

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

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**1. CRA-S-618-SB-2003 (O&M)
Reserved on: 11.11.2022
Date of Decision: 10.01.2023**

Budh Singh	Versus	...Appellant
State of Punjab		... Respondent

2. CRA-S-882-SB-2003 (O&M)

Swaran Singh	Versus	...Appellant
State of Punjab		... Respondent

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. Karan Pathak, Advocate
for the appellant in CRA S-618-SB of 2003.

Mr. Satinder Khana, Advocate
for the appellant in CRS A-882-SB of 2003.

Mr. Vipin Pal Yadav, Addl. A.G. Punjab.

N.S.SHEKHAWAT, J.

This judgment shall disposed of two criminal appeals, i.e., CRA-S-618-SB-2003 titled as Budh Singh Vs. State of Punjab and CRA-S-882-SB-2003 titled as Swaran Singh Vs. State of Punjab, respectively, which are directed against the common judgment of conviction and order of sentence dated 06.03.2003 passed by the learned Judge, Special Court, Patiala, whereby, the present appellants were convicted under Section 15(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter to be referred as '**the NDPS Act**') and sentenced to undergo rigorous imprisonment for ten

years each and to pay a fine of Rs. 1,00,000/- each alongwith default stipulation.

The brief facts of the present case are that on 24.05.1998, ASI Jaswinder Singh Incharge, P.P. Gajewas alongwith other police officials was present in the area of village Achral Khurd and received a secret information that Swaran Singh and Budhu, both accused indulged in sale of poppy husk and they had concealed the same under the heap of Chaff and they also parked a trolley near the stack of chaff in the fields of Swaran Singh, accused and if raid was conducted, huge quantity of poppy husk could be recovered from both the accused. Finding the secret information reliable, the *ruka* Ex.PA was sent and on the basis of this, FIR Ex.PA/1 was registered by Nageshwar Rao, ASP. The police party joined Pritam Singh, Member Panchayat and the raid was conducted at the place disclosed by secret informer and Swaran Singh and Bhudu both accused were found lying near a tractor trolley in the land of Swaran Singh. The police party raised the suspicion that poppy husk could be there in the trolley, the notice under Section 50 of the NDPS Act was served upon them and the accused expressed their intention to get their search conducted in the presence of a gazetted officer.

Thereafter, Nageshwar Rao, ASP, was informed and he reached at the spot. He introduced himself to the accused and at his instance, the search was conducted in the trolley, which led to the recovery of seven bags, which were kept under the chaff in the trolley and six bags were containing 35 kgs of poppy husk each and seventh

bag was containing 30 kgs of poppy husk. The samples were drawn as per the procedure and the sample parcel as well as gunny bags containing the residue, were sealed vide separate seals. The case property alongwith trolley were taken into possession vide memo Ex.PD, prepared by ASI Jaswinder Singh and nothing was recovered from the personal search of the accused. The grounds of arrest vide memo Ex.PG and PH were supplied to the accused and the statements of the witnesses were recorded. Special report was sent to SDJM Samana vide Ex.PK.

The case property was deposited with the MHC and on the next day, the same was produced before the SDJM, Samana vide application Ex.PL. After the presentation of the case property before the Court, ASI Jaswinder Singh again deposited the case property as well as seals with MHC Gurmail Singh and the sample parcels were sent to Chemical Examiner on 26.05.1998. The FSL report Ex.PH was received and as per the same, the samples parcel contained 'chura poppy heads'.

After the completion of the investigation, the report under Section 173 Cr.P.C., was presented by the police in the competent Court. After perusal of the report under Section 173 Cr.P.C., the learned trial Court held that the offence under Section 15 of the NDPS Act was made out against the present appellants and both of them claimed trial by denying to the charge.

