

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

CRA-S-1117-2021 (O&M)

Reserved on: 21.04.2022

Pronounced on: 02.06.2022

GURJANT SINGH @ SHINDA

...APPELLANT

VERSUS

STATE OF PUNJAB

....RESPONDENT

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present: Mr. Ruhani Chadha, Advocate
for the appellant.

Mr. Karanbir Singh, AAG, Punjab.

The present appeal raises a challenge to the judgment of conviction as well as order of sentence dated 03.08.2021 passed in case bearing No.NDPS/107 of 2018 by the Judge, Special Court, Jalandhar arising out of FIR No.146 dated 23.11.2017, under Section 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'the NDPS Act') registered at Police Station Lohian, Jalandhar, whereby the appellant has been sentenced as under:

Offence	Sentence awarded
Under Section 21 (b) of NDPS Act.	To undergo Rigorous Imprisonment for 5 years (Five years) and further to pay a fine of Rs.20,000/- (Twenty thousand only) and in default of payment of fine, to further undergo Simple Imprisonment for a period of six months.

2. Briefly, the case of the prosecution is that that on 23.11.2017, police party headed by SI Pargat Singh along with other police officials was going from Lohian to Adda Darewal side in their private vehicles in connection with patrolling and search of bad elements. When the police party crossed Adda Darewal, near river Bandh they laid a naka and during checking, one Sikh gentleman came from Gidderpindi bridge on a motorcycle. On noticing the police party, he tried to turn back. Investigating Officer with the help of other police officials, apprehended the accused. On inquiry, the said person disclosed his name as Gurjant Singh (appellant herein). Investigating Officer who suspected some contraband in his possession, apprised him that he had a right to get himself searched from some Gazetted officer or Magistrate. However, the accused reposed confidence in the Investigating Officer and search of the accused was conducted by the Investigating Officer, after making efforts to join independent witness. From the possession of the accused, one transparent envelope was recovered from the right pocket of jean worn by him, containing heroin weighing 205 grams, which was taken into police possession after sealing the same with seal bearing impression PS. Form M-29 was also prepared at the spot. Recovered heroin was taken into police possession by the Investigating Officer. Seal after use was handed over to C. Gurpreet Singh. Recovered Ruqa was sent to the police station, on the basis of which FIR was registered against the accused. Accused was arrested. Report of Chemical Examiner was obtained and statements of witnesses were recorded.

3. The final report under Section 173 of the Code of Criminal Procedure (hereinafter referred to as “Cr.P.C.”) was submitted in the court after completion of the investigation and charge under Section 21 of the NDPS Act was framed against the appellant.

4. The prosecution examined following witnesses in order to substantiate its case:

Sr. No.	Name
PW1.	SI Pargat Singh
PW2	Ct. Maninder Singh
PW3	ASI Sukhdev Singh
PW4	SI Surinder Kumar
PW5	Ct. Gurpreet Singh

5. Furthermore, the prosecution had also produced the following documents:

Exhibits	Documents.
Ex.PA	Consent Memo
Ex.PX	Form M29
Ex.PX/1	Seal impression on Ex.PX
Ex.PB	Recovery memo
Ex.PC	Ruqa
Ex.PE	FIR
Ex.PG	Personal search memo conducted of accused.
Ex.PF	Arrest-cum-intimation memo of accused
Ex.PH	Site plan
Ex.PI & Ex.PJ	Applications moved to Ld. Illaqa Magistrate.
Ex.PK, Ex.PL, Ex.PM	Order passed by Ld. Illaqa Magistrate
Ex.PY	Report of Chemical Examiner.

6. Upon closure of the prosecution evidence, the statement of the appellant-accused under Section 313 of the Cr.P.C. was recorded and the entire incriminating evidence/material was put to him, to which he pleaded his innocence and alleged that nothing had been recovered from his possession and that he was illegally picked up from his house. He further examined DW-1 Gurdev Singh in his defence evidence to substantiate that the police officials, who were in civil dress, had forcibly picked him up on 22.11.2017 in the evening at 04.00 PM alongwith Kuldeep Singh from the house of the accused-Gurjant Singh and was implicated in the present case and that nothing was recovered from the appellant-accused at the time as portrayed.

7. Thereafter, on consideration of the evidence led by the prosecution as well as arguments advanced by the counsel for the respective parties, the trial Court came to a conclusion that the appellant-accused Gurjant Singh was duly nabbed being in possession of 205 grams of heroin and that the prosecution had proved its case beyond a shadow of reasonable doubt and thus, convicted and sentenced the appellant-accused accordingly.

8. Aggrieved of the said judgment of conviction and order of sentence, the appellant-accused preferred the instant appeal.

ARGUMENTS

9. Learned counsel appearing on behalf of the appellant-accused has argued that the recovery is stated to have been effected from the pocket of the appellant-accused. He has argued that once a person is apprehended and he is to be searched, it is incumbent upon the officer authorized under Section 42 of the NDPS Act to comply with the mandate

of Section 50 of the NDPS Act to inform the person apprehended to exercise an option to be searched before a Gazetted Officer or before a Magistrate. It is stated that the said condition has been incorporated in the NDPS Act by way of a safeguard and in favour of a suspect to check misuse of power and to avoid harm to the innocent persons. A reference was made to the consent memo (Ex.PA) and recovery memo (Ex.PB) recorded by the Investigating Officer, wherein it has been mentioned that the appellant-accused has a statutory right to get his search conducted in the presence of a 'G.O.' or before a Magistrate. It is argued that the offer was not compliant of Section 50 of the NDPS Act as the appellant-accused was not made aware of what the expression 'G.O.', used in the consent memo and recovery memo, stands for. The expression 'G.O.' has been used instead of the words 'Gazetted Officer' as prescribed under Section 50 of the NDPS Act. It is thus argued that the offer was defective and the search of the appellant-accused has not been carried out in compliance with the provisions of the NDPS Act, 1985.

10. Learned counsel for the appellant-accused has further argued that the search of the appellant-accused was conducted by S.I. Pargat Singh, who himself is the Investigating Officer of the case and that it was incumbent upon S.I. Pargat Singh to have called a second Investigating Officer for a fair investigation.

11. A further argument was also raised by the learned counsel for the appellant-accused to the effect that the FIR number was found to have been mentioned in the recovery memo and that as the said recovery memo is prepared at the spot, no explanation has been given by the prosecution

as to how the FIR number came to be mentioned on a document that had been prepared at the spot.

12. The counsel further argued that as per the testimony of PW1 S.I. Pargat Singh, the police party was in a private vehicle and not in a government vehicle. No valid reason has been given as to why the police party was using a private vehicle instead of a government vehicle and that the same was in violation of the instructions issued by the Director General of Police, Punjab. He has also contended that there are material discrepancies in the testimonies of the prosecution witnesses. Whereas the Investigation Officer S.I. Pargat Singh, while appearing as PW-1, has stated that the entire typing work was done while sitting on a concrete bench which was at a distance of about two feet from the solar light. However, the site plan Ex.PH does not show the existence of any concrete bench or any solar light at the place of recovery. It is also stated that the Investigating Officer has admitted in his cross-examination that there was no printer at the spot, even though they were carrying laptop, and that the statement was typed by Constable Gurpreet Singh at the spot and the print-out of the same was taken after reaching at the police station at about 10.00 PM. Learned counsel further refers to the deposition of PW-5 Constable Gurpreet Singh, No.1294, wherein he has stated that all the memos and statements were recorded in hand. He denies having typed any statement or memo in the laptop and deposed that only the Investigating Officer can describe the circumstances in which the hand-written statements have been substituted by computer prints as exhibited. It is contended that even though the case as set up by the Investigating Officer is that the statements under Section 161 Cr.P.C. were typed on the laptop

by Constable Gurpreet Singh, however, the said Constable stated that all the statements were written in hand. No explanation, as to the circumstances in which the hand-written statements have been replaced by computer prints, has been given. He further argued that as per the testimony of the Investigating Officer, the village was at a distance of 4 kilometers from the place of recovery, however, no witness from the *abadi* area of the village was called at the spot to join the investigation proceedings. Learned counsel submits that the Investigating Officer has also stated that the recovery memo Ex.PB was prepared at 06.35/06.40 P.M., however, the Ruqa is stated to have been sent at 07.05 P.M. and that the FIR in question was registered at 07.55 P.M. He further argued that the recovery in question has thus been effected prior to the sending of Ruqa, which further vitiates the recovery.

