



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-1121-2023 (O&M)
RESERVED ON : 04.05.2026
PRONOUNCED ON : 26.05.2026
UPLOADED ON : 29.05.2026

Whether only operative part of the judgment is pronounced or the full judgment is pronounced.	Operative part/full judgment
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AJAY KUMAR @ AJUPetitioner

VERSUS

STATE OF PUNJABRespondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present: - Mr. Sidhant Vermani, Advocate
for the petitioner.

Mr. Mohit Kapoor, Senior DAG, Punjab.

VINOD S. BHARDWAJ, J.

The present appeal has been preferred against the judgment dated 09.03.2023 passed by the Judge Special Court, Amritsar in case bearing No. NDPS/427/2017 arising out of FIR No. 339 dated 05.12.2014 registered under Sections 22 of the NDPS Act, 1985 at Police Station Sultanwind, Amritsar whereby the appellant herein had been convicted for commission of offence

under Section 22 (C) of the NDPS Act, 1985 and sentenced to undergo rigorous imprisonment for a period of 10 years and fine of Rs. 1 lac and in default of payment of fine to undergo rigorous imprisonment for one year vide judgment of conviction and order of sentence dated 09.03.2023.

2. Briefly summarised, the facts of the present case are that on 05.12.2014, ASI Satnam Singh, along with other police officials, was present near Sapan Da Shivala Mandir situated on the canal road while conducting patrol duty and checking suspicious persons. During the course of patrolling, a young man was seen approaching on foot from the side of New Kot Mit Singh. Upon noticing the police party, the said person became perplexed, immediately changed direction and attempted to pull out a polythene bag from the right pocket of his trousers with an intention to throw it away. However, before he could do so, he was apprehended by ASI Satnam Singh with the assistance of the accompanying police officials. Upon inquiry, the said person disclosed his identity as Ajay Kumar @ Aju, (the present appellant). Before conducting the search of the polythene bag recovered from the possession of the appellant, efforts were made by the Investigating Officer to associate independent witnesses from the public, however, none agreed to join the proceedings. The search of the polythene bag was thereafter conducted, which resulted in recovery of intoxicant powder. Out of the recovered substance, a sample weighing 05 grams was separated and placed in a plastic container. The remaining bulk quantity, upon weighment, was found to be 255 grams and was also sealed separately in another plastic container. Both the sample parcel and the bulk parcel were sealed by the Investigating Officer with seal bearing impression "SS". A separate sample seal was also prepared and Form

M-29 was filled at the spot with the seal impressions affixed thereupon. The seal after use was handed over to HC Bikramjit Singh. The recovered contraband along with the sample parcel was thereafter taken into possession vide separate recovery memo attested by the police officials present at the spot. Since the appellant failed to furnish any explanation regarding possession of the aforesaid intoxicant powder, ruqa was sent to the police station on the basis of which the present FIR was registered. Further investigation was thereafter carried out at the spot.

3. It is further the case of the prosecution that after reaching the police station, ASI Satnam Singh produced the accused, the sealed parcels, sample seal and Form M-29 before Inspector/SHO Parvesh Chopra, who verified the intactness of the seals and thereafter affixed his own seal bearing impression "PC" upon the parcels as well as Form M-29. The SHO thereafter deposited the case property, sample seal and Form M-29 in the double lock after preparing the handing over memo. On the following day, i.e. 06.12.2014, the SHO operated the double lock and handed over the parcels, sample seal, Form M-29 and the accused to ASI Satnam Singh for production before the Illaqa Magistrate. It is averred that before the Court, a representative sample of 05 grams was again drawn in accordance with the prescribed rules and the remaining bulk parcel as well as the representative sample parcel were sealed by the Judicial Magistrate with seal impression "NK", though the same was wrongly reflected in the judgment as "AS/SS". The Investigating Officer also affixed his seal "SS" on the parcels. Thereafter, upon return to the police station, the three parcels, i.e. one bulk parcel and one representative sample parcel each bearing seal impressions "NK/SS" and another sample parcel

bearing seal impressions SS/PC” were deposited with the SHO and kept in the double lock. Subsequently, the sample parcel bearing seal impressions SS/PC” was sent to the office of the Chemical Examiner, Kharar on 16.02.2015 for chemical analysis.

4. Upon completion of investigation and after receipt of the report from the office of the Chemical Examiner, the police presented the final report/challan for offence under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 before the competent Court. It further transpires from the record that along with the challan presented against the present appellant, an application seeking discharge of two other accused persons, namely Navdeep Singh and Manjit Singh, who had also initially been arrayed as accused in the present case, was filed before the trial Court. However, the said application was declined by the Court. Learned counsel appearing on behalf of the appellant informed this Court that despite the aforesaid proceedings, the said co-accused were ultimately not tried along with the present appellant. It has been submitted that accused Manjit Singh was declared a proclaimed offender vide order dated 12.07.2018, whereas accused Navdeep Singh expired during the pendency of proceedings and consequently the proceedings against him stood abated vide order dated 16.11.2022. Resultantly, the present appellant remained the sole accused who eventually faced trial in the instant case.

5. Be that as it may, after presentation of the challan in Court, copies of the challan and documents relied upon by the prosecution were supplied to the accused free of cost in compliance of provision of Section 207 Code of Criminal Procedure, 1973.

6. Upon consideration of the prima facie material available on record, the trial Court formed an opinion that the accused-appellant was found in conscious possession of 260 grams of intoxicant powder containing Alprazolam” without any valid permit, licence or authorization and that sufficient grounds existed to proceed against him for commission of offence punishable under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985. Accordingly, charge under the aforesaid provision was framed against the appellant. The substance of accusation was read over and explained to him in simple Punjabi language, to which the appellant pleaded not guilty and claimed trial.

