

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-S-3730-SB-2016 (O&M)
Date of decision: 05.12.2022

Sunny @ Siti

...Appellant

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Rajesh Lamba, Advocate as Pro-bono
for the appellant.

Mr. Shubham Kaushik, DAG, Punjab.

ARVIND SINGH SANGWAN, J.

Challenge in this appeal is to the judgment of conviction dated 22.07.2016, vide which the appellant was convicted under Section 22 (c) of Narcotic Drugs and Psychotropic Substances Act (for short 'NDPS Act') and order of sentence of even date, vide which he was ordered to undergo rigorous imprisonment for a period of 10 years along with a fine of Rs.1.00 lac and in default of payment of fine, the appellant was further ordered to undergo R.I. for a period of one year.

At the very outset, learned State counsel has filed the custody certificate, according to which, out of 10 years R.I. awarded by the trial

Court, the appellant has undergone 08 years, 08 months and 11 days of total sentence including remission.

Brief facts of the case, as per the prosecution version, are that on 28.03.2014, ASI Surinder Pal, alongwith HC Fakir Singh No.1712, HC Balwinder Singh No.3417 and HC Dalwinder Singh 1681 was going from Gha Mandi Octroi Post to Mohalla Gurunanakpura, on their private vehicles, were on patrol duty, a clean shaven person was seen coming, on foot, from the side of Gurunanak Nagar, who, on seeing the police party, became perplexed and tried to turn towards backside. On suspicion, ASI Surinder Pal apprehended him with the help of co-police officials. On inquiry, he disclosed his name as Sunny @ Siti son of Narinder Kumar, resident of WQ 147 Talian Mohalla Basti Sheikh Jalandhar. Thereafter, ASI Surinder Pal apprised him about his legal right to get his search conducted before him or in the presence of Gazetted Officer or Magistrate, who can be arranged at the spot, as he has a suspicion about possessing of some intoxicant substance by him, on this Sunny @ Siti, reposed faith in ASI Surinder Pal by stating that his search can be done by ASI Surinder Pal himself. A consent memo in this regard was prepared separately. Before conducting the personal search of accused, ASI Surinder Pal tried to join an independent witness, but no one was ready to join the police party. On personal search of accused Sunny @ Siti, intoxicant powder was recovered from the right side pocket of his Capri/trouser. Out of the above said intoxicant powder, two samples of 05 gm each were drawn. The remaining intoxicant powder on weighment came

out 100 grams. Both the samples and remaining bulk of intoxicant powder were put into separate small plastic containers, and converted into parcels and ASI Surinder Pal put his seal bearing impression 'SP'. Form M-29 was prepared at the spot and sample seal impression was affixed on Form M-29. The seal, after use, was handed over to HC Fakir Singh No.1712. The sample parcels, bulk parcel, and Form M-29 were taken into possession vide separate recovery memos in the presence of the witnesses. Thereafter, a ruqa was prepared and sent to the Police Station through HC Dalwinder Singh No.1681, on the basis of which formal FIR was registered against the accused. Rough site plan of the place of recovery was prepared at the spot and statements of witnesses under Section 161 Cr.PC were recorded and accused was arrested. On coming back to the police station, sample parcels, bulk parcel and Form M-29 alongwith accused, were produced before SHO/Inspector Hardayal Singh, who, after checking the case property and sample parcel, put his seal bearing impression 'HS' and deposited the same with the MHC of police station. On 29.03.2014 sample parcels and bulk parcel alongwith accused were produced before the Illaqa Magistrate and thereafter, sample parcels and bulk parcel were deposited with the MHC again for safe custody and accused was sent to judicial custody. During investigation, one sample parcel was sent to the office of Chemical Examiner, Kharar for Chemical analysis through C.Yadwinder Singh No.998. On receiving the report from the Chemical Examiner, challan under Section 173 Cr.P.C. was presented in the Court. Copies of the challan were supplied

free of cost to the accused. The trial Court framed charge under Section 22(c) of NDPS Act. The accused denied the charges and claimed trial.

The prosecution, in order to prove its case, examined PW1 ASI Surinder Pal, PW2 Yadwinder Singh, PW3 Hardev Singh, PW4 Hardyal Singh and PW5 ASI Faqir Singh. Thereafter, APP closed the evidence. Statement of accused under Section 313 Cr.P.C. was recorded. The accused-appellant did not plead guilty and claimed false implication. In defence, the accused did not lead any evidence.

