

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

CRM-A-82-2023 (O&M)

Date of Decision: 27.09.2024.

State of Punjab

....Appellant.

Versus

Gurjeet Singh @ Jeeta

...Respondent.

**CORAM: HON'BLE MRS. JUSTICE LISA GILL
HON'BLE MRS. JUSTICE SUKHVINDER KAUR**

.....

Argued by: Mr. H.S. Deol, Sr. DAG, Punjab.

Sukhvinder Kaur, J.

1. Appellant-State of Punjab has preferred the instant application under Section 378(3) Cr.P.C. seeking leave to appeal against judgment dated 12.03.2021, pertaining to FIR No.154 dated 01.12.2018, under Section 22/61/85 Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'the Act'), registered at Police Station Sirhind, passed by learned Judge, Special Court, Fatehgarh Sahib, vide which respondent/accused-Gurjeet Singh @ Jeeta has been acquitted.

2. Factual scenario, as per prosecution version, is that on 01.12.2018 ASI Satwinder Singh alongwith police party was present at main Bus Stand, G.T. Road, Sirhind in connection with routine checking of suspected persons. At about 6.20 P.M. a clean shaven person was seen coming on foot from the side of railway road, holding a black coloured polythene bag in the right hand. On seeing the police party he got perplexed

and tried to turn back, but was nabbed by ASI Satwinder Singh with the help of police party. On enquiry, he disclosed his name as Gurjeet Singh @ Jeeta son of Balvir Singh, resident of Village Katt, Police Station Behram, District Shaheed Bhagar Singh Nagar. ASI Satwinder Singh after disclosing his identity and expressing reasonable suspicion that he might be carrying some prohibited contraband in the polythene bag held by him in his hand, apprised him of his legal right to get his search conducted in the presence of a Gazetted Officer or a Magistrate and if he so desired, he could be taken to the said authority or such person could be called at the spot. The suspect opted to exercise the right to be searched by gazetted officer. After preparing the dissent memo Sukhjeet Singh Virk, DSP (D) Fatehgarh Sahib was called at the spot. DSP Sukhjeet Singh Virk apprised the suspect of his right to get his personal search conducted from any other Gazetted Officer or Magistrate, if he so desired, but he expressed his willingness to get his search conducted in the presence of DSP Sukhjeet Singh Virk. Consent memo was prepared and search of the suspect and polythene bag carried by him was conducted by ASI Satwinder Singh in presence of DSP Sukhjeet Singh Virk, which resulted in recovery of four card board boxes, which were numbered as 1,2,3 and 4. From box No.1 and 2, 25 injections labelled as Leegesic, each containing 2 ml fluid and 25 vials Avil were recovered. From box No.3 and 4, 17 injections labelled as Omgesic, each containing 2 ml fluid and 17 vials of Avil were recovered. All the boxes were collectively put in the same polythene bag and converted into a parcel which was sealed with seal bearing impression SS and SS. Sample of the seal was prepared at the spot. ASI Satwinder Singh handed over his seal to ASI Harpal Singh. The recovered contraband was taken in possession. Recovery

memo was prepared. Ruqa was sent through C.Gurdit Singh on the basis of which formal FIR was registered. Accused was arrested at the spot. On completion of all necessary formalities of arrest and recovery at the spot, including recording of statements of witnesses, the accused along with witnesses and case property were produced before ASI Jagroop Singh the officiating SHO, who verified the factum of recovery and affixed his counter seal bearing seal impression 'JS' on the case property and sample chit. Case property along with sample chit were then deposited with MHC. On 2.12.2018 the case property was again withdrawn from the police Malkhana for producing the same along with accused before Ilaqa Magistrate to comply with provisions of Section 52-A of the Act. The Magistrate took four injections of Leegesic and four injections of Avil vial from box no.1 and 2, four injections of Omgesic and two samples of Avil vial from box No.3 and 4. Due to holiday, ASI Satwinder Singh redeposited residue bulk and sample parcel with the MHC. On 3.12.2019 ASI Satwinder Singh took residue bulk parcel and one representative sample from MHC and deposited the same in judicial Malkhana. The samples of Leegesic injections, Omgesic injection and Avil vials were sent for chemical analysis, where average weight of liquid in each glass injection ampules labeled as Leegesic was found to be 2 ML which tested positive for containing Buprenorphine hydrochloride to the extent of 0.28 mg per ML, sample of each injection ampules labelled as Omgesic was found to be 2 ml which tested positive for containing Buprenorphine hydrochloride to the extent of 0.27 mg per ml and sample of Avil vial injection, was found to be containing 10 ml of colourless liquid which tested positive for Pheniramine maleate. On receiving report of Chemical Examiner and on completion of

