IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRA-S-574-SB-2004 (O&M)
Reserved on : 18.08.2026
Pronounced on : 30.10.2026

Surinder Pal

..... Appellant

VERSUS

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE SURYA PARTAP SINGH

Argued by : Mr. Balram Sngh, Mr. Lakshya Goyal, Advocates and
Mr. Akashdeep Singh, Legal Aid Counsel, for the appellant.

Mr. Eklavya Darshi, Deputy Advocate General, Punjab.

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SURYA PARTAP SINGH, J.

This is appeal against conviction.

2. It has been preferred by convict-Surinder Pal, who has been held guilty for the commission of offence punishable under Section 15 of the 'Narcotic Drugs and Psychotropic Substances Act', hereinafter being referred to as 'NDPS Act'.

3. The above-named convict, hereinafter being referred to as 'appellant' only, is aggrieved of the judgment of conviction dated 28.02.2004, hereinafter being referred to as 'impugned judgment' only, and also the order on the point of quantum of sentence dated 28.02.2004, hereinafter being referred to as 'impugned order' only.

4. The abovementioned verdict was pronounced in a trial, pertaining to FIR No.83 dated 28.04.2000, Police Station Nurmahal,

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Jalandhar, for the commission of offence under Section 15 of NDPS Act. BY virtue of impugned order, following sentences were awarded to the appellant:-

Offence under Section	**Sentence**
15 of NDPS Act	Rigorous imprisonment for a period of ten years and to pay a fine of Rs.1,00,000/- and in default thereof to further undergo rigorous imprisonment for a period of six months.

5. Briefly stating the facts emerging from record are that the FIR of this case came into being at the instance of 'SI Kulwant Singh', who reported that on 24.04.2000, when he along with other police officials was present at Village Lakhanpal and was manning a check-post on canal bridge, 'Jagdish Lal @Saddi', an independent witness, came there. According to above-named police officer, in the presence of 'Jagdish Lal @Saddi', a Maruti van bearing registration No.DL4-CB-1412 was found to be approaching the barricade, and for usual checking a signal was given to the abovementioned vehicle to stop. The above-named police officer further reported that when the signal to stop the car was given, 'Chhinda' s/o Boori jumped out the van from its boot and fled from the spot, whereas remaining two occupants of the car, namely 'Parvinder Singh @Sonu' (the driver) and 'Harbhajan Lal', were apprehended. As per above-named police officer, when search of the van was conducted, it was found that in the above-mentioned van, there were 10 bags, each containing 32 kg of poppy husk.

6. It was a case of the prosecution that pursuant on recovery of abovementioned contraband, necessary formalities with regard to seizure &

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sealing of contraband, lodging of FIR, and formal arrest of the accused were completed, and further investigation taken up. According to prosecution, during the course of investigation, the Investigating Officer inspected the spot, prepared rough site plan of the place of recovery, and completed usual formalities of investigation. Thereafter, the final report under Section 173 of CrPC was filed.

7. To discharge its burden, of proving charges against the appellant, the prosecution in the instant case had relied upon documentary as well as oral evidence. The documents proved and marked with exhibits, by the prosecution were:-

Ex.PA	-	Affidavit of MHC Balkar Singh
Ex.PB	-	Affidavit of Ct. Nachhattar Singh
Ex.PC	-	Affidavit of HC Harpal Singh
Ex.PD & PE	-	Affidavits with regard to sale of Maruti van bearing registration No.DL4-CB-1412 to the accused
Ex.PF & PK	-	Consent memos of 'Harbhajan Lal' (the co-accused)
Ex.PG & PL	-	Consent memos of 'Parvinder Singh' (the co-accused)
Ex.PH	-	Seizure memo of contraband and Maruti van
Ex.P1 to P10	-	Seizure memo of 10 bags, containing poppy husk
Ex.PM	-	The information-memo sent to the police station (*ruqqa*)
Ex.PM/1	-	Copy of First Information Report
Ex.PN	-	Rough site plan of the place of recovery of contraband, with marginal notes
Ex.PO	-	Grounds of arrest served upon 'Harbhajan Lal' (the co-accused)
Ex.PP	-	Grounds of arrest served upon 'Parvinder Singh' (the co-accused)
Ex.PQ	-	Report of Chemical Examiner

