2026:PHHC:104277

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA-S-1781-SB-2004 (O&M)
Reserved on: 26.05.2026
Pronounced on: 29.07.2026
Uploaded on: 29.07.2026

Whether only operative part of the judgment is Pronounced : No
Whether full judgment is pronounced: ***Yes***

Puran Singh

...Appellant

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MS. JUSTICE RUPINDERJIT CHAHAL

Present: Mr. KPS Virk, Advocate, for the appellant.
Mr. Mohit Chaudhary, AAG, Haryana.

***

RUPINDERJIT CHAHAL, J.

1. The present appeal has been directed against the judgment of conviction dated 08.09.2004 and order of sentence dated 10.09.2004, passed by the Learned Special Judge, Panipat whereby the appellant was held guilty and convicted under Section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act) and sentenced to undergo rigorous imprisonment for ten years and to pay a fine of Rs.1 Lac, in default of payment of fine, to further undergo rigorous imprisonment for a period of two years and six months.

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2026:PHHC:104277

2. The facts, in brief, are that on 23.04.2001, a police party headed by PW-4 Inspector Dhian Singh was present at the General Bus Stand, Panipat, in connection with patrolling and crime detection. During the course of patrolling, one person was seen approaching the outer gate of the bus stand carrying a bag in his right hand. On noticing the police party, he immediately turned back and started walking briskly, which aroused suspicion. Consequently, he was apprehended by the police party. Upon enquiry, he disclosed his identity. Suspecting that he was carrying some contraband, the Investigating Officer served upon him a notice (Exhibit PD) under Section 50 of the Narcotic Drugs and Psychotropic Substances Act, 1985. In response thereto, vide reply (Exhibit PD-1), he opted to be searched in the presence of a Magistrate. In pursuance of the option exercised by him, PW-3 Shri K.K. Amrohi, District Revenue Officer, Panipat, reached the spot. Thereafter, the search of the bag being carried by the appellant was conducted in his presence. The bag was found to contain 2 kilograms of opium wrapped in wax paper. Out of the recovered contraband, a representative sample weighing 50 grams was separated, whereas the remaining opium constituted the bulk parcel. Both the sample parcel and the bulk parcel were converted into separate parcels, sealed with the seals bearing impressions 'DS' and 'KK', and taken into possession vide recovery memo (Exhibit PC). Thereafter, ruqa (Exhibit PE) was sent to the police station, on the basis whereof the formal First Information Report was registered against the appellant. During the course of investigation, a rough site plan of the place of recovery was prepared and the statements of the witnesses were recorded. The case property, along with the accused and the witnesses, was thereafter produced before PW-1 Inspector Badan Singh,

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2026:PHHC:104277

Station House Officer, Police Station City, Panipat, who verified the investigation and affixed his seal bearing impression 'BS' on both the sample parcel and the bulk parcel. Thereafter, the case property was deposited with the Malkhana Moharrir for safe custody. On receipt of the report of the Forensic Science Laboratory (Exhibit PX), the sample was found to be that of opium. Upon completion of the investigation and after finding sufficient material against the accused, the final report under Section 173 of the Code of Criminal Procedure was presented before the competent Court.

3. Upon consideration of the material available on record, the learned Special Judge, Panipat, vide order dated 08.08.2001, found a prima facie case against the accused and accordingly framed charge against him under Section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985. The charge was read over and explained to the accused, to which he pleaded not guilty and claimed trial.

4. In support of its case, the prosecution examined five witnesses, namely: PW-1, Inspector Badan Singh, Station House Officer (SHO); PW-2, Brij Pal Singh, Malkhana Moharrir Head Constable (MMHC); PW-3, Sh. K.K. Amrohi, District Revenue Officer (DRO); PW-4, Inspector Dhian Singh, the Investigating Officer; and PW-5, Constable Chamela Ram. Upon completion of the oral evidence, the learned Additional Public Prosecutor tendered in evidence the report of the Chemical Examiner, exhibited as Ex. PX, whereafter the prosecution evidence was closed.

5. Upon the conclusion of the prosecution evidence, the statement of the appellant was recorded under Section 313 of the Code of Criminal

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2026:PHHC:104277

Procedure, wherein all the incriminating circumstances appearing in the prosecution evidence were put to him. The appellant denied the prosecution case in toto, asserted that no recovery had been effected from his possession, and pleaded false implication. Although adequate and repeated opportunities were afforded to him to lead evidence in defence, the appellant chose not to examine any witness, and the defence evidence was accordingly closed.

6. Upon appreciation and evaluation of the oral as well as documentary evidence adduced by the prosecution, the learned trial Court came to the conclusion that the prosecution had succeeded in proving its case beyond reasonable doubt. Consequently, the appellant was held guilty and convicted for the offence punishable under Section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985.

