



IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRA-D No.457-DB of 2016 (O&M)
Date of Decision:04.11.2025

Malkiat Singh

...Appellant

Versus

State of Punjab

...Respondent

CORAM: *HON'BLE MRS. JUSTICE LISA GILL*
HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA

Argued by:- Mr. D.N. Ganeriwala, Advocate and
Mr. Kanisth Ganeriwala, Advocate
for the appellant.

Mr. Raghav Garg, AAG, Punjab
for the respondent-State.

Meenakshi I. Mehta, J.

By way of instant Criminal Appeal, the afore-named appellant has laid challenge to the judgment and order on sentence, handed down by learned Judge, Special Court, Ferozepur (for short 'the trial Court'), on 01.04.2014 in the criminal case arising out of FIR No.08 dated 19.01.2013 as registered at Police Station Mamdot, under Section 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the Act'), whereby he (appellant) has been held guilty for committing the offence punishable under Section 21 of the Act and has been sentenced to undergo rigorous imprisonment for a period of 12 years and pay a fine of Rs. one (01) lac and in case of default in the payment of fine, to further undergo rigorous imprisonment for 06 months.



2. Shorn and short of unnecessary details, the facts, leading to the filing of present appeal, are that on 19.01.2013, Inspector Joginder Singh, along-with some other police officials, was going from Village Rahime Ke to Village Sadar Ke, in connection with checking of suspected vehicles and the persons on private vehicles. On the way, they held 'Nakabandi' (putting up barricades) at the bridge on Canal Minor in the area of Village Rahime Ke. There, they saw a young person coming from Village Sadar Ke side on a motor-cycle, without registration number. On seeing the police party, that person turned the motor-cycle back but however, in the meantime, its engine stopped. On suspicion, the above-said motor-cyclist was apprehended and on interrogation, he disclosed his name as Malkiat Singh (appellant). The afore-named Inspector apprised the appellant of his right to get his own search as well as the search of his motor-cycle and the plastic bag, as kept thereon, conducted by him or some Gazetted Officer or a Magistrate. The appellant opted for getting the search conducted in the presence of any Gazetted Officer. Then, the Inspector informed Sh. Jasbir Singh, Deputy Superintendent of Police, Ferozepur, on his mobile-phone, about the facts of the case, with a further request to him to arrive at the spot and he (DSP) reached there accordingly and disclosed his identity to the appellant and sought his option regarding his search and the search of plastic bag and motor-cycle by him (DSP) or any other Gazetted Officer or Magistrate. The appellant consented for his own search and the search of plastic bag and motor-cycle by the DSP vide Consent Memo Exhibit PC. Thereafter, the plastic bag, as lying on the front side of motor-cycle, was opened and its



search resulted in the recovery of six (06) packets, containing heroin. Two (02) samples, each weighing 10 grams, were separated out from each packet and these samples, along-with the remaining heroin in the packets, which weighed 980 grams each, were separately packed and sealed with the seals bearing impressions 'JS' and 'JS'. Specimen seal was prepared on Form M-29. The appellant was arrested. On returning to the police station, the case property, along-with the appellant and witnesses and Form M-29, was produced before ASI Karnail Singh, the officiating SHO who, after verifying facts of the case, sealed all the eighteen parcels with his seal having impression 'KS'. Further necessary investigation was, then, carried out and on the completion thereof, Challan/Police Report under Section 173 Cr.P.C was prepared against the appellant and was presented in the Court.

3. After hearing learned Public Prosecutor for the State and learned defence counsel and perusing the Challan/Final Police Report as also the documents annexed therewith, learned trial Court framed the charge against the appellant under Section 21 of the Act. He pleaded not guilty to the charge and claimed trial.

4. In order to substantiate its allegations against the appellant, the prosecution examined as many as six (06) witnesses namely Constable Param Preet Singh as PW1, Inspector Joginder Singh as PW2, ASI Karnail Singh as PW3, Inspector Paramjit Singh as PW4, Surinder Bhandari as PW5 and SP Jasbir Singh as PW6. Then, learned Public Prosecutor for the State closed the prosecution evidence. Thereafter, the appellant was examined under Section 313 Cr.P.C to explain the incriminating material/circumstances, appearing



against him in the prosecution evidence, as led on record, wherein he pleaded innocence and stated that he had falsely been got involved in the instant case. However, he did not lead any evidence in his defence. After hearing learned counsel for the parties and appraising the record, learned trial Court held the appellant guilty and awarded sentence to him, as already described in the opening para of this judgment.

