2025 INSC 96

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1953 OF 2014

RAKESH KUMAR RAGHUVANSHI **APPELLANT(S)**

VERSUS

THE STATE OF MADHYA PRADESH **RESPONDENT(S)**

O R D E R

1. This appeal arises from the judgment and order dated 7th May, 2013 passed by the High Court of Madhya Pradesh, Jabalpur Bench at Indore in Crl.A.No.1213 of 1997 by which the High Court dismissed the appeal filed by the appellant herein and thereby affirmed the judgment and order of conviction passed by the Trial Court for the offence punishable under Section 8 read with Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (For short "the NDPS Act").

2. The case of the prosecution may be summarized as under:

(i) An ASI officer by name Musharraf Beg lodged an FIR No.713/96 dated 30.12.1996 with the S.H.O., Police Station, G.R.P. Ujjain which reads thus:

"Regarding registration of the crime, it is submitted that I, ASI M.Beg received information from the informer while attending the duty on 29.12.96 at 22.15 o'clock that a dark complexioned person is traveling in Bhopal Rajkot 1270 up train

in the gallery of the bathroom at the last compartment of General Coach, carrying three separate cartoon packets. He is sitting on one of them. This information was entered in General Diary no. 2381 on 29.12.96 and to confirm the information constable Braj Mohan was sent to summon witnesses Rakesh and Prakash and they were made aware of the information received from the informer. The panchnama of the information of the information was prepared. Headquarter of senior officials of Railway Region Indore is in Indore. As per the Information, on the possibility of the alteration of article and for the confirmation of the said information being necessary and looking at the circumstances, the search warrant could not be received whose panchnama has been prepared. Two copies of the panchnama of the information of the informer, in the situation of not receiving the search warrant the copy of the panchnama under section 42 of NDPS Act was sent to Superintendent of Police Railway, Indore through constable Dispatch rider no. 6735 of police station on 29.12.96. As per the information mentioned in General Diary No., reached along with Head Constable Bharat Pandey, Head Constable Pradeep Singh, Constable Brij Mohan Singh with the summoned witnesses, necessary materials Tarazu, baant, seal, shellac etc to the spot at Platform no.1 of railway station, near parcel office, near ver bridge. On the arrival of the train, deputed accompanied force near to the coach and train guard constable 405 Umashankar and 610 Rajendra Singh. Searched the suspect along with the witnesses in the coach No. 91105 and on confirming the features of the suspect before the witnesses and in his sudden attempt to leave the coach, he was stopped with the assistance of accompanying force. He was summoned along with three cartoons he possessed, out of the coach. Since, it will take time on the confirmation of the information and the train stays for the less time. The moment he came out with the luggage out of the train, was asked name and address. He told his name Rakesh son of Shankar Lal resident of Sanwal Kheda, Tehsil and District Hoshangabad. Subsequently also stated that at present he is living in Chhola Naka House No.44, in the house of Kallu at Bhopal and paying the rent of Rs 300/- per month. So, he was informed that he is having the opium poppy husk in three cartoons which he possessed and he is smuggling to sell them. I have to take the search of all three cartoons possessed by you. You could

give your search before Magistrate or Gazetted officer or even could be . given before me. You could give your search to anyone. On this, appearing Rakesh gave his consent to give the search to me of which the panchnama of the consent was prepared before the witnesses. Rakesh took the body search of the force accompanying me and the witnesses. Nothing suspected object could be found. Thereafter, the search of the body of Rakesh was conducted. The three cartoons were searched then opium poppy husk was found which was smelt and tasted to witnesses who revealed to be opium poppy husk. Then, after this the panchnama of possessing the suspected article, panchnama of being smelt and tasted and panchnama of the measurement were prepared, it was measured in parcel office which was carried by Mithu Lal son of Satya Narayan, Begumpura. all three cartoons and kept on the measurement scale of parcel officer M.K.Jaiswal, measured the cartoons measured 17 kg, 17 kg and 16 kg respectively making a total of 50 kg of poppy husk, having the value of Rs 3500/- thus he was found possessing these articles Illegally and on stating of not finding in written or by any proof, the seizure memo was prepared. The copy of the panchnama was made. Since I was not having the seal with my name so the action done at the place of occurrence was affixed with the seal of police station. The samples from the packets of the seized Opium poppy husk where article A - 1 A - 2 B - 1 B - 2 C - 1 and C-2 were marked and to send them to the Forensic Science Laboratory for examination; a sample comprising of 250 grams each were taken out from each of the cartoons. The criminal case under section 8/15 of NDPS Act is found on the aforesaid action made against Rakesh at the place of occurrence. Due to this reason, panchnama was prepared. Thus on panchnama of the action conducted at the aforesaid place of occurrence and as per the details of the seizure articles of the case along with the accused Rakesh are being produced to police station for further action. Please do the further action.

