

**CRA-S-181-SB-2011 (O&M)****-1-****IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****CRA-S-181-SB-2011 (O & M)****Date of decision: 12.12.2024****JAIMAL SINGH****..... Appellant****VERSUS****STATE OF PUNJAB****...Respondent****CORAM: HON'BLE MR. JUSTICE SUDHIR SINGH
HON'BLE MR. JUSTICE JASJIT SINGH BEDI****Present: Mr. P.S. Sekhon, Advocate as Amicus Curiae
for the appellant.****Mr. Kuljeet Singh, Addl.A.G., Punjab.*************JASJIT SINGH BEDI, J.**

The present appeal has been filed against the judgment of conviction and order of sentence dated 22/23.12.2010 passed by the Judge Special Court, Kapurthala.

2. The FIR was registered on 01.10.2006, the judgment of conviction and order of sentence passed by the Judge, Special Court, Kapurthala is dated 22/23.12.2010, the appeal was filed on 20.01.2011 and the matter is being taken up for hearing now i.e. after 18 years of the registration of the FIR.

3. The brief facts of the case of the prosecution are that on 01.10.2006 Inspector Lakhwinder Singh alongwith SI Sulakhan Singh, HC Harjit Singh No.303, HC Harbhajan Singh No.843 alongwith other police

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No.518 in connection with checking of vehicles and bad elements and were holding nakabandi in the area of Village Khera Chorasta, Phagwara, towards Thakarki De Road. In the meantime, PW Jaswinder Singh son of Jeevan Singh came and was joined with the police party. During checking one Qualis of white colour no.CH-03-E2112 came, which was being driven by a short hair young boy and one short hair young boy was sitting near the driver on the cleaner side. On suspicion it was stopped and the driver disclosed his name as Jaimal Singh (accused/appellant) son of Jagir Singh, Jat Sikh, resident of Narli Police Station, Bhikhiwind, Tehsil Patti and District Tarn-Taran now residence of House No.183 Habowal Sant Vihar Chuaharpura Road, Ludhiana and the other person disclosed his name as Gurmail Singh son resident of Jaimal Singh Ramgarhia, resident of Dhanola Road Barnala, Police Station Sadar, Barnala. On suspicion, the Investigating Officer apprised both the accused regarding their legal right to get the search of the Qualis conducted before a Gazetted Officer or Magistrate. Two separate consent memos were prepared and both the persons desired to get their search conducted before a Gazetted Officer. Then through mobile, ASP Sub Division, Phagwara, was called, who on reaching disclosed his name as Sukhchain Singh Gill, IPS. He apprised both the accused vide two separate consent memos regarding their legal right to have their search conducted from him or from any other Gazetted Officer or Magistrate. Both the accused reposed confidence in him. Then a search of the Qualis was conducted. Three bags were lying in the dicky were taken out and untied

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from which poppy husk was recovered. From all the three bags 250 grams each samples were separated and remaining bulk in two bags came to 29 killo 750 grams each while from the third bag came to 34 killo 750 grams. The samples and bulk were duly sealed with the seal bearing impression LS & SS and separate seal impression was prepared. The seal after use was handed over to SI Sulakhan Singh. Thereafter, the recovered poppy husk alongwith samples were taken into police possession. The accused were arrested. The site plan was prepared. A Ruqa was sent to the police station on the basis of which the instant case was registered. On reaching the police station, the case property was deposited with the MHC. On the next day i.e. 02.10.2006 the case property was taken out from the Malkhana and was produced before the Ilaqa Magistrate and then again deposited with the MHC. Samples were sent to the office of the chemical examiner and on completion of the investigation as well as on receipt of chemical report, the challan was presented.

4. From the perusal of report u/s 173 Cr.PC, and the documents attached thereto, there were grounds to presume that both the accused had committed an offence punishable u/s 15 of the NDPS, Act. Accordingly, charge was framed against both the accused, to which, they pleaded not guilty and claimed trial. Thereafter, the case was fixed for prosecution evidence.

5. In order to substantiate its case, the prosecution examined as many as seven witnesses in this case, namely, PW1 HC Rajeshwar Dutt,

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PW2 C-1 Shangara Singh, PW3 HC Ashwani Kumar, PW4 MHC Jasbir Singh, PW5 Inspector, Lakhwinder Singh, PW6 Sukhchain Singh Gill IPS, SSP Ludhiana, PW7 SI Sulakhan Singh. PW Ashok Kumar was given up being unnecessary and Jaswinder Singh having been won over by the accused. Thereafter, the Addl. PP closed the prosecution evidence.

