

530 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-1116-SB-2005

Reserved on: 12.04.2023

Date of Pronouncement: 18.04.2023

Anand Kumar@Pappu

...Appellant

vs.

State of Haryana

...Respondent

Coram : Hon'ble Mr. Justice N.S.Shekhawat

Present : Mr. J.S Kang, Advocate for
Mr. K.P.S Virk, Advocate
for the appellant.

Ms. Sheenu Sura, Deputy Advocate General, Haryana.

N.S.Shekhawat J.

Feeling aggrieved and dissatisfied with the impugned judgment of conviction dated 02.06.2005 and order of sentence dated 04.06.2005, passed by the Court of Learned Judge Special Court, Jhajjar, whereby the present appellant was convicted for the offence punishable under Section 18 of the Narcotics Drugs and Psychotropic Substances Act (herein after referred to as the Act) and was sentenced to undergo rigorous imprisonment for a period of 5 years and to pay a fine of Rs.2000/- along with default stipulation; the present appellant has preferred the instant appeal before this Court.

The adumbrated facts of the present case are that on 21.11.2000, a police party headed by SI Rohtas Singh along with other police officials was present on the bridge of rivulet (Rajwaha) on the Jassaur Kheri, Assaudah Road

and in the meantime, the SI received the information that Anand @Pappu son of Om Parkash resident of Village Jassaur Kheri was indulging in the business of selling opium illegally and if the naka was set up, he could be apprehended at the spot. On getting the information, a naka was set up on the bridge of rivulet (Rajwaha). In the meantime, a person wearing white shirt and pajama came from the side of Western bank of the rivulet (Rajwaha) and was having a polythene in his hand. On seeing the police party, he was perplexed and immediately turned back. The police party had the suspicion on him and was apprehended by them. On interrogation by the police, he disclosed his name Anand Kumar alias Pappu son of Om Parkash, resident of Jassaur Kheri. A notice under Section 50 of the Act was issued to him by the Investigating Officer that he suspected that he must be having some contraband in his possession and offered him that he could get his search conducted either in his presence or in the presence of some Gazetted Officer or a Magistrate. On this the accused replied that the search might be conducted in the presence of a Gazetted Officer. On this, the DSP was informed telephonically and Shiv Dayal, DSP reached at the spot. He also gave an option to the accused and ultimately the search of the polythene bag was conducted at the instance of the DSP and it was found to be containing opium. The total quantity of opium weighed to be 700 grams and out of the same, 100 grams of opium was taken out as a sample. The sample as well as the remaining quantity of the opium were kept into separate parcels and were sealed with the seals having the inscription "RS" and the same were taken into possession by the police. The seal after use was handed over to Shiv Dayal, DSP. Thereafter, a ruqa was sent

to the police station and the local police recorded the formal FIR in this regard. The accused, case property and the witnesses were taken to the police station and the case property was deposited with the MHC. After completion of the necessary investigation, the challan was presented in the Court.

After considering the challan and the documents appended with the same, the learned Trial Court found a prima facie case under Section 18 of the Act against the present appellant and he was charge-sheeted accordingly. The accused pleaded that he was innocent and claimed trial.

In order to prove the case, the prosecution examined 9 witnesses in all. Even the parcel containing the sample was sent to the FSL Madhuban and vide the report Ex. PG, the sample was identified as opium by the FSL. The prosecution examined Bhim Singh Inspector as PW-1, who had prepared the report under Section-173 Cr.PC on conclusion of the investigation and forwarded the same to the Court. Inspector Bhullan Singh was examined as PW-2, who had recorded the formal FIR Ex.PA/1, on receipt of the written information Ex.PA. He had sent the copies of the FIR to Illaqua Magistrate and DSP and SP as special report. The prosecution further examined PW-3 C. Jagbir Singh, who had delivered the copy of the FIR to Illaqua Magistrate and to the DSP and SP as a special report. PW-4, HC Karan Singh tendered his affidavit Ex.PB in his evidence. Similarly, SI Maha Singh appeared as PW-5, who had recorded the statements under Section 161 Cr.PC. Shiv Dayal, DSP was examined as PW-6, who was called at the spot and was a witness to the recovery from the appellant/accused. He also witnessed the search and seizure procedure and was signatory to various memos prepared at the time of