In support of the prosecution case, six witnesses were examined before the learned trial Court. PW1 ASI Jaswinder Singh was the main witness, who supported the case of the prosecution in totality and narrated the facts, as mentioned in the FIR. However, in cross-examination, he stated that he received the secret information at village Achral Khurd. He did not separately reduce the secret report into writing. He did not send intimation regarding the secret information to his higher officers in writing. He further stated that there are judicial and executive Courts at Samana. There is a senior medical officer and some other medical officers at Samana and the office of the Deputy Superintendent of Police is also there at Samana. Even wireless was fitted in his vehicle and he did not try to call any other gazette officer apart from the ASP. He admitted that Additional S.P., Nageshwar Rao was the Station House Officer of his police station at that time. No Sarpanch or Numberdar was called from the village and the place of recovery was at a distance of 500 meters from the village. He did not prepare the memo regarding the fact that the ASP had apprised the accused of his name and the status. The consent statements of the accused were not got attested from the ASP. He did not verify the revenue record to ascertain the ownership of the place, where the trolley was parked. The chaff was taken out from the trolley to some extent by the accused and the other extent by his officials but by that time no public witness had come to the spot. He further admitted that he had seen the case property in the Court on that day and the seals of the gunny bags were broken to some extent on that

day. Still further PW2 HC Gurmail admitted that the police station registers were verified by the DSP or some other higher officer at the time of their periodical inspection of the police station. Register No. 19 had been seen by him, but it did not bear verification of any higher police officer. He volunteered that no inspection for the year 1998 had taken place by that time. He admitted that register No. 19 aforesaid was still continuing and contained the last entry dated 25.12.1998 and had not been closed. Even register No. 19 did not contain entry of return of the case property to the MHC after production before the Illaqa Magistrate. Even he remained posted as MHC from 17.11.1997 to 31.12.1998. He had not seen the case property, while he appeared as witness before the learned Court. HC Daljit Singh appeared as PW3 who was part of the police party and supported the case of the prosecution with regard to the search and seizure. The prosecution further examined Pritam Singh as PW4, who was joined as independent witness during the search and seizure. However, he turned hostile and did not support the case of the prosecution. He stated that he was not joined by the ASI Jaswinder Singh, 9/10 months ago in any case. Since accused Swaran Singh etc., did not own or possess any land, therefore, the question of his visiting their land did not arise. Even, in his presence no poppy husk was recovered from the accused. Still further, the prosecution examined PW5 Nageshwar Rao, who was posted as SHO, Police Station Samana on 24.05.1998. He recorded the formal FIR Ex.PA/1 on receipt of *ruka* Ex.PA. He received wireless message from ASI

Jaswinder Singh and he alongwith the staff reached at the spot. On his inspection, ASI Jaswinder Singh had conducted the search of the accused and the recovery had taken place. He supported the case of the prosecution in all material particulars. The prosecution examined PW6 Constable Sukhwinder Singh, whose evidence was of formal character and he tendered into evidence his affidavit Ex.PG.

After the closure of the prosecution evidence, statements of both the accused, namely, Swaran Singh and Budhu under Section 313 Cr.P.C. were recorded separately. Both of them pleaded their false implication and had taken up similar stands in their respective statements. They stated that nothing was recovered from them at any point of time and a false case has been planted on them. There was party faction in their village. One group was headed by Gurbachan Singh and Jaswant Singh and their group was headed by Didar Singh, Sarpanch. They were picked from their house alongwith Mohinder Singh, Darshan Singh at the instance of Gurbachan Singh and Jaswant Singh as they had opposed them in the Panchayat elections and those persons were having close relations with the police. Later on, respectables including Pritam Singh, Mohan Singh, Jarnail Singh, Aroor Singh, Subegh Singh and Didar Singh Sarpanch etc., approached the police and on their request, Mohinder Singh and Darshan were let off by the police, however, a false case was planted on them. They had no connection with the recovery of the alleged contraband or the tractor trolley etc. In defence, accused examined Didar Singh as DW1 and closed their evidence.

I have heard learned counsel for the parties and with their able assistance I have gone through the trial Court record in the present case.

Learned counsel for the appellants vehemently argued that as per the case of the prosecution, the place of recovery was the land allegedly owned by Swaran Singh accused/appellant. Consequently, the police was bound to follow the procedure as provided under Section 42 of the NDPS Act and non-compliance of the said statutory provisions is impermissible in law. Still further, the only independent witness, i.e. PW4 Pritam Singh had not supported the case of the prosecution and he specifically stated that no poppy husk was recovered in his presence from the accused. Apart from that, PW1 Jaswinder Singh had further stated that the seals on the gunny bag were broken to some extent and, therefore, the possibility of tampering with the case property could not be ruled out. The submissions made by learned counsel for the appellants have been refuted by learned State counsel by submitting that all the mandatory provisions of the NDPS Act had been strictly complied with. Even, the search was conducted in the presence of Nageswar Rao, ASP, who was a gazetted officer and there was no reason to doubt the recovery effected from the present appellants. Moreover, there was huge recovery from the present appellants and the police was not in a position to plant the same on the accused. Thus, he prayed for upholding the impugned judgment and order passed by the learned trial Court.

