

**CRA-S-2489-SB-2004 (O&M)**

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

CRA-S-2489-SB-2004**Reserved on: 21.05.2026****Pronounced on: 27.07.2026****Uploaded on: 28.07.2026**

Whether only operative part of the judgment is Pronounced : No

Whether full judgment is pronounced: Yes

Amar Singh**...Appellant**

Versus

State of Haryana**...Respondent****CORAM: HON'BLE MS. JUSTICE RUPINDERJIT CHAHAL**

Present: Ms. Uru Sharma, Advocate, for the appellant.

Ms. Shaveta Sanghi, DAG, Haryana, for the Respondent State.

RUPINDERJIT CHAHAL, J.

1. The present appeal has been directed against the judgment of conviction dated 08.07.2004 and order of sentence dated 09.07.2004 , passed by the learned Special Judge, Panipat whereby the appellant was held guilty and convicted under Section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act') and sentenced to undergo rigorous imprisonment for ten years and to pay a fine of Rs.1 Lac and in default of payment of fine, to further undergo rigorous imprisonment for a period of two years and six months.

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2. Shorn of unnecessary details, the case of the prosecution is that, on 07.04.1998 a police party headed by ASI Sant Raj (PW-7) was present outside bus stand Panipat in connection with patrolling. They saw a person coming from bus stand Panipat carrying a blue bag on his left shoulder. On seeing the police party he turned back and started walking at a fast pace which aroused suspicion amongst the police officials. When he was apprehended the police party inquired about his identity as he was suspected of carrying some contraband in the bag. So a notice Exhibit PE under Section 50 of NDPS Act was given to him with an option to be searched in presence of a Magistrate or a Gazetted Officer. Vide Ex.PE/1 he opted to be searched before a Gazetted Officer and accordingly the bag carried by the appellant was searched in the presence of PW9 Rattan Singh, DSP and 1.5 kgs of Charas was recovered from him. After separating 100 grams out of the recovered contraband as sample, the residue along with the sample were sealed with seal 'RS' and was taken into possession by the police vide recovery memo EX.PF. Thereafter the sample along with the remaining contraband and the accused were produced before the SHO, who counter sealed the sample and contraband with his seal 'SS'. On the same day ASI Sant Raj (PW7) deposited this sample and the remaining contraband in the Malkhana with HC Naresh Kumar (PW-4) who thereafter handed over the same along with the sample seal on 15.04.1998 to HC Raghbir Singh (PW-5) for depositing the same in the Office of Director FSL Madhuban (on 15.04.1998) who deposited it with the FSL on the same day. On receipt of the FSL report Ex.PH and the completion of the investigation, challan was presented against the appellant.

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3. Vide order dated 08.05.2001, the appellant was charge sheeted for the commission of offence punishable under Section 20 of the NDPS Act to which he pleaded not guilty and claimed trial.

4. In order to prove its case the prosecution examined Kartar Singh, DSP (Retired) as PW1, Prithviraj ASI as PW2, H.C. Rajbir Singh as PW3, H.C. Naresh Kumar as PW4, H.C. Raghbir Singh as PW5, Sumandar Singh DSP as PW6, Sant Raj ASI (Retired) as PW7, H.C.Dhan Raj as PW8 and Rattan Singh DSP as PW9 besides tendering in evidence report of FSL as Ex.PH and closed the prosecution evidence.

5. On the conclusion of the prosecution evidence, the incriminating circumstances appearing in the prosecution evidence were put to the accused during the course of their examination under Section 313 Cr.P.C. The appellant-accused denied the prosecution allegations and pleaded false implication. No defence evidence was led by the appellant, in spite of number of opportunities.

6. The learned trial Court, after appreciating and evaluating the evidence available on record, held the appellant guilty and convicted him under Section 20 of NDPS Act.

7. Learned counsel appearing for the appellant has assailed the judgment of conviction by contending that the learned trial Court has failed to appreciate the evidence on record in its correct perspective and has ignored material infirmities which go to the root of the prosecution case. It has been argued that the conviction has been recorded despite serious contradictions in the testimonies of the prosecution witnesses, unexplained delay in sending the sample to the Forensic Science Laboratory, non-

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association of independent witnesses though readily available, and non-compliance with the mandatory safeguards embodied under Section 50 of the Narcotic Drugs and Psychotropic Substances Act, 1985.