7. Learned counsel appearing on behalf of the appellant has assailed the impugned judgment of conviction and the order of sentence on several grounds. It has been contended that the prosecution has failed to establish its case beyond reasonable doubt and that the mandatory procedural safeguards envisaged under the Narcotic Drugs and Psychotropic Substances Act, 1985, have not been complied with, thereby vitiating the prosecution case.

8. At the outset, learned counsel has argued that the alleged recovery was effected from the General Bus Stand, Panipat, which is admittedly a busy public place frequented by numerous persons. Notwithstanding the availability of independent witnesses at the spot, no effort was made by the Investigating Officer to associate any such person

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2026:PHHC:104277

with the search and seizure proceedings. The unexplained failure to join independent witnesses, it is contended, casts a serious doubt on the fairness, transparency and credibility of the prosecution version.

9. Learned counsel has further questioned the sanctity of the handling and preservation of the alleged contraband by submitting that the prosecution has failed to establish unimpeachable link evidence. It has been argued that no CFSL Form was prepared at the spot and the specimen seal has not been brought on record. It has further been contended that there was an unexplained delay of fifteen days in forwarding the sample parcel to the Forensic Science Laboratory. According to the learned counsel, this delay, coupled with the admitted fact that the Investigating Officer had retrieved his seal after one week, creates a reasonable possibility of tampering with the case property.

10. Learned counsel has further contended that the prosecution case is rendered doubtful by the fact that the recovery memo is stated to have been prepared prior to the dispatch of the ruqa (Ex. PE); however, the said document conspicuously bears the FIR number, the date of registration, and the relevant penal provisions. It has been argued that these particulars could not have legitimately found mention in the recovery memo as the FIR was not registered yet, thereby creating a serious doubt that either the documents were prepared subsequently or the FIR had been recorded prior to the alleged recovery.

11. It has also been argued that the complainant himself acted as the investigating officer in the present case. According to the learned counsel, the same is contrary to the settled legal position governing fair

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2026:PHHC:104277

investigation and has caused serious prejudice to the appellant, thereby vitiating the entire prosecution.

12. Learned counsel has further submitted that the mandatory provisions of Section 50 of NDPS Act are not complied with in the present case.

13. He further submits that the reply (Exhibit PD/1) to the notice unmistakably shows that the appellant had exercised his option to be searched in the presence of a Magistrate. However, instead of summoning a Magistrate, the Investigating Officer called PW3 K.K. Amrohi DRO. It is, therefore, argued that the choice exercised by the appellant was rendered wholly illusory and meaningless, thereby vitiating the search proceedings.

14. Learned counsel has also assailed the prosecution case on the ground of alleged non-compliance with the mandatory provisions of Section 52A of the Narcotic Drugs and Psychotropic Substances Act, 1985. It has been contended that neither any inventory of the seized contraband was prepared nor any application was moved before the competent Magistrate for certification of the inventory or for drawing representative samples in the presence of the Magistrate, as envisaged under the said provision. According to the learned counsel, the failure to adhere to the statutory procedure prescribed under Section 52A of the Act casts a serious doubt on the authenticity and integrity of the seized contraband and, consequently, renders the prosecution case unreliable.

15. In the alternative, learned counsel has contended that, even if the prosecution case is accepted in its entirety, the alleged recovery of two kilograms of opium does not fall within the ambit of "commercial quantity"

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2026.07.29 14:30
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2026:PHHC:104277

as defined under the Narcotic Drugs and Psychotropic Substances Act, 1985. It has been submitted that the learned trial Court proceeded on an erroneous premise in treating the recovered contraband as a commercial quantity and, on that basis, imposed the maximum sentence prescribed under the Act. According to the learned counsel, the sentence awarded is legally unsustainable and warrants interference by this Court.

16. On the strength of the aforesaid submissions, learned counsel for the appellant has prayed that the impugned judgment of conviction and the consequent order of sentence be set aside and that the appellant be acquitted by extending to him the benefit of doubt.

17. Per contra, learned State counsel has supported the impugned judgment of conviction and order of sentence, contending that the prosecution has proved its case beyond reasonable doubt by leading cogent, reliable and trustworthy evidence. It is submitted that the recovery of two kilograms of opium from the conscious possession of the appellant stands duly established through the consistent testimony of the prosecution witnesses, which finds complete corroboration from the documentary evidence as well as the report of the Forensic Science Laboratory. Learned State counsel has further argued that there is nothing on record to suggest any ulterior motive on the part of the police officials to falsely implicate the appellant in a case involving a serious offence under the NDPS Act. In the absence of any such motive, the testimony of the official witnesses cannot be discarded merely because no independent witness was associated with the investigation. Learned State counsel has argued that the testimony of the official witnesses is natural, consistent and inspires confidence. It is submitted that no material contradiction or discrepancy has emerged from