7. In order to substantiate the allegations levelled against the appellant, the prosecution examined as many as five witnesses and also proved on record various documents, reports, recovery memos, seizure proceedings, Form M-29, forensic material and other documents collected during the course of investigation. The witnesses examined by the prosecution are as follows:

PW1 - Constable Ajaypal Singh

PW-2 HC Bikramjit Singh

PW-3 ASI Satnam Singh, Investigating Officer

PW-4 Inspector Parvesh Chopra

PW-5 Vaneet Sethi, Malkhana Moharrar

8. After completion of the prosecution evidence, the statement of the appellant-accused was recorded under Section 313 Cr. P.C. The entire incriminating evidence was put to him to which he pleaded false implication. The accused-appellant further pleaded that he is innocent and no recovery was

effected from him. No evidence was however led by the accused in his defence. By way of a separate statement, defence evidence of the appellant-accused was closed.

9. The parties were heard at length and the evidence was perused. Upon consideration thereof, the trial Court recorded a finding of conviction against the appellant herein and sentenced him as above. Hence, the present appeal.

10. Learned counsel appearing on behalf of the appellant has assailed the impugned judgment of conviction primarily on the following grounds:-

(i) That although a representative sample was drawn before the Illaqa Magistrate in compliance of Section 52-A of the Narcotic Drugs and Psychotropic Substances Act, 1985, the said representative sample was never forwarded to the office of the Chemical Examiner for forensic analysis. Learned counsel submits that instead of sending the representative sample drawn under the supervision of the Magistrate, the investigating agency chose to send the sample drawn at the spot by the Investigating Officer and sealed with seal impressions "SS/PC" for chemical examination. It is argued that once a representative sample had been drawn before the Magistrate in compliance with the statutory procedure contemplated under Section 52-A of the NDPS Act, the prosecution was required to establish that the very same sample was forwarded for forensic analysis. He submits that the act of sending an altogether different sample drawn at the spot notwithstanding drawing of the sample before the Magistrate, creates a serious infirmity in the prosecution case and renders the entire sampling process suspect. It is

contended that such a deviation strikes at the sanctity of the case property and creates a reasonable apprehension regarding the contraband seized and sanctity of the sample examined by the Chemical Examiner. In support of his arguments he relies on the judgment of this Court in the matter of ***Gagandeep Singh @ Bau versus State of Punjab***” reported as **2019 (4) RCR (Crl.) 733**. The relevant extract thereof reads thus:-

11. What emerges from the statements recorded here in above is that the appellant was apprehended from a busy place known as Namdhari Kanda. According to PW1 HC Tejinder Singh, the appellant was carrying contraband in his pocket. Similarly PW2 ASI Mukhtiar Singh has also testified that the appellant was carrying something in a polythene in right pocket of his pant. The contraband was recovered from his person. PW1 HC Tejinder Singh categorically admitted in his statement that the accused was not apprised of his legal right to be searched before a Gazetted Officer or the Executive Magistrate. Similarly PW2 ASI Mukhtiar Singh has also admitted in his cross-examination that he gave no option to the accused about his legal right to be searched before a Gazetted Officer. Since the contraband has been recovered from the person of the appellant, he was to be apprised of his legal right to be searched in the presence of a Gazetted Officer or Executive Magistrate.”

(ii) Reliance is also placed on the judgment of ***“Simranjit Singh versus State of Punjab”*** reported as **2023 Cri. L.R. (SC) 1502**. Relevant extract thereof reads thus:-

“8. In paragraphs 15 to 17 of the decision of this Court in Mohanlal's case, it was held thus:

"15. It is manifest from Section 52-A(2)include (supra) that upon seizure of the contraband the same has to be forwarded either to the officer in-charge of the nearest police station or to the officer empowered under Section 53 who shall prepare an inventory as

stipulated in the said provision and make an application to the Magistrate for purposes of (a) certifying the correctness of the inventory, (b) certifying photographs of such drugs or substances taken before the Magistrate as true, and (c) to draw representative samples in the presence of the Magistrate and certifying the correctness of the list of samples so drawn.

16. Sub-section (3) of Section 52-A requires that the Magistrate shall as soon as may be allow the application. This implies that no sooner the seizure is effected and the contraband forwarded to the officer-in-charge of the police station or the officer empowered, the officer concerned is in law duty-bound to approach the Magistrate for the purposes mentioned above including grant of permission to draw representative samples in his presence, which samples will then be enlisted and the correctness of the list of samples so drawn certified by the Magistrate. In other words, the process of drawing of samples has to be in the presence and under the supervision of the Magistrate and the entire exercise has to be certified by him to be correct.

17. The question of drawing of samples at the time of seizure which, more often than not, takes place in the absence of the Magistrate does not in the above scheme of things arise. This is so especially when according to Section 52-A(4) of the Act. samples drawn and certified by the Magistrate in compliance with subsections (2) and (3) of Section 52-A above constitute primary evidence for the purpose of the trial. Suffice it to say that there is no provision in the Act that mandates taking of samples at the time of seizure. That is perhaps why none of the States claim to be taking samples at the time of seizure."

- (iii) That there was an inordinate and unexplained delay in dispatching the sample parcel to the office of the Chemical Examiner. It is submitted that the recovery was effected on 05.12.2014, however, the sample parcel was

sent to the Chemical Examiner only on 16.02.2015, i.e. after a delay of more than two months. It is argued that under the statutory safeguards governing prosecutions under the NDPS Act, the investigating agency is expected to dispatch the sample parcel for forensic examination at the earliest available opportunity to eliminate any possibility of tampering, substitution or manipulation of the case property. He further argues that the unexplained delay in forwarding the sample materially affects the credibility and sanctity of the prosecution case and creates a serious doubt regarding preservation of the seized contraband in an untampered condition. In support of his argument, he relies upon the judgment in the case of **“Jagtar Singh versus State of U.T. Chandigarh”** reported as **2023 (4) RCR (Crl.) 602**. The relevant extract thereof reads thus:-

