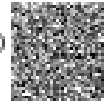


2024.PHHC:166370



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

CRM-A-1667-2019

Date of Decision- 05.08.2024

STATE OF PUNJAB

.....APPELLANT

VERSUS

GURJIT SINGH ALIAS SONU

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. J.S.Rattu, DAG, Punjab

None for the respondent.

SANDEEP MOUDGIL, J

1. This appeal has been filed by the State of Punjab against the judgment dated 02.03.2019 passed by the learned Judge, Special Court, Amritsar (for short – ‘trial Court’), whereby the accused – Gurjit Singh @ Sonu son of Gurmukh Singh, resident of village Nag Kalan, Police Station Majitha, District Amritsar, has been acquitted of the offence under Section 22 of the Narcotic Drugs and Substances Act, 1985 (for short – ‘Act’) in the case arising out of FIR No.25 dated 12.03.2015 registered at Police Station Majitha, Amritsar.

2. Facts of the case succinctly stated are that on 12.03.2015 at about 05:30 P.M., ASI Malkiat Singh alongwith HC Baldev Singh and

other police official were going from Police Station Majitha towards village Nangal Panwa, Nag Khurad, Ludhar etc. in connection with patrolling and in search of bad elements on their private vehicles. When they reached at bridge over minor canal (sua) of village Nangal Panwa, one youth was coming on the unmatled road by the side of minor canal, who on seeing the police party became perplexed and tried to turn back and threw a polythene envelop, which was being carried by him in his right hand, on the ground. ASI Malkiat Singh apprehended the said youth with the help of his afore-mentioned police officials and inquired about his antecedents whereupon he disclosed his name as Gurjit Singh alias Sonu, afore-mentioned. Before conducting his search, ASI Malkiat Singh tried to join some public witness in the Police party but none became ready to join a witness. Then ASI Malkiat Singh checked the said polythene envelop after getting the same lifted from the accused Gurjit Singh alias Sonu and on checking of the same, intoxicant power was recovered, out of which 10 grams intoxicant power was taken out as sample and it was converted into parcel after putting the same into a separate plastic container and on weighing the remaining, the same became 130 grams which was also converted into bulk parcel after putting the same into another separate plastic container. Both the parcels were sealed by ASI Malkiat Singh with his seal bearing impression MS and sample seal was prepared separately and one specimen seal was affixed on Form M-29. Both the parcels, sample seal, form M-29 were taken into possession by ASI Malkiat Singh by preparing a separate

recovery memo and seal after use was handed over to HC Baldev Raj and the said memo was attested by HC Baldev Raj and C. Rajwinder Singh as witnesses. Then ASI Malkiat Singh sent ruqa to the Police Station, through C. Satwinder Singh, for the registration of formal FIR on the basis of which FIR of this case was registered by ASI Kuldeep Singh. Then ASI Malkiat Singh conducted further investigation in the matter during which he formally arrested the accused in the present case and before affecting his arrest, his personal search was also conducted in accordance with the rules and during the personal search of accused nothing valuable was recovered and memo in this regard were prepared, which were attested by HC Baldev Singh and C. Rajwinder Singh as witnesses. ASI Malkiat Singh also prepared rough site plan of the place of recovery with correct marginal notes and also recorded statements of the witnesses at the spot under section 161 Cr.P.C. After presentation of challan, on receipt of the Chemical Examiner report, copy of challan and documents were supplied to the accused free of cost, as required under Section 207 Cr.P.C.

The learned trial Court, on denial by the accused to the charges against him in challan, after framing of charge against the accused for the commission of offence under Section 22 read with Section 8 of the Act, directed the prosecution to lead evidence and accordingly, prosecution on its behalf examined HC Baldev Singh, the recovery witness as PW-1, ASI Malkiat Singh, the Investigating Officer of the case

as PW-2, retired Sub Inspector Tirath Singh as PW, ASI Kabal Singh as PW-4, Inspector Arun Sharma as PW-5, HC Daljit Singh as PW6.

