



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

CRA-S-2721-SB-2009

Reserved on : 14.05.2025

Pronounced on : 20.05.2025

Jaspal Singh

...Appellant

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Avijit Singh, Advocate as Amicus Curiae
for the appellant.

Mr. Harkesh Kumar, AAG Haryana.

HARPREET SINGH BRAR, J. (ORAL)

1. The instant appeal is preferred against the judgement and order of sentence dated 04.07.2009 passed by learned Judge, Special Court Karnal in FIR No. 340 dated 24.07.2007 registered at Police Station Civil Lines, Karnal under Section 15 of the Narcotic Drugs & Psychotropic Substances Act, 1985 (hereinafter referred to as 'the NDPS Act' for short), whereby the appellant was convicted and sentenced to undergo for the period already undergone by him during the trial from 24.07.2007 to 12.09.2007 and to pay a fine of Rs. 10,000/-.

FACTUAL BACKGROUND

2. Briefly put, the prosecution case is that On 24.07.2007, a police party led by ASI Nand Kishore, including EASI Ashok Kumar, SI Gurdev Singh, and HC Gurmail Singh, was present at the T-point of Sector 9, Kunjpura Road, Karnal, conducting vehicle checks. In the meanwhile, a young man carrying a yellow colour polythene bag in his right hand came from the side of Kunjpura. On noticing the police, he turned back and started walking briskly, arousing suspicion. He was apprehended and identified himself as Jaspal Singh. On being suspicion of having some contraband in the polythene, notice under Section 50 of the NDPS



Act was served. In reply to the notice, he reposed faith in the Investigating officer and a search was conducted, resulting in the recovery of poppy husk from the bag. Two samples of 100 grams each were taken, and the remaining quantity weighed 4.8 kg of Poppy husk. All three parcels were sealed with the seal 'NK'; a sample seal was prepared, and the seal was handed over to HC Gurmail Singh. All the sealed parcels were taken into police possession vide separate recovery memo along with sample seal. Reply, notice and recovery memo were duly signed by EASI Ashok Kumar and HC Gurmail Singh. Thereafter, the investigating officer sent rukka through EASI Gurdev Singh to police station, leading to registration of the FIR by ASI Baljeet Singh. The site plan was prepared and statements of witnesses were recorded, and the accused was formally arrested. A report under Section 57 of the Act was also prepared.

3. The accused alongwith the case property, and witnesses were presented before SHO Kushal Singh, who verified the facts and affixed his seal 'SS' on the parcels. The case property was deposited with the MHC, and the accused was placed in lock-up. Satatement of SHO was recorded and supplementary statement of other recovery witness was also recorded. On 25.07.2007, the accused and case property were produced before the Illaqa Magistrate under Section 52-A of the NDPS Act. The Magistrate issued the necessary certificate, and the accused was remanded to judicial custody. One sample parcel was deposited with the MHC of PS Civil Lines, Karnal, and the remaining contraband with the Judicial Malkhana. Subsequently, the final report under Section 173 Cr.P.C. was filed. After complying with necessary formalities, the appellant was charged for commission of offence under Section 15 of the NDPS Act, to which he pleaded not guilty and claimed trial.



4. In order to prove its case, prosecution examined as many as six witnesses. All the incriminating evidence was put to the appellant and his statement under Section 313 Cr.P.C. was recorded, wherein he pleaded false implication. However, the appellant did not lead any evidence in his defence. After minutely scrutinizing all the material available on the record, the learned trial Court held the appellant guilty and sentenced him as discussed above.

CONTENTIONS

5. Learned *Amicus Curiae* contends that the recovery was allegedly made from a public place and no effort was made to join any independent witness despite the place being busy. He further argues that there were discrepancies in the chain of custody of samples and contradiction in the testimony of prosecution witnesses regarding sample seals and handling of recovered material. It is also submitted that the search and seizure were not conducted in accordance with law, particularly the procedural safeguards under Sections 50 and 52-A of the NDPS Act. The delay in forwarding the samples to the FSL and the improper handling of the seals casts serious doubt on the prosecution's case. The identity and conscious possession of the appellant over the contraband have not been proved beyond reasonable doubt.