13. Learned counsel has further argued that even though the consent memo bears the signatures of the appellant-accused, however, his signatures have not been obtained on the recovery memo which clearly shows that the documents were prepared at a later point in time and that in fact the appellant-accused had been already taken in custody by the police. The recovery was foisted upon the appellant-accused. Reliance was placed on the judgment of **Arif Khan @ Agha Khan Vs. State of U.P., bearing Criminal Appeal No.273 of 2007** decided by the Hon'ble Supreme Court of India vide order dated 27.04.2018, wherein a finding of fact was set aside by the Hon'ble Supreme Court after noticing the following aspects:

- (i) That the accused was not produced before any Gazetted Officer or a Magistrate.

- (ii) That the personal search of accused and recovery of contraband from his possession was not conducted in the presence of a Gazetted Officer or a Magistrate.
- (iii) That none of the police officials of the raiding party, who recovered the contraband, were a Gazetted Officer and they were thus not empowered to conduct search or effect recovery from the accused.
- (iv) That in order to conduct the search and effect recovery of contraband from the body of a suspect, the search and recovery have to be in conformity with the provisions of Section 50 of the NDPS Act.
- (v) That it is mandatory for the prosecution to prove that the search and recovery was made from the accused in the presence of a Magistrate or a Gazetted Officer.

14. By placing reliance upon the abovesaid judgment, it was argued by the counsel for the appellant-accused that the recovery in the present case was vitiated in view of the law laid down by the Hon'ble Supreme Court since the same was not effected in the presence of a Magistrate or a Gazetted Officer.

ARGUMENTS BY RESPONDENT-STATE

15. On the other hand, learned State Counsel has argued that the mandate of Section 50 of the NDPS Act is not applicable to the facts of the instant case as it was a case of chance recovery and that the provision has been even otherwise complied with. The Investigating Officer S.I. Pargat Singh had set up a *Naka* when the accused came from the side of Giddar Pindi Bridge on a motorcycle and tried to turn back upon seeing the police party. He was apprehended on a suspicion, whereafter he disclosed his name and other particulars to the police. The search was, however, conducted after recording the consent memo of the accused, upon which he put his signatures in the presence of witnesses namely Constable Gurpreet Singh and PHG Satnam Singh. A transparent

envelope containing 205 grams of heroin was recovered from the Jeans worn by the appellant-accused. A parcel of the same was prepared and sealed with the seal having monogram 'P.S.' and that the formalities of Form M-29 (Ex.PX) were also duly completed, on which the Investigating Officer had put his seal and signature at point 'A'. The parcel of heroin, Form M-29 and recovery of motorcycle was made vide recovery memo Ex.PB. The seal after use was handed over to Constable Gurpreet Singh. A *ruqa* Ex.PC was written and after completion of the police proceedings as Ex.PD, the same was sent to police station through Constable Buta Singh on the basis whereof, FIR Ex.PE was registered by S.I. Mandeep Singh. The accused as well as the case property was brought to the Police Station Lohian and produced before the SI/SHO Surinder Kumar, who verified the facts from the accused and put his seal impression bearing monogram 'S.K.' on the parcel as well as the Form M-29 at point 'B'. Thereafter, the case property was deposited with the MHC and the accused was lodged in police lock-up. On the next i.e. 24.11.2017, the Investigating Officer acquired the case property and took the custody of the accused for producing him before the Court and an application Ex.PI was moved before the Illaqa Magistrate to seek police remand of the accused and another application Ex.PJ was also moved for preparation of an inventory, taking samples and for completion of the Form M-29. The Illaqa Magistrate drew two samples of 5 grams each and sealed the samples with her seal bearing monogram 'T.J.'. Remainder of the case property was also sealed by the Illaqa Magistrate by putting her aforementioned seal monogram. The Illaqa Magistrate prepared the Form M-29 also, as Ex.PX/1. In this regard, the order dated 24.11.2017 passed

by the Illaqa Magistrate was duly proved by the prosecution during the trial as Ex.PK. Learned State counsel further argued that the report of FSL Ex.PY duly established that the seized material was heroin. It is further contended that the Investigating Officer S.I. Pargat Singh has specifically deposed that it was orally informed to the accused that he could get himself searched before a Gazetted officer or a Magistrate and that while giving the offer orally to the accused, the Investigating Officer had used the words 'Gazetted Officer' and not the expression 'G.O.' and as such, there was no necessity to explain the meaning of the expression 'G.O.' used in the consent memo as well as in the recovery memo. A mere use of abbreviation 'G.O.' in the consent memo as well as recovery memo shall not render the offer as non-compliant of Section 50 of the NDPS Act. It is further submitted that the *ruqa* in question Ex.PC was sent at about 06.50 P.M. and was received in the police station at 07.05 P.M. and the FIR in question was also registered at 07.55 P.M. The Investigating Officer reached the police station at about 10.00 P.M. The FIR number was thus already registered and could have been duly mentioned in the recovery memo. It is submitted that no such FIR number is stated in the consent memo, which shows that the documents were prepared at the site. It is further submitted that only the consent memo is required to be signed by the accused and the recovery memo is not required to be signed by the accused. The significance of obtaining the signatures of the accused on the consent memo is as an acknowledgement that the offer under Section 50 of the NDPS Act was duly made to the appellant-accused.

16. Learned State counsel further submits that Section 50 of the NDPS Act does not specify the manner of offer and that the offer can also

be oral. Hence, the offence against the appellant-accused was duly proved by the prosecution. It is also submitted that the said contention was rightly recorded by the Judge, Special Court, Jalandhar.

17. I have heard the learned counsels for the respective parties and have gone through the record of the case with their able assistance.

18. The questions which arise for determination in the instant case is as to whether the offer of personal search had been made to the appellant-accused as per the mandate prescribed under Section 50 of the NDPS Act and as to whether the recovery in question would be surrounded by suspicious circumstances rendering it doubtful and consequently for setting aside the judgment of the trial Court.

ANALYSIS:

19. Before analyzing the facts and circumstances of the instant case as referred to above and the rival submissions of both sides, it would be apposite to refer to the statutory provisions as enshrined under Section 50 of the NDPS Act:

Section 50 of The Narcotic Drugs and Psychotropic Substances Act, 1985

50. Conditions under which search of persons shall be conducted.

(1) When any officer duly authorised under section 42 is about to search any person under the provisions of section 41, section 42 or section 43, he shall, if such person so requires, take such person without unnecessary delay to the nearest Gazetted Officer of any of the departments mentioned in section 42 or to the nearest Magistrate.

(2) If such requisition is made, the officer may detain the person until he can bring him before the Gazetted Officer or the Magistrate referred to in sub-section (1).

(3) The Gazetted Officer or the Magistrate before whom any such person is brought shall, if he sees no reasonable ground for search, forthwith discharge the person but otherwise shall direct that search be made.

