



CRA-S-371-2025

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

**CRA-S-371-2025 (O&M)
Reserved on : 28.03.2025
Pronounced on : 07.04.2025**

Harminder Singh @ Pappu

..... Appellant

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. J.P. Devgan, Advocate, for the appellant.

Mr. J.S. Arora, DAG, Punjab.

Rajesh Bhardwaj, J.

1. Appellant has approached this Court by way of filing the present appeal impugning the judgment of conviction and order of sentence dated 02.01.2025 passed by learned Judge, Special Court, Tarn Taran, wherein, the appellant has been convicted for the offence under Section 21(b) of the Narcotics Drugs and Psychotropic Substance Act, 1985 (for short, 'the NDPS Act') and sentenced to undergo rigorous imprisonment for a period of 20 days and to pay a fine of Rs.1,000/-.

2. Succinctly, the facts as enumerated from the case are that on 28.01.2021, when SI Sukhdev Singh was on patrol duty alongwith his fellow officials, and when they reached near village Chohla Sahib, he noticed a person approaching from the opposite side, who was carrying a polythene packet in his right hand. On seeing the police, he got perplexed and threw the polythene packet on the ground and tried to escape. However, he was apprehended and on asking he disclosed his name as Harminder Singh (appellant). On examining the contents of the packet, it was found to



be containing 05 grams of heroin. After sealing the contraband, it was placed in a plastic container. The appellant failed to produce any licence regarding the possession of the same and hence, the FIR was registered and he was arrested on spot. On the conclusion of the investigation, the challan was presented and on framing the charges, the trial commenced. On the conclusion of the trial, learned trial Court found the charges having been proved against the appellant for the offence under Section 21(b) of the NDPS Act and thus, convicted and sentenced him to undergo rigorous imprisonment for 20 days and fine of Rs.1,000/- vide order dated 02.01.2025. Hence, aggrieved by the same, the appellant has approached this Court by way of filing the present appeal.

3. Learned counsel for the appellant has vehemently contended that the appellant has been falsely and frivolously implicated in this case. He submits that the appellant is a poor person, a IVth class employee, employed as Peon at Government High School, Gharka, District Tarn Taran. He submits that the petitioner has an unblemished service record, however, he has been implicated in this case in a clandestine manner. He has submitted that the appellant has been implicated in this case by planting a fake recovery of 05 grams of heroin allegedly effected from his conscious possession. It is submitted that prosecution has examined five official witnesses alongwith documentary evidence. It is further submitted that recovery has been effected from the conscious possessions of the petitioner, however, there is a blatant violation of Sections 42 and 50 of the NDPS Act. He submits that admittedly neither any offer under Section 50 of the NDPS Act was given to the petitioner before conducting his search nor any



independent witness was joined while carrying out search. He submits that the alleged recovery was made from the petitioner and the FIR was registered under Section 21(a) of the NDPS, Act against him, but the challan was submitted for the offence under Section 21(b) of the Act. He submits that even the trial Court has convicted the appellant under Section 21(b) of the Act, whereas, weight of the contraband allegedly recovered from the appellant was 05 grams of heroin, which is a small quantity as per notification dated 19.10.2001 of the NDPS Act. It is contended that even if recovery of the contraband has been said to be from a polythene packet, even then it is evident from the case of the prosecution that personal search of the appellant was also carried out and hence, the search conducted was totally in violation of the law settled as the same was done without issuing any offer as per the mandate of Section 50 of the NDPS Act. He submits that there is violation of Section 42 of the NDPS Act as well while effecting recovery as the Investigating Officer did not even join any independent witness at the time of recovery. He submits that recovery in the present case has been effected from a public place and thus, there was no reason for not joining any independent witness. He assailed the conviction order by submitting that *Ruqa* and Form No.M-29 and other documents, which are said to have been recorded at the place of occurrence, are not proved to have been prepared at place of occurrence from the evidence produced by the prosecution. He submits that all these documents contained the details of FIR and date which was not possible as at time of effecting the recovery and sending the *ruqa* when the FIR was not even registered. This shows that all the documents were fabricated by the police officials. He submits that the



samples taken were sent to FSL with a delay. He submits that the recovery was effected on 28.01.2021, whereas, samples were deposited with the chemical examiner on 01.02.2021, thus, there was a delay in sending the samples. He submits that learned trial Court has totally misread the evidence and failed to appreciate that the prosecution had totally failed to prove its case beyond reasonable doubts and hence, the conviction as held by learned trial Court deserves to be set aside by acquitting the appellant.