8. Learned counsel has argued that the prosecution evidence suffers from material inconsistencies regarding the manner in which the recovered contraband was sealed and preserved. It is submitted that, as per the *ruqa* prepared by the Investigating Officer, the sample parcel was kept in a tin container whereas the remaining contraband was kept in a plastic container. However, while deposing before the Court, the Investigating Officer stated that both the parcels were kept in tin containers. On the other hand, PW-8 Dhan Raj deposed that the sample was kept in a plastic container while the remaining contraband was kept in a tin box. According to learned counsel, these contradictions relate to the identity and sanctity of the case property and cannot be brushed aside as minor discrepancies. It has further been contended that there are material contradictions regarding the sealing of the parcels. PW-7 ASI Sant Raj deposed that two seals were affixed on the sample parcel, whereas PW-8 Dhan Raj stated that only one seal had been affixed. Similarly, PW-7 categorically stated that the Deputy Superintendent of Police had not affixed his seal on the parcels, whereas PW-9 DSP Rattan Singh deposed that the parcels had also been sealed with his seal bearing impression "RS". It has been argued that these conflicting versions strike at the credibility of the prosecution case and cast a serious doubt upon the integrity of the sample allegedly recovered from the appellant.

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8.1. Learned counsel has also pointed out that the prosecution witnesses have contradicted each other with regard to the weights used for weighing the alleged contraband. According to him, these inconsistencies assume significance in a prosecution under the NDPS Act, where strict adherence to the prescribed procedure is indispensable and the quantity of the recovered substance has a direct bearing on the nature of the offence and the punishment prescribed.

8.2. Another submission advanced by learned counsel is that the FIR in the present case was registered on the basis of the *ruqa* sent by PW-7 ASI Sant Raj, who thereafter continued to investigate the case. It has been argued that the Investigating Officer himself being the complainant renders the investigation unfair and contrary to the settled principles. According to learned counsel, the investigation conducted by the complainant himself stands vitiated and the conviction based thereon cannot be sustained.

8.3. Learned counsel has next contended that the alleged recovery was effected from the bus stand at Panipat, which is admittedly a public place having high foot fall of general public and officials of the Transport Department. Despite the availability of several independent persons, no effort was made by the investigating agency to associate any independent witness with the search and recovery proceedings. It is argued that the omission to join independent witnesses, without any plausible explanation, assumes considerable significance in the facts of the present case and creates a serious doubt about the fairness and transparency of the alleged recovery. According to learned counsel, the entire recovery has been falsely planted

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upon the appellant after preparing the necessary documents at the police station.

8.4. It has further been argued that there is an unexplained delay of eight days in sending the sample parcel to the Forensic Science Laboratory. Learned counsel submits that the prosecution has failed to furnish any satisfactory explanation for such delay. In the absence of any evidence regarding the safe custody of the sample during the intervening period, the possibility of tampering with the sample cannot be ruled out.

8.5. Lastly, learned counsel has vehemently argued that there has been complete non-compliance with the mandatory provisions of Section 50 of the NDPS Act. Referring to memo Ex. PE, it is submitted that the appellant was merely informed that he could be searched in the presence of a Gazetted Officer or a Magistrate. However, he was never informed that he possessed a legal right to demand that the search be conducted before such an officer. According to learned counsel, the communication of this valuable legal right is mandatory and not a mere formality. Since the appellant was not apprised of his statutory right in the manner contemplated by law, the entire search and recovery stand vitiated. It is, therefore, prayed that the conviction and sentence recorded by the learned trial Court be set aside and the appellant be acquitted of the charges.

9. Per contra, learned State counsel has argued that the material prosecution witnesses have deposed consistently regarding recovery of charas from the possession of appellant-accused, without any licence or permit. Learned State counsel further argued that the alleged contradictions in the statements of the prosecution witnesses are minor in nature and do not

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affect the case of the prosecution at all. Learned State counsel further argued that though appellant was apprehended from a public place but the search and recovery of contraband was effected in the office of the DSP. Learned State counsel further argued that investigating officer tried to join the witnesses from the public but no one came forward to join the police party. Learned State counsel further argued that merely on account of non joining of independent witness, prosecution case cannot be doubted, which otherwise stands proved. Learned State counsel further argued that the delay of 8 days in sending the sample to the FSL is not fatal as it has been proved by the prosecution that the sample remained intact till it reached the office of FSL and was not tampered with at any stage. The same is fortified by Ex.PH i.e. the FSL report. Lastly, learned State counsel submitted that Section 50 of the NDPS Act is not applicable in the present case as the recovery was effected from the bag which the accused was carrying on his left shoulder. Thus, learned State counsel prayed that the judgment of conviction passed by the Learned Special Judge be upheld.

