

2026:PHHC:048080



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

SR. NO.102

CRM-M-24029-2017 (O&M)
DATE OF DECISION:23.03.2026

RAJESH AND ANOTHER

...PETITIONER(S)

VERSUS

STATE OF HARYANA

...RESPONDENT(S)

CORAM: HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present: Dr. Anmol Rattan Sidhu, Senior Advocate with
Mr. Shiv K. Sharma, Advocate
for the petitioners.

Mr. Parmod Kumar, AAG, Haryana.

N.S. SHEKHAWAT, J.

1. The petitioners have filed the present petition under Section 482 CrPC with a prayer to quash FIR No.151 dated 24.04.2017 registered under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the NDPS Act') at Police Station Urban Estate, Rohtak and all subsequent proceedings arising therefrom.

2. While issuing notice of motion, a Co-ordinate Bench of this Court noticed the following contentions:-

"It is inter alia contended that petitioner No.2 is a licensed Pharmacist and the bottles of Corex syrup allegedly recovered from him are permissible under Schedule 'H' of

Drugs and Cosmetics Act, which he is entitled to possess. It is further contended that petitioner No.1 is his own brother and Dentist by profession, who has been motivatedly framed on account of some undesirable incident involving some person close to the Police Authorities, the details of which need not be mentioned in this order.

Notice of motion.

On the asking of the Court, Mr. D.R. Singla, Deputy Advocate General, Haryana, accepts notice on behalf of the respondent-State. Let a copy of the paper-book be supplied to him during the course of the day.

List on 11.10.2017, for reply/arguments.

Further proceedings before the trial Court shall remain stayed till the next date of hearing.”

3. During the course of arguments today, learned Senior Counsel has reiterated the above submissions. He has further contended that the FIR in the present case was registered on the basis of the statement made by HC Amit Kumar and the same has been reproduced below:-

“Today, I HC alongwith HC Baljit Singh No.994 and Harish Kumar No.2339 was present at Sheela Bye Pass, Rohtak for patrolling and crime checking purpose. In the meantime, a secret informer came and gave information that one person riding on black coloured Activa having no front or rear number plates, was coming from the side of village Bohar towards Sheela Bye pass and there might be some intoxicant material in the dickey and if barricading was done immediately then he could be apprehended. I, HC, found the information to be true and apprised the fellow officials regarding circumstances and started installing barricade. After some time, one person was seen coming from village Bohar towards Sheela Bye pass on Activa. After seeing the police party standing in the front, he turned back the scooty and started running. I, HC, apprehended

the person few steps away with the help of fellow officials on suspicion basis and asked his name and address, who disclosed his name as Rajesh S/o Jai Bhagwan R/o H.No. 1427, Sector 3, Rohtak and on the basis of suspicion, his dickey was opened and checked and 15 bottles of Corex were found in the dickey. On every bottle cap, Pfizer was written and Chlorpheniramine Maleate & Codeine-Phosphate Cough Syrup 100 cm was mentioned on the label of bottle. The same is prohibited by the government and the accused was asked to produce the permit or licence regarding this medicine, but he could not produce. Upon this a call was made to Drug Inspector Mandeep Maan on his telephone No.7404013222 and he was informed and asked to come at the spot and prepare his report, but he showed his inability to visit the spot and told to submit his report later on. Thereafter 2 bottles each were separated as samples out of the 15 bottles of corex recovered from above said accused Rajesh and parcel was prepared and parcel of balance corex bottles was prepared and the parcels and sample were sealed with the seal of V.K. and after use the seal was handed over to HC Baljit No.994 and the parcels and sample of corex and Activa were taken into police possession vide recovery memo and the witnesses put their respective signatures on the memo. The accused committed an offence U/S 22 of NDPS Act by keeping the corex bottles prohibited by the government without any permit or licence in his possession. Therefore, writing was sent to the police station for registration of case through Ct. Harish Kumar No.2339. After registration, case number be intimated through application. The higher officials be intimated through special report and investigating officer be sent at the spot for further investigation. I, HC alongwith fellow official, am present at the spot for waiting the investigating officer. Today - Sheela Bye pass, Rohtak. HC Amit Kumar No.1111 RTK, P.S. Urban Estate Rohtak. Dated 24.04.17 at 10:15 p.m.”

4. Learned Senior Counsel further submitted that petitioner No.1 is a registered Dental Surgeon, who is running his dental clinic at Sheela Bypass, Rohtak and his Certificate of Registration under the Dentists Act, 1948 was attached as Annexure P-1. His real brother, i.e. petitioner No.2 is also a qualified pharmacist and is running a medical store under the name and style of M/s Poonam Medical Hall, Rohtak. He has placed reliance on the Registration Certificate (Annexure P-2) in this regard. Learned Senior Counsel next submitted that on 12.04.2017, a person came to the medical store of petitioner No.2, where both the petitioners were sitting. He produced a prescription of Manchanda Chest Care Clinic and asked the petitioners to give him the prescribed medicine. Petitioner No.2 gave the medicines and asked him to pay the bill. However, instead of paying the bill, the said person threatened that he was a relative of some police personnel and would not make any payment. This led to a scuffle between the petitioners and the said person and ultimately the said unknown person snatched ₹60,000 from petitioner No.1, lying in his pocket, and ran away. The petitioners informed the police control room by dialling number 100 and Constable Baljeet and Constable Rohtash visited the shop. A written complaint was moved by the petitioners and the Registration Number of the Aactiva scooter was also disclosed. Despite assurance, no action was taken by the police. Even, the said incident was reported in various newspapers, which is evident from Annexure P-3.

