

**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

**CRA-S-1087-SB-2015 (O&M)
Date of decision: 07.02.2020**

Sukhwinder Singh

...Appellant

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE AJAY TEWARI

Present:- Mr. Bhanu Partap Singh, Advocate
for the appellant.

Mr. Pankaj Gupta, Addl. A.G., Punjab.

AJAY TEWARI, J. (Oral)
CRM-1543-2020

Prayer in this application is for early hearing of the main appeal,
which stands admitted on 11.03.2015.

For the reasons stated in the application, the same is allowed. Let
the main appeal be taken up today itself for its final hearing

CRA-S-1087-SB-2015

1. This appeal has been preferred against the judgment of conviction dated 10.02.2015 and order of sentence of the even date, passed by the Judge, Special Court (*Ad hoc*), Fast Track Court, Hoshiarpur, wherein appellant Sukhwinder Singh was held guilty and convicted for commission of offence punishable under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (*for brevity 'NDPS Act'*) and was sentenced to undergo rigorous imprisonment for a period of two years and to pay a fine of ₹20,000/-, in case of default of payment of fine, he was directed to further undergo rigorous imprisonment for three months.

2. Brief facts of the case are that on 31.08.2012, ASI Mohan Lal, along with HC Pawan Kumar, HC Anil Kumar and PHG Parampal Singh, was on patrol duty in Dasuya and when they crossed the railway track, one car bearing registration No. PB-21-A-5050 was found parked there and one young persons was sitting inside the same. On suspicion, he was apprehended by ASI Mohan Lal along with other police officials. On inquiry the said person disclosed his name as Sukhwinder Singh (appellant herein). Thereafter, ASI Mohan Lal introduced himself and told Sukhwinder Singh that he was having suspicion that he (appellant) was possessing some contraband and he had a right to get his search conducted in the presence of some Magistrate or Gazetted Officer, however, the accused/appellant reposed faith on him. Thereafter, the consent memo in this regard was prepared by ASI Mohan Lal and was read over to accused/appellant and he signed the same in English after admitting it to be correct. The Investigating Officer also tried to join some independent witness, however, nobody was ready to join. Thereafter, the Investigating Officer conducted the search of the said car and recovered 120 capsules of *Spasmo Proxywon* and from the personal search of the accused/appellant, one injection of *Avil* 10 ml along with syringe was recovered, for which accused/appellant could not produce any licence. The trial Court, finding a *prima facie* case against the accused/appellant, chargesheeted him under Section 22 of the NDPS Act for keeping in his possession 120 capsules of Spasmo Proxywon containing salt of '*Dextrpropoxyphene Napsylate*', '*Dicyclomine hydrochloride*' and '*Paracetamol*' and one injection of Avil 10 ml containing the salt of '*Pheniramine Maleate*', without any permit or licence, to which the accused

pleaded not guilty and claimed trial.

3. The trial Court, after hearing both the parties and appreciating the material/evidence available on record, convicted and sentenced the accused/appellant as noticed above. Hence, the present appeal.

4. Learned counsel for the petitioner has argued that during investigation, the offer made under Section 50 of the NDPS Act was defective insomuch as the PW1/IO ASI Mohan Lal had stated that the appellant had the option to get himself searched either through him or through a Gazetted Officer or through a Magistrate.

5. Learned counsel for the appellant has relied upon a judgment rendered by Supreme Court in ***State of Rajasthan vs Parmanand and another, 2014(2) RCR (Criminal) 40***, wherein it has been held that considering the stringent provisions under the NDPS Act, the right available to an accused person under Section 50 of the NDPS Act, to be searched before a Gazetted Officer or a Magistrate, will be frustrated in case a clear, unambiguous and individual offer is not given to the accused person. Learned counsel for the appellant has, thus, argued that in view of the aforesaid ratio of law, the conviction of the appellant is not sustainable.

6. Learned State counsel is not in a position to cite any contrary judgment.

7. Admittedly, during investigation, PW1/IO ASI Mohan Lal gave an offer to accused/appellant to get his search conducted either through him or through a Gazetted Officer or through a Magistrate, which was a defective offer and was not in consonance with the provisions of Section 50 of the NDPS Act. The purpose of Section 50 of the NDPS Act, which provides for

conducting the search of an accused person either before a Gazetted Officer or before a Magistrate, is to give him a chance of being searched in the presence of an independent officer. Hence, it was not lawful for the PW1/IO Mohan Lal to give a third option to accused/appellant by telling him that he could be searched before him as well as it could not have been done in view of Section 50(1) of the NDPS Act.

8. Therefore, keeping in view the aforesaid facts and also in view of the ratio of law laid down by Supreme Court in *Parmanand's* case (supra), the present appeal is allowed and the impugned judgment of conviction dated 10.02.2015 and order of sentence of the even date are hereby set aside. The appellant is acquitted of the charge framed against him.

9. Since the appellant is on bail, his bail bond is discharged.

February 07, 2020

shabha

(AJAY TEWARI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No