4. Per contra, learned State counsel has opposed the submissions made by learned counsel for the appellant. He has submitted that recovery of 05 grams of heroin was effected from the appellant and he was arrested on spot. He has submitted that after due compliance of the provisions of NDPS Act, recovery was effected and samples taken were sent to FSL. He submits that it was a chance recovery made from the appellant, thus, provisions of Section 50 NDPS Act were not attracted. He submits that the samples taken were immediately sealed and were sent to the chemical lab in sealed condition after taking order from the Court. He further submits that non-joining of independent witness does not effect the credibility of the prosecution case as the evidence of the official witnesses is equally good and rests on the same footing as that of a private witness. He submits that learned trial Court has rightly convicted the appellant for the offence and thus, has rightly sentenced him. He, thus, submits that the present appeal being devoid of any merit deserves to be dismissed.

5. Heard learned counsel for the parties and perused the record with their able assistance. It is apparent from the facts and circumstances of the case that the case of the prosecution against the appellant is to the effect



that 05 grams of heroin was recovered from his conscious possession. As per the evidence produced, the appellant was carrying a polythene packet in his right hand, which he threw on seeing the police. However, he was apprehended and thereafter, search of the polythene packet and that of his person was conducted. On conducting the search, alleged recovery of 05 grams of heroin was effected by the Investigating Officer. The precise issue involved for the appreciation by this Court is not whether the procedure in sending the samples to the lab was rightly followed but whether the contraband allegedly recovered was actually recovered from the conscious possession of the appellant after due compliance of the mandatory provisions of the NDPS Act? As per the case of prosecution, the appellant was seen coming on foot by the police, and then he was apprehended and recovery was effected. But from perusal of the record, there is no evidence to the effect that he was made aware about his rights of search before a Gazetted officer or a Magistrate. Though the evidence of the official witnesses rests on the same footing with that of a private witnesses, but joining of independent witness give credence to the alleged recovery effected from the accused. The provisions of Section 50 of the NDPS Act are the safeguards provided by the legislature which can rule out a false implication of any innocent person. The appellant before this Court is a Class-IV employee and recovery allegedly effected from him was 05 grams of heroin. The Court cannot shut its eyes that in the absence of any offer having been given under Section 50 of the NDPS Act and non joining of any independent witness, renders the appellant to be most vulnerable person, who was totally at the mercy of the Investigating Agency/police



officials.

6. Hon'ble Supreme Court in **State of Rajasthan vs. Parmanand** 2014 CRLJ 175, has held as under:-

“12. 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 the NDPS Act will have application. In this case, respondent No.1 Parmanand's bag was searched. From the bag, opium was recovered. His personal search was also carried out. Personal search of respondent No.2 Surajmal was also conducted. Therefore, in light of judgments of this Court mentioned in the preceding paragraphs, Section 50 of the NDPS Act will have application.**

13. It is now necessary to examine whether in this case, Section 50 of the NDPS Act is breached or not. The police witnesses have stated that the respondents were informed that they have a right to be searched before a nearest gazetted officer or a nearest Magistrate or before PW-5 J.S. Negi, the Superintendent. They were given a written notice. As stated by the Constitution Bench in Baldev Singh, it is not necessary to inform the accused person, in writing, of his right under Section 50 of the NDPS Act. His right can be orally communicated to him. But, in this case, there was no individual communication of right. A common notice was given on which only respondent No.2 – Surajmal is stated to have signed for himself and for respondent No.1 – Parmanand. Respondent No.1 Parmanand did not sign.

14. In our opinion, a joint communication of the right available under Section 50 of the NDPS Act to the accused would



frustrate the very purport of Section 50. Communication of the said right to the person who is about to be searched is not an empty formality. It has a purpose. **Most of the offences under the NDPS Act carry stringent punishment and, therefore, the prescribed procedure has to be meticulously followed. These are minimum safeguards available to an accused against the possibility of false involvement. The communication of this right has to be clear, unambiguous and individual. The accused must be made aware of the existence of such a right. This right would be of little significance if the beneficiary thereof is not able to exercise it for want of knowledge about its existence. A joint communication of the right may not be clear or unequivocal. It may create confusion. It may result in diluting the right. We are, therefore, of the view that the accused must be individually informed that under Section 50 (1) of the NDPS Act, he has a right to be searched before a nearest gazetted officer or before a nearest Magistrate. Similar view taken by the Punjab & Haryana High Court in Paramjit Singh and the Bombay High Court in Dharamveer Lekhram Sharma meets with our approval. It bears repetition to state that on the written communication of the right available under Section 50 of the NDPS Act, respondent No.2 Surajmal has signed for himself and for respondent No.1 Parmanand. Respondent No.1 Parmanand has not signed on it at all. He did not give his independent consent. It is only to be presumed that he had authorized respondent No.2 Surajmal to sign on his behalf and convey his consent. Therefore, in our opinion, the right has not been properly communicated to the respondents. The search of the bag of respondent No.1 Parmanand and search of person of the respondents is, therefore, vitiated and resultantly their conviction is also vitiated.**