10. I have heard learned counsel for the parties and have gone through the record with their able assistance.

11. So far as discrepancies pointed out by the learned counsel for the appellant in the statements of PW's Sant Raj, Dhan Raj and DSP Rattan Singh are concerned, suffice it to say that same are minor discrepancies. The material fact is that the appellant was apprehended from bus stand, Panipat on the basis of suspicion. The search of his bag which led to recovery of 1.5 kg charas from his conscious possession, without any licence or permit was conducted in the office of DSP Rattan Singh in his presence. The

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discrepancies about the weights used for weighing the contraband, number of seals affixed on the parcels, time of production of accused and case property before SHO and other discrepancies pointed out by the learned counsel for the appellant are not material and the same do not go to root of the prosecution case. Such type of discrepancies do occur in the statements of the prosecution witnesses more so when the witnesses are being examined after more than five years from the date of recovery. The testimony of prosecution witnesses in the present case has remained consistent on all material particulars.

12. So far as the contention of the learned counsel for the appellant regarding non joining of independent witness is concerned, it is observed that people are often hesitant in joining police investigation for variety of reasons. PW-7 ASI Sant Raj has clearly stated that he tried to join independent witness but all expressed their helplessness. It is now well settled that evidence of a witness cannot be rejected merely because he happens to be an official witness. In the present case, nothing could be elucidated from the cross examinations of PW's Sant Raj, Dhan Raj, DSP Rattan Singh and DSP Samundar Singh, so as to raise any dispute with regard to recovery of contraband from the possession of the appellant or that their statements are partisan in nature or that they had any motive to plant a false recovery upon the appellant. In these circumstances, this Court is of considered opinion, that testimonies of official witnesses inspire confidence and the same are held to be reliable. In *Karamjit Singh v. State (Delhi*



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Administration), **AIR 2003 SC 1311**, the Hon'ble Supreme Court has held as under:

"The testimony of police personnel should be treated in the same manner as testimony of any other witness and there is no principle of law that without corroboration by independent witnesses their testimony cannot be relied upon. The presumption that a person acts honestly applies as much in favour of police personnel as of other persons and it is not a proper judicial approach to distrust and suspect them without good grounds. It will all depends upon the facts and circumstances of each case and no principle of general application can be laid down."

12.1. In ***State of Punjab Vs. Balbir Singh, 1994(1) Recent Criminal Reports 736*** the Hon'ble Supreme Court has held that, *"there is no bar in recording the conviction by relying upon the statements of police officers and that testimony of a witness is not to be doubted or discarded merely on the ground that he happens to be an official witness."*

12.2. In ***Ram Sarup Vs. State (Govt. of NCR Delhi) 2013(3) RCR (Criminal) 946***, it has been held by the Hon'ble Apex Court that, *"there is no absolute rule that police officers cannot be cited as a witness and their depositions should be treated with suspect. Court cannot start with the presumption that police records are untrustworthy."*

12.3. A Division Bench of this Court in ***Ramesh Kumar v. State of Punjab, (2013)(4) RCR (Criminal) 320***, has observed that the testimony of

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official witnesses cannot be discarded until it is proved that they have any animus or hostility against the accused for his false implication. While discussing the question of non-joining of the independent witnesses, it was observed that they are averse to join the police and depose in favour of prosecution as they are afraid of the fact that joining the police and deposing in favour of the prosecution may expose them to serious consequences.

12.4. In *Krishan Kumar v. State of Punjab, 2016 (2) RCR (Criminal) 707*, it was observed that testimonies of the official witnesses carry the same evidentiary value as that of any other witness and their statements cannot be discarded simply on account of their official designation.