Upon appreciation of the evidence, the trial Court, vide judgment of conviction dated 22.07.2016, held the appellant guilty of offence under Section 22 (c) of NDPS Act and vide order of sentence of even date, sentenced him to undergo R.I. for a period of 10 years and to pay a fine of Rs.1.00 lac and in default of payment of fine, he was ordered to further undergo R.I. for a period of two years. Present appeal is filed challenging the aforesaid judgment of conviction.

Lower Court record is requisitioned.

Learned counsel for the appellant has argued that as per case of the prosecution, recovery was effected from right side pocket of capri/half pant worn by the appellant, therefore, it was a personal search and there is no proper compliance of Section 50 of NDPS Act. Learned counsel has referred to consent memo Ex.PA, wherein it is mentioned that the appellant-accused has a right to be searched either before him i.e. ASI Surinder Pal/Investigating Officer or before a Gazetted Officer or Magistrate. Upon

which, consent of the appellant was recorded that he has faith in the Investigating Officer for conducting the search. It is further argued that in fact, no specific notice was given to the appellant and straightway consent memo Ex.PA was recorded, in which it is stated that the appellant has a legal right to be searched either before him or a Gazetted Officer or Magistrate, upon which, the accused reposed confidence in him vide consent memo Ex.PA. Learned counsel has relied upon judgment of the Hon'ble Supreme Court in **State of Rajasthan Vs. Parmanand and another, 2014 (2) RCR (Crl.) 40**, wherein the following observations have been made: -

*“We also notice that PW-10 SI Qureshi informed the respondents that they could be searched before the nearest Magistrate or before a nearest gazetted officer or before PW-5 J.S. Negi, the Superintendent, who was a part of the raiding party. It is the prosecution case that the respondents informed the officers that they would like to be searched before PW-5 J.S. Negi by PW-10 SI Qureshi. This, in our opinion, is again a breach of Section 50(1) of the NDPS Act. The idea behind taking an accused to a nearest Magistrate or a nearest gazetted officer, if he so requires, is to give him a chance of being searched in the presence of an independent officer. **Therefore, it was improper for PW-10 SI Qureshi to tell the respondents that a third alternative was available and that they could be searched before PW-5 J.S. Negi, the Superintendent, who was***

part of the raiding party. PW-5 J.S. Negi cannot be called an independent officer. We are not expressing any opinion on the question whether if the respondents had voluntarily expressed that they wanted to be searched before PW-5 J.S. Negi, the search would have been vitiated or not. But PW-10 SI Qureshi could not have given a third option to the respondents when Section 50(1) of the NDPS Act does not provide for it and when such option would frustrate the provisions of Section 50(1) of the NDPS Act. On this ground also, in our opinion, the search conducted by PW-10 SI Qureshi is vitiated. We have, therefore, no hesitation in concluding that breach of Section 50(1) of the NDPS Act has vitiated the search. The conviction of the respondents was, therefore, illegal. The respondents have rightly been acquitted by the High Court. It is not possible to hold that the High Court's view is perverse. The appeal is, therefore, dismissed."

It is next argued that a perusal of Ex.PA shows that after PW1 conducted the personal search of the appellant and recovered intoxicant powder, wrapped in a polythene bag from right pocket of capri/half pant worn by the appellant, the Investigating Officer prepared two sample parcels of 05 grams each and converted into sample parcels and remaining contents on weighment came to be 100 grams, which was converted into a bulk parcel and thereafter, all the parcels were sealed with seal impression 'SP'. He

prepared Form M-29 Ex.PX at the spot and affixed his own seal on the same. The sample parcels were taken into possession vide Ex.PB and it was witnessed by HC Fakir Singh and HC Balwinder Singh. Only thereafter, ASI Surinder Pal scribed the ruqa Ex.PC and sent the same to the police station through HC Dalwinder Singh, on the basis of which formal FIR Ex.PD was registered by SI Vijay Kumar. It is also submitted that all the documents, which were prepared at the spot, including personal search memo Ex.PA, which was prepared much prior to conducting the recovery i.e. at a stage, when the consent was taken before search, bear the complete details of FIR No.43.

