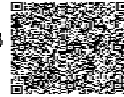


2025:PHHC:037406-DB



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

CRA-D-522-DB-2016 (O&M)

Reserved on: 18.02.2025

Date of decision: 18.03.2025

Surjit Singh alias Tikka

.....Appellant

Versus

State of Punjab

.....Respondent

**CORAM: HON'BLE MR. JUSTICE SUDHIR SINGH
HON'BLE MRS. JUSTICE SUKHVINDER KAUR**

Present: Mr. Nitin Sachdeva, Advocate (Amicus Curiae),
for the appellant.

Mr. Kuljit Singh, Addl. A.G., Punjab,
and Mr. Neeraj Madaan, Sr. DAG, Punjab.

SUDHIR SINGH, J.

The present appeal has been filed against the judgment dated 30.11.2015 passed by the Special Court (A), Gurdaspur, whereby, accused-appellant (Surjit Singh @ Tikka) has been convicted and sentenced to undergo rigorous imprisonment for a period of 10 years for commission of the offence under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the Act') along with the fine of Rs.1,00,000/- and, in default of payment of fine, to undergo rigorous

imprisonment for a period of 02 years and further to undergo rigorous imprisonment for 02 years for commission of the offence punishable under Section 21 of the NDPS Act along with the fine of Rs.20,000/- and, in default of payment of fine, to undergo rigorous imprisonment for a period of 06 months.

2. Lower Court records has been received.

3. The prosecution case was that on 14.08.2012, ASI Daljit Singh, along with other police officials, was present near Gurudwara Tapiana Sahib, Kinjad Pull Sua, in the vicinity of village Nangal, in connection with patrolling duty. In the meantime, accused-appellant (Surjit Singh alias Tikka) was seen coming from the side of village Pandori and on seeing the police party, he tried to turn back. However, with the help of other police officials, he was apprehended on the basis of suspicion. He was carrying a polythene packet containing something suspicious in his right hand. After obtaining the consent of the accused-appellant, his personal search was conducted in the presence of Mr. Ranjit Singh, DSP, Halqa Qadian, whereupon a polythene envelope containing three plastic packets was recovered from his possession. The first packet was found containing 200 intoxicant capsules of Jaxson, out of which two samples of 10 capsules each were separated and put in two small containers. Remaining 180 capsules were put in a

separate container. The second packet was having five injections (without label), out of which, one injection was separated as a sample. The third packet was containing intoxicant powder, out of which, two samples of 50 grams each were separated and the remaining bulk, after weighing, came to be 900 grams. Separate parcels of the recovered contraband were prepared and sealed by ASI Daljit Singh and DSP Ranjit Singh with their seals bearing impressions 'DS' and 'RS' respectively.

4. Thereafter, *ruqa* was sent to the police station, on the basis of which, FIR No. 90 dated 14.08.2012, under Sections 21/22 of NDPS Act, was registered at Police Station, Ghuman. After investigation, the charge-sheet was submitted, where-after cognizance was taken. Thereafter, charge under Sections 21/22 of the NDPS Act was framed against the accused-appellant, to which he pleaded not guilty and claimed to be tried.

5. During trial, the prosecution examined seven witnesses, namely, PW1 ASI Daljit Singh, PW2 HC Rattan Jyoti Singh, PW3 NMMK Jatinder Jit Singh, PW4 HC Amrik Singh, PW5 ASI Parminder Singh, PW6 DSP Ranjit Singh and PW7 Inspector Sarabjit Singh. On conclusion of the prosecution evidence, statement of the accused-appellant was recorded under Section 313 Cr.P.C., wherein entire incriminating evidence was put to him. However, he denied

the same and pleaded false implication in the case. In defence, the accused-appellant examined DW1 PHC Buta Singh, DW-1 (renumbered) Makhan Singh and DW-2 Rajinder Kumar.

6. After conclusion of the trial, the learned Trial Court convicted and sentenced the accused-appellant, as noticed above. The grounds considered by the learned Trial Court for recording the conviction of the appellant were as under:-

“(1) Though there is a delay in sending the samples for examination, but the same would not be fatal. There was no evidence that the samples of the case property were tempered with.

