

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

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2024:PHHC:053906
CRM-A No.348 of 2022
Date of decision: April 19th, 2024

State of Union Territory Chandigarh
.....Applicant

Versus

Deepika Khanna
.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Charanjit S. Bakshi, Additional Public Prosecutor,
U.T. Chandigarh
and Mr. Gagandeep Singh, Advocate
for the applicant.

MANJARI NEHRU KAUL, J.

The applicant is impugning the judgment dated 14.09.2021 passed by the learned Additional Sessions Judge-cum-Special Judge, Chandigarh, whereby respondent-accused has been acquitted of the charges framed against her in case FIR No.86 dated 12.03.2019 under Section 21 of The Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'the NDPS Act'), registered at Police Station Sector 31, Chandigarh.

2. As per the case of the prosecution, on 12.03.2019, at around 5:45 PM, a police patrol party noticed a woman (hereinafter referred to as 'accused') behaving suspiciously while walking on the road. On seeing the police, the accused attempted to discard a transparent polythene pouch, which she was holding in her hand. Upon suspicion that the accused may be carrying some stolen goods or illegal arms and ammunition or narcotic substances, the pouch which she was holding in her hand, was inspected by the police party and it was found containing a white substance, which was later identified as heroin. The accused was unable to produce any

licence for possessing the substance. Subsequently, the recovered substance on being weighed, came to 10 grams; the recovered contraband was sealed as per the procedure provided and thereafter, all the requisite formalities were carried out by the police. The case property along with the sample seals was sent to the Forensic Science Laboratory at Chandigarh. Challan along with the Forensic Science Laboratory report was presented before the learned Special Court leading to the framing of charges against the accused under Section 21 of the NDPS Act. During trial, the prosecution in support of its case, examined ten witnesses including the Investigating Officer ASI Lakha Singh and PW-3 SI Eram Rizvi, the police officer, who apprehended the accused. While getting her statement under Section 313 of the Cr.P.C., the accused claimed false implication but did not lead any evidence in support of her innocence.

3. Learned counsel for the applicant/State has vehemently submitted that the Special Court at Chandigarh erroneously acquitted the respondent of the charges framed against her under Section 21 of the NDPS Act. It has been argued that the accused was apprehended on suspicion and thereafter, recovery of 10 grams of heroin affected from her. All the procedural formalities outlined under the NDPS Act were followed. However, the learned Special Court recorded a finding of acquittal in favour of the accused only on the ground that there had been non-compliance of Section 50 of the NDPS Act. Learned counsel has asserted that since it was a case of chance recovery, mere non-compliance of Section 50 of the NDPS Act could not have enured to the benefit of the accused, more so when the recovery was affected from a pouch, which the accused was holding in her hands and which

would not qualify as a wearing apparel of the accused. Hence, compliance of Section 50 of the NDPS Act would not have been required in the instant case. It has still further been argued that no doubt, there was some delay in the dispatch of the case property to the CFSL, however, since it was received in an intact condition, it did not in any manner, prejudice the case of the prosecution.

4. I have heard learned counsel for the applicant and perused the relevant material on record.

5. As per the case of the prosecution, upon noticing the police party, the accused swiftly changed direction and started walking away briskly; she was intercepted by the police officials, who suspected that she may be carrying some stolen goods/illegal arms and ammunition or narcotic substance. The accused on being stopped by the police was found to be carrying a transparent polythene pouch in the fist of her right hand. On being tested with a drug detection kit, it was confirmed to be heroin, weighing 10 grams. No doubt, the recoveries were duly sealed and all the other procedures outlined in the NDPS Act were followed, however, PW-7 HC Fateh Singh categorically testified that the accused was holding the pouch containing heroin in the fist of her right hand, which fact was also corroborated by PW-3 S.I. Eram Rizvi. The testimony of PW-7 HC Fateh Singh, who admittedly was a part of the police patrol party cannot thus, be discarded. No doubt, PW-3 S.I. Eram Rizvi did not depose that they suspected the accused to be in possession of some narcotic substance, however, PW-7 HC Fateh Singh, confirmed the same. Notably, PW-3 S.I. Eram Rizvi though, as per her own deposition, called the Investigating Officer to the spot but she did not serve any notice under Section 50 of the NDPS

Act before carrying out the personal search of the accused and before inspecting the substance, which was in a transparent polythene pouch. This omission is crucial as the case property was found directly on the person of the accused, and not in any of her belongings. Moreover, suspicion of any narcotic possession by the police, mandated a notice under Section 50 of the NDPS Act to be served upon the accused. The recovery, although incidental, was affected through a personal search of the hands of the accused. Hence, adherence to Section 50 of the NDPS Act in the facts and circumstances of this case was essential. This Court, therefore, does not find any illegality in the impugned order.

6. The application stands dismissed.

April 19th, 2024
Puneet

(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/reasoned : Yes

Whether reportable : No