“19. Admittedly, the sample was sent after a delay of 4 days for chemical examination to CFSL, Sector 36-A, Chandigarh. As per instructions issued vide Standing Order No.1 of 1988 dated 15.03.1988 by the Narcotics Control Bureau, the representative sample is required to be sent to the Chemical Examiner within 72 hours. The Standing Orders are mandatory in nature and the omission on the part of the Investigating Officer with regard to non-compliance of Section 52-A of the NDPS Act coupled with the violation of Standing Order No.1 of 1988 ibid in sending the sample after a delay of 4 days would tantamount to be a serious flaw in the investigation, which suffocates the prosecution case completely. The sanctity of the statutory instructions contained in the Standing Orders issued by the Narcotics Control Bureau came up for consideration before the Hon'ble Supreme Court in Noor Aga v. State of Punjab, 2008 (16) SCC 417, where a two Judge Bench. speaking through Justice S.B.Sinha, has held as under:-

*"32. Recently, this Court in **State of Kerala &Ors. v.***

*Kurian Abraham (P) Ltd. & Anr. [(2008) 3 SCC 582]. following the earlier decision of this Court in **Union of India v. Azadi Bachao Andolan ((2004) 10 SCC 1]** held that statutory instructions are mandatory in nature. Logical corollary of these discussions is that the guidelines such as those present in the Standing Order cannot be blatantly flouted and substantial compliance therewith must be insisted upon for so that sanctity of physical evidence in such cases remains intact. Clearly, there has been no substantial compliance of these guidelines by the investigating authority which leads to drawing of an adverse inference against them to the effect that had such evidence been produced, the same would have gone against the prosecution."*

- (iv) That the testimony of Head Constable Bikramjit Singh, examined as PW-2 materially contradicted the statements of the other prosecution witnesses on significant aspects relating to the recovery and seizure proceedings. It is submitted that PW-2 gave a version regarding the presence of the SHO at the spot which is inconsistent with the testimonies of the Investigating Officer ASI Satnam Singh as well as the SHO himself. It is further contended that PW-2 also deposed regarding the presence of a Gazetted Officer at the spot during the recovery proceedings, however, no such fact finds mention either in the testimony of the Investigating Officer or in the deposition of the SHO. Learned counsel argues that these contradictions are not minor discrepancies but material inconsistencies which go to the root of the prosecution case and probabalise the defence contention that the proceedings were not conducted in the manner specified by law.

11. It is thus contended that the prosecution has failed to establish an unimpeachable chain of custody and compliance with mandatory procedural safeguards under the NDPS Act and consequently the appellant is entitled to benefit of doubt.

12. Learned counsel appearing on behalf of the respondent-State, while controverting the aforesaid submissions, contends that the arguments advanced on behalf of the appellant proceed on an erroneous understanding of the scope and object of Section 52-A of the Narcotic Drugs and Psychotropic Substances Act, 1985. It is submitted that the representative sample drawn before the Illaqa Magistrate under Section 52-A of the NDPS Act is intended primarily for certification, inventory and preservation prior to disposal of the seized contraband in accordance with the statutory procedure. Learned State counsel argues that the representative sample prepared before the Magistrate is meant to remain preserved as a safeguard for future reference, judicial scrutiny and possible cross-verification, particularly in cases where the bulk contraband is liable to be disposed of in terms of statutory standing orders and procedural requirements.

13. It is thus contended that there exists no statutory mandate prescribing that only the representative sample drawn under Section 52-A alone is to be sent to the office of the Chemical Examiner for analysis. He submits that the established investigative procedure contemplates that the sample initially drawn at the spot during the course of seizure proceedings by the Investigating Officer and sealed at the relevant time is the sample ordinarily forwarded to the Forensic Science Laboratory/Chemical Examiner for chemical examination.

14. Learned counsel submits that in the present case, the sample parcel bearing seal impressions "SS/PC" had remained intact throughout and there is nothing on record to suggest any tampering, substitution or manipulation thereof. It is argued that merely because the representative sample prepared before the Magistrate was forwarded to the Chemical Examiner after some delay, the same by itself would not vitiate the prosecution case or render the chemical analysis report inadmissible.

15. Responding to the contention raised on behalf of the appellant regarding the delay of more than two months in forwarding the sample parcel to the office of the Chemical Examiner, learned State counsel submits that the underlying object behind requiring expeditious dispatch of samples to the Forensic Science Laboratory/Chemical Examiner is essentially to preserve the sanctity, integrity and identity of the seized sample and to eliminate any possibility of tampering, substitution or manipulation while the case property remains in police custody. Learned counsel contends that in the present case, the prosecution has successfully established an unbroken chain of custody with respect to the seized contraband as well as the sample parcel. It is submitted that after use, the seal bearing impression "SS" was handed over by the Investigating Officer to an independent police witness and was not retained by the Investigating Officer himself. Thereafter, the parcels remained deposited in the double lock under the custody of the SHO and were handled strictly in accordance with the prescribed procedure.

16. It is further argued that when the sample parcel was ultimately received in the office of the Chemical Examiner, Kharar, the seals affixed thereupon were found intact and untampered with and were found tallying

with the specimen seal impressions forwarded along with the sample. Learned State counsel submits that once the prosecution has established that the seals remained intact throughout and there is no material suggesting tampering of the seals, no presumption can be drawn that the contents of the sample parcel were altered, substituted or manipulated during the period it remained in custody. Learned counsel further contends that the law on the subject is well settled to the effect that mere delay in dispatching the sample parcel to the Chemical Examiner does not by itself vitiate the prosecution case unless the accused is able to demonstrate circumstances creating a reasonable doubt regarding the sanctity of the sample or the possibility of tampering with the contents thereof.

17. Learned counsel further submits that the discrepancies sought to be highlighted in the testimony of PW-2 Head Constable Bikramjit Singh are minor and inconsequential in nature and do not affect the core substratum of the prosecution case. It is submitted that trivial variations in the testimony of official witnesses are natural and are bound to occur due to lapse of time and cannot be elevated to the level of material contradictions so as to discard an otherwise trustworthy prosecution case.

