Serial No. 24

HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT JAMMU

CRAA No. 45/2008

Date of pronouncement: 12.11.2026
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State .....Appellant(s)/Petitioner(s)

Through: Mr. P.D. Singh. Dy. AG

vs

1. Romesh Kumar S/o Ram Lal
2. Raj Kumar S/o Jagan Nath both residents of Chanderbagha Haridwar Kshanchan Dehradun, Uttaranchal
3. Balbir Chand alias Beeru S/o Paras Ram R/o Pargwal Akhnoor
4. Dev Raj alias Devi S/o Basant Ram R/o Karyal Pallanwala, Tehsil Akhnoor. ..... Respondent(s)

Through: Mr. L.K. Sharma, Sr. Advocate with
Mr. Mohit Kumar, Advocate

Coram: HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE

ORDER (ORAL)

1. This acquittal appeal is directed against the judgment dated 14.03.2008 recorded by the Court of 1st Additional Sessions Judge, Jammu ["the trial Court"] in case titled "State vs. Romesh Kumar and Others", whereby the respondents have been acquitted of of the charges for the commission of offences under Section 8/21 of the NDPS Act.

2. The State has come up in appeal against the aforesaid judgment thereby assailing the same on the ground that the learned trial Court has acquitted the respondents erroneously despite the fact that the

prosecution had led cogent evidence regarding commission of offence by the respondents.

3. Heard learned counsel appearing for the parties and perused the record.

4. The story as projected by the prosecution is that a Naka was laid at Rajpura Chungi on 04.06.2005 and a vehicle had approached from Akhnoor side at about 08:50 AM. Two persons came down from the vehicle and fled towards Ganesh Marble Shop and were apprehended by Naka party from the bushes and they disclosed their identities as Romesh Kumar and Raj Kumar. Romesh Kumar was having a briefcase whereas the other accused Raj Kumar was having a bag with him. During the search of briefcase and bag, 1 kg and 40 grams each of heroin was recovered from bag and briefcase. Docket was sent through PW-Nishant Sharma for registration of case to Police Station Nowabad. During enquiry they disclosed that they had procured the drugs from Balbir Chand and Dev Raj residents of village Pargwal and from them also 1 kg 40 grams each of heroin was recovered. They too were arrested and after completing the formalities, the charge sheet for commission of offence under Section 8/21 of the NDPS Act was filed on 02.08.2005 against the respondents. The respondents came to be charged for commission of offence under Section 8/21 of the NDPS Act in terms of order dated 27.10.2005. The prosecution led its evidence, whereas the respondents did not lead any. After hearing the parties, learned trial Court acquitted the respondents. In order to appreciate as to whether the learned trial Court has rightly appreciated

the evidence or not, it is deemed proper to have a brief resume of the evidence led by the prosecution.

5. PW Nishant Sharma (PSO to SHO) has stated that a Naka was laid at Rajpura Mangotrian road on 04.06.2005. Two persons alighted from a vehicle and started running towards bushes. Romesh Kumar had a briefcase with him. The accused were chased and caught. On opening of briefcase, a white coloured bag and clothes were found. A drug officer was called, who identified the matter. It was disclosed by these two persons that they had a meeting with two persons at Pargwal. He along with SHO and other police officials went to Pargwal and found two persons sitting under a tree outside the village. SP Basant Kumar was called on spot by the SHO. Head constable searched those two persons and identity cards and money were recovered. Romesh Kumar Bhat identified the other material seized from both the accused which was weighed and found to be 01 kg 400 grams, whereas from the other seized material weighing 01 kg 40 gram, five grams each was extracted for the purpose of sample. SHO gave an option to the accused for their search from Magistrate or Gazetted Officer and prepared the papers which bear his signatures. Seizure memos were also prepared regarding Balbir Chand and Dev Raj. During cross-examination, he stated that he does not know the registration number of the vehicle from which two persons alighted and there were many passengers in the bus. Ajay Kohli and Sunil Dutt caught hold of persons who had fled from spot. The papers were prepared on spot near Gypsy No. 9689-JK02T. Police proceeded from that place

towards Pargwal. None from the Police team went to police station. The accused who were earlier caught, also accompanied the police and showed them the way. No police personnel from Akhnoor or police post were called on spot. The proceedings were conducted in presence of SP. Two persons were present under a tree and did not try to flee on seeing the police and other two accused. Sunil Dutt HC searched those two persons on the directions of SP. Neither any civilian was present on spot nor any shopkeeper was summoned.