5. We have heard learned counsel for the appellant as well as learned counsel for the respondent-State in the present appeal and have also gone through the record carefully.

6. Learned counsel for the appellant have contended that the provisions, as contained in Section 50 of the Act, had not been complied with at the time of conducting the search of appellant and the bag, which allegedly contained six (06) packets of heroin and this infirmity eats into the vitals of entire case of prosecution and makes it a highly doubtful one. They have also contended that as per prosecution version, the samples of heroin had been drawn and the same, along-with bulk parcels, were sealed at the spot itself whereas Section 52-A(2)(c) of the Act provides for drawing such samples in the presence of Magistrate and non-compliance of the above-said provisions renders the trial proceedings and the impugned judgment and order on sentence, illegal. To buttress this contention, they have placed reliance upon the observations made by Hon'ble the Supreme Court in **Bothilal vs. The Intelligence Officer, Narcotics Control Bureau 2023(2)RCR (Criminal) 828; Simranjit Singh vs. State of Punjab Criminal Appeal No.1443 of 2023; Yusuf @ Asif vs. State 2023 INSC 912; Bharat Aambale vs. State of**



Chhattisgarh 2025 INSC 78; Surepally Srinivas vs. The State of Andhra Pradesh (now State of Telangana) 2025 INSC 414 and by the Co-ordinate Bench of this Court in *Charan Singh vs. State of Punjab CRA-D No.1002-DB of 2007*. They have, further, contended that no independent witness had been joined at the time of affecting the alleged recovery of heroin despite the fact that the place of recovery was a public place, i.e the bridge over Canal Minor on the road and this fact casts a shadow of doubt on the prosecution version and they have urged that in view of the afore-discussed facts and circumstances, the instant appeal deserves to be allowed and the appellant is, therefore, entitled to his acquittal.

7. Per-contra, learned State counsel has argued that the provisions contained in Sections 50 and 52-A(2)(c) of the Act had duly been complied with and the case property and appellant, along-with Inventory Report, had been produced before the concerned Magistrate on 20.01.2013, i.e the very next day of recovery of the contraband and the seals, as affixed on samples, had been found to be intact, as mentioned in FSL Report Exhibit PM and specified by the Magistrate as well, in her order dated 20.01.2013 and mere non-joinder of any independent witness does not make the testimonies of official witnesses doubtful at all and in such circumstances, the present appeal is liable to be dismissed.

8. As regards the contention qua violation of the provisions as contained in Section 50 of the Act, it is pertinent to mention here that PW2 Inspector Joginder Singh has categorically deposed during his examination-in-chief itself that he had told the accused (appellant) that his search as well



as search of the bag, was to be conducted and vide Non-Consent Statement Exhibit PB, he (appellant) had opted for getting the search conducted by a Gazetted Officer and thereafter, he had requested DSP Jasbir Singh to reach at the spot and he (DSP) had arrived there. PW6 Jasbir Singh, the then DSP, has also deposed that he had apprised the appellant of his legal right to get his search conducted in his presence or in the presence of any other Gazetted Officer or Magistrate and he (appellant) had reposed confidence in him and his (appellant's) Consent Statement Exhibit PC was reduced into writing and thereafter, the search had been conducted which resulted into the recovery of six packets of heroin from the bag, as carried by the appellant on the motor-cycle. These depositions sufficiently establish the compliance of Section 50 of the Act in this case.

9. Seen from yet another angle also, six (06) packets of heroin had allegedly been recovered during the search of the bag, as kept on the motor-cycle which was being driven by the appellant at the relevant time, meaning thereby that the said recovery had not been affected during personal search of the appellant. In **State of Himachal Pradesh vs. Pawan Kumar, Appeal (Crl.) 222 of 1997 (decided on 08.04.2005)**, a three Judges' Bench of Hon'ble Supreme Court has held as under: -

“xxx In view of the discussion made earlier, Section 50 of the Act can have no application on the facts and circumstances of the present case as opium was allegedly recovered from the bag, which was being carried by the accused. xxx”

In **Ranjan Kumar Chadha vs. State of Himachal Pradesh**



2023 INSC 878, the Apex Court has made the following observations:-

“125. For all the foregoing reasons, we are of the view that the High Court was justified in holding the appellant guilty of the offence under the NDPS Act and at the same time, the High Court was also correct in saying that Section 50 of the NDPS Act was not required to be complied with as the recovery was from the bag.”