At the outset, learned counsel for the appellants has raised the contention that the mandatory provisions of Section 42 of the NDPS Act had not been complied with and the said provision is extracted hereinbelow:-

"42. Power of entry, search, seizure and arrest without warrant or authorisation.-(1) Any such officer (being an officer superior in rank to a peon, sepoy or constable) of the departments of central excise, narcotics, customs, revenue intelligence or any other department of the Central Government including para-military forces or armed forces as is empowered in this behalf by general or special order by the Central Government, or any such officer (being an officer superior in rank to a peon, sepoy or constable) of the revenue, drugs control, excise, police or any other department of a State Government as is empowered in this behalf by general or special order of the State Government, if he has reason to believe from persons knowledge or information given by any person and taken down in writing that any narcotic drug, or psychotropic substance, or controlled substance in respect of which an offence punishable under this Act has been committed or any document or other article which may furnish evidence of the commission of such offence or any illegally acquired property or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter V A of this Act is kept or concealed in any building, conveyance or enclosed place, may between sunrise and sunset, (a) enter into and search any such building, conveyance or place;

(b) in case of resistance, break open any door and remove any obstacle to such entry;

(c) seize such drug or substance and all materials used in the manufacture thereof and any other article and any animal or conveyance which he has reason to believe to be liable to confiscation under this Act and any document or other article which he has reason to believe may furnish evidence of the commission of any offence punishable under this Act or furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter V A of this Act; and

(d) detain and search, and, if he thinks proper, arrest any person whom he has reason to believe to have committed any offence punishable under this Act:

Provided that if such officer has reason to believe that a search warrant or authorisation cannot be obtained without affording opportunity for the concealment of evidence or facility for the escape of an offender, he may enter and search such building, conveyance or enclosed place at any time between sunset and sunrise after recording the grounds of his belief.

(2) Where an officer takes down any information in writing under sub-section (1) or records grounds for his belief under the proviso thereto, he shall within seventy-two hours send a copy thereof to his immediate official superior."

In the instant case, PW1 ASI Jaswinder Singh is the star witness of the prosecution who supported the case of the prosecution in all material particulars. However, in his cross-examination, he clearly admitted that he acted on receipt of the secret information,

which was received by him at village Achral Khurd. However, he did not separately reduce the secret report into writing and did not send any intimation regarding the secret information to his higher officers in writing. Apart from that, even from the perusal of his entire testimony, it is not discernible that he had complied with the mandatory provisions of Section 42(2) of the NDPS Act at the time of search and seizure or within the period prescribed by the statute. It has been held by the Hon'ble Supreme Court in plethora of judgments that the contents with the requirement of Section 42 (1) and Section 42(2) of the NDPS Act in regard to writing down the information received and sending a copy thereof to the superior officers should normally precede the entry, search and seizure by the officer. But in special circumstances involving emergent situation the recording of information in writing and sending a copy thereof to official superior may get postponed by a reasonable period, i.e. after the search, entry and seizure. While total non-compliance of Section 42 is impermissible in law, delayed compliance with satisfactory explanation about the delay is acceptable compliance of Section 42 of the NDPS Act. In the instant case, there is complete non-compliance of the mandatory provisions of Section 42 of the NDPS Act. The first informant in the instant case had sufficient time to take action and to send a copy of the information, to the officer superior and in spite of the same, he did not adhere to the mandatory provisions of law.