6. PWs Ashok Kumar and Ganesh Kumar turned hostile and despite cross-examination no incriminating material could be extracted from them.

7. PW Romesh Chander Bhat has stated that on instructions of Inspector, Gian Chand, he went to Paloura Chungi and brought drug detection kit, as two persons had been apprehended and powder like substance was recovered from them. He along with one NCB personnel reached the spot along with weighing scale and drug detection kit. SHO Gian Chand showed him two packets and asked him to identify the substance. The packet weighed 1.40 kgs and having identity mark 222. On checking the substance, it was found to be heroin. 05 grams each of heroin as sample was extracted from the packets and seal of NCB was fixed over the same. The accused disclosed that the drug was obtained from two persons from Akhnoor and was to be delivered to one Sham Pandit at Delhi. Accused were arrested and brought to Nowabad Police Station, thereafter the police team headed by SSP Basant Kumar proceeded towards Pargwal at 01:30 PM. Two accused

were arrested from Pargwal village and two packets were seized from them, having 999 and 555 marks on them. The packets contained drugs weighing 01 kg 40 grams each. Again 05 grams of heroin as sample was extracted from each packet and samples were sealed. The seizures from Dev Raj and Balbir Chand were prepared in police station. During cross-examination it is stated that when the police was questioning Raj Kumar and Romesh Kumar, he reached on spot. The articles were not seized in his presence though sealed in his presence. SP Basant Kumar was present on spot when the articles were seized. The seizure memos are not correct to the extent that the articles were seized in his presence. He obtained seal from Satish Sharma and returned the same to him. Thereafter, the seal remained under the control of Satish Sharma. The kit was once used in Domana Police Station in another case. The police team had reached prior to him and accused along with the articles were brought on spot by the police. The documents were prepared in Nowabad Police Station. Munshi had prepared the documents at 5/6 PM on the day of occurrence.

8. PW Haji Mohd Hussain states that he re-sealed ten packets on 06.06.2005 and issued certificate for the same. During cross-examination it is stated that he neither weighed nor opened the sealed packets.

9. PW Basant Kumar stated that he was posted as ASP, Jammu (Rural) on 04.06.2005. At 10 AM SHO Nowabad sent a message from Pargwal that two persons had been detained and are required to be searched. He reached on spot at 01:45 PM where two accused had

been detained at open place near sawmill. SHO asked the accused if they wanted to be searched by Magistrate or Gazetted Officer. Option notice shown to witness did not bear his signature. He conducted search of HC Sunil Dutt who in turn carried search of two accused. A packet was recovered from one person and another packet was recovered from dub of Mehra. NCB Personnel checked the material and the same was found to be heroin. NCB Personnel also weighed the article and lifted sample of five gram each. No civilian came on spot despite request. Seizure memo was signed by him. During cross-examination it is stated that it is wrong to state that he was in office from 10:00 AM to 02 PM. He did not take any independent witness along with him or summoned BSF or Army personnel. He does not remember if Chowki Officer was called on spot. He does not remember as to who prepared the seizure memos and also whether the samples were taken on paper. He did not sign the samples.