investigation, challan under Section 173 of the Cr. PC was presented in the court for trial.

3. Prima facie case under Section 22 of the Act was found to be made out against the accused. He was charge sheeted accordingly, to which the accused pleaded not guilty and claimed trial.

4. In order to prove its case, the prosecution has examined as many as 8 witnesses. Thereafter, statement of the accused under Section 313 Cr.P.C. was recorded in which, all incriminating evidence was put to him, which he denied and pleaded innocence and closed his defence evidence.

5. Learned trial Court concluded that prosecution failed to prove its case against the accused beyond reasonable doubt. It was held that there was violation of provisions of Section 50 of NDPS Act, besides link evidence being conspicuous by its absence, credibility of prosecution witnesses being doubtful as well as violation of mandatory provisions of NDPS Act. Aggrieved of the said decision, appellant-State has filed the present application for leave to appeal against acquittal of accused.

6. We heard learned counsel for the appellant-State and have also perused the record.

7. Learned counsel for the State vehemently contended that learned trial Court has wrongly held that provisions of Section 50 of the Act were not complied with. In fact, Section 50 of the Act was not applicable as recovery in question was firstly a chance recovery and was effected from the polythene bag and not from person of the accused. He further contended that undue importance has been given by learned trial Court to minor discrepancies and contradictions in the statements of prosecution witnesses, which were bound to occur due to lapse of time and that these discrepancies

do not go to the root of the prosecution case. He argued that it has also been wrongly observed by learned trial Court that there was tampering in the relevant entry of register No.19 and it has not been appreciated that PW5 MHC Rajinder Singh explained about the said correction in his cross-examination. Mere correction in the entry of register No.19 does not affect the prosecution version and that evidence is to be read as a whole. Affidavit Ex.PW3/A is a valid affidavit and it bore the number and seal impression of learned Judicial Magistrate Ist Class and it has been wrongly ignored. Learned counsel contended that no defence evidence has been produced by the accused to rebut presence of the police officials at the spot at the time of effecting alleged recovery from the accused. He urged that report of Chemical Examiner duly established that the samples tested positive for Buprenorphine hydrochloride and as accused was found in possession of commercial quantity of Buprenorphine hydrochloride, present appeal be allowed and the judgment of acquittal dated 12.03.2021 passed by learned trial Court be set aside and accused be convicted as charged and be punished in accordance with law.

8. In order to prove its case, prosecution has examined PW1-ASI Harpreet Singh, who is a formal witness and was posted as AC-III in the office of SSP Fatehgarh Sahib at the relevant time. He deposed that on 03.12.2018, Ct- Jaspreet Singh brought one parcel for depositing the same in the office of FSL, which was produced before DSP(1) Sukhjeet Singh Virk, who put the said sample parcel into another parcel and put his seal bearing impression 'SS' and affixed UID number and thereafter handed over the same to Ct-Jaspreet Singh to deposit the same with the office of FSL. He has deposed that throughout the process said sample parcel remained in

intact condition.

PW2-DSP-Sukhjeet Singh Virk, is a material witness of the prosecution in whose presence alleged recovery from the accused was effected, on 01.12.2018, when he was called at the spot by ASI Satwinder Singh. He deposed that after disclosing his identity to the accused he apprised him that he could get his search conducted along with his bag in the presence of some Gazetted Officer or Magistrate, who could be called at the spot and accused could be produced before them, however accused reposed confidence in him. After preparing consent memo, under his supervision, personal search of the accused as well as search of bag carried by the accused was conducted which led to recovery of total 84 Buprenorphine IP Omgesic injections and 84 vials of Avil out of the four boxes in the custody of the accused. He stated that recovered injections and vials were put in the same bag, which was sealed with his seal bearing impression 'SS' and seal of Investigating Officer bearing impression 'SS'. He handed over his seal to ASI Harpal Singh and all the contraband along with sample seal chit were taken into police possession. Ruqa was sent through Ct-Gurdit Singh.