MOHIT
2026.07.29 14:30
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2026:PHHC:104277

their cross-examination so as to discredit the prosecution case. The minor inconsistencies, if any, are stated to be natural and inconsequential, particularly when the statements of the recovery witnesses came to be recorded nearly one and a half years after the occurrence. Such trivial variations, it is argued, do not affect the core of the prosecution case. Learned State counsel has also contended that the provisions of Section 50 of the NDPS Act are wholly inapplicable to the facts of the present case. According to him, the recovery was not effected from the person of the appellant but from a bag being carried by him, and it is now well settled that the protection envisaged under Section 50 is confined only to cases involving the personal search of an accused and does not extend to the search of a bag or other article carried by him. It is further submitted that, in any event, the search was conducted in the presence of PW3 K.K. Amrohi, District Revenue Officer, who is a Gazetted Officer duly empowered by the State of Haryana to exercise powers of Executive Magistrate. Learned State counsel contends that the appellant suffered no prejudice whatsoever on account of the search having been conducted in the presence of the said officer and, therefore, the challenge to the search proceedings is wholly misconceived. Lastly, it has been submitted that the report of the Forensic Science Laboratory (Exhibit PX) conclusively establishes that the substance recovered from the appellant was opium. Once the recovery stands proved, the statutory presumptions under Sections 35 and 54 of the NDPS Act come into operation, and the appellant having failed to rebut the said presumptions, the learned trial Court has rightly recorded the order of conviction and imposed the sentence in accordance with law. Hence he prayed that the present appeal be dismissed.

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18. Heard learned counsels appearing for both sides at considerable length and with their able assistance carefully gone through the entire evidence available on record, the impugned judgment, the documentary evidence, the depositions of the witnesses as well as the relevant record.

19. So far as the contention of the learned counsel for the appellant regarding non joining of independent witness is concerned, it is observed that people are often hesitant in joining police investigation for variety of reasons. PW-4 Inspector Dhian Singh has clearly stated that he tried to join independent witness but all expressed their helplessness. It is now well settled that evidence of a witness cannot be rejected merely because he happens to be an official witness. In the present case, nothing could be elucidated from the cross-examinations of PW's Dhian Singh or PW3 K.K. Amrohi DRO, so as to raise any dispute with regard to recovery of contraband from the possession of the appellant or that their statements are partisan in nature or that they had any motive to plant a false recovery upon the appellant. In these circumstances, this Court is of considered opinion, that testimonies of official witnesses inspire confidence and the same are held to be reliable. In ***Karamjit Singh v. State (Delhi Administration), AIR 2003 SC 1311***, the Hon'ble Supreme Court has held as under:

> *"The testimony of police personnel should be treated in the same manner as testimony of any other witness and there is no principle of law that without corroboration by independent witnesses their testimony cannot be relied upon. The presumption that a person acts honestly applies as much in favour of police personnel as of other persons and it is not a proper judicial approach to distrust and suspect them without*

MOHIT
2026.07.29 14:30
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2026:PHHC:104277

good grounds. It will all depends upon the facts and circumstances of each case and no principle of general application can be laid down."

19.1. In ***State of Punjab Vs. Balbir Singh, 1994(1) Recent Criminal Reports 736*** the Hon'ble Supreme Court has held that, "*there is no bar in recording the conviction by relying upon the statements of police officers and that testimony of a witness is not to be doubted or discarded merely on the ground that he happens to be an official witness."*

19.2. In ***Ram Sarup Vs. State (Govt. of NCR Delhi) 2013(3) RCR (Criminal) 946***, it has been held by the Hon'ble Apex Court that, *"there is no absolute rule that police officers cannot be cited as a witness and their depositions should be treated with suspect. Court cannot start with the presumption that police records are untrustworthy."*

19.3. A Division Bench of this Court in ***Ramesh Kumar v. State of Punjab, (2013)(4) RCR (Criminal) 320***, has observed that the testimony of official witnesses cannot be discarded until it is proved that they have any animus or hostility against the accused for his false implication. While discussing the question of non-joining of the independent witnesses, it was observed that they are averse to join the police and depose in favour of prosecution as they are afraid of the fact that joining the police and deposing in favour of the prosecution may expose them to serious consequences.

19.4. In ***Krishan Kumar v. State of Punjab, 2016 (2) RCR (Criminal) 707***, it was observed that testimonies of the official witnesses carry the same evidentiary value as that of any other witness and their statements cannot be discarded simply on account of their official designation.