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8. To provide support and corroboration to the above-mentioned documentary evidence, as many as six witnesses were examined by the prosecution. They were:-

PW-1 - MHC Balkar Singh
PW-2 - Ct. Nachhattar Singh
PW-3 - HC Harpal Singh
PW-4 - Gobind Ram
PW-5 - DSP Sajjan Singh Cheema
PW-6 - SI Kulwant Singh

9. Once the prosecution evidence had been recorded, the learned trial Court completed all the essential formalities, enshrined under Section 313 CrPC. Thereafter, opportunity of defence evidence was afforded to the appellant. In his defence evidence, the appellant examined only one witness, i.e. ‘Jagdish Lal’ as DW-1.

10. When evidence of both the parties was over, the learned trial Court gave opportunity to the learned public prosecutor and the learned counsel for the appellants to address arguments. Thereafter, a judgment of conviction, against the appellants, was pronounced. Accordingly, the appellants were sentenced to undergo imprisonment, as detailed hereinbefore.

11. Heard.

12. It has been contended on behalf of appellant that the impugned judgment of conviction and order of sentence, passed by the learned trial Court were perverse and unsustainable. According to learned counsel for the appellant, merely on the basis of conjectures and surmises, the unreliable

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and self-contradictory evidence adduced by the prosecution was believed by the learned trial Court. As per learned counsel for the appellant, the learned trial Court failed to apply judicious mind to the facts of the case, and merely, on the basis of conjectures and surmises, the finding of conviction of appellant, for the commission of offence under Section 15 of NDPS Act, was recorded.

13. The learned counsel for the appellant has further contended that instant case is a case of no evidence, whatsoever, against the appellant, and that an error of judgment was committed by the learned trial Court in appreciation of prosecution evidence. According to learned counsel for the appellant, there was no evidence to prove, even *prima facie*, that it was the appellant, who was travelling in the car at the time of alleged recovery of contraband or that he was in conscious possession thereof. With regard to above, the learned counsel for the appellant has contended that any reliable witness, who was present on the spot at the time of alleged recovery, was not examined to prove that the appellant was travelling in the same car, in which the contraband was allegedly recovered. As per learned counsel for the appellant, merely, on the basis of assumptions and presumptions, the learned trial Court observed that charge of being in possession of 320 kg of contraband, being transported in a van, had been successfully proved by the prosecution.

14. The learned counsel for the appellant has also contended that in the present case, the case set-out by the prosecution itself showed that an independent witness was joined at the time of recovery of contraband, but

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the abovementioned witness was not examined by the prosecution. As per learned counsel for the appellant, the same person had appeared in the witness-box as defence witness and testified that nothing was recovered in his presence from the possession of appellant. According to learned counsel for the appellant, in fact the deposition of DW-1, who stated that neither any vehicle was checked nor any contraband was recovered in his presence, demolished the very foundation of the prosecution case.

15. It has also been contended by learned counsel for the appellant that even the official witnesses, namely 'HC Varinder Singh', who had identified the appellant, was not examined during the course of trial, and that 'ASI Baljit Singh', who had arrested the appellant, too, was withheld without any justification. It has also been contended by learned counsel for the appellant that identity of the appellant was otherwise doubtful in view of the fact that he was not apprehended on the spot, and that as per contents of the FIR, the person, who allegedly fled from the spot, was 'Chhinda' s/o Boori, whereas the name of the father of the appellant was 'Chain Ram'. In view of above, the learned counsel for the appellant has contended that there were very serious issues with regard to identity of the appellant as one of the occupants of the vehicle, wherein the contraband was allegedly being transported.