recovery of the contraband from the present appellant and had supported the case of the prosecution completely. Still further, HC Subhash Chand was examined as PW-7, who was part of the raiding team, which apprehended the appellant at the bridge of the rivulet (Rajwaha) and was a witness to the entire recovery of the contraband from the present appellant. In his cross-examination, he clearly stated that during the period, they remained there, the inhabitants of the nearby areas passed that place. However, inspite of efforts, by SI Rohtas Singh, no one came forward to join as a witness in the entire procedure. The prosecution further examined PW-8 C. Jasbir Singh, who tendered his affidavit Ex.PD in evidence. The prosecution examined Rohtash Singh, SI as PW-9 in the end, who was the most material witness of the prosecution. He supported the case of the prosecution and deposed the facts as mentioned in the FIR. Even the said witness was subjected to lengthy cross-examination. He also stated that during the period of search and recovery, the inhabitants of the nearby areas passed through the said place. He tried to join independent witnesses, but they expressed their inability. No action was taken against any one of them.

After the closure of the prosecution evidence, the entire incriminating evidence was put to the accused/appellant in the shape of his statement under Section 313 Cr.P.C and he pleaded his innocence. The appellant/accused examined DW-1 Raj Singh, who stated that on 18.11.2000, he was sleeping in his house. He was informed by Krishan, Member Panchayat that police officials had come to the village and he was also called in the Panchayat convened in the village. When he reached there, the police officials told him that they wanted to get the gate of the house of the accused opened, as

house was to be searched. The police did not recover anything from the personal search or search of the house of the appellant/accused. Thereafter, the police took the accused along with them and after 4/5 days, they came to know that accused Anand Kumar @Pappu, appellant had been involved in a false criminal case. Thereafter, the defence evidence was closed.

I have heard the learned counsel for the parties at length and have also perused the trial Court record carefully.

Learned counsel for the appellant vehemently argued that in the instant case, there was breach of mandatory provision of Section 42 of the Act. As per the case of the prosecution, PW-9 SI Rohtash, the Investigating Officer had received the secret information, but the Investigating Officer failed to reduce the information into writing, as per the provisions of Section 42 of the Act. The Investigating Officer was supposed to take down the secret information in writing and further send a copy of the information to his immediate superior forthwith. He further contended that Section 42 of the Act was a mandatory provision and required strict compliance. On the other hand, the learned State counsel contended that in the instant case, the provisions of Section 42 of the Act would not be attracted. In fact, the recovery of the contraband had taken place at a bridge, which is an open public place and instead of the provisions of Section 42 of the Act, Section 43 would apply. Having considered the rival submissions made by learned counsel on both the sides, I am of the considered view that in the instant case, the mandatory provisions of Section 42 of the Act would not apply and non-adherence to the provisions of the Section 42 would have no effect on the present case. It is

evident from the perusal of the FIR as well as from the testimony of PW-9 Rohtash SI, that the recovery had taken place from the bridge of the rivulet (Rajwaha) and not from a private place. The material difference between the provisions of Section 42 and 43 of the Act is that Section 42 requires recording of reasons for belief and for taking down of information received in writing with regard to the commission of an offence before conducting search and seizure. Section 43 of the Act does not contain any such provision and as such while acting under Section 43 of the Act, the empowered officer has the power of seizure of the article etc. and arrest of a person who is found to be in possession of any narcotic drug or psychotropic substance in a public place, where the possession appears to him to be unlawful.

