



IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(1) CRA-D No.523-DB of 2015 (O&M)
Date of Decision:04.11.2025

Malkiat Singh ...Appellant

Versus

State of Punjab ...Respondent

(2) CRA-D No.526-DB of 2015 (O&M)

Rajjo Bai @ Rajan ...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 appellants (*in both the appeals*).

Mr. Raghav Garg, AAG, Punjab
for the respondent-State (*in both the appeals*).

Meenakshi I. Mehta, J.

Both the above-captioned Criminal Appeals are being taken up together for discussion and adjudication as these have arisen out of the same 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.09 dated 24.01.2013 registered at



Police Station Lakho Ke Behram, under Sections 21, 25 & 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the Act'), whereby appellants Malkiat Singh and Rajjo Bai have been held guilty for committing the offence punishable under Section 21 of the Act and have been sentenced to undergo rigorous imprisonment for a period of 12 years and pay a fine of Rs. one (01) lac each and in case of default in payment of fine, to further undergo rigorous imprisonment for 06 months.

2. Bereft of unnecessary details, the facts, culminating in the filing of instant appeals, are that on 24.01.2013, Inspector/SHO Gobinder Singh, along-with some other police officials, was present at Bus Stand in the area of Village Karma, in connection with patrolling duty and for checking the suspected persons. There, he received a secret information that appellant Malkiat Singh had been indulging in smuggling of heroin from Pakistan and he had received total fourteen (14) packets from the smugglers on Indo-Pak Border and six (06) packets of heroin had already been recovered from him during the previous week and eight (08) packets had been kept concealed in his house and his wife, i.e appellant Rajjo Bai, was having knowledge of the same and on her interrogation, the afore-said contraband could be recovered from her possession. On receipt of this information, a '*ruqa*' was forwarded to the police station for registration of the case. Sh. Baljit Singh, Deputy Superintendent of Police, Sub-Division Guru Har Sahai, was requested to arrive at the spot and he met the police party at the outskirts of the village. Then, they reached at the house of the appellants and appellant Rajjo Bai was found present there. After disclosing his identity, the above-named



DSP informed her (Rajjo Bai) that she was required to be interrogated and she could opt for the same in presence of any other Gazetted Officer but the afore-said appellant reposed faith in him vide Consent Statement Exhibit PF. During her interrogation, she disclosed that eight (08) packets of heroin were kept near the 'Killa' (peg for tethering cattle) by digging the earth and this fact was in her exclusive knowledge and she could get those packets recovered. Then, in pursuance of her disclosure statement Exhibit PG, she got the said packets of heroin recovered from the disclosed place. Two (02) samples, each weighing 05 grams, were separated out from each packet and these samples, along-with the remaining heroin in these packets, which weighed 990 grams each, were sealed with the seals bearing impressions 'GS' and 'BS'. Specimen seal was prepared on Form M-29. Appellant Rajjo Bai was arrested. Site-plan was prepared and the statements of witnesses had also been recorded. While returning from the spot, the police party met SI Gurjant Singh, SHO Police Station Mamdot, at Village Murkwala and the entire case property as well as appellant Rajjo Bai and the witnesses were produced before him and on verification of facts of the case, he (SI) sealed sixteen (16) sample parcels and eight (08) bulk parcels with his own seal having impression 'GS'. Further necessary investigation was, then, carried out and on completion thereof, Challan/Police Report under Section 173 Cr.P.C was prepared against the appellants 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 appellants under Sections 21 and 29 of the Act. They pleaded not guilty to the charge and claimed trial.

4. In order to bring home the guilt of appellants, the prosecution examined as many as four (04) witnesses namely SI Gurjant Singh as PW1, Constable Jaspreet Singh as PW2, DSP Baljit Singh as PW3 and DSP Gobinder Singh as PW4. Then, learned Public Prosecutor for the State closed the prosecution evidence. Thereafter, the appellants were examined under Section 313 Cr.P.C to explain the incriminating material/circumstances, appearing against them in the prosecution evidence, as led on record, wherein they pleaded innocence and stated that they had falsely been got implicated in the present case, consequent upon the registration of FIR No.08 dated 19.01.2013 against appellant Malkiat Singh and appellant Rajjo Bai further stated that she had no concern with her husband as he had already left the house in 2011. They tendered photostat copies of the News item and FIR as Marks DA, DB and DC in their defence evidence. After hearing learned counsel for the parties and appraising the record, learned trial Court held the appellants guilty and awarded sentence to them, as already described in the opening para of this judgment.

