



**1356 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRA-S-1430-SB-2010
Reserved on: 15.05.2025
Pronounced on: 21.05.2025

Suresh KumarAppellant

Versus

State of U.T. Chandigarh ...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Harshdeep Singh, Advocate as *Amicus Curiae*
for the appellant.

Mr. Shubham Mangla, Addl. P.P., UT Chandigarh.

HARPREET SINGH BRAR, J. (ORAL)

1. This criminal appeal has been filed under Section 374(2) of the Code of Criminal Procedure to challenge the judgment dated 23.03.2010 passed by the learned Judge, Special Court, Chandigarh, whereby the appellant, Suresh Kumar, was convicted under Section 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as "the NDPS Act") and sentenced to undergo rigorous imprisonment for a period of one year and five months, along with a fine of ₹1,000/-, and in default of payment of fine, to further undergo rigorous imprisonment for seven days.

FACTUAL BACKGROUND

2. The facts of the prosecution case, tersely put, are that on 04.08.2007 ASI Surinder Kumar (PW8) accompanied by other police officials apprehended the accused who was coming on scooter bearing No. HR03B-3959 on the basis of suspicion. On his search a polythene envelop was recovered



from the left pocket of his shirt and it was weighed at the spot and found to be 10 gms *heroin*. The accused could not produce any licence or permit for keeping the same in his possession. Out of the total *heroin* two samples of 2 grams each were drawn and put in the polythene envelop. Each was put in plastic containers and converted into separate parcels. The residue contraband was put in the same plastic envelop and then put in a plastic jar and also converted into parcel. All the three parcels were sealed with the seal bearing impression "SK" at two places on each parcels and sample seal was prepared. The case property was taken into police possession vide memo Ex. PA. The investigating officer prepared a ruqa Ex. PC and sent the same through Constable Ramesh Kumar to the police station on the basis of which formal FIR Ex. PD was registered.

3. Afterwards, a wireless message was sent for sending the second IO and in pursuance thereof SI Tarsem Singh reached at the spot. He prepared the rough site plan Ex. PG. The accused was arrested vide Memo Ex. PB. He recorded the statements of the witnesses and produced the case property along with the accused before SHO SI Uday Pal Singh (PW3) who verified the facts of the case and put his own seal bearing impression "US" on each parcel as well as on sample seal and found the case property in an intact condition. He deposited the case property with the MHC Jaibir Singh (PW4). The case property including sample seal was produced in the court of learned Area Magistrate Chandigarh on 5.8.2007 by SI Tarsem Singh in intact condition. The sample parcel was sent to CFSL, Sector 36, Chandigarh on 7.8.2007 through Constable Harbhajan (PW1) who deposited it on the same in intact condition. The chemical examiner vide his report Ex. PK has opined that the contents of the sample are containing 5.628% Diacetylmorphine (*heroin*).



4. Upon completion of investigation, challan was submitted before learned trial court and charge under Section 21 of the Act was framed against the accused, upon which he pleaded not guilty and claimed trial. The prosecution examined eight witnesses to prove its case, including the recovery witnesses and the officials who dealt with the custody and forwarding of the seized articles. After considering the evidence, the learned trial Court held the appellant guilty and sentenced him as aforesaid.

CONTENTIONS

5. Learned *amicus curiae* has challenged the impugned judgment on several grounds. Firstly, it is submitted that no independent witness was joined in the investigation or at the time of recovery, despite the fact that the occurrence took place in a public place. Also, he pointed out serious discrepancies in the prosecution case regarding the site of the Naka and the process of weighing the contraband. Further, it is submitted that the mandatory provisions under Section 50 of the NDPS Act were not complied with, although the contraband was recovered from the person of the accused, i.e. from the pocket of his shirt. Lastly, it is further submitted that the link evidence is defective, as the seal after recovery was allegedly handed over to an unnamed person, thereby creating doubt about the integrity of the case property.

6. On the other hand, the learned State counsel has supported the judgment of conviction and submitted that all procedural requirements were fulfilled, and the recovery being of a small quantity, the Court below rightly convicted the appellant under Section 21 of the Act.