(2) The chemical examiner in his reports Exs.PJ and PK, has specifically mentioned that the seals were intact.

(3) Investigating Officer, ASI-Diljit Singh (PW1) had deposed that the case property had been handed over to SI/SHO Sarabjit Singh, who had also affixed his seal on the case property and had kept the same in double lock intact under his custody.

(4) The link evidence is complete and the delay of 18 days in sending the sample to the chemical examiner is not fatal to the case of prosecution. There was no requirement under law that seal after use should be handed over to the independent witness.

(5) Recovery was affected from the polythene held by the accused in his right hand and, therefore, Section 50 of the Act was not attracted. Nothing substantial was brought on record in respect of the non-complication of Section 50 of the Act.

(6) The testimony of DW1 and DW2 is not believable being interested witnesses and co-villagers of the accused.”

7. The learned counsel for the appellant, while assailing the impugned judgment of conviction passed by the trial Court, has vehemently argued that the same suffers from patent illegality. He further argued that in this case, provisions of Section 52A of the NDPS Act have not been complied with, as the samples of the recovered contraband were taken at the spot and not before the Magistrate as has been held in “Union of India Vs. Mohanlal & Anr., 2016(1) RCR (Criminal) 858; Bothilal Vs. The Intelligence Officer Narcotics Control Bureau, 2023(2) RCR (Criminal) 828, Simranjit Singh Vs. State of Punjab, 2023 Cri LR (SC) 1502, Mangilal Vs. The State of Madhya Pradesh, 2023(3) RCR (Criminal) 703 and Yusuf @ Asif Vs. State , Criminal Appeal No.3191 of 2023 (arising out of SLP (Crl.) No.3010 of 2023 decided on 13.10.2023”. It is further argued that in furtherance of the judgments of the Hon’ble Supreme Court, the Ministry of Finance in its Notification

No.G.S.R. 899(E) dated 23.12.2022 has also stipulated that the IO would ensure that the samples of the seized material are to be drawn in the presence of the Magistrate in terms of Section 52-A of the Act. The same not having been done and the samples having been taken at the spot, completely vitiates the trial and therefore, the appellant is liable to be acquitted. Apart from this, he has further argued that conscious possession of the contraband has not been proved in this case, as no independent witness had been joined at the time of effecting the alleged recovery. Further, there was an unexplained delay of 18 days in sending the samples to the Forensic Science Laboratory. Learned counsel for the appellant has further argued that the impugned judgment of conviction is based on conjectures and surmises and the trial Court has ignored the material evidence proved on record by the appellant that he was falsely implicated in the present case. It is further argued that the finding of the learned trial Court that the prosecution had been able to prove alleged recovery from the possession of the accused-appellant is contrary to the settled law. Reliance is also placed upon a Division Bench judgment of this court in Iqbal Mod. Vs. State of Punjab, 2024 NCPHHC 165343.

8. The learned counsel for the State, on the other hand, contends that all the arguments raised by the Amicus

Curiae have been dealt with by the trial Court and therefore, the present appeal is liable to be dismissed.

9. The Hon'ble Supreme Court in Union of India versus Mohanlal & Anr., 2016(1) RCR (Criminal) 858, has held as under:-

“13. It is manifest from Section 52A (2)(c) (supra) that upon seizure of the contraband the same has to be forwarded either to the officer in-charge of the nearest police station or to the officer empowered under Section 53 who shall prepare an inventory as stipulated in the said provision and make an application to the Magistrate for purposes of (a) certifying the correctness of the inventory (b) certifying photographs of such drugs or substances taken before the Magistrate as true and (c) to draw representative samples in the presence of the Magistrate and certifying the correctness of the list of samples so drawn. Sub-section (3) of Section 52-A requires that the Magistrate shall as soon as may be allow the application. This implies that no sooner the seizure is effected and the contraband forwarded to the officer in charge of the Police Station or the officer empowered, the officer concerned is in law duty bound to approach the Magistrate for the purposes mentioned above including grant of permission to draw representative samples in his presence, which samples will then be enlisted and the correctness of the list of samples so drawn certified by the Magistrate. In other words, the process of drawing of samples has to be in the presence and under the supervision of the Magistrate and the entire exercise has to be certified by him to be correct. The question of drawing of samples at the time of seizure which, more often than not, takes place in the absence of the Magistrate does not in the above scheme of things arise. This is so especially when according to

