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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CRL.M.C. 7155/2022  
STATE OF NCT OF DELHI .....Petitioner  
Through: Mr. Naresh Kumar  
Chahar, APP for the State.  
IO SI Amit Kr., PS Nand  
Nagri.

versus

ABRAR .....Respondent  
Through:

+ CRL.M.C. 2600/2023  
STATE (NCT OF DELHI) .....Petitioner  
Through: Mr. Naresh Kumar  
Chahar, APP for the State.  
IO SI Amit Kr., PS Nand  
Nagri.

versus

RINKU KUMAR .....Respondent  
Through: Mr. Pawan Reley, Mr.  
Akshay Lodhi, Ms. Simran  
Singh, Mr. Gaurav Kumar,  
Ms. Lashika Singh, Mr.  
Agrim Tandon & Mr. Anil  
Nimesh, Advs.

+ CRL.M.C. 2829/2023  
STATE (NCT OF DELHI) .....Petitioner  
Through: Mr. Naresh Kumar  
Chahar, APP for the State.  
IO SI Amit Kr., PS Nand  
Nagri.

versus

AMIT KUMAR .....Respondent  
Through:

+ CRL.M.C. 2924/2023  
STATE (NCT OF DELHI) .....Petitioner  
Through: Mr. Naresh Kumar  
Chahar, APP for the State.  
IO SI Amit Kr., PS Nand

**CRL.M.C. 7155/2022**

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Nagri.

versus

AFROZ

.....Respondent

Through:

**CORAM:**

**HON'BLE MR. JUSTICE AMIT MAHAJAN**

**ORDER**

**07.11.2024**

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1. The present petitions are filed challenging the order dated 12.01.2021 and three separate orders dated 30.01.2021 (hereafter '**the impugned orders**') respectively, passed by the learned Trial Court, in SC No. 185/2020 arising out of FIR No. 470/2020, registered at Police Station Nand Nagri, for offence under Section 20 of the Narcotic Drugs and Psychotropic Substances, Act, 1985 ('**NDPS Act**').
2. By the impugned orders, the learned Trial Court admitted the respective respondents on bail.
3. The FIR was registered alleging that secret information was received that three to four people would come on 24.07.2020 near the Bus Stand Nand Nagri at around 2 PM and they would be carrying *Ganja*. It is alleged that a Raiding Team was formed and the vehicle bearing No. DL-1LA-D5681 was apprehended and 38.5 kilograms of *Ganja* was recovered from the possession of the respondents.
4. The learned Trial Court noted in the impugned orders that Section 50 of the NDPS Act was not complied with in the present case.
5. In the impugned order dated 12.01.2021, it was observed that a mere perusal of the notices under Section 50 of the NDPS Act showed that the same was not readable and there was a lot of over-witing in the notice.



6. It was noted in the impugned orders that there was a discrepancy in the vehicle numbers in the respective notices under Section 50 of the NDPS Act and the vehicle number mentioned in the FIR. It was also noted that there is a discrepancy in the vehicle number mentioned in the seizure memo as well.

7. The learned Additional Public Prosecutor ('APP') for the State submits that the recovery in the present case was effectuated from the vehicle, and hence, the compliance of Section 50 of the NDPS Act was not necessary.

8. There is merit in the contention raised by the learned APP.

9. Section 50 of the NDPS Act reads as under:

***“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 gazetted 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 sub-section (1).*

*(3) The gazetted 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 Gazetted 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.”

10. A three Judge Bench of the Hon’ble Apex Court in ***State of Punjab v. Baljinder Singh : (2019) 10 SCC 473*** has held as under:

“8. The question that arises in the matter is:  
If a person found to be in possession of a vehicle containing contraband is subjected to personal search, which may not be in conformity with the requirements under Section 50 of the Act; but  
the search of the vehicle results in recovery of contraband material, which stands proved independently;  
would the accused be entitled to benefit of acquittal on the ground of non-compliance of Section 50 of the Act even in respect of material found in the search of the vehicle?