MOHIT
2026.07.29 14:30
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2026:PHHC:104277

20. The next limb of argument raised by learned counsel for the appellant is with regard to alleged discrepancies in the prosecution's case qua the mentioning of FIR particulars upon the recovery memo Ex. PC. According to the appellant, this circumstance indicates that either the documents were prepared subsequently or the FIR had been recorded prior to the alleged recovery. The contention, however, does not merit acceptance. In ***Jauni Ram v. State of H.P., 2004(3) CLJ (HP) 484;*** a two-judge bench of Himachal Pradesh High Court has held that mere mention of the FIR number on documents is not fatal to the case of prosecution. A coordinate bench of this Court has also expressed a similar view in ***Parkash Singh v. State of Punjab, 2023 (1) Law Heral 409.*** Thus, unless it is shown that the FIR was ante-timed or ante-dated or that prejudice has been caused to the accused, the mere presence of the FIR number on the recovery memo cannot be treated as a circumstance sufficient to vitiate the entire prosecution.

21. In the present case, Investigating Officer has not been cross-examined on this point. The only question put to him was as to whether it was recorded before or after the departure of DRO. In such circumstances, the mere mention of the FIR particulars on Ex. PC, without anything more, cannot be elevated to a ground for discarding an otherwise trustworthy prosecution case.

22. Now, adverting to the alleged discrepancies pointed out by the learned counsel for the appellant, firstly, that no CFSL form is shown to have been prepared at the spot. Merely because the evidence does not reflect that the said form was prepared at the place of recovery, the prosecution case cannot be doubted. The purpose of the FSL/CFSL form is to enable the Forensic Science Laboratory to verify the specimen seal and examine the

MOHIT
2026.07.29 14:30
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2026:PHHC:104277

seized samples. There is no statutory requirement under the applicable law that such form must necessarily be prepared at the spot of recovery. What is material is that the prosecution must establish the safe handling and preservation of the samples and that the seals remained intact and tallied with the specimen seal at the time of examination by the Laboratory. In the present case, the FSL report confirms the intactness and correctness of the seals, and no prejudice has been demonstrated to have been caused to the accused on account of the form having been prepared subsequently. The mere fact that the form was not prepared at the spot, by itself, does not create any doubt regarding the genuineness of the recovery or the integrity of the seized contraband. The investigation cannot be invalidated merely on account of non-observance of a procedure which is not mandated by law. Reliance in this regard is placed upon ***Wazir Singh v. State of Haryana, 2010 (1) RCR (Criminal) 480;*** wherein it was held that CFSL form can be prepared by the Investigating Officer later on and it is not the requirement of law that the entire investigation must be completed at the spot or that no part of writing can be done by such agency later on in the Police Station.

22.1. The second discrepancy as pointed out by the learned counsel for the appellant that the specimen seal has not been produced before the Court, also lacks merit. A two Judge bench in ***Hira Giri alias Hardev Giri v. State of Himachal Pradesh, 2005 (1) 231;*** held that Production of the seals and its specimen impressions at the trial is not the requirement of law but only a circumstance to reinforce the prosecution evidence and in case there is other cogent and reliable evidence like contemporaneous records supported by confidence inspiring evidence of witnesses, such non-

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production will be rendered inconsequential. The relevant paragraphs are reproduced below:

> *"36. The seals used for sealing the case property, specimen thereof and second sample retained by the investigating agency, has admittedly not been produced in the trial Court. However, in view of the evidence led by the prosecution, as already discussed hereinabove, such non-production is not fatal to the case of the prosecution. Production of the seals and its specimen impressions at the trial is not the requirement of law but only a circumstance to reinforce the prosecution evidence and in case there is other cogent and reliable evidence like contemporaneous records supported by confidence inspiring evidence of witnesses, such non-production will be rendered inconsequential.*
>
> *37. In* ***Fredrick George v. State of H.P., 2002 Cr.L.J. 4600****, a Division Bench of this Court, while examining the effect of non-production of seal used for sealing the case property and the relevant witnesses, held as under :-*
>
>> *"62. It is a fact that the seals used for sealing and re-sealing the bulk case property and the samples have not been produced at the trial. In Manjit Singh's case (supra) while dealing with the effect of non-production of the seal, this Court held as under :*
>>
>> *'In the absence of any mandatory provision in the law/Rules of procedure relating to sealing of the case property, that the seal used in sealing the case property must be produced*

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2026.07.29 14:30
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at the trial, it cannot be said that failure to produce such seal at the trial will be fatal to the case of the prosecution. It will depend on the facts and circumstances of each case whether by non-production of the seal at the trial any doubt is raised about the safe custody of the case property or not.'

63. In view of the above position in law and the conclusion we have already arrived at hereinabove that there is unchallenged and trustworthy evidence that the case property was not tampered with at any stage, the non-production of the seals used for sealing and re-sealing of the bulk case property of the samples is also of no help to the accused."