6. After the closure of the prosecution evidence, statements of both the accused were recorded under Section 313 Cr.P.C in which, they denied all the incriminating evidence produced against them by the prosecution and pleaded innocence and false implication stating that nothing had been recovered from their possession. Both the accused took up the common defence plea as under:-

"We are innocent. They have been falsely implicated in this case by the police on account of enmity. In fact, they have taken a lift in the alleged vehicle. Two other persons were also sitting. In the meantime some police officials came there and they demanded the vehicle on Vagar for going to Delhi. Driver refused to hand over the vehicle without the permission of the owner. In between the persons who were sitting in the vehicle slipped away. Some hot conversation took place between the police and the driver. Then the police arrested both of us."

7. Both the accused opted to lead evidence in defence and examined four witnesses namely, DW1 Mohan Lal, DW2 Joginder Singh, DW3 Jang Singh and DW4 HC Manjit Singh.



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8. Based on the evidence led, accused/appellant-Jaimal Singh was convicted whereas Gurmail Singh was acquitted vide judgment dated 22.12.2010 passed by the Judge, Special Court, Kapurthala.

9. It is the aforementioned judgment which is under challenge in the present appeal.

10. The learned Amicus Curiae for the appellant contends that the testimony of the prosecution witnesses is thoroughly discrepant in material particulars. The mandatory provisions of Sections 42 and 52A of the NDPS Act have not been complied with in this case. No CFSL Form has been filled in at the spot by the I.O. and was therefore not deposited with the MHC. There is a delay of 18 days in sending the samples to the chemical examiner. No report regarding the search and seizure of the contraband has been sent to superior officers. He, therefore contends that the impugned judgment is liable to be set aside and the appellant be acquitted of the charge framed against him. Reliance is placed on the judgments in ***“Union of India versus Mohanlal & Anr., 2016(1) RCR (Criminal) 858, Bothilal versus The Intelligence Officer Narcotics Control Bureau 2023(2) RCR (Criminal) 828, Simranjit Singh versus State of Punjab 2023 Cri LR (SC) 1502, Mangilal versus The State of Madhya Pradesh 2023(3) RCR (Criminal) 703 and Yusuf @ Asif versus State , Criminal Appeal No.3191 of 2023 (arising out of SLP (Crl.) No.3010 of 2023 decided on 13.10.2023”***.



11. The learned State counsel, on the other hand, contends that all the arguments raised by the Amicus Curiae have been dealt with by the trial Court and therefore, the present appeal is liable to be dismissed.

12. We have heard the learned counsel for the parties.

13. Section 52-A of the NDPS Act is reproduced as under:-

52A. Disposal of seized narcotic drugs and psychotropic substances.— *(1) The Central Government may, having regard to the hazardous nature, vulnerability to theft, substitution, constraint of proper storage space or any other relevant consideration, in respect of any narcotic drugs, psychotropic substances, controlled substances or conveyances, by notification in the Official Gazette, specify such narcotic drugs, psychotropic substances, controlled substances or conveyance or class of narcotic drugs, class of psychotropic substances, class of controlled substances or conveyances, which shall, as soon as may be after their seizure, be disposed of by such officer and in such manner as that Government may, from time to time, determine after following the procedure hereinafter specified.*

(2) Where any narcotic drugs, psychotropic substances, controlled substances or conveyances has been seized and forwarded to the officer-in-charge of the nearest police station or to the officer empowered under section 53, the officer referred to in sub-section (1) shall prepare an inventory of such narcotic drugs or psychotropic substances containing such details relating to their description, quality, quantity, mode of packing, marks, numbers or such other identifying particulars of the narcotic drugs or psychotropic substances or the packing in which they are packed, country of origin and other



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particulars as the officer referred to in sub-section (1) may consider relevant to the identity of the narcotic drugs or psychotropic substances in any proceedings under this Act and make an application, to any Magistrate for the purpose of—

- (a) certifying the correctness of the inventory so prepared; or*
- (b) taking, in the presence of such Magistrate, photographs of such drugs, substances or conveyances and certifying such photographs as true; or*
- (c) allowing to draw representative samples of such drugs or substances, in the presence of such Magistrate and certifying the correctness of any list of samples so drawn.*

(3) Where an application is made under sub-section (2), the Magistrate shall, as soon as may be, allow the application.

