

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

CRA-S-1983-SB-2004 (O&M)

Reserved on:-24.01.2023

Date of Decision: 14.02.2023

Rajbir Singh @ Shyam Lal	Versus	...Appellant
State of Haryana		... Respondent

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

Present : Mr. Bobby Girdhar, Advocate
as Amicus Curiae for the appellant.

Ms. Sheenu Sura, DAG, Haryana.

N.S.SHEKHAWAT, J.

By way of the instant appeal, the appellant has challenged the judgment of conviction dated 27.05.2004 and order of conviction dated 28.05.2004 passed by the Presiding Officer, Special Court, Kurukshetra, whereby, the appellant was convicted under Section 18 of the Narcotic Drugs and Psychotropic Substance Act, 1985 (in short '**the NDPS Act**') and was sentenced to undergo rigorous imprisonment for a period of five years and to pay a fine of Rs. 25,000/-, alongwith the default stipulation,

Briefly, the facts of the present case are that on 16.03.2002, SI Chanderpal, alongwith police officials was present on patrolling and crime detection duty on a government vehicle at G.T. road village Partapgarh, District Kurukshetra. In the meantime, a person was seen coming with a bag on his right shoulder and after seeing the police party, he tried to run away from the spot. However, the police officials chased him and he was apprehended. During questioning by the police party, he disclosed his name and address to be Rajbir Singh @ Sham Lal son of Bachna Ram resident of village

Jalubi. The police party suspected that he was carrying some

contraband in the said bag and a notice under Section 50 of the NDPS Act was served upon him and he was given option to get his search conducted in the presence of a gazetted officer or a Magistrate. However, the accused exercised his option of his search in the presence of a gazetted officer. The accused was taken before Ramesh Kumar Singla, Naib Tehsildar, Thanesar, accordingly and the police team apprised the said official about the facts of the case. Naib Tehsildar also verified the facts from the accused and the witnesses and directed that the search of the bag may be conducted in his presence. As per the directions of the Naib Tehsildar the contents of the said bag were checked and a polythene envelope containing 1 kg and 400 gms of opium was found in the bag. On this, two samples of 50 gms each were separated. The samples as well as residue opium were converted into separate parcels and were sealed with the seal bearing impression "JC" of the Investigating Officer and the Naib Tehsildar also affixed his seal "RK" and retained the seal with himself. Specimen seal impressions were also prepared and a separate memo was prepared for taking possession the sealed parcels as well as specimen seal impressions, which were signed by the witnesses and were attested by the Naibb Tehsildar. A *rukka* was sent, which led to the registration of the formal FIR under Section 18 of the NDPS Act by the concerned police station. The accused was arrested after serving grounds of arrest and the relatives of the accused were also informed. After the arrest, the accused, case property and the witnesses were produced before Paras Kumar, SI/SHO in police

station, who also verified the facts of the case as well as the initial investigation and had affixed his seal bearing impression “PK” on the sealed parcels and specimen seal impressions. As per the directions of the SI/SHO, the case property was deposited with the MHC and the accused was brought to CIA Staff, Kurukshetra. The provisions of Section 57 of the NDPS Act were also complied with by sending a report to the higher officers by the Investigating Officer. Ultimately, finding sufficient evidence against the appellant/accused, a final report under Section 173 Cr.P.C. was prepared and was submitted to the competent Court for trial.

After scrutiny of the incriminating evidence collected during the course of the investigation, a prima facie case under Section 18 of the NDPS Act was found against the appellant/accused and he was charge sheeted accordingly by the learned trial Court. The accused pleaded his innocence and claimed trial.

To support the charge, the prosecution examined 8 witnesses, namely, PW1 HC Dhanpat Singh, PW2 Constable Rameshwar, PW3 HC Mange Ram, PW4 Ramesh Kumar Singla, Naib Tehsildar, PW5 SI Ram Dutt, PW6 SI Rajinder Singh, PW7 SI Chander Pal and PW8 SI/SHO Paras Kumar and various documents were exhibited to prove the same.

I have heard learned counsel for the parties and with their able assistance, I have marshaled the trial Court record.

Learned counsel for the appellant argued that the provisions of Section 50 of the NDPS Act were not complied with in

the instant case and since there was non-compliance of the mandatory provisions of law, the appellant was entitled to acquittal on this ground. The said submission has been opposed by the learned State counsel by submitting that the notice under Section 50 of the NDPS Act was not required in the instant case as the recovery was effected from the bag in the instant case, which was held by the accused in his right hand. I find that the submission made by the learned counsel for the appellant is not sustainable in law. From a perusal of the various testimonies of the prosecution witnesses, it is evident that the police party had noticed the accused/appellant coming from opposite side and he was carrying a bag on his right shoulder. On suspicion, he was apprehended and the search of the bag was conducted, which led to the recovery of the contraband. The search was conducted and 1 kgs and 400 gms of opium was found in the polythene envelope, which was kept in the bag by the appellant. Thus, the recovery was not effected from the personal search of the accused, rather it was effected from the search of the bag. Thus, the provisions of Section 50 of the NDPS Act were not attracted in the facts of the present case and the compliance or non-compliance of the provisions of Section 50 of the NDPS Act would have no effect in the instant case, as upheld by the Hon'ble Court in number of judgments. It has been held by the Hon'ble Supreme Court in the matter of **Jarnail Singh Vs. State of Punjab, AIR 2011, SC 964** as follows:-

