



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-S-3025-SB-2018 &
CRA-S-2974-SB-2018
Reserved on 10.07.2024
Date of decision: 23.07.2024

Amarjit Singh ...Appellant

Versus

State of Punjab ...Respondent

CRA-S-2974-SB-2018

Vikas Kumar @ Noori ...Appellant

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

Argued by: Mr. Naresh Jain, Advocate for the appellant
in CRA-S-3025-SB-2018.

Mr. Sumeet Puri, Advocate for the appellant
in CRA-S-2974-SB-2018 (Through VC).

Mr. J.S. Dhaliwal, AAG, Punjab.

KARAMJIT SINGH, J. (ORAL)

1. The above-mentioned two appeals have been directed against the judgment of conviction and order of sentence dated 20.07.2018 passed by Judge, Special Court, Patiala in case having FIR No.38 dated 09.05.2015 under Section 21/29 of NDPS Act, Police Station Lahori Gate, Patiala vide which the appellants were convicted and sentenced to RI for a period of 6 months each with fine of Rs.5,000/- each and in default of payment of fine



to further undergo RI for 1 month under Section 21(b) of NDPS Act while third accused Avtar Singh @ Tari was acquitted of all the charges.

2. The brief facts of case of the prosecution are that on 09.05.2015 ASI Gurmeet Singh who was heading a police party received secret information that Amarjit Singh (appellant in CRA-S-3025-SB-2018), after procuring smack from Vikas Kumar (appellant in CRA-S-2974-SB-2018), used to supply the said contraband to one Avtar Singh @ Tari who at that time was lodged in Central Jail Patiala. Further, on that day Amarjit Singh had gone to Dhiru Ki Majri to bring smack from Vikas Kumar. On the basis of the said secret information, police party headed by SI Gurmeet Singh laid naka near Sheranwala Gate, Patiala and at about 2 PM, Amarjit Singh who was seen coming from the side of Fountain Chowk, was apprehended on the basis of suspicion and was apprised of his legal right of personal search in presence of Magistrate or Gazetted officer. Amarjit Singh reposed confidence in ASI Gurmeet Singh and to this effect, separate consent memo Ex.PW-4/A was prepared. The same was signed by Amarjit Singh and attested by the Investigating Officer namely ASI Gurmeet Singh. On the personal search of Amarjit Singh 10 grams of smack was recovered from the right pocket of his trouser, out of which two samples of 2 grams each were separated and converted into two samples parcel. The bulk parcel having 6 grams of smack and said two sample parcels were sealed by the investigating officer with his seal bearing impression GS. Separate sample seal impression Ex.P-1 was also prepared and seal after use was handed over to ASI Tejinder Singh. The Investigating Officer also prepared Form No.M-29 and the aforesaid case property was taken into possession vide



memo Ex.PW-4/B. The investigating officer sent ruka Ex.PB to the police station and consequently, FIR Ex.PB/1 was registered in the present case. The rough site plan of place of recovery Ex.PW-4/C was prepared and on completion of the proceedings at the spot, report Ex.PW-4/M under Section 57 of NDPS Act was sent to Halka G.O. from the spot itself.

3. Thereafter, while on the way to police station, the police party headed by ASI Gurmeet Singh, apprehended Vikas Kumar on the pointing of Amarjit Singh and he was made aware of his legal right to be searched in presence of Magistrate or Gazetted officer but Vikas Kumar reposed confidence in ASI Gurmeet Singh and to this effect, consent memo Ex.PW-4/F was prepared which was signed by Vikas Kumar and attested by investigating officer. On personal search of Vikas Kumar, 10 grams of smack was recovered from right pocket of his trouser, out of which two samples of 2 grams each were separated. Aforesaid two sample parcels and bulk parcel having 6 grams of smack were sealed by investigating officer with his seal having impression GS. Separate sample seal impression Ex.P-2 was prepared along with Form No.M-29. The aforesaid articles recovered from Vikas Kumar were seized by the police vide separate memo Ex.PW-4/G which was attested by the investigating officer.

