



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

101

CRA-S-1733-SB-2004

Date of decision: September 10th, 2025

Jagir Singh

.....Appellant

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Daldeep Singh, Advocate
for the appellant.

Mr. G.S. Chhina, Senior Deputy Advocate General,
Haryana.

MANJARI NEHRU KAUL, J.

The instant appeal is directed against the judgment of conviction dated 14.08.2004 and order of sentence dated 16.08.2004 passed by learned Additional Sessions Judge, Fatehabad, whereby the learned trial Court convicted appellant-Jagir Singh for an offence punishable under Section 15 of The Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'the NDPS Act'), and sentenced him as follows:

Offence under Section	Period of sentence	Fine imposed	Period of sentence in default of payment of fine
15 of the NDPS Act, 1985.	RI for ten years	₹1 lakh	R.I. for six months

2. The appellant has challenged his conviction on multiple grounds of law and fact. The appeal has been argued at length and is essentially founded upon procedural infirmities and lacunae in the case of the prosecution.

3. The prosecution case, in short, is that on 27.05.2001, PW-5 ASI Charan Singh, while on duty at Bus Stand, Hijrawan Kalan, received a secret information that appellant-Jagir Singh was indulging in sale of narcotics and was then sitting near a pond on the road leading from Hijrawan Kalan to Musa Ahli with bags containing poppy husk. The information was, it is said, transmitted by V.T. message to senior officers. The police party proceeded to the place where the appellant was found sitting on two bags. On noticing the police, the appellant attempted to flee but was apprehended. He was given notice under Section 50 of the NDPS Act and opted to be searched before a Gazetted Officer. Thereafter, Naib Tehsildar PW-6 Jiwan Singh was called and the search in his presence was carried out leading to the recovery of 80 kilograms of poppy husk from two bags. The case property was taken into possession, *ruqa* was sent and FIR No.283 dated 27.05.2001 under Section 15 of the NDPS Act was registered at Police Station Sadar, Fatehabad. On interrogation, the accused allegedly stated that he had purchased the poppy husk from one Raj Pal (co-accused since acquitted). After investigation, the chargesheet was presented and the trial Court convicted the appellant as already stated above.

4. The prosecution examined several witnesses including PW-5 ASI Charan Singh (Investigating Officer), PW-6 Jiwan Singh (Naib Tehsildar), PW-7 ASI Rajesh Kumar (witness of recovery), PW-8 Inspector Vijay Kumar and other formal witnesses. PW-2 Head Constable Om Prakash filed an affidavit regarding non-deposit of Form No.29-A specimen seal in the *Malkhana*, and the FSL report was exhibited as Exhibit P18.

5. The principal grounds pressed before this Court by the learned counsel for the appellant may be summarized as follows:

(i) The mandatory safeguards in Section 42 of the NDPS Act regarding receipt and reduction of secret information into writing and forwarding the same to superior officers were not complied with-PW-5 ASI Charan Singh admitted receiving secret information at 9:30 am, but no record was made nor was the information reduced to writing or forwarded as required. The notice and option under Section 50 of the NDPS Act was a mere formality. Although the appellant is said to have opted for search before PW-6 Jiwan Singh, however, PW-6 was not a Gazetted Officer in the sense required by Section 50 of the NDPS Act and, therefore, the statutory safeguard was not truly availed of

(ii) There was non-compliance of Section 52A of the NDPS Act-samples and the bulk were not produced before a Magistrate for certification and the procedure mandated in Section 52A of the NDPS Act was not followed.

(iii) Contradictions in material particulars between PW-5 ASI

Charan Singh and PW-7 ASI Rajesh Kumar, including the placement of the bags and details of recovery, raise serious doubts about the propriety of the seizure.

(iv) Delay in dispatching samples to the FSL and failure to deposit specimen seal (Form No.29-A) in the *Malkhana*-chain of custody stood broken; in the circumstances the FLS report (Exhibit P18), therefore, cannot be safely relied upon.

(v) Interpolations in the recovery memo (blank columns later filled that relate to the presence of PW-6 Jiwan Singh) give rise to serious suspicion about whether PW-6 Jiwan Singh was actually present at the time of recovery.

(vi) Inconsistencies regarding sealing-although as per the prosecution both the Investigating Officer and Naib Tehsildar affixed their individual seals, the Investigating Officer admitted that only one seal impression was used.