16. As per learned counsel for the appellant, despite abovementioned contradictions, discrepancies and shortcomings in the prosecution evidence, merely, on the basis of whims and fences, the learned trial Court believed the prosecution story and therefore, there is immediate

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need for interference and indulgence in the finding of conviction, recorded by the learned trial Court. In support of his arguments, the learned counsel for the appellant has relied upon the principles of law propounded by the Hon'ble Supreme Court of India in the case of 'Bothilal V/s The Intelligence Officer Narcotics Control Bureau' 2023(2) RCR (Criminal) 828 and by this Court in the case of 'Prithi Raj (Prithi Raj) & Anr. V/s State of Punjab' CRA-S-2497-SB-2016.

17. The learned counsel for the respondent/State has controverted the abovementioned arguments. It has been contended by learned counsel for the respondent/State that instant case was a well-proved case, wherein each and every component, supposed to be proved for bringing home guilt of the appellant, was duly proved by the prosecution, and that on proper appreciation of evidence, a right conclusion was drawn by the learned trial Court. According to learned counsel for the respondent/State, there was no illegality or perversity in the finding of conviction, recorded by the learned trial Court against the appellant. In view of abovementioned arguments, the learned counsel for the respondent/State has contended that there is no scope for indulgence or interference in the findings of learned trial Court. As per learned counsel for the respondent/State, the present appeal is devoid of merit and deserves dismissal.

18. The record has been perused carefully.

19. In order to prove the story, set-out by the prosecution in its final report under Section 173 CrPC, the prosecution had relied upon the evidence, which comprised of the testimonies of five official witnesses,

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along with the registered owner of the vehicle in question. Amongst them, PW-1 MHC Balkar Singh was only a formal witness, who by virtue of his affidavit, Ex.PA, deposed that the case property was deposited with him in the store room (*Malkhana*) of the police station.

20. The next witness examined by the prosecution was 'Ct. Nachhattar Singh'. He was examined as PW-2. The PW-2, by virtue of affidavit, Ex.PB, had testified that on 26.04.2000, he had sent the sample for chemical analysis, and thereafter, handed over the receipt, thereof, to 'MHC Balkar Singh'.

21. The next witness, examined by the prosecution, was 'HC Harpal Singh'. He was examined as PW-3. The PW-3, too, was a formal witness, who had deposed that on 24.04.2000, he had deposited the case property along with sample with 'MHC Balkar Singh' in the store room of police station.

22. The next witness examined by the prosecution was 'Gobind Ram'. He was a public witness. He was examined as PW-4. However, the role of PW-4 was very limited. According to PW-4, he was owner of the Maruti van bearing registration No.DL4-CB-1412. As per PW-4, the abovementioned vehicle was sold by him in June 1999 to 'Parvinder'. The documents with regard to sale of abovementioned vehicle to 'Parvinder' were proved by PW-4.

23. The next witness, examined by the prosecution, was 'Sajjan Singh Cheema', the then DSP Batala. He was examined as PW-5. The PW-5 had supported the prosecution case by deposing that on 24.04.2000, while

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posted as DSP Phillaur, he had received the wireless message of 'SI Kulwant Singh'. According to PW-5, in response to abovementioned message, he had visited the spot, i.e. the culvert on minor canal at Daduwal road within the area of Village Dhanni Pind. As per PW-5, when he reached the spot, he found that a police party headed by 'SI Kulwant Singh' had apprehended 'Parvinder Singh' and 'Harbhajan Lal'. According to PW-5, he had disclosed his identity to the above-named persons and then search of the bags, being carried in the van, was conducted. As per PW-5, 10 bags were there in the abovementioned van, and that in each bag, there was 32 kg of poppy husk. The PW-5 had supported the prosecution case with regard to the fact that samples were extracted from the abovementioned gunny bags in his presence.

24. The last witness, examined by the prosecution, was 'SI Kulwant Singh'. He was examined as PW-6. The PW-6 was the most material witness, being head of the police team, which recovered the contraband. The PW-6, in his examination-in-chief, thoroughly supported the prosecution case by reproducing the allegations, which were identical to the contents of final report under Section 173 CrPC and the FIR. It was specifically deposed by the PW-6 in his examination that on signal to stop, the car was stopped by its driver, namely 'Parvinder Singh', and that 'Chhinda' s/o Boori had managed to flee from the spot by alighting through rear part of the van. Rest of the story, deposed by PW-6, too, was identical to the contents of the FIR.