38. The above view was subsequently reiterated by the Division Benches of this Court in ***Manjit Singh v. State of H.P., 2001(2) Cr.L.J. (HP) 106****,* ***Soni v. State of H.P., Cr.A. No. 182 of 2001, (decided on 11.6.2003)*** *and* ***Rajesh Kumar v. State of H.P., Cr.A. No. 547 of 2001, (decided on 10.7.2003).*** *In view of this position in law and the findings hereinabove recorded, the non-production of the seals or the specimen impressions thereof in this case is inconsequential and of no help to the accused."*

22.2. In the facts of the present case, the mere non-production of the specimen seal before the Court cannot be treated as fatal to the prosecution case. The evidence on record, including the testimony of the relevant witnesses and contemporaneous documents, satisfactorily establishes that the case property remained intact and was not tampered with at any stage.

MOHIT
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2026:PHHC:104277

Therefore, applying the principles laid down in ***Hira Giri alias Hardev Giri (supra),*** the said omission is merely procedural and does not cause any prejudice to the accused.

23. The next submission advanced by the learned counsel for the appellant is with regard to the delay in sending the sample parcel to the Forensic Science Laboratory, which, according to him, creates a serious doubt regarding the prosecution case. This Court has considered the said contention; however, the same does not merit acceptance. In the present case, the recovery of the contraband was effected on 23.04.2001 and thereafter the case property was duly deposited with Brij Pal Singh, Malkhana Moharrir Head Constable (MMHC) PW-2, who kept the same in the police malkhana in safe custody. Subsequently, on 08.05.2001, the sample parcel was submitted to the FSL, Madhuban, without any tampering.

23.1 The statement of PW-2 Brij Pal Singh, establishes that during the period the sample remained in their custody, the same was neither tampered with nor any opportunity was afforded to anyone to interfere with the sanctity of the parcel. The said witness was not cross-examined by the defence on this issue. The FSL report Ex. PX further establishes that upon receipt of the sample parcel, the seals affixed thereon were found intact and tallied with the specimen seal impression. Thus, the prosecution has successfully established the safe custody of the sample.

23.2 In view of the aforesaid circumstances, the mere delay of 15 days in forwarding the sample to the forensic science laboratory, in the absence of any evidence of tampering or prejudice caused to the accused, cannot be held to be fatal to the prosecution case. The Hon'ble Supreme

MOHIT
2026.07.29 14:30
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Court in ***Hardip Singh v. State of Punjab, 2008 (4) RCR (Criminal) 97***, has held that when there is no evidence that samples were tampered with or any prejudice was caused to the accused then even 40 days delay in sending the sample to chemical examiner was held not fatal to the prosecution case. The aspect of delay in sending the sample to the office of Chemical Examiner was also discussed in ***Sucha Singh v. State of Punjab 2015 (4) RCR (Criminal) 25,*** wherein it was held that when the samples were not sent to the office of Chemical Examiner within 72 hours, the prosecution and conviction cannot be vitiated on that ground since there was no specific provision in the Act in that regard and the instructions/standing orders in that respect were only the guidelines to regulate and control their internal working of Narcotic Control Bureau. Therefore, the delay of few days in sending the sample to the office of Chemical Examiner, Punjab, Chandigarh was immaterial and no prejudice is going to be caused to the appellant/accused.

24. As regards to the contention of the learned counsel for the appellant that ASI Sant Raj being complainant was not competent to investigate the case is concerned, the same cannot be accepted in view of the settled legal position. The **Constitution Bench** of the Hon'ble Supreme Court in ***Mukesh Singh v. State (Narcotic Branch of Delhi) 2020(10) SCC 120,*** has held as under:

> *"12. From the above discussion and for the reasons stated above,* ***we conclude and*** *answer the reference as under:*
>
> *I. That the observations of this Court in the cases of* ***Bhagwan Singh v. State of Rajasthan (1976) 1 SCC***

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2026.07.29 14:30
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*15; **Megha Singh v. State of Haryana (1996) 11 SCC 709;** and **State by Inspector of Police, NIB, Tamil Nadu v. Rajangam (2010) 15 SCC 369** and the acquittal of the accused by this Court on the ground that as the informant and the investigator was the same, it has vitiated the trial and the accused is entitled to acquittal are to be treated to be confined to their own facts. It cannot be said that in the aforesaid decisions, this Court laid down any general proposition of law that in each and every case where the informant is the investigator there is a bias caused to the accused and the entire prosecution case is to be disbelieved and the accused is entitled to acquittal;*

*II. In a case where the informant himself is the investigator, by that itself cannot be said that the investigation is vitiated on the ground of bias or the like factor. The question of bias or prejudice would depend upon the facts and circumstances of each case. Therefore, merely because the informant is the investigator, by that itself the investigation would not suffer the vice of unfairness or bias and therefore on the sole ground that informant is the investigator, the accused is not entitled to acquittal. The matter has to be decided on a case to case basis. A contrary decision of this Court in the case of **Mohan Lal v. State of Punjab (2018) 17 SCC 627** and any other decision taking a contrary view that the informant cannot be the investigator and in such a case the accused is entitled to acquittal are not good law and they are specifically overruled."*