(4) No female shall be searched by anyone excepting a female. 5[(5) When an officer duly authorised under section 42 has reason to believe that it is not possible to take the person to be searched to the nearest Gazetted Officer or Magistrate without the possibility of the person to be searched parting with possession of any narcotic drug or psychotropic substance, or controlled substance or article or document, he may, instead of taking such person to the nearest Gazetted Officer or Magistrate, proceed to search the person as provided under section 100 of the Code of Criminal Procedure, 1973 (2 of 1974).

(6) After a search is conducted under sub-section (5), the officer shall record the reasons for such belief which necessitated such search and within seventy-two hours send a copy thereof to his immediate official superior.]

20. Reference was made by the counsel for the appellant to the judgment of the Hon'ble Supreme Court in the matter of **Jeet Ram Vs. Narcotic Control Bureau** report as **(2020) 4 RCR (Criminal) 151** , wherein it held that the mandate of Section 50 of the NDPS Act has to be complied with when personal search of a person, suspected to be in possession of narcotic substance, is to be conducted.

21. Furthermore, reliance was placed on the judgment of the Hon'ble Supreme Court in the matter of **Arif Khan @ Agha Khan Vs.**

State of Uttarakhand reported as (2018) 2 RCR (Criminal) 931 wherein it reiterated the mandatory nature of the application of Section 50 of the NDPS Act. Reliance on paragraph 26 of the said judgment was placed by the counsel for the appellant to contend that search and recovery of the contraband has to be made only in the presence of either a Magistrate or a Gazetted Officer and that the failure to do so would fall within the ambit of violation of Section 50 of the NDPS Act and thus may prove fatal to the prosecution case. The relevant extract of the said judgment is reproduced herein below:

“26. It is the case of the prosecution and which found acceptance by the two Courts below that since the appellant (accused) was apprised of his right to be searched in the presence of either a Magistrate or a Gazetted Officer but despite telling him about his legal right available to him under Section 50 in relation to the search, the appellant (accused) gave his consent in writing to be searched by the police officials (raiding party), the two Courts below came to a conclusion that the requirements of Section 50 stood fully complied with and hence the appellant was liable to be convicted for the offence punishable under the NDPS Act.

27. We do not agree to this finding of the two Courts below as, in our opinion, a search and recovery made from the appellant of the alleged contraband “Charas” does not satisfy the mandatory requirements of Section 50 as held by this Court in the case of Vijaysinh Chandubha Jadeja (supra). This we say for the following reasons.

28. First, it is an admitted fact emerging from the record of the case that the appellant was not produced before any Magistrate or Gazetted Officer; Second, it is also an admitted fact that due to the aforementioned first reason, the search and recovery of the contraband “Charas” was not made from the appellant in the presence of any Magistrate or Gazetted Officer; Third, it is also an admitted fact that none of the police officials of the raiding party, who recovered the contraband “Charas” from him, was the Gazetted Officer and nor they could be and, therefore, they were not empowered to make search and recovery from the appellant of the contraband “Charas” as provided under Section 50 of the NDPS Act except in the presence of either a Magistrate or a Gazetted Officer; Fourth, in order to make the search and recovery of the contraband articles from the body of the suspect, the search and recovery has to be in conformity with the requirements of Section 50 of the NDPS Act. It is, therefore, mandatory for the prosecution to prove that the search and recovery was made from the appellant in the presence of a Magistrate or a Gazetted Officer.

29. Though, the prosecution examined as many as five police officials (PW-1 to PW-5) of the raiding police party but none of them deposed that the search/recovery was made in presence of any Magistrate or a Gazetted Officer.

30. For the aforementioned reasons, we are of the considered opinion that the prosecution was not able to prove that the search and recovery of the contraband (Charas) made from the appellant was in accordance with the procedure prescribed under Section 50 of the NDPS Act. Since the non-compliance of the mandatory procedure prescribed under Section 50 of the NDPS Act is fatal to the prosecution case and, in this case, we have

found that the prosecution has failed to prove the compliance as required in law, the appellant is entitled to claim its benefit to seek his acquittal.”

22. The proposition of law laid under the aforesaid judgment of the Hon'ble Supreme Court is not in dispute. The question which, however, comes for consideration is as to whether the ratio of the aforesaid judgment is applicable to the facts and circumstances of the present case.

FIRST ARGUMENT

23. The first question which arises for determination is as to whether the recovery in the present case is 'chance recovery' or not. It is not a subject matter of dispute in the present case that there was no secret information available with the Investigating Agency at the time when the appellant-accused was apprehended. As a matter of fact, a specific query was raised to the counsel appearing on behalf of the appellant which was responded to by the learned counsel admitting that the recovery, in question, would be a case of chance recovery. It is also not disputed by learned counsel appearing on behalf of the appellant that the mandate of Section 50 of the NDPS Act would not get attracted in the case of a chance recovery. He, however, contends that the fact that the Investigating Officer had resorted to the compliance of provisions of Section 50 of the NDPS Act, it would lead to an inference that the Investigating Officer had "reasons to believe" that the appellant was carrying some narcotic drugs or psychotropic substance and as such he was obligated to strictly comply with the mandate of Section 50 of the

NDPS Act. It thus becomes essential to examine as to what would constitute “reasons to believe” as contemplated under Sections 42 and 50 of the NDPS Act.

24. A perusal of the statement of the Investigating Officer SI Pargat Singh shows that when the accused turned back on seeing the police party, he was suspected of carrying some prohibited item/contraband and that the appellant-accused was accordingly apprehended. It was undisputedly not a case where the Investigating Officer had any prior secret information. Section 42 of the NDPS Act stipulates that the authorized officer under the Act must have ‘reasons to believe’ from personal knowledge or information given by any person that any narcotic drug or psychotropic substance in respect of which an offence punishable under the NDPS Act has been committed before detaining a person or to carry out the search of such person or premises. The phrase used in Section 42 of the NDPS Act is “reasons to believe” and not “reasons to suspect”. The phrase “reasons to believe” is distinct from the use of phrase “reasons to suspect”. The language of Section 42 contemplates the “reasons to believe” to arise from “personal knowledge” or “information given by any person”. Thus, the mandate of “reasons to believe” needs to be founded on personal knowledge or reliable information and not a suspicion or apprehension in the mind of the officer concerned. The Hon’ble Supreme Court, in the matter of **State of Himachal Pradesh Vs. Sunil Kumar, bearing Criminal Appeal No.207 of 2019 decided on 15.07.2019**, has dealt with the issue and held as under:

“8. Feeling aggrieved, Sunil Kumar preferred Criminal Appeal No. 37 of 2002 before the High Court of Himachal Pradesh. In its decision dated 11-6-2004² the High Court held that the recovery of charas was not a chance recovery. It was held that though the search conducted was a random search, but the police officers had a positive suspicion that Sunil Kumar might be carrying contraband. It is for this reason that he was asked to get down from the bus and then subjected to a body search. Therefore it was not a chance recovery. According to the High Court, this attracted the provisions of section 50 of the Act and Sunil Kumar ought to have been given an option of being searched before a gazetted officer or a Magistrate in compliance with Section 50 of the Act. Since this option was not given, the conviction and sentence imposed upon Sunil Kumar was not justified.