3. Learned Deputy Advocate General, Punjab, has vehemently argued that the learned trial Court has erred in acquitting the accused-respondent because all the prosecution witnesses, one after the other, have supported the prosecution case as such the guilt of the accused is completely proved on record. Moreover, it has come on record by virtue of the Chemical Examiner report that intoxicant power contained Alprazolam, therefore, the accused was found to be in possession of 140 grams intoxicant powder containing Alprazolam without having any licence to keep the same in his possession. Non-joining of any independent witness and compliance of Section 50 of the Act in this case is immaterial because it is a chance recovery. Since there is no material contradiction in the evidence of prosecution witnesses as such the accused has been erroneously acquitted and he deserves conviction for the charge against him. Therefore, the appeal may kindly be allowed.

4. Heard and meticulously perused the case file also.

5. This court while perusing the record in hand came across para 21 wherein there is specific and categoric mentioning of the cross-examination of PW2-Malkiat Singh, the investigating officer which is reproduced herein below:-

“....In cross-examination it has been admitted by Investigating Officer that no offer under Section 50 of the Act was given to the accused to be got searched before gazetted officer or Magistrate. In the present

case, the offer under section 50 of the Act was required to be given to the Investigating Officer to the accused that he can get him searched before gazetted officer or Magistrate but no compliance has been made which has caused prejudice to the accused.”

6. At this stage, it is apposite to mention section 50 of the Act which is reproduced herein below:-

50. Conditions under which search of persons shall be conducted.—

(1)When any officer duly authorised under section 42 is about to search any person under the provisions of section 41, section 42 or section 43, he shall, if such person so requires, take such person without unnecessary delay to the nearest Gazette Officer of any of the departments mentioned in section 42 or to the nearest Magistrate.

(2)If such requisition is made, the officer may detain the person until he can bring him before the Gazetted Officer or the Magistrate referred to in subsection (1).

(3)The Gazette Officer or the Magistrate before whom any such person is brought shall, if he sees no reasonable ground for search, forthwith discharge the person but otherwise shall direct that search be made.

(4)No female shall be searched by anyone excepting a female.

(5)When an officer duly authorised under section 42 has reason to believe that it is not possible to take the person to be searched to the nearest Gazetted Officer or Magistrate without the possibility of the person to

be searched parting with possession of any narcotic drug or psychotropic substance, or controlled substance or article or document, he may, instead of taking such person to the nearest Gazette Officer or Magistrate, proceed to search the person as provided under section 100 of the Code of Criminal Procedure, 1973 (2 of 1974).

(6)After a search is conducted under sub-section (5), the officer shall record the reasons for such belief which necessitated such search and within seventy-two hours send a copy thereof to his immediate official superior.”

7. Perusal of the above mentioned section coupled with the judgment of the Hon’ble Supreme Court, rendered in **“Arif Kman @ Agha Khan vs. State of Uttrakhand 2018 (2) R.C.R. (Criminal) 931**, makes it amply clear that it is mandatory to comply with section 50 of the Act wherein it has been categorically held that:

“23. Their Lordships have held in Vijaysinh Chandubha Jadeja (supra) that the requirements of Section 50 of the Act are mandatory and, therefore, the provisions of Section 50 must be strictly complied with. It is held that it is imperative on the part of the Police Officer to apprise the person intended to be searched of his right under Section 50 to be searched only before a Gazetted Officer or a Magistrate. It is held that it is equally mandatory on the part of the authorized officer to make the suspect aware of the existence of his right to be searched before a Gazetted Officer or a Magistrate, if so required by him and this requires a strict compliance. It is ruled that the suspect person

may or may not choose to exercise the right provided to him under Section 50 of the Act but so far as the officer is concerned, an obligation is cast upon him under Section 50 of the Act to apprise the suspect of his right to be searched before a Gazetted Officer or a Magistrate (See also Ashok Kumar Sharma Vs. State of Rajasthan, 2013 (2) SCC 67 and Narcotics Control Bureau Vs. Sukh Dev Raj Sodhi, 2011 (6) SCC 392).”

8. Since the learned State counsel could not controvert the fact that there has been an abuse of process of law by not complying with section 50 of the Act, therefore this court is not inclined to interfere with the findings of the lower court.

9. In view of the above factual matrix, the present appeal filed by the State of Punjab challenging the judgment dated 02.03.2019 passed by the learned Judge, Special Court, Amritsar, thereby acquitting the respondent of the charge against him, fails being devoid of any substance and merit.

10. Hence, the same is dismissed.

05.08.2024

Poonam Negi

**(SANDEEP MOUDGIL)
JUDGE**

*Whether speaking/reasoned
Whether reportable*

*Yes/No
Yes/No*