12. The next submission made by Mr. Ujjal Singh is that there has been non compliance of Section 50 of the Narcotic Drugs and Psychotropic Substances Act, in that

requisite option was not given to the appellant, as to, whether he wanted to be searched in the presence of a Gazetted Officer or a Magistrate. We are unable to accept the aforesaid submission. Inspector Ram Pal (PW4) has clearly stated that the option was duly given to the appellant. The appellant had, in fact, signed on the consent statement expressing his confidence to be searched in presence of the aforesaid witness. Similarly, Satpal Singh PW5 has also stated that before affecting the search, the accused/appellant was given the necessary option as to whether he wanted to be searched before a Gazetted Officer or a Magistrate. This witness also stated that the appellant reposed his confidence in Inspector Rampal. In such circumstances, it cannot be held that there was non compliance with Section 50 of the Narcotic Drugs and Psychotropic Substances Act.

*12.1 This apart, it is accepted that the narcotic/opium, i.e., 1 kg. and 750 grams was recovered from the bag (thaili) which was being carried by the appellant. In such circumstances, Section 50 would not be applicable. The aforesaid Section can be invoked only in cases where the drug/narcotic/NDPS substance is recovered as a consequence of the body search of the accused. In case, the recovery of the narcotic is made from a container being carried by the individual, the provisions of Section 50 would not be attracted. This Court in the case of **Kalema Tumba v. State of Maharashtra, 1999(4) RCR (Criminal) 575 : (1999) 8 SCC 257** discussed the provisions pertaining to 'personal search' under Section 50 of the Narcotic Drugs and Psychotropic Substances Act and held as follows;*

"..... if a person is carrying a bag or some other article with him and narcotic drug or psychotropic substance is

found from it, it cannot be said that it was found from his person.

" Similarly, in the case of Megh Singh v. State of Punjab, 2003(4) RCR (Criminal) 319 : 2004(1) Apex Criminal 482 : (2003) 8 SCC 666 this Court observed that;

"A bare reading of section 50 shows that it applies in case of personal search of a person. It does not extend to a search of a vehicle or container or a bag or premises."

The scope and ambit of Section 50 was also examined by this Court in the case of State of Himachal Pradesh v. Pawan Kumar, 2004(4) RCR (Criminal) 543 : 2004(3) Apex Criminal 618 : (2005) 4 SCC 350. In paragraphs 10 and 11, this Court observed as follows:-

"10. We are not concerned here with the wide definition of the word "person", which in the legal world includes corporations, associations or body of individuals as factually in these type of cases search of their premises can be done and not of their person. Having regard to the scheme of the Act and the context in which it has been used in the section it naturally means a human being or a living individual unit and not an artificial person. The word has to be understood in a broad common-sense manner and, therefore, not a naked or nude body of a human being but the manner in which a normal human being will move about in a civilised society. Therefore, the most appropriate meaning of the word "person" appears to be -- "the body of a human being as presented to public view usually with its appropriate coverings and clothing". In a civilised society appropriate coverings and clothings are considered absolutely essential and no sane human being comes in the gaze of others without appropriate

coverings and clothings. The appropriate coverings will include footwear also as normally it is considered an essential article to be worn while moving outside one's home. Such appropriate coverings or clothings or footwear, after being worn, move along with the human body without any appreciable or extra effort. Once worn, they would not normally get detached from the body of the human being unless some specific effort in that direction is made. For interpreting the provision, rare cases of some religious monks and sages, who, according to the tenets of their religious belief do not cover their body with clothings, are not to be taken notice of. Therefore, the word "person" would mean a human being with appropriate coverings and clothings and also footwear.

11. A bag, briefcase or any such article or container, etc. can, under no circumstances, be treated as body of a human being. They are given a separate name and are identifiable as such. They cannot even remotely be treated to be part of the body of a human being. Depending upon the physical capacity of a person, he may carry any number of items like a bag, a briefcase, a suitcase, a tin box, a thaila, a jhola, a gathri, a holdall, a carton, etc. of varying size, dimension or weight. However, while carrying or moving along with them, some extra effort or energy would be required. They would have to be carried either by the hand or hung on the shoulder or back or placed on the head. In common parlance it would be said that a person is carrying a particular article, specifying the manner in which it was carried like hand, shoulder, back or head, etc. Therefore, it is not possible to include these articles within the

ambit of the word "person" occurring in Section 50 of the Act."

