377-SB-2007 (O&M) and  
CRA-S-1136-SB-2007 (O&M)

-1-

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

**CRA-S-1377-SB-2007 (O&M)**

Boga Singh

... Appellant

Versus

State of Haryana

.. Respondent

**CRA-S-1136-SB-2007 (O&M)**

Jagdev Singh

... Appellant

Versus

State of Haryana

.. Respondent

**Reserved on : 03.07.2025**

**Date of Pronouncement : 18.07.2025**

**CORAM : HON'BLE MR. JUSTICE H.S.GREWAL**

Present:- Mr. Atul Lakhanpal, Senior Advocate with  
Mr. Karan Jangra, Advocate for the appellant  
In CRA-S-1377-SB-2007.

Mr. Rahul Bora, Advocate for  
Mr. Amit Khatkar, Advocate for the appellant  
In CRA-S-1136-SB-2007.

Mr. Parveen Kumar Aggarwal, Addl. A.G., Haryana.

\*\*\*

**H.S. Grewal, J.**

This order shall dispose of two criminal appeals bearing Nos.  
CRA-S-1377-SB-2007 and CRA-S-1136-SB-2007 as these are arising out of  
identical FIR. For brevity, the facts are taken from CRA-S-1377-SB-2007.



**CRA-S-1377-SB-2007 (O&M) and  
CRA-S-1136-SB-2007 (O&M)**

-2-

2. These criminal appeals are directed against the judgment of conviction and order of sentence dated 03.04.2007 passed by the Additional Sessions Judge, Fatehabad, in case FIR No.77 dated 15.03.2000, registered at Police Station Ratia whereby the appellants have been convicted for the commission of an offence punishable under Section 15 of the NDPS Act and sentenced to undergo RI for 10 years, to pay a fine of Rs.1 lakh each and in default thereof to undergo SI for 01 year.

3. Learned counsel for the appellant(s) have submitted that the trial Court has erred in passing the aforesaid judgment inasmuch as there is non-compliance of Section 42 of the NDPS Act which specifically provides that the alleged secret information received by the police regarding the presence of contraband should have to be reduced into writing. Although notice under Section 50 of the NDPS Act is stated to be served upon the appellants but it was a joint notice which is not permissible under the law. Moreover, the necessary ingredients of Section 55 of the NDPS Act have not been followed as there is no reliable evidence to establish that the seized case property was duly deposited with the Officer-in-charge of the police station or that proper custody and sealing procedures were followed. The prosecution has failed to produce the necessary documentation or evidence showing proper handling of the case property after the seizure, thereby creating serious doubts about the integrity of the evidence. Learned counsel have further submitted that the prosecution has relied heavily on the testimonies of Jaswant Singh and Gurjant Singh, who are alleged to be "independent" witnesses. However, learned counsel has drawn attention to the fact that both witnesses were politically opposed to co-convict

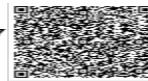


**CRA-S-1377-SB-2007 (O&M) and  
CRA-S-1136-SB-2007 (O&M)**

-3-

Bhagwan Singh in light of the then-upcoming village panchayat elections. It is also submitted that their testimonies are tainted with bias and political rivalry, and hence the same cannot be considered as independent or impartial witnesses. Learned counsel also submitted that there is an unexplained delay of more than 30 days in sending the sample to the Laboratory which has not been taken into account by the trial Court. The prosecution has also failed to adduce any documentary or credible evidence to prove that co-convicts Karnail Singh and Bhagwan Singh were in ownership or possession of the premises from where the alleged recovery was made. The prosecution has merely relied on oral assertions without producing any revenue or property records to substantiate this critical aspect. Learned counsel has also pointed out various procedural irregularities and material contradictions in the testimonies of prosecution witnesses. These include inconsistencies in the timing of the recovery, discrepancies regarding the presence or absence of the police officials at the spot, and contradictions between the statements of the BDO and the Investigating Officer. It is argued that such contradictions strike at the root of the prosecution case and make it wholly unreliable.

4. On the other hand, learned State counsel, has contended that the judgment passed by the learned trial Court is well-reasoned and based on proper appreciation of facts and evidence. The contentions raised by the learned counsel for the appellant(s) are misplaced and do not require interference by this Court. He further contended that the provisions under Section 42 of the NDPS Act have been complied with as the Investigating Officer had clearly stated that the information was put into writing and sent to



**CRA-S-1377-SB-2007 (O&M) and  
CRA-S-1136-SB-2007 (O&M)**

**-4-**

his superior officer. Although a joint notice was given to the appellants as both were together at the time of the search and no prejudice has been caused to them. Learned State counsel, while referring to the status report filed by way of an affidavit of Deputy Superintendent of Police, Ratia, District Fatehabad, submitted that co-convicts Bhagwan Singh and Karnail Singh, who had filed CRA-S-1058-2007, had expired during the pendency of the appeal.