(4) Notwithstanding anything contained in the Indian Evidence Act, 1872 (1 of 1872) or the Code of Criminal Procedure, 1973 (2 of 1974), every court trying an offence under this Act, shall treat the inventory, the photographs of narcotic drugs, psychotropic substances, controlled substances or conveyances and any list of samples drawn under subsection (2) and certified by the Magistrate, as primary evidence in respect of such offence.

14. The Hon'ble Supreme Court in ***Union of India versus Mohanlal & Anr., 2016(1) RCR (Criminal) 858***, held as under:-

13. It is manifest from Section 52A (2)(c) (supra) that upon seizure of the contraband the same has to be forwarded either to the officer in-charge of the nearest police station or to the officer empowered under Section 53 who shall prepare an inventory as stipulated in the said provision and make an



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application to the Magistrate for purposes of (a) certifying the correctness of the inventory (b) certifying photographs of such drugs or substances taken before the Magistrate as true and (c) to draw representative samples in the presence of the Magistrate and certifying the correctness of the list of samples so drawn. Sub-section (3) of Section 52- A requires that the Magistrate shall as soon as may be allow the application. This implies that no sooner the seizure is effected and the contraband forwarded to the officer in charge of the Police Station or the officer empowered, the officer concerned is in law duty bound to approach the Magistrate for the purposes mentioned above including grant of permission to draw representative samples in his presence, which samples will then be enlisted and the correctness of the list of samples so drawn certified by the Magistrate. In other words, the process of drawing of samples has to be in the presence and under the supervision of the Magistrate and the entire exercise has to be certified by him to be correct. The question of drawing of samples at the time of seizure which, more often than not, takes place in the absence of the Magistrate does not in the above scheme of things arise. This is so especially when according to Section 52-A(4) of the Act, samples drawn and certified by the Magistrate in compliance with sub-section (2) and (3) of Section 52-A above constitute primary evidence for the purpose of the trial. Suffice it to say that there is no provision in the Act that mandates taking of samples at the time of seizure. That is perhaps why none of the States claim to be taking samples at the time of seizure. Be that as it may, a conflict between the statutory provision governing taking of samples and the standing order issued by the Central Government is evident when the two are placed in juxtaposition. There is no gainsaid



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that such a conflict shall have to be resolved in favour of the statute on first principles of interpretation but the continuance of the statutory notification in its present form is bound to create confusion in the minds of the authorities concerned instead of helping them in the discharge of their duties. The Central Government would, therefore, do well, to re-examine the matter and take suitable steps in the above direction.

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20. To sum up we direct as under :

(1) No sooner the seizure of any Narcotic Drugs and Psychotropic and controlled Substances and Conveyances is effected, the same shall be forwarded to the officer in-charge of the nearest police station or to the officer empowered under Section 53 of the Act. The officer concerned shall then approach the Magistrate with an application under Section 52A(ii) of the Act, which shall be allowed by the Magistrate as soon as may be required under Sub-Section 3 of Section 52A, as discussed by us in the body of this judgment under the heading 'seizure and sampling'. The sampling shall be done under the supervision of the magistrate as discussed in paras 13 and 14 of this order.

(2) The Central Government and its agencies and so also the State Governments shall within six months from today take appropriate steps to set up storage facilities for the exclusive storage of seized Narcotic Drugs and Psychotropic and controlled Substances and Conveyances duly equipped with vaults and double locking system to prevent theft, pilferage or replacement of the seized drugs. The Central Government and the



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State Governments shall also designate an officer each for their respective storage facility and provide for other steps, measures as stipulated in Standing Order No. 1/89 to ensure proper security against theft, pilferage or replacement of the seized drugs.

(3) The Central Government and the State Governments shall be free to set up a storage facility for each district in the States and depending upon the extent of seizure and store required, one storage facility for more than one districts.

(4) Disposal of the seized drugs currently lying in the police maalkhans and other places used for storage shall be carried out by the DDCs concerned in terms of the directions issued by us in the body of this judgment under the heading 'disposal of drugs'.