9. Accordingly, the appeal filed by Sunil Kumar was allowed by the High Court.

Chance recovery

10. The State is in appeal against the acquittal of Sunil Kumar and the broad submission is that the recovery of charas from him was a chance recovery. Under these circumstances, in view of the Constitution Bench decision in Baldev Singh which endorsed the view taken in State Of Punjab v. Balbir Singh, 1994 3 SCC 299 the personal search of Sunil Kumar resulting in the recovery of contraband did not violate Section 50 of the Act. Reliance was placed by the learned counsel on para 25 in Balbir Singh which was also endorsed by the Constitution Bench. It was submitted that it is only after a chance or accidental recovery of any narcotic drug or psychotropic substance by any police officer that the provisions of the Act would come into play. It is then that

the empowered officer should be informed and that empowered officer should thereafter proceed u investigate the matter in accordance with the provisions of the Act

11. *The relevant extract of para 25 of Balbir Singh reads as follows:*

"(1) a police officer without any prior information as contemplated under the provisions of the NDPS Act makes a search or arrests a person in the normal course of investigation into an offence or suspected offences as perided under the provisions of CPC and when such search is completed at that stage section 50 of the ndps act would not be attracted and the question of complying with the requirements thereunder would not arise. If during such search or arrest there is a chance recovery of any narcotic drug or psychotropic substance then the police officer, who is not empowered, should inform the empowered officer who should thereafter proceed in accordance with the provisions of the NDP'S Act If he happens to be an empowered officer also, then from that stage onwards, he should carry out the Investigation in accordance with the other provisions of the NDPS Act.

12. *In view of the opinion expressed by the trial court and the High Court, we need to firstly understand what a "chance recovery" is. The next question would be whether the provisions of section 50 of the Act would apply when there is a chance recovery.*

13. *The expression "chance recovery" has not been defined anywhere and its plain and simple meaning seems to be a recovery made by chance or by accident or unexpectedly, In Mohinder Kumar v. State 1998 8 SCC*

655 this Court considered a chance recovery as one when a police officer "stumbles on" narcotic drugs when he makes a search. In **Sorabkhan Gandhkhan Pathan Y State of Gujarat 2004 13 SCC 608** the police officer, while searching for illicit liquor, accidentally found some charas. This was treated as a "chance recovery".

14. Applying this to the facts of the present appeal, it is clear that the police officers were looking for passengers who were travelling ticketless and nothing more. They accidentally or unexpectedly came across drugs carried by a passenger. This can only be described as a recovery by chance since they were neither looking for drugs nor expecting to find drugs carried by anybody.

15. It is not possible to accept the view of the High Court that since the police officers conducted a random search and had a "positive suspicion" that Sunil Kumar was carrying contraband, the recovery of charas from his person was not a chance recovery. The recovery of contraband may not have been unexpected, but the recovery of charas certainly was unexpected notwithstanding the submission that drugs are easily available in the Chamba area. The police officers had no reason to believe that Sunil Kumar was carrying any drugs and indeed that is also not the case set up in this appeal. It was plainly a chance or accidental or unexpected recovery of charas-Sunil Kumar could well have been carrying any other contraband such as, smuggled gold, stolen property or an illegal firearm or even some other drug.

16. We are not going into the issue whether the personal or body search of Sonil Kumar (without a warrant) was at all permitted by law under these circumstances. That was not an issue raised or canvassed before the trial court or the High Court or even before us, although it

has been adverted to in the written submissions by the learned counsel assisting us on behalf of Sunil Kumar.

Applicability of Section 50 of the Act

17. As far as the applicability of Section 50 of the Act in a chance recovery is concerned, the issue is no longer res integra in view of the decision of the Constitution Bench in Baldev Singh.

18. It is true that Sunil Kumar behaved in a suspicious manner which resulted in his personal search being conducted after he disembarked from the bus. However, there is no evidence to suggest that before he was asked to alight from the bus, the police officers were aware that he was carrying a narcotic drug, even though the Chamba area may be one where such drugs are easily available. At best, it could be said that the police officers suspected Sunil Kumar of carrying drugs and nothing more. Mere suspicion, even if it is "positive suspicion" or grave suspicion cannot be equated with "reason to believe". These are two completely different concepts. It is this positive suspicion, and not any reason to believe, that led to the chance recovery of charas from the person of Sunil Kumar.

19. Similarly, the positive suspicion entertained by the police officers cannot be equated with prior information. The procedure to be followed when there is prior information of the carrying of contraband drugs is laid down in the Act and it is nobody's case that that procedure was followed, let alone contemplated.

20. We are not in agreement with the view of the High Court that since the police officers had a positive suspicion that Sunil Kumar was carrying some contraband, therefore, it could be said or assumed that they had reason to believe or prior information that he was carrying charas or some other narcotic substance

and so, before his personal or body search was conducted, the provisions of section 50 of the Act ought to have been complied with. The recovery of charas on the body or personal search of Sunil Kumar was clearly a chance recovery and, in view of Baldev Singh, it was not necessary for the police officers to comply with the provisions of section 50 of the Act.”

25. It is evident from the ratio of the aforesaid judgment that a positive suspicion does not amount to “reasons to believe” and that in the event of a chance recovery, the rigour of Section 50 of the NDPS Act would not be applicable. The judgment of the Hon’ble Supreme Court in the matter of Arif Khan’s case (supra) thus does not apply to the facts and circumstances of the present case and the judgment of Sunil Kumar’s case (supra) would be more applicable.

26. Despite the same, the Investigating Officer had proceeded to record the consent of the appellant-accused and had mentioned the abbreviation “G.O,” instead of Gazetted Officer. However, he has specifically explained while stepping into the witness box that he had made the offer orally and had used the words ‘Gazetted Officer’ in his oral offer and that it was only at the time of reducing the consent in writing that he used the abbreviation ‘G.O.’ instead of writing ‘Gazetted Officer’. It is further stated that Section 50 of the NDPS Act mandates an offer to be made and does not prescribe that such offer has to be made in writing only. Thus, any use of the abbreviation in recording the consent memo would not *ipso facto* mean that the offer has not been made at all. He has thus given a valid and satisfactory explanation to the use of the

word “G.O.” No prejudice would have thus occasioned by a mere use of abbreviation. Moreover, no such plea of defence has been taken by the appellant-accused even in the statement recorded under Section 313 of the Cr.P.C.

27. Furthermore, the Hon’ble Supreme Court has held in the matter of **Dayalu Kashyap Versus State of Chhattisgarh** in SLP (Crl.) No.514/2022, decided on 25.01.2022 that merely because there is some variation in the offer given under Section 50 of the NDPS Act, it would not vitiate the recovery and the same can still be relied upon for the purposes of assessing the culpability in the case. The relevant extract of the said judgment is reproduced hereinafter below:-

“6. In the conspectus of the facts of the case, we find the recovery was in a polythene bag which was being carried on a Kanwad. The recovery was not in person. Learned counsel seeks to expand the scope of the observations made by seeking to contend that if the personal search is vitiated by violation of Section 50 of the NDPS Act, the recovery made otherwise also would stand vitiated and thus, cannot be relied upon. We cannot give such an extended view as is sought to be contended by learned counsel for the appellant.

28. The submission that the “reasons to believe” must be inferred since an offer in terms of Section 50 of the NDPS Act was made by the Investigating Officer, would amount to reading the statute in reverse. A pre-emptive action taken on entertaining a suspicion cannot be interpreted as “reasons to believe” and would not fall within the elucidation carried out by the Hon’ble Supreme Court in the matter of **Sunil Kumar’s case** (**supra**). Furthermore, while Section 42 of the NDPS Act mandates that

where the “reasons to believe” arise from personal knowledge or information given by any person, the same is required to be taken down in writing, no such expression has been used by the Legislature in Section 50 of the NDPS Act. The object of Section 50 of the NDPS Act is to inform the accused of his right to be searched before a Gazetted Officer and/or before a Magistrate and the said Section does not contemplate the form in which such information is to be recorded. The procedural requirement laid down in the case of **State of Punjab Versus Baldev Singh**, reported as **1999 (6) SCC 172** was diluted by the insertion of sub-sections (5) and (6) to the Section by the Amendment Act No.9 of 2001. The same was not intended to erode the protection of the safeguard, but certain flexibility in the procedural norm was adopted to balance an urgent situation. The requirement of Section 50 of the NDPS Act may be summarized as follows:-

- (i) It is mandatory for the officer conducting search and seizure to inform the suspect his right to be searched in the presence of the Magistrate or Gazetted Officer.
- (ii) It is mandatory for the officer conducting search and seizure to follow the mandate of sub-section (3) and to inform the suspect that Gazetted Officer or the Magistrate, if sees no reasonable ground for search, shall discharge the person.