OBSERVATIONS AND ANALYSIS

7. I have heard learned counsel for the parties and perused the record carefully.

8. Firstly, a perusal of the impugned judgment indicates that the prosecution also failed to associate any independent witness despite the occurrence having taken place in a public area. In the present case PW-2, Constable Balkar Singh is the recovery witness, who is an only official witness. Also, no explanation was given as to why no efforts were made to associate any independent witness, thereby raising doubt about the veracity of this claim. In *Vijay v. State of Haryana*, (2010) 3 SCC (Cri) 693, and in *Krishan Chand Vs. State of H.P.*, AIR 2017 SC 3751 the Hon'ble Supreme Court emphasized 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. The Hon'ble Supreme Court in *Gorakh Nath Prasad Vs. State of Bihar*, 2018(1) R.C.R. (Criminal) 108 has acquitted the accused while holding that the case of the prosecution cannot be said to be proved when it is entirely based upon the statements of the official witnesses.

9. Another issue that arises in this case is regarding compliance with Section 50 of the NDPS Act. Admittedly, the contraband was recovered from the left pocket of the appellant's shirt. Therefore, his body is also searched, the rigor of Section 50 of the NDPS Act would be made applicable. It is now well-settled law, as held by the Constitution Bench of the Hon'ble Supreme Court in *State of Punjab v. Baldev Singh*, (1999) 6 SCC 172, that compliance with Section 50 is mandatory in cases where the search is of a person. Thus, the failure of the investigating officer to inform the appellant of this right vitiates the recovery itself.



Similar views were taken by the Hon'ble Supreme court in ***State of Rajasthan v. Parmanand and another (2014) 5 SCC 345*** and ***S.K. Raju alias Abdul Haque alias Jagga v. State of W.B. (2018) 9 SCC 708***.

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. Furthermore, the discrepancies in the site of the Naka also weaken the prosecution case. While PW-2 Constable Balkar Singh stated that the Naka was on the main road dividing Sector 19 and 20, whereas PW-8 ASI Surinder Kumar stated that it was on an inner road near the Masjid turn. This inconsistency, though minor in isolation, adds to the cumulative doubt arising in this case. Further, the contradiction regarding the weighing of the recovered substance is another material factor. PW-2 Constable Balkar Singh mentioned the use of standard weights for measurement, whereas PW-8 ASI Surinder Kumar stated that an electronic scale was used. Such contradictions,



particularly in a case relying wholly on official witnesses, affect the credibility of the prosecution. Another significant lapse is seen in the link evidence. SHO Uday Pal Singh, in his deposition, stated that he handed over the seal to a police official present at the site, but could not remember the name of that person. This casts a serious shadow over the safe custody and sealing of the case property. In *Ashok v. State of M.P.*, (2011) 5 SCC 123, the Hon'ble Supreme Court stressed that the failure to account for the seal and its custody raises the possibility of tampering with the evidence, thereby creating doubt about the sanctity of the recovery.

11. In criminal jurisprudence, it is a settled principle that if there is any reasonable doubt in the prosecution case, the benefit thereof must go to the accused. The present case is replete with procedural lapses and material inconsistencies that collectively erode the confidence in the prosecution story.

CONCLUSION

12. In light of the foregoing discussion, this Court is of the considered view that the prosecution has failed to establish the guilt of the appellant beyond reasonable doubt. Consequently, the conviction and sentence imposed upon the appellant by the learned Special Judge, Chandigarh, cannot be sustained.

13. Accordingly, the appeal is allowed. The judgment of conviction and order of sentence dated 23.03.2010 passed by the learned Judge, Special Court, Chandigarh are hereby set aside. The appellant, Suresh Kumar, is acquitted of the charge under Section 21 of the NDPS Act. His bail/surety bonds stand discharged.

14. All the pending miscellaneous application(s), if any, shall also stand disposed of.



15. 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.

16. Secretary, High Court Legal Services Authority is directed to pay remuneration to the learned *Amicus Curiae* as per rules.

(HARPREET SINGH BRAR)
JUDGE

21.05.2025

Neha

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No