5. The petitioners were later summoned in the police station and were threatened to withdraw the complaint, otherwise they will have to face dire consequences. The petitioners refused to withdraw their complaint and

against them. Immediately after registration of the FIR, petitioner No.1 was picked up by the police and was given third-degree torture. His disclosure statement was forcefully recorded and even petitioner No.2 was also implicated by showing the recovery of 22 bottles of Corex from him.

6. Learned Senior Counsel further submitted that the alleged occurrence had taken place at 10:15 p.m. and the FIR was registered on the basis of a secret information. However, neither any independent witness was joined nor any senior police officer was called at the spot. Even the FIR was ordered to be registered on the basis of a raid, which was allegedly conducted by a police official of the level of a Head Constable. Even there was also non-compliance of Section 42 of the NDPS Act.

7. Learned Senior Counsel further vehemently argued that petitioner No.1 is a Dental Surgeon, whereas petitioner No.2 is a qualified pharmacist and was entitled to keep the preparations, which have allegedly been recovered from him, as these drugs fall under Schedule 'H' of the Drugs and Cosmetics Rules and do not attract the provisions of the NDPS Act and the Rules. Learned counsel further submitted that a false case has been registered against him, just to victimise them and the other mandatory provisions of the NDPS Act were also not complied with.

8. On the other hand, learned State counsel has vehemently opposed the submissions made by learned Senior Counsel for the petitioners and it was stated to be a case of chance recovery. However, learned State counsel also admitted that notice under Section 42 of the NDPS Act was not served and no intimation was sent to the Police Station and no gazetted officer of any department was called at the time of search and recovery. He

remains crowded, however, no public witness was joined, while effecting the recovery from the petitioners.

9. I have heard the learned counsel for the parties and perused the case file minutely.

10. In the present case, admittedly, the provisions of Section 42 of the NDPS Act were not complied with by the police. Before proceeding further, it would be appropriate to refer to the law laid down by **Hon'ble the Supreme Court in the matter of Karnail Singh v. State of Haryana 2009(8) SCC 539**, wherein Hon'ble the Supreme Court held as follows:-

"12. The material difference between the provisions of Sections 42 and 43 is that Section 42 requires recording of reasons for belief and for taking down of information received in writing with regard to the commission of an offence before conducting search and seizure, Section 43 does not contain any such provision and as such while acting under Section 43 of the Act, the empowered officer has the power of seizure of the article etc. and arrest of a person who is found to be in possession of any narcotic drug or psychotropic substance in a public place where such possession appears to him to be unlawful.

It was further held as follows:-

14. The Constitution Bench in Baldev Singh (supra) considered the compliance of Section 50 of the Act. While doing so, the Bench also considered the provisions of Sections 41 and 42 of the Act. It observed as follows :

"8. Section 41 of the Narcotic Drugs and Psychotropic Substances Act provides that a Metropolitan Magistrate or a Magistrate of the First Class or any Magistrate of the Second Class specially empowered by the State Government in this behalf, may issue a warrant for the arrest of and for search of any person whom he has reason to believe to have committed any offence punishable under Chapter IV. Vide sub-section (2)

the power has also been vested in gazetted officers of the Departments of Central Excise, Narcotics, Customs, Revenue Intelligence or any other department of the Central Government or of the Border Security Force, empowered in that behalf by a general or special order of the State Government to arrest any person, who he has reason to believe to have committed an offence punishable under Chapter IV or to search any person or conveyance or vessel or building etc. with a view to seize any contraband or document or other article which may furnish evidence of the commission of such an offence, concealed in such building or conveyance or vessel or place.

9. Sub-section (1) of Section 42 lays down that the empowered officer, if has a prior information given by any person, he should necessarily take it down in writing and where he has reason to believe from his personal knowledge that offences under Chapter IV have been committed or that materials which may furnish evidence of commission of such offences are concealed in any building etc. he may carry out the arrest or search, without a warrant between sunrise and sunset, and he may do so without recording his reasons of belief.