25. Since in the present case, the basic issue raised by the learned counsel for the appellant was with regard to identity of the appellant, first of

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all it has to be determined as to whether with the help of abovementioned evidence, the prosecution had been successful in proving that it was the appellant, who was travelling in the same vehicle, from which the contraband was recovered.

26. Qua abovementioned aspect, except the testimony of PW-6, there was no evidence on record. The deposition of PW-6 with regard to identity of the appellant, without corroboration from independent witness, was not reliable, particularly in view of the fact that being Investigating Officer of the case, PW-6 was an interested witness.

27. In order to provide support and corroboration to the abovementioned testimony of the Investigating Officer (PW-6), no witness, whatsoever, was examined by the prosecution. Although in the present case, another witness of recovery was examined by the prosecution as PW-5, but PW-5 himself had deposed that he was not present on the spot when the vehicle was stopped and the appellant fled from the spot.

28. Here it shall not be out of place to mention that as per prosecution story, one independent witness, too, was present on the spot, at the time of recovery. He was ‘Jagdish Lal’. However, the prosecution had not examined the above-named witness in its evidence. To the contrary, ‘Jagdish Lal’ had appeared in the witness-box as DW-1 and deposed that in his presence nothing was recovered, neither from the possession of co-accused of the appellant, nor from the appellant. The DW-1, in his examination-in-chief, demolished the prosecution case with regard to the

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fact that the appellant was travelling in the same vehicle, from which the contraband was recovered.

29. In the present case, it is also relevant to mention here that as per contents of the FIR, the incident had taken place at about 08:00 pm, which means that at the time of incident, when the abovementioned vehicle was stopped and the appellant allegedly fled from the spot, it was already dark. In such circumstances, in every probability headlights of the van must be on and in such a situation, it was next to impossible for a person watching the van from front side to recognize the face of the appellant, who alighted from rear side of the vehicle and fled from the spot. In my considered opinion, in the abovementioned circumstances, the deposition of PW-6 qua the fact that he had recognized the appellant was surrounded by serious doubts.

30. In the present case, in order to dispel the abovementioned suspicious circumstances, the best course available to the Investigating Officer was to examine other members of the police team, who were present on the spot at the time of recovery, but no such witness was examined by the prosecution and for abovementioned lapse, no explanation was forthcoming from prosecution side.

31. In the present case, another factor, which adds to the doubts about the identity of the appellant, was that as per contents of the FIR and deposition of PW-6, the name of the person, who fled from the spot was ‘Chhinda’ s/o Boori, but as per case set-out by the prosecution, the person, who was apprehended after seven months of the incident and prosecuted in the present case, was ‘Surinder Pal @Chhinda’ s/o Chain Ram.

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32. If the cumulative effect of all the abovementioned factors is considered co-jointly, in my considered opinion, the uncorroborated and unsupported testimony of PW-6, a police official, with regard to identity of the appellant was not worth believeable. Rather in view of deposition of DW-1 (the only independent witness of recovery) the testimony of PW-6 was rendered to be unworthy of credit.

33. As a sequel to abovementioned observations, in my considered opinion, the learned trial Court committed an error of judgment, when it believed the abovementioned evidence of the prosecution and observed that the abovementioned evidence was sufficient to bring home guilt of the accused. In my considered opinion, the abovementioned verdict of the learned trial Court, being perverse, calls for interference in by this Court, in the exercise of appellate jurisdiction. Thus, it is hereby held that the present appeal deserves to be allowed and the impugned judgment & impugned order deserve to be set aside.

34. In view of abovementioned observations, the present appeal is hereby ***allowed***. The impugned judgment and impugned order are hereby set aside and the appellant is acquitted of the charges framed against him.

35. Pending miscellaneous application(s), if any, shall also stand disposed of, accordingly.

(SURYA PARTAP SINGH)
JUDGE

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Whether speaking/reasoned Yes/~~No~~
Whether reportable Yes/~~No~~

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