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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-31595-2019 in/and
CRM-A-2321-2019 (O&M)
Date of Decision: 03.05.2024

STATE OF PUNJAB

. . . . Appellant

Vs.

KARAN KUMAR ALIAS HAPPY

. . . . Respondent

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA
HON'BLE MRS. JUSTICE SUKHVINDER KAUR

Present: Mr. Brijesh, AAG, Punjab.

SANJEEV PRAKASH SHARMA, J.(Oral)

CRM-31595-2019

Application for condonation of delay of 17 days in filing the
appeal is allowed and accordingly the delay is condoned.

Main case

1. This is an appeal preferred against the judgment dated 14.05.2019 whereby the accused were acquitted on account of non-compliance of Section 50 of the NDPS Act, 1985 and non-joining of independent witnesses.
2. Learned State counsel submits that the provisions are not mandatory. Otherwise also, the material was found in conscious possession of the accused.
3. We have considered the submissions. The Constitution Bench of Hon'ble Supreme Court in *Mukesh Singh vs. State (Narcotic Branch of*

Delhi), 2021 (1) SCC (Cri) 356, has held that the provisions of Section 50 of the NDPS Act, 1985 are mandatory in character.

4. In view thereof, it is necessary that the Investigating Officer shall inform the person to be searched in the presence of a Gazetted Officer of any of the departments mentioned in Section 42 or to the nearest Magistrate and if such person so desires he shall take such person without unnecessary delay to the nearest Gazetted Officer as mentioned in sub-section 1 of Section 50. The Supreme Court has held as under:

“9.3.5 There are inbuilt safeguards provided under the NDPS Act itself, such as, Sections 50 and 52. Section 50 of the NDPS Act provides that when any officer duly authorized under section 42 is about to search any person under the provisions of section 41, 42 or 43, he shall inform the person to be searched in the presence of a Gazetted Officer of any of the departments mentioned in Section 42 or to the nearest Magistrate and if such person so desires, he shall take such person without unnecessary delay to the nearest Gazetted Officer as mentioned in sub-section 1 of Section 50. As per sub-section 5 of Section 50, 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 Gazetted Officer or Magistrate, proceed to search the person as provided under Section 100 of the Code of Criminal Procedure, 1973. Sub-section 6 of Section 50 provides that 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.”

5. The provisions being found to be mandatory in character, violation of the same would result in acquittal as held by this Court in the case of *State of Punjab vs. Bhupinder Singh, 2001 (1) RCR (Criminal), 356 (P&H)*.
6. In view thereof, the appeal against acquittal order is held to be without legal basis and the same is accordingly *dismissed*.
7. All pending applications also stand disposed of accordingly.

(SANJEEV PRAKASH SHARMA)
JUDGE

(SUKHVINDER KAUR)
JUDGE

May 03, 2024
Mohit goyal

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| 1. Whether speaking/reasoned? | Yes/No |
| 2. Whether reportable? | Yes/No |