It has been held by the Hon'ble Supreme Court in the matter of **State of Rajasthan Vs. Jag Raj Singh @ Hansa** 2016(3)

R.C.R.(Criminal) 539 and AIR 2016 SC 3041 as follows:-

*19. Thus the present is not a case where Section 43 can be said to have been attracted, hence, noncompliance of Section 42(1) proviso and Section 42(2) had seriously prejudiced the accused. This Court had occasion in large number of cases to consider the consequence of non-compliance of provisions of Section 42(1) and 42(2), whether the entire trial stand vitiated due to above non compliance or conviction can be set aside. In this context reference is made to the judgment of this Court in **State of Punjab v. Balbir Singh 1994(1) RCR (Criminal) 736 : (1994) 3 SCC 299.** In the above batch of cases, the High Court has acquitted accused on the ground that search was conducted without conforming to the provisions of the NDPS Act. Sections 41,42 43 and other relevant provisions came for consideration before this Court, referring to the provisions of Chapter IV following was stated in paragraph 8:*

"8. But if on a prior information leading to a reasonable belief that an offence under Chapter IV of the Act has been committed, then in such a case, the Magistrate or the officer empowered have to proceed and act under the provisions of Sections 41 and 42. Under Section 42, the empowered officer even without a warrant issued as provided under Section 41 will have the power to enter, search, seize and arrest between sunrise and sunset if he has reason to believe from personal knowledge or information given by any other person and taken down in writing that an offence under Chapter IV has been committed or any document or other article which may furnish the evidence of the commission of such offence is kept or concealed in any building or in any place. Under the proviso if such officer has reason to believe that search warrant or authorisation cannot be obtained without affording opportunity for the concealment of the evidence or facility for the escape of the offender, he can carry out the arrest or search between sunset and sunrise also after recording the grounds of his belief. Subsection (2) of 8 1990 Cri LJ 414 (Del) Section 42 further lays down that when such officer takes down any

information in writing or records grounds for this belief under the proviso, he shall forthwith send a copy thereof to his immediate official superior."

20. After referring large number of cases, this Court recorded conclusion in paragraph 25 which is to the following effect:

"25. The question considered above arise frequently before the trial courts. Therefore we find it necessary to set out our conclusions which are as follows :

(1) If 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 provided under the provisions of CrPC 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 NDPS 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.

(2-A) Under Section 41(1) only an empowered Magistrate can issue warrant for the arrest or for the search in respect of offences punishable under Chapter IV of the Act etc. when he has reason to believe that such offences have been committed or such substances are kept or concealed in any building, conveyance or place. When such warrant for arrest or for search is issued by a Magistrate who is not empowered, then such search or arrest if carried out would be illegal. Likewise only empowered officers or duly authorised officers as enumerated in Sections 41(2) and 42(1) can act under the provisions of the NDPS Act. If such arrest or search is made under the provisions of the NDPS Act by anyone other than such officers, the same would be illegal.

(2-B) Under Section 41(2) only the empowered officer can give the authorisation to his subordinate officer to carry out the arrest of a

person or search as mentioned therein. If there is a contravention, that would affect the prosecution case and vitiate the conviction.

(2-C) Under Section 42(1) the empowered officer if has a prior information given by any person, that should necessarily be taken down in writing. But if he has reason to believe from personal knowledge that offences under Chapter IV have been committed or materials which may furnish evidence of commission of such offences are concealed in any building etc. he may carry out the arrest or search without a warrant between sunrise and sunset and this provision does not mandate that he should record his reasons of belief. But under the proviso to Section 42(1) if such officer has to carry out such search between sunset and sunrise, he must record the grounds of his belief.

To this extent these provisions are mandatory and contravention of the same would affect the prosecution case and vitiate the trial. (3) Under Section 42(2) such empowered officer who takes down any information in writing or records the grounds under proviso to Section 42(1) should forthwith send a copy thereof to his immediate official superior. If there is total noncompliance of this provision the same affects the prosecution case. To that extent it is mandatory. But if there is delay whether it was undue or whether the same has been explained or not, will be a question of fact in each case.

(4-A) If a police officer, even if he happens to be an "empowered" officer while effecting an arrest or search during normal investigation into offences purely under the provisions of CrPC fails to strictly comply with the provisions 'of Sections 100 and 165 Cr.P.C. including the requirement to record reasons, such failure would only amount to an irregularity.

(4-B) If an empowered officer or an authorised officer under Section 41(2) of the Act carries out a search, he would be doing so under the provisions of CrPC namely Sections 100 and 165 Cr.P.C. and if there is no strict compliance with the provisions of CrPC then such search would not per se be illegal and would not vitiate the trial.