PW2 further deposed that on 03.12.2018, when he was present in his office, ASI Harpreet Singh presented before him one sample parcel with seal bearing impression 'GS' along with Ct. Jaspreet Singh. He put the said parcel into another parcel and put his seal and affixed UID and then handed it over to Ct-Jaspreet Singh for depositing the same with FSL Mohali.

PW3-Ct-Jaspreet Singh is a formal witness, who tendered in evidence his duly sworn affidavit as Ex.PW3/A.

PW4-ASI Satwinder Singh, who is Investigating Officer of the present case deposed in detail regarding recovery of contraband from the accused on 01.12.2018 as also about various proceedings conducted by him during the process of investigation.

PW5-ASI Rajinder Singh, tendered in evidence his duly sworn affidavit as Ex.PW5/A and produced on record relevant entry of register No.19 in the Court.

PW6-ASI Harpal Singh, is the recovery witness who accompanied the police party headed by ASI Satwinder Singh, Investigating Officer. He deposed on similar lines as deposed by PW4-ASI Satwinder Singh, Investigating Officer.

PW7-ASI Jagroop Singh, was the officiating SHO at Police Station Sirhind on 01.12.2018, when the Investigating Officer produced before him accused, witnesses and case property i.e. one parcel containing four cardboard boxes. He deposed that there were total 84 injections of Buprenorphine and 84 vials of Avil in all the four boxes, which were sealed with seal bearing impression 'SS'/'SS', alongwith sample seal chits. He verified the facts from the witnesses and accused and after his satisfaction put his seal bearing impression 'JS' on the parcel and also attested the sample seal chits. Then he deposited the case property with MHC Rajinder Singh and accused was put behind bars.

He also deposed that on 16.01.2019 investigation of this case was entrusted to him and during investigation he recorded the statement of ASI Harpreet Singh and inspector Gurmeet Singh and statement of MHC Rajinder Singh.

PW8-DSP-Gurmeet Singh was posted as SHO at Police Station

Sirhind. He deposed that on 03.12.2018 MHC Rajinder Singh produced a parcel containing samples of two injections of Buprenorphine Leegisic, two injections of Buprenorphine Omegesic and four vials of Avil, which were duly sealed with impression 'VC' alongwith sample seal chit and form No.29. He put all these articles into a parcel and sealed the parcel with his seal bearing impression 'GS', affixed secret code No.21 and handed over the parcel to MHC Rajinder Singh for further proceedings.

9. After having heard learned counsel for the appellant-State and having perused the judgment as well as the other relevant record, we are of the considered opinion that the prosecution was indeed not able to prove its case against the accused beyond the shadow of reasonable doubt and that learned trial Court has correctly acquitted him of the charges against him.

10. It is a settled position that an order of acquittal is not to be interfered with lightly because presumption of innocence of the accused is further strengthened by acquittal. Interference is called for only under compelling circumstances, where impugned findings are perverse, unreasonable and convincing material on record is ignored unjustifiably by the trial Court. Reference in this regard can be made to judgments of Hon'ble the Supreme Court in 'Mahamadkhan Nathekhan vs. State of Gujarat' 2014 (14) SCC 589 and Mallappa and others Vs. State of Karnataka, 2024 AIR (SC) 1252. NDPS Act provides for very stringent punishment in case the accused is found to have committed an offence under the same, several safeguards have been provided under the Act, compliance of which is mandatory. In the light of above, it is to be examined whether learned trial Court correctly concluded that prosecution could not prove conscious possession of accused regarding the contraband

in question.