4. On return to the police station, the entire case property was produced before officiating SHO/SI Hakam Singh who after verifying the facts of the case appended his seal bearing impression HS on the entire case property and then the same was deposited in malkhana, while Amarjit Singh and Vikas Kumar were sent to police lock up. On the next day, the entire case property along with accused Amarjit Singh and Vikas Kumar was



produced before the area magistrate, who after checking the case property, appended endorsement 'seen' on the entire case property and also passed separate orders in this regard. Bulk case property along with one sample each was deposited in judicial malkhana while one sample each relating to recoveries effected from Amarjit Singh and Vikas Kumar respectively was sent to FSL for analysis, along with Form No.29-M. Third accused Avtar Singh @ Tari was formally arrested after taking permission from the Court concerned. On the receipt of reports of FSL, challan was presented against all the three accused namely Amarjit Singh, Vikas Kumar and Avtar Singh @ Tari.

5. On finding *prima facie* case, charges under Section 21 and 29 of NDPS Act were framed to which the accused persons pleaded not guilty and claimed trial.

6. In order to prove its case, prosecution examined, as many as 5 witnesses. PW-4 ASI Gurmeet Singh, Investigating Officer while supporting the case of prosecution deposed regarding recovery of contraband which was effected from conscious possession of Amarjit Singh and Vikas Kumar on 09.05.2015. He proved the concerned recovery memos Ex.PW-4/B and Ex.PW-4/G respectively and he also proved ruka Ex.PB and FIR Ex.PB/1 and other relevant documents. PW-5 ASI Tejinder Singh corroborated the statement of Investigating Officer being witness to the aforesaid recoveries. PW-2 SI Hakam Singh who on the day of recovery was working as a officiating SHO, deposed that on 09.05.2015 he received ruka Ex.PB on the basis of which FIR Ex.PB/1 was recorded by him. That on the same day, PW-4 ASI Gurmeet Singh produced accused Amarjit



Singh and Vikas Kumar along with entire case property bearing seal impression GS, before him and he inspected the same and then appended his seal HS on all the parcels and sample seal slips. PW-1 HC Sukhwinder Singh who was deputed to deposit the samples in the office of FSL Mohali tendered his affidavit Ex.PA. PW-3 HC Pavittar Singh who at the relevant time was working as a MHC and with whom the entire case property was deposit, tendered his affidavit Ex.PW-3/A to prove the link evidence. The reports of FSL Ex.PW-4/S and Ex.PW-4/T were also placed on record.

7. On completion of prosecution evidence, the accused were examined under Section 313 Cr.P.C. and they pleaded innocence and denied the entire incriminating evidence appearing against them. Accused Amarjit Singh examined DW-1 Ajay Kashyap, DW-2 Constable Balbir Singh and DW-3 Kulwant Singh Bajwa Ex. MC in order to establish the fact that on the day of his arrest Amarjit Singh was working in Punjab Police and was deputed as a gunman cum driver with Parkash Chand MLA Sangrur.

8. After hearing the counsel for the parties, the learned trial Court acquitted accused Avtar Singh @ Tari but convicted and sentenced appellants Amarjit Singh and Vikas Kumar as detailed in the first paragraph of this judgment. Being aggrieved, appellant Amarjit Singh has filed the present appeal while Vikas Kumar filed the connected appeal.

9. I have heard the counsel for the parties and gone through the record of the trial Court.

10. The counsel appearing on behalf of the appellants have argued that Amarjit Singh and Vikas Kumar are falsely implicated in the present case. It has been further submitted that at the relevant time Amarjit Singh



was working in Punjab Police. It has been further argued that there was clear violation of mandatory provisions of Section 50 NDPS Act, as the personal search of Amarjit Singh and Vikas Kumar was not conducted in presence of magistrate or gazetted officer. It has been further contended that prosecution cannot take benefit of alleged consent memos. It has been further contended that by preparing the aforesaid consent memos, it cannot be said that the requirement of Section 50 NDPS Act stood fully complied with. In this context, the counsel for the appellants have placed reliance on the judgment of Hon'ble Supreme Court in ***Arif Khan @ Agha Khan Vs. State of Uttarakhand 2018 (2) RCR Criminal 931.***