It has come in evidence that although the body search of the appellant was conducted but no recovery of any narcotic was made. The body search only led to the recovery of Rs. 25/- from his pocket.

Learned counsel for the appellant assailed the case of the prosecution on the ground that no independent witness was joined at the time of effecting the recovery from the present appellant and submitted that the appellant had been falsely implicated in the instant case. However, this argument is bereft of any merits as it is the settled proposition of law that the case of the prosecution cannot be thrown on the ground that only the official witnesses had been examined by the prosecution. In fact, as a rule of caution, no doubt independent corroboration is required, but at the same time, if the official witnesses had no reason to falsely involve the appellant in a criminal case and if their testimonies are found to be credible and trustworthy, the judgment of conviction can always rest on such testimonies. The trial Court discussed the testimonies of official witnesses in detail and recorded valid and cogent reasons in placing reliance on such testimonies. The findings recorded in this regard are liable to be upheld.

Apart from that, I have scanned the trial Court record carefully and all statutory provisions of the NDPS Act have been strictly adhered to by the prosecution while leading evidence. The prosecution examined PW1 HC Dhanpat Singh, who had recorded

formal FIR Ex.PA/1 on receipt of *rukka* Ex.PA. PW2 Constable Rameshwar tendered his affidavit Ex.PC and his testimony was formal in nature. HC Mange Ram, Reader to DSP, Headquarter, Kurukshetra was examined as PW3, who had received the report Ex.PD under Section 57 of the NDPS Act, which was put up by him before the then DSP, Headquarter, Kurukshetra, who made his endorsement Ex.PD/1. Sufficient compliance of provisions of Section 57 of the NDPS Act has been proved on record by the prosecution. Even, Ramesh Kumar Singla, Naib Tehsildar, in whose presence the search was effected and initial investigation was conducted, was examined as PW4 by the prosecution and he supported the case of the prosecution. He was subjected to lengthy cross-examination, but nothing material could come out in favour of the appellant. SI Rajinder Singh, who was part of the police team appeared into the witness box as PW6 and supported the charge against the appellant. His testimony was supported by PW7 SI Chander Pal as well. Apart from that, PW8 SI Paras Kumar, who was posted as SHO in the Police Station Sadar Thanesar also submitted that he had verified the facts from the police as well as the accused and had affixed his seal bearing impression "PK" on the sample parcel and the residue parcel. Thus, the testimonies of official witnesses were found to be credible and the trial Court has discussed the creditworthiness of all the official witnesses. Apart from that, even the entire prosecution evidence was put to the accused in the shape of his statement under Section 313 Cr.P.C. and he could not lead any evidence to prove his

false implication in the instant case. Thus, the findings recorded by the learned trial Court are upheld and affirmed.

Vide the impugned order of sentence dated 28.05.2004, a sentence of rigorous imprisonment for a period of five years and a fine of Rs. 25,000/- were imposed upon the present appellant. However, this Court is conscious of the fact that the recovery of the contraband in the instant case was effected on 16.03.2002 and appellant has been facing the agony of appeal/trial for the last about 21 years. Even, as per the charge sheet dated 01.07.2002, he was aged about 25 years at the time of framing of charges. During the course of hearing, the learned State counsel filed the custody certificate of the present appellant/accused and as per the same, the appellant had undergone 02 years, 09 months and 08 days of actual sentence out of total sentence of 05 years. Even, as per the case of the prosecution, the police had recovered 1 kg 400 gms of opium from the present appellant, which is non-commercial in nature. Still further, as per the custody certificate, no other case was registered against the present appellant in the last about 21 years, even though, he was on bail and is not involved in any other criminal activity. It is also apparent that the appellant has undergone sufficiently long period and the ends of justice will be suitably met if the sentence imposed upon the present appellant is reduced to the period already undergone by him and the order of sentence is liable to be modified by this Court to that extent. However, the amount of fine is enhanced to Rs. 40,000/- from Rs. 25,000/- which shall be deposited by the appellant in the Punjab

and Haryana High Court Bar Association Lawyer's Family Welfare Fund within a period of three months from today, failing which, the appellant shall undergo imprisonment for a period of three months as observed by the learned trial Court

With the above modifications, the appeal is partly allowed and the impugned judgment of conviction is upheld, whereas the order of sentence is modified to the extent that the sentence imposed on the present appellant is reduced to the period already undergone by him. However, the amount of fine is enhanced to Rs. 40,000/- as observed, which shall be deposited by him within a period of three months from today.

The appeal stands disposed off accordingly.

All pending applications, if any, are disposed off, 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.

In the end, I record my appreciation for Mr. Bobby Girdhar, learned Amicus Curiae, who had rendered able assistance to this Court.

14.02.2023
amit rana

(N.S.SHEKHAWAT)
JUDGE

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