MOHIT
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25. So far as the contention of the learned counsel for the appellant that the provision of Section 50 of NDPS Act has not been complied with by the prosecution is concerned, the law is well settled. The Hon'ble Supreme Court in ***Ajmer Singh v. State of Haryana, (2010) 3 Supreme Court Cases 746***, has held that for search of bag, briefcase, container, etc. carried by accused person, compliance with Section 50 of the NDPS Act is not required. Their Lordships have held as under :-

> *"15. The learned counsel for the appellant contended that the provision of Section 50 of the Act would also apply, while searching the bag, brief case etc., carried by the person and its noncompliance would be fatal to the proceedings initiated under the Act. We find no merit in the contention of the learned counsel. It requires to be noticed that the question of compliance or non-compliance of Section 50 of the NDPS. Act is relevant only where search of a person is involved and the said Section is not applicable nor attracted where no search of a person is involved. Search and recovery from a bag, brief case, container, etc., does not come within the ambit of Section 50 of the NDPS Act, because firstly, Section 50 expressly speaks of search of person only. Secondly, the Section speaks of taking of the person to be searched by the Gazetted Officer or Magistrate for the purpose of search. Thirdly, this issue in our considered opinion is no more res-integra in view of the observations made by this court in the case of* ***Madan Lal v. State of Himachal Pradesh (2003) 7 SCC 465****. The Court has observed:*

MOHIT
2026.07.29 14:30
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> *"16. A bare reading of Section 50 shows that it only applies in case of personal search of a person. It does not extend to search of a vehicle or a container or a bag or premises (see* ***Kalema Tumba v. State of Maharashtra and Anr. (1999) 8 SCC 257****,* ***State of Punjab v. Baldev Singh (1999) 6 SCC 172*** *and* ***Gurbax Singh v. State of Haryana (2001) 3 SCC 28)****. The language of section is implicitly clear that the search has to be in relation to a person as contrast to search of premises, vehicles, or articles. This position was settled beyond doubt by the Constitution Bench in Baldev Singh's case. Above being the position, the contention regarding noncompliance of Section 50 of the Act is also without any substance."*

16. x x x

17. x x x

18. It appears from the evidence on record that the accused was confronted by ASI Maya Ram and other police officials on 24.1.1996 and he was informed that he has the right to either be searched before the gazetted officer or before a Magistrate and the accused chose the later (sic former). Thereafter, the accused was taken to the DSP, Pehowa, Shri Paramjit Singh Ahalawat and as directed by him, the bag carried by accused on his shoulder was searched and the charas was found in that bag. Thus, applying the interpretation of the word "search of person" as laid down by this Court in the decision mentioned above, to facts of present case, it is clear that the compliance

MOHIT
2026.07.29 14:30
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of Section 50 of the Act is not required. Therefore, the search conducted by the investigation officer and the evidence collected thereby, is not illegal. Consequently, we do not find any merit in the contention of the learned counsel of the appellant as regards the noncompliance of Section 50 of the Act."

25.1. More recently, in the matter of ***Mehboob Shah v. State of Madhya Pradesh***, ***Criminal Appeal No(s). 3305-3306 of 2026 D/d.21.07.2026;*** the Hon'ble Supreme Court has held as under:-

"12. The next contention of the appellant pertains to the alleged non-compliance of Section 50 of the NDPS Act. We find the same to be devoid of merit. Section 50 of the NDPS Act confers upon an accused a valuable right to have his personal search conducted before a Gazetted Officer or a Magistrate, if he so requires. Such right is sacrosanct and indefeasible which cannot be disregarded by the prosecution except at its own peril. [See: ***State of Punjab v. Baldev Singh, (1999) 6 SCC 172]*** *<u>The protection under Section 50 is confined to cases where the recovery is sought to be effected through the personal search of the accused. It has no application where the search is of an article, such as a bag, container, suitcase or any other object, which the accused may be carrying</u>. [See:* ***State of H.P. v. Pawan Kumar, (2005) 4 SCC 350*** *and* ***Ranjan Kumar Chadha v. State of H.P., 2023 SCC Online SC 1262****]."*

.....emphasis supplied

MOHIT
2026.07.29 14:30
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25.2. Since the recovery of opium was effected from the bag which the appellant was carrying on his shoulder, so Section 50 of the NDPS Act was not applicable in the present case. Even otherwise, in the present case, the prosecution has gone a step further by serving a written notice under Section 50 NDPS Act (Ex. PD), despite the fact that the recovery was from a bag. The appellant exercised his option to be searched before a Magistrate and, accordingly, he was searched before PW3 K.K. Amrohi, DRO who as per prosecution was exercising the powers of Executive Magistrate on that day. Though Section 50 of the NDPS Act is not applicable in the present case but still the same has been complied with. Thus, in view of the settled law as discussed above, the submissions made by learned counsel for the appellant with regard to non-compliance of Section 50 of the NDPS Act are without any substance. Accordingly, this Court is of the considered opinion that the submissions advanced on behalf of the appellant regarding the alleged non-compliance of Section 50 of the NDPS Act are devoid of merit and deserve to be rejected.

