

2025:PHHC:050008



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

**CRA-S-1519-2024
DECIDED ON: 05.04.2025**

HARMESH SINGH @ MESHI

.....APPELLANT

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. Ashu Rana, Advocate
 for the appellant.

 Mr. Rubal Pawar, AAG, Punjab.

SANDEEP MOUDGIL, J

1. Relief Sought

The instant appeal has been preferred by the appellant-Harmesh Singh @ Meshi, challenging the judgment of conviction and order of sentence dated 13.10.2023 passed by Special Judge, Kapurthala whereby he has been convicted for commission of offence under Section 21 of NDPS Act, 1985 and has been sentenced to undergo RI for a period of 1 year along with fine of Rs.10,000/- for an offence under Section 21 of NDPS Act, 1985 and in default thereof to further undergo RI for a period of 3 months.

2. Facts

The brief facts of the present case are that ASI Dalwinderbir Singh, along with his police team, was on patrolling duty and checking of anti social

elements. However, when the police party reached in the area of Dhusi Bandh, they saw a person coming from the of Village Baguwal, who upon seeing the police party tried to turn back. On suspicion, he was apprehended by ASI Dalwinderbir Singh with the help of his police team. On enquiry, the said person disclosed his name as Harmesh Singh @ Meshi- A1 son of Kakka Singh. Then ASI Dalwinderbir Singh tried to associate a public witness before conducting his search, but none came forward to associate the police party. Thereafter, he was apprised about his right under the provisions of Section 50 of the NDPS Act. He had reposed faith in favour of ASI Dalwinderbir Singh vide a consent memo. On checking, 213 intoxicant tablets were recovered from the right pocket of his pant. The same were converted into separate parcels and sealed by ASI Dalwinderbir Singh with his seal bearing impression DS. Specimen seal was also prepared separately. Further, Form-29M was prepared at the spot. The seal after use was handed over to ASI Ronki Ram. Ruqa was sent through C. Maninderjit Singh. Hence, the present FIR.

After completion of investigation challan stands presented against the appellant.

On finding a *prima-facie* case, the accused was charge-sheeted under Section 21 of NDPS Act, 1985, to which he pleaded not guilty and claimed trial.

In order to prove its case, the prosecution examined as many as six prosecution witnesses. Thereafter, the appellant was examined under Section 313 Cr.P.C. wherein, he pleaded innocence and false implication alleging that no recovery was ever effected from him. He further pleaded that he never indulged in any offence and the present case has been planted upon him.

The accused was held guilty for commissioning of offence under

Section 21 of NDPS Act, 1985 and has been sentenced as above.

Being aggrieved and dissatisfied with the impugned judgment of conviction and order of sentence, the present appeal has been filed.

3. CONTENTIONS

ON BEHALF OF COUNSEL FOR THE APPELLANT:

Learned counsel for the appellant has strenuously contended that there was a gross and substantial violation of the mandatory provisions of Section 50 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act) in the present case, thereby rendering the prosecution's case highly doubtful. It is submitted that the accused is entitled to acquittal on this ground alone.

It has further been argued that the prosecution failed to associate any independent witness during the course of the recovery proceedings, which casts a serious doubt on the credibility of the prosecution version. The prosecution was duty-bound to associate and examine at least one independent witness so as to lend authenticity and reliability to its case. In the absence of any plausible explanation for such failure, the benefit of doubt ought to have been extended to the accused.

Additionally, learned counsel has submitted that there was also a violation of the provisions of Section 57 of the NDPS Act, which further vitiates the prosecution case. He has emphasized that the conviction cannot rest solely on the testimony of official witnesses, particularly when they are interested witnesses likely to depose in favour of the prosecution. It is also pointed out that there was an unexplained delay in sending the sample to the Forensic Science Laboratory (FSL), which adversely affects the sanctity and evidentiary value of the sample.

ON BEHALF OF LEARNED STATE COUNSEL

Learned State counsel has vehemently argued that the prosecution has successfully established its case on record through the consistent and credible testimony of its witnesses. It is submitted that there is no material on record to disbelieve or discard their evidence. All the prosecution witnesses have been thoroughly cross-examined by the learned defence counsel during the course of trial, but nothing substantial has emerged to impair or discredit their testimony.

