



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

CRA-S No.3827-SB of 2015
Date of decision: 14th February, 2025

Manpreet @ Babbu @ Chhatri

... Appellant

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Arnav Sood & Mr. Manpreet Singh,
Advocates for the appellant.

Mr. Shiva Khurmi, Asst. Advocate General, Punjab
for the respondent/State.

MANJARI NEHRU KAUL, J.

1. The appellant has challenged the judgment of his conviction and order of sentence dated 02.06.2015 passed by the learned Special Court, Jalandhar in FIR No.244 dated 28.09.2012 under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as, 'the Act' or 'the NDPS Act') registered at Police Station Bhargo Camp, Jalandhar.

2. The case of the prosecution, in brief, is that on 28.09.2012 ASI Resham Singh, along with other police officials, was present near Nakhan Wala Bagh, engaged in *naka bandi* and patrolling. During the vehicle-checking process, the accused, upon noticing the police presence, attempted to turn in the opposite direction, raising suspicion.

The accused was immediately apprehended with the assistance of other police officials and disclosed his identity as Manpreet alias Babbu alias Chhatri, son of Amar Chand, resident of Mohalla Kanshi Nagar, Kot Sadiq, Jalandhar.

3. Upon being asked to produce the necessary documents for his motorcycle and driving license, the accused failed to do so and avoided giving a satisfactory response. The Investigating Officer (IO) insisted on the production of the documents, upon which the accused opened the dicky of the motorcycle, revealing a polythene bag containing an orange coloured powder. Efforts were made to associate independent witnesses, but none came forward. On opening the bag, the police found the substance to be an intoxicant powder, and the accused could not produce any valid prescription for its possession. Two samples of 5 grams each were drawn and placed into separate containers, while the remaining substance was weighed at 205 grams, making the total contraband 215 grams.

4. All parcels were sealed with the impression “RS” by the IO, who also prepared a sample seal, affixed it to form No.M-29, and sent a ruqa to the Police Station, leading to the registration of the FIR. The seal was later handed over to HC Bhushan Kumar. The case property, along with the accused, was presented before SHO Inspector Som Nath, who verified the recovery and affixed his seal “SN” on the case property, the samples, and form No.M-29. After completion of the investigation, the police presented challan against the accused in the Court.

5. During the trial, the prosecution examined 8 witnesses, i.e. PW-1 HC Bhushan Kumar, PW-2 Inspector Som Nath, PW-3 Constable Darshan Sahota, PW-4 MHC Balkar Singh, PW-5 ASI Resham Singh, PW-6 Sanjeev Khattar, PW-7 Surinder Singh, PW-8 Sham Lal.

6. All incriminating evidence was put to the appellant under Section 313 Cr.P.C., wherein he denied the allegations and pleaded innocence. However, based on the evidence presented, the learned trial Court convicted the appellant under Section 22(c) of the NDPS Act and sentenced him to undergo rigorous imprisonment for a period of 10 years and to pay a fine of ₹1,00,000/-, in default of payment of fine to further undergo rigorous imprisonment for one year.

7. Learned counsel for the appellant has primarily challenged the conviction on the following grounds:

(i) Non-compliance with Section 52(A) of the NDPS Act:

It has been argued that the procedure for seizure and sampling of the recovered contraband was flawed. The samples were not drawn in the presence of a Magistrate, as mandated under Section 52A of the NDPS Act, which casts a serious doubt on the authenticity of the samples sent for forensic examination. This non-compliance raises a substantial question as to whether the samples truly represent the seized contraband.

(ii) Absence of independent witnesses:

Despite the presence of multiple persons at the scene of the alleged recovery, no independent witness was joined at the search and seizure process. This omission, according to the appellant, creates a dent in the case of the prosecution and weakens its credibility.

(iii) Delay in sending samples to FSL:

There was an unexplained delay of 6 days in sending the case property to the FSL, thereby raising concerns regarding the possibility of tampering with the samples before they were examined.