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14. At this stage we may also consider the following observations from the decision of this Court in ***Ajmer Singh v. State of Haryana*** [*Ajmer Singh v. State of Haryana*, (2010) 3 SCC 746 : (2010) 2 SCC (Cri) 475] : (SCC pp. 752-53, para 15)

“15. The learned counsel for the appellant contended that the provision of Section 50 of the Act would also apply, while searching the bag, briefcase, etc. carried by the person and its non-compliance would be fatal to the proceedings initiated under the Act. We find no merit in the contention of the learned counsel. **It requires to be noticed that the question of compliance or non-compliance with Section 50 of the NDPS Act is relevant only where search of a person is involved and the said section is not applicable nor attracted where no search of a person is involved.** Search and recovery from a bag, briefcase, container, etc. does not come within the ambit of Section 50 of the NDPS Act, because firstly, Section 50 expressly speaks of search of person only. Secondly, the section speaks of taking of the person to be searched by the gazetted officer or a Magistrate for the purpose of search. Thirdly, this issue in our considered opinion is no more *res integra* in view of the observations made by this Court in ***Madan Lal v. State of H.P.*** [*Madan Lal v. State of H.P.*, (2003) 7 SCC 465 : 2003 SCC (Cri) 1664] The Court has observed: (SCC p. 471, para 16)

‘16. A bare reading of Section 50 shows that it only



*applies in case of personal search of a person. It does not extend to search of a vehicle or a container or a bag or premises (see Kalema Tumba v. State of Maharashtra [Kalema Tumba v. State of Maharashtra, (1999) 8 SCC 257 : 1999 SCC (Cri) 1422] , State of Punjab v. Baldev Singh [State of Punjab v. Baldev Singh, (1999) 6 SCC 172 : 1999 SCC (Cri) 1080] and Gurbax Singh v. State of Haryana [Gurbax Singh v. State of Haryana, (2001) 3 SCC 28 : 2001 SCC (Cri) 426] ). The language of Section 50 is implicitly clear that the search has to be in relation to a person as contrasted to search of premises, vehicles or articles. This position was settled beyond doubt by the Constitution Bench in Baldev Singh case [State of Punjab v. Baldev Singh, (1999) 6 SCC 172 : 1999 SCC (Cri) 1080] . Above being the position, the contention regarding non-compliance with Section 50 of the Act is also without any substance.’”*

**15. As regards applicability of the requirements under Section 50 of the Act is concerned, it is well settled that the mandate of Section 50 of the Act is confined to “personal search” and not to search of a vehicle or a container or premises.**

*16. The conclusion (3) as recorded by the Constitution Bench in para 57 of its judgment in **Baldev Singh** [State of Punjab v. Baldev Singh, (1999) 6 SCC 172 : 1999 SCC (Cri) 1080] clearly states that the conviction may not be based “only” on the basis of possession of an illicit article recovered from personal search in violation of the requirements under Section 50 of the Act, but if there be other evidence on record, such material can certainly be looked into.*

*17. In the instant case, the personal search of the accused did not result in recovery of any contraband. Even if there was any such recovery, the same could not be relied upon for want of compliance of the requirements of Section 50 of the Act. **But the search of the vehicle and recovery of contraband pursuant thereto having stood proved, merely because there was non-compliance of Section 50 of the Act as far as “personal search” was concerned, no benefit can be extended so as to invalidate the effect of recovery from the search of the vehicle.** Any such idea would be directly in the teeth of conclusion (3) as aforesaid.”*

*(emphasis supplied)*

11. As held in the aforesaid case, when the recovery is effected from a vehicle and not from the person of the accused, compliance of Section 50 of the NDPS Act does not invalidate



the same.

12. However, in the present case, the learned Trial Court while passing the impugned orders has also noted the discrepancies in mentioning of the vehicle at different places. It was noted that the seizure memo mentions the vehicle number as DL-1LAD-5661, whereas the notice under Section 50 of the NDPS Act mentions the same as DL-1L-AS-5661. The FIR, at the same time, mentions another number being DL-1L-AD-5681.

13. It is also undisputed that the recovery was effected from a busy area at around 2 PM in the afternoon and despite the same, no public witness has been associated with the alleged recovery.

14. The respondents were in custody since 24.07.2020 and were granted bail by the impugned orders in January, 2021. The investigation has since been completed and the chargesheet has been filed.

15. It is also relevant to note that the impugned orders were passed way back in the year 2021. Despite the same, the impugned order dated 12.01.2021 was challenged by filing the concerned petition in December, 2022, while the other impugned orders were challenged in April, 2023.

16. Considering the aforesaid facts, this Court does not consider it apposite to interfere with the impugned orders.

17. The petitions are, therefore, dismissed.

18. A copy of this order be placed in all the matters.

**AMIT MAHAJAN, J**

**NOVEMBER 7, 2024**

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