

**216/2 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Reserved on:19.01.2023

Date of Pronouncement: 23.01.2023

(i)CRA-S-2639-SB-2010(O&M)

Gurlal Singh ...Appellant

VS.

State of Punjab ...Respondent

(ii) CRA-S-370-SB-2011(O&M)

Darshan Singh ...Appellant

VS.

State of Punjab ...Respondent

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

Present : Mr. Naresh Kaushik, Advocate
for the appellant in CRA-S-2639-SB-2010

Mr. Dhirinder Chopra, Advocate
for the appellant in CRA-S-370-SB-2011.

Mr. M.S.Bajwa, Deputy Advocate General, Punjab.

N.S.Shekhawat J.

This judgment shall dispose of two criminal appeals i.e. CRA-S-2639-SB-2010 titled as ‘Gurlal Singh Vs. State of Punjab’ and CRA-S-370-SB-2011, titled as ‘Darshan Singh Vs. State of Punjab’, which had been filed against the judgment of conviction dated 09.06.2010 and order of sentence dated 10.06.2010, passed by learned Special Court, Gurdaspur, whereby the

appellants were convicted under Sections 21 of the Narcotics Drugs and Psychotropic Substances Act (for short 'the NDPS Act') and were sentenced to undergo rigorous imprisonment for 10 years and to pay a fine of Rs.1 lac alongwith default stipulation.

When the cases were taken up for hearing, learned counsel for the appellant in CRA-S-370-SB-2011 titled as 'Darshan Singh Vs. State of Punjab' submitted that Darshan Singh, appellant had expired. Learned State counsel had also verified the said fact and submitted that Darshan Singh had expired on 13.03.2016. However, keeping in view the law laid down by the Hon'ble Supreme Court in the matter of **Criminal Appeal No.77 of 2020** titled as '**Ramesan (dead) through LR Girija A. Vs. State of Kerela**', the appeal would not abate on the death of the appellant/accused as a fine of Rs.1 lac was imposed by the trial Court on Darshan Singh, apart from imposing the sentence of 10 years and consequently, this Court has decided to proceed to consider the said appeal as well on merits. The said appeal is required to be heard against the sentence of fine, despite the death of the appellant/accused.

The story of the prosecution in brief is that SI Sukhdev Singh, SI Amrik Singh and SI Swinder Singh were present alongwith other police officials on 16.06.2008 in the area of Adda Dostpur in connection with checking of vehicles and bad elements in the area, a secret information was received by them to the effect that Gurlal Singh @ Lalli S/o Gurdial Singh, resident of village Hoshiar Nagar, Amritsar and Darshan Singh S/o Diwan Singh, resident of Chaura Kalan, Police Station Kalanaur were standing near BEHAK of Gurjit Singh S/o Diwan Singh on a motorcycle No.PB-02-AX-1363, make Hero

Honda Splendor and were carrying some intoxicating material in a black colour bag. If a raid was conducted, they could be apprehended at the spot with the contraband. On getting the information, DSP Jagdeep Singh, City Gurdaspur was informed in this regard on the wireless message and Sukhdev Singh SI/SHO alongwith other police officials reached the place disclosed by the informer. Two persons were standing near the motorcycle No.PB-02-AX-1363 and on seeing the police party, both of them tried to escape on the said motorcycle. Public persons Balwinder Singh S/o Jaswant Singh and Gurjit Singh S/o Diwan Singh, residents of Village Chaura Kalan, were also standing at some distance from them. Then Sukhdev Singh SI/SHO along with other police officials apprehended them with the help of Balwinder Singh, Gurjit Singh and other persons. They suffered minor injuries also due to the falling from the motorcycle. On enquiry, the person, who was driving the motorcycle, disclosed his name Gurlal Singh @ Lalli S/o Gurdial Singh, resident of village Hoshiar Nagar, Amritsar and the person, who was sitting on the pillion seat, disclosed his name to be Darshan Singh, S/o Diwan Singh, resident of Chaura Kalan, Police Station Kalanaur. In the presence of Balwinder Singh and Gurjit Singh, SI/SHO Sukhdev Singh disclosed his identity to both the accused and informed them that there was a suspicion that both of them were carrying some intoxicating material / contraband. Further, they could get their bag searched either before him or a Magistrate or a Gazetted Officer as it was their legal right. Both the accused expressed their desire to get their search conducted before some gazetted officer and a memo was prepared in this regard, which was thumb marked by the accused, Gurjit Singh and was attested by the official