26. Learned counsel has next argued that Section 52-A of the NDPS Act has not been complied with as samples were not drawn before the Magistrate. The contention cannot be accepted. This Court is conscious that the law on the consequence of such non-compliance has since been authoritatively settled by the Hon'ble Supreme Court in ***Bharat Aambale v. State of Chhattisgarh, 2025 INSC 78,*** wherein the Supreme Court had held that non-compliance or delayed compliance with Section 52A of the NDPS Act will not automatically vitiate the trial or entitle the accused to acquittal unless it leads to significant discrepancies in the physical evidence that cast doubt on the prosecution's case. It was further held that the Courts ought to

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consider entire evidence and assess if procedural lapses affect credibility and the non-compliance may lead to adverse inference under Section 114(g) Indian Evidence Act depending on facts but Substantial compliance is sufficient. The relevant part of the order is reproduced below:

> *"50. We summarize our final conclusion as under: -*
>
> *(I) Although Section 52A is primarily for the disposal and destruction of seized contraband in a safe manner yet it extends beyond the immediate context of drug disposal, as it serves a broader purpose of also introducing procedural safeguards in the treatment of narcotics substance after seizure inasmuch as it provides for the preparation of inventories, taking of photographs of the seized substances and drawing samples therefrom in the presence and with the certification of a magistrate. Mere drawing of samples in presence of a gazetted officer would not constitute sufficient compliance of the mandate under Section 52A sub-section (2) of the NDPS Act.*
>
> *(II) Although, there is no mandate that the drawing of samples from the seized substance must take place at the time of seizure as held in Mohanlal (supra), yet we are of the opinion that the process of inventorying, photographing and drawing samples of the seized substance shall as far as possible, take place in the presence of the accused, though the same may not be done at the very spot of seizure.*
>
> *(III) Any inventory, photographs or samples of seized substance prepared in substantial compliance of the procedure prescribed under Section 52A of the NDPS Act and the Rules/Standing Order(s) thereunder would have to be mandatorily treated as primary evidence as per Section 52A subsection (4) of the NDPS Act, irrespective of whether the substance in original is actually produced before the court or not.*

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(IV) The procedure prescribed by the Standing Order(s)/Rules in terms of Section 52A of the NDPS Act is only intended to guide the officers and to see that a fair procedure is adopted by the officer in-charge of the investigation, and as such what is required is substantial compliance of the procedure laid therein.

(V) Mere non-compliance of the procedure under Section 52A or the Standing Order(s)/Rules thereunder will not be fatal to the trial unless there are discrepancies in the physical evidence rendering the prosecution's case doubtful, which may not have been there had such compliance been done. Courts should take a holistic and cumulative view of the discrepancies that may exist in the evidence adduced by the prosecution and appreciate the same more carefully keeping in mind the procedural lapses.

(VI) If the other material on record adduced by the prosecution, oral or documentary inspires confidence and satisfies the court as regards the recovery as-well as conscious possession of the contraband from the accused persons, then even in such cases, the courts can without hesitation proceed to hold the accused guilty notwithstanding any procedural defect in terms of Section 52A of the NDPS Act.

(VII) Non-compliance or delayed compliance of the said provision or rules thereunder may lead the court to drawing an adverse inference against the prosecution, however no hard and fast rule can be laid down as to when such inference may be drawn, and it would all depend on the peculiar facts and circumstances of each case.

(VIII) Where there has been lapse on the part of the police in either following the procedure laid down in Section 52A of the NDPS Act or the prosecution in proving the same, it will not be appropriate for the court to resort to the statutory presumption of commission of an offence from the possession of illicit material under Section 54 of the NDPS Act, unless the court is otherwise

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2026.07.29 14:30
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satisfied as regards the seizure or recovery of such material from the accused persons from the other material on record.

(IX) The initial burden will lie on the accused to first lay the foundational facts to show that there was non-compliance of Section 52A, either by leading evidence of its own or by relying upon the evidence of the prosecution, and the standard required would only be preponderance of probabilities.

(X) Once the foundational facts laid indicate non-compliance of Section 52A of the NDPS Act, the onus would thereafter be on the prosecution to prove by cogent evidence that either (i) there was substantial compliance with the mandate of Section 52A of the NDPS Act OR (ii) satisfy the court that such non-compliance does not affect its case against the accused, and the standard of proof required would be beyond a reasonable doubt."

