



CRA-S-3577-2023 and
CRA-S-3414-2023(O&M) 1
IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH
CRA-S-3577-2023

Varinder Thakur alias VickyAppellant
Versus

State of Punjab Respondent
CRA-S-3414-2023(O&M)

Vikram Singh alias VickyAppellant
Versus

State of Punjab Respondent

1.	Date when Order was reserved	01.05.2026
2.	Pronouncement of Order	12.05.2026
3.	Date of uploading Order	12.05.2026
4.	Whether operative part or full Order is pronounced	Full
5.	Delay, if any, in pronouncing of full order, and reasons thereof	Not Applicable

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. Jashandeep Singh Sandhu, Advocate for the appellant
(in CRA-S-3577-2023).

Mr. Narinder Singh Dadwal, Advocacte for the appellant.
(in CRA-S-3414-2023).

Mr. Jasdeep Singh, Addl. A.G., Punjab.

SANJAY VASHISTH, J.

1. Aforesaid two appeals have been filed by the convicts,
Varinder Thakur @ Vicky and his co-convict Vikram Singh @ Vicky,
against a common judgment of conviction and order of sentence dated
02.11.2023, arising out of FIR No. 106 dated 15.10.2019, registered



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under Sections 21 and 29 of the NDPS Act, 1985, read with Section 473
of the IPC. The details of the order of sentence are as follows:

Sr. No.	Name of Convict(s)	Under Section	Sentence
1. Varinder Thakur alias Vicky		21 of NDPS Act	To undergo rigorous imprisonment for 10 years and to pay fine of Rs.1,00,000/- (Rupees one lac only) and in default of payment of fine, he will further undergo rigorous imprisonment for six months
		29 of NDPS Act	To undergo rigorous imprisonment for 10 years and to pay fine of Rs.1,00,000/- (Rupees one lac only) and in default of payment of fine, he will further undergo rigorous imprisonment for six months
		473 IPC	To undergo rigorous imprisonment for 02 years and to pay a fine of Rs.3,000/- and in default of payment of fine, he will further undergo rigorous imprisonment for three months.
2. Vikram Singh @ Vicky		21 of NDPS Act	To undergo rigorous imprisonment for 10 years and to pay fine of Rs.1,00,000/- (Rupees one lac only) and in default of payment of fine, he will further undergo rigorous imprisonment for six months
		29 of NDPS Act	To undergo rigorous imprisonment for 10 years and to pay fine of Rs.1,00,000/- (Rupees one lac only) and in



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		default of payment of fine, he will further undergo rigorous imprisonment for six months
	473 IPC	To undergo rigorous imprisonment for 02 years and to pay a fine of Rs.3,000/- and in default of payment of fine, he will further undergo rigorous imprisonment for three months.

2. On 15.10.2019, SI Gurcharan Singh, along with other police officials, was present in Beant Colony, behind the Blind School on Chandigarh Road, Ludhiana, in connection with the search of drug smugglers. On receipt of a telephonic message from a secret informer, ASI Mohd. Sadiq conveyed the information orally to SI Gurcharan Singh and thereafter got his statement recorded to the effect that Varinder Thakur @ Vicky, resident of Village Bamian Kalan, Police Station Jamalpur, and presently residing as a tenant in Street No. 1, Beant Colony, 33 Feet Road, Mundian Kalan, Police Station Jamalpur, Ludhiana, was involved in multiple cases of heroin smuggling and had also been declared a proclaimed offender in such cases. It was further disclosed that he, along with his associate Vikram Singh @ Vicky, had been engaged in the illicit trade of heroin for some time and that both were likely to leave shortly on a Pulsar motorcycle bearing registration No. PB-10-FZ-1626 from the rented house of Varinder Thakur @ Vicky to supply heroin to their customers. It was further informed that, if naka



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bandi was laid near the said house, both could be apprehended along with the motorcycle and heroin.

Finding the information to be credible, SI Gurcharan Singh sent a ruqa to Police Station STF, Mohali, through C-Vishal Kumar for registration of a case under Sections 21 and 29 of the NDPS Act.