(vii) Non-compliance with Section 57 of the NDPS Act, discrepancies in timing of arrest, and improper preservation of case property-cumulatively entitling the appellant to benefit of doubt.

6. Learned counsel for the appellant vehemently urged that the learner trial Court had proceeded mechanically without giving due weight to the cumulative effect of these infirmities. He relied upon the categorical admissions and contradictions in the testimony of the prosecution witnesses; the lacunae in the statutory procedures; the missing specimen seal; the delay and incomplete chain of custody; and

the suspicious manner in which certain entries and signatures came to be recorded. It was submitted that the presence of a neutral, independent and duly authorized Gazetted Officer or Magistrate at the time of search was the statutory safeguard envisaged by the legislature; calling a Naib Tehsildar could not cure this defect. A prayer was, therefore, made for setting aside the impugned judgment and acquitting the appellant on the ground that the prosecution had failed to prove the charge against the appellant beyond reasonable doubt.

7. Learned counsel appearing for the State vehemently defended the judgment of conviction. It was argued that the essential facts—receipt of secret information, the police reaching the spot, the appellant being found sitting on the bags, the seizure of uh poppy husk and subsequent report of the FSL—are supported by the statements of material witnesses PW-5 ASI Charan Singh (Investigating Officer), PW-6 Jiwan Singh (Naib Tehsildar) and PW-7 ASI Rajesh Kumar (witness of recovery) and, therefore, the conviction ought not to be disturbed. Learned State counsel further urged that the object and purpose of Section 42 and Section 50 of the NDPS Act is to provide safeguards and to curb abuse; mere non-reduction of secret information into writing would not, without more, nullify a clear recovery. As regards Section 52A of the NDPS Act, the learned State counsel contended that non-compliance, even if proved, does not *ipso facto* vitiate the case of the prosecution where the chain of custody and identification are otherwise established. The learned State counsel also

pointed to the quantity of poppy husk recovered i.e. 80 kilograms, and the fact that co-accused Raj Pal was acquitted as reflecting the individualized assessment made by the learned trial Court.

8. I have heard learned counsel for the parties and perused the relevant material on record.

9. Section 42, Section 50, Section 52A and Section 57 of the NDPS Act set out statutory safeguards and procedures which are designed to ensure transparency and to preserve the sanctity of the evidence in prosecutions under the NDPS Act. The NDPS Act itself and various judicial pronouncements have repeatedly emphasized the importance of compliance with these provisions in letter and spirit. The statute and the administrative guidelines require that where a “secret information” is acted upon the manner in which it is received and recorded must be transparent so as to exclude afterthoughts and fabricated recoveries.

10. Section 50 of the NDPS Act mandates that the person about to be searched be informed of his right to be searched in the presence of a Gazetted Officer or a Magistrate. The purpose is to secure an independent, neutral presence as a statutory safeguard.

11. Section 52A of the NDPS Act requires that samples be drawn and certified in the presence of a Magistrate (and particular safeguards about inventories, photographs and list of samples are mandatorily prescribed). The Hon’ble Supreme Court has emphasized the mandatory nature of Section 52A of the NDPS Act insofar as the

drawing and certification of samples and the inventory procedures are concerned; deviations may be tolerated only in strictly exceptional circumstances and where the prosecution can show that non-compliance does not affect the reliability of the evidence.

12. Chain of custody and custody of specimens seal: the statutory scheme and supervisory guidelines require that sealed contraband, sample packets and specimen seals be preserved and deposited in *Malkhana* and the specimen seal (Form 29-A or the like) be properly kept; failure in such matters materially weakens the evidentiary value of the FSL report because the Court must be sure that what reached the Laboratory is the same and unaltered substance seized from the accused. Unexplained discrepancies in the custody and seals can vitiate the reliance on the FSL report.

