

[2022 LiveLaw \(SC\) 245](#)

**IN THE SUPREME COURT OF INDIA**  
**CRIMINAL APPELLATE JURISDICTION**  
**N.V. RAMANA, CJI; A.S. BOPANNA, J; HIMA KOHLI, J.**  
CRIMINAL APPEAL No.1004 OF 2016; FEBRUARY 22, 2022  
**SUKHDEV SINGH Versus THE STATE OF PUNJAB**

**Narcotic Drugs and Psychotropic Substances Act, 1985 - The physical nature of the material is not relevant for determining whether the contents of the sample analyzed were actually opium or not, and physical analysis is not prescribed under the provisions of the NDPS Act for testing the opium.**

**Summary: Appeal against HC judgment upholding conviction of appellant under NDPS Act - Dismissed.**

*For Appellant(s) Mr. Abbula Kalam, Adv. Ms. Mausumi Mishra, Adv. Mr. Abdul Qarim, Adv. Mr. Danish Saifi, Adv. Mr. Fuzail Ahmad Ayyubi, AOR*

*For Respondent(s) Ms. Jaspreet Gogia, AOR Mr. Karanvir Gogia, Adv. Ms. Shivangi Singhal, Adv.*

**ORDER**

The instant appeal, by way of special leave, is directed against order dated 06.10.2010 passed by the High Court of Punjab and Haryana at Chandigarh in Crl.Appeal No.885-SB of 1999 whereby the High Court dismissed the appeal filed by the appellant herein.

Heard learned counsel appearing on behalf of the appellant as also the learned counsel appearing on behalf of the respondent – State.

Learned counsel for the appellant submitted that the prosecution has not been able to prove the case beyond any reasonable doubt as there was no independent witness in the present case. Learned counsel further submitted that mandatory provisions of Section 50 of the Narcotic, Drugs and Psychotropic Substances Act (for short, 'the NDPS Act') were not complied with and the appellant was neither searched nor told of his right of being searched before the Gazetted Officer or the Magistrate.

*Per contra*, learned counsel for the respondent – State submitted that the appellant was searched in the presence of S.P., District Moga, who is a gazetted officer, as per the provisions of Section 50 of the NDPS Act, and it was found that the appellant was carrying 4kg. of opium and 20gms were taken as sample. Thereafter, the Chemical Examiner, after the completion of necessary investigation, confirmed that the substance was opium.

Having heard learned counsel for the parties and on carefully perusing the material placed on record, we notice that the report of the Chemical Examiner indicates that some powder material/ chura was tested. Learned counsel for the appellant contended that opium is generally a sticky material. No doubt, the report of the Chemical Examiner indicates that some powder material/chura was undertaken for analysis which was found to contain morphine and meconic acid. The learned counsel for the respondent – State points out that as per the provisions of the NDPS Act, it is nowhere mentioned that opium should necessarily be in the form of a sticky material. It is only on the basis of the contents of particular sample that a conclusion is to be arrived at regarding the same being opium. The physical nature of the material is not relevant for determining whether the contents of the sample analyzed were actually opium or not, and physical analysis is not prescribed under the provisions of the NDPS Act for testing the opium. These aspects of the matter has been appropriately adverted to by the learned Sessions Judge in arriving at his conclusion. The same has been re-appreciated and confirmed by the High Court.

In view of the above, we are not inclined to interfere with the impugned order passed by the High Court.

The appeal is, accordingly, dismissed. Vide order dated 21.10.2016, the appellant was granted bail. Consequent upon dismissal of the appeal filed by the appellant herein, the bail bonds stand cancelled and he is directed to surrender before the trial court to serve out the remaining period of sentence.

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