The effect of such failure has to be borne in mind by the courts while appreciating the evidence in the facts and circumstances of each case.

(5) On prior information the empowered officer or authorised officer while acting under Sections 41(2) or 42 should comply with the provisions of Section 50 before the search of the person is made and such person should be informed that if he so requires, he shall be produced before a Gazetted Officer or a Magistrate as provided thereunder. It is obligatory on the part of such officer to inform the person to be searched. Failure to inform the person to be searched and if such person so requires, failure to take him to the Gazetted Officer or the Magistrate, would amount to non-compliance of Section 50 which is mandatory and thus it would affect the prosecution case and vitiate the trial. After being so informed whether such person opted for such a course or not would be a question of fact.

(6) The provisions of Sections 52 and 57 which deal with the steps to be taken by the officers after making arrest or seizure under Sections 41 to 44 are by themselves not mandatory. If there is non-compliance or if there are lapses like delay etc. then the same has to be examined to see whether any prejudice has been caused to the accused and such failure will have a bearing on the appreciation of evidence regarding arrest or seizure as well as on merits of the case."

It has also been held by the Hon'ble Supreme Court in the matter of **Boota Singh Vs. State of Haryana 2021 (2) RCR Criminal 892 and 2021 AIR (SC) 1913** as follows:-

10. In Karnail Singh, the Constitution Bench of this Court concluded:-

*"35. In conclusion, what is to be noticed is that **Abdul Rashid [(2000) 2 SCC 513 : 2000 SCC (Cri) 496]** did not require literal compliance with the requirements of Sections 42(1) and 42(2) nor did **Sajan Abraham [(2001) 6 SCC 692 : 2001 SCC (Cri) 1217]** hold that the requirements of Sections 42(1) and 42(2) need not be fulfilled at all. The effect of the two decisions was as follows:*

(a) The officer on receiving the information [of the nature referred to in sub-section (1) of Section 42] from any person had to record it in writing in the register concerned and forthwith send a copy to his immediate official superior, before proceeding to take action in terms of clauses (a) to (d) of Section 42(1).

(b) But if the information was received when the officer was not in the police station, but while he was on the move either on patrol duty or otherwise, either by mobile phone, or other means, and the information calls for immediate action and any delay would have resulted in the goods or evidence being removed or destroyed, it would not be feasible or practical to take down in writing the information given to him, in such a situation, he could take action as per clauses (a) to (d) of Section 42(1) and thereafter, as soon as it is practical, record the information in writing and forthwith inform the same to the official superior.

(c) In other words, the compliance with the requirements of Sections 42(1) and 42(2) in regard to writing down the information received and sending a copy thereof to the superior officer, should normally precede the entry, search and seizure by the officer. But in special circumstances involving emergent situations, the recording of the information in writing and sending a copy thereof to the official superior may get postponed by a reasonable period, that is, after the search, entry and seizure. The question is one of urgency and expediency.

(d) While total non-compliance with requirements of subsections (1) and (2) of Section 42 is impermissible, delayed compliance with satisfactory explanation about the delay will be acceptable compliance with Section 42.

To illustrate, if any delay may result in the accused escaping or the goods or evidence being destroyed or removed, not recording in writing the information received, before initiating action, or non-sending of a copy of such information to the official superior forthwith, may not be treated as violation of Section 42. But if the information was received when the police officer was in the police station with sufficient time to take action, and if the police officer fails to record in writing the information received, or fails to send a copy thereof, to the official superior, then it will be a suspicious circumstance being a clear violation of Section 42 of the Act. Similarly, where the police officer does not record the information at all, and does not inform the official superior at all, then also it will be a clear violation of Section 42 of the Act. Whether there is adequate or substantial compliance with Section 42 or not is a question of fact to be decided in each case. The above position got strengthened with the amendment to Section 42 by Act 9 of 2001."

(Emphasis added)

11. In Jagraj Singh alias Hansa, the facts were more or less identical. In that case, the vehicle (as observed in para 5.3 of the decision) was not a public transport vehicle. After considering the relevant provisions and some of the decisions of this Court including the decision in Karnail Singh, it was observed:-

"14. What Section 42(2) requires is that where an officer takes down an information in writing under sub-section (1) he shall send a copy thereof to his immediate officer senior. The communication Ext. P-15 which was sent to the Circle Officer, Nohar was not as per the information

recorded in Ext. P-14 and Ext. P-21. Thus, no error was committed by the High Court in coming to the conclusion that there was breach of Section 42(2).