10. PW Sunil Dutt stated that he along with others had laid naka at Rajpura Chungi on 04.06.2025 at 09:00 AM and were checking the vehicles. Two persons alighted from bus, coming from Akhnoor, and fled towards other side of the road. They were chased and caught by police from bushes behind Ganesh Marble shop. One of them had attaché and other had bag with him. They disclosed their names as Ramesh Kumar and Raj Kumar. Ramesh Kumar was having an attaché and Raj Kumar was having a bag. SHO searched Romesh Kumar and found clothes and plastic packets from attaché and on finding some suspicious material, he called NCB people on spot. NCB people

checked the articles with kit and found the same as heroin and weight of the article was found to be 01 kg and 40 grams. From the bag of Raj Kumar, same quantity of article was found. Five grams of heroin as sample was extracted by NCB people from each packet. The articles were seized and were sealed with ring. He admitted contents and that he signed the seizure memos. The accused in turn disclosed that they had procured the contraband from Dev Raj and Balbir resident of Pargwal. Both of them were caught on spot. SHO gave an option to them for their search before the Magistrate or Gazetted Officer and the accused opted for Gazetted Officer. SHO sent wireless message to ASP (Rural) Basant Kumar who reached the spot, as the accused opted to be searched by Gazetted Officer. In his presence search was conducted and 1.40 grams of heroin was found in plastic bag and cloth from dub. The seizure memos were prepared, which bear his signature. The packets were sealed and brought to police station. During cross-examination, it is stated that naka was laid on right side of road leading towards Akhnoor and the naka party was on the left side of the road. The bushes from where the accused were apprehended, were 50 yards away from the naka. He had not seen attaché and bag in the court. NCB team was called on spot by the SHO after the accused were searched. The IO conducted the proceedings. The party proceeded directly to Pargwal and it is wrong to state that police party came back to police station. It is wrong to state that seizure memos were prepared in police station. ASP Basant Kumar was summoned on spot from Pargwal. He does not remember as to who prepared the

seizure memos. He does not know to whom the seal belonged to. He does not know if anyone from Naka, shops or panch or sarpanch was called on spot. SHO gave an option to the accused. Option notice was neither written by him nor by SHO.

11. PW Rohit Koul had proved the FSL report.

12. PW Gian Chand Sharma (IO) has stated that on 04.06.2005 he along with other police personnel had laid naka at Rajpura. Two persons came down from the bus, which was coming from Akhnoor and they had bag and attaché with them. They disclosed their names as Ramesh Chander and Raj Kumar. Some powder like substance was found wrapped in cloth, which was discovered from bag and attaché case. He suspected that powder was heroin. NCB officials were called on spot, who detected the material as heroin with the drug detection kit. He sent docket for lodging of FIR through constable Nishant Kumar. The docket bears his signature. The material was weighed by NCB officials and five gram each was extracted as samples from packets and samples were sealed and the seal was given to Ashok Kumar on supurdnama. Both the accused disclosed that they had procured the articles from Balbir Chand and Dev Raj from Pargwal and co-accused had more heroin with them. He then went to Pargwal and found the accused sitting under Safeda tree. The accused were given an option to be searched by Gazetted or police officer. Gazetted Officer of police was summoned on spot. The heroin was found in plastic bags from dub of accused and was weighing 01 kg and 40 grams. From the total 05 grams of heroin was extracted as sample and was seized. He stated

that the documents were prepared on spot by him. The witness identified the seized material in the court. During cross-examination, he stated that both the persons fled towards down side after crossing the road. Krishan Chand and Vijay Koul who chased accused are not cited as witnesses in the charge-sheet. The reference to bag and attaché has not been made in the docket. The signatures of accused were not obtained on the seizure memos. The accused disclosed, in presence of Ashok Kumar, Romesh Chander Bhat and Ganesh about presence of co-accused at Pargwal. After obtaining option from accused at 01:05 PM, Bsant Kumar, SP Rural was sent a message through PCO situated at Pargwal Market. SP reached on spot at 01:45 PM. The people from vicinity were called, but they refused, as recorded in the case diary, but their names are not mentioned in the file. The police returned to police station at 02:45 PM. The packets were not produced before the Naib Tehsildar when remand of accused was obtained. Bashir Ahmed, Malkhana in-charge has not been cited as witness. He has not mentioned about removing of packets and sample packets from malkhana in the record. He is witness to occurrence and investigated the case as well. He did not inform his superior officers of the proceedings. The letter dated 06.06.2005 from SSP West to Director FSL does not carry impression of seal.

