

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

CRM-A-382-2020 (O & M)
Date of decision: 29.08.2022

State of Punjab

....Appellant(s)

Versus

Jatinderpal Singh @ JP

....Respondent(s)

**CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA
HON'BLE MR. JUSTICE JAGMOHAN BANSAL**

Present: Mr. Arjun Sheorean, DAG, Punjab.

G.S.SANDHAWALIA, J. (Oral)

CRM-8160-2020

Application has been filed for condonation of delay of 35 days in filing the application for grant of leave to appeal.

Keeping in view the averments made in the application duly supported by affidavit of the official and in view the nominal delay, application is allowed. Delay of 35 days in filing the application for grant of leave to appeal is condoned.

CRM stands disposed of.

CRM-A-382-2020

The present application has been filed under Section 378(4) Cr.P.C. for grant of leave to appeal against the judgment passed by the Special Court, Shaheed Bhagat Singh Nagar dated 29.07.2019 whereby acquittal has been recorded of the respondent in FIR No. 55 dated 12.07.2017 under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'the Act'), P.S. Mukandpur.

The recovery in the present case is stated to be 40 injections of

Buprenorphine of 2 ml each. The Trial Court found that there was violation as such of Section 50 of the Act since though the recovery was from the polythene bag but the personal search of the body of the accused was also conducted. Reliance was placed upon the judgment of the Apex Court in *State of Rajasthan vs. Parmanand and others, 2014 (2) RCR (Crl.) 40* and *Arif Khan @ Agha Khan vs. State of Uttarakhand, 2018 (2) RCR (Crl.) 931* which, in turn, had relied upon the judgment in *Vijaysinh Chandubha Jadeja vs. State of Gujarat, 2010 (4) RCR (Crl.) 911*.

It was also noticed that when the case property was produced before the Magistrate, all 40 glass ampules were not opened before the Magistrate and were sent to the FSL by stating that the label on the injection was not legible. Reliance was placed upon the report of the FSL (Ex.P-9) which shows that the samples contained the label 'OMGESIC' which were found containing Buphrenorphine salt. The fact that how the ampules produced before the FSL were labeled as OMGESIC and on account of the absence of explanation on the part of the prosecution as to how the label was not legible on an earlier occasion, it was held that there was serious doubt about the safe custody of the contraband which was allegedly recovered from the accused.

It was also noticed that the recovery was made from public road and there must be traffic on the same but no independent person had been joined in the investigation nor any member of Panchayat, Lambardar and any other person had been associated with the search. Resultantly while noticing that the house of the accused was also not raided to find out if any other part of the contraband to be recovered from the accused could be available at his place and since police did not try to trace the origin of the

contraband, the benefit of acquittal had been recorded.

It is not disputed that the Apex Court in *Parmanand's case (supra)* has gone on to hold that if the personal search is conducted, then the provisions of Section 50 of the Act as such have to be complied with. The relevant portion of the judgment in *Parmanand's case (supra)*, which was also referred to by the Trial Court, reads thus:-

“12. Thus, if merely a bag carried by a person is searched without there being any search of his person, [Section 50](#) of the NDPS Act will have no application. But if the bag carried by him is searched and his person is also searched, [Section 50](#) of the NDPS Act will have application. In this case, respondent No.1 Parmanand’s bag was searched. From the bag, opium was recovered. His personal search was also carried out. Personal search of respondent No.2 Surajmal was also conducted. Therefore, in light of judgments of this Court mentioned in the preceding paragraphs, [Section 50](#) of the NDPS Act will have application.”

We have gone through the record which has been requisitioned and the factum of the personal search as such also being carried out is confirmed from the statement of PW-3 ASI Jarnail Singh in the examination-in-chief itself. Similarly, PW-4 H.C. Manjit Singh had also deposed regarding the said aspect and from his cross examination, it has come forth that the batch number was not legible on the recovered injections and they were not mentioned in any document prepared by them.

The order of the Judicial Magistrate Ist Class, Shaheed Bhagat Singh Nagar dated 31.07.2017 (Ex.P-6) has also been examined wherein, the case property was opened in the Court after breaking open the seals and the Investigating officer was allowed to inspect the same. The said order also

does not show the make or brand of the contraband which was specifically mentioned 'OMGESIC' as per the report of the laboratory and the said samples were received in the laboratory on 17.07.2017 i.e. 4 days after the Magistrate had said that the same be sent to the FSL. It is pertinent to notice that the Magistrate did not put his seal on the sample which was sent to the forensic laboratory, which would be clear from the said order and also from the report of the FSL. Thus, the chances of tampering as such, as rightly observed by the Court below, are on the higher side and the benefit of the same has to be granted to the accused as per the settled law.

In such circumstances, we are of the considered opinion that the trial Court did not err in any manner while acquitting the respondent. The judgment as such does not seem to be suffering from any vice of perversity which would give any reason to reopen the double presumption of innocence which has now come in favour of the respondent, as per the settled principle of law. The trial Court has also noticed that no independent person has been joined.

Accordingly, in the absence of any perversity in the judgment under appeal, we are of the considered opinion that no interference is required as per the settled principles of law on the basis of which interference could be done in the judgment of acquittal which has been rendered in favour of the accused. Accordingly, the present application stands dismissed.

(G.S. SANDHAWALIA)
JUDGE

(JAGMOHAN BANSAL)
JUDGE

29.08.2022
shivani
Whether reasoned/speaking
Whether reportable

Yes/No
Yes/No