witnesses. The dissent memo of accused Gurlal Singh was also prepared, which was thumb marked by the accused, Gurjit Singh and was attested by the witnesses. Jagdeep Singh, DSP City, Gurdaspur also reached at the spot and informed the accused that he was a gazetted officer of Punjab Police and was posted as DSP City Gurdaspur. He also stated that he suspected some intoxicating material / contraband in the black bag, which was carried by Gurlal Singh, accused and both of them to get their search conducted from him or Magistrate or any other gazetted Officer as it was their legal right. Both the accused reposed their confidence in the DSP and the consent memo Ex.PC of Gurlal Singh and consent memo Ex.PD of Darshan Singh were prepared by the DSP, which were thumb marked by the accused and were attested by him and other public witnesses. On the direction of the DSP, the search was conducted of the black bag and eight packets containing heroin were recovered from the bag. From the eight recovered packets of heroin, two samples of 10 grams each were separated as samples from the packets and the remaining packets were weighed, which came to be 980 grams in each packet. The samples were put in small plastic container and the remaining 980 grams were also put into separate plastic containers. 16 samples and 08 packets were prepared with the help of piece of cloth and all parcels were sealed with his seal impression 'SS' and seal impression of DSP 'JS'. The seal impressions were affixed on all 24 parcels as per law. The investigating officer handed over his seal after use to SI Amrik Singh and DSP kept the seal with himself. All the parcels and the case property were taken into police possession vide recovery memo, which was duly thumb marked and sealed. Even the motorcycle was taken into possession by the

police, by preparing a separate memo. After the arrest, Darshan Singh, accused suffered a disclosure statement before SI/SHO Sukhdev Singh that he had five packets of heroin weighing 1 kg each and had kept those concealed near his sugarcane fields and near a grave yard in the plastic sacks, which he could get recovered. Even a memo was prepared in this regard, which was thumb marked by Darshan Singh and was attested by the police officials. Darshan Singh led the police party at the disclosed place and got recovered five packets of heroin from a plastic sack. Two samples of 10 grams each were separated from samples of all the five packets of heroin and were kept in small plastic containers and the remaining weighed to be 980 grams each. 15 separate parcels were prepared and sealed with the seal impression 'SS' and the seal impression of 'JS' of the DSP. All the parcels were taken into possession vide the recovery memo, which was thumb marked by the accused and attested by the witnesses. SI/SHO Sukhdev Singh handed over his seal to SI Amrik Singh and conducted the initial investigation. Even he sent rukka to the police station and on the basis of same, the formal FIR was recorded by ASI Darshan Lal. Both the accused were arrested formally. Even their family members were informed telephonically. On return to the police Station, SI/SHO Sukhdev Singh prepared the inventory reports of Gurlal Singh and Darshan Singh, both appellants/accused and had taken the samples and the case property with seals intact in double lock.