It is further contended that the absence of independent witnesses does not vitiate the recovery proceedings, particularly in light of the cogent, consistent, and trustworthy evidence adduced by the official witnesses. The recovery of the contraband from the conscious possession of the accused has been duly proved, and all procedural requirements under the NDPS Act were meticulously followed from the stage of recovery up to the receipt of the report from the Chemical Examiner.

Minor discrepancies, if any, are natural and expected in the course of human testimony and do not go to the root of the matter. The accused has failed to demonstrate any motive or enmity on the part of the Investigating Officer or the other police officials that could suggest a possibility of false implication. Furthermore, the accused has not led any defence evidence to substantiate his plea of innocence or false implication, rendering such contentions baseless and unsubstantiated.

4. Analysis & Conclusion

From perusal of judgment, particularly the testimonies of the prosecution witnesses, it is revealed that the prosecution has successfully established that on 08.07.2017, in the area of Dhusi Bandh, Mand Desal, within

the jurisdiction of Police Station Fattudhinga, District Kapurthala, the accused, Harmesh Singh @ Meshi, was apprehended while in conscious possession of 213 loose sedative tablets containing Alprazolam, without possessing any valid permit or license. All the prosecution witnesses have been subjected to extensive and detailed cross-examination by the learned defence counsel. However, nothing material could be elicited during their cross-examination to discredit their version or to lend any support to the defence's case. Furthermore, the defence failed to examine even a single witness in rebuttal to challenge the credibility of the prosecution witnesses or to substantiate its plea. PW-5, ASI Dalwinderbir Singh, the Investigating Officer and a key witness in the case, has unequivocally deposed that on the aforementioned date, the accused was apprehended in possession of the contraband, as detailed in the FIR. This witness has also duly proved various material documents on record, including the consent memo, Ruqa, FIR, recovery memo, personal search memo, among others. His testimony is clear, cogent, and consistent, effectively unfolding the entire sequence of events forming the prosecution story. Despite his detailed cross-examination, no material contradiction or discrepancy was brought forth to weaken the prosecution's case.

Similarly, PW-6, ASI Ronki Ram, who was present at the spot along with the Investigating Officer, corroborated the testimony of PW-5 in material particulars. He has also proved on record several crucial documents and has provided consistent support to the prosecution version. His testimony, too, remained unshaken during lengthy cross-examination, and no evidence was brought on record through him to aid the defence case in any manner.

The fact that the accused person has a right under [Section 50](#) of the NDPS Act to be searched before a Gazetted Officer or a Magistrate was not

made known to him. There is an obligation on the part of the empowered officer to inform the accused or the suspect of the existence of such a right to be searched before a Gazetted Officer or a Magistrate, if so required by him. Only if the suspect does not choose to exercise the right in spite of apprising him of his right, the empowered officer could conduct the search on the body of the person. In the case in hand on perusal of consent memo Ex.PW-5/A, it is evident that the appellant was rightly and clearly apprised about his legal right under Section 50 of NDPS Act for getting his search done before any Gazetted Officer or Magistrate. However, the appellant has reposed faith in favour of investigating officer.

Further contention of learned counsel for the appellant that no independent witness has been joined is concerned, it is a well settled law that joining of independent witness is not the rule of law, but the rule of prudence. In this regard, reliance can be placed upon the judgment of this Court in the case of “*Jarnail Singh Vs. State of Punjab*” (2011) 3 SCC 521, wherein it has been held that merely because the prosecution did not examine any independent witness, would not necessarily lead to a conclusion that the accused was falsely implicated. The evidence of official witnesses cannot be distrusted and disbelieved, merely on account of their official status.

In view of the discussions made hereinabove, this Court does not find any merit in the present appeal, hence, the same is dismissed being devoid of any merits. The impugned judgment of conviction and sentence dated 13.10.2023 passed by Judge Special Court, Kapurthala is upheld.

(SANDEEP MOUDGIL)
JUDGE

05.04.2025

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No