11. PW6-ASI Harpal Singh, stated in his cross-examination that they reached at the place of recovery at around 6.00 PM. Before that they had conducted search of around 7-8 persons as they apprehended that those 7-8 persons might be carrying some contraband or intoxicant, yet no offer under Section 50 of the Act was made to those 7-8 persons. Then he stated that an offer under Section 50 of the Act is required to be given only to those suspects against whom reasonable suspicion is there that they might be carrying some narcotic/ contraband and in this case as the contraband stood recovered that is why accused was given an offer under Section 50 of the Act. So, from his testimony, this fact clearly emerges, that preparing of consent memo Ex.P1 was just a paper formality.

12. PW2-DSP Sukhjit Singh Virk stated that the investigating officer prepared the consent memo after sending ruqa carrier to the police station and before he returned to the spot. He further stated that he had attested the personal search memo and arrest memo of the accused, but when his attention was drawn towards these documents, both these documents were not bearing his signatures/attestation. He again said that he had not attested the personal search memo but only attested the arrest memo and again said that he did not remember whether he attested the arrest memo or not. This clearly casts a doubt on his presence on the spot at the time of alleged recovery.

13. It is further to be noted that PW2-DSP Sukhjit Singh Virk admitted during his cross-examination that he had not recorded his visit in the log book of his official Bolero Jeep and did not hand over the same as a corroborative piece of evidence to the Investigating Officer to prove that he

had actually visited the spot on 01.12.2018 on the call of ASI Satwinder Singh. He could not tell as to which specific documents were prepared during the interregnum when the ruqa carrier left the spot for the police station till his return to the spot. Firstly he stated that during the interregnum investigating officer prepared the consent memo. When he realized his mistake, he changed his version and stated that the consent memo was prepared before sending the ruqa carrier. He again changed his stand by saying that immediately after the ruqa carrier left the spot, he too left the spot. As already observed his statement that he had attested the personal search memo and arrest memo of the accused is not borne out from the record, as these documents do not bear his signatures/ attestation. It creates a doubt regarding the prosecution version of effecting of alleged recovery of contraband from the accused under supervision of this witness at the spot.

14. It is to be noted that PW6-ASI Harpal Singh could not tell the time when DSP arrived at the spot and for how long he stayed at the spot. He could not tell the time of preparation of various documents at the spot. He also stated that DSP had attested personal search memo and arrest memo which as already observed are not bearing attestation of DSP. He could not tell the particulars of seal of the Investigating Officer even though as per the Investigating Officer, seal after use was handed over to him.

15. Investigating Officer PW4-Satwinder Singh could not tell from where DSP had arrived. He further stated that typing work was done by C.Parampreet Singh. Printer and laptop were belonging to him. He further stated that electricity for operating printer was obtained from the battery of vehicle with the help of special device which was attached with the battery of the Car and a separate plug was installed in the dash board of their

government vehicle. He further stated that printer was kept on the bonnet of the Car, Laptop was kept inside the Car and only command was given from inside the car for printing the documents. Printer was not having WIFI connection or of Blue-tooth connection. Learned trial Court has rightly observed that he was unable to point out existence of any such apparatus at the spot with the help of which a printer can be operated with battery of a car engine.

16. PW4 further stated that he tried to join independent witnesses at the spot but none agreed to join the police proceedings. No action was taken by him against those persons who refused to join the proceedings. He also did not record the statements of any of such persons regarding their unwillingness to join as independent witness. PW4 admitted that he did not verify genuineness of alleged batch or lot from the manufacturing company and also did not verify the source of alleged contraband.

17. Thus testimony of alleged recovery witnesses do not inspire confidence, rather their presence at the same place at the same time, at the time of alleged recovery from the accused in the manner as alleged is doubtful. It is to be noted at this juncture that Hon'ble the Supreme Court in the case of **Ranjan Kumar Chadha Vs. State of Haryana, 2023 LiveLaw (SC) 856** while discussing its earlier judgments including **State of Himachal Pradesh Versus Pawan Kumar, Latest HLJ 2004 (SC) 1247,** held that the term 'person' under Section 50 of NDPS Act would mean a natural person or living unit and not a bag or briefcase. However, in the instant case, this fact by itself is not very material or relevant because the evidence on record when considered as a whole reveals material chinks which demolish its case. Presence of official witnesses in question at the

spot at the time of alleged recovery is itself doubtful as discussed in foregoing paras. Therefore even though learned trial Court has delineated in great detail about violation of Section 50 of NDPS Act, in this matter of chance recovery, the same is of no avail to the appellant, because the ultimate conclusion of inability of prosecution to prove its case beyond reasonable doubt has been correctly arrived at by learned trial Court when the matter is examined in its entirety.