18. It is thus contended that the prosecution has successfully established conscious possession of the contraband by the appellant and has duly proved compliance of the statutory safeguards contemplated under the NDPS Act. Learned State counsel accordingly prays for dismissal of the appeal.

19. It is submitted that the judgments relied upon by accused persons in such matters are distinguishable and generally pertain to cases where the

prosecution failed to establish safe custody of the case property or where seals were found broken or where material discrepancies existed regarding handling of the sample parcel during investigation. In such circumstances, Courts have extended benefit of doubt to the accused on account of compromised sanctity of the sample. However the facts of the present case stand on an entirely different footing inasmuch as there is no evidence whatsoever suggesting that the sample parcel was tampered with at any stage. The intact condition of the seals at the time of receipt by the Chemical Examiner itself sufficiently establishes preservation of the sanctity and identity of the sample. It is thus contended that in the absence of any material indicating tampering or prejudice caused to the appellant, mere delay in forwarding the sample to the Chemical Examiner would not be fatal to the prosecution case nor would it vitiate the conviction recorded against the appellant.

20. Learned State counsel, while responding to the submissions advanced on behalf of the appellant regarding the contradictions in the testimony of Head Constable Bikramjit Singh examined as PW-2, contends that the said argument is wholly misconceived and devoid of merit. It is submitted that a careful perusal of the cross-examination conducted during trial would reveal that no specific suggestion with respect to the inconsistencies now sought to be highlighted was ever put either to the Investigating Officer or to the other prosecution witnesses. Learned State counsel argues that neither the Investigating Officer nor the SHO was confronted during cross-examination with any suggestion that the recovery proceedings had not been conducted in the manner deposed by them or that the alleged presence of a Gazetted Officer at the spot rendered the prosecution

case doubtful. It is further contended that no suggestion whatsoever was put to any prosecution witness alleging fabrication, manipulation or irregularity in the seizure proceedings on account of the discrepancies now sought to be emphasized on behalf of the appellant. It is submitted that in the absence of such confrontation during trial, the prosecution witnesses were deprived of an opportunity to explain the discrepancies or clarify the surrounding circumstances.

21. Learned State counsel further submits that significantly no such defence was even taken by the appellant while his statement under Section 313 Cr.P.C. was recorded. The appellant never pleaded that the recovery proceedings were fabricated on account of non-presence of any Gazetted Officer or that the prosecution witnesses had rendered mutually destructive versions regarding the manner in which the proceedings had been conducted. It is thus argued that the appellant cannot now be permitted to build an entirely new defence at the stage of final arguments or appellate scrutiny without having laid the factual foundation during trial. Learned State counsel submits that it is a settled principle of law that minor discrepancies, isolated statements or inconsequential inconsistencies, particularly those which were never put to the concerned witnesses during cross-examination, should not be magnified so as to demolish an otherwise cogent and trustworthy prosecution case.

22. It is further submitted that all the remaining prosecution witnesses i.e. the Investigating Officer and the SHO, have remained materially consistent in their depositions regarding the recovery proceedings, sealing process, custody of the case property and the subsequent investigation conducted in the matter. Learned State counsel further submits that the oral

testimonies of the official witnesses stand duly corroborated by the contemporaneous documentary evidence proved on record including the recovery memo, Form M-29, seizure proceedings, sample seal memos, deposit memos and the report of the Chemical Examiner. Counsel submits that the prosecution case has to be appreciated on the basis of the cumulative effect of the entire evidence led on record and not by isolating stray or inconsequential statements made by one witness. It is contended that the testimony of PW-2 Head Constable Bikramjit Singh was only supplementary and corroborative in nature and therefore any minor discrepancy appearing therein should not be treated as sufficient to impeach the otherwise cogent, reliable and consistent testimonies of the other official witnesses.

23. Learned State counsel further contends that there is not even an iota of allegation, much less any evidence, suggesting that the police officials harboured any personal enmity, animus or ulterior motive against the appellant so as to falsely implicate him in the present case. It is submitted that in the absence of any material indicating previous hostility or motive to falsely implicate the appellant, there was no conceivable reason for the police officials to plant contraband upon him and fabricate an entire prosecution case. It is submitted that official acts performed by public servants in discharge of their official duties carry a presumption of regularity under Section 114 of the Evidence Act, 1872, unless compelling material is brought on record to dislodge the same. Counsel contends that in the present case no such circumstance has been demonstrated by the appellant which may probabalise false implication or fabrication by the police officials. It is thus contended that the minor discrepancies sought to be highlighted by the

appellant do not affect the core substratum of the prosecution case and are wholly insufficient to discard the otherwise trustworthy and duly corroborated prosecution evidence available on record.

24. I have heard learned Counsel appearing on behalf of the Counsel for the parties and have gone through the documents appended alongwith the present petition as well as the evidence referred to.

25. The core argument of the appellant has revolved around Section 52-A of the NDPS Act and to contend that only the sample drawn in the presence of the Magistrate has to be sent for chemical examination. Sending of any other sample is likely to discredit the result of chemical analysis of its application to the bulk contraband. The argument projected, by referring to certain precedents is that compliance to Section 52-A is mandatory and to submit that failure to send the sample so seized, shall vitiate the trial.

26. Before proceeding further, it would thus be imperative to understand the scope and object behind Section 52-A, to understand its impact and appreciate the argument. It is pertinent to note that although the Narcotic Drugs and Psychotropic Substances Act, 1985 came into force on 14.11.1985, Section 52-A was introduced subsequently by Act 2 of 1989 with effect from 29.05.1989. The historical background preceding insertion of Section 52-A assumes significance for understanding the legislative intent governing search, seizure, drawal of samples and preservation of narcotic substances.

