

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA-S-2172-2024.doc (O&M)

Reserved on 03.05.2025

Pronounced on 31.07.2025

Rajiv Rattan

... Appellant

VS.

State of Punjab

... Respondent

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. Yashpal Thakur, Advocate for the appellant

Mr. JS Rattu, DAG Punjab

Sandeep Moudgil, J.

(1). This appeal under Section 415 Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) has been preferred by the appellant-Rajiv Rattan assailing the judgment and order dated 22.05.2024 passed by learned Special Court, Fatehgarh Sahib whereby he has been convicted under Section 22(c) of the Narcotic Drugs and Psychotropic Substance Act, 1985 (in short, the NDPS Act) and sentenced to undergo RI for 10 years and to pay fine of Rs.1,00,000 in case FIR No.127 dated 24.10.2018 under Sections 22/61/85 of NDPS Act, registered at Police Station Khamanon.

(2). As per prosecution report under Section 173 Cr.P.C. on 24.10.2018, ASI Kulwant Singh, along with ASI Gurmeet Singh, HC Amrik Singh, C. Davinderjit Singh, PHG Jatinder Singh, and HC Malkiat Singh (driver), were on patrolling duty in a Government Vehicle (Bolero bearing no. PB23T-1188). While checking passersby at the T-point of the road leading to Old Railway Over Bridge and Madhopur railway crossing, they noticed a clean-shaven person, later identified as Rajiv Rattan, approaching on foot from

Madhopur railway crossing. Upon seeing the police party, he appeared perplexed and he threw away a transparent poly bag, and attempted to turn back. The police apprehended him, inquired about his particulars, and upon opening the poly bag, found 20 injections of Buprenorphine Rexogesic 2ml and 20 vials of Avil, some of which had fallen on the ground and on being asked by ASI Kulwant Singh, the appellant could not produce any licence or permit to possess the said contraband and as such, the same were taken into police custody and sealed with impression 'KS'. Sample seal chit was prepared and was then handed over to ASI Gurmeet Singh. Recovery memo was prepared duly signed by official witnesses and the accused. Ruqa was prepared and was sent through PHG Jatinder Singh. Thereafter, the recovered case property was produced before SHO Inspector Gurmeet Singh who appended his seal 'GS' and later on deposited it with the police malkhana of police Station Sirhind. The appellant was produced before the Magistrate along with the case property.

(3). In order to substantiate its case, the prosecution examined 6 PWs and exhibited as many as 17 documents. However, no defence witness or court witness was examined. After closure of the prosecution evidence, statement of the accused under Section 313 CrPC was recorded and all incriminating materials were put to him wherein he pleaded not guilty and deposed that a false case has been implanted against him.

(4). The trial court framed following questions for adjudication of the case and the same read as under:-

"1. Whether on 24.10.2018, in the area of P.S. Sirhind, accused Rajiv Rattan was found in conscious possession of 20 Injections of

Bupernorphine Rexogesic each containing 2 ml., without any permit or licence ?

2. Whether provision of section 50 of NDPS Act is applicable on the present set of facts ?

3. Whether non joining of independent witness is fatal to the prosecution version ?

4. Whether investigation conducted is shoddy in nature ?

5. Whether prosecution has been able to prove its version without reasonable doubt ?”

(5). It was the case of the appellant before the trial court that there is non compliance of Section 50 of NDPS Act, if applicable on the present case and the prosecution has not been able to prove its version as established by it. It was further submitted that no recovery memo has been proved as per law as the same does not bear the signatures of the appellant besides the link evidence is also missing there being discrepancies and contradictions in the statements of PW1 MHC Rajinder Singh, PW2 C. Sandeep Singh, sample carrier and PW4 DSP Gurmeet Singh, the then SHO. Further, no site plan has been proved as required by law. It was further the case of the appellant before the trial court that FIR number was mentioned on all the documents which were prepared even before receipt of the FIR. That apart, the source of supply of contraband has not been investigated by the Investigating Officer and therefore, the investigation is shoddy in nature. The recovered contraband is alleged to be in transparent polythene which creates doubt with regard to the prosecution version.

(6). The prosecution examined the witnesses including PW5 ASI Gurmeet Singh being a recovery witness of the case. He deposed while he was patrolling with other police officials, in a govt. car, in connection with checking