It has been held by larger Bench of the Hon'ble Supreme Court of India in matter of **Karnail Singh Vs. State of Haryana, 2009(5) R.C.R(Criminal) 515:2009(8) SCC 539 as follows:-**

“14.The Constitution Bench in Baldev Singh (supra) considered the compliance of Section 50 of the Act. While doing so, the Bench also considered the provisions of Sections 41 and 42 of the Act. It observed as follows :

"8. Section 41 of the Narcotic Drugs and Psychotropic Substances Act provides that a Metropolitan Magistrate or a Magistrate of the First Class or any Magistrate of the Second Class specially empowered by the State Government in this behalf, may issue a warrant for the arrest of and for search of any person whom he has reason to believe to have committed any offence punishable under Chapter IV. Vide sub-section (2) the power has also been vested in gazetted officers of the Departments of Central Excise, Narcotics, Customs, Revenue Intelligence or any

other department of the Central Government or of the Border Security Force, empowered in that behalf by a general or special order of the State Government to arrest any person, who he has reason to believe to have committed an offence punishable under Chapter IV or to search any person or conveyance or vessel or building etc. with a view to seize any contraband or document or other article which may furnish evidence of the commission of such an offence, concealed in such building or conveyance or vessel or place.

9. Sub-section (1) of Section 42 lays down that the empowered officer, if has a prior information given by any person, he should necessarily take it down in writing and where he has reason to believe from his personal knowledge that offences under Chapter IV have been committed or that 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 he may do so without recording his reasons of belief.

10. The proviso to sub-section (1) lays down that if the empowered 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. Vide sub-section (2) of Section 42, the empowered officer who takes down information in writing or records the grounds of his belief under the proviso to sub-section (1), shall forthwith send a copy of the same to his immediate official superior. Section 43 deals with the power of seizure and arrest of the suspect in a public place. The

material difference between the provisions of Section 43 and Section 42 is that whereas Section 42 requires recording of reasons for belief and for taking down of information received in writing with regard to the commission of an offence before conducting search and seizure, Section 43 does not contain any such provision and as such while acting under Section 43 of the Act, the empowered officer has the power of seizure of the article etc. and arrest of a person who is found to be in possession of any narcotic drug or psychotropic substance in a public place where such possession appears to him to be unlawful."

Learned counsel for the appellant further vehemently argued that the case of the prosecution is that the secret information was received, naka was set up, the appellant was apprehended and thereafter, the appellant was served a notice under Section 50 of the Act. As per the notice, the IO gave the options to the appellant that he could get his search conducted in his presence or in the presence of a Magistrate or a Gazetted Officer. This amounts to non-compliance of the mandatory provision of Section 50 of the NDPS Act. As per the provisions of the Act, any officer duly authorised under Section 42 of the Act, who 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. In the present case, the IO diluted the provisions of Section 50 of the Act by giving option to the appellant that his search may be conducted by the IO himself as well. The provisions of Section 50 of the Act were mandatory provisions of the law and required strict compliance on the part of the Officer, who had effected the search. The said

submissions have been countered by learned State counsel by contending that the recovery had taken place from a polythene bag and not from the personal search of the appellant. Consequently, the question of strict compliance of the provisions of Section 50 of the Act does not arise at all and the said submissions are liable to be rejected.

I have considered the submissions made by both the sides in the light of the evidence led by the parties as well as the settled legal principles. It has been held by the Hon'ble Supreme Court in the matter of **State of Punjab Vs. Baljinder Singh, 2020(1) RCR (Criminal) 58: 2019 AIR(Supreme Court) 5298 as follows:-**

“12. Section 50 of the Act affords protection to a person in matters concerning "personal search" and stipulates various safeguards. It is only upon fulfilment of and strict adherence to said requirements that the contraband recovered pursuant to "personal search" of a person can be relied upon as a circumstance against the person.