On 17.06.2008, he took out samples and case property with seals intact 'SS' and 'JS' from the double lock and produced before the Magistrate along with both the accused. Learned Magistrate had also withdrawn 13

samples from 13 packets which were produced before the Court separately and after seeing the case property, the learned Magistrate passed the orders formally and also affixed his seal impression of the Court. On return to the police station, SI/SHO Sukhdev Singh deposited all the samples and the case property again in double lock. On 22.06.2008, Gurlal Singh again suffered a disclosure statement and disclosed that he and one Kala, Lambardar had kept concealed one packet heroin along with 30 bore mouser taken from some Pakistani person and handed over the same to Gurnam Singh @ Gama. The memo was signed by the accused and was attested by the witnesses. On 18.06.2008, again accused Gurlal Singh suffered a disclosure statement, but no recovery was effected in pursuance of the same. On 20.06.2008, he took out 13 samples from the double lock bearing seal impressions of 'SS' and 'JS' and handed over the same to C. Palwinder Singh for depositing the seals and parcels in the office of Chemical Examiner, Amritsar. He first procured the docket from the office of SSP, Gurdaspur and deposited in the office of Chemical Examiner, Amritsar on 20.06.2008. Later on, SI Parsan Singh deposited the samples and case property in the Judicial Malkhana vide order dated 17.06.2008. After the necessary investigation was completed, the final report under Section 173 Cr.P.C. was presented in the Competent Court.

After finding *prima facie* case against both the accused, the learned trial Court charge-sheeted both the appellants/accused under Section 21 of the NDPS Act, to which they pleaded not guilty and claimed trial.

In order to prove the case against the appellants in both the appeals, the prosecution examined PW-1 SI Amrik Singh, who supported the

case of prosecution in totality. He also supported the allegations as levelled in the FIR. However, in cross-examination, he stated that they had reached at the place of recovery at about 1.45 p.m. SHO received the secret information at Adda Dosatpur at 1.30 p.m. and the place of recovery was 4 kilometers away from the place, where secret information was received. He admitted that the SHO did not send any intimation to the superior officer regarding the secret information from Adda Dosatpur. DSP Jasdeep Singh also reached at the spot at about 2.15 p.m. The secret informer met him at about 1.30 pm and he left the spot immediately after giving them the secret information at Adda Dosatpur. He did not remember as to whether any description of the accused was shared with him by the secret informer. However, the accused was arrested at 1.45 p.m. The prosecution examined PW-2, SI Parsan Singh, to whom SI/SHO Sukhdev Singh handed over total 26 parcels for depositing the same in the Judicial Malkhana, Gurdaspur. On return in the police station, he handed over the receipt for depositing the samples and the case property with Judicial Malkhana. The prosecution examined PW-3 C. Palwinder Singh; who stated that he procured the docket from the office of SSP, Gurdaspur and on 20.06.2008, he deposited 13 sample parcels in the office of Chemical Examiner, Amritsar.

On return to the police station, he handed over the receipt to SI/SHO Sukhdev Singh. In his cross examination, he admitted that he did not remember the name to whom he handed over the parcels. He had not seen the case property on that day in the Court. PW-4 SI/SHO Sukhdev Singh, who was part of police raiding team, also supported the case of the prosecution in totality and narrated the facts as stated in the FIR. However, in cross-examination, he

stated that he received the secret information at about 1.30 p.m. at Adda Dosatpur, which was situated at a distance of 2 kilometers from Chaura Kalan. After receipt of the secret information, they did not join any independent witness. He did not give any writing to the DSP or SSP on receipt of the secret information. However, he sent a wireless message to reach at the spot from the place, where he had received secret information. He volunteered that he could inform the superiors through telephone or wireless. The prosecution examined PW-5 DSP Jasdeep Singh, who had reached at the spot and had signed various memos and had witnessed the search and seizure. Surinder Kumar Bhatia, Reader, in the Court of learned Additional District Judge, Gurdaspur was examined as PW-6. He stated that on 17.06.2008, both the accused were produced in the Court along with the case property and the learned Judge had passed the order Ex.PW6/A after seeing the case property and he identified the signatures of the judicial officer on Ex.PW4/G, Ex.PW4/H and Ex.PW6/A. The prosecution examined PW-7 Harwinder Singh, Clerk, DTO Office, Amritsar, who brought the original record of RC of motorcycle No.PB-02-AX-1363, which was in the name of Lakhwinder Singh S/o Sohan Singh, resident of Dilbagh Nagar, Amritsar. Vide statement dated 12.05.2010, learned Public Prosecutor had given up Gurjit Singh and Balwinder Singh, both witnesses and tendered into evidence reports of the Chemical Examiner Ex.PY and Ex.PZ and closed the prosecution evidence.