6. On the other hand, learned State counsel argues that learned trial Court has passed a well-reasoned judgment based on correct appreciation of evidence available on record and as such, no interference by this Court is warranted. Additionally, there is nothing on record to suggest that the appellant may have been falsely implicated.

OBSERVATIONS AND ANALYSIS

7. Having heard the counsel for the parties and perused the material on record, this Court is of the considered opinion that the prosecution has failed to



prove its case beyond reasonable doubt. The recovery allegedly took place at a public place, i.e., a road in Sector 9, Karnal, yet no effort was made by the investigating officer to join any independent witness despite it being a busy locality. The Hon'ble Supreme Court in ***Krishan Chand v. State of H.P.***, AIR 2017 SC 3751 has observed that non-association of independent witnesses at the time of recovery creates a serious dent in the prosecution story. Also in ***Gorakh Nath Prasad Vs. State of Bihar, 2018(1) R.C.R. (Criminal) 108*** the Hon'ble Supreme Court has acquitted the accused while holding that the case of the prosecution cannot be said to be proved when it is entirely based upon the statements of the official witnesses. Also held in ***State of Rajasthan v. Daulat Ram*** [(1980) 3 SCC 303, failure to produce a material witness, without sufficient reason, casts doubt on the prosecution's case. This lapse attracts an adverse inference.

8. Substantially, there are contradictions between PW2 HC Ishwar Singh and PW3 HC Gurmail Singh regarding the number of seals used and who deposited the case property. According to affidavit Ex. P2 recorded by PW2, there were four sample seals bearing impressions 'NK' and 'SS', while PW3 stated that only one sample seal was prepared and that all the sealed parcels along with the sample seal were taken into possession vide recovery memo Ex. P5. This discrepancy is significant. Furthermore, PW3 admitted that the seal remained with him for one week and no entry or statement has been made regarding its return. This raises serious doubts about the sanctity of the samples. Additionally, he admitted in his cross-examination that sample parcels of 100 grams bear two item no. 885 of 2007 and 892 of 2007. The reason for the non-continuity of item number. has not been explained. Even he has failed to recollect as to whom the intimation of the arrest of the accused by Investigating officer was given. Hence, the inconsistencies in witness accounts therefore shake the foundation of its case.



9. Moreover, It is also significant to note that the entire investigation in present case was carried out by ASI Nand Kishore who was also the complainant. The Hon'ble Supreme Court in ***State by Inspector of Police, Narcotic Intelligence Bureau, Madurai, Tamil Nadu Vs. Ranjangam (2010) 15 SCC 369***, has opined that since the arrest and search is made by the complainant, he should not involve himself with the investigation of the case. Such an officer leading the investigation would forthrightly raise questions as to the fairness and impartiality of the said investigation process. Similarly, the Hon'ble Supreme Court in ***Megha Singh vs. State of Haryana 1996(11) SCC 709***, opined that the complainant who had intercepted the accused, recovered the arms and registered the case should have recused himself from the investigation as it raises doubts regarding the impartial nature of the investigation.

10. Considering the above discrepancies, lapses, and non-compliance with statutory procedures, the benefit of doubt must go to the appellant. The standard of proof required in criminal cases, especially under a stringent law like the NDPS Act, has not been met by the prosecution.

CONCLUSION

11. In view of the discussion above, this Court finds merit in the appeal. Accordingly, the present appeal is allowed and the judgment of conviction and order of sentence dated 04.07.2009 passed by the learned Judge, Special Court, Karnal are hereby set aside. The appellant, namely Jaspal Singh, is acquitted of the charges framed against him. His bail bonds and surety bonds stand discharged.

12. All the pending miscellaneous application(s), if any, shall also stand disposed of.



11. The case property, if any, may be dealt with as per rules, after the expiry of period of limitation for filing the appeal(s). Record of the case be sent back to the Court below.

(HARPREET SINGH BRAR)
JUDGE

Reserved on : May 14, 2025

Decided on: May 20, 2025

Ajay Goswami

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No