In a recent verdict rendered in **State of Kerala vs. Prabhu, Criminal Appeal No.3434 of 2024 (decided on 20.08.2024)** also, Hon’ble Supreme Court has observed as under:-

“7. Thus, it is evident that the exposition of law on the question regarding the requirement of compliance with Section 50 of the NDPS Act is no more res integra and this Court in unambiguous term held that if the recovery was not from the person and whereas from a bag carried by him, the procedure formalities prescribed under Section 50 of the NDPS Act was not required to be complied with. xxx”

In view of these observations, it becomes quite explicit that Section 50 of the Act applies only in the eventuality of recovery of any contraband during the search of person of an accused and hence, these provisions are not applicable to the instant case.

10. So far as the contention regarding non-compliance of Section 52-A(2)(c) of the Act is concerned, the same is devoid of merit because as mentioned earlier, the case property and appellant had been produced before the concerned Magistrate on 20.01.2013, i.e on the very next day of alleged recovery of contraband (heroin) and in her order passed on the same day on



the Inventory Report presented under Section 52 of the Act, the Magistrate has specifically mentioned that she had gone through the seals attached on the case property and the seals bearing impressions 'JS', 'JS' and 'KS' were intact and accordingly, the inventory was certified. The verdicts rendered by Hon'ble Supreme Court in **Bothilal (supra) (DOD 26.04.2023)**, **Simranjit Singh (supra) (DOD 09.05.2023)** and **Yusuf @ Asif (supra) (DOD 13.10.2023)** are of no avail to the appellant in view of the subsequent observations made by the Apex Court in **Narcotics Control Bureau vs. Kashif 2024 INSC 1045 (decided on 20.12.2024)** and the judgment passed by the Co-ordinate Bench in **Charan Singh (supra) (DOD 19.12.2024)** would also not come to the rescue of the appellant in view of the following observations made in **Narcotics Control Bureau vs. Kashif (supra)**: -

“35. None of the provisions in the Act prohibits sample to be taken on the spot at the time of seizure, much less Section 52A of the said Act. On the contrary, as per the procedure laid down in the Standing Orders and Notifications issued by the NCB and the Central Government before and after the insertion of Section 52A till the Rules of 2022 were framed, the concerned officer was required to take samples of the seized contraband substances on the spot of recovery in duplicate in presence of the Panch witnesses and the person in whose possession the drug or substance recovered, by drawing a Panchnama. It was only with regard to the remnant substance, the procedure for disposal of the said substance was required to be followed as prescribed in Section 52A.

*36. At this stage, we must deal with the recent judgments in case of **Simarnjit vs. State of Punjab, (Criminal***



*Appeal No.1443/2023), in case of Yusuf @ Asif vs. State (2023 SCC Online SC 1328), and in case of Mohammed Khalid and Another vs. State of Telangana ((2024) 5 SCC 393) in which the convictions have been set aside by this Court on finding non-compliance of Section 52A and relying upon the observations made in case of Mohanlal. Apart from the fact that the said cases have been decided on the facts of each case, none of the judgments has proposed to lay down any law either with regard to Section 52A or on the issue of admissibility of any other evidence collected during the course of trial under the NDPS Act. Therefore, we have considered the legislative history of Section 52A and other Statutory Standing Orders as also the judicial pronouncements, which clearly lead to an inevitable conclusion that delayed compliance or non-compliance of Section 52A neither vitiates the trial affecting conviction nor can be a sole ground to seek bail. In our opinion, the decisions of Constitution Benches in case of **Pooran Mal and Baldev Singh** must take precedence over any observations made in the judgments made by the benches of lesser strength, which are made without considering the scheme, purport and object of the Act and also without considering the binding precedents.*

37. It hardly needs to be reiterated that every law is designed to further ends of justice and not to frustrate it on mere technicalities. If the language of a Statute in its ordinary meaning and grammatical construction leads a manifest contradiction of the apparent purpose of the enactment, a construction may be put upon it which modifies the meaning of the words, or even the structure of the sentence. It is equally settled legal position that where the main object and intention of a statute are



clear, it must not be reduced to a nullity by the draftsman's unskillfulness or ignorance of the law. In Maxwell on Interpretation of Statutes, Tenth Edition at page 229, the following passage is found: -

"Where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence. ... Where the main object and intention of a statute are clear, it must not be reduced to a nullity by the draftsman's unskillfulness or ignorance of the law, except in a case of necessity, or the absolute intractability of the language used."