13. The law which has developed on the point in some of the judgments of this Court may now be considered.

*In **State of Punjab v. Baldev Singh, [1999(3) RCR (Criminal) 533 : (1999) 6 SCC 172]** a Constitution Bench of this Court considered, inter alia, questions as to what would be the resultant effect, in case the requirements of Section 50 were not complied with. The conclusions arrived at in para 57 of the decision were as under:*

57. On the basis of the reasoning and discussion above, the following conclusions arise:

(1) That when an empowered officer or a duly authorised officer acting on prior information is about to search a person, it is imperative for him to inform the

person concerned of his right under sub-section (1) of Section 50 of being taken to the nearest gazetted officer or the nearest Magistrate for making the search. However, such information may not necessarily be in writing.

(2) That failure to inform the person concerned about the existence of his right to be searched before a gazetted officer or a Magistrate would cause prejudice to an accused.

(3) That a search made by an empowered officer, on prior information, without informing the person of his right that if he so requires, he shall be taken before a gazetted officer or a Magistrate for search and in case he so opts, failure to conduct his search before a gazetted officer or a Magistrate, may not vitiate the trial but would render the recovery of the illicit article suspect and vitiate the conviction and sentence of an accused, where the conviction has been recorded only on the basis of the possession of the illicit article, recovered from his person, during a search conducted in violation of the provisions of Section 50 of the Act. (Underlying by us)

(4) That there is indeed need to protect society from criminals. The societal intent in safety will suffer if persons who commit crimes are let off because the evidence against them is to be treated as if it does not exist. The answer, therefore, is that the investigating agency must follow the procedure as envisaged by the statute scrupulously and the failure to do so must be viewed by the higher authorities seriously inviting action against the official concerned so that the laxity on the part of the investigating authority is curbed. In every case the end result is important but the means to achieve it must remain above board. The remedy cannot be worse than the disease itself. The legitimacy of the judicial process may come under a cloud if the court is seen to condone acts of lawlessness conducted by the

investigating agency during search operations and may also undermine respect for the law and may have the effect of unconscionably compromising the administration of justice. That cannot be permitted. An accused is entitled to a fair trial. A conviction resulting from an unfair trial is contrary to our concept of justice. The use of evidence collected in breach of the safeguards provided by Section 50 at the trial, would render the trial unfair.

(5) That whether or not the safeguards provided in Section 50 have been duly observed would have to be determined by the court on the basis of the evidence led at the trial. Finding on that issue, one way or the other, would be relevant for recording an order of conviction or acquittal. Without giving an opportunity to the prosecution to establish, at the trial, that the provisions of Section 50 and, particularly, the safeguards provided therein were duly complied with, it would not be permissible to cut short a criminal trial.

(6) That in the context in which the protection has been incorporated in Section 50 for the benefit of the person intended to be searched, we do not express any opinion whether the provisions of Section 50 are mandatory or directory, but hold that failure to inform the person concerned of his right as emanating from sub-section (1) of Section 50, may render the recovery of the contraband suspect and the conviction and sentence of an accused bad and unsustainable in law.

(7) That an illicit article seized from the person of an accused during search conducted in violation of the safeguards provided in Section 50 of the Act cannot be used as evidence of proof of unlawful possession of the contraband on the accused though any other material

recovered during that search may be relied upon by the prosecution, in other proceedings, against an accused, notwithstanding the recovery of that material during an illegal search.

(8) A presumption under Section 54 of the Act can only be raised after the prosecution has established that the accused was found to be in possession of the contraband in a search conducted in accordance with the mandate of Section 50. An illegal search cannot entitle the prosecution to raise a presumption under Section 54 of the Act.