After closure of the prosecution evidence, the statement of Gurlal Singh, appellant/accused was recorded under Section 313 Cr.P.C. and he pleaded his false implication and stated that no recovery was effected from him

and the police had planted a false case against him. Similarly, Darshan Singh also stated that he had been falsely implicated in the present case and no recovery was effected from him.

In defence evidence, HC Ram Lal was examined as DW-1 and he placed on record the daily diary register pertaining to 19.06.2008 and stated that there was no entry regarding departure of C. Palwinder Singh from the police station to anywhere on the said day. Pawan Kumar, Ahlmad was examined as DW-2. He stated that Kulwant Singh Vs. State, an appeal is pending in the Court of learned Additional Sessions Judge. In the summoned file, Gurjit Singh S/o Diwan Singh had appeared as a prosecution witness i.e. PW-1 against accused Kuldeep Singh, Darshan Singh (appellant), Harjinder Singh, Salwinder Singh, Jagir Chand, Hansa Singh and Balwant Singh. Constable Surti Lal appeared as DW-3, who was posted as a driver on Bolero jeep bearing registration No.PB-06-8839 and had brought the log book of the said vehicle.

I have heard learned counsel for the parties and have marshalled the evidence with their assistance.

Learned counsel for the appellants submitted that there was non-compliance of the provisions of Section 42 of the Act, which had caused prejudice to the accused and the entire prosecution case was rendered doubtful. Learned counsel further submitted that even as per the case of the prosecution, the recovery was allegedly made from the bag kept by the accused on their private vehicle i.e. motorcycle bearing registration No.PB-02-AX-1363 and some of the recovery was made from the place disclosed by Darshan Singh. Thus, the police was under a legal obligation to record the secret information in

writing and to communicate the same to their superior officers without any undue delay and non-compliance of the mandatory provision of Section 42 of the Act is impermissible in law.

Learned State counsel has opposed the said submission and submitted that in the instant case, the provisions of Section 42 will not be applicable as the recovery was not effected either from a building or from an enclosed place or from a vehicle parked in the enclosed place and in such a situation, the provisions of Section 43 of the Act would be applicable.

Section 42 and Section 43 of the NDPS Act have been reproduced below:-

“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 authorization 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."

"43. Power of seizure and arrest in public place.-*Any officer of any of the departments mentioned in section 42 may-*

(a) seize in any public place or in transit, any narcotic drug or psychotropic substance or controlled substance in respect of which he has reason to believe an offence punishable under this Act has been committed, and, along with such drug or substance, any animal or conveyance or article liable to confiscation under this Act, any document or other article which he has reason to believe may furnish evidence of the commission of an offence punishable under this Act 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;

(b) detain and search any person whom he has reason to believe to have committed an offence punishable under this Act, and if such person has any narcotic drug or psychotropic substance or controlled substance in his possession and such possession appears to him to be unlawful, arrest him and any other person in his company.

Explanation.- For the purposes of this section, the expression "public place" includes any public conveyance, hotel, shop, or other place intended for use by, or accessible to, the public"

While interpreting the difference between the applicability of Sections 42 and 43 of the Act, the Hon'ble Supreme Court in the matter of **"State of Rajasthan Vs. Jag Raj Singh @ Hansa", 2016 AIR (SCW) 3041; 2016(3) RCR (Criminal) 539** held 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 authorization 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."

Similarly in another judgment titled as ***“Boota Singh and others Vs. State of Haryana”***; ***2021(2) RCR (Criminal) 892***, the Hon’ble Supreme Court laid down that total non-compliance of Section 42 is impermissible and held 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."

