

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of decision: 28.05.2019

1. CRM-M-5074-2019

Joginder Singh

... Petitioner

Vs.

State of Punjab

... Respondent

2. CRM-M-21323-2019

Ajay Kumar

... Petitioner

Vs.

State of Punjab

... Respondent

3. CRM-M-48327-2018

Satnam Singh

... Petitioner

Vs.

State of Punjab

... Respondent

4. CRM-M-64384-2018

Jaswant Malhotra

... Petitioner

Vs.

State of Punjab

... Respondent

5. CRM-M-5555-2019

Ramesh Kumar @ Boli

... Petitioner

Vs.

State of Haryana

... Respondent

6. CRM-M-3025-2019

Gurpreet Singh @ Gopi

... Petitioner

Vs.

State of Punjab

... Respondent

7. CRM-M-3465-2019

Sarabjit Singh @ Jyoti @ Sarabjot

... Petitioner

Vs.

State of Punjab

... Respondent

8. CRM-M-3441-2019

Mukha Singh

... Petitioner

Vs.

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. R.K. Gupta, Advocate
for the petitioner (in CRM-M-5074 & 21323-2019).

Ms. Jyoti Gill, Advocate for
Mr. Amit Arora, Advocate
for the petitioner (in CRM-M-48327-2018).
Ms. Kiranpreet Kaur, Advocate for
Mr. Ashish Aggarwal, Advocate
for the petitioner (in CRM-M-64384-2018).

Mr. Ajay Kumar Gupta, Advocate
for the petitioner (in CRM-M-5555-2019).

Mr. K.S. Dadwal, Advocate
for the petitioner (in CRM-M-3025, 3465 & 3441-2019).

Mr. R.S. Rai, Sr. Advocate with
Mr. Gautam Dutt, Advocate
for U.T. Chandigarh.

Mr. Joginder Pal Ratra, DAG, Punjab,
Mr. M.S. Nagra, AAG, Punjab,
Mr. Sidakmeet Sandhu, AAG, Punjab.

Mr. Naveen Sheoran, DAG, Haryana,
Mr. Himmat Singh, DAG, Haryana and
Mr. Deepak Grewal, DAG, Haryana.

ARVIND SINGH SANGWAN, J. (ORAL)

Vide this common order, I dispose of all the aforementioned petitions, as it is noticed in many cases that the Investigating Officers, while conducting the investigation under the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act'), are not adhering to the mandatory provisions of NDPS Act. Though it cannot be said at this stage whether the Investigating Officers are leaving a lacuna intentionally to do favour to the accused persons, as on the other hand, a common defence is taken by all the accused persons that they have been falsely implicated yet the lapses on the part of Investigating Officers need to be checked in future.

Separate replies by way of affidavits of Addl. Director Bureau of Investigation of both the States along with concerned Senior Superintendent of Police/Superintendent of Police have been filed in the Court today. For the sake of brevity, in all the affidavits, it is stated that the Investigating Officers have failed to comply with the provisions of NDPS Act and accordingly, departmental proceedings are initiated against them by the competent

authority.

CRM-M-5074-2019

In the affidavit of Senior Superintendent of Police, Police District Khanna, District Ludhiana, it is admitted that despite receiving a secret information, neither any notice under Section 50 of NDPS Act was given to the accused persons before conducting the personal search nor an information/ruqa was sent to the police station as per Section 42 of NDPS Act.

CRM-M-64384-2018 and CRM-M-48327-2018

In the short replies by way of affidavits of Senior Superintendent of Police, District Tarn Taran, it is stated that while giving the notice under Section 50 of NDPS Act, a joint non-consent memo was prepared, which is not the correct procedure as per provisions of NDPS Act and while admitting the mistake of the Investigating Officer as well as DSP, who was called at the spot, it is stated in these affidavits that departmental proceedings are initiated against L/SI Sukhraj Singh and Satpal Singh, DSP.