27. Prior to insertion of the said provision, the Central Government, in exercise of powers conferred under Section 4(3) of the NDPS Act, constituted the Narcotics Control Bureau vide notification dated 17.03.1986 and entrusted it with powers and functions relating to enforcement measures

contemplated under Section 4(2) of the Act. It was thereafter noticed by the Narcotics Control Bureau that different investigating officers and enforcement agencies were following varying procedures in relation to drawal of samples from seized narcotic drugs and psychotropic substances, thereby resulting in lack of uniformity and procedural inconsistency. Consequently, with a view to ensure uniformity in approach and to establish a secure and standardized mechanism for handling narcotic samples, the Narcotics Control Bureau issued Standing Instructions No.1 of 1988 vide notification dated 15.03.1988. The said Standing Instructions prescribed the procedure to be followed for drawal of samples from seized narcotic drugs and psychotropic substances, numbering and sealing of samples, method of packing, preservation and dispatch of samples to the concerned laboratory for chemical examination and other connected procedural safeguards. The relevant extract of the aforesaid Standing Instructions read as under :

1.5. Place and time of drawal of sample

Samples from the narcotic drugs and psychotropic substances seized, must be drawn on the spot of recovery, in duplicate, in the presence of search (panch) witnesses and the person from whose possession the drug is recovered, and a mention to this effect should invariably be made in the panchnama drawn on the spot.

1.21. Custody of duplicate sample

Duplicate sample of all seized narcotic drugs and psychotropic substances must be preserved and kept safely in the custody of the investigating officer along with the case property. Normally duplicate sample may not be used but in case of loss of original sample in transit

or otherwise or on account of trial court passing an order for a second test, the duplicate sample will be utilised.

1.22. Disposal of test memo

As soon as the test result in original or duplicate or both test memos are received, the same will be filled in the Court, trying the case, along with, charge-sheet/complaint by the investigating officer. He will keep an attested copy of the same in his case file.

1.23. Disposal of remnant sample/duplicate sample and the drug

At present, the remnant sample/duplicate sample and seized narcotic drugs and psychotropic substances can be disposed of after the proceedings of prosecution is over or by obtaining an order from such court under Section 110 of the Customs Act, 1962 and/or 451 CrPC. While obtaining the order of the court under the aforesaid section it is necessary that specific order in respect of the remnant sample/duplicate sample is also obtained.

After such order has been obtained, the drug or substance along with the samples including remnants shall be disposed of in the manner prescribed. Please acknowledge the receipt of the Standing Order.”

[Emphasis Supplied]

28. Subsequently, the incorporation of Section 52-A into the Narcotic Drugs and Psychotropic Substances Act, 1985 was prompted by India's international obligations arising out of global and regional conventions addressing illicit trafficking in narcotic drugs and psychotropic substances. During the year 1988, United Nations adopted the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic

Substances, 1988”, which emphasized the need for effective measures concerning handling and disposal of seized contraband. In order to align domestic law with the international commitments, the Central Government introduced the Narcotic Drugs and Psychotropic Substances (Amendment) Bill, 1988 before Parliament. Pursuant thereto, Section 52-A came to be inserted into the statute with effect from 29.05.1989, thereby creating a statutory mechanism governing disposal and preservation of seized narcotic drugs and psychotropic substances. The same is extracted as under:

52A. Disposal of seized narcotic drugs and psychotropic substances.

[(1) The Central Government may, having regard to the hazardous nature, vulnerability to theft, substitution, constraint of proper storage space or any other relevant consideration, in respect of any narcotic drugs, psychotropic substances, controlled substances or conveyances, by notification in the Official Gazette, specify such narcotic drugs, psychotropic substances, controlled substances or conveyance or class of narcotic drugs, class of psychotropic substances, class of controlled substances or conveyances, which shall, as soon as may be after their seizure, be disposed of by such officer and in such manner as that Government may, from time to time, determine after following the procedure hereinafter specified.]

(2) Where any [narcotic drugs, psychotropic substances, controlled substances or conveyances] has been seized and forwarded to the officer-in-charge of the nearest police station or to the officer empowered under section 53, the officer referred to in sub-section (1) shall prepare an inventory of such [narcotic drugs, psychotropic

substances, controlled substances or conveyances] containing such details relating to their description, quality, quantity, mode of packing, marks, numbers or such other identifying particulars of the [narcotic drugs, psychotropic substances, controlled substances or conveyances] or the packing in which they are packed, country of origin and other particulars as the officer referred to in sub-section (1) may consider relevant to the identity of the [narcotic drugs, psychotropic substances, controlled substances or conveyances] in any proceedings under this Act and make an application, to any Magistrate for the purpose of—

(a) certifying the correctness of the inventory so prepared; or

(b) taking, in the presence of such magistrate, photographs of [such drugs, substances or conveyances] and certifying such photographs as true; or

(c) allowing to draw representative samples of such drugs or substances, in the presence of such magistrate and certifying the correctness of any list of samples so drawn.

(3) Where an application is made under sub-section (2), the Magistrate shall, as soon as may be, allow the application.

(4) Notwithstanding anything contained in the Indian Evidence Act, 1872 (1 of 1972) or the Code of Criminal Procedure, 1973 (2 of 1974), every court trying an offence under this Act, shall treat the inventory, the photographs of [narcotic drugs, psychotropic substances, controlled substances or conveyances] and any list of samples drawn under sub-section (2) and certified by the Magistrate, as primary evidence in respect of such offence.]

29. Following the insertion of Section 52-A into the Narcotic Drugs and Psychotropic Substances Act, 1985, the Central Government issued Standing Order No.1 of 1989 dated 13.06.1989 prescribing the procedure relating to search, seizure and sampling of narcotic drugs and psychotropic substances. The Standing Order mandated that the seized contraband be properly classified, carefully weighed and sampled at the spot of recovery itself and further laid down guidelines regarding preparation, sealing, safe custody and dispatch of representative samples for chemical examination so as to preserve the sanctity and evidentiary value of the seized material. The relevant part of Standing Order No. 1 of 89 reads as under:

SECTION II - GENERAL PROCEDURE FOR SAMPLING, STORAGE, ETC.