3. Subsequently, SI Gurcharan Singh, along with the remaining police officials, reached Street No.1, Ludhiana near the rented house of Varinder Thakur and his co-accused Vikram Singh. At about 08:15 PM, both the accused came out of the rented house; Varinder Thakur @ Vicky was carrying a bag, and Vikram Singh @ Vicky accompanied him. They started the motorcycle bearing registration No. PB-10-FZ-1626 parked in front of the house, whereupon they were intercepted by the police party.

4. After disclosing their identities, accused were informed of their legal right to be searched in the presence of a Gazetted Officer or a Magistrate. Upon their consent, as recorded in consent memos, DSP Pawanjit was informed telephonically by SI Gurcharan Singh and he reached the spot at about 09:15 PM. The accused were again apprised of their legal rights, and they reposed confidence in the Gazetted Officer present.

Upon search, a black polythene envelope recovered from the bag of Varinder Thakur @ Vicky was found to contain a small electronic weighing scale and 70 empty pouches. From another polythene envelope, heroin weighing 455 grams was recovered. The recovery proceedings were conducted in accordance with the prescribed procedure; the case



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property was sealed, and parcels were prepared by the Investigating Officer.

The Investigating Officer thereafter brought the accused and the case property to Police Station Jamalpur and produced them before SI Varinder Pal Singh, the officiating SHO, who, after verifying the facts, affixed his seal bearing impression “VS” and deposited the case property with the MHC of the police station.

On the following day, i.e., 16.10.2019, accused were formally arrested, and the case property was produced before the learned Judicial Magistrate First Class for inventory proceedings. Learned Magistrate drew two samples of 10 grams each from the recovered heroin and sealed them with seal impression “ASM”. The bulk parcel containing 435 grams of heroin was also sealed separately. The inventory proceedings were duly photographed.

5. During investigation, accused Varinder Thakur @ Vicky disclosed that the correct registration number of the motorcycle was PB-10-FJ-1626. It was further revealed that the said motorcycle was originally registered in the name of Jagtar Singh, who stated that he had sold it to Kuldeep Singh. It also emerged that Varinder Thakur @ Vicky was the brother-in-law of Kuldeep Singh, who had given the motorcycle to him. However, no involvement of Jagtar Singh or Kuldeep Singh was found in the recovery of heroin. Upon receipt of the report of the Chemical Examiner, challan was presented under Sections 21 and 29 of the NDPS Act and Section 473 IPC.



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6. Vide order dated 18.07.2022, charges were framed against the accused under Sections 21 and 29 of the NDPS Act and Section 473 read with Section 34 IPC. During the trial, the prosecution examined eight witnesses, the gist whereof is as follows:

PW1 – ASI Mohd. Sadiq: Deposed regarding receipt of secret information about the accused dealing in heroin and their plan to transport the same on a motorcycle. He also proved the sending of ruqa and registration of the FIR.

PW2 – ASI Manish Riat: A member of the investigation team, who deposed regarding the recovery proceedings, preparation of site plan, arrest memos, and submission of report under Section 57 of the NDPS Act.

PW3 – L/SC Jasvir Kaur: Deposed that on 22.10.2019, she deposited a parcel containing 10 grams of heroin, sealed with seal “ASM,” along with sample seal chit and Form M-29, at the Regional Forensic Science Laboratory, Ludhiana.

PW4 – Kiranjit Kaur (RTA Official): Proved the ownership records of motorcycles bearing registration Nos. PB-10-FZ-1626 and PB-10-FJ-1626.

PW5 – SI Varinderpal Singh: Before whom the case property was produced by the Investigating Officer on 16.10.2019.

PW6 – DSP Pawanjit: Corroborated the prosecution version and supported the testimony of the Investigating Officer.



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PW7 – SI Gurcharan Singh (Investigating Officer): Reiterated the facts of the case and detailed the investigation conducted by him. He also stated that the representative sample parcel kept in the judicial malkhana was stolen along with other parcels, for which a separate FIR was registered. Consequently, a fresh sample was drawn from the bulk parcel on 07.06.2023 in the presence of the Illaqa Magistrate and sealed with seal “RK”.

PW8 – Retired Inspector Narinder Singh: Deposed that on 16.10.2019, the SI Varinderpal Singh, officiating SHO deposited the case property along with the motorcycle in the malkhana. He further stated that the parcels and sample seal chits were handed over to the Investigating Officer for inventory proceedings.