On the basis of the aforesaid written information and the seizure made at the place of occurrence and from other documents, a criminal case under section 8/15 of NDPS Act is registered and took for the investigation.

Action taken: Since the above report reveals commission of offence(s) u/s 8/15 of NDPS Act----- Registered the case and took up the investigation or, Directed/entrusted (Name of I.O.)-ASI Beg to take up the investigation.

13.F.I.R. read over to complainant/informant, admitted to be correctly recorded and a copy given to the complainant/informant, free of cost. ”

(ii) Thus it appears from the aforesaid that the appellant was travelling on 29.12.1996 by Train No.1270, Bhopal Rajkot Express. There was information with the Department that a young boy was travelling with three packets of poppy husk and was sitting in the general coach. The information was to the extent that he was sitting near bath room alongwith three cartons of poppy husk. It was also specified that he was sitting on one of the packets containing contraband and the other two were next to him. When the train, referred to above, arrived at the platform, the raiding party identified the boy and asked him to come out of the coach alongwith the three cartons. The appellant herein disembarked the coach with three cartons. He was searched and was found to be in conscious possession of poppy husk weighing around 50 Kgs.

3. On FIR being registered the investigation commenced. At the end of the investigation Police filed charge sheet in the Special Court. The Special Court proceeded to frame charge for the offence enumerated above to which the appellant pleaded not guilty and claimed to be tried.

4. In the Course of the trial, the prosecution examined eleven witnesses. The prosecution also relied upon few pieces of documentary evidence.

5. Upon closure of the recording of the evidence by the prosecution the further statement of the appellant was recorded under section 313 of the CrPC. In his further statement, he stated that he was falsely implicated in the alleged offence. He further stated that he was travelling with a valid ticket. He was to visit his relative residing in Maninagar (Gujarat). He was detained at Ujjain Railway Police Station (M.P.).

6. The Trial Court upon appreciation of the oral as well as documentary evidence on record held the appellant guilty of the alleged offence and sentenced him to undergo 10 years rigorous imprisonment with fine of Rs.1,00,000/-. The appellant went in appeal before the High Court. His appeal also came to be dismissed.

7. In such circumstances referred to above, the appellant is here before this Court with the present appeal.

8. Ms. Pragati Neekhra, the learned counsel appearing for the appellant vehemently submitted that the Trial Court as well as the High Court committed a serious error in holding the appellant guilty of the offence under the NDPS Act. The principal argument of the learned counsel for the appellant is that there is nothing on record to indicate that the appellant was in conscious possession of the contraband. According to the learned counsel, when the officers asked him to come out of the

coach with the three cartons he was left with no option but to abide by the directions of the officers and that is how he got down from the coach with the three cartons. According to the learned counsel otherwise he had nothing to do with the three cartons. The Learned counsel would submit that the search was carried out at a public place like a railway platform. There were many passengers in the train and the three cartons could have belonged to any one of the passengers. In such circumstances, according to the learned counsel the appellant deserves to be given a benefit of doubt.

9. Learned counsel prayed that there being merit in her appeal, the same may be allowed and the appellant be acquitted of the charge enumerated above.

10. On the other hand, Mr. Bhupendra Pratap Singh, the learned counsel appearing for the State submitted that no error not to speak of any error of law could be said to have been committed by the two Courts below in holding the appellant guilty of the alleged offence. He would submit that there is cogent and reliable evidence on record to indicate that the appellant was in conscious possession of the three cartons containing poppy husk. He further pointed out that there was a specific information which was reduced into writing in accordance with law that a young boy was travelling in train referred to above and had in his possession contraband in the form of poppy husk. Accordingly, search was undertaken and the appellant was found to be in possession. He would submit that

there being no merit in this appeal. The same may be dismissed.

11. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for our consideration is whether the Courts below committed any error in holding the appellant guilty of the alleged offence.