18. It is to be noted that link evidence is also missing in the present case. ASI Rajinder Singh, MHC has been examined by the prosecution as PW5 with whom ASI Jagroop Singh deposited the entire case property, sealed with seal SS/SS/JS alongwith sample seal and form No.29 and currency note of denomination of Rs.50, on 01.12.2018, regarding which he made entry in his register No.19. Then on 02.12.2018 the aforesaid case property was handed over to SI Satwinder Singh for producing the same before the Ilaqa Magistrate. On 2.12.2018 entire case property alongwith the samples were produced in the court of Ilaqa Magistrate, form No.29 and sample seal was deposited into the Malkhana. On 3.12.2018 the residue bulk property and one sample was handed over to SI Satwinder Singh for being deposited into Judicial Malkhana while one sample, form No.29 and sample seal were retained in the police Malkhana. On 3.12.2018 the sample, form No.29 and sample seal was presented before SHO Gurmeet Singh for affixation of unique code. On 3.12.2018 the sample alongwith form No.29 and sample seal was handed over to C.Jaspreet Singh for transmission of the same to FSL.

19. PW5-ASI Rajinder Singh was asked to produce register No.19, photocopy of which was tendered by him in his examination in chief as

Ex.PW5/B. He admitted that there was some cutting with blue pen on the document Ex.PW5/B, which was otherwise a photostat copy. PW5 in his cross-examination conducted on 08.02.2021 conceded that in column No. 4 of original register No. 19 (brought by him in Court) corresponding to serial No. 914, where note was given regarding the road number and date, road number was originally written as 282 where upon an alteration had been made after using white fluid and the road number had been written as 182. He also admitted that this correction had been made in between the last date of hearing i.e 19.01.2021 when his examination in chief was recorded, and the day when he appeared for his cross examination. He voluntarily stated that correction in register No.19 with respect to the road number was made by him on 3.12.2018 itself and he had not mentioned this fact in his affidavit Ex.PW5/A. He stated that the document Ex.PW5/B was compared by him with the original register No. 19 entry and attested by him on 19.01.2021. Thus, tampering by the police officials in column No.4 of register No.19 corresponding to serial No.914 with respect to the case property in question cannot be ruled out. The tampering suggested that earlier the road number was written as 282 which was covered with white fluid and thereafter road No.182 was over written. No plausible explanation thereof is available on record. Testimony of ASI Rajinder Singh is thus not worthy of credence. There is lack of proper link evidence to connect the accused with commission of offence and recovery from conscious possession of accused as alleged is not proved beyond reasonable doubt.

20. Affidavit Ex.PW3/A was tendered in evidence by PW3-C.Jaspreet Singh in his examination in chief. It has been correctly observed by learned trial Court that this affidavit is bearing no attestation, though

there is the stamp of the Judicial Magistrate Ist Class and date is written in hand, but it is not bearing signature of Judicial Magistrate. As only this document has been tendered into evidence by C.Jaspreet Singh, so a crucial link in the chain of evidence is missing.

21. Therefore, keeping in view the material discrepancies as above prosecution was indeed unable to prove its case against the accused beyond reasonable doubt. Recovery of the contraband in the manner and mode as alleged by prosecution is not proved on the basis of evidence on record beyond the pale of reasonable doubt. The accused has been rightly acquitted by giving him the benefit of doubt.

22. No other argument was addressed.

23. In view of the above, no case is made out for grant of leave to appeal against acquittal of Gurjeet Singh @ Jeeta. The application is devoid of any merit. Leave to appeal is accordingly declined.

(SUKHVINDER KAUR)
JUDGE

(LISA GILL)
JUDGE

27.09.2024

Komal

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