7. After the conclusion of prosecution evidence, statements of the accused were recorded under Section 313 Cr.P.C. Accused-Varinder Thakur @ Vicky pleaded that he was innocent and that a false case had been planted against him.

Accused-Vikram Singh @ Vicky also pleaded innocence and stated that he had no connection with co-accused Varinder Thakur, nor was he the owner of the motorcycle bearing registration No. PB-10-FZ-1626. He further stated that he had earlier been married to one Ramanpreet Kaur, and due to disputes with her, and her acquaintance with certain police officials, he had been falsely implicated in the present case by officials of STF Ludhiana. He also claimed that he had been picked up by STF Ludhiana prior to 15.10.2019 from his house.



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8. In defence, one witness was examined, namely Constable Davinder Pal, who produced the summoned record, i.e., the Roznamcha of STF Ludhiana dated 15.10.2019 and 16.10.2019. He also proved the logbook of the official vehicle bearing registration No. PB-10-GK-6045 for the said dates.

A copy of a petition under Section 13 of the Hindu Marriage Act, titled *Vikram Singh vs. Ramanpreet Kaur*, was tendered in evidence as Ex. D1.

On the basis of the aforesaid evidence, learned trial Court recorded its findings and consequently sentenced the accused as detailed in the earlier part of the judgment.

9. Learned counsel for the appellants has argued that there is total non-compliance with Section 42(2) of the NDPS Act. It is contended that, as per the allegations in the FIR, upon receipt of secret information and considering it to be reliable, a ruqa (information) was directly sent to the police station through Constable Vishal Kumar.

PW-1 ASI Mohd. Sadiq deposed that it was he who had received the secret information on his mobile phone No. 85918-00078 regarding the involvement of the accused in the illegal trade of heroin. He further stated that he informed SI Gurcharan Singh verbally and got his statement recorded as Ex. P1, on the basis of which SI Gurcharan Singh sent the ruqa for registration of the FIR.

However, in his cross-examination, said witness deposed that telephonic call received from the secret informer at about 06:45 PM and that he had reduced the information into writing on a piece of paper.



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He candidly admitted that the said paper was neither available with him nor placed on the judicial file. He further admitted that no information regarding the secret tip-off was sent to any superior officer.

The witness also admitted that the place where the information was received was a thoroughfare, yet no attempt was made to join any independent witness from that place. He further stated that the ruqa carrier went to the police station on foot from the spot. It was also admitted that at the time of preparation of his statement Ex. P1, no seal of Police Station STF Mohali had been affixed.

10. Learned counsel also highlighted that the witness admitted that his statement was recorded by Constable Lakhwinder Singh; however, said constable has not been examined by the prosecution.

11. To further assail the credibility of the witness, learned counsel referred the initial part of the cross-examination of PW-1 ASI Mohd. Sadiq, wherein he admitted that earlier he was involved in one more case under the NDPS Act and another under the Prevention of Corruption Act in the year 2013 while posted at Police Station Dehlon, although he was acquitted in both cases.

The Investigating Officer, SI Gurcharan Singh (PW-7), deposed that the statement of ASI Mohd. Sadiq (Ex. P1) was recorded and signed, and thereafter forwarded to the police station through Constable Vishal Kumar for registration of the FIR. However, said Constable Vishal Kumar has not been examined by the prosecution.



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Consequently, factum of forwarding of the ruqa to the police station remains unproved.

During cross examination IO admitted that he had prepared an information u/s 42 of NDPS Act on the spot, but the same was sent after reaching the police station. IO also admitted that the writing work was done through laptop by keeping the same on a folding chair, however, he also admitted that regarding having private laptop no entry in the DDR register was made.

PW-7, the Investigating Officer, clearly admitted in his cross-examination that no recovery was effected from the personal search of accused Vikram Singh @ Vicky. He further categorically stated that the secret information had been received by ASI Mohd. Sadiq and that no written record of such information was available on the judicial file. He also admitted that he had not placed on record the call detail records of the mobile phones of the secret informer or ASI Mohd. Sadiq. Additionally, he expressed ignorance as to whether any criminal cases had previously been registered against ASI Mohd. Sadiq.