(iv) Non-compliance with Section 50 of the NDPS Act:

It has been contended that the appellant was not informed of his right to be searched in the presence of a Magistrate or a Gazetted Officer, thereby violating his statutory right under Section 50 of the Act.

SUBMISSIONS ON BEHALF OF THE STATE

8. Per contra, the learned State counsel while opposing the appeal, has submitted the following:

(i) Credibility of Official Witnesses:

The mere non-joining of independent witnesses does not render the case of the prosecution unreliable, especially when the testimony of the official witnesses is cogent, consistent, and trustworthy. It is well settled

legal principle that reluctance of the public to join as independent witnesses is a common occurrence in such cases.

(ii) Non-applicability of Section 50 of NDPS Act:

The recovery in the present case was from the dickey of a motorcycle and not from the person of the appellant. Therefore, the provisions of Section 50 of the NDPS Act which apply only to personal search, are not attracted in this case.

(iii) Delay in sending samples to FSL:

The delay of 6 days in sending the samples to the FSL does not, by itself, vitiate the case of the prosecution, particularly when as per the FSL report, the seals were found to be intact upon receipt. There is no material to suggest tampering with the case property.

(iv) Compliance with Section 52A of NDPS Act:

The learned State counsel, relying on the judgment of Hon'ble the Supreme Court in '**Bharat Aambale vs. State of Chhattisgarh**' 2025 INSC 78, has contended that the accused bears the initial burden of proving non-compliance with Section 52A of the NDPS Act. In the present case, the evidence led by the prosecution sufficiently proves substantial compliance with the statutory requirements. Procedural lapses, if

any, does not vitiate the trial unless they create serious doubts about the veracity of the prosecution's version.

9. I have heard learned counsel for the parties and perused the relevant material on record.

10. Before proceeding further, it would be apposite to examine the mandate of Section 52A of the NDPS Act. The Hon'ble Supreme Court in **Bharat Aambale's case** (supra) has held that the initial burden to establish non-compliance with Section 52A of the Act lies on the accused. Only when a prima facie case of non-compliance is made out, does the onus shift to the prosecution to prove either substantial compliance or that such non-compliance does not materially affect the case. The object of Section 52A of NDPS Act is not only the safe disposal of contraband, but also ensuring procedural safeguards through proper documentation. It would be relevant to refer to the observations of the Hon'ble Supreme Court in **Bharat Aambale's case** (supra), which reads thus:

“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 sub-section (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 present case, the prosecution has successfully proved the recovery and conscious possession by the appellant. The evidence on record, both oral and documentary, sufficiently inspires confidence. The procedural lapses alleged by the appellant do not go to the root of the matter so as to vitiate the entire case.

12. Coming next to the arguments of the learned counsel for the appellant regarding non-joining of the independent witnesses, this Court finds no merit in the same. The testimony of the official witnesses is clear, cogent, and reliable. Courts have, time and again, held that reluctance of public witnesses to join search and seizure operations is common and does not, per se, render the case of the prosecution doubtful.

13. There is no merit in the contention of the learned counsel for the appellant with respect to the alleged delay in sending the samples to FSL. As per the report of the FSL, it stands confirmed that the samples were received with their seals intact, negating any possibility of tampering. A mere delay of 6 days, without any accompanying proof of foul play, does not create a dent in the case of the prosecution.

14. Even the contention of the learned counsel with respect to the non-compliance with the provisions of Section 50 of the NDPS Act is bereft of any merit. Concededly, the recovery was made from the

dickey of a motorcycle and not from the person of the accused, Section 50 of the NDPS Act has no application in the present case.

15. In view of the foregoing discussion, this Court has no hesitation to observe that the prosecution successfully proved its case beyond reasonable doubt. The learned trial Court has rightly convicted the appellant based on credible and consistent evidence.

16. Accordingly, the present appeal is dismissed.

(MANJARI NEHRU KAUL)
JUDGE

February 14, 2025
rps

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No