.....

16. In this context, it is relevant to note that before the Special Judge also the breach of Sections 42(1) and 42(2) was contended on behalf of the defence. In para 12 of the judgment the Special Judge noted the above arguments of defence. However, the arguments based on non-compliance with Section 42(2) were brushed aside by observing that discrepancy in Ext. P-14 and Ext. P-15 is totally due to clerical mistake and there was compliance with Section 42(2). The Special Judge coming to compliance with the proviso to Section 42(1) held that the vehicle searched was being used to transport passengers as has been clearly stated by its owner Vira Ram, hence, as per the Explanation to Section 43 of the Act, the vehicle was a public transport vehicle and there was no need of any warrant or authority to search such a vehicle. The High Court has reversed the above findings of the Special Judge. We thus, proceed to examine as to whether Section 43 was attracted in the present case which obviated the requirement of Section 42(1) proviso.

.....

29. After referring to the earlier judgments, the Constitution Bench came to the conclusion that non-compliance with requirement of Sections 42 and 50 is impermissible whereas delayed compliance with satisfactory explanation will be acceptable compliance with Section 42. The Constitution Bench noted the effect of the aforesaid two decisions in para 5. The present is not a case where insofar as compliance with Section

42(1) proviso even an argument based on substantial compliance is raised there is total non-compliance with Section 42(1) proviso. As observed above, Section 43 being not attracted, search was to be conducted after complying with the provisions of Section 42. We thus, conclude that the High Court has rightly held that non-compliance with Section 42(1) and Section 42(2) were proved on the record and the High Court has not committed any error in setting aside the conviction order."

(Emphasis added)

From the above referred observations, it is apparent that there has been total non-compliance of requirement of Section 42 of the NDPS Act, which is impermissible in law.

Apart from that, I find sufficient force in the arguments raised by the learned counsel for the appellants that Pritam Singh was joined as an independent witness and he appeared as PW4 during the course of trial. While appearing as PW4, the said witness clearly stated that he was not joined by ASI Jaswinder Singh 9/10 months ago in any case. He further stated that accused Swaran Singh etc., did not own or possess any land, therefore, question of his visiting their land did not arise and no poppy husk was recovered from the accused from any trolley in the area of village Achral Khurd. Even, I have perused the evidence led by the prosecution and no evidence has been adduced by the prosecution to show that the land in question was either owned or possessed by Swaran Singh, accused/appellant. Apart from that, the prosecution examined PW2 HC Gurmail Singh, who

was working as MHC in Police Station Samana from 17.11.1997 to 31.12.1998, i.e. on the date of the offence on 24.05.1998, he was posted there as Incharge of the Malkhana. The said witness also admitted that there was an entry in Register No. 19 at Serial No. 1366, whereby, the weight was entered and the case property was deposited. However, he admitted that the register No. 19 did not contain the entry of return of the case property to the MHC after production before the Illaqa Magistrate. Thus, it is apparent that the contraband was recovered from the accused on 24.05.1998 and was produced before the learned SDJM on 25.05.1998 however, it was apparently not deposited back in the Malkhana, as per the statement of PW2 HC Gurmail Singh. It further shows that the contraband, which was recovered by the police remained in custody of the Investigating Officer and he himself had sent the samples to the FSL and this raises a question mark with regard to the legal requirement and sanctity of the entire procedure.

In view of above discussion, it can be safely concluded that there was complete non-compliance of the mandatory provisions of the NDPS Act and the appellants are entitled to acquittal.

In view of this, the impugned judgment of conviction and order of sentence dated 06.03.2003 passed by the learned Judge, Special Court, Patiala, are set-aside and both the appeals succeed. As a consequence, both the appellants are ordered to be acquitted.

All pending applications, if any, are disposed of, accordingly.

The case property, if any, may be dealt with as per the rules after expiry of period of limitation for filing the appeal.

Records of the Court below be sent back.

10.01.2023
amit rana

(N.S.SHEKHAWAT)
JUDGE

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