7. Hon'ble Supreme Court in **Sanjeev Vs. State of Himachal Pradesh, 2022(2) RCR (Criminal) 341**, has held under:-

“9. We have checked the original record to satisfy ourselves. Exhibits PW8/B, PW8/C, PW8/D and PW8/E, which are arrest memos, do not reflect that any option or choice was given to the accused before their personal search was undertaken. It is true that the personal search did not result in recovery of any contraband material but the non-compliance of requirement of affording an option, was one of the reasons which weighed with the Trial Court in disbelieving the case of the prosecution.”

8. Further Hon'ble Supreme Court in **Vijaysinh Chandubha Jadeja vs. State of Gurjarat, 2011 (1) SCC 609**, has held as under:-

“22. In view of the foregoing discussion, we are of the firm opinion that the object with which right under Section 50 of the NDPS Act, by way of a safeguard, has been conferred on the suspect, viz. to check the misuse of power, to avoid harm to innocent persons and to minimise the allegations of planting or foisting of false cases by the law enforcement agencies, it would be imperative on the part of the empowered officer to apprise the person intended to be searched of his right to be searched before a gazetted officer or a Magistrate. We have no hesitation in holding that in so far as the obligation of the authorised officer under sub-section (1) of Section 50 of the NDPS Act is concerned, it is mandatory and requires a strict compliance. Failure to comply with the provision would render the recovery of the illicit article suspect and vitiate the conviction if the same is recorded only on the basis of the recovery of the illicit article from the person of the accused during such search. Thereafter, the suspect may or may not choose to exercise the right provided to him under the said



provision.

9. It is desirable to conduct videography at the time of recovery of contraband or some illegal substance from the accused to rule out his false implication in the case. As on date, every official has mobile phone and thus, there is no difficulty in making videography of the recovery by the mobile phone being carried by the police officials. However, no such efforts were made by the Police officials at the time of alleged recovery which makes the same seriously doubtful.

10. Thus, weighing the evidences on the anvil of law settled, the recovery effected from the appellant is totally in violation of the mandate of provisions of Section 50 of the NDPS Act as the personal search of the appellant was also conducted but no offer as per requirement of Section 50 of NDPS Act was ever made to the appellant. Further 05 grams of heroin is admittedly a small quantity as per notification dated 19.10.2001 of the NDPS Act, which is at Sr. No.56 of the table, wherein, it is provided that Diacetylmorphine weighing 05 grams is a small quantity. However, the challan has been presented for the offence under Section 21(b) of the NDPS Act and the trial Court has also convicted the appellant for the offence under Section 21(b) of the NDPS Act. For the appreciation of the controversy involved in the present case, perusal of Section 21 of the NDPS Act is necessary, which is reproduced as under:-

“21. Punishment for contravention in relation to manufactured drugs and preparations.—Whoever, in contravention of any provision of this Act or any rule or order made or condition of licence granted thereunder, manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses any manufactured drug or any preparation containing any manufactured



drug shall be punishable,--

(a) where the contravention involves small quantity, with rigorous imprisonment for a term which may extend to one year, or with fine which may extend to ten thousand rupees, or with both;

(b) where the contravention involves quantity, lesser than commercial quantity but greater than small quantity, with rigorous imprisonment for a term which may extend to ten years and with fine which may extend to one lakh rupees; (c) where the contravention involves commercial quantity, with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees.”

11. Thus, the trial Court has fallen in error while holding the recovery effected from the appellant to be not a small quantity and convicting him under Section 21(b) of the NDPS Act by holding it as a non-commercial quantity. The non-compliance of Sections 42 and 50 of the NDPS Act is fatal to the case of the prosecution. Thus, in the light of discussion made above and also weighing the evidence produced by the prosecution on the anvil of law settled, this Court finds that there is blatant violation of Section 50 the NDPS Act, where the Investigating Agency has totally given a go bye to the mandatory provisions of Section 50 of the NDPS Act. This Court finds that the prosecution has miserably failed to prove its case beyond the reasonable doubts and hence, the present appeal is allowed and the order of conviction and sentence dated 01.02.2025 is set aside. The Appeal is allowed and the pending application i.e. CRM-5991-2025 stands infructuous.

07.04.2025
sharmila

(RAJESH BHARDWAJ)
JUDGE

Whether Speaking/Reasoned	:	Yes/No
Whether Reportable	:	Yes/No