12. On the basis of these admissions, learned counsel for the appellants has argued that there is clear non-compliance with Section 42 of the NDPS Act, rendering the prosecution case highly doubtful. It is contended that the entire case has been built upon alleged secret information, with the FIR having been registered in advance, without any credible or prior recovery. It is further submitted that, while sending the ruqa through Constable Vishal Kumar for registration of the FIR, the



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Investigating Officer failed to record any reasons as to how or on what basis the information was considered reliable.

13. In support of these submissions, reliance has been placed upon the judgments of the Hon'ble Supreme Court in ***Darshan Singh vs. State of Haryana*, 2016(1) RCR (Criminal) 333**, and of the Punjab and Haryana High Court in ***Daljit Singh @ Jit vs. State of Punjab*, 2023 NCPHHC 46785**.

14. Another limb of the argument raised on behalf of the appellants is that the sample was required to be sent to the Forensic Science Laboratory within 72 hours; however, in the present case, it is an admitted position that the samples were dispatched after a delay of seven days. Referring to the judgment of this Court, '***Amar Singh @ Kabu Vs. State of Haryana*, 2008(4) RCR(Criminal) 440**, Law Finder Doc id # **144975**, learned counsel submits that in the said case, samples were sent after a delay of 07 days without explaining the reasons for delay and in this circumstance, the unexplained delay in sending the sample to the laboratory, certainly proved fatal to the case of prosecution.

15. It is further argued that the alleged theft of the first sample has not been duly proved by the prosecution on record. Consequently, the link evidence in the prosecution case is stated to be completely missing. On these grounds, it is prayed that the appellants be acquitted by dropping the charges framed against them.

16. On the other hand, learned Additional Advocate General, Punjab, has argued that the mere non-availability of the *ruqa* on the



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judicial file does not lead to the presumption that no information was forwarded to the police station immediately after receipt of the secret information. Reliance is placed upon statement Ex. P1 of ASI Mohd. Sadiq (PW-1), who had received the secret information and, after endorsement Ex. P1/A was made thereon by the Investigating Officer, the same was forwarded to Police Station STF, Mohali, through Constable Vishal Kumar for registration of the FIR.

It is further contended that, as per the findings recorded by the learned trial Court, the special report under Section 42 of the NDPS Act (Ex. PW7/A) was prepared at the spot, though it was dispatched to the superior officers upon reaching the police station. Learned State counsel thus argues that even if there was some delay, the subsequent compliance with Section 42(2) of the NDPS Act is sufficient, and such delayed compliance would not vitiate the trial.

Section 42(2) of the NDPS Act reads as under:

“42. Power of entry, search, seizure and arrest without warrant or authorisation

(1) xxx

(2) Where an officer takes down any information in writing under sub section (1) or records grounds for his belief under the proviso thereto, he shall within seventy-two hours send a copy thereof to his immediate official superior.”

17. I have considered the submissions advanced by learned counsel for the parties and have carefully perused the record.

18. In *Darshan Singh (supra)*, paragraphs 10 to 13 reads as under:



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“10. The solitary question that arises for our consideration in the Instant appeal, is whether the registration of the first information report, narrating the factual position as Lhas already been described at the beginning of this order, as also, the communication of the first information report to the Superintendent of Police, Panipat would constitute an effective compliance of the provisions contained in section 42 of the NDPS Act.

11. Having given our thoughtful consideration to the submission advanced at the hands of learned counsel for the respondent, we are of the view that the mandate contained in section 42(1) of the NDPS Act, requiring the recording in writing, the details pertaining to the receipt of secret information, as also, the communication of the same to the superior officer are separate and distinct from the procedure stipulated under the provisions of the Criminal Procedure Code. Sub-section 1 of section 41 of the NDPS Act provides that a Metropolitan Magistrate or a Magistrate of the First Class or any Magistrate of Second Class specially empowered by the State Government may issue a warrant for the arrest of any person whom he has reason to believe to have committed any offence punishable under Chapter IV. Sub-section (2) of Section 41 refers to issue of authorisation for similar purposes by the officers of the Departments of Central Excise, Narcotics, Customs, Revenue Intelligence, etc. Sub-section (1) of section 42 of the NDPS Act lays down, that the empowered officer, if he has a prior information given by any person, should necessarily take it down in writing, and where he has reason to believe from his personal knowledge, that offences under Chapter IV have been committed or that materials which may furnish evidence of commission of such offences are concealed in any building, etc. he may carry out the arrest or search,



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without warrant between sunrise and sunset and he may do so without recording his reasons of belief. The two separate procedures noticed above are exclusive of one another. Compliance of one, would not infer the compliance of the other. In the circumstances contemplated under section 42 of the NDPS Act the mandate of the procedure contemplated therein will have to be followed separately, in the manner interpreted by this Court in Karnail Singh's case (supra) and the same will not be assumed, merely because the Station House Officer concerned had registered a first Information report, which was also dispatched to the Superintendent of Police, in compliance with the provisions of the Criminal Procedure Code.