of bad elements and on patrolling, they found a clean shaven person coming from Madhopur railway crossing on foot and on seeing the police party, he got perplexed and threw the transparent poly bag holding in his hand and tried to turn back. ASI Kulwant Singh – the Investigating officer with the help of other police official apprehended him and inquired about his particulars who named himself to be Rajiv Rattan son of Satpal Rattan R/o Mohalla Gobind Nagar, Near Division Number 7, Jalandhar, District Jalandhar. The IO opened the transparent poly bag thrown by the appellant and found injections of Bupernorphine and bottles of Avil which were lying on the ground and thereafter he counted all the injections and bottles in the polythene as well lying on the ground and on counting, they were found to be 20 injections of Buprenorphine Rexogesic 2 ml. with batch RX-122/123 and 20 bottles of Avil Pheniranine Maleate injection IP 10 ml., having batch no. 2418081 and on being asked by ASI Kulwant Singh, the appellant could not produce any licence or permit. He further deposed that the said bottles and injections were taken into police possession and a parcel was prepared by putting all the articles in a recovered transparent poly bag into a cloth and sealed with seal impression 'KS'. Sample seal chit Ex. P1 was prepared. Seal after use was handed over to him. Recovered contraband was taken into police possession vide memo Ex. P2 which was witnessed by him and other police officials. Ruqa Ex. P3 was sent through PHG Jatinder Singh. He proved FIR as Ex. P4, its endorsement as Ex. P5, Site plan as Ex. P6, arrest cum intimation memo as Ex. P7 and personal search memo as Ex. P8. Currency notes of Rs. 110/- were recovered from him. On return to the police station, the recovered property was produced before SHO Insp. Gurmeet Singh who inquired from the accused and

witnesses and thereafter, appended his seal 'GS' on the case property and thereafter deposited the same with the police malkhana of Police Station, Sirhind. He also identified signatures of Investigating Officer ASI Kulwant Singh (since deceased) on special report under section 57 of NDPS Act and proved the same as Ex. P9.

(7). The trial court observed that undisputedly there was no secret information available with the Investigating Officer at the time when the appellant was apprehended as it was a case of chance recovery and that too not from the personal search of the appellant and as such the mandate of Section 50 would not be attracted. It is also recorded that though the appellant was apprised of his right to get himself searched from a Gazetted Officer or a Magistrate, however, there is no such memo on file apprising the appellant of his rights as provided under Section 50 of the NDPS Act which the trial court found to be having no relevance as there is no applicability of Section 50 in the present case.

(8). The trial court further rejected the contention of the appellant-accused that recovery memo does not bear the signature of the accused and hence unproved on the ground that there is no such requirement under the CrPC to obtain signatures of the accused on the recovery memo except that such recovery is to be effected in the presence of the witnesses, who are required in token of the acknowledgment of the recovery so effected in their presence.

(9). The argument advanced by the appellant that link evidence is missing as there are discrepancies and contradictions in the statement of the official witnesses.

(10). Learned State counsel has vehemently opposed the prayer made by learned counsel for the appellant stating that the appellant was found in possession of contraband and, therefore, no leniency be shown to him in the matter of sentence. However, he has produced the custody certificate dated 28.01.2025 which indicates that the appellant had undergone an actual sentence of 1 year 6 months and 23 days. It has also been mentioned therein that there is no other criminal case pending today against him.

(11). Heard learned counsel for the parties and gone through the record.

(12). The present case is a case of chance recovery wherein the appellant is alleged to have carried transparent polythene bag in which 20 injections of Buprenorphine Rexogesic 2ml each and 20 vials of Avil, were found and allegedly on seeing the police party, the same was thrown on the ground by the appellant and the contraband in question was scattered. It has been repeatedly held by various Courts, that it is highly unlikely that a person carrying any contraband would carry the same in a transparent polythene bag.

(13). This Court is sanguine of the fact that a person who is committing an offence in respect of any contraband would do it in such a manner that his/her detection is inevitable. Carrying contraband in a transparent polythene bag making it clearly visible to others would surely invite attention of everybody who passes by. In these circumstances the case of the prosecution at the very outset is rather rendered skeptical particularly in view of the fact that the appellant is not even stated to be a previous convict and is a person who has been behind bars since the last about 1 year 6 months and 23 days.

(14). Moreover, the contradictions in the statements of both recovery witnesses i.e PW5 ASI Gurmeet Singh and PW6 HC Amrik Singh have

convinced this court that there has been glaring loopholes in the prosecution case regarding the signature of the accused-appellant on recovery memo. Therefore, the Court opines that these loopholes have given rise to an inescapable inference that the prosecution had miserably failed to prove the required evidence to satisfy the Court regarding the genuineness of the prosecution version.

(15). It is highly unacceptable to this court that the alleged contraband was recovered in transparent polythene and passerby were going on the main road and despite the hustle and bustle, the police officials failed to join any independent witness. The IO even failed to prove that to whom the appellant was to sell the contraband and no person was kept under section 29 of the NDPS Act. Even the course of investigation further seems to be shoddy wherein no iota of evidence has been put forward to show the source of the alleged contraband which was commercial in nature and therefore the scope of implanting the same cannot be ruled out.

(15). In the light of above mentioned discussion, the appeal stands allowed and the conviction of the appellant in FIR No. 127 dated 24.10.2018 under section 22 of the NDPS Act 1985, registered at police station Khamanon is hereby set aside.

(16). Ordered accordingly.

31.07.2025

V.Vishal

1. *Whether speaking/reasoned?*
2. *Whether reportable?*

(Sandeep Moudgil)
Judge

Yes/No
Yes/No