Similar is the status on all other documents i.e. recovery memo Ex.PB. It is next argued that a perusal of ruqa Ex.PC would show that PW1 ASI Surinder Pal scribed the same at 06.15 pm and it was sent to the police station, which was received at 06.30 pm and the FIR was registered at 07.30 pm, as per endorsement made on the second page of ruqa Ex.PC. This would reflect that investigation was not conducted in a fair manner, as even prior to registration of FIR, complete details of FIR was found mentioned on the notice/consent memo under Section 50 of NDPS Act Ex.PA as well as recovery memo Ex.PB, though the FIR was registered after two and half hours after effecting the recovery.

Learned counsel has referred to cross-examination of PW1, wherein he stated that it was about 5.30 pm, when they spotted the accused and prepared the memos and thereafter, ruqa was sent to the police station. It

is argued that the police party stayed at the spot about three hours to complete the investigation and thus, mentioning of FIR number on the memos, which were prepared much prior to registration of FIR itself makes the case highly doubtful. Learned counsel relies upon a judgment of the Hon'ble Supreme Court in **Kamaljit Singh @ Pappu Vs. State of Punjab, 2019 (4) Scale 18.**

Learned counsel has further argued that when the appellant along with case property was produced before the Investigating Officer i.e. PW4 Inspector Hardayal Singh, he put his seal 'HS' on Form M-29 Ex.PX, which is Ex.P2. It is further stated by this witness that he also put seal on the sample parcels as well as the bulk parcel and thereafter, he kept the parcels and Form M-29 in his possession and prepared an application Ex.PG for preparing the inventory for submitting the same before the Illaqa Magistrate. In cross-examination, this witness stated that he has not seen the case property in the Court and has not attested the memos prepared by the Investigating Officer, which also reflects that the FIR number, which was already mentioned on the consent notice and recovery memo was never verified/attested by the SHO.

It is next argued that this witness has clearly admitted that the Investigating Officer was not a Gazetted Officer and inventory Ex.PG was handed over to the Investigating Officer on the next day i.e. 29.03.2014. In cross-examination, regarding endorsement made on Form M-29, this witness stated that he did not know whether it was made at the spot or not. PW5 ASI

Faqir Singh, who was also part of the investigating team, also made the similar statement that after consent memo Ex.PA was prepared by ASI Surinder Pal, recovery was effected from right pocket of capri/half pant worn by the accused and two sample parcels were prepared and sealed with seal impression 'SP', Form M-29 Ex.PX was also prepared, which also bears the same seal and the parcels were taken in possession vide memo Ex.PB, which was witnessed by him as well as HC Balwinder Singh. Thereafter, the accused was formally arrested and produced before the SHO. This witness also stated that they remained at the spot for long time and HC Dalwinder Singh, who took ruqa to the police station, reached back at the spot at about 08.15 pm. It is thus argued that the prosecution has failed to explain as to how the FIR number on all the memos, which were prepared two and half hours prior to registration of FIR, was mentioned by the Investigating Officer.

Learned counsel has next argued that when the appellant was produced before the Judicial Magistrate 1st Class, following order was passed on 29.03.2014: -

“In pursuance of the application having been made under Section 52(A) of the NDPS Act one parcel containing 100 gms intoxicant powder alongwith two parcel of 5 gms each bearing seal impression SP/HS were produced before me being Illaqua Magistrate. It is certified that case property alongwith the sample have been produced before me and same are seen and

initiated. It is hereby certified that in pursuance of the provisions of Under Section 52(A) of NDPS Act prescribing the manner for disposal of the case property, as per circular order No.9 of ADGP Crime, Punjab dated 31.05.2001 the application is allowed and case property be destroyed as per rules formulated under the above said circular order No.9 dated 31.05.2001 and that too, strictly by the Drug Disposal Committee.

Application for certifying the inventory of the case property as well as sample parcels has been moved before me. Inventory so prepared by the police and case property as well as sample tallies with case property as well as sample produced before me. Seals of SP/HS were found intact. Inventory has been certified to be correct.”

It is argued that the Illaqa Magistrate has neither put her own seal on the sample parcels, bulk parcels or on Form M-29 and has only observed that she has seen the same and found that seals are intact on an initialed on sample parcel. This order is absolutely silent as to how the sample parcels were to be kept till the time one of it was sent to the FSL and even no directions were issued to the Investigating Officer to immediately sent the sample parcels to the concerned FSL for chemical examination. Therefore, even the order passed by the JMIC is not in compliance of Section 52(A) of NDPS Act.