Section 52-A(4) of the Act, samples drawn and certified by the Magistrate in compliance with sub-section (2) and (3) of Section 52-A above constitute primary evidence for the purpose of the trial. Suffice it to say that there is no provision in the Act that mandates taking of samples at the time of seizure. That is perhaps why none of the States claim to be taking samples at the time of seizure. Be that as it may, a conflict between the statutory provision governing taking of samples and the standing order issued by the Central Government is evident when the two are placed in juxtaposition. There is no gainsaid that such a conflict shall have to be resolved in favour of the statute on first principles of interpretation but the continuance of the statutory notification in its present form is bound to create confusion in the minds of the authorities concerned instead of helping them in the discharge of their duties. The Central Government would, therefore, do well, to re-examine the matter and take suitable steps in the above direction.

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20. To sum up we direct as under : (1) No sooner the seizure of any Narcotic Drugs and Psychotropic and controlled Substances and Conveyances is effected, the same shall be forwarded to the officer in-charge of the nearest police station or to the officer empowered under Section 53 of the Act. The officer concerned shall then approach the Magistrate with an application under Section 52A(ii) of the Act, which shall be allowed by the Magistrate as soon as may be required under Sub-Section 3 of Section 52A, as discussed by us in the body of this judgment under the heading 'seizure and sampling'. The sampling shall be done under the supervision of the magistrate as discussed in paras 13 and 14 of this order.

(2) The Central Government and its agencies and so also the State Governments shall within six months

from today take appropriate steps to set up storage facilities for the exclusive storage of seized Narcotic Drugs and Psychotropic and controlled Substances and Conveyances duly equipped with vaults and double locking system to prevent theft, pilferage or replacement of the seized drugs. The Central Government and the State Governments shall also designate an officer each for their respective storage facility and provide for other steps, measures as stipulated in Standing Order No. 1/89 to ensure proper security against theft, pilferage or replacement of the seized drugs.

(3) The Central Government and the State Governments shall be free to set up a storage facility for each district in the States and depending upon the extent of seizure and store required, one storage facility for more than one districts.

(4) Disposal of the seized drugs currently lying in the police maalkhans and other places used for storage shall be carried out by the DDCs concerned in terms of the directions issued by us in the body of this judgment under the heading 'disposal of drugs'.

10. The Hon'ble Supreme Court in the recent judgment in 'Bharat Aambale Vs. The State of Chhattisgarh' 2025 SCC OnLine SC 110, has held that mere drawing of samples in the presence of a Gazetted Officer would not constitute sufficient compliance of the mandate under Section 52A sub-section (2) of the NDPS Act. In the said judgment, the Hon'ble Apex Court, has distinguished Mohanlal (supra) to some extent holding that although, there is no mandate that the drawing of samples from the seized substance must take place at the time of seizure as

held in Mohanlal (supra), yet the process of inventorying, photographing and drawing samples of the seized substance shall as far as possible, take place in the presence of the accused, though the same may not be done at the very spot of seizure. It was held as under:-

“50. We summarize our final conclusion as under:—

(I) Although Section 52A is primarily for the disposal and destruction of seized contraband in a safe manner yet it extends beyond the immediate context of drug disposal, as it serves a broader purpose of also introducing procedural safeguards in the treatment of narcotics substance after seizure inasmuch as it provides for the preparation of inventories, taking of photographs of the seized substances and drawing samples therefrom in the presence and with the certification of a magistrate. Mere drawing of samples in presence of a gazetted officer would not constitute sufficient compliance of the mandate under Section 52A sub-section (2) of the NDPS Act.

(II) Although, there is no mandate that the drawing of samples from the seized substance must take place at the time of seizure as held in *Mohanlal* (supra), yet we are of the opinion that the process of inventorying, photographing and drawing samples of the seized substance shall as far as possible, take place in the presence of the accused, though the same may not be done at the very spot of seizure.