CRM-M-5555-2019

In the affidavit of Addl. Director General of Police, Crime, Haryana, Panchkula, it is stated that while giving the notice under Section 50 of NDPS Act, an offer was given to the accused that he has a right to be searched before a Magistrate or a Gazetted Officer or before an officer of revenue/excise department, which is not the requirement of Section 50 of NDPS Act and therefore, the Investigating Officer has given a third option beyond the scope of Section 50(1) of NDPS Act. In this affidavit, again admitting the lapse on the part of the Investigating Officer, it is stated that

departmental inquiry is initiated against ASI Chandeshwer.

CRM-M-3025, 3465 & 3441-2019

In the affidavit of Commissioner of Police, Ludhiana, it is stated that on a single day, three FIRs No.42, 43 & 44 were registered in the same police station, in which three accused persons were arrested in a similar manner, with the allegations that they are having 255 grams, 262 grams and 250 grams of intoxicant powder. In these three cases, the consent memo was recorded, reposing faith in the Investigating Officer, who did not call the second Investigating Officer and as per the affidavit of Director, Bureau of Investigation, Punjab, the Investigating Officer did not intimate his senior officer within 72 hours of the search as prescribed under Section 50 (6) of NDPS Act and in FIR No.43, as per the FSL report, no psychotropic substance was found and cancellation report was recommended to be filed in Court.

While issuing notices in all these cases, directions were also issued to the Director, Bureau of Investigation, Punjab and the Addl. Director General of Police, Crime, Haryana, to inform the Court about the training, which is being imparted to the Investigating Officers, conducting the investigation under the NDPS Act as well as the guidelines issued to them from time to time, so that they do not leave lacunae in the prosecution cases, which ultimately lead to acquittal of the accused persons. In the affidavits of both these officers, details of various circulars issued from time to time regarding effective enforcement of NDPS Act and the instructions regarding submission of final report under Section 173 Cr.P.C. as well as the various training programmes held in the academy, are also given.

Since in number of cases, finding that the investigation is faulty, the accused get bail pending trial like in the present cases and ultimately also earn acquittal, it would be appropriate to issue necessary guidelines, based on the judgment of the Hon'ble Supreme Court in *S.K. Raju @ Abdul Haque @ Jagga Vs. State of West Bengal, 2018 (5) RCR (Crl.) 771, State of Punjab Vs. Baldev Singh, 1999 (6) SCC 172, Balbir Kaur Vs. State of Punjab, AIR 2009 SC 3036, Vijasinh Chandubha Jadeja Vs. State of Gujarat, AIR 2011 SC 77, State of Rajasthan Vs. Parmanand and another, 2014 (2) RCR (Crl.) 40, Arif Khan @ Agha Khan Vs. State of Uttarakhand, 2018 (2) RCR (Crl.) 931, State of Punjab Vs. Baldev Singh, (1999) 6 SCC (Crl.) 1080, Union of India Vs. Mohan Lal and another, 2016 (1) RCR (Crl.) 85 and Mohan Lal Vs. State of Punjab, AIR 2018 SC.*

These guidelines, in vernacular (Hindi & Punjabi) will be uploaded in PDF format.

(i) The mandatory guidelines, which should be followed by the Investigating Officers, are as under: -

PDF-I

- *Search of the person/accused should be conducted by the officer authorized under Section 42 of the NDPS Act. An Officer duly authorized should not below the rank of Assistant Sub Inspector (Regular). Investigation officer who is an adhoc ASI is not competent to exercise the power and performs the duties specified in Section 42 and 67 of the Act.*

- *If empowered officer or an authorized officer has any prior information/secret information given by any person, that should necessarily be taken down in writing and should forthwith send a copy thereof to his immediate superior official.*
- *If there is a secret information, it is mandatory that the empowered officer will immediately sent a “ruqa” to the police Station for registering of FIR.*
- *If the officer takes down any information in writing or records his belief, he will within 72 hours, send copy of the same to his superior officials.*
- *In case of a chance recovery of any Narcotic Drugs or Psychotropic Substance, the police official who is not empowered, should informed the empowered officer, who should thereafter proceeds in accordance with the provisions of NDPS Act. Even an empowered officer will inform the other empowered officers from stage of recovery onwards and will call the other empowered officer to carry out the further investigation in accordance with the other provisions of the NDPS Act.*
- *For the fair and impartial investigation, it is necessary that informant/complainant and investigator must not be the same person.*