12. Learned counsel appearing for the appellant invited our attention to a decision of this Court in the case of *Avtar Singh v. State of Punjab* reported in (2002) 7 SCC 419. Although the learned counsel seeks to rely upon this judgment for the benefit of her client yet unfortunately the ratio of the judgment or rather the dictum laid therein goes against the appellant. The relevant observations are as under:

> ***"The word 'possession' no doubt has different shades of meaning and it is quite elastic in its connotation. Possession and ownership need not always go together but the minimum requisite element which has to be satisfied is custody or control over the goods. Can it be said, on the basis of the evidence available on record, that the three appellants one of whom was driving the vehicle and other two sitting on the bags, were having such custody or control? It is difficult to reach such conclusion beyond reasonable doubt. It transpires from evidence that the appellants were not the only occupants of the vehicle. One of the persons who was sitting in the cabin and another person sitting at the back of the truck made themselves scarce after seeing the police and the prosecution could not establish their identity. It is quite probable that one of them could be the custodian of goods whether or not he was the proprietor. The persons who were merely sitting on the bags, in the absence of proof of anything more, cannot be presumed to be in possession of the goods. For instance, if they are labourers engaged merely for loading and unloading purposes and there is***

nothing to show that the goods were at least in their temporary custody, conviction under Section 15 may not be warranted. At best, they may be abettors, but, there is no such charge here. True, their silence and failure to explain the circumstances in which they were traveling in the vehicle at the odd hours, is one strong circumstance that can be put against them. A case of drawing presumption under Section 114 of the Evidence Act could perhaps be made out then to prove the possession of the accused, but, the fact remains that in the course of examination under Section 313 Cr.P.C, not even a question was asked that they were the persons in possession of poppy husk placed in the vehicle. The only question put to them was that as per the prosecution evidence, they were sitting on the bags of poppy husk. Strangely enough, even the driver was questioned on the same lines. The object of examination under S. 313, it is well known, is to afford an opportunity to the accused to explain the circumstances appearing in the evidence against him. It is unfortunate that no question was asked about the possession of goods. Having regard to the charge of which appellants were accused, the failure to elicit their answer on such a crucial aspect as possession, is quite significant. In this state of things, it is not proper to raise a presumption under Section 114 of Evidence Act nor is it safe to conclude that the prosecution established beyond reasonable doubt that the appellants were in possession of poppy husk which was being carried by the vehicle. The High Court resorted to the presumption under Section 35 which relates to culpable state of mind, without considering the aspect of possession. The trial court invoked the presumption under S. 54 of the Act without addressing itself to the question of possession. The approach of both the courts is erroneous in law. Both the courts rested their conclusion on the fact that the accused failed to give satisfactory explanation for travelling in the vehicle containing poppy husk at an odd hour. But, the other relevant aspects pointed out above were neither adverted to nor taken into account by the trial court and the High Court. Non-application of mind to the material factors has thus vitiated the judgment under appeal."

(Emphasis supplied)

13. In *Avtar Singh* (supra), some of the occupants who were travelling in the car on being intercepted were in a position

to escape. In such circumstances, the prosecution was unable to identify them during the course of investigation. This Court observed that anyone of those who made good their escape could be the actual custodian of the contraband seized from the vehicle. This Court further observed that the persons who were merely sitting on the bags, in the absence of proof of anything more, cannot also be presumed to be in possession of the contraband seized from the vehicle. Further, this Court held that for failure of the Trial Court to examine the accused under Section 313(1)(b) CrPC with respect to their possession which is the main and foremost incriminating element to attract the offence alleged against the accused, the prosecution could not have claimed to have established the guilt of the accused under Section 15 of the NDPs Act beyond the reasonable doubt. In such circumstances, the judgment of the Trial Court convicting the accused for the offence under Section 15 NDPS Act was reversed by this Court.

14. Thus, before the Court holds the accused guilty of the offence under the NDPS Act, possession is something that the prosecution needs to establish with cogent evidence. If the accused is found to be in possession of any contraband which is a narcotic drug, it is for the accused to account for such possession satisfactorily, if not, the presumption under Section 54 comes into place.