2.1 All drugs shall be properly classified, carefully weighed and sampled on the spot of seizure.

2.2 All the packages/containers shall be serially numbered and kept in lots for sampling. Samples from the narcotic drugs and psychotropic substances seized shall be drawn on the spot of recovery, in duplicate, in the presence of search witnesses (Panchas) and the person from whose possession the drug is recovered, and a mention to this effect should invariably be made in the panchanama drawn on the spot.

2.3 The quantity to be drawn in each sample for chemical test shall not be less than 5 grams in respect of all narcotic drugs and psychotropic substances save in the cases of opium, ganja and charas (hashish) where a quantity of 24 grams in each case is required for chemical test. The same quantities shall be taken for the duplicate sample also. The

seized drugs in the packages/containers shall be well mixed to make it homogeneous and representative before the sample (in duplicate) is drawn.

2.4 In the case of seizure of a single package/container, one sample in duplicate shall be drawn. Normally, it is advisable to draw one sample (in duplicate) from each package/container in case of seizure of more than one package/container.

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.

2.6 Where after making such lots, in the case of hashish and ganja, less than 20 packages/containers remain and, in the case of other drugs, less than 5 packages/containers remain, no bunching would be necessary and no samples need be drawn.

2.7 If such remainder is 5 or more in the case of other drugs and substances and 20 or more in the case of ganja and hashish, one more sample (in duplicate) may be drawn for such remainder package/container.

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.

2.9 The sample in duplicate should be kept in heat-sealed plastic bags as it is convenient and safe. The plastic bag container should be kept in a paper envelope which may be sealed properly. Such sealed envelope may be marked as original and duplicate. Both the envelopes should also bear the No. of the package(s)/container(s) from which the sample has been drawn. The duplicate envelope containing the sample will also have a reference of the test memo. The seals should be legible. This envelope along with test memos should be kept in another envelope which should also be sealed and marked "Secret - Drug sample/Test memo", to be sent to the chemical laboratory concerned.

(emphasis supplied)

30. It is evident from a reading of Section 52-A of the Narcotic Drugs and Psychotropic Substances Act, 1985 that the said provision was inserted by way of amendment in the year 1989 primarily to provide a statutory mechanism for disposal of seized narcotic drugs and psychotropic substances while simultaneously preserving the evidentiary sanctity of the seized material. Sub-section (1) of Section 52-A empowers the officer notified by the Central Government to initiate disposal of the seized contraband in such manner and subject to such procedure as may be prescribed by the Government. The provision thus essentially deals with preservation, inventory, certification and disposal of seized narcotic substances.

31. A further perusal of sub-section (2) of Section 52-A reveals that

the Legislature contemplated adoption of appropriate safeguards for preservation of the identity, sanctity and evidentiary value of the seized contraband before its disposal. It is in this context that the statute contemplates preparation of inventories, taking of photographs and drawing of representative samples in the presence and under the certification of the Magistrate.

32. It is evident from above that an international treaty for handling and disposal of the seized narcotics is the source of statutory amendment. The Standing Order 1 of 1989 also suggests disposal of seized contraband and highlights the reason for its need viz. the hazardous nature; Vulnerability to theft, substitution; Constraint of storage space; or Any other relevant consideration. The inaugural section of the aforesaid standing order reads as under:

(1) The Central Government may, having regard to the hazardous nature of any narcotic drugs or psychotropic substances, their vulnerability to theft, substitution, constraints of proper storage space or any other relevant considerations, by notification published in the Official Gazette, specify such narcotic drugs or psychotropic substances, or class of narcotic drugs or class of psychotropic substances which shall, as soon as may be after or by their seizure, be disposed of by such officer and in such manner as that Government may, from time to time, determine after following the procedure hereinafter specified.

33. The notification to be thus issued was to lay down procedure for its disposal, after seizure. Sub Section (2) of Section 52-A prescribes the

procedure, after seizure, for disposal. The requirement prescribed is to make an inventory of the seized material as would provide all distinct marks of its identification and the Magistrate may do any of the following i.e.

- Certify correction of inventory, or
- Direct photographs in his presence and certify them as true; or
- Allow drawing of its samples and certify correctness of samples.

Hence, adhering to any one of the above three is a sufficient compliance of Section 52-A. The authority empowered for disposal is thereafter at liberty to destroy the seized contraband and the inventory, photographs or the samples becomes primary evidence of the quantity and quality of seized contraband.

34. In the present case, clause (c) of sub-section (2) of Section 52-A was admittedly complied with and a representative sample of the seized contraband was drawn before the Illaqa Magistrate. The object underlying such exercise was essentially to preserve a certified representative sample for future evidentiary reference and verification as mandated by law and to destroy the contraband and ward off the mischief sought to be curtailed. It is thus evident that globally a mischief and nuisance following the seizure and storage of contraband was identified and the measures were prescribed, by way of Section 52-A, to curb the same.

35. The purpose of Section 52-A was thus not to incorporate the procedure of sub-Section 2 as a mandate of investigation but as a mandate for disposal of seized contraband and to avoid long duration storage of contraband for its production before the Court. Such long storage often led to pilferation of the stock or its manipulation apart from a storage hazard itself.

36. Looking at the provision still further, it is apparent that the drawing of a representative sample is not a compulsory mandate and it is one amongst three options to be exercised. Thus, it would not be correct to assume that not only is drawing of a sample mandatory but sending of only that sample for chemical analysis is a statutory mandate. A mandatory compliance and its vitiating consequences on breach, do not flow when the sampling itself is not a statutory mandate.