- *Section 50 of the NDPS Act, casts duty on empowered officer to inform the suspect of his right to be searched in the presence of the Gazetted Officer or Magistrate. A mere enquiry by the said officer as to whether the suspect would like to be searched in presence of the Magistrate or the Gazetted Officer, can be said to be due compliance within the Mandate of Section 50, as the suspect may or may not choose to exercise the right given to him under the said provision. It is mandatory for empowered officer to inform the person concerned/ accused of his right to be taken to the nearest Gazetted Officer or nearest Magistrate for conducting the search under the NDPS Act.*
- *The empowered officer can not put any additional condition while informing the right to accused like apart from (empowered officer) e.g. the accused can be searched by Gazetted Officer or Magistrate. No third option can be given by the empowered officer.*
- *Each empowered officer will keep a list of all Gazetted Officers of District with their mobile number, who can be associated. The list of empanelled Gazetted Officers will be updated quarterly in every year by Sr. Superintendent of Police of District.*
- *Where the personal search of the accused is conducted by*

- the empowered officer/ investigating officer acting on the prior information, then the compliance of Section 50 of NDPS Act is mandatory. Section 50 only applies in case of the personal search of the person.*
- *If there are more than one accused, each accused must be individually informed that he has a right to be searched in the presence of a Gazetted Officer or a Magistrate. A joint communication of the right available under Section 50 (1) of the NDPS Act to the accused person is not permissible under Section 50. The communication has to be clear, unambiguous and individual.*
 - *Empowered officer or an authorized officer, who is about to search any person under provision of Sections 41, 42 and Section 43, shall, if such person so require, take such person, without unnecessarily delay to nearest Gazetted Officer or to the nearest Magistrate.*
 - *The Gazetted Officer or Magistrate before whom any such person is brought shall also comply with the provision of Section 50 of the NDPS Act by apprising the person of his/her right.*
 - *While enforcing the mandate of Sec 50 of the NDPS Act, an option in writing, duly read over and explained in the language the person about to be searched understands,*

shall be provided and such search shall be carried out by the gazetted officers of the civil department, Magistrate or gazetted officer of the Police, already empanelled for the purpose and available on spot. The signatures shall be obtained from the accused on the option memo together with the signatures of witnesses and kept in the CD file as evidence.

- *No female shall be searched by any one excepting a female officer and such lady police officer will never be given up in trial Court as unnecessary witness.*
- *The process of drawing of sample has to be in the presence and under the supervision of Magistrate and the entire exercise be got certified by him. The application for sampling and certification ought to be made without undue delay.*
- *In case of bulk recovery, the seized drug/narcotic substance in the package/container should be well mixed to make it homogenous so that the sample drawn is representative of the seized substance.*
- *Upon the seizure, the same has to be forwarded to the officer incharge of the nearest police station who will prepare an inventory and make an application to the Magistrate for the purpose of: (a) Certifying the*

- correctness of the inventory (b) Certifying photographs of such drugs or substance taken before the Magistrate as true and (c) to draw representative sample in the presence of the Magistrate and certifying the correctness of the list of sample so drawn.*
- *A detailed report in this regard shall be shared, without any fail, with the superior officers, at the earliest possible time, preferably within a period of 72 hours, as required under section 42 of NDPS Act.*
 - *All seizures shall be kept in the malkhana of the police station concerned with specific entries in the malkhana register under the charge of SHO/Munshi and send to FSL without delay in case the samples, owing to some extreme exigency, are not sent to FSL within the prescribed time as per the mandate of Sec. 55 of NDPS Act. Statements as witnesses of SHO/Munshi/Malkhana Incharge shall be reduced in writing to maintain the chain of evidence.*
 - *All such seized/sealed packets of contrabands shall be placed before the Magistrate to follow Section 52-A of NDPS Act.*
 - *Whenever any person makes any arrest or seizure under this Act, he shall, within 48 hours of such arrest or*

seizure, make a full report of all the particulars of such arrest or seizure to his immediate superior official as per the mandatory requirement of Sec. 57 of NDPS Act.