10. The proviso to sub-section (1) lays down that if the empowered officer has reason to believe that a search warrant or authorisation cannot be obtained without affording opportunity for the concealment of evidence or facility for the escape of an offender, he may enter and search such building, conveyance or enclosed place, at any time between sunset and sunrise, after recording the grounds of his belief. Vide sub-section (2) of Section 42, the empowered officer who takes down information in writing or records the grounds of his belief under the proviso to sub-section (1), shall forthwith send a copy of the same to his immediate official superior. Section 43 deals with the power of seizure and arrest of the suspect in a public place. The material difference between the provisions of Section 43 and Section 42 is that whereas Section 42 requires recording

of reasons for belief and for taking down of information received in writing with regard to the commission of an offence before conducting search and seizure, Section 43 does not contain any such provision and as such while acting under Section 43 of the Act, the empowered officer has the power of seizure of the article etc. and arrest of a person who is found to be in possession of any narcotic drug or psychotropic substance in a public place where such possession appears to him to be unlawful."

It is to be noted that Baldev Singh's case (supra) has dealt with Section 50 of the Act and the effect of non-compliance of the same. It was held that the same provisions of Section 50 containing certain protection and safeguards implicitly make it imperative and obligatory and cast a duty on the investigating officer to ensure that search and seizure of the person concerned is conducted in a manner prescribed by Section 50. The unamended Section 50 as existed during that period is as follows :

"Section 50 - Conditions under which search of persons shall be conducted (1) When any officer duly authorised under section 42 is about to search any person under the provisions of section 41, section 42 or section 43, he shall, if such person so requires, take such person without unnecessary delay to the nearest Gazetted Officer of any of the departments mentioned in section 42 or to the nearest Magistrate. (2) If such requisition is made, the officer may detain the person until he can bring him before the Gazetted Officer or the Magistrate referred to in sub-section (1).

(3) The Gazetted Officer or the Magistrate before whom any such person is brought shall, if he sees no reasonable ground for search, forthwith discharge the person but otherwise shall direct that search be made.

(4) No female shall be searched by anyone excepting a female.

" The safeguard or protection to be searched in the presence of a gazetted officer or a Magistrate has been incorporated in Section 50 to ensure that persons are only searched with a good cause and also with a view to maintain the veracity of evidence derived from such search. But this strict procedural requirement has been diluted by the insertion of sub-section (5) and (6) to the Section by Act 9 of 2001, by which the following sub-Sections were inserted accordingly :

"(5) When an officer duly authorised under section 42 has reason to believe that it is not possible to take the person to be searched to the nearest Gazetted Officer or Magistrate without the possibility of the person to be searched parting with possession of any narcotic drug or psychotropic substance, or controlled substance or article or document, he may, instead of taking such person to the nearest Gazetted Officer or Magistrate, proceed to search the person as provided under section 100 of the Code of Criminal Procedure, 1973 (2 of 1974).

(6) After a search is conducted under sub-section (5), the officer shall record the reasons for such belief which necessitated such search and within seventy-two hours send a copy thereof to his immediate official superior." Through this amendment the strict procedural requirement as mandated by Baldev Singh's case was avoided as relaxation and fixing of the reasonable time to send the record to superior official as well as exercise of Section 100 of Criminal Procedure Code was included by the legislature. The effect conferred upon the previously mandated strict compliance of Section 50 by Baldev Singh's case was that the procedural requirements which may have handicapped an emergency requirement of search and seizure and give the suspect a chance to escape were made directory based on the reasonableness of such emergency situation. Though it cannot be said that the protection or safeguard given to the suspects have been taken away completely but certain flexibility in the

procedural norms were adopted only to balance an urgent situation. As a consequence the mandate given in Baldev Singh's case is diluted.”

11. Further, similar views have been expressed by the Hon'ble Supreme Court while deciding the matter of ***Boota Singh v. State of Haryana, AIR 2021 SC 1913***.

12. Adverting to the facts of the instant case, it is apparent that there was admittedly non-compliance of requirement of Section 42 of the NDPS Act. The law is well settled that total non-compliance of Section 42 of the NDPS Act is impermissible in law. If the information was received by the police officer and he had sufficient time to take action and if the police officer failed to record in writing the information received or failed to send a copy thereof to the Superior Officer, then it would be construed as a suspicious circumstance and a clear violation of Section 42 of the NDPS Act. Similarly, where a police officer did not record the information at all and did not inform the superior, then it would also be a clear violation of Section 42 of the NDPS Act. Thus, the FIR itself is liable to be quashed on this ground alone.

13. Apart from that, in the present case, apparently the facts are highly suspicious. On receipt of secret information, Head Constable Amit Kumar did not feel it appropriate to either call or inform any superior police officer at the spot. Even after the raid, he did not deem it appropriate to inform his senior police officers. Apparently, it seems that the complainant was acting at the dictates of some hidden force, with some ulterior motive. Moreover, I also find sufficient force in the argument raised by learned counsel for the petitioners that the registration of the FIR clearly smacks of

malafide and on this ground also, the FIR is liable to be quashed by this Court.

14. In view of the above discussion, the present petition succeeds and resultantly FIR No.151 dated 24.04.2017 registered under Section 22 of the NDPS Act at Police Station Urban Estate, Rohtak and all consequential proceedings arising therefrom are quashed. Pending application(s), if any, shall stand disposed of.

23.03.2026
mks

(N.S.SHEKHAWAT)
JUDGE

Whether Speaking/Reasoned: YES / NO
Whether Reportable: YES / NO