*(9) That the judgment in **Pooran Mal case [(1974) 1 SCC 345]** cannot be understood to have laid down that an illicit article seized during a search of a person, on prior information, conducted in violation of the provisions of Section 50 of the Act, can by itself be used as evidence of unlawful possession of the illicit article on the person from whom the contraband has been seized during the illegal search.*

*(10) That the judgment in **Ali Mustaffa case [(1994(3) RCR (Criminal) 595 : 1994) 6 SCC 569]** correctly interprets and distinguishes the judgment in **Pooran Mal case [(1974) 1 SCC 345]** and the broad observations made in **Pirthi Chand case [1996(2) RCR (Criminal) 759 : (1996) 2 SCC 37]** and **Jasbir Singh case [(1996)1 SCC 288]** are not in tune with the correct exposition of law as laid down in **Pooran Mal case[(1974) 1 SCC 345].**"*

*Subsequently, another Constitution Bench of this Court in **Vijaysinh Chandubha Jadeja v. State of Gujarat, [2010(4) RCR (Criminal) 911 : (2011) 1 SCC 609]** had an occasion to consider the case from the stand-point whether the person who is about to be searched ought to be informed of his right that he could be searched in the presence of a Gazetted*

Officer or a Magistrate. While considering said question, this Court also dealt with the judgment rendered in Baldev Singh's case and the discussion in paragraphs 24 and 29 was as under:

*24. Although the Constitution Bench in **Baldev Singh case [(1999) 6 SCC 172]** did not decide in absolute terms the question whether or not Section 50 of the NDPS Act was directory or mandatory yet it was held that provisions of sub-section (1) of Section 50 make it imperative for the empowered officer to "inform" the person concerned (suspect) about the existence of his right that if he so requires, he shall be searched before a gazetted officer or a Magistrate; failure to "inform" the suspect about the existence of his said right would cause prejudice to him, and in case he so opts, failure to conduct his search before a gazetted officer or a Magistrate, may not vitiate the trial but would render the recovery of the illicit article suspect and vitiate the conviction and sentence of an accused, where the conviction has been recorded only on the basis of the possession of the illicit article, recovered from the person during a search conducted in violation of the provisions of Section 50 of the NDPS Act. The Court also noted that it was not necessary that the information required to be given under Section 50 should be in a prescribed form or in writing but it was mandatory that the suspect was made aware of the existence of his right to be searched before a gazetted officer or a Magistrate, if so required by him. We respectfully concur with these conclusions. Any other interpretation of the provision would make the valuable right conferred on the suspect illusory and a farce.*

.....

29. In view of the foregoing discussion, we are of the firm opinion that the object with which the right under Section 50(1) of the NDPS Act, by way of a safeguard, has been conferred on the suspect viz. to check the misuse of power, to avoid harm to innocent persons and to minimise the allegations of planting or foisting of false cases by the law enforcement agencies, it would be imperative on the part of the empowered officer to apprise the person intended to be searched of his right to be searched before a gazetted officer or a Magistrate. We have no hesitation in holding that insofar as the obligation of the authorised officer under subsection (1) of Section 50 of the NDPS Act is concerned, it is mandatory and requires strict compliance. Failure to comply with the provision would render the recovery of the illicit article suspect and vitiate the conviction if the same is recorded only on the basis of the recovery of the illicit article from the person of the accused during such search. Thereafter, the suspect may or may not choose to exercise the right provided to him under the said provision." (Underlying by us)

14. The law is thus well settled that an illicit article seized from the person during personal search conducted in violation of the safeguards provided in Section 50 of the Act cannot by itself be used as admissible evidence of proof of unlawful possession of contraband.

But the question is, if there be any other material or article recovered during the investigation, would the infraction with respect to personal search also affect the qualitative value of the other material circumstance.

15. At this stage we may also consider following observations

from the decision of this Court in **Ajmer Singh v. State of Haryana [2010(2) RCR (Criminal) 132 : (2010) 3 SCC 746]** :-