Learned counsel submits that PW1 has admitted in cross-examination as under: -

*“Thereafter, I deposited the case property and Form M-29 with MHC. Ex.P4 is in my hand and there is no mention regarding production of Form M-29 before the Court. **It is correct that Form M-29 Ex.PX do not bear any endorsement of the learned Magistrate.**”*

It is argued that from the admission of PW1, it is apparent that Form M-29 was neither produced before the Magistrate nor signed by her. Surprisingly, the Magistrate never issued any such direction to the SHO to produce Form M-29 for verification even at a later point of time. It is submitted that neither any representative sample was drawn by the Magistrate at the time of presentation of sample parcels and bulk parcel nor any initial on seal of Magistrate was put on sample parcels. Even no directions were issued to send sample parcels within 78 hours to FSL. Learned counsel has relied upon **Union of India Vs. Mohan Lal and others, 2016 (1) RCR (Crl.) 858**, wherein guidelines are issued both to Magistrate and Investigating Officer regarding compliance of Section 52-A of the Act.

It is further argued that there is a delay of 28 days in sending the sample parcel to FSL, which is not explained by the prosecution. It is submitted that though it has come in the statement of PW4 Inspector Hardayal Singh/SHO that in the intervening period, sample parcels remained

in his custody, however, there is nothing on record that the same were kept in safe custody, as there is no order of Magistrate, therefore, again there is a suspicion about the manner, in which the sample parcels and bulk parcel were kept by the Investigating Officer in his custody for a period of 28 days. Recovery was effected on 29.03.2014 and as per FSL report Ex.PY, sample parcels were received on 14.04.2014 through Constable Yadwinder Singh.

It is submitted that even a perusal of this report Ex.PY would show that the sealed parcel was having two seals i.e. SP/HS and there was no seal of the Illaqa Magistrate or even no mention that sample parcels bear initials/signatures of Illaqa Magistrate, which again prove the fact that the Illaqa Magistrate has not passed the order in accordance with law and has not put her own seal to verify that seals on two sample parcels were found intact.

Learned counsel has referred to statement of PW2 Constable Yadwinder Singh, who deposited the sample parcels with FSL, SAS Nagar (Mohali). In the supporting affidavit Ex.PW2/A, which is part of the examination-in-chief, it is stated that on 17.04.2014, he took the sample parcels with seals SP/HS to deposit with FSL, SAS Nagar (Mohali). There is no explanation about delay of 28 days in sending the sample parcels, which also raises a suspicion. In this regard, learned counsel has relied upon judgments of this Court in **Harjinder Singh Vs. State of Punjab, 2016 (1) RCR (Crl.) 197**. Learned counsel has also relied upon **Pargat Singh Vs. State of Haryana, 2008 (4) RCR (Crl.) 596**, wherein it is held that unexplained delay in sending sample to FSL is a circumstance to hold that

trial stands vitiated.

It is also submitted that the trial Court has not looked into statement of the appellant recorded under Section 313 Cr.P.C. in a correct perspective. In the statement, all the incriminating evidence was not put to the appellant, as it is only stated that the Investigating Officer told the appellant that he has a right to be searched before a Gazetted Officer or a Magistrate and as no formal notice under Section 50 of NDPS Act was served upon him, only the consent memo Ex.PA was prepared, therefore, the trial Court wrongly assumed that notice was put to accused. It is further submitted that the Investigating Officer and the complainant are the same person and at no point of time, a second Investigating Officer was called, even for the purpose of verification of the investigation, which was conducted at the spot.

Learned counsel has relied upon a judgment dated 31.08.2020 passed by the Hon'ble Supreme Court in **SLP (Crl.) No.5648/2019 [Mukesh Singh Vs. State (Narcotic Branch of Delhi)]**, wherein following observations were made: -

“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.”

It is submitted that once it has come on record that the investigation was neither fair nor in accordance with provisions of NDPS Act, as noticed above, the fact that Investigating Officer as well as the complainant are the same person, the trial stands vitiated. Even otherwise, it is not a case that even after registration of FIR, second Investigating Officer was deputed to re-verify the entire investigation and PW4 Inspector Hardayal Singh has only verified the sample/bulk parcels, by putting his seal and the memos, which were prepared at the spot were not verified as per his admission in cross-examination.

Learned counsel has also relied upon **State of Rajasthan Vs. Gurmail Singh, 2005 (2) RCR (CrI.) 58**, to submit that sample parcels remained in malkhana for 28 days and no malkhana register No.19 was produced before the Court to show that the entries of the sample parcels/bulk parcel was made in the said register and while sending the sample parcels to

FSL, again no entry was made in the register that there was no tempering of the same. It is submitted that in the absence of this link evidence, the trial is vitiated, as it is not proved that the sample parcels were ever deposited with the malkhana.