(III) Any inventory, photographs or samples of seized substance prepared in substantial compliance of the procedure

prescribed under Section 52A of the NDPS Act and the Rules/Standing Order(s) thereunder would have to be mandatorily treated as primary evidence as per Section 52A subsection (4) of the NDPS Act, irrespective of whether the substance in original is actually produced before the court or not.

(IV) The procedure prescribed by the Standing Order(s)/Rules in terms of Section 52A of the NDPS Act is only intended to guide the officers and to see that a fair procedure is adopted by the officer in-charge of the investigation, and as such what is required is substantial compliance of the procedure laid therein.

(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.

(VI) If the other material on record adduced by the prosecution, oral or documentary inspires confidence and satisfies the court as regards the recovery as-well as conscious possession of the contraband from the accused persons, then even in such cases, the courts can without hesitation proceed to hold the accused guilty notwithstanding any

procedural defect in terms of Section 52A of the NDPS Act.

(VII) Non-compliance or delayed compliance of the said provision or rules thereunder may lead the court to drawing an adverse inference against the prosecution, however no hard and fast rule can be laid down as to when such inference may be drawn, and it would all depend on the peculiar facts and circumstances of each case.

(VIII) Where there has been lapse on the part of the police in either following the procedure laid down in Section 52A of the NDPS Act or the prosecution in proving the same, it will not be appropriate for the court to resort to the statutory presumption of commission of an offence from the possession of illicit material under Section 54 of the NDPS Act, unless the court is otherwise satisfied as regards the seizure or recovery of such material from the accused persons from the other material on record.

(IX) The initial burden will lie on the accused to first lay the foundational facts to show that there was non-compliance of Section 52A, either by leading evidence of its own or by relying upon the evidence of the prosecution, and the standard required would only be preponderance of probabilities.

(X) Once the foundational facts laid indicate non-compliance of Section 52A of the NDPS Act, the onus would thereafter be on the prosecution to prove by cogent evidence that either (i) there was substantial compliance with the mandate of Section 52A of the NDPS Act OR (ii) satisfy the court that such non-

compliance does not affect its case against the accused, and the standard of proof required would be beyond a reasonable doubt.”

11. In the instant case separate parcels of the recovered contraband were prepared and sealed by ASI Daljit Singh and DSP Ranjit Singh with their seals bearing impressions ‘DS’ and ‘RS’ respectively. Inventory Exhibit PW7/D was prepared. Vide PW7/G, the papers were put up before the Duty Magistrate regarding presentation of the inventory by the police. The learned Magistrate, *inter-alia*, passed the following order thereon:-

“Papers put up before me being Duty Magistrate. The inventory is presented by the police. After comparison of it with the seal impression and the case property, it is certified to be correct. The total case property i.e. Intoxicating Powder 1000 gram, 200 intoxicating capsules and 5 intoxicating injections bearing seal impression of DS/RS/SS and it is the nature of as under:-

xx xx xx”

12. Thus, in terms of Section 52A(2) of the Act, once the Duty Magistrate on an application moved by the officer concerned, had certified the correctness of the inventory so prepared, we find no force in the submission of the learned

counsel for the appellant that the samples had not been drawn in the presence of the Magistrate. It may be noticed here that sub-sections 1(a), (b) and (c) of Section 52A of the Act, have to be operative alternatively. Thus, in the instant case, compliance of sub-section 1(a) satisfies the requirement of law.

13. We also do not find any substance in argument of the learned Amicus Curiae that the delay of 18 days in sending the sample to the Chemical Examiner is fatal to the case of prosecution, in the face of the fact that no evidence had been produced by the defence that the seals were tampered with and that the reports Exs.PJ and PK of the Chemical Examiner, had specifically mentioned that the seals were intact. Similarly, the defence witnesses, suddenly deposing for the first time in the Court after three years, regarding the innocence of the accused, were rightly not believed by the learned trial Court.

14. In view of the above, we do not find any illegality or perversity in the finding of guilt recorded by the learned trial Court. Hence, the present appeal is dismissed. The appellant be taken into custody to undergo the remaining sentence.

(SUDHIR SINGH)
JUDGE

(SUKHVINDER KAUR)
JUDGE

18.03.2025/ Ajay Prasher

- Whether speaking/reasoned:
- Whether reportable:

Yes/No
Yes/No