



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

CRA-S-950-SB-2010
Reserved on : 15.05.2025
Pronounced on : 20.05.2025

Vikas Garg @Vicky @ Baba

...Appellant

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. P.K.Garg, Advocate for the appellant.

Mr. Rishab Singla, AAG Punjab.

HARPREET SINGH BRAR, J. (ORAL)

1. The present appeal is directed against the judgment of conviction and order of sentence dated 25.02.2010 passed by the learned Judge, Special Court, Mansa, whereby the appellant, Vikas Garg @ Vicky @ Baba, was convicted under Section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as "the NDPS Act") and sentenced to undergo rigorous imprisonment for a period of fifteen days and to pay a fine of Rs.1,000/-, in default of which he was to further undergo rigorous imprisonment for four days.

FACTUAL BACKGROUND

2. The case of the prosecution, briefly stated, is that on 18.07.2006, the police party headed by SI Sardara Singh, in official jeep being driven by Constable Gurdial Singh in connection with patrolling was going from side of Mansa towards Thuthianwali via link road and when the police party reached



near the gate of the cattle market (Mal Mandi), Mansa, they spotted the accused sitting under a Tahli tree on left hand side and was something in his hand who on seeing the police party at once closed his hands. On suspicion, he was apprehended on the spot. SI Sardara Singh told the accused to open his hand and a polythene bag was found to contain 29 grams of opium. A sample of 5 grams was separated, and put in a plastic box and converted into parcel. Remaining opium was also put in a plastic box and converted into a separate parcel. SI Sardara Singh sealed both the parcels with his seal being impression 'SS'. Sample seal chit Ex.P1 was separately prepared and seal after use was handed over to HC Gurpal Singh. SI Sardara Singh took the case property into possession vide recovery memo Ex.P2 attested by HC Gurcharan Singh and HC Gurpal Singh. He conducted personal search of accused and currency notes of Rs.25 were recovered which were taken into possession vide memo Ex.P3 signed by accused and attested by PWs. Ruqa Ex.P4 was sent to the police station through Constable Gurdial Singh on the basis of which a formal FIR Ex.P5 was recorded.

3. The accused was formally arrested and memo of his arrest Ex.P7 was also prepared. On return to police station SI Sardara Singh, Investigating Officer produced the accused and the case property before Inspector Barjinder Kumar, who applied his own seal bearing impression 'BK' and took the entire case property in his possession vide memo Ex.P8 attested by SI Sardara Singh. SI Sardara Singh also presented the special Report Ex.P9 to DSP. On the next day, Inspector Barjinder Singh presented the case property before the learned Chief Judicial Magistrate along with inventory memo Ex.P10. In the Court of learned CJM, after breaking open the seals of bulk parcel separated 10 grams



of opium as representative sample and converted the same into a parcel and were sealed by learned CJM with his seal bearing impression SS, who further deposited the bulk parcel and representative sample parcel in judicial Malkhana. He sent one sample parcel, sample seal and Form 29 to office of chemical examination, Patiala through CII Avtar Singh. After receipt of report of chemical examiner, Ex.PX and completing the formal investigation, the challan against petitioner was presented in court on 14.09.2006 under Section 18 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 counsel for the appellant has assailed the judgment primarily on the grounds of procedural lapses. It is argued that there was non-compliance with Section 50 of the NDPS Act, as the accused was never informed of his right to be searched before a Magistrate or a Gazetted Officer. It is further contended that no independent witness was associated at the time of recovery, despite the recovery having taken place near a populated area. Further, contradictions exist in the testimony of prosecution witnesses about the proximity of residential houses. SI Sardara Singh stated in cross-examination that the nearest houses were 5-7 kilas away from place of recovery, while HC Gurpal Singh admitted that there were residential houses



nearby and that Constable Gurmail Singh had gone to fetch a witness but was never examined by the prosecution. It is also argued that the defence version was not properly considered. The appellant, in his statement under Section 313 Cr.P.C, clearly stated that he was illegally lifted from his shop and thereafter falsely implicated in this case. In support, two defence witnesses, DW1-Ram Singh and DW2-Prem Sagar, testified that the appellant was taken from his shop in their presence and no contraband was recovered. The learned trial court dismissed this testimony without cogent reasoning, thereby failing to appreciate the defence evidence as required under law.

6. *Per contra*, learned State counsel has supported the conviction and argued that the recovery of opium was proved by the official witnesses, who had no motive to falsely implicate the accused. The chemical examiner's report confirmed the seized substance to be opium, and minor procedural lapses, if any, do not vitiate the conviction.

OBSERVATIONS AND ANALYSIS

7. After hearing the rival contentions and examining the material on record, this Court is of the considered view that the prosecution has not been able to prove its case beyond reasonable doubt. The compliance with Section 50 of the NDPS Act remains a serious issue. Though the recovery was made from the hand of accused, which amounts to personal search, the prosecution has failed to prove that the accused was duly informed of his right in the manner mandated by law. It is now well-settled law, as held by the Constitution Bench of the Hon'ble Supreme Court in ***State of Punjab v. Baldev Singh*, (1999) 6 SCC 172**, that compliance with Section 50 of NDPS Act is mandatory in cases where the search is of a person. Thus, the failure of



the investigating officer to inform the appellant of this right vitiates the recovery itself.

Similar views were taken by the Hon'ble Supreme court in ***State of Rajasthan v. Parmanand and another (2014) 5 SCC 345*** and ***S.K. Raju alias Abdul Haque alias Jagga v. State of W.B. (2018) 9 SCC 708***.

A two Judge Bench of the Hon'ble Supreme Court in ***State of Rajasthan v. Parmanand and another (2014) 5 SCC 345*** speaking through Justice Ranjana P. Desai has held as under: -

"15. Thus, if merely a bag carried by a person is searched without there being any search of his person, Section 50 of the NDPS Act will have no application. But if the bag carried by him is searched and his person is also searched, Section 50 of the NDPS Act will have application. In this case, Respondent 1 Parmanand's bag was searched. From the bag, opium was recovered. His personal search was also carried out. Personal search of Respondent 2 Surajmal was also conducted. Therefore, in the light of the judgments of this Court mentioned in the preceding paragraphs, Section 50 of the NDPS Act will have application."

8. Most importantly, the absence of independent witnesses also detracts from the prosecution case, especially in view of conflicting testimonies of the official witnesses. The omission to examine Constable Gurmail Singh, who allegedly went to call independent witnesses, and failure to take legal action against non-cooperating locals further weaken the credibility of the recovery. 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.

9. 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

10. In view of the foregoing, this Court is of the opinion that the conviction and sentence recorded by the learned Judge, Special Court, Mansa, cannot be sustained and are liable to be set aside.

11. Accordingly, the appeal is allowed. The judgment of conviction and order of sentence dated 25.02.2010 passed by the learned Judge, Special Court, Mansa, in FIR No.142 dated 18.07.2006 under Section 18 of the NDPS Act, Police Station City Mansa, are hereby set aside. The appellant, Vikas Garg @ Vicky @ Baba, is acquitted of the said charge. His bail bonds and surety bonds stand discharged.

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



13. 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.

Reserved on : May 15, 2025
Pronounced on : May 20, 2025
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(HARPREET SINGH BRAR)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No