38. *As observed by this Court in **K.P. Varghese vs. Income Tax Officer, Ernakulam and Another (1981) 4 SCC 173**, a statutory provision must be so construed, if it is possible, that absurdity and mischief may be avoided. Where the plain and literal interpretation of statutory provision produces a manifestly absurd and unjust result, the Court may modify the language used by the Legislature or even do some violence to it, so as to achieve the obvious intention of the Legislature and produce a rational construction and just result.*

39. *The upshot of the above discussion may be summarized as under:*

(i) The provisions of NDPS Act are required to be interpreted keeping in mind the scheme, object and purpose of the Act; as also the impact on the society as a whole. It has to be interpreted literally



and not liberally, which may ultimately frustrate the object, purpose and Preamble of the Act.

(ii) While considering the application for bail, the Court must bear in mind the provisions of Section 37 of the NDPS Act which are mandatory in nature. Recording of findings as mandated in Section 37 is sine qua non is known for granting bail to the accused involved in the offences under the NDPS Act.

(iii) The purpose of insertion of Section 52A laying down the procedure for disposal of seized Narcotic Drugs and Psychotropic Substances, was to ensure the early disposal of the seized contraband drugs and substances. It was inserted in 1989 as one of the measures to implement and to give effect to the International Conventions on the Narcotic drugs and psychotropic substances.

(iv) Sub-section (2) of Section 52A lays down the procedure as contemplated in sub-section (1) thereof, and any lapse or delayed compliance thereof would be merely a procedural irregularity which would neither entitle the accused to be released on bail nor would vitiate the trial on that ground alone.

(v) Any procedural irregularity or illegality found to have been committed in conducting the search and seizure during the course of investigation or thereafter, would by itself not make the entire evidence collected during the course of investigation, inadmissible. The Court would have to consider all the circumstances and find out whether any serious prejudice has been caused to the accused.



(vi) Any lapse or delay in compliance of Section 52A by itself would neither vitiate the trial nor would entitle the accused to be released on bail. The Court will have to consider other circumstances and the other primary evidence collected during the course of investigation, as also the statutory presumption permissible under Section 54 of the NDPS Act.”

11. Though, the appellant has relied upon the judgment passed in **Bharat Aambale (supra)** but again, the same would be of no help to him because in the above-referred appeal, the only plea as canvassed by the appellant, was the violation of Section 52-A of the Act and Rule 10 of the NDPS Rules, 2022 on the ground that Investigating Officer had allegedly mixed all 73 packets of the seized contraband together and had, thereafter, proceeded to draw two samples of 100-100 grams each from the mixture, meaning thereby that in the afore-mentioned case also, the samples had been drawn by the Investigating Officer. However, the appeal had been dismissed while observing as under:-

“40. Having gone through the materials on record, we are in complete agreement with the reasoning of the High Court. Although, from the testimony of PW-15 i.e., the officer-in-charge of the police station where the seized substance was forwarded it may appear that the seized substances were simpliciter mixed together without following the procedure of segregating similar packets of same quality and nature into lots and thereafter taking representative samples therefrom, yet a closer reading of the Trial Court's judgment would reveal that the police officers herein had duly followed the procedure



prescribed to the letter and spirit.

41. As per Clause 2.5 of the Standing Order No. 1 of 89 i.e., the relevant standing order in force at the time of seizure, where multiple packages or packets are seized, they first have to be subjected to an identification test by way of a colour test to ascertain which packets are of the same sized, weigh and contents. Thereafter, all packets which are identical to each other in all respects will be bunched in lots, in the case of ganja, they may be bunched in lots of 40 packets each. Thereafter from each lot, one sample and one in duplicate has to be drawn. The relevant clause reads as under: -

"2.5 However, when the packages/containers seized together are of identical size and weight, bearing identical markings, and the contents of each package given identical results on colour test by the drug identification kit, conclusively indicating that the packages are identical in all respects, the packages/containers may be carefully bunched in lots of ten packages/containers except in the case of ganja and hashish (charas), where it may be bunched in lots of 40 such packages/containers. For each such lot of packages/containers, one sample (in duplicate) may be drawn."