In reply, learned State counsel has argued that the Investigating Officer has followed the proper procedure. The recovery effected from the appellant is of commercial quantity and by following a proper procedure and informing the appellant about his right to be searched before a Gazetted Officer or Magistrate, his consent was recorded vide consent memo Ex.PA. It is further submitted that the FSL report duly support the version of the prosecution, as ingredients found were 'Alprazolam', therefore, it was a narcotic substance and the trial Court has rightly convicted the appellant. Learned State counsel, as per the custody certificate filed in the Court, could not dispute that out of total 10 years R.I. awarded by the trial Court, the appellant has already undergone the total sentence of 08 years, 08 months and 11 days, including remission and his sentence has never been suspended during pendency of the present appeal, as no application was ever filed.

Learned State counsel further submits that since the accused has given consent to the same Investigating Officer for conducting the search in terms of Section 50 of NDPS Act, therefore, there was no requirement of giving separate notice under Section 50 of NDPS Act.

After hearing learned counsel for the parties and on re-appreciation of the prosecution evidence, I find merit in the present appeal,

for the following reasons: -

- (a) There is no notice under Section 50 of NDPS Act on record and only a consent memo Ex.PA was recorded, in which it is mentioned that PW1 ASI Surinder Pal being the Investigating Officer informed the appellant that he has a right to be searched either before him (ASI Surinder Pal) or before a Gazetted Officer or Magistrate, on which, consent of the appellant was recorded that he has faith in the Investigating Officer, therefore, there is no proper compliance of Section 50 of NDPS Act.
- (b) Admittedly, recovery was effected from personal search of the appellant i.e. from right side pocket of capri/half pant worn by him at the spot, therefore, in view of judgment of the Hon'ble Supreme Court in **Parmanand's** case (supra), entire investigation stands vitiated.
- (c) Even otherwise, as per prosecution version, PW1 ASI Surinder Pal and PW5 ASI Faqir Singh stated that it took about two and half hours/three hours at the spot, while conducting the investigation, the appellant was apprehended at 5.30 pm and ruqa was sent at 06.15 pm and it was received in the police station at 06.30 pm and the FIR was registered at 07.30 pm and thereafter, FIR number was communicated to the Investigating Officer at the spot at 8.30 pm. A perusal of endorsement Ex.PC on ruqa reflects that the ruqa was sent at 06.15 pm and FIR was

registered at 07.30 pm and information was sent back thereafter. Therefore, prosecution has failed to explain as to how the complete details of FIR on the consent memo Ex.PA, (which was prepared at the first instance even before conducting the search), are given, as at that stage, it could not be presumed that the Investigating Officer had apprehension that the appellant was carrying some intoxicant substance. Similar is recovery memo Ex.PF, in which details of FIR were given. PW1 ASI Surinder Pal, in examination-in-chief, admitted that after he recorded the consent memo Ex.PA, effected the recovery by preparing the recovery memo Ex.PF, only thereafter, he sent the ruqa to the police station i.e. after two hours of the investigation conducted at the spot. Therefore, in the entire prosecution evidence, nothing has come on record to explain as to how FIR number came on the memos prepared much prior to registration of FIR. A perusal of site plan Ex.PE as well as recovery memo Ex.PF and Ex.PG also shows that FIR number is written on the same. Therefore, in view of **Kamaljit Singh's** case (supra), the prosecution case became highly doubtful.

- (d) The order passed by the Illaqa Magistrate under Section 52-A of NDPS Act is also silent about any direction given to the Investigating Officer how and where to keep the case property, though a direction was issued to destroy the case property, as

per Rules of the State Govt., however, a mandatory direction, which was required to be given to send the sample parcel immediately to FSL, SAS Nagar (Mohali) was not given, which resulted into delay of 28 days in sending the sample parcels. Even otherwise, it was only mentioned in the order that the Magistrate has seen the sample parcels and initialed it, but has not put her own seal/seal of the Court on the same to certify the same. This fact is also co-related with Form M-29 Ex.PX and report of FSL Ex.PY that on the sample parcels as well as Form M-29 received by FSL, there was no seal or signature of the Illaqa Magistrate certifying that she has verified the seals to be intact.

