

CRM-A-378-2021 (O&M)

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

(217)

CRM-A-378-2021 (O&M)

Date of decision : 05.08.2025

State of Punjab

... Applicant/Appellant

Versus

Davinder Singh @ Sahab

... Respondent

**CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL
HON'BLE MR. JUSTICE H.S. GREWAL**

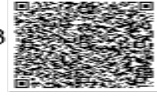
Present:- Mr. H.S. Deol, Senior DAG, Punjab.

Mr. Amit Dhawan, Advocate for the respondent.

H.S. Grewal, J.

1. The present application has been preferred under Section 378(3) Cr.P.C. seeking grant of leave to appeal against the judgment of acquittal dated 17.02.2020 passed by the learned Judge Special Court, Jalandhar in case FIR No.69 dated 23.03.2015, registered under Section 22 (c) of the NDPS Act, at Police Station City Nakodar.

2. The brief facts of the case are that on 23.03.2015, ASI Inder Singh along with other police officials was present at 'T' point Hussainpur situated at Nakodar to Kapurthala Road on patrolling duty. During checking, one person was seen coming from the side of Kapurthala on his car make Indica bearing registration No.PB08-AS-5647. ASI Inder Singh signalled the driver of the said car to stop but he had tried to flee away from the spot. However, he was apprehended by ASI Inder Singh with the help of other members of police



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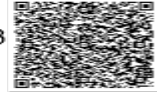
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party. On enquiry, said person disclosed his name as Davinder Singh @ Sahab (respondent). ASI Inder Singh told the respondent that he was suspecting some intoxicating substance in his possession and he had apprised him about his legal right to be searched in the presence of a Gazetted Officer or a Magistrate. The respondent did not accept the offer and in turn opted to be searched by the Investigating Officer. Therefore, consent memo was prepared. Before carrying out the personal search of the respondent/accused, the police party tried to join an independent witness but no one had shown his consent. Thereafter, the Investigating Officer, in the presence of the members of the police party, carried out the personal search of the accused/respondent. From the right pocket of the pant worn by him, one plastic envelope containing intoxicating powder was recovered from which two samples of 05 grams each were separated which were put in separate plastic containers and were sealed. The bulk Case property weighing 235 grams was separately sealed by the IO with his seal bearing impression 'IS'. The Form M-29 was separately prepared. The seal after use was handed over to HC Balwinder Singh. The parcels containing the case property and samples were taken into police possession vide recovery memos. The car being driven by the accused/respondent was also taken into police possession vide separate recovery memo. Since, the accused/respondent could not furnish any reasonable and proper explanation for retaining in his possession the recovered intoxicating powder, therefore, he was found to have committed offence under Section 22 of the NDPS Act. Accordingly, rukka was sent to the Police Station for registration of FIR. Thereafter, site plan of the place of recovery was prepared. Statements of witnesses were recorded. On



returning to the police station, accused along with the case property samples and Form M-29 was produced before the SHO. Thereafter, the case property was deposited with the MHC. One of the sample parcels was sent to the office of Chemical Examiner, Kharar for testing. On receipt of report of chemical examiner and on completion of investigation, the challan was presented against the accused/respondent.

3. Learned State counsel submits that the trial Court had erred in acquitting the respondent despite cogent, reliable and duly corroborated evidence being brought on record by the prosecution establishing the commission of offence under Section 22 of the NDPS Act. He further submits that insofar as the question of compliance of the mandatory provisions of the NDPS Act is concerned, ASI Inder Singh, Investigating Officer had duly apprised the accused/respondent of his legal right under Section 50 of the NDPS Act to be searched in the presence of a Gazetted Officer or a Magistrate but the accused/respondent voluntarily opted to be searched by the Investigating Officer and a consent memo to that effect was duly prepared and signed. Moreover, Form M-29 was duly prepared and all necessary documents including the recovery memos, seizure memos and site plan were prepared on the spot. He further submits that although efforts were made to join an independent witness at the time of recovery but no one was willing to participate despite sincere efforts. It is an admitted case where recovery of 245 grams of intoxicating powder containing Alprazolam was effected and the report of the Chemical Examiner had duly confirmed the presence of a psychotropic substance. Thus, the quantity recovered clearly falls within the



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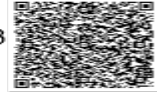
ambit of Section 22 of the NDPS Act. He, therefore, prays for allowing the appeal and setting aside the impugned judgment of acquittal passed by the learned Trial Court.