11. It has been further argued that in the present case, the recovery proceedings were vitiated as there was complete violation of mandatory provision of Section 52-A NDPS Act. That in the present case, no proceedings under Section 52-A NDPS Act were undertaken by the investigating officer for preparing an inventory and obtaining samples in presence of the area magistrate, as is apparent from orders Ex.PW-4/P and Ex.PW-4/Q. In support of his contention, the counsel for the appellants has referred to decision of Hon'ble Supreme Court in ***Mohammed Khalid and Another Vs. State of Telengana 2024 (2) RCR Criminal 102.***

12. It has been further contended that FIR number was noted at the top of the search and seizure memos, despite the fact that the same were prepared at an earlier point in time than the registration of FIR. That this fact further deepens the doubt regarding the prosecution story. In this context, reference has been made to the decision of Hon'ble Supreme Court in ***Kamaljit Singh @ Pappu Vs. State of Punjab 2020 (14) SCC 9.***



13. It has been further contended that the alleged recovery was effected on 09.05.2015 whereas the samples were sent for their analysis to the office of FSL on 19.05.2015 and this unexplained delay further weakens the prosecution case.

14. The counsel appearing on behalf of Amarjit Singh while referring to depositions of DW-1 to DW-3 submits that Amarjit Singh was employee of Punjab Police and was illegally detained in a police station on 06.05.2015 and later on falsely implicated in the present case.

15. It has been further argued that in the instant case, there is no independent corroboration to the evidence led by the prosecution and that in the light of aforesaid infirmities, the prosecution has miserably failed to prove its case against appellants Amarjit Singh and Vikas Kumar.

16. On the other hand, the State counsel while supporting the impugned judgment and order, has submitted that there is no illegality or perversity in the judgment of conviction passed by the learned trial Court. It has been further contended that it stands fully proved that recovery of 10 grams of smack was effected from Amarjit Singh after he consented for his personal search by PW-4 ASI Gurmeet Singh and in the similar manner, recovery of another 10 grams of smack was effected from possession of Vikas Kumar after he gave his consent to PW-4 ASI Gurmeet Singh to effect his personal search. It has been further submitted that the samples separated from aforesaid contraband were properly sealed and sent to FSL for their analysis and FSL gave its reports in favour of the prosecution, as is evident from Ex.PW-4/S and Ex.PW-4/T respectively.

17. I have considered the submissions made by counsel for the



parties.

18. As per prosecution version, in the present case, recoveries of contraband were effected from Amarjit Singh and Vikas Kumar on their personal search conducted by the investigating officer. Undoubtedly, mandatory provisions of Section 50 of NDPS Act are applicable to the present case. It is also apparent that before conducting personal search of Amarjit Singh and Vikas Kumar they were not produced before any Magistrate or Gazetted officer. It is the case of the prosecution that Amarjit Singh and Vikas Kumar gave their consent to ASI Gurmeet Singh to conduct their personal search vide memos Ex.PW-4/A and Ex.PW-4/F respectively and that is why there was no need to produce both the said accused before Magistrate or Gazetted officer before effecting their personal search. However, the aforesaid plea taken by the prosecution is not sustainable in the eyes of law laid down by Hon'ble Supreme Court in **Arif Khan @ Agha Khan's case** (supra) wherein Hon'ble Supreme Court held that the requirements of Section 50 NDPS Act are mandatory and must be strictly complied with and that it was imperative on the part of the police officer to apprise the person intended to be searched of his right under Section 50 of NDPS Act to be searched before a Gazetted officer or a Magistrate. In **Arif Khan @ Agha Khan's case** (supra), the Hon'ble Supreme Court, further observed that merely because the accused gave his consent in writing to be searched by the police officials (raiding party), this does not mean that the requirements of Section 50 stood fully complied. The Hon'ble Supreme Court further observed that a search and recovery made from the accused of the alleged contraband, in absence of Magistrate



or Gazetted officer, by the investigating officer, does not satisfy the mandatory requirements of Section 50 of NDPS Act. The Hon'ble Supreme Court while passing the said decision placed reliance on its earlier judgment in ***Vijaysinh Chandubah Jadeja Vs. State of Gujarat 2010 (4) RCR Criminal 911***. In the light of the aforesaid settled position of law, it is clear that the personal search of accused Amarjit Singh and Vikas Kumar was effected by PW-4 ASI Gurmeet Singh in breach of the mandatory provisions of Section 50 NDPS Act, as both the said accused were not produced before any Magistrate or Gazetted officer before conducting their personal search.