26.2. In the present case, the prosecution witnesses i.e. the Investigating Officer PW-4 Inspector Dhian Singh and the PW-2 MMHC Brij Pal Singh and also the report of the Forensic Science Laboratory (Ex.PX), consistently establishes that the sample analysed by the laboratory was the sample drawn from the contraband recovered from the appellant. There is no material on record to indicate that the identity of the seized substance was ever lost or that the sample examined by the Forensic Science Laboratory was different from the one allegedly recovered from the appellant. Thus, in the facts and circumstances of the present case, the alleged non-compliance with Section 52A of NDPS Act, even if assumed, constitutes at best a procedural irregularity and not an illegality going to the root of the prosecution case. In the absence of any demonstrated prejudice or any

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discrepancy affecting the credibility of the physical evidence, the conviction cannot be vitiated on this ground alone.

27. On a comprehensive appreciation of the entire evidence on record, this Court finds that the prosecution has proved each circumstance beyond reasonable doubt. The evidence of the official witnesses is trustworthy, consistent and inspires confidence. Their testimony is duly corroborated by the documentary evidence and the report of the Forensic Science Laboratory. No material contradiction, omission or discrepancy has been pointed out which goes to the root of the prosecution case or is sufficient to discredit the otherwise reliable evidence led by the prosecution.

28. Thus, this Court concludes that the findings recorded by the learned Special Judge are based upon proper appreciation of oral as well as documentary evidence and do not suffer from any illegality, perversity or misreading of evidence warranting interference by this Court. The prosecution has successfully established that the appellant was found in conscious possession of 2 Kgs. of opium in contravention of the provisions of the NDPS Act.

29. This Court has also considered the argument of the learned counsel for the appellant that the sentence awarded by the learned trial Court is on higher side.

30. In ***Deo Narain Mandal v. State of U.P. (2004) 7 SCC 257***, the Supreme Court (Three-Judge Bench) underscored that sentencing is not a mere formality in criminal proceedings. Where a statute prescribes both minimum and maximum terms, the court must exercise the discretion conferred upon it judiciously-not whimsically or

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2026.07.29 14:30
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arbitrarily. Factors such as the gravity of the offence, manner of commission, and the accused's age are imperative in determining an appropriate sentence. The sentencing court must operate within the principle of proportionality, ensuring the sentence is neither unduly harsh nor inappropriately lenient.

31. In ***Ravada Sasikala v. State of Andhra Pradesh AIR 2017 SC 1166***, the Court reaffirmed that sentencing serves a broader social purpose a deterrent effect that compels the offender to acknowledge the harm caused both to the victim and to society. The Court held that opportunities for reformation must be afforded, and sentencing discretion must be exercised by weighing all attendant circumstances, including the nature and manner of the offence and the conduct of the accused, to strike a balance between legal efficacy and prospects of rehabilitation.

32. The contraband recovered in the present FIR falls under non-commercial quantity and the trial court has awarded the maximum sentence to the appellant. With regard to the alternate prayer of the learned counsel for the appellant, this Court has considered all the aggravated and mitigating circumstances. The present case was registered in the year 2001. The appellant-accused had faced agony of trial for almost about 25 years and at the time of arrest he was 31 years of age. Now he is more than 55 years of age. The custody certificate produced on record by the learned State counsel reveals that he has undergone actual sentence of 01 year 04 months and 19 days and the custody certificate further shows that he is not involved in any other case. The sentence of the appellant was suspended by this Court way

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back on 14.01.2005. Thereafter, the appellant has not misused the concession of bail granted to him.

33. Accordingly, this Court is of the opinion that considering the facts and circumstances of the case, it would be appropriate to sentence the appellant for rigorous imprisonment for 05 years for offence punishable under Section 18 of the NDPS Act.

34. Therefore, in view of the discussion above, the present appeal is disposed of in the following terms:-

(i) The judgment dated 08.09.2004 passed by the Learned Special Judge, Panipat is upheld.

(ii) The order of sentence dated 10.09.2004 is modified to the extent that the sentence of imprisonment for 10 years awarded to the appellant is reduced to rigorous imprisonment for 05 years.

(iii) The order of sentence qua fine imposed is upheld and punishment in default is of payment of fine is modified to rigorous imprisonment for 06 months.

35. The appellant, shall surrender before the learned trial Court forthwith to undergo the remaining part of the sentence. The trial Court shall take appropriate steps to secure his custody in accordance with law.

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

(RUPINDERJIT CHAHAL)
JUDGE

29.07.2026
Mohit Bishnoi

Whether speaking/reasoned : Yes
Whether reportable : Yes

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