12. In the above view of the matter, it is not possible for us to accept the submission of the learned counsel for the respondent-State, that the registration of the first information report at the hands of the Station House Officer, Police Station Shahar, Panipat and its communication to the Superintendent of Police, Panipat would constitute sufficient compliance of the mandate of section 42 of the NDPS Act.

13. In aforesaid view of the matter, we are satisfied, that section 42 of the NDPS Act was not complied with at all, insofar as the present controversy is concerned. Thus viewed, conclusion (d) recorded in Paragraph 35 of the judgment rendered in Karnall Singh's case (supra), would fully apply to the facts and circumstances of the present case, and we are left with no other option, but to set aside the conviction and the sentence of imprisonment of the accused-appellant Darshan Singh. Ordered accordingly. The appeal stands allowed."

19. Delay in compliance with the requirement of sending information under Section 42(2) of the NDPS Act has also been viewed



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adversely against the prosecution in ***Daljit Singh @ Jit v. State of Punjab***

by this Court, wherein it was held that strict and conscious compliance of Section 42 is mandatory and failure to produce contemporaneous documentary evidence regarding transmission of information to superior officers creates a serious dent in the prosecution case, entitling the accused to the benefit of doubt. If the mandate of Section 42 of the NDPS Act is applied to the present case, statements of PW-1 ASI Mohd. Sadiq and the Investigating Officer SI Gurcharan Singh (PW-7) make it evident that no documentary evidence has been brought on record to establish due compliance, thereby failing to rebut the arguments advanced by learned counsel for the appellants or to sustain the findings recorded by the learned trial Court. Both the witnesses have categorically admitted that no document regarding compliance of Section 42(2), particularly with respect to forwarding information to superior officers, has been produced or proved on record. The testimony of the Gazetted Officer (PW-6) further weakens the prosecution case, as he stated that “*we were having cell phones with us but we did not prepare any videography or photographs through our phones at the spot. The particulars of the case was mentioned on the parcels by IO SI Gurcharan Singh.*”

The admission of the DSP that he reached the spot alone at about 09:15 PM by driving himself also appears doubtful. No particulars, including the registration number of the vehicle allegedly used by the Gazetted Officer to reach the place of recovery, have been disclosed in the evidence.



Although Constable Lakhwinder Singh, who recorded statement Ex. P1, may not be that essential to examine but even Constable Vishal Kumar—who allegedly carried the information to the police station at the initial stage—was not produced as a witness by the prosecution. His non-examination creates further doubt, as to whether any such information was in fact received, whether it was forwarded to the police station for entry, and whether it was thereafter communicated to superior officers. Why such a witness was withheld from examination as “unnecessary” vide order dated 21.12.2022 be best known to the Public Prosecutor.

When SHO SI Varinderpal Singh (PW-5) entered the witness box, he did not depose about receipt of any such secret information at the police station or about any entry being made in this regard. No corresponding record has been proved on file.

20. In view of the above circumstances, this Court is in agreement with the contention that there is complete non-compliance of the mandate of Section 42 of the NDPS Act. Additionally, there is no satisfactory explanation for the delay of one week in sending the samples to the laboratory. The occurrence having taken place on a public street, which was admittedly a thoroughfare, and despite availability of independent witnesses, none were associated with the recovery proceedings.

21. Accordingly, in view of the foregoing discussion, the prosecution case is rendered doubtful. Both the appeals are accordingly



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allowed and the appellants are acquitted of the charges framed against them. Since the appellants are in custody, they shall be released forthwith, if not required in any other case (the bail bonds and surety bonds, if any, shall stand discharged).

22 A photocopy of this order be placed on the file of another connected case.

**(SANJAY VASHISTH)
JUDGE**

**12.05.2026
Rashmi**

**Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No**