The Hon'ble Supreme Court in ***Bothilal versus The Intelligence Officer Narcotics Control Bureau 2023(2) RCR (Criminal) 828***, held as under:-

15. Admittedly, PW-2 drew two samples from each of the packets of the contraband found in the hotel room and kept them in two separate plastic covers. These covers were sealed and the remaining contraband was also sealed. Thus, the prosecution claims that the samples were prepared even before the packets were sent to the Station House Officer. The submission of the learned senior counsel appearing for the appellant in Criminal Appeal 451 of 2011 was that a grave suspicion is created about the prosecution's case as this action by the PW-2, was contrary to Section 52A of NDPS Act.



16. In paragraphs 15 to 17 of the Mohanlal's case, it was held thus:

"15. It is manifest from Section 52A(2) include (supra) that upon seizure of the contraband the same has to be forwarded either to the officer-in-charge of the nearest police station or to the officer empowered under Section 53 who shall prepare an inventory as stipulated in the said provision and make an application to the Magistrate for purposes of (a) certifying the correctness of the inventory, (h) certifying photographs of such drugs or substances taken before the Magistrate as true, and (c) to draw representative samples in the presence of the Magistrate and certifying the correctness of the list of samples so drawn.

16. Sub-section (3) of Section 52A requires that the Magistrate shall as soon as may be allow the application. This implies that no sooner the seizure is effected and the contraband forwarded to the officer-in-charge of the police station or the officer empowered, the officer concerned is in law duty-bound to approach the Magistrate for the purposes mentioned above including grant of permission to draw representative samples in his presence, which samples will then be enlisted and the correctness of the list of samples so drawn certified by the Magistrate. In other words, the process of drawing of samples has to be in the presence and under the supervision of the Magistrate and the entire exercise has to be certified by him to be correct.

17. The question of drawing of samples at the time of seizure which, more often than not, takes place in the absence of the Magistrate does not in the above scheme of things arise. This is so especially when according to Section 52A(4) of the Act, samples drawn and certified by the Magistrate in compliance with sub-sections (2) and (3) of Section 52A above constitute primary evidence for the purpose of the trial. Suffice it to say that there is no provision in the Act that mandates taking of samples at the time of seizure. That is perhaps why none of the States claim to be taking samples at the time of seizure."

(emphasis added)

Thus, the act of PW-2 of drawing samples from all the packets at the time of seizure is not in conformity with what is held by



this Court in the case of Mohanlal². This creates a serious doubt about the prosecution's case that the substance recovered was contraband.

17. Even according to the prosecution's case, as can be seen from the version of PW-2, accused no.1 (appellant in Criminal Appeal No.1185 of 2011) was staying in room no.213 of Himalaya Lodge, Triplicane, Chennai. He was to receive 5 kilograms of heroin from accused no.2 and accused no.3 (appellant in Criminal Appeal no.451 of 2011). Accused nos.2 and 3, according to the case of the prosecution, were staying in room no.211 of Hotel Blue Star International, Chennai. It was accused no.4 who was staying in room no.303 of Hotel Suriya, Periamet, Chennai where PW-2 and other members of her party entered. The case of the prosecution is that after PW-2 and others entered the room, they called upon all the four accused who were present there to disclose whether they were in possession of the contraband. The prosecution's case is that accused no.1 showed a blue coloured bag from which the recovery of about 5 kilograms of heroin was made. It is not the case of the prosecution that accused no.1 was carrying that bag with him or that it was in his custody. The bag was in the room occupied by accused no.4. Thus, it cannot be said that the contraband was found in the custody of accused no.1. At the highest, it was found in the room occupied by accused no.4. We may note here that accused no.4 has been convicted by the High Court only for the offence punishable under Section 30 of the NDPS Act which is for the offence of making preparation to do or omitting to do anything which constitutes an offence punishable under the provisions of Sections 19, 24 and 27A. The prosecution has not produced any evidence to show that the contraband was brought to the room of the accused no.4 by the



other three accused persons or anyone of them. It is not the case that the room of accused no.4 was in possession of accused nos.1 to 3 who were staying in different hotels.

18. Therefore, in our view, the case of the prosecution is not free from suspicion. The prosecution has not proved beyond a reasonable doubt that the appellants in these two appeals were in possession of the contraband or that they brought the contraband to the hotel room of the accused no.4.

The Hon'ble Supreme Court in ***Simranjit Singh versus State of Punjab 2023 Cri LR (SC) 1502***, held as under:-

7. We have perused the evidence of PW-7 Hardeep Singh in which he has stated that from the eight bags of poppy husk, two samples of 250 gms each were drawn and converted into 16 parcels. This has been done immediately after the seizure.