4. Learned counsel for the respondent, on the other hand, submits that the learned Trial Court correctly examined the evidence and passed a well-reasoned judgment of acquittal because there was a violation of Section 50 of the NDPS Act. PW3 ASI Inder Singh, who had conducted the investigation, was not only the complainant but also the recovery officer in this case which is not permissible under the law. Moreover, the police failed to include any independent witness during the recovery process despite having sufficient time and opportunity to do so. Although the Chemical Examiner report confirms the substance to be Alprazolam but this alone does not prove the guilt of the respondent unless the recovery is shown to be legal, fair, and reliable. Therefore, it is respectfully requested that the present appeal be dismissed and the judgment of acquittal be upheld. In support of his submissions, he has relied upon the judgment of the Hon'ble Supreme Court in the case of **Ranjan Kumar Chadha versus State of Himachal Pradesh, 2023 SCC Online SC 1262.**

5. We have heard learned counsel for the parties and have carefully perused the material available on record.

6. In order to prove its case, the prosecution had examined as many as five prosecution witnesses.

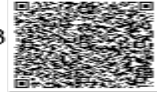
7. PW-1 ASI Balwinder Singh, who was also present in the police party, had endorsed the testimony of PW3 SI Inder Singh. He had duly proved



the consent memo (Ex.P1), Form M-29 (Ex.PX) on which he proved seal impression of the Investigating Officer as Ex.P2, recovery memo (Ex.P3), rukka (Ex.P4), FIR (Ex.P5), site plan of place of recovery (Ex.P6), arrest-cum-intimation memo of accused/respondent (Ex.P7) and personal search memo (Ex.P8).

8. PW-2 DSP Subhash Chander Arora had deposed that on 23.03.2015, he was posted as SHO at P.S. City, Nakodar and ASI Inder Singh had produced before him two samples weighing 05 grams each containing intoxicating powder and one bulk parcel weighing 235 grams containing intoxicating powder along with Form M-29 and the accused/respondent. He put his seal impressions 'SC' on the parcels and also on the Form M-29 Ex.PX at point Ex.P2/A after verifying the preliminary details. Thereafter, he handed over the case property along with Form M-29 to MHC of the police station.

9. PW3 SI Inder Singh, who was the Investigating Officer of this case and was leading the police party, had deposed the version as reiterated in the FIR. He proved on record consent memo (Ex.P1), Form M-29 (Ex.PX) on which he affixed his seal impression Ex.P2, recovery memo Ex.P3, rukka (Ex.P4), FIR (Ex.P5), site plan of place of recovery (Ex.P6), arrest-cum-intimation memo of accused (Ex.P7) and personal search memo (Ex.P8). He further deposed that after reaching the police station, he had produced the case property and Form M-29 along with accused/respondent before PW2 Inspector/SHO Subhash Chander, who verified the facts in recovery and sealed the case property and also put his seal 'SC' on the parcels and also affixed his seal impression 'SC' on Form M-29 at point Ex.P2/A. Thereafter, PW2 had



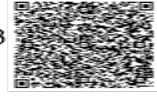
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deposited the case property along with Form M-29 with MHC of the police station. He further stated that on the next day, he obtained case property from MHC and produced the same before learned JMIC(D), Nakodar along with the accused/respondent, vide applications Ex.P9 and Ex.P10, on which learned Magistrate passed the relevant orders Ex.P11 and Ex.P12. On return to the police station, he had deposited the case property with the MHC. Finally chemical report Ex.PY was received and challan was presented.

10. PW-4 Constable Harwinder Singh had deposed through his affidavit Ex.PW4/A that on 06.04.2015, he was posted as Constable at Police Station City, Nakodar, Jalandhar. On that day, MHC Narinder Singh had handed over to him one sample parcel containing 05 grams of intoxicating powder sealed with seal impressions 'IS' and 'SC' along with Form M-29 for depositing the same in the office of Chemical Examiner Kharar. He deposited the said sample and Form M-29 in the office of Chemical Examiner, Kharar and obtained receipt, which was submitted by him to the MHC on return to the police station. He further deposed that as long as sample parcel remained with him, neither he tampered with the same nor he allowed anybody else to tamper with the same.

11. PW-5 MHC Narinder Singh had deposed through his affidavit Ex.PW5/A that on 23.03.2015, he was posted as MHC at Police Station City, Nakodar. On that day, one plastic box containing 235 grams intoxicating powder and two sample parcels containing 05 grams each intoxicating powder along with Form M-29 sealed with seals 'IS' and 'SC' and one Indica Car bearing No.PB08-AS-5647 were deposited with him by Inspector/SHO



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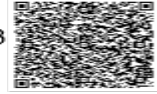
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Subhash Chander Arora. He made entry in register No.19 regarding the same. On 24.03.2015, he handed over one plastic box containing 235 grams intoxicating powder and two sample parcels containing 05 grams each intoxicating powder along with Form M-29 sealed with seals 'IS' and 'SC' to ASI Inder Singh for producing the same before the learned JMIC(D), Nakodar. After producing the case property before learned Magistrate, PW3 ASI Inder Singh had re-deposited the case property along with Form M-29 with him on the same day. He further deposed that on 27.03.2015, he had handed over one sample parcel containing 05 grams of intoxicating powder along with Form M-29 sealed with seal impressions 'IS' and 'SC' through Constable Harwinder Singh No.1650 for depositing the same in the office of Chemical Examiner, Kharar. Sample parcel was deposited in an intact condition by the said official and acknowledgment thereof was handed over to him.