29. Thus, considering it from both the perspectives that the counsel for the appellant conceded that it was a case of chance recovery and hence, Section 50 of the NDPS Act would not be applicable. Yet, it can be said that Section 50 of the NDPS Act has nonetheless been complied with and that mere use of the word “G.O.” in the consent memo

would not be sufficient to conclude that the mandate of Section 50 of the NDPS Act has not been complied with more so when the Investigating Officer has already explained in his deposition that the complete word instead of the abbreviation had been used at the time when the information was given to the appellant-accused.

SECOND ARGUMENT

30. The next contention of the counsel for the appellant-accused is that no independent witness was joined by the prosecution during the investigation and that the same is based solely on the testimony of the official witnesses.

31. Upon consideration of the said segment, this Court is of the opinion that a mere failure on the part of the prosecution to join an independent/private witness would not by itself vitiate the case of the prosecution and it can be well established and proved by the prosecution also on the strength of the testimonies of the official witnesses alone. It was so held after specifically noticing that the private persons are usually not interested in associating themselves with the police proceedings due to apprehension of unnecessary harassment to them at the hands of investigating agency as well as the accused persons. It is also held that when the case of prosecution is based solely on the testimony of the official witnesses, in that case, the Court has to exercise greater care and caution and accept such evidence with circumspection.

32. This Court finds its support from the observation from the judgment of the Hon'ble Supreme Court in **Dharampal Singh Vs. State of**

Punjab reported as **(2010) 9 SCC 608**. The relevant extract of the aforesaid judgment is reproduced herein below:

“27. Pandit Katara had further submitted that no independent witness of search and seizure had been examined and on this ground alone the search and seizure is rendered illegal. He submits that rigours of [Section 100](#) of the Code of Criminal Procedure are applicable and there being no independent witness, the case of the prosecution deserves to be rejected. We do not find any substance in the submission of Mr. Katara.

28. The case of the prosecution cannot be rejected only on the ground that independent witnesses have not been examined, in case on appraisal of the evidence on record the court finds the case of prosecution to be trustworthy. It has come in the evidence of the prosecution witnesses that an attempt was made to join person from public at the time of search but none was available. In the face of it mere absence of independent witness at the time of search and seizure will not render the case of the prosecution unreliable.”

33. In the matter of **Jarnail Singh Vs. State of Punjab**, reported as **(2011) 3 SCC 521** the Hon’ble Supreme Court of India has observed as under:

“11. The first submission of Mr. Ujjal Singh, learned counsel, is that the appellant has been falsely implicated. We are unable to accept this submission. Merely because the prosecution has not examined any independent witness, would not necessarily lead to the conclusion that the appellant has been falsely implicated. It was clearly a case where the police personnel had noticed the odd

behaviour of the appellant when he was walking towards them on a path which led to village Mirzapur. It was the display of hesitation by the appellant on sighting the police party that Satpal Singh (PW5) became suspicious. On seeing the police personnel, the appellant tried to run away from the scene. It was not a case where the prosecution has claimed that the appellant was apprehended on the basis of any earlier information having been given by any secret informer. It was also not a case of trap. In such circumstances, it would not be possible to hold that the appellant has been falsely implicated.

12. The prosecution has offered a plausible explanation with regard to non-joining of the independent witnesses. It was clearly stated by PW5 that the path on which the appellant was apprehended was not frequently used by the public. In fact, efforts were made to bring a member of Panchayat or Sarpanch of the village. However, the Head Constable Baldev Singh who had been sent, reported that none of the villagers were prepared to join as independent witnesses.”

34. This Court further finds its support from the judgment of the Hon’ble Supreme Court passed in the matter of **Ajmer Singh Vs. State of Haryana** reported as **(2010) 3 SCC 746**. The relevant extract of the said judgment is reproduced herein below:

19. The learned Counsel for the appellant has submitted that the evidence of the official witness cannot be relied upon as their testimony, has not been corroborated by any independent witness. We are unable to agree with the said submission of the learned Counsel. It is clear from the testimony of the prosecution witnesses

PW-3 Paramjit Singh Ahalwat, D.S.P., Pehowa, PW-4 Raja Ram, Head Constable and PW-5 Maya Ram, which is on record, that efforts were made by the investigating party to include independent witness at the time of recovery, but none was willing. It is true that a charge under the Act is serious and carries onerous consequences. The minimum sentence prescribed under the Act is imprisonment of 10 years and fine. In this situation, it is normally expected that there should be independent evidence to support the case of the prosecution. However, it is not an inviolable rule. Therefore, in the peculiar circumstances of this case, we are satisfied that it would be travesty of justice, if the appellant is acquitted merely because no independent witness has been produced.

20. We cannot forget that it may not be possible to find independent witness at all places, at all times. The obligation to take public witnesses is not absolute. If after making efforts which the court considered in the circumstances of the case reasonable, the police officer is not able to get public witnesses to associate with the raid or arrest of the culprit, the arrest and the recovery made would not be necessarily vitiated. The court will have to appreciate the relevant evidence and will have to determine whether the evidence of the police officer was believable after taking due care and caution in evaluating their evidence.

21. In the present case, both the trial court and the High Court by applying recognized principle of evaluation of evidence of witnesses has rightly come to the conclusion that the appellant was arrested and Charas was recovered from the possession of the appellant for

which he had no licence. We find no good reason to differ from that finding.

35. Furthermore, the Hon'ble Supreme Court had held in the matter of **Surinder Kumar Versus State of Punjab**, 2020(2) SCC 563 that merely because the prosecution did not examine any independent witness, it would not necessarily lead to a conclusion that the accused was falsely implicated and thus reaffirmed the law laid down in the matter of **Jarnail Singh's case (supra)**. The said view has further been relied upon by the Hon'ble Supreme Court in the matter of **Kallu Khan Versus State of Rajasthan** in the judgment passed in Criminal Appeal No.1605 of 2021 decided on 11.12.2021.

36. In view of the afore-mentioned settled pronouncements of the Hon'ble Supreme Court, the aforesaid argument of the learned counsel for the appellant-accused with respect to non-joining of any independent witness, also stands rejected.

THIRD ARGUMENT

37. It is further argued that the Investigating Officer did not call for a second Investigating Officer and himself proceeded to conduct the investigation. Since the informant himself is the Investigating Officer of the case, he is an interested witness and his testimony & investigation cannot be accepted.

38. Learned counsel for the appellant-accused has, however, not been able to refer to any statutory provision which mandates that an Investigating Officer, who has effected the recovery, may not carry out

further proceedings in the case. The conducting of proceedings by the said Investigating Officer did not by itself vitiate the case of the prosecution.

The aforesaid aspect stands crystallized by the judgment of the Hon'ble Supreme Court in the matter of ***State Rep. by Inspector of Police, Vigilance and Anti Corruption, Tiruchirapalli, T.N. Vs. V. Jayapaul***

reported as ***(2004) 5 SCC 223***. The relevant extract of the same is reproduced herein below:

“4. We have no hesitation in holding that the approach of the High Court is erroneous and its conclusion legally unsustainable. There is nothing in the provisions of the Criminal Procedure Code which precluded the appellant (Inspector of Police, Vigilance) from taking up the investigation. The fact that the said police officer prepared the FIR on the basis of the information received by him and registered the suspected crime does not, in our view, disqualify him from taking up the investigation of the cognizable offence. A suo motu move on the part of the police officer to investigate a cognizable offence impelled by the information received from some sources is not outside the purview of the provisions contained in Sections 154 to 157 of the Code or any other provisions of the Code. The scheme of Sections 154, 156 and 157 was clarified thus by Subba Rao, J. speaking for the Court in State of U.P. v. Bhagwant Kishore .