13. The record depicts that in the seizure memo qua the accused Raj Kumar and Romesh Kumar, besides other official witnesses, PW Ganesh Kumar and Ashok Kumar have been cited as witnesses who were independent witnesses. Both these witnesses have not supported

the prosecution story and turned hostile. PWs Sunil Dutt, Nishant Kumar and Gian Chand Sharma have deposed about the recovery of the contraband from the bag and the attaché which were in possession of the accused Raj Kumar and Romesh Kumar, but surprisingly in the docket in EXPW-GC there is no reference of bag and attaché rather it is mentioned that from the possession of both the accused one packet each was recovered. If the contraband was recovered from the bag and attaché in possession of the accused Raj Kumar and Romesh Kumar, then the reference must have been made in the docket EXPW-GC which is the first document pursuant to which FIR was registered by the police station. It casts a dent upon the story projected by the prosecution regarding the recovery of contraband from the accused Raj Kumar and Romesh Kumar.

14. Record depicts that FIR No. 88 of 2005 was registered on 04.06.2005 at 10:00 AM and as per the statement made by PW Gian Chand Sharma, docket was prepared and sent through Constable Nishant Kumar for registration of FIR whereas PW Nishant Kumar in his deposition has categorically stated that the seizure proceedings were conducted by the Investigating Officer near Gypsy No. 9689-JK02T which took 30 minutes and, thereafter, the police proceeded towards Pargwal at 10:30 AM and none from the team went to the police station, as such doubt is created with regard to the registration of FIR at 10:00 AM. This is also a material fact which cannot be ignored.

15. The prosecution witnesses have also given the divergent versions with regard to the apprehending of the accused, namely Balbir Chand and

Dev Raj from Pargwal. PW Gian Chand Sharma (IO) has stated that when he went to Pargwal, he found the co-accused sitting under the Safeda tree, who tried to flee, but police overpowered them whereas PW Nishant Sharma has stated that the accused did not try to flee from the spot. More so, PW-Romesh Chander has stated that the accused were arrested from Pargwal village, but had not specified the place whereas PW-Basant Kumar had deposed that the accused were at an open place near a Sawmill and he further states that at 10:00 AM, SHO sent message from Pargwal that two persons were detained and required to be searched. Further, PW Romesh Chander Bhat has stated that seizure memos were prepared by the Police Station Nowabad which also creates doubt about the authenticity of alleged seizures affected from the accused. PW Sunil Dutt has too not specified the exact location of the arrest of the accused. These different versions of the prosecution witnesses have also caused dent in the prosecution case.

16. Last but not the least there is no evidence that after the contraband was allegedly recovered from the accused persons, the same was kept in safe custody. The record depicts that the seizure were effected on 04.06.2005 and packets were taken before the Tehsildar on 06.06.2005 for re-sealing. There is nothing on record to show as to where the samples were kept on 04.06.2005, 05.06.2005 and 06.06.2005. Neither the register of Malkhana has been placed on record nor in-charge Malkhana has been has been examined to prove the safe custody of the seized contraband as well as samples.

17. This Court has examined the judgment of acquitted passed by the learned trial Court and after perusing the same, this Court is of the considered opinion that the opinion formed by the learned trial Court while acquitting the respondents cannot be termed as perverse in any manner, rather the opinion formed by the learned trial Court is possible and plausible. It is settled law that while dealing with the acquittal appeal, the appellate Court cannot substitute the view of the learned trial Court with its own view, particularly, when the opinion formed by the learned trial Court is plausible or possible.

18. In view of the above, this Court does not find any reason to show indulgence and, as such, this appeal is found to be devoid of any merit and the same is, accordingly, dismissed.

19. Record of the trial Court be sent back.

(RAJNESH OSWAL)
JUDGE

Jammu
12.11.2026
Manik

Whether the order is speaking: Yes
Whether the order is reportable: Yes