"15. The learned counsel for the appellant contended that the provision of Section 50 of the Act would also apply, while searching the bag, briefcase, etc. carried by the person and its non-compliance would be fatal to the proceedings initiated under the Act. We find no merit in the contention of the learned counsel. It requires to be noticed that the question of compliance or non-compliance with Section 50 of the NDPS Act is relevant only where search of a person is involved and the said section is not applicable nor attracted where no search of a person is involved. Search and recovery from a bag, briefcase, container, etc. does not come within the ambit of Section 50 of the NDPS Act, because firstly, Section 50 expressly speaks of search of person only. Secondly, the section speaks of taking of the person to be searched by the gazetted officer or a Magistrate for the purpose of search. Thirdly, this issue in our considered opinion is no more *res integra* in view of the observations made by this Court in **Madan Lal v. State of H.P. [2003(4) RCR (Criminal) 100 : (2003) 7 SCC 465]**. The Court has observed: (SCC p. 471, para 16)

"16. A bare reading of Section 50 shows that it only applies in case of personal search of a person. It does not extend to search of a vehicle or a container or a bag or premises (see **Kalema Tumba v. State of Maharashtra [1999(4) RCR (Criminal) 575 : (1999) 8 SCC 257]**, **State of Punjab v. Baldev Singh [(1999) 6 SCC 172]** and **Gurbax Singh v. State of Haryana [2001(1) RCR (Criminal) 702 : (2001) 3 SCC 28]**). The language of Section 50 is implicitly clear that the search has to be in relation to a person as contrasted to search of premises, vehicles or articles. This

position was settled beyond doubt by the Constitution Bench in Baldev Singh case. Above being the position, the contention regarding non-compliance with Section 50 of the Act is also without any substance."

16. As regards applicability of the requirements under Section 50 of the Act are concerned, it is well settled that the mandate of Section 50 of the Act is confined to "personal search" and not to search of a vehicle or a container or premises.

17. The conclusion (3) as recorded by the Constitution Bench in Para 57 of its judgment in Baldev Singh clearly states that the conviction may not be based "only" on the basis of possession of an illicit article recovered from personal search in violation of the requirements under Section 50 of the Act but if there be other evidence on record, such material can certainly be looked into.

In the instant case, the personal search of the accused did not result in recovery of any contraband. Even if there was any such recovery, the same could not be relied upon for want of compliance of the requirements of Section 50 of the Act. But the search of the vehicle and recovery of contraband pursuant thereto having stood proved, merely because there was non-compliance of Section 50 of the Act as far as "personal search" was concerned, no benefit can be extended so as to invalidate the effect of recovery from the search of the vehicle. Any such idea would be directly in the teeth of conclusion (3) as aforesaid.

18. The decision of this Court in Dilip's case, however, has not adverted to the distinction as discussed hereinabove and proceeded to confer advantage upon the accused even in respect of recovery from the vehicle, on the ground that the requirements of Section 50 relating to personal search were not complied with. In our view, the decision of this Court in said judgment in Dilip's case is not correct and is opposed to the law laid down by this Court in Baldev Singh and other judgments.

19. Since in the present matter, seven bags of poppy husk each weighing 34 kgs. were found from the vehicle which was being driven by accused-Baljinder Singh with the other accused accompanying him, their presence and possession of the contraband material stood completely established.

Now adverting to the facts of the instant case, it is apparent that on receipt of the secret information, the police had setup a naka on the bridge of the *rajwaha* and a person was seeing coming from the opposite side, carrying a polythene bag in his hands. On search of the bag, the opium weighing 700 grams was recovered by the police. The prosecution examined PW-7 Subhash Chand HC and PW-9 Rohtash Singh SI, who had arrested the accused from the spot and as per both the said witnesses, the recovery had taken place from the polythene bag, held by the appellant in his hands. Even no recovery was effected in pursuance of the personal search of the appellant/accused. Since the personal search of the present appellant did not lead to any recovery at all, it was not mandatory for the police to comply with the provisions of Section 50 of the Act and the non-compliance of the provisions of the Section-50 of the Act would have no effect on the facts of the present case.