37. On a plain reading based upon statutory history and background, the argument of petitioner, to the effect that only the sample drawn in proceedings under Section 52-A could be sent for chemical analysis lacks merit. Rather the procedure is to draw a sample at the spot and to seal it safe. The standing order specifically provides for the same as well.

38. The statutory scheme clearly show that it does not indicate that only the representative sample prepared under Section 52-A must necessarily be the sample forwarded to the Forensic Science Laboratory/Chemical Examiner for analysis.

39. The aforesaid statutory provisions as well as the Standing Orders issued thereunder came to be comprehensively examined and interpreted by the Hon ble Supreme Court in ***Bharat Aambale v. State of Chhattisgarh***, reported as **(2025) 8 SCC 452**, wherein the Court considered the scope and effect of Section 52-A of the Narcotic Drugs and Psychotropic Substances Act, 1985, the procedural safeguards relating to seizure and sampling, preservation of sanctity of seized contraband, delay in dispatch of samples for forensic examination and the consequences of alleged procedural irregularities occurring during investigation. The relevant extract therefrom

reads as under:-

56. We summarise our final conclusion as under:

56.1. Although Section 52-A 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 the presence of a gazetted officer would not constitute sufficient compliance of the mandate under Section 52-A sub-section (2) of the NDPS Act.

56.2. 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 [Union of India v. Mohanlal, (2016) 3 SCC 379 : (2016) 1 SCC (Cri) 864] , 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.

56.3. Any inventory, photographs or samples of seized substance prepared in substantial compliance of the procedure prescribed under Section 52-A of the NDPS Act and the Rules/Standing Order(s) thereunder would have to be mandatorily treated as primary evidence as per Section 52-A sub-section (4) of the NDPS Act, irrespective of whether the substance in original is actually produced before the court

or not.

56.4. The procedure prescribed by the Standing Order(s)/Rules in terms of Section 52-A 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.

56.5. Mere non-compliance of the procedure under Section 52-A 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.

56.6. 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 52-A of the NDPS Act.

56.7. 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.

56.8. Where there has been lapse on the part of the police in either following the procedure laid down in Section 52-A 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.

56.9. The initial burden will lie on the accused to first lay the foundational facts to show that there was non-compliance of Section 52-A, 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.

[emphasis supplied]

40. The entire thrust of the argument advanced on behalf of the appellant proceeds upon an assumption, which finds no support either from the statutory framework governing the field or from the judicial pronouncements interpreting the same. Section 52-A merely contemplates preparation and preservation of representative samples before the Magistrate so as to maintain the evidentiary sanctity and identity of the seized contraband, particularly in cases where disposal of the bulk quantity is undertaken. The provision nowhere stipulates that the representative sample drawn before the Magistrate alone must necessarily be the sample dispatched for forensic examination.

41. In the absence of any express statutory embargo or demonstrated

prejudice caused to the appellant, the mere fact that the sample originally drawn at the spot was forwarded to the Chemical Examiner would not be treated as fatal to the prosecution. More so, when the prosecution has otherwise been able to establish through cogent oral and documentary evidence that the seals on the sample parcel remained intact throughout and tallied with the specimen seal impressions at the time of receipt by the Chemical Examiner.

42. The mandate of Section 52-A of the Narcotic Drugs and Psychotropic Substances Act, 1985 stood substantially complied with in the present case. A perusal of the record clearly establishes that representative samples of the seized contraband were drawn before the Illaqa Magistrate in accordance with the procedure prescribed under the statute and the Standing Orders framed thereunder. The said representative samples were thereafter sealed, certified and preserved so as to maintain the identity and evidentiary sanctity of the seized substance.

43. In the present case, the representative sample drawn before the Magistrate admittedly remained preserved and available throughout for future reference or verification had any dispute arisen with respect to the report of the Chemical Examiner or the identity and composition of the seized contraband. Significantly, during the entire course of trial, no challenge was raised either regarding the identity of the sample parcel, the integrity of the seals or the correctness of the forensic analysis conducted by the Chemical Examiner.

44. The report of the Chemical Examiner also conclusively establishes that the seals on the sample parcel received in the laboratory were

found intact and tallied with the specimen seal impressions forwarded therewith. The prosecution has further succeeded in establishing through cogent link evidence that the sanctity and custody of the sample parcel remained duly preserved throughout.

45. In such circumstances, the argument advanced on behalf of the appellant that the entire prosecution case stands vitiated merely because the representative sample prepared before the Magistrate was not itself forwarded to the Forensic Science Laboratory is wholly misconceived. The judgment in the matter of *Jagtar Singh (supra)* and *Gagandeep Singh @ Bau (supra)* by the Single Bench and Division Bench of this Court have failed to notice the legislative history, structure and its objective. The same has been well elaborated in the judgment of *Bharat Aamble (supra)* by the Supreme Court. The position in law expressed above, being so laid after considering the judgments in the matter of *Mangilal versus State of Madhya Pradesh*” reported as *2023 SCC Online SC 862* as well as *Simarnjit Singh versus State of Punjab* reported as *2023 SCC Online SC 906* expounds a greater nuanced interpretation. Being strengthened in my conclusion, from the law as above, the judgment of the High Court need no elaboration or discussion.

46. Adverting to the submission advanced on behalf of the appellant regarding the delay in forwarding the sample parcel to the Forensic Science Laboratory for chemical examination, it may be noticed at the outset that the law laid down by the Hon ble Supreme Court is consistent and categorical to the effect that expeditious dispatch of the sample parcel to the Chemical Examiner is essentially a rule of prudence, caution and fair investigation intended to preserve the sanctity and identity of the seized contraband.

However, it is equally well settled that a mere delay in sending the sample parcel, by itself, does not automatically lead to an inference or presumption that the case property was tampered with while in police custody. The question as to whether such delay has prejudiced the accused or compromised the sanctity of the sample is required to be examined on the basis of the overall evidence available on record including the documentary evidence, link evidence and testimonies of the prosecution witnesses.