5. I have heard learned counsel for the parties and have carefully gone through the material available on record.

6. The brief facts of the case are that on March 15, 2000, ASI Balbir Singh and other police officers were present at the Mehmhra bus stand when he received a secret information that Keli alias Karnail Singh and Bhagwan Singh, both residents of Mehmhra, were selling poppy husk from a house located in their fields in village Babanpur. The police were told that if they conducted a raid, they could catch them red-handed. ASI Balbir Singh then informed the Tehsildar and the BDO (Block Development Officer), Ratia through wireless communication. In response, Rajbir Khudia, the BDO, arrived, and the raiding team went to Bhagwan Singh's house in Babanpur. When they reached there, they saw two men each carrying a bag and loading them onto a scooter and a Hero Honda motorcycle. The two men identified themselves as Jagdev Singh (son of Ajaib Singh) and Boga Singh (son of Nand Singh). ASI Balbir Singh served a joint notice under Section 50 of the NDPS Act to both Jagdev and Boga. The notice stated that they were suspected of carrying contraband (illegal substances) in their bags and that they had the right to be searched in the presence of a Magistrate or Gazetted Officer if they wished. The notice was



CRA-S-1377-SB-2007 (O&M) and  
CRA-S-1136-SB-2007 (O&M)

-5-

read and explained to both of them. Jagdev Singh signed the notice while Boga Singh gave his thumb impression. Following this, under the direction of BDO Rajbir Khudia, the police searched the bags. Both bags were found to contain crushed poppy straw. A 100-grams sample was taken from each bag. The rest of the contents were weighed: Jagdev Singh's bag (on the scooter) had 34.9 kg, and Boga Singh's bag (on the motorcycle) had 29.9 kg of poppy straw. All the seized material, including the samples, was sealed using the seal marked 'BS'. After sealing, the seal was handed over to BDO Rajbir Singh Khudia.

7. The trial Court had framed the following points to prove the case of the prosecution:-

- a) Whether on 15.3.2000 in the area of village Babanpur, 65 Kgs. poppy husk was recovered from the possession of the appellants Jagdev Singh and Boga without any permit or licence?
- b) Whether on 15.3.2000 in the area of Babanpur, appellants Karnail Singh and Bhagwan Singh have intentionally permitted their Jagdev Singh and Boga Singh to stock and keep the poppy husk in their house?

8. In order to prove its case, the prosecution has examined as many as nine witnesses. PW1 Head Constable Ram Kishan who had recorded the formal FIR Ex.PB. PW2 SI Vijay Singh, a formal witness, stated that on 10.4.2001 on completion of the investigation, he prepared report under section 173 Cr.P.C. and submitted before the Court. PW3 ASI Sunder Singh was also a formal witness.

9. PW4 ASI Balbir Singh, Investigating Officer had deposed that on 15.3.2000, he was posted as Incharge, Police Post, Mehmhra and on that day he along with Constable Ashok Kumar and Constable Laxmi Parshad was present



**CRA-S-1377-SB-2007 (O&M) and  
CRA-S-1136-SB-2007 (O&M)**

**-6-**

at bus-stand Mehmhra in connection with investigation of Excise Case of P.S. Ratia. He met with Gurjant Singh and Jaswant Singh, Sarpanch of village Mehmhra who told them that Karnail Singh and Bhagwan Singh used to sell poppy straw in their house constructed in the fields of Babanpur area. On this secret information, he sent a V.T. message to call Tehsildar or B.D.O. at the spot and after some time Sh.Rajbir Singh, BDO, Ratia came there and he joined him in the investigation and reached in the fields of Karnail Singh and Bhagwan Singh in the area of village Babanpur and saw two persons one on a scooter and other on a motor cycle were loading gunny bags. He apprehended both of them and they disclosed their names as Jagdev Singh and Boga Singh and suspected that there might be some contraband substance in the bags. He served a joint notice Ex.PF to both the appellants persons to the effect that he intends to search the bags and if they so desire, the search can be arranged in the presence of a Gazetted Officer or a Magistrate or in his presence. The contents of the notice were read over to both the appellants, who after admitting the same, signed and thumb marked. Accordingly on search of the bag, poppy husk was found in it and separate samples of 100 gram each were separated from each of the bag and were converted into sealed parcels with the seal of 'BS' and the remaining poppy husk was put in the same bags. Both the sample parcels as well as the bags alongwith the scooter and the motor cycle were taken into police possession as per the seizure memo Ex.PH which was attested by BDO Rajbir Singh. After recording the statements of the witnesses under section 161 Cr.P.C., both the appellants were formally arrested as per arrest memo Ex.PK. On completion of the investigation at the spot and on