15. Section 54 of the NDPS Act being relevant in the context on hand is extracted hereunder for convenient reference:

"54. Presumption from possession of illicit articles. —In trials under this Act, it may be presumed, unless and until the contrary is proved, that the accused has committed an offence under this Act in respect of —

(a) any narcotic drug or psychotropic substance or controlled substance;

(b) any opium poppy, cannabis plant or coca plant growing on any land which he has cultivated;

(c) any apparatus specially designed or any group of utensils specially adopted for the manufacture of any narcotic drug or psychotropic substance or controlled substance; or

(d) any materials which have undergone any process towards the manufacture of a narcotic drug or psychotropic substance or controlled substance, or any residue left of the materials from which any narcotic drug or psychotropic substance or controlled substance has been manufactured, for the possession of which he fails to account satisfactorily."

16. Therefore, as envisaged by the provision itself, unless and until the contrary is proved in trials of cases involving offences coming within the purview of the NDPS Act, it may be presumed that the accused has committed an offence under the Act in respect of any articles prohibited to be possessed by him and for the possession of which, he failed to account satisfactorily. Therefore, it is the burden of the prosecution to establish that the contraband was seized from the conscious possession of the accused. Only when that aspect has been successfully proved by the prosecution, the onus will shift to the accused to account for the possession legally and satisfactorily.

17. We looked into the evidence as regards possession and are convinced that the appellant was found to be in conscious possession of the three cartons containing poppy husk. The

defence put forward by the appellant that he had no idea about the three cartons and that he got down from the coach alongwith the three cartons only because the officers asked him to come out of the coach is something which is not palatable to us.

18. We have looked into the further statement of the accused. We do not find any satisfactory reply or explanation as to how come he was sitting on one of the cartons and the other two cartons were closely placed next to him.

19. In such circumstances, Section 54 referred to above, comes into play and the court would be justified in drawing the presumption that the accused was in conscious possession.

20. Section 35 of the NDPS Act deals with the presumption of culpable mental state. It states that in any prosecution under the NDPS Act, the court shall presume that the accused had the requisite mental state, including intention, knowledge, and motive, unless the accused can prove otherwise. This shifts the burden of proof onto the accused to demonstrate that they lacked knowledge or intent regarding the possession of the drugs.

21. Conscious possession refers to a scenario where an individual not only physically possesses a narcotic drug or psychotropic substance but is also aware of its presence and nature. In other words, it requires both physical control and mental awareness. This concept has evolved primarily through judicial interpretation since the term "conscious possession" is not explicitly defined in the NDPS

Act. This Court through various of its decisions has repeatedly underscored that possession under the NDPS Act should not only be physical but also conscious. Conscious possession implies that the person knew that he had the illicit drug or psychotropic substance in his control and had the intent or knowledge of its illegal nature.

22. In *Abdul Rashid Ibrahim Mansuri v. State of Gujarat* reported in 2000 (2) SCC 513, this Court highlighted that once the prosecution proves physical possession, the burden shifts to the accused to explain how he came into possession of the contraband and prove that he was not aware of its presence or nature. The Court ruled that a person who admits that drugs were found in his possession must prove that he had no knowledge of the illicit nature of the substance.

23. In *Madan Lal v. State of Himachal Pradesh* reported in (2003) 7 SCC 465, this Court was dealing with a case where all the accused persons were travelling in a vehicle when they were nabbed and recoveries were made from them. The relevant extracts from the said judgment are set out below:

> ***"19. Whether there was conscious possession has to be determined with reference to the factual backdrop. The facts which can be culled out from the evidence on record are that all the accused persons were travelling in a vehicle and as noted by the trial court they were known to each other and it has not been explained or shown as to how they travelled together from the same destination in a vehicle which was not a public vehicle.***
>
> ***20. Section 20(b) makes possession of contraband articles an offence. Section 20 appears in Chapter IV of the Act which relates to offences for possession of***

such articles. It is submitted that in order to make the possession illicit, there must be a conscious possession."

24. In the overall view of the matter, we are convinced that the High Court committed no error in dismissing the appeal and thereby affirming the judgment and order of conviction passed by the Trial Court.

25. In view of the aforesaid, the appeal fails and is hereby dismissed.

26. The appellant is on bail. He shall surrender within a period of eight weeks to serve out the remaining part of the sentence.

……J.
[J.B. PARDIWALA]

……J.
[R. MAHADEVAN]

NEW DELHI.
JANUARY 16, 2025.