8. In paragraphs 15 to 17 of the decision of this Court in Mohanlal's case, it was held thus:

"15. It is manifest from Section 52-A(2) include (supra) that upon seizure of the contraband the same has to be forwarded either to the officer in-charge of the nearest police station or to the officer empowered under Section 53 who shall prepare an inventory as stipulated in the said provision and make an application to the Magistrate for purposes of (a) certifying the correctness of the inventory, (b) certifying photographs of such drugs or substances taken before the Magistrate as true, and (c) to draw representative samples in the presence of the Magistrate and certifying the correctness of the list of samples so drawn.

16. Sub-section (3) of Section 52-A requires that the Magistrate shall as soon as may be allow the application. This implies that no sooner the seizure is effected and the contraband forwarded to the officer-in-charge of the police station or the officer empowered, the officer concerned is in law duty-bound to approach the Magistrate for the purposes mentioned above including



grant of permission to draw representative samples in his presence, which samples will then be enlisted and the correctness of the list of samples so drawn certified by the Magistrate. In other words, the process of drawing of samples has to be in the presence and under the supervision of the Magistrate and the entire exercise has to be certified by him to be correct.

17. The question of drawing of samples at the time of seizure which, more often than not, takes place in the absence of the Magistrate does not in the above scheme of things arise. This is so especially when according to Section 52-A(4) of the Act, samples drawn and certified by the Magistrate in compliance with subsections (2) and (3) of Section 52-A above constitute primary evidence for the purpose of the trial. Suffice it to say that there is no provision in the Act that mandates taking of samples at the time of seizure. That is perhaps why none of the States claim to be taking samples at the time of seizure."

9. Hence, the act of PW-7 of drawing samples from all the packets at the time seizure is not in conformity with the law laid down by this Court in the case of Mohanlal. This creates a serious doubt about the prosecution's case that substance recovered was a contraband.

The Hon'ble Supreme Court in ***Mangilal versus The State of Madhya Pradesh 2023(3) RCR (Criminal) 703***, held as under:-

6. The obvious reason behind this provision is to inject fair play in the process of investigation. Section 52A of the NDPS Act is a mandatory rule of evidence which requires the physical presence of a Magistrate followed by an order facilitating his approval either for certifying an inventory or for a photograph taken apart from list of samples drawn. In due compliance of Section 52A(1) of the NDPS Act the Ministry of Finance (Department of Revenue) issued a Notification No. G.S.R.



339(E) dated 10.05.2007 which furnishes an exhaustive manner and mode of disposal of drugs ending with a certificate of destruction:

"4. Manner of disposal

1) Where any narcotic drug or psychotropic substances has been seized and forwarded to the officer-in-charge of the nearest police station or to the officer empowered under section 53, of the Act, or if it is seized by such an officer himself, he shall prepare an inventory of such narcotic drugs or psychotropic substances as per Annexure 1 to this notification and apply to any Magistrate under sub-section (2) of section 52A as per Annexure 2 to this notification.

2) After the Magistrate allows the application under sub-section (3) of section 52A, the officer mentioned in clause (1) above shall preserve the certified inventory, photographs and samples drawn in the presence of the Magistrate as primary evidence for the case and submit details of the drug consignments to the Chairman of the Drug Disposal Committee for a decision by the committee on the disposal. The officer shall send a copy of the details along with the drug consignments to the officer-in-charge of the godown.

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7. To be noted, the aforesaid notification was in existence at the time of the commission of the offence alleged in the case on hand, stood repealed with effect from 23.12.2022 vide Notification No. G.S.R.899(E). In any case a notification issued in derogation of the powers conferred under sub-section (1) of Section 52A of the NDPS Act can never contradict the main



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provision, particularly sub-Section (2). However, any guideline issued by way of a notification in consonance with Section 52A of the NDPS Act has to be followed mandatorily.

The Hon'ble Supreme Court in ***Yusuf @ Asif versus State*** ,
Criminal Appeal No.3191 of 2023 (arising out of SLP (Crl.) No.3010 of 2023 decided on 13.10.2023, held as under:-

12. A simple reading of the aforesaid provisions, as also stated earlier, reveals that when any contraband/narcotic substance is seized and forwarded to the police or to the officer so mentioned under Section 53, the officer so referred to in sub section (1) shall prepare its inventory with details and the description of the seized substance like quality, quantity, mode of packing, numbering and identifying marks and then make an application to any Magistrate for the purposes of certifying its correctness and for allowing to draw representative samples of such substances in the presence of the Magistrate and to certify the correctness of the list of samples so drawn.