"Section 154 of the Code prescribes the mode of recording the information received orally or in writing by an officer in charge of a police station in respect of the commission of a cognizable offence. Section 156 thereof authorizes such an officer to investigate any cognizable offence prescribed therein. Though ordinarily investigation is undertaken on information received by a police officer; the receipt of information is not a condition precedent for investigation. Section 157 prescribes the procedure in the matter of such an investigation which can be initiated either on information or otherwise. It is clear from the said provisions that an officer in charge of a police station can start investigation either on information or otherwise."

5. xx xx xx xx

6. *Though there is no such statutory bar the premise on which the High Court quashed the proceedings was that the investigation by the same officer who 'lodged' the FIR would prejudice the accused inasmuch as the investigating officer cannot be expected to act fairly and objectively. We find no principle or binding authority to hold that the moment the competent police officer, on the basis of information received, makes out an FIR incorporating his name as the informant, he forfeits his right to investigate. If at all, such investigation could only be assailed on the ground of bias or real likelihood of bias on the part of the investigating officer. The question of bias would depend on the facts and circumstances of each case and it is not proper to lay down a broad and unqualified proposition, in the manner in which it has been done by the High Court, that whenever a police officer proceeds to investigate after registering the FIR on his own, the investigation would necessarily be unfair or biased. In the present case, the police officer received certain discreet information, which, according to his assessment, warranted a probe and therefore made up his mind to investigate. The formality of preparing the FIR in which he records the factum of having received the information about the suspected commission of the offence and then taking up the investigation after registering the crime, does not, by any semblance of reasoning, vitiate the investigation on the ground of bias or the like factor. If the reason which weighed with the High Court could be a ground to quash the prosecution, the powers of investigation conferred on the police officers would be unduly hampered for no good reason. What is expected to be done by the police officers in the normal course of discharge of their official duties will then be vulnerable to attack.*

7. *There are two decisions of this Court from which support was drawn in this case and in some other referred to by the High Court. We would like to refer to these two decisions in some detail. The first one is the case of Bhagwan Singh v. State of Rajasthan. There, the Head Constable to whom the offer of bribe was allegedly made, seized the currency notes and gave the first information report. Thereafter, he himself took up the investigation. But, later on, when it came to his notice that he was not authorized to do so, he forwarded the papers to the Deputy Superintendent of Police. The DSP then reinvestigated the case and filed the charge sheet against the accused. The Head Constable and the accompanying Constables were the only witnesses in that case. This Court found several circumstances which cast a doubt on the veracity of the version of the Head Constable and his colleagues. This Court observed that "the entire story sounds unnatural". While so holding, this Court referred to*

"a rather disturbing feature of the case" and it was pointed out that:

"Head Constable Ram Singh was the person to whom the offer of bribe was alleged to have been made by the appellant and he was the informant or complainant who lodged the first information report for taking action against the appellant. It is difficult to understand how in these circumstances, Head Constable Ram Singh could undertake investigation?..... This is an infirmity which is bound to reflect on the credibility of the prosecution case".

8. *It is not clear as to why the Court was called upon to make the comments against the propriety of the Head Constable, informant investigating the case when the reinvestigation was done by the Deputy Superintendent of Police. Be that as it may, it is possible to hold on the basis of the facts noted above, that the so called investigation by the Head Constable himself would be a mere ritual. The crime itself was directed towards the Head Constable which made him lodge the FIR. It is well nigh impossible to expect an objective and undetached investigation from the Head Constable who is called upon to check his own version on which the prosecution case solely rests. It was under those circumstances the Court observed that the said infirmity "is bound to reflect on the credibility of the prosecution case". There can be no doubt that the facts of the present case are entirely different and the dicta laid down therein does not fit into the facts of this case.*

9. XXXXX

10. *In Megha Singh's case, PW3, the Head Constable, found a country-made pistol and live cartridges on search of the person of the accused. Then, he seized the articles, prepared a recovery memo and a 'rukka' on the basis of which FIR was recorded by the S.I. of police. However, P.W.3--the Head Constable himself, for reasons unexplained, proceeded to investigate and record the statements of witnesses under Section 161 Cr.P.C. The substratum of the prosecution case was sought to be proved by the Head Constable. In the appeal against conviction under Section 25 of the Arms Act and Section 6(1) of the TADA Act, this Court found that the evidence of PWs 2 & 3 was discrepant and unreliable and in the absence of independent corroboration, the prosecution case cannot be believed. Towards the end, the Court noted "another disturbing feature in the case". The Court then observed:*

"PW 3, Siri Chand, Head Constable arrested the accused and on search being conducted by him a pistol and the cartridges were recovered from the accused. It was on his complaint a formal first information report was lodged and the case was initiated. He being complainant should not have proceeded with the investigation of the case. But it appears to us that he was not only the complainant in the case but he carried on with the investigation and examined witnesses under Section 161 Cr.P.C. Such practice, to say the least, should not be resorted to so that there may not be any occasion to suspect fair and impartial investigation".

11. XXXXX

12. *At first brush, the observations quoted above might convey the impression that the Court laid down a proposition that a Police Officer who in the course of discharge of his duties finds certain incriminating material to connect a person to the crime, shall not undertake further Investigation if the FIR was recorded on the basis of the information furnished by him. On closer analysis of the decision, we do not think that any such broad proposition was laid down in that case. While appreciating the evidence of the main witness, i.e., the Head Constable (PW3), this Court referred to this additional factor--namely, the Head Constable turning out to be the investigator. In fact, there was no apparent reason why the Head Constable proceeded to investigate the case bypassing the Sub-Inspector who recorded the FIR. The fact situation in the present case is entirely different. The appellant--Inspector of Police, after receiving information from some sources, proceeded to investigate and unearth the crime. Before he did so, he did not have personal knowledge of the suspected offences nor did he participate in any operations connected with the offences. His role was that of investigator--pure and simple. That is the obvious distinction in this case. That apart, the question of testing the veracity of the evidence of any witness, as was done in Megha Singh's case, does not arise in the instant case as the trial is yet to take place. The High Court has quashed the proceedings even before the trial commenced.*

13. *Viewed from any angle, we see no illegality in the process of investigation set in motion by the Inspector of Police (appellant) and his action in submitting the final report to the Court of Special judge".*

39. This Court further finds its support from the judgment of the

Hon'ble Supreme Court in the matter of **S. Jeevanantham Vs. State**

through Inspector of Police, T.N. reported as (2004) 5 SCC 230. The relevant extract of the same is reproduced herein below:

2. We heard the learned counsel for the appellants. The counsel for the appellants contended that PW-8 the Inspector after conducting search prepared the FIR and it was on the basis of the statement of PW8 the case was registered against the appellants and it is argued that PW-8 was the complainant and he himself conducted the investigation of the case and this is illegal and the entire investigation of the case is vitiated. Reliance was placed on the decision in Megha Singh v. State of Haryana, [1996] 11 SCC 709 wherein this Court observed that constable, who was the defacto complainant, had himself investigated the case and this affects impartial investigation. This Court said that Head Constable who arrested the accused, conducted the search, recovered the pistol and on his complaint FIR was lodged and the case was initiated and later he himself recorded the statement of the witnesses under section 161, Cr.P.C. as part of the investigation and such practice may not be resorted to as it may affect the fair and impartial investigation. This decision was later referred to by this Court in State v. V. Javapaul, [2004] 3 SCALE 507 wherein it was observed that:

"We find no principle or binding authority to hold that the moment the competent police officer, on the basis of information received, makes out an FIR incorporating his name as the informant, he forfeits his right to investigate. If at all, such investigation could only be assailed on the ground of bias or real likelihood of bias on the part of the investigating officer. The question of bias would depend on the facts and circumstances of each

case and it is not proper to lay down a broad and unqualified proposition, in the manner in which it has been done."