- *All articles, things, conveyance etc. used in the transportation of narcotics be also seized with a proper inventory prepared on the spot, as these things/items are liable to be confiscated under Sec. 60 & 61 of the Act as per the procedure laid down in Sec. 63.*
- *Further a direction be given to the Investigating Officers to maintain separate register to keep record of pending FSL reports to complete the investigation on time and file FSL report along with report under Section 173 (2) Cr.P.C. within the time prescribed as per NDPS Act.*
- *In case of faulty investigations, deviation of the prescribed laws, burking of crime or illicit practices adopted by the investigating cell/team or its supervisory officer or during the prosecution of the cases at the time of trial, effective departmental actions shall be immediately initiated against the erring officers/officials found responsible for the lapses and stringent & exemplary punishments shall be awarded in each case as per Act.*

Apart from this, in order to enable the Investigating Officers to conduct the investigation in proper sequence and proper manner, it would be

appropriate to give certain guidelines, which are directory in nature and only for the purpose of enabling them to conduct fair, impartial and proper investigation, the Investigating Officers should keep a checklist (not to be made a part of report under Section 173 Cr.P.C., however, this checklist will be kept in police file by tick marking in following manner): -

PDF-II

“DURING INVESTIGATION

1. *Whether the complainant/informant and Investigating Officers are two different persons if yes, mention the name of complainant and Investigating Officer.*

2. *Was the information recorded by him?* Y/N

[Sec 41 (1)]

3. *Was the personal belief and the ground for conducting search in the absence of authorization recorded in writing by him?* Y/N

[Sec 42(1)]

4. *Was a copy of the said document as at 1 or 2, as applicable, sent to his official superior within 72 hours?* Y/N

[Sec 42 (2)]

5. *Was the copy of search authorization shown and signatures of two independent witnesses and the owner/occupier available in the premises at the time of search obtained/procured thereon?*
Y/N

6. *Did the search team offer their own personal search by the owner/occupier of the premises before beginning the search of the premises?* Y/N

7. *Was a written notice under Section 50 of the NDPS Act served on the occupants of the premises or on the person who is intercepted at a public place and was the response to such a notice recorded in writing thereon?* Y/N

8. *Was a lady officer present in the search team to ensure that a female is searched by a female? If yes, mention the name of the female officer.* Y/N

[Sec 50 (4)]

9. *Was the reason to believe that the person about to be searched will part with the possession of drugs and other incriminating articles as such cannot be taken to such officer, recorded in writing?* Y/N

[Sec 50 (5)]

10. *Was the copy of the document, as at 8, sent to his immediate superior within 72 hours?* Y/N

[Sec 50 (6)]

11. *Were all the recovered substances tested on the spot with drug detection kits etc. to verify the presence of narcotics etc. and were the necessary documents prepared in this regard?* Y/N

12. *Were all the recovered documents, articles or things scrutinized/examined to determine their relevance to the commission of offence under the Act?* Y/N

13. *Were all the recovered and relevant items liable to seizure and confiscation entered carefully in an inventory and documented in the seizure memo?* Y/N

14. *Were all the goods, documents, articles, things and assets found relevant to the commission of offence and subsequent investigations, recovered during search, seized and the fact of seizure documented in the memo?* Y/N
15. *Was it ensure that the representative samples are of specified weights?* Y/N
16. *Were all the packages including the representative samples properly packed, marked and sealed?* Y/N
17. *Was the seizure memo/site plan of place of recovery prepared/drawn carefully on the spot and correctly indicating the sequence of events including start and end time of the search proceedings?* Y/N
18. *Was it ensure that the seizure memo of all the recovered/seized documents/articles/things bear signatures of the person whose premises was searched or from whom the recovery was made, two independent witnesses, the I.O, and the lady officer present on the spot for the search of a lady?* Y/N
19. *Was a notice to examine the owner/occupier and recovery witnesses under Section 67 of the Act issued and their statements recorded by the I.O.?* Y/N
20. *Was a written arrest memo informing the grounds of arrest prepared in respect of the person arrested?* Y/N
21. *Was the arrest made in the presence of a witness and his signatures obtained on the arrest memo?* Y/N
22. *Was the fact of arrest intimated to one of the relative or friend*

of the person who was arrested and the same endorsed on the arrest memo? Y/N

23. *Was the personal search memo (fard jamatalashi) prepared?*

24. *Was the arrested person produced before a Magistrate within 24 hours of his arrest?* Y/N