19. From the perusal of the record, it is clear that no sample was separated in presence of the magistrate, in compliance of the mandatory provision of Section 52-A NDPS Act. The Hon'ble Supreme Court in ***Union of India Vs. Mohan Lal (2016) 3 SCC 379*** while enumerating scope of Section 52-A of NDPS Act held that there is no provision in the NDPS Act that mandates taking of samples at the time of seizure. The Hon'ble Supreme Court further observed as follows:-

“Sub-section (3) of [Section 52- A](#) requires that the Magistrate shall as soon as may be allow the application. This implies that no sooner the seizure is effected and the contraband forwarded to the officer in charge of the Police Station or the officer empowered, the officer concerned is in law duty bound to approach the Magistrate for the purposes mentioned above including grant of permission to draw representative samples in his presence, which samples will then be enlisted and the correctness of the list of samples so drawn certified by the Magistrate. In other words, the process of drawing of samples has to be in the presence and under the supervision of the Magistrate and the entire exercise has to be certified by him to be correct.”



22. Recently, Hon'ble Supreme Court in **Simranjit Singh v. State of Punjab**, 2023 SCC Online SC 906, while placing reliance upon its earlier decision in **Mohan Lal's** case (supra) held that mandate of Section 52-A of the NDPS Act was not complied with and consequently, acquitted the accused while making the following observations :

*“10. Hence, the act of PW-7 of drawing samples from all the packets at the time seizure is not in conformity with the law laid down by this Court in the case of **Mohanlal**. This creates a serious doubt about the prosecution's case that substance recovered was a contraband.*

11.Hence, the case of the prosecution is not free from suspicion and the same has not been established beyond a reasonable doubt. Accordingly, we set aside the impugned judgments insofar as the present appellant is concerned and quash his conviction and sentence.”

23. It is the case of the prosecution that recovery of contraband was effected on 09.05.2015. From the perusal of link evidence coupled with reports of FSL Ex.PW-4/S and Ex.PW-4/T, it transpires that the samples were received in the office of FSL on 19.05.2014. Prosecution has failed to show as to what type of objections were raised by the officials of FSL when the samples were firstly sent to said laboratory on 13.05.2015 and were returned and the manner in which the said objections were later on removed by the investigating officer. As per instructions issued by Narcotic Control Bureau vide standing order No.1 dated 15.03.1988, such samples are required to be sent to the chemical examiner within 72 hours of their seizure. The Hon'ble Supreme Court in State of **Rajasthan Vs. Gurmel Singh 2005 (2) RCR (Criminal) 58** held that as there was unexplained delay of five days in sending the sample to the office of chemical examiner,



the possibility of tampering with the same until it reached the laboratory could not be ruled out.

24. In the instant case, both the seals after use remained with the police officials, who were posted in the same police station. Further, there is no independent corroboration to the depositions of prosecution witnesses all of whom were employees of Punjab Police.

25. In light of the fact that the recoveries in question were effected in clear violation of the mandatory provisions of NDPS Act, as are discussed above, this Court is of the view that the prosecution has failed to prove its case beyond shadow of doubt against both the appellants.

26. Consequently, the aforesaid appeals filed by appellants Amarjit Singh and Vikas Kumar are allowed. The judgment of conviction and order of sentence dated 20.07.2018 passed by the Judge, Special Court, Patiala are set aside. Appellants Amarjit Singh and Vikas Kumar @ Noori are acquitted of the charges framed against them. Their bail bonds and surety bonds stand discharged.

27. Pending miscellaneous application(s), if any, shall also stand disposed of. Record of the learned trial Court be sent back.

23.07.2024
Yogesh

(KARAMJIT SINGH)
JUDGE

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