5. We have heard learned counsel for the appellants as well as learned counsel for the respondent-State in the instant appeals and have also gone through the record carefully.

6. Learned counsel for the appellants have contended that the details/contents of the secret information, as allegedly received by PW4 Gobinder Singh regarding concealment of the contraband in the house of



appellants, had not been reduced into writing nor any intimation in respect thereof, was sent to the superior officer as mandated in Section 42 of the Act and this infirmity eats into the vitals of entire case of prosecution and makes it highly doubtful. 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 these 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 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 the sole independent witness named Gurmeet Singh has not been examined by the prosecution and has, rather, been given up for his having been won over by the appellants and this fact also casts a shadow of doubt on the prosecution version. Their next contention is that the alleged recovery of heroin had been affected on 24.01.2013 but the samples were sent to the FSL on 04.02.2013 and thus, there was a delay of eleven (11) days in sending the samples for chemical examination thereof and this delay also goes to the roots of the case



and makes it doubtful. Their another contention is that as per the prosecution version, the contraband (heroin), as allegedly recovered in the present case and in the case registered vide FIR No.08 dated 19.01.2013, pertained to single bulk/consignment and therefore, such recovery constituted one offence but two (02) FIRs were registered and separate trials have been conducted in respect thereof and appellant Malkiat Singh has been awarded punishment in each of these two (02) cases, which has resulted in double jeopardy to him. Lastly, they have contended that appellant Rajjo Bai had no concern with the alleged recovery of heroin as her husband, appellant Malkiat Singh, had left the home in 2011, i.e much prior thereto and they have urged that in view of the above-discussed facts and circumstances, the instant appeals deserve to be allowed and the appellants are, therefore, entitled to their acquittal.

7. Per-contra, learned State counsel has argued that there is no violation of the provisions contained in Sections 42 and 52-A(2)(c) of the Act and the case property, along-with appellant Rajjo Bai, had been produced before the concerned Magistrate on 25.01.2013, 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 PD and specified by the Magistrate as well, in her order dated 25.01.2013 and mere non-examination of the independent witness does not make the testimonies of official witnesses doubtful and then, FIRs No.08 and 09 were registered on two (02) different dates and occasions qua the recovery of separate quantities of heroin and hence, the question of double jeopardy does not arise at all and it being so, the present appeals are liable to be dismissed.



8. As regards the contention qua non-compliance of the provisions contained in Section 42 of the Act, it is worth-while to mention here that Exhibit PI is the 'ruqa' sent by PW4 Gobinder Singh to the police station wherein the factum of receipt of secret information regarding concealment of heroin in the house of the appellants, finds specific mention and it has also been categorically recorded in it that DSP Baljit Singh was being informed to arrive at the spot. Further, Exhibit PJ is the copy of FIR and in the police proceedings recorded therein, it has been mentioned that Special Police Reports, after preparation thereof, were being sent to the Area Magistrate and higher officers. While appearing as PW3, the afore-named DSP, has also specifically deposed during his examination-in-chief itself that he had received a wireless message from Inspector Gobinder Singh (PW4) qua the receipt of secret information, with a request to him (PW3) to arrive at the spot and he had interrogated appellant Rajjo Bai after seeking her consent in this regard. He has further made depositions in respect of the disclosure statement suffered by Rajjo Bai and recovery of eight (08) packets of heroin at her instance and drawing of samples and affixation of seals thereon by him and PW4 as well. Undisputedly, Deputy Superintendent of Police is a Gazetted Officer and is superior to the Inspector/SHO, in the departmental hierarchy. Thus, PW3 (DSP) had not only received a wireless message but had also reached/arrived at the spot and had participated in the investigation proceedings, including the recovery of contraband in question. It has been held by the Apex Court in ***M. Prabhulal vs. Assistant Director, Directorate of Revenue Intelligence (2003) 8 SCC 449*** that "Section 42(2) of the Act



does not apply when a Gazetted Officer himself makes an arrest or conducts search and seizure”. These observations are fully applicable to the facts and circumstances of the instant case and in the light thereof, it becomes quite explicit that the provisions as contained in Section 42 of the Act, stood duly complied with in this case.