25. *Was a report of seizure and arrest sent to the immediate superior within 48 hours of seizure/arrest?* Y/N

(Sec 57)

26. *Were the seized goods and samples deposited in the Malkhana at the earliest after seizure and entries made in the Malkhana register accordingly and statement of Malkhaka Incharge recorded?* Y/N

27. *Were the samples forwarded/sent to FSL for analysis and report, within 72 hours of seizure?* Y/N

28. *Were proceedings under Section 68-F of the NDPS Act relating to seizing/freezing all assets etc. initiated, order issued and served in this regard upon the person searched and proceedings shared with the jurisdictional Competent Authority (NCB) within 48 hours of such search/action?* Y/N

29. *Were all the leads/clues evaluated, analyzed and investigated subsequently to establish independent corroborating evidence of the roles of the accused persons, their links etc. in the crime?* Y/N

30. *Was the investigation file put up before superior officers to inform them of the progress in the case on a regular basis at*

least once in a week/fortnight for their instructions and guidance? Y/N

31. *Was the test report received from FSL in time? If not, is it being followed up?* Y/N

32. *Was the investigation completed on time at least two weeks before the time to file chargesheet?* Y/N

33. *Was the draft chargesheet evidence collected etc. vetted through superior officer/legal officers before its presentation?* Y/N

34. *Is the chargesheet complete in all respects and includes all material facts & evidences collected during investigation, details of all the witnesses and accompanied with all the original documents at the time of its presentation before the Court?* Y/N

35. *Was an application made for pre-trial disposal of the seized goods under Section 52-A of NDPS Act?* Y/N

36. *Was the application for pre-trial disposal of the seized goods disposed of by the Magistrate? If yes, was the process of disposal initiated and certificate to that effect placed in CD file as evidence?* Y/N

PDF-III

It is further directed that a list of the empowered Gazetted Officers other than the police officers, along with their mobile numbers, in consultation with the Deputy Commissioner of the concerned district, will also be prepared in PDF format and will be given to all the Investigating Officers so as to call a Gazetted Officer during the investigation.

The Director General of Police, Haryana and the Director General of Police, Punjab as well as the Inspector General of Police, U.T., Chandigarh are directed that they will prepare 03 PDF files of the (i) mandatory guidelines; (ii) a directory checklist and will circulate to all the Investigating Officers, who are of the rank of Assistant Sub Inspector and above, on their mobile phones, for handy and instant reference, while conducting the investigation.

The list of empowered Gazetted Officers will also be upgraded quarterly every year and all the officers above the rank of DSP/Illaq Magistrate will randomly check the mobile phones of the Investigating Officers to ascertain that the aforesaid guidelines are maintained by them in their mobile phones as ready reckoner.

The Senior/Superintendent of Police shall maintain a register about the acquittal of cases in which the Court, findings faulty investigation, has acquitted the accused and shall ensure taking appropriate action under Sections 58 and 59 of NDPS Act.

Accordingly, Govt. of Haryana and Govt. of Punjab as well as U.T. Chandigarh are directed to keep a watch in all NDPS cases, where there is a lapse on the part of the Investigating Officers and to take prompt action against them.

The offices of Advocate General, Punjab and Haryana as well as Sr. Standing Counsel for U.T. Chandigarh will prepare the PDF in vernacular and will forward it to all concerned within a period of 08 weeks from today.

Since the petitioners, in all these cases, were granted interim bail vide orders by this Court, finding the lacunae in the investigation, the interim

bail granted to them is made absolute.

With the aforesaid directions and observations, all these petitions are disposed of.

However, it is made clear, if in future, the Director General of Police, Haryana and the Director General of Police, Punjab as well as the Inspector General of Police, U.T., Chandigarh fail to perform their duties, these petitions will be revived to take action against them as well.

Registrar General is directed to circulate this judgment to all the District & Sessions Judge in the States of Punjab, Haryana and U.T. Chandigarh for further circulation with all the Illaqa Magistrates, for compliance.

[ARVIND SINGH SANGWAN]
JUDGE

28.05.2019
vishnu

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No