13. Notwithstanding the defence set up from the side of the respondent in the instant case, no evidence has been brought on record to the effect that the procedure prescribed under sub-sections (2), (3) and (4) of Section 52A of the NDPS Act was followed while making the seizure and drawing sample such as preparing the inventory and getting it certified by the Magistrate. No evidence has also been brought on record that the samples were drawn in the presence of the Magistrate and the list of the samples so drawn were certified by the Magistrate. The mere fact that the samples were drawn in the



presence of a gazetted officer is not sufficient compliance of the mandate of subsection (2) of Section 52A of the NDPS Act.

14. It is an admitted position on record that the samples from the seized substance were drawn by the police in the presence of the gazetted officer and not in the presence of the Magistrate. There is no material on record to prove that the Magistrate had certified the inventory of the substance seized or of the list of samples so drawn.

15. It may also be relevant to mention here that in terms of Section 52-A of the NDPS Act, a Notification No.G.S.R. 899(E) dated 23.12.2022 has been issued by the Ministry of Finance and the relevant extract thereof is reproduced as under:-

CHAPTER III

SAMPLING

8. Application to Magistrate. – *After the seized material under the Act is forwarded to the officer-in-charge of the nearest police station or to the officer empowered under section 53 of the Act or if it is seized by such an officer himself, he shall prepare an inventory of such material in Form-4 and apply to the Magistrate, at the earliest, under sub-section (2) of section 52A of the Act in Form-5.*

9. Samples to be drawn in the presence of Magistrate. – *After application to the Magistrate under sub-section (2) of section 52A of the Act is made, the Investigating Officer shall ensure that samples of the seized material are drawn in the presence of the Magistrate and the same is certified by the magistrate in accordance with the provisions of the said-sub-section.*

10. Drawing the samples. – *(1) One sample, in duplicate, shall be drawn from each package and container seized.*

(2) When the packages and containers seized together are of identical size and weight bearing identical marking and the contents of each package give identical results on colour test by the drugs identification kit,



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conclusively indicating that the packages are identical in all respects, the packages and containers may carefully be bunched in lots of not more than ten packages or containers, and for each such lot of packages and containers, one sample, in duplicate, shall be drawn:

Provided that in the case of ganja, poppy straw and hashish (charas) it may be bunched in lots of not more than forty packages or containers.

(3) In case of drawing sample from a particular lot, it shall be ensured that representative sample in equal quantity is taken from each package or container of that lot and mixed together to make a composite whole from which the samples are drawn for that lot.

16. On perusal of the aforementioned judgments as well as the Notification dated 23.12.2022 issued in consonance with the said judgments, it is apparent that when the contraband is seized, it is to be sealed and forwarded to the officer-in-charge of the nearest police station or to an officer empowered under Section 53 of the Act, who shall prepare an inventory of such material and forward the same to the Magistrate concerned, in whose presence, samples of the seized material are to be drawn and thereafter, certified by the Magistrate. The samples are, thereafter, to be dispatched to the Chemical Examiner.

17. Coming back to the facts of the instant case, it is apparent from the depositions of PW-5 SHO, Lakhwinder Singh, PW6-ASP Sukhchain Singh Gill and PW7-SI Sulakhan Singh that the samples were taken at the spot and the said samples were sent for forensic analysis. The samples so taken at the spot were not signed, sealed or seen by the Magistrate



on the record to establish that the samples and the bulk were produced before the Magistrate for the purposes of inventory and for the purposes of taking of samples for onward dispatch to the Chemical Examiner. Thus, quite apparently, the procedure of drawing samples at the spot of recovery itself, is in derogation of the law laid down (supra) and is sufficient to cast a doubt on the entire prosecution case. The act of drawing samples at the spot of the recovery completely violates the statutory provisions contained under Section 52A read with the judgments (supra) and therefore, the other grounds raised by the appellant need not be gone into.

18. In view of the aforementioned discussion, we find considerable merit in the present appeal and therefore, the same stands allowed. The impugned judgment of conviction and order of sentence dated 22/23.12.2010 passed by the Judge Special Court, Kapurthala, is set aside and the appellant is acquitted of the charge framed against him.

(JASJIT SINGH BEDI)
JUDGE

(SUDHIR SINGH)
JUDGE

December 12, 2024
jitesh

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