- (e) There is unexplained delay of 28 days in sending the sample parcels to FSL, though it has come in the statement of PW4 Inspector Hardayal Singh that the sample parcels remained in his custody under MHC till the time, the same were sent to the FSL, however, there is no explanation as to why it was kept for a period of 28 days by him and was not sent to FSL immediately. As per judgment of the Hon'ble Supreme Court in **Harjinder Singh's** case (supra) and **Pargat Singh's** case (supra), this delay of 28 days in sending the sample to FSL is not explained and is fatal to prosecution version.
- (f) It is to be seen that the appellant, out of 10 years R.I. awarded

by the trial Court, has already undergone 08 years, 08 months and 11 days of total sentence, including remissions and he is still languishing in jail, as the appeal was filed through a legal aid counsel, who, at no point of time, filed any application for suspension of sentence.

- (g) PW1 admitted that Form M-29 Ex.PX was not verified by the learned Magistrate and no representative sample was drawn by the Magistrate, therefore, in view of judgment in **Mohan Lal's** case (supra), guidelines issued by the Hon'ble Supreme Court were not complied with and there is no proper compliance of Section 52-A of the Act. In view of judgments of the Hon'ble Supreme Court in **Harjinder Singh's** case (supra) and **Pargat Singh's** case (supra), it is apparent that the prosecution has failed to lead cogent evidence that for a period of 28 days, sample parcels remained in safe custody of malkhana in the police station, as register No.19 maintained for this purpose is not produced before the Court to show that when the case property was handed over to MHC of malkhana, any entry was made and to further show that when the sample parcels were sent to FSL, again no entry was made in the said register, therefore, link evidence is missing, to prove that sample parcels remained in safe custody in the malkhana of the police station.

In the statement recorded under Section 313

Cr.P.C., it is only put to the accused that his consent memo Ex.PA was prepared. It is admitted case of the prosecution that no formal notice under Section 50 of the Act was served upon him, therefore, incriminating evidence, which has come against the accused, was never put to him to show that proper procedure was followed for that purpose. Though it is held by the Hon'ble Supreme Court in **Mukesh Singh's** case (supra) that mere fact that informant himself is the investigator itself cannot be said that the investigation is vitiated on the ground of bias or like factor, however, in the peculiar facts and circumstances of the present case, which are discussed above, it is apparent that the entire exercise was done by PW1 ASI Surinder Pal and the verification of the same was not done either by the SHO or by the Magistrate in strict compliance of Section 52-A of the Act, therefore, there is no proper verification of the investigation conducted by the informant/Investigating Officer.

Accordingly, the present appeal is allowed and judgment of conviction and order of sentence dated 22.07.2016 passed by the trial Court are set aside. The appellant is acquitted of the charge framed against him.

Since the appellant is in custody, he be released forthwith, if not required in any other case.

Since Mr. Rajesh Lamba, Advocate has provided his legal services as pro-bono to assist the Court, which has ultimately resulted into

acceptance of the appeal and acquittal of the appellant, after 08 years, 08 months and 11 days of the sentence, this Court appreciates the efforts made by him.

A perusal of the impugned judgment shows that the accused-appellant was defended by a legal aid counsel before the trial Court. Even the present appeal was also filed through legal aid counsel before this Court, appointed by the High Court Legal Services Authority and the same was admitted on 20.10.2017, however, thereafter, no application for suspension of sentence was moved, which resulted into unnecessary incarceration of the appellant in judicial custody for a period of 08 years, 08 months and 11 days, which cannot be compensated.

Since the Hon'ble Supreme Court has already issued directions to give priority to the cases filed through legal aid counsels, High Court Legal Services Authority is directed to submit a report within a period of three months from today, in all the appeals, filed through legal aid counsel, in which the appellant-accused are in custody and their sentence is not suspended. The High Court Legal Services Authority will also issue instructions to all the counsels, who are representing the accused, whose sentence is not suspended to file an application for suspension of sentence within a period of three months from today.

The Director, Chandigarh Judicial Academy, Chandigarh is also directed to prepare a draft order under Section 52-A of the Act in the light of judgment of the Hon'ble Supreme Court in **Mohan Lal's** case (supra) and

circulate the same to all the Illaqa Magistrates, before whom the accused arrested in NDPS case is produced, so as to make strict compliance of Section 52-A of the Act. Needful be done within a period of 30 days from today.

05.12.2022
vishnu

[ARVIND SINGH SANGWAN]
JUDGE

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