40. The aforesaid aspect has also been dealt with by the Hon'ble Supreme Court in the matter of **Bhaskar Ramappa Madar and others Vs. State of Karnataka** reported as **(2009) 11 SCC 690**. The important and relevant extract of the same reads thus:

*"8. So far as the desirability of the complainant undertaking investigation is concerned there is no legal bar. The decisions of this Court in **Bhagwan Singh v. The State of Rajasthan** (1976 (1) SCC 15 at para 18) and **Megha Singh v. State of Haryana** (1996 (11) SCC 709 at para 4) have to be confined to the facts of the said cases. Merely because the complainant conducted the investigation that would not be sufficient to cast doubt on the prosecution version to hold that the same makes the prosecution version vulnerable. The matter has to be decided on case to case basis without any universal generalization."*

41. The aforesaid observations have further been re-affirmed by the Constitutional Bench of the Hon'ble Supreme Court in its judgment rendered in the matter of **Mukesh Vs. State (NCB)** reported as **(2020) 10 SCC 120**. The relevant extract of the same is reproduced herein below:

"8.3.1 In the case of V. Jayapaul (supra), after considering the entire scheme of investigation under the Cr.P.C., it is held that investigation by the same police officer who lodged the FIR is not barred by law. It is further observed that such investigation could only be assailed on the ground of bias or real likelihood of bias on the part of the investigating officer and the question of bias would depend

on the facts and circumstances of each case. It is further observed that it is not proper to lay down a broad and unqualified proposition that such investigation would necessarily be unfair or biased. In this decision, the decisions of this Court in the cases of Bhagwan Singh (supra) and Megha Singh (supra) were pressed into service on behalf of the accused, however this Court observed that both the decisions are on their own facts and circumstances and do not lay down a proposition that a police officer in the course of discharge of his duties finds certain incriminating material to connect a person to the crime, shall not undertake further investigation if the FIR was recorded on the basis of the information furnished by him. In this decision, this Court also considered the scheme of Sections 154, 156 and 157 Cr.P.C. and another decision of this Court in the case of State of U.P. v. Bhagwant Kishore Joshi, AIR 1964 SC 221. That thereafter this Court did not agree with the submission on behalf of the accused that as the investigation was carried out by the informant who himself submitted the final report, the trial is vitiated. This Court confirmed the conviction by setting aside the order passed by the High Court acquitting the accused solely on the ground that the very same police officer who registered the case by lodging the first information ought not to have investigated the case and that itself had caused prejudice to the accused.”

42. In view of the precedent judgments referred to above and in the absence of any statutory provision, mandating the initial Investigating Officer to call for a second Investigating Officer, the aforesaid argument advanced by the learned counsel for the appellant-accused is devoid of merit and cannot lay the foundation for discrediting the testimonies of the official prosecution witnesses.

FOURTH ARGUMENT

43. The next argument advanced by the learned counsel for the appellant-accused is to the effect that even though the consent memo was bearing the signatures of the appellant-accused, however, the recovery memo had not been signed by the appellant-accused and as such the availability of the appellant-accused is highly doubtful and the documents in question are ante-dated.

44. The said submission, however, does not seem to carry any weight. The signature of an accused, to whom an offer under Section 50 of the NDPS Act has been made, is an act of abundant precaution exercised by the investigating agency. It is a token of acknowledgment of the offer in compliance of the mandatory provision of Section 50 of the NDPS Act. There is no such requirement prescribed under the Code of Criminal Procedure to obtain signatures of the accused on the consent memo or the recovery memo. Such recovery memos being part of the investigation and material relied upon by the prosecution to prove its case against an accused, existence of signatures of the accused have no bearing on the case of the prosecution. The requirement is that such recovery is to be effected in the presence of witnesses and that the witnesses are required to sign in token of the acknowledgment of the recovery having been effected in their presence. The said argument thus does not advance the case of the appellant-accused and is thus, rejected.

FIFTH ARGUMENT

45. The same leads to the final argument relied upon by the counsel for the appellant-accused pointing out various discrepancies in the prosecution evidence pertaining to the preparation of various documents and the printouts that were taken during the course of investigation. The reference was made to the discrepancies by highlighting the testimony of PW-1 SI Pargat Singh and PW3 Constable Gurpreet Singh.

46. In order to appreciate import of such discrepancies, it has to be seen whether the said discrepancies are fundamental to the case of the prosecution and as to whether the case against the appellant-accused would stand demolished as a result of the said discrepancies. When broadly categorized, the discrepancies relate to the preparation of documents. It is broadly contended that the concrete bench as well as solar light, claimed to be available at the place of incident, have not been shown in the site plan and that the documents stated to have been hand written by PW-5 Constable Gurpreet Singh were actually typed documents and that the FIR number was also mentioned on the same. On the strength of the aforesaid discrepancies, learned counsel for the appellant-accused has contended that the documents in question were not prepared at the spot and were rather prepared later in point of time. It has been specifically stated by the Investigating Officer that the printouts of the documents were taken after coming back to the police station. A mere reference to the FIR number on the documents by itself would not vitiate the recovery. Needless to mention that in the course of investigation, the FIR number itself is a mark of distinction of the various documents prepared by an

Investigating Officer. It must also be borne in mind that an Investigating Officer may be investigating multiple cases at one point of time and in order to ensure that such documents/memos do not get mixed up with any other file or case or are not misplaced, it is essentially a practice followed by the Investigating Officers to mention the FIR number on such documents. Such an exercise which is conducted for management of a case and preventing documents from being misplaced or mixed with other documents cannot form the basis of discrediting the testimony of the prosecution witnesses.

47. It is also essential to take into consideration that there is every possibility of some discrepancies in the testimonies of the prosecution witnesses which are likely to creep in because the deposition made before the Court is after a lapse of substantial time. The FIR in the instant case was registered on 23.11.2017 and the Investigating Officer had appeared as PW1 before the Court for recording his deposition on 28.11.2019 i.e. after a lapse of two years. Similarly, Constable Gurpreet Singh had appeared before the trial Court as PW5 on 09.01.2020 i.e. after a lapse of more than two years. Consequently, such discrepancies in the depositions of the prosecution witnesses would not discredit the prosecution case in its entirety. Furthermore, the discrepancies pointed out by the counsel for the appellant do not discredit or demolish the recovery effected from the accused at the time or the place suggested by the prosecution. The said discrepancies that are heavily relied upon by the learned counsel for the appellant-accused do not support the suggestion that the appellant-accused was not nabbed at the spot or that the

Investigating Officer PW1 SI Pargat Singh and PW5 Constable Gurpreet Singh were not present at the spot at the time when the recovery was effected. Moreover, the recovery has been verified by the Magistrate, and the procedure as contemplated under Section 52-A of the NDPS Act has also been followed.

48. The learned counsel for the appellant has further contended that the recovery had allegedly been effected between 06.35/06.40 P.M.; whereas ruqa was sent on 07.05 P.M. which is later in point of time and the FIR has been registered at 07.55 P.M. and thus there is a delay in sending the ruqa to the police station and the registration of the FIR as well.

49. The said argument of the learned counsel for the appellant is devoid of any merit. It is a case of chance recovery and the counsel appearing on behalf of the appellant-accused had also fairly conceded to the same. Thus, there was no occasion for the Investigating Officer to send a ruqa in advance. The occasion of sending a ruqa arose only after the recovery had already been effected. The said submission is thus devoid of any merit and is rejected.