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. P14 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."

In the instant case also, it is admitted position that the vehicle and the place disclosed by Darshan Singh, accused, were not public conveyance / public place. The motorcycle may be parked in a public place, but the registration certificate did not indicate it to be a public transport vehicle. The explanation appended to Section 43 of the Act shows that a private vehicle would not come within the expression 'Public Place' as explained in Section 43 of the Act. A cumulative reading of the provisions of Sections 42 and 43 of the Act would clearly establish that in the facts of the instant case, the relevant provision would not be Section 43 of the NDPS Act but the case would squarely fall under Section 42 of the Act. Even PW-1 SI, Amrik Singh, who was part of the raiding team, admitted that the secret information was received at about 1.30 p.m. at Adda Dosatpur, however, he admitted that SHO did not send any intimation to the Superior officers regarding the secret information from Adda Dosatpur. The secret informer met them at 1.30 p.m. and left the spot immediately after giving them secret information. Even PW-4 SI/SHO Sukhdev Singh, who was heading the raiding team, deposed on similar lines and admitted that the secret information was not even reduced into writing nor any writing was sent to the DSP or SSP on receipt of the secret information. He simply stated that he sent a wireless message to the DSP to reach at the spot on getting the secret information. However, this can hardly be termed as a compliance of the mandatory provisions of Section 42 of the Act. The evidence led by the prosecution clearly suggests that no efforts were made by the police officials to

strictly comply with the provisions of Section 42 of the Act, which is not permissible in law. This Court as well as the Hon'ble Supreme Court have held in the various judgments that delayed compliance of Section 42 with a valid explanation for delay is permissible, however, the total non-compliance of the said mandatory provision cannot be overlooked and in such a situation, it can be safely concluded that serious prejudice had been caused to the appellants and the benefit must be extended to them. Thus, it is established that there was a breach of mandatory provisions of Section 42 of the Act and the recovery of the alleged contraband was vitiated.

Further, as per story of the prosecution, the Investigating Officer had associated Balwinder Singh and Gurjit Singh as two independent persons during the search and seizure. During the course of trial, vide statement dated 12.05.2010, the learned Public Prosecutor had given up the said witnesses Gurjit Singh and Balwinder Singh without any reason. Still further, the accused examined DW-2 Pawan Kumar, Ahlmad of the Court of learned Additional Sessions Judge, who brought the summoned file in appeal and deposed that Gurjit Singh (independent witness) had appeared as a prosecution witness i.e. PW-1 against Darshan Singh (accused) and others. Thus, it is apparent that a person, who was already inimical towards the accused, was associated as an independent person during the search and this casts a cloud of suspicion on the entire prosecution case.

Apart from that, the learned counsel for the appellants has also referred to various discrepancies appearing in the statements of various prosecution witnesses. However, such variations / contradictions are not so

material and in case under NDPS Act, these can be safely ignored. However, it is apparent from the prosecution evidence that the seals were not handed over to the private witnesses and this also raises serious question marks on the entire procedure followed by the raiding team, especially when one of the witness Gurjit Singh had appeared as a prosecution witness against Darshan Singh in a separate criminal trial. Moreover, there is breach of mandatory provision of Section 42 of the Act, causing serious prejudice to the case of the accused and also vitiates the proceedings and the benefit has to be extended to the present appellants.

In view of the above discussion, the appeals filed by the appellants are allowed and the impugned judgment of conviction dated 09.06.2010 and order of sentence dated 10.06.2010, passed by learned Special Court, Gurdaspur, are set aside. The bail bonds and surety bonds of the accused stand discharged. Gurlal Singh, accused may be released from custody, if in jail and not required in any other case.

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. The trial court record be sent back.

23.01.2023
Hemlata

(N.S.SHEKHAWAT)
JUDGE

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