47. In cases where the prosecution is able to establish an unbroken chain of custody and where the possibility of tampering with the case property stands completely ruled out, mere delay in dispatching the sample would not by itself vitiate the prosecution case. The decisive consideration is whether the identity and integrity of the sample parcel remained intact throughout. In the present case, the report of the Chemical Examiner/CFSL, exhibited as Ex.PX, clearly records that when the sample parcel was received in the office of the Chemical Examiner on 16.02.2015, the seals affixed thereupon were found intact and tallied with the specimen seal impressions forwarded along with the parcel. This circumstance substantially reinforces the prosecution case regarding preservation of the sanctity and identity of the sample.

48. It has further come on record through the testimonies of the prosecution witnesses that after seizure, the case property along with the sample parcels remained deposited under double lock and in the custody of the SHO. Even after the property parcels had been produced before the learned Illaqa Magistrate for authentication under Section 52-A of the Narcotic Drugs and Psychotropic Substances Act, 1985 and on its return to the police station, the parcels continued to remain secured under double lock with intact seals.

The evidence further establishes that the sample parcel was taken out from the double lock only on 16.02.2015 for the limited purpose of obtaining the requisite docket from the office of the Commissioner of Police, Amritsar and for forwarding the sample to the office of the Chemical Examiner on the very same day. The SHO as well as the other official witnesses have consistently deposed that during the entire period the case property remained in the double lock, no unauthorized access thereto was permitted and neither the SHO himself nor any other person tampered with the parcels in any manner whatsoever. It has also come in evidence that after removal from the double lock, the sample parcel was directly deposited in the office of the Chemical Examiner on the same day.

49. Thus, the link evidence relating to handling, preservation and transmission of the sample parcel stands fully established and duly corroborated from the oral as well as documentary evidence available on record. The prosecution has successfully proved that the seals remained intact throughout and the identity of the sample parcel remained fully preserved till it reached the office of the Chemical Examiner. In such circumstances, this Court is of the opinion that a mere delay in forwarding the sample parcel for forensic examination would not be sufficient to discard the prosecution case, particularly when the sanctity and intactness of the sample parcel stands affirmatively established. Reliance in this regard can appropriately be placed upon the judgment of this Court in ***Jagir @ Jagir Kaur versus State of Punjab reported as 2014 (3) RCR (Criminal) 717***, wherein it was held that delay in sending the sample parcel would not be fatal to the prosecution case once the prosecution successfully establishes safe custody of the sample and intactness

of the seals throughout.

50. Further, advertent to the submission advanced on behalf of the appellant that the testimony of PW-2 Head Constable Bikramjit Singh materially contradicts the version put forth by the remaining prosecution witnesses, this Court is of the opinion that the said discrepancy, even if assumed to exist, is merely in the nature of an aberration from the otherwise consistent and cogent prosecution evidence available on record. An appreciation of the entire evidence reveals that the remaining prosecution witnesses, particularly the Investigating Officer and the SHO, have remained substantially consistent on all material particulars relating to the recovery proceedings, preparation of sample parcels, sealing process, custody of the case property, deposit of the parcels in the double lock and transmission of the sample parcel to the office of the Chemical Examiner. The oral testimonies of these witnesses stand fully corroborated by the contemporaneous documentary evidence duly exhibited on record. It is also significant to notice that PW-2 Head Constable Bikramjit Singh was only one amongst several official witnesses examined by the prosecution to support the recovery and subsequent investigation. The prosecution case does not rest solely upon his testimony. Once the remaining official witnesses have consistently supported the prosecution version and the same stands independently corroborated from the documentary material proved on record, any isolated inconsistency appearing in the deposition of PW-2 would not be sufficient to demolish the entire prosecution case.

51. A further perusal of the record shows that Head Constable Bikramjit Singh was merely a signatory witness to limited documents, namely

Ex.P2 and Ex.P3. The said documents pertain to the recovery proceedings including seizure of the parcels, sample seals, Form M-29 and the personal search memo of the accused. However, the aforesaid documents do not derive their evidentiary value exclusively from the testimony of PW-2 alone. The same stands proved and exhibited through the testimonies of the other prosecution witnesses as well, particularly the Investigating Officer and the SHO. Significantly, despite lengthy cross-examination of the prosecution witnesses, no material contradiction, omission or circumstance could be elicited so as to cast any serious doubt upon the genuineness of the recovery proceedings or the authenticity of the documents exhibited on record. The chain of custody, handling of the case property and compliance of the procedural safeguards contemplated under the Narcotic Drugs and Psychotropic Substances Act, 1985 stands established from the cumulative evidence available on record. It is a settled principle of criminal jurisprudence that minor discrepancies, normal inconsistencies or isolated deviations occurring in the testimony of one witness cannot be magnified so as to reject the prosecution case in its entirety, particularly where the core substratum of the prosecution version remains intact and duly corroborated by independent documentary evidence. This Court is thus of the opinion that the inconsistency in the testimony of PW-2 Head Constable Bikramjit Singh does not go to the root of the matter and is wholly insufficient to discredit the otherwise reliable and trustworthy prosecution evidence available on record.

52. The Apex Court has specifically observed that Courts are required to adopt a holistic and cumulative approach while appreciating such alleged discrepancies and procedural lapses and that if the oral and

documentary evidence otherwise inspires confidence regarding the recovery and conscious possession of the contraband, conviction can still be sustained notwithstanding certain procedural irregularities.

53. The arguments thus advanced by the petitioner lack merit in view of the position in law discussed above. The appeal thus lacks merit and is accordingly ***dismissed***. The judgment of conviction and order of sentence dated 09.03.2023 passed in Case bearing No. NDPS/427/2017 by Judge, Special Court, Amritsar arising out of FIR No. 339 dated 05.12.2024, registered under Sections 22 of the NDPS Act, at Police Station Sultanwind, Amritsar are affirmed.

MAY 26, 2026
Vishal Sharma

(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No