9. So far as the contention regarding non-compliance of Section 52-A(2)(c) is concerned, the same is devoid of merit because as mentioned earlier, the case property and appellant Rajjo Bai had been produced before the concerned Magistrate on 25.01.2013, 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 ‘GS’, ‘BS’ and ‘GS’ were intact and accordingly, the inventory was certified. The verdicts as 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 appellants 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 appellants 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. ”

10. Though, the appellants have relied upon the judgment passed in **Bharat Aambale (supra)** but again, the same would be of no help to them because in the above-cited appeal, the only plea as canvassed by the appellant was 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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(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 PW3 DSP Baljit Singh and PW4 DSP Gobinder Singh, coupled with the depositions made by PW1 SI Gurjant Singh and PW2 Constable Jaspreet Singh, sufficiently establish the factum of recovery of eight (08) packets of heroin from the house of appellants in pursuance of the disclosure statement suffered by appellant Rajjo Bai and there is nothing on the record to doubt the truthfulness or veracity of the testimonies of above-named prosecution witnesses. To cap it all, in the concluding part of cross-examination of PW4, a suggestion had been put to him that the contraband (heroin) had been concealed in the house by the husband of Rajjo Bai, without her knowledge and the same was denied by him (PW4). This suggestion on behalf of the appellants, by itself, substantiates the version of prosecution regarding the recovery of afore-mentioned contraband (heroin) from their (appellants') house.

11. Further, the verdict rendered by the Apex Court in **Surepally Srinivas (supra)** is again of no avail to the appellants because in the above-referred case, the Court had observed that the seized contraband was not



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, PW4 Inspector Gobinder Singh had produced the case property and appellant Rajjo Bai before PW1 SI/SHO Gurjant Singh on the date of recovery itself and PW1 had produced the same, along-with specimen seal on Form M-29, before the concerned Magistrate on 25.01.2013, i.e the day following the date of recovery of contraband and as recorded by the Magistrate in her order dated 25.01.2013 and mentioned in FSL Report Exhibit PD, seals bearing impressions 'GS', 'BS' and 'GS' were found to be duly intact and the Magistrate had also certified the Inventory in her order.

12. As regards the contention in respect of non-examination of PW Gurmeet Singh, who was stated to be an independent witness, it is pertinent to mention here that mere non-examination of a witness from public, by itself, does not vitiate the trial proceedings or the judgment of conviction and does not entitle the accused/appellant to his acquittal and rather, in such a scenario, the Court is required to appraise and evaluate the testimonies of official witnesses cautiously. In the instant case, as discussed in the preceding paragraphs, testimonies of PW3 and PW4 do inspire confidence and these corroborate/support the prosecution version on all the material particulars, especially the disclosure statement made by appellant Rajjo Bai and recovery of contraband in pursuance thereof and it being so, the same can safely be relied upon to record the conviction of appellants.

13. The contention regarding delay of eleven (11) days in sending the samples to FSL for chemical examination thereof, also does not hold any



water because as pointed out earlier, the seals, as affixed thereon, were found by the concerned Magistrate and FSL Authorities, to be duly intact. Further, PW2 HC Jaspreet Singh has also made specific depositions in his affidavit Exhibit PE to the effect that he had been handed over the sealed parcels of the samples with the afore-said seals duly intact and he had deposited these parcels with the Chemical Examiner on the same day and neither he nor anyone else had tampered with the samples while these were in his custody. The appellants have not been able to point out as to how this delay had caused prejudice to their defence and therefore, the above-mentioned delay does not adversely affect the case of prosecution.

14. The contention regarding registration of two (02) FIRs in respect of the recovery of heroin, allegedly forming single consignment and the same, hence, having caused double jeopardy to appellant Malkiat Singh, is bereft of any force because FIR No.08 had been registered on 19.01.2013 for his having been found in possession of a bag containing 06 packets of heroin, weighing total six (06) kgs, as kept on the motor-cycle which he was riding at the relevant time whereas FIR No.09, relating to the present case, had been registered on 24.01.2013, consequent upon the recovery of 08 kgs of heroin having been affected from the house of appellants at the instance of appellant Rajjo Bai in pursuance of her disclosure statement. Thus, it is quite explicit that the contraband in question had been recovered on two (02) different dates and occasions. Therefore, the plea of double jeopardy is not available to appellant Malkiat Singh. It will also be apposite to point it out here that Criminal Appeal No.457-DB of 2016, as preferred by appellant



Malkiat Singh to assail his conviction in the criminal case pertaining to FIR No.08, has also been dismissed vide the separate judgment of even date.

15. Lastly, the contention as raised on behalf of appellant Rajjo Bai regarding her husband, appellant Malkiat Singh, having left the house in the year 2011, i.e prior to the alleged recovery of heroin, also does not make a dent in the case of prosecution because there is no evidence on record to indicate/show/establish her separation from her husband or any matrimonial discord between them.

16. 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, both the appeals in hand, being *sans* any merit, are dismissed.

17. 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