

CRA-S No.2268 of 2022 (O&M)

2023:PHHC:163102

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

CRA-S No.2268 of 2022 (O&M)

Date of Reserve: 08.12.2023

Date of Decision: 14.12.2023

Surjit Ram @ Teetu

.....Appellant

Vs

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Ms. Dhamanpreet Kaur, Advocate (Legal Aid counsel)
for the appellant.

Mr. Gurlal Singh Dhillon, Asstt. A.G., Punjab.

HARKESH MANUJA, J.

[1]. By way of present appeal, challenge has been laid to the judgment of conviction and order of sentence dated 15.03.2022 passed by the Judge (Special Court) Shaheed Bhagat Singh Nagar in FIR no 17 dated 27.02.2019 under Sections 22 and 29 of Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter to be referred to as "NDPS Act") whereby the appellant was convicted under Section 22 of NDPS Act and sentenced to undergo rigorous imprisonment for the period already undergone i.e 1 month and 10 days alongwith payment of fine of Rs 1500/- and in default of payment of fine to further undergo rigorous imprisonment for a period of 10 days. The fine stands paid by the appellant.

[2]. Briefly stated, as alleged, on 27.02.2019 appellant and other co-accused were standing with polythene bags in their hands near Saroya Complex, Ratnana Road, Rahon, Distt. SBS Nagar. On basis of suspicion, Investigating

Officer posted at Rahon asked them to hand over the said polythene bags and thereafter informed the Deputy Superintendent of Police, SBS Nagar. Upon reaching the spot DSP disclosed his name and rank to both accused and also his intention to conduct search on the basis of suspicion. Further, DSP apprised them of their legal right to get their search conducted in presence of Magistrate but both accused reposed confidence in him and accordingly consent memos were prepared and were signed by both accused.

[3]. Upon search of said polythene bags 25 strips each containing 10 capsules of Tredol-50 and 07 strips each containing 10 tablets of Alprazolam tablets XL-PAM 0.5 mg were recovered from the bag of accused Surjit Ram @ Teetu which happened to be of non-commercial quantity and 28 strips each strip containing 10 tablets of Clovidol-100 SR were recovered from the bag of accused Harjinder Singh also amounting to non-commercial quantity. After completing necessary formalities accused were arrested. On the next day, accused were produced before Judicial Magistrate Ist Class, SBS Nagar and Form No.29 was prepared in the Court. The case property and sample parcels were also produced before the Court. Thereafter upon receipt of report of chemical examiner, challan was presented in the Court and charge-sheet was served upon accused, who pleaded not guilty and claimed trial.

[4]. After appreciating the material on record, the Trial Court held that since recovery was not carried out from the person of the accused, rather from the polythene bags, there was no requirement of search to be conducted in presence of Gazetted Officer or Magistrate but still the same was carried out in presence of DSP who happened to be a gazetted officer and thus, there was no violation of

Section 50 of NDPS Act. Resultantly, convicted and sentenced the appellant in the aforesaid manner vide decision dated 15.03.2022

[5]. I have heard learned counsel for the parties and gone through the paper-book with their able assistance.

[6]. In the present case, the Court below failed to appreciate the fact that personal search was indeed conducted as evident from the personal search memos of both the accused as Ex.PW-3/M(accused-appellant Surjit Ram @ Teeta) and Ex.PW-3/N(other co-accused Harjinder Singh), however, even though an option of search before any other Gazetted Officer or Magistrate was given to the accused by DSP but that was merely with regard to search of polythene bags and no option was given to accused when they were subsequently searched in person. Therefore, necessary mandate as laid down in Section 50 of NDPS Act was not fulfilled, which can even be derived from the decision of Hon'ble Supreme Court judgment in case of **Sanjeev and Anr. Vs State of Himachal Pradesh** reported as **2022(2) RCR(Cri) 341** wherein the Hon'ble Apex Court held that failure to give an option/choice to accused to be searched personally, in presence of Magistrate is against the mandatory requirement of Section 50 of NDPS Act. Relevant paragraph is reproduced as: -

“9. We have checked the original record to satisfy ourselves. Exhibits PW8/B, PW8/C, PW8/D and PW8/E, which are arrest memos, do not reflect that any option or choice was given to the accused before their personal search was undertaken. It is true that personal search did not result in recovery of any contraband material but non-compliance of requirement of affording an option, was one of the reasons weighed with the Trial Court in disbelieving the case of the prosecution.”

[7]. Further, Court below also failed to consider the fact that Form No.29 was not filled-up on the spot rather it was filled-up in the Court and this error committed by Investigating Agency creates doubt in the prosecution story and goes against the cannons of law as explained by this Court in **Gurjant Singh vs State of Punjab** reported as **2007(4) RCR(Cri) 226** where the accused was acquitted by giving him benefit of doubt as Form No.29 was not filled-up on the spot as it laid a dent in the prosecution's case. The relevant paragraph from the judgment passed in case of **Gurjant Singh's case** (supra) is reproduced hereunder: -

“Another admitted position is that Form No. 29 was neither prepared at the spot nor deposited with the Incharge of malkhana. The matter does not rest here. There is no evidence on record with regard to preparation of the seal impression chit as all the three prosecution witnesses are silent on this aspect. Form No. 29(Ex PK) no doubt reflects that one sample impression chit bearing inscription ‘BS and DS’ is pasted on it. there are signatures of Daljit Singh SHO but it does not say a word that he has put his seal impression on any sample chit after affixing his seal on case property. It is also not exhibited before the trial Court. At the same time, there is also no reference in the report with regard to the fact that all the 25 samples sent to the Chemical Examiner were tallied with the seal impression chit. Therefore, it creates doubt in mind of the Court as to when this sample chit was prepared. No doubt while filling up Form No. 29 which is prepared by SHO Daljit Si it is mentioned that 20 samples contained the sample seal impression ‘BS and DS’ but in my considered view, this would not be sufficient to say that the link evidence is proved. This is the reason that in Bhola Singhs case (supra), this Court has laid lot of stress on this aspect and made it practically incumbent upon the investigating agency to fill up the aforesaid Form No. 29 at the spot. In my view the case of the appellant is

squarely covered by the ratio of Bhola Singhs case (supra) as well as by the ratio of another judgment rendered in Baldev Singh’s case (supra).”

[8]. In view of the discussion made hereinabove, the prosecuting agency, having failed to establish the guilt of the appellant, beyond reasonable doubt, the present appeal is allowed and the appellant is acquitted of the charges leveled against him. Resultantly, the impugned judgment of conviction and order of sentence dated 15.03.2022 passed by the Judge (Special Court) Shaheed Bhagat Singh Nagar is hereby set aside.

[9]. All pending application(s), if any, shall stand disposed of.

December 14, 2023	(HARKESH MANUJA)
<i>Atik</i>	JUDGE
Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No