13. Keeping the above principles, this Court would now proceed to examine the material on record.

14. Coming to the non-reduction of secret information as per the provisions of Section 42 of the NDPS Act, PW-5 ASI Charan Singh admitted that he received secret information about the appellant at or about 9:30 am at Bus Stand, Hijrawan Kalan. The record shows that no contemporaneous note of that information was taken, no record was sent to the immediate superior officer and no entry appears in any station diary or register showing reduction of the secret information as contemplated by the statutory scheme and recognized investigational practice. The omission is not a trifling procedural lapse-it goes to the

origin and credibility of the entire chain of events that follow. Where secret information forms the sole or primary basis of the raid and recovery, the non-reduction of the information and failure to forward it to supervisory officers create an inevitable spectre of afterthought and possible fabrication; any recovery founded on such an unrecorded and uncorroborated secret information must, therefore, be scrutinized with care.

15. The response of the State that mere non-reduction cannot automatically vitiate a case is, of course, legally correct as a general proposition-but where non-reduction combines with other material infirmities (as in the present case) it becomes an important piece in the cumulative mosaic that undermines the reliability of the case of the prosecution. Coming next to the option given under Section 50 of the NDPS Act and the search carried out by PW-6 Jiwan Singh, Naib Tehsildar. It is recorded that the appellant was informed of the option under Section 50 of the NDPS Act and that he “opted” to be searched before a Gazetted Officer. The police party then called Naib Tehsildar PW-6 Jiwan Singh and the search is said to have proceeded in his presence. The presence of the Naib Tehsildar in the wake of certain interpolations and entries in the opinion of this Court creates a serious doubt in the case of the prosecution. The recovery memos to which the attention of this Court was drawn by the learned counsel for the appellant as well as to the fact that several columns (specially those documenting the presence and particulars of PW-6

Jiwan Singh) contain blank portions which were later filled in. The explanation by the prosecution for the alterations is fitfully recorded and unconvincing. Where entries are altered or made after-the-event, and the persons who are said to have been present at the time of search do not give a wholly consistent account, exceptional caution is called for. The possibility of interpolation cannot be lightly brushed aside-it is precisely such unexplained after-entries that the statute sought to guard against by prescribing independent checks like in reduction of secret information and presence of duly empowered persons.

16. In short, when the initial non reduction of secret information is read with the suspicious manner in which attendance and columns were filled in the recovery documents, the veracity of the claimed presence of PW-6 Jiwan Singh is materially compromised. This Court cannot, on the basis of such dubious documentation, accept without reservation that the statutory safeguard under Section 50 of the NDPS Act was properly exercised.

17. Further the prosecution placed reliance on Exhibit P18 (FSL report). Section 52A of the NDPS Act and the statutory scheme require a stringent, almost iron-clad record of how samples and inventories were made, certified and kept. In this case, the record demonstrates non-compliance and the prosecution has miserably failed to satisfactorily explain the lacunae.

18. Still further, PW-5 ASI Charan Singh (Investigating

Officer) and PW-7 ASI Rajesh Kumar are the principal witnesses who are said to have discovered the two bags containing poppy husk; their depositions are not entirely congruent on important particulars including precise placement of the bags and some other material particulars. While contradictions between witnesses do not necessarily falsify the core of a case, when such contradictions occur together with other infirmities (no reduction of secret information, suspicious recovery memos, defective sealing, specimen seal missing), they acquire cumulative value and cannot be disregarded.

19. Furthermore, in a criminal prosecution, the standard is beyond reasonable doubt. The NDPS Act prescribes stringent procedural safeguards because of the draconian penal consequences and the potential abuse in drug related seizures. Where multiple procedural safeguards have not been followed, where documents are susceptible to interpolation, where the chain of custody is opaque and where contradictions exist in the testimony of material witnesses, the cumulative effect is to create a reasonable doubt. Each infirmity taken in isolation might, in some cases, be amenable to explanation to explanation; but here the defects are many and operate together to undermine confidence in the case of the prosecution.

20. After a close and careful scrutiny of the record, the arguments advanced, this Court finds that the conviction recorded by the trial Court cannot stand. Reasonable doubt persists because of procedural breaches and lacunae that touch the core of the seizure and

chain of custody. Therefore, the accused is entitled to benefit of such doubt.

21. Accordingly, the instant appeal is allowed and the impugned judgment of conviction dated 14.08.2004 and order of sentence dated 16.08.2004 passed by learned Additional Sessions Judge, Fatehabad, are set aside qua appellant-Jagir Singh. The appellant is acquitted of the charge framed against him.

September 10th, 2025
Puneet

(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/reasoned : Yes

Whether reportable : Yes