



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

1353

**CRA-S-1152-SB-2010 (O&M)
Reserved on: 15.05.2025
Pronounced on: 21.05.2025**

Natha Singh

....Appellant

Versus

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Manvinder Singh, Advocate
for the appellant.

Mr. Harkesh Kumar, AAG, Haryana.

HARPREET SINGH BRAR J. (Oral)

1. This appeal is preferred against the judgment of conviction dated 09.02.2010 and order of sentence dated 10.02.2010 passed by learned Additional Sessions Judge, Sirsa, in FIR No.123 dated 09.04.2007 registered at Police Station Rania, under Sections 17 and 18 of the Narcotic Drugs & Psychotropic Substances Act, 1985 (hereinafter referred to as 'the NDPS Act '), whereby the appellant has been convicted under Section 17 of NDPS Act and sentenced to undergo imprisonment till the rising of the Court along with a fine of ₹2,500/-, and in default, to further undergo rigorous imprisonment for fifteen days.

FACTUAL BACKGROUND

2. Succinctly, the facts, as alleged, are that on 09.04.2007, a police party headed by ASI Chhabil Dass (PW5), was on patrolling



duty. When they reached in the area of village Bani, the appellant-accused was seen coming on a a motorcycle, who on seeing the police party attempted to retreat but on suspicion, the police apprehended him. Subsequently, notice under Section 50 of the NDPS Act (Ex. PD), was served to the appellant-accused, asking whether he wished to be searched in the presence of a Magistrate or Gazetted Officer, to which the appellant-accused is stated to have declined the offer and agreed to be searched by the investigating officer (PW5).

3. On personal search of the appellant, 35 grams of opium milk was recovered from the front pocket of his shirt. From this, two samples of 10 grams each were drawn and remaining contraband was sealed separately. The sample parcels, residue parcels, specimen seal impressions including the motorcycle, RC thereof and driving license were taken into police possession vide separate recovery memo. After completion of necessary formalities of investigation, Ruqa (written information) was sent to the police station on the basis of which formal FIR(*supra*) was registered against the appellant-accused.

4. On finding, the charge under Section 17 of the NDPS Act was framed against the appellant-accused to which he pleaded not guilty and claimed trial. Learned trial Court, on minutely scrutinizing the evidence led by the prosecution and going through the record of the case, held the appellant guilty and convicted and sentenced him as discussed herein above.

CONTENTIONS



5. Learned counsel for the appellant, *inter alia*, contends that there was no compliance with Section 50 of the NDPS Act in the manner required by law. Although a notice was given, it was a general offer and did not inform the accused of his right to be searched before a Magistrate or a Gazetted Officer. Further there is a material discrepancy in the seal used. While the recovery witnesses stated the seal used was 'CD' and 'KL', the FSL report mentions seals 'CD' and 'KC', suggesting that the sample sent to the FSL may not be the one actually recovered at the spot. Furthermore, the seal after use was not handed over to an independent witness but was retained by the police personnel. Further, it is also contended by the counsel that although the recovery was effected from a public place and several persons were allegedly present at the scene, no independent witness was associated. PW5 admitted in cross-examination that around 4-5 persons were asked to join, but none agreed. However, no explanation is given for not taking legal steps against those who refused to assist.

6. *Per contra*, learned State counsel contends that the link evidence is complete and the learned trial Court has arrived at a guilty verdict on correct appreciation of material on record.

OBSERVATIONS AND ANALYSIS

7. Having heard learned counsel for the parties and carefully examining the evidence led by the prosecution with their able assistance, this court is of the opinion that the prosecution has failed to prove its case beyond reasonable doubt.



8. The appellant has been convicted in the present case for possessing 35 grams of opium milk. A perusal of the impugned judgment indicates that there was non-association of independent witnesses even though the recovery was affected from the public setting. The Hon'ble Supreme Court in **Krishan Chand v. State of H.P. AIR 2017 (SC) 3751** has laid down the ratio that the failure of the investigating officer to associate an independent witness at the time of recovery creates a dent in the case of the prosecution. A two Judge Bench of the Hon'ble Supreme Court in **Gorakh Nath Prasad v. State of Bihar, 2018(1) RCR (Criminal) 108** had acquitted the accused and held that the case of the prosecution cannot be entirely based upon the statements of the official witnesses when no independent witness has been joined in the investigation.

9. Further, it is discernible from the record that the compliance with Section 50 NDPS Act is not in consonance with the settled law. The offer made to the appellant was mechanical and did not effectively communicate his statutory right, thereby rendering the search suspect. This stands fatal for the case of prosecution. Therefore, the case in hand is a case of composite search, meaning thereby, when along with the bag/vehicle/receptacle of the accused, his body is also searched, the rigor of Section 50 of the NDPS Act would be made applicable.



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

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

10. A three Judge bench of the Hon'ble Supreme Court of India in **Mohan Lal v. State of Punjab AIR 2018 SC 3853**, speaking through Justice Navin Sinha, made the following observations in this regard:

"25. In view of the conflicting opinions expressed by different two Judge Benches of this Court, the importance of a fair investigation from the point of view of an accused as a guaranteed constitutional right under Article 21 of the Constitution of India, it is considered necessary that the law in this regard be laid down with certainty. To leave the matter for being determined on the individual facts of a case, may not only lead to a possible abuse of powers, but more importantly will leave the police, the accused, the lawyer and the courts in a state of uncertainty and confusion which has to be avoided. It is therefore held that a fair investigation, which is but the very foundation of fair trial, necessarily postulates that the informant and the investigator must not be the same person. Justice must not only be done, but must appear to be done also. Any possibility of bias or a predetermined conclusion has to be excluded. This requirement is all the more imperative in laws carrying a reverse burden of proof. "



11. It is a cardinal principle of criminal law that the prosecution must prove its case beyond reasonable doubt. Where procedural safeguards under the NDPS Act, which are stringent and mandatory, are not scrupulously followed, the benefit must go to the accused.

Conclusion

12. In view of the above discussion, it is held that the prosecution has failed to prove its case beyond reasonable doubt, and as such, the present appeal is allowed. The judgment of conviction dated 09.02.2010 and order of sentence dated 10.02.2010 passed by learned Additional Sessions Judge, Sirsa, are set aside. The appellant, namely Natha Singh, is acquitted of the charges framed against him. His bail bonds and surety bonds stand discharged.

13. Pending miscellaneous application(s), if any, shall also stand disposed of.

14. The case property, if any, may be dealt with as per rules after the expiry of period of limitation for filing the appeal(s). Record of the case be sent back to the Court below.

(HARPREET SINGH BRAR)
JUDGE

21.05.2025

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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No