50. The same thus leaves only an argument regarding certain discrepancies stated to exist in the testimony of PW1 SI Pargat Singh and PW5 Constable Gurpreet Singh. The same relates to the failure to reflect the solar light as well as the concrete bench in the site plan. The Investigating Officer had stated that the writing work was done under the solar light, whereas PW5 Constable Gurpreet Singh has stated in his

cross-examination that there is no statement written in hand and that only the Investigating Officer can tell under what circumstances the hand written statement was changed vide a computer print. Needless to mention that even the said witness had stated that the offer was given twice to the appellant-accused i.e. orally and thereafter in writing and has specifically stated about the recovery having been effected and the procedure duly followed by the Investigating Agency. The only discrepancy which thus exists is that even though PW5 Constable Gurpreet Singh submits that the statements under Section 161 Cr.P.C. were reduced to writing by hand, however, typed copies thereof had been filed along with the charge-sheet. The suggestion sought to be made to the effect that the same would render the investigation suspect, fails to convince the Court. Firstly, there is no requirement under the NDPS Act or under the Code of Criminal Procedure that the statements of the witnesses under Section 161 Cr.P.C. have to be recorded at the spot and also it would make no material difference in case typed copies of the statements are appended along with the final report. The requirement of submission of a chargesheet/report under Section 173 Cr.P.C. stipulates the form in which the report is to be submitted under Section 173(2) Cr.P.C. and Section 173(5) Cr.P.C. contemplates the documents/statements to be forwarded along with the report. The provisions of the Cr.P.C. do not stipulate that the statements/documents recorded under Section 161 Cr.P.C. or any other provisions of the Code of Criminal Procedure have to be recorded only at the place of occurrence or that the same must be hand written. Thus, merely because a statement was originally written in hand and then was subsequently typed for the

convenience of the Court, it would not vitiate the final report or the investigation. It is also significant to point out that the Investigating Officer had nowhere stated that the statement in question was hand written. A general expression of writing work used by the Investigating Agency cannot be assigned a strict interpretation as suggested by the counsel for the appellant-accused to be hand written. The terminology commonly used by the Investigating Officers/Investigating Agency in reference to all investigation cannot be assigned a meaning contrary to what is assigned to it by the Investigating Agency itself. The said PW5 Constable Gurpreet Singh has also stated that the printouts were taken after coming back to the police station . PW5 Constable Gurpreet Singh has, however, stated that memo and statements were recorded in hand and that the Investigating Officer can tell about the circumstances under which the same has been changed by a computer print. Surprisingly, even though the Investigating Officer was recalled for further examination after adjudication of an application under Section 311 Cr.P.C. and that too after the testimony of Constable Gurpreet Singh had been recorded as PW5, however, the said witness was not confronted with the aforesaid statement of PW5 Constable Gurpreet Singh. The testimony of PW5 has remained consistent in so far as the recovery, search and seizure is concerned. Moreover, there is no suggestion made to either of the witnesses that their statements recorded under Section 161 Cr.P.C. have been changed. Resultantly, the appellant-accused cannot be permitted to take advantage of any such alleged discrepancy as they have failed to suggest or establish as to how and in what manner the alleged change in the statement under Section 161 Cr.P.C. from hand written to a typed copy demolishes the

recovery, search and seizure of the contraband. Once the PW5 had replied to seek a clarification from PW1 SI Pargat Singh and when such PW1 had been recalled for further examination after recording of his testimony, it was incumbent upon the accused to have confronted the said witness with the testimony of PW5 and to evince a response. Failure on the part of the appellant-accused to confront the said witness and to seek an explanation renders such discrepancy unworthy of any material credential. The testimony of the witnesses has remained consistent, creditworthy and reliable on all material particulars relating to the apprehension, detention, search, seizure and production of the case property. In the matter of **Kallu Khan's case (supra)**, the Hon'ble Supreme Court observed that where the testimony of the witnesses proved beyond reasonable doubt that the procedure for search and seizure had been duly followed and that the seizure was duly proved, the samples taken from and out of the contraband material were kept intact; the report of forensic expert shows potency, nature and quality of contraband material and establishes the existence of the essential ingredients constituting the offence, the judgment of the Court cannot be said to suffer from any perversity or illegality that would warrant any interference. Reliance in this regard is placed on the judgment of **Than Kumar Versus State of Haryana**, reported as **2020 (5) SCC 260**.

SIXTH ARGUMENT

51. Furthermore, insofar as the submission of the learned counsel for the appellant-accused that the appellant-accused was forcibly picked up from his house on 22.11.2017 is concerned, in that regard DW-1

Gurdev Singh has appeared as a defence witness, however, the said testimony is not corroborated by any contemporaneous evidence. Even though such defence witness as well as the appellant-accused himself alleged that they were forcibly picked up by the police, however, there is no reason as to why despite being aware of the implication in the instant case, no application/complaint was moved to any higher police officials alleging false implication. In case, the incident in question would have taken place in the manner as suggested, there was no reason or occasion for the appellant-accused or members of his family or even the defence witness who was a close family friend not to approach the police officials to highlight the said course of action. Complete absence of any contemporaneous evidence suggesting the false implication or occurrence of the incident in the manner as sought to be projected, leave the defence version bereft of any plausible explanation.

52. Moreover, there is no reason or motive suggested or indicated by the appellant-accused that the Investigating Officer or investigating agency had any motive or reason to falsely implicate the applicant-accused. The Hon'ble Supreme Court in the matter of **State of NCT of Delhi Vs. Sunil** reported as **(2000) 1 SCC 748** has held as under:-

“It is an archaic notion that action of police officer should be approached with initial distrust. It is time now to start placing at least initial trust on the actions and documents made by the police. At any rate, the Court cannot start with the presumption that the police records are untrustworthy. As a proposition of law, the presumption should be the other way round. The official acts of the police have been regularly

performed in a wise principle of presumption and recognized even by the legislature.”

53. In the absence of any material on record to suggest that there was any bias on the part of the police, the entire case of the prosecution cannot be thrown away merely on account of certain random, unsubstantiated and uncorroborated possibilities propounded by the appellant-accused.

54. While referring to the aspect of the police-party travelling in a private vehicle in violation of the instructions issued by the DGP is concerned, the same may be a breach of the administrative instructions and would not vitiate the proceedings undertaken by the Investigating Agency at the time of conducting investigation in the matter.

CONCLUSION:

55. In view of the facts noticed above and the precedent judgments laid down by the Hon'ble Supreme Court on various issues pertaining to recovery, I find that there is no illegality, perversity or misappreciation of evidence in the impugned judgment dated 03.08.2021 on the part of trial Court and the conclusions drawn by the trial Court cannot be held to be devoid of any objective assessment of the material brought on record. If the conclusion drawn by the trial Court on appreciation of the evidence brought on record are based upon a plausible view, such a view is not to be ordinarily interfered with by the appellate Court only for the reasons that any other view is also possible, unless the view of the trial Court is manifestly perverse and unsupportable from the evidence on record or where the findings recorded by the Court are

vitiated by any error of law or procedure or found to be contrary to the principles of natural justice and/or based upon blatant misreading of the evidence, vitiating the conclusion so drawn or the same is founded upon mischief or malice. Finding no illegality, perversity, impropriety or irregularity in the impugned judgment that may vitiate the proceedings, the instant appeal is hereby dismissed and the judgment dated 03.08.2021 passed by the Judge, Special Court, Jalandhar convicting and sentencing the accused-appellant is affirmed.

02.06.2022
Rajender/seema

(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned : *Yes/No*

Whether reportable : *Yes/No*