**CRA-S-1377-SB-2007 (O&M) and  
CRA-S-1136-SB-2007 (O&M)**

-7-

return to the police station, the appellants, case property, witnesses along with his report Ex.PD were produced before Sandeep Singh, the then Station House Officer for verification. The S.H.O. inquired the facts from the appellants and the witnesses and affixed his own seal 'SS' on the case property as well as the sample parcels and made his endst. On the same day, on the direction of the S.H.O. he handed over the case property with the MHC and put the appellants persons in police lock up. He further deposed that on 16.4.2000 accused Karnail Singh, present in the court on that day was arrested for the commission of an offence u/s 25 of the NDPS Act for providing his house to transport and sell the poppy husk and after his arrest, he prepared his report Ex.PE and produced the appellants before the S.H.O. Sandeep Singh for verification along with the witnesses. The S.H.O. verified the facts and as per his direction he put up him in the lock up and that on 5.6.2000, he recorded the statements of MHC Ram Kishan and Constable Rohtash under section 161 Cr.P.C.

10. The appellants in their statements under Section 313 Cr.P.C. had stated that they had no concern with the case and on that day, they were coming from the fields to their house and the police picked them up and falsely involved in this case and nothing was recovered from them. In their defence, the appellants had examined Richppal Singh as DW1 who had stated that Jagdev Singh was his employee in the year 2000 and on 15.3.2000, he was returning from his fields after irrigating the same. He was picked up by the police party and was falsely implicated in this case despite the fact that no contraband was recovered from his possession.



**CRA-S-1377-SB-2007 (O&M) and  
CRA-S-1136-SB-2007 (O&M)**

-8-

11. After carefully considering the entire record, the submissions made by the learned counsel for the parties and the evidence on record, this Court finds substantial infirmities in the trial court's judgment, warranting interference and setting aside of the conviction and sentence imposed on the appellants.

12. Firstly, there is non-compliance of Section 42 of the NDPS Act, as the prosecution has failed to prove that the secret information received regarding the presence of contraband was reduced into writing as mandated by Section 42 of the NDPS Act. The Investigating Officer's vague assertion that the information was "put into writing" is not supported by any document or record. This procedural lapse undermines the foundation of the entire search and seizure operation.

13. The joint notice served upon two separate individuals is not in conformity with the procedural safeguards envisaged under the NDPS Act. Each accused has a statutory right to receive individual notice. The joint notice raises doubts about the voluntariness and validity of the search, thus vitiating the seizure.

14. The prosecution has failed to produce credible and consistent evidence establishing proper deposit and custody of the seized contraband with the Officer-in-charge of the Police Station. The absence of a clear chain of custody and irregularities in the sealing process seriously impairs the integrity and reliability of the seized evidence.



**CRA-S-1377-SB-2007 (O&M) and  
CRA-S-1136-SB-2007 (O&M)**

**-9-**

15. The testimonies of Jaswant Singh and Gurjant Singh, relied upon heavily by the prosecution, are tainted with political rivalry and bias against co-accused Bhagwan Singh. Such factors severely diminish the credibility of their evidence, which cannot be treated as independent or impartial.

16. The prosecution has failed to adduce any documentary evidence to prove that co-convicts Karnail Singh and Bhagwan Singh owned or possessed the premises from where the alleged contraband was recovered.

17. The prosecution has also failed to explain the unexplained delay of over 30 days in sending the sample to the laboratory, which casts benefit of doubt in favour of the accused.

18. PW-6 Rajbir Singh, BDO of Ratia, had stated that on 15.03.2000, a Constable came to his house at 10:30 PM to call him which clearly suggests that the alleged recovery happened on 15.03.2000, not in the night of 14.03.2000. This is also supported by the statement of PW-8 Jaswant Singh. The differences in the timing of the recovery, contradictions about the police officers were present, and the conflicting statements of the prosecution witnesses raise serious doubts about the truthfulness of the prosecution's version of events.

19. In view of the above, the prosecution has failed to establish the guilt of the appellants beyond shadow of reasonable doubt. The procedural irregularities and material contradictions in evidence cast a shadow of doubt



**CRA-S-1377-SB-2007 (O&M) and  
CRA-S-1136-SB-2007 (O&M)**

**-10-**

which benefits the appellants in accordance with the principle of ‘benefit of doubt’ enshrined in criminal jurisprudence.

19. Consequently, the appeals are allowed and the judgment of conviction and sentence dated 03.04.2007 passed by the Additional Sessions Judge, Fatehabad, is hereby set aside. The appellants are acquitted of the charges under Section 15 of the NDPS Act.

20. It is also clarified that since the appeal preferred by co-convicts Bhagwan Singh and Karnail Singh, bearing CRA-S-1058-2007 has already been abated vide order dated 03.07.2025, but keeping in view the acquittal of other convicts, the appellants-Bhagwan Singh and Karnail Singh are also acquitted of the charges leveled against them under Section 15 of the NDPS Act. Their bail bonds and surety bonds stand discharged.

21. Pending application(s), if any, shall stand disposed of accordingly.

**(H.S.GREWAL)  
JUDGE**

**18.07.2025.**

A.Kaundal

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