12. After closing the prosecution evidence, the statement of the accused/respondent was recorded under Section 313 Cr.P.C. and the incriminating circumstances from the prosecution's evidence were presented to him. He had denied the allegations and deposed that he had been falsely implicated in the case and nothing had been recovered from him.

13. After appreciating all the material placed before the trial Court, it was observed by the trial Court that the prosecution had failed to prove its case and the accused/respondent, by giving the benefit of doubt, was acquitted of the charges levelled against him under Section 22 of the NDPS Act.

14. The primary contention of the defence was that compliance of Section 50 of the NDPS Act had not been made out as the personal search of



the accused/respondent was not conducted by any Gazetted Officer or by any Magistrate and in the alternative, third option had been given to him to be searched through an Officer himself which is contrary to the law laid down by the Hon'ble Supreme Court in the case of **State of Rajasthan versus Parmanand and others, 2014(5) SCC 345** and in pursuant thereto, the respondent had been granted the benefit of doubt.

15. The Hon'ble Supreme Court in the case of **Ranjan Kumar Chadha Vs. State of Himachal Pradesh, 2023 SCC OnLine SC 1262**, while examining the issue of applicability of the provisions of Section 50 of the NDPS Act, in case of personal search has summarized as follows:-

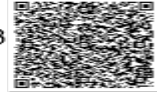
“i) [Section 50](#) provides both a right as well as an obligation.

The person about to be searched has the right to have his search conducted in the presence of a Gazetted Officer or Magistrate if he so desires, and it is the obligation of the police officer to inform such person of this right before proceeding to search the person of the suspect.

(ii) Where, the person to be searched declines to exercise this right, the police officer shall be free to proceed with the search. However, if the suspect declines to exercise his right of being searched before a Gazetted Officer or Magistrate, the empowered officer should take it in writing from the suspect that he would not like to exercise his right of being searched before a Gazetted Officer or Magistrate and he may be searched by the empowered officer.

(iii) Before conducting a search, it must be communicated in clear terms though it need not be in writing and is permissible to convey orally, that the suspect has a right of being searched by a Gazetted Officer or Magistrate.

(iv) While informing the right, only two options of either being searched in presence of a Gazetted Officer or Magistrate must be



given, who also must be independent and in no way connected to the raiding party.

(v) In case of multiple persons to be searched, each of them has to be individually communicated of their right, and each must exercise or waive the same in their capacity. Any joint or common communication of this right would be in violation of [Section 50](#).

(vi) Where the right under [Section 50](#) has been exercised, it is the choice of the police officer to decide whether to take the suspect before a Gazetted Officer or Magistrate but an endeavour should be made to take him before the nearest Magistrate.

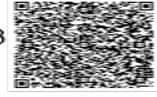
(vii) [Section 50](#) is applicable only in case of search of person of the suspect under the provisions of the [NDPS Act](#), and would have no application where a search was conducted under any other statute in respect of any offence.

(viii) Where during a search under any statute other than the [NDPS Act](#), a contraband under the [NDPS Act](#) also happens to be recovered, the provisions relating to the [NDPS Act](#) shall forthwith start applying, although in such a situation [Section 50](#) may not be required to be complied for the reason that search had already been conducted.

(ix) The burden is on the prosecution to establish that the obligation imposed by [Section 50](#) was duly complied with before the search was conducted.

(x) Any incriminating contraband, possession of which is punishable under the [NDPS Act](#) and recovered in violation of [Section 50](#) would be inadmissible and cannot be relied upon in the trial by the prosecution, however, it will not vitiate the trial in respect of the same. Any other article that has been recovered may be relied upon in any other independent proceedings.”

16. Moreover, the prosecution had failed to join any independent witness at the time of the alleged recovery. The explanation offered by the



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police that no one was willing to join was found to be unsatisfactory especially in a case involving serious consequences.

17. Additionally, the Investigating Officer had played multiple roles including Recovery officer and the complainant as well, which lay serious doubt upon the prosecution version and entitle the respondent for grant of 'benefit of doubt'.

18. In view of the above, we do not find any illegality or perversity in the judgment of the trial Court acquitting the respondent and the application under Section 378(3) Cr.P.C. seeking leave to appeal is, hereby, dismissed.

19. Pending application, if any, shall stand disposed of accordingly.

(MANJARI NEHRU KAUL)
JUDGE

05.08.2025
A.Kaundal

(H.S.GREWAL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No