During the course of arguments, learned counsel for the appellant has referred to various contradictions in the statements of PW-7 HC Subhash Chand and PW-9 SI Rohtash. However, the learned Trial Court has discussed the contradictions in the statements of various witnesses in detail and even this Court is of the considered view that minor contradictions/inconsistencies are bound to appear in the testimonies of truthful witnesses, who got a chance to appear before the learned Trial Court after a long gap. Even the police officials

have to appear in various criminal cases and it is not possible for them to give a vivid account of the entire search and seizure. Thus, the findings recorded by the learned Trial Court are liable to be upheld.

Learned counsel for the appellant vehemently argued that in the instant case, no independent witness was joined in the investigation, even there was plenty of opportunity with PW- 7 HC Subhash Chand and PW-9 SI Rohtash to do so as the recovery had taken place from the common passage and many people had passed by from the place of recovery. Still the I.O did not make any efforts to join the independent witnesses. The said submissions have been opposed by the learned State Counsel. I have considered the rival submissions in this regard and find no substance in the arguments raised by learned counsel for the appellant. It is a matter of common knowledge that in case of raid on a drug peddler, the local public is always reluctant to join as an independent witness. Even otherwise the accused belonged to the nearby area and no person would be willing to appear as a witness against an accused from the same locality. Even otherwise, the prosecution examined nine official witnesses, who were subjected to lengthy cross-examination. However, their testimonies could not be shaken in any manner and this Court has no reason to disbelieve the said witnesses and to deviate from the judgment recorded by the learned Trial Court.

During the course of arguments, learned counsel for the appellant has submitted that there was tampering with the sample of recovery as the sample of 100 grams of contraband was taken from the total quantity, whereas the FSL report Ex. PG shows that when the test was conducted, the weight of

the sample of the contraband was 95.600 grams along with tin box. Consequently, the learned counsel contends that the sample was tampered with. The submissions have been opposed by the learned State counsel. After due consideration of the evidence, I find no substance in the arguments raised by learned counsel for the appellant. The Learned Trial Court has considered every aspect of the matter and the findings are apparently legal. In fact, the recovery was effected at a bridge near a village and after arranging the weighing scales, the police normally weigh the contraband. When the sample is sent to the FSL, it is weighed on sophisticated and advanced weighing scales. Consequently, the variation of five grams may have occurred and the prosecution has been able to prove the case beyond the shadow of reasonable doubt. I have gone through the findings recorded by the learned Trial Court and the judgment passed by the learned Trial Court does not suffer from any illegality or perversity. As a consequence, the impugned judgment of conviction dated 02.06.2005, passed by learned Judge Special Court, Jhajjar is ordered to be upheld and affirmed.

Now, advertent to the order of sentence, this Court cannot lose sight of the fact that the FIR in the instant case was registered in the year 2000 and the present appellant has faced the agony of appeal/trial for the last more than 22 years. Even at the time of his conviction, he was aged about 29 years. His sentence was suspended on 18.08.2005 and he has not indulged in any criminal activity for last about 18 years. He is a first offender and even the quantity of the contraband, recovered from him was non-commercial in nature. As per the custody certificates produced by the learned State counsel, the present appellant has undergone about 1 year 4 months and 22 days of actual

sentence. Consequently, a lenient view can be taken and the sentence imposed upon the present appellant is reduced to the period already undergone by him. However, the amount of fine is enhanced from Rs.2000 to Rs.30,000/- which shall be deposited by the present 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 rigorous imprisonment for a period of two months, as observed by the learned Trial Court.

In view of the above discussion, the present appeal is partly allowed and the impugned judgment of conviction dated 02.06.2005 passed by the learned Judge Special Court, Jhajjar is upheld, whereas the period of sentence is reduced to the period already undergone by him and the amount of fine is enhanced from Rs.2000/ to Rs.30,000/-, as mentioned above.

With these directions, the appeal stands disposed off.

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

Case property, if any, be dealt with, and destroyed after the expiry of period of limitation for filing the appeal, in accordance with law.

The Trial Court record be sent back.

18.04.2023
Hitesh

(N.S.SHEKHAWAT)
JUDGE

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