42. As per Clause 2.8 of the Standing Order No. 1 of 89, while drawing a sample from a particular lot, representative samples are to be drawn, in other words, equal quantity has to be taken from each packet in a particular lot, that then has to be mixed to make one composite sample. The relevant clause reads as under: -

"2.8 While drawing one sample (in duplicate) from a particular lot, it must be ensured that



representative samples in equal quantity are taken from each package/container of that lot and mixed together to make a composite whole from which the samples are drawn for that lot."

43. As aforementioned in the preceding paragraphs, the above Standing Order came to be repealed by the enactment of the NDPS Rules in 2022. However, as per Rule 29 of the aforesaid NDPS Rules, notwithstanding such repeal of the erstwhile Standing Order(s), all actions that were done on the basis of such order or guidelines shall be deemed to have been done under the corresponding provision of these Rules. Furthermore, the procedure that was delineated in Clause(s) 2.5 and 2.8 of the said Standing Order have been reincorporated as Rule 10 and 11 in the NDPS Rules without any significant alteration.

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50.xxxxx

(V) Mere non-compliance of the procedure under Section 52A or the Standing Order(s) / Rules thereunder will not be fatal to the trial unless there are discrepancies in the physical evidence rendering the prosecution's case doubtful, which may not have been there had such compliance been done. Courts should take a holistic and cumulative view of the discrepancies that may exist in the evidence adduced by the prosecution and appreciate the same more carefully keeping in mind the procedural lapses."

In the present case, the testimonies of PW2 Inspector Joginder Singh, PW4 Inspector Paramjit Singh and PW6 SP Jasbir Singh, coupled



with the depositions of PW5, the Registration Clerk, sufficiently establish the factum of recovery of six (06) packets of heroin from the bag, as found lying on the motor-cycle which belonged to the appellant and there is nothing on the record to doubt the truthfulness/veracity of the depositions as made by the above-referred prosecution witnesses.

12. Further, the verdict rendered by the Apex Court in **Surepally Srinivas (supra)** is again of no avail to the appellant because in the afore-cited case, the Court had observed that the seized contraband had not been properly sealed and though, the same had been seized on 18.06.2010 but it had been produced in the Court for the first time on 03.07.2010 whereas in the present case, PW2 Inspector Joginder Singh had produced the case property and appellant before PW3 ASI/officiating SHO Karnail Singh on 19.01.2013, i.e the day of recovery itself, and PW3 had produced the same, along-with Inventory Report Exhibit PK, before the concerned Magistrate on 20.01.2013, i.e the day following the date of recovery of contraband and as recorded by the Magistrate in her order dated 20.01.2013 and mentioned in FSL Report Exhibit PM, seals bearing impressions 'JS', 'JS' and 'KS' were found to be duly intact and the Magistrate had also certified the Inventory in her order.

13. The contention regarding non-joinder of independent witness from public, also does not render the case of the prosecution doubtful at all because Exhibit PH is the '*ruqa*' as sent by PW2 Inspector Joginder Singh to the police station for registration of the case and it has specifically been mentioned therein that before conducting the search, an effort had been



made to join witness from public but none was available. In such a scenario, the Court is required to appraise and evaluate the testimonies of the official witnesses cautiously. In the instant case, as discussed in the preceding paragraphs, testimonies of PW2, PW4 and PW6 inspire confidence and these corroborate the prosecution version on all the material particulars and hence, the same can safely be relied upon to record the conviction of the appellant.

14. As a sequel to the fore-going discussion, it follows that the impugned judgment and order on sentence, as passed by learned trial Court on 01.04.2014, do not suffer from any infirmity, illegality or perversity or irregularity so as to warrant any interference by this Court. Resultantly, the appeal in hand, being *sans* any merit, is dismissed.

15. Pending applications, if any, stand disposed of accordingly.

(LISA GILL)
JUDGE

(MEENAKSHI I. MEHTA)
JUDGE

November 04, 2025
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Whether speaking/reasoned: Yes
Whether Reportable: No