13. The next limb of the arguments raised by the learned counsel for the appellant is that there is delay of eight days in sending the sample parcel to the FSL, which casts a serious doubt on the prosecution story. In the present case, the recovery of contraband was effected from the accused on 07.04.1998 and on the same day it was deposited with MHC Naresh Kumar who kept the same in police malkhana in safe custody. On 15.04.1998, MHC handed over the sample parcel to HC Raghbir Singh, who deposited the same in the office of FSL, Madhuban on the same day. Both these witnesses stepped into the witness box as PW4 and PW5 respectively. In their respective affidavits Ex.PC and Ex.PD they have categorically stated that so long the parcel remained in their possession, neither they tampered with the same nor allowed anybody to tamper with the parcel. Perusal of FSL report Ex.PH reveals that when the sample parcel was received in the

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laboratory, seals were found intact and tallied with the specimen seal. Thus, delay of eight days in sending the sample is immaterial and not fatal to the case of prosecution. The Hon'ble Supreme Court in *Hardip Singh v. State of Punjab, 2008 (4) RCR (Criminal) 97*, has held that when there is no evidence that samples were tampered with or any prejudice was caused to the accused then even 40 days delay in sending the sample to chemical examiner was held not fatal to the prosecution case. The aspect of delay in sending the sample to the office of Chemical Examiner was also discussed in *Sucha Singh v. State of Punjab 2015 (4) RCR (Criminal) 25*, wherein it was held that when the samples were not sent to the office of Chemical Examiner within 72 hours, the prosecution and conviction cannot be vitiated on that ground since there was no specific provision in the Act in that regard and the instructions/standing orders in that respect were only the guidelines to regulate and control their internal working of Narcotic Control Bureau. Therefore, the delay of few days in sending the sample to the office of Chemical Examiner, Punjab, Chandigarh was immaterial and no prejudice is going to be caused to the appellant/accused.

14. As regards to the contention of the learned counsel for the appellant that ASI Sant Raj being the complainant, was not competent to investigate the case is concerned, the same cannot be accepted in view of the settled legal position. The **Constitution Bench** of the Hon'ble Supreme Court in *Mukesh Singh v. State (Narcotic Branch of Delhi) 2020(10) SCC 120*, has held as under:

“12. From the above discussion and for the reasons stated above, we conclude and answer the reference as under:



I. That the observations of this Court in the cases of **Bhagwan Singh v. State of Rajasthan (1976) 1 SCC 15**; **Megha Singh v. State of Haryana (1996) 11 SCC 709**; and **State by Inspector of Police, NIB, Tamil Nadu v. Rajangam (2010) 15 SCC 369** and the acquittal of the accused by this Court on the ground that as the informant and the investigator was the same, it has vitiated the trial and the accused is entitled to acquittal are to be treated to be confined to their own facts. It cannot be said that in the aforesaid decisions, this Court laid down any general proposition of law that in each and every case where the informant is the investigator there is a bias caused to the accused and the entire prosecution case is to be disbelieved and the accused is entitled to acquittal;

II. In a case where the informant himself is the investigator, by that itself cannot be said that the investigation is vitiated on the ground of bias or the like factor. The question of bias or prejudice would depend upon the facts and circumstances of each case. Therefore, merely because the informant is the investigator, by that itself the investigation would not suffer the vice of unfairness or bias and therefore on the sole ground that informant is the investigator, the accused is not entitled to acquittal. The matter has to be decided on a case to case basis. A contrary decision of this Court in the case of **Mohan Lal v. State of Punjab (2018) 17 SCC 627** and any other decision taking a contrary view that the informant cannot be the investigator and in such a case the accused is entitled to acquittal are not good law and they are specifically overruled.”

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15. So far as the contention of the learned counsel for the appellant that the provision of Section 50 of NDPS Act have not been complied with by the prosecution is concerned, the law is well settled. The Hon'ble Supreme Court in *Ajmer Singh v. State of Haryana, (2010) 3 Supreme Court Cases 746*, have held that for search of bag, briefcase, container, etc. carried by accused person, compliance with Section [50](#) of the NDPS Act is not required. Their Lordships have held as under :-

*"15. The learned counsel for the appellant contended that the provision of Section [50](#) of the Act would also apply, while searching the bag, brief case etc., carried by the person and its noncompliance would be fatal to the proceedings initiated under the Act. We find no merit in the contention of the learned counsel. It requires to be noticed that the question of compliance or non-compliance of Section [50](#) of the NDPS. Act is relevant only where search of a person is involved and the said Section is not applicable nor attracted where no search of a person is involved. Search and recovery from a bag, brief case, container, etc., does not come within the ambit of Section [50](#) of the NDPS Act, because firstly, Section 50 expressly speaks of search of person only. Secondly, the Section speaks of taking of the person to be searched by the Gazetted Officer or Magistrate for the purpose of search. Thirdly, this issue in our considered opinion is no more res-integra in view of the observations made by this court in the case of **Madan Lal***



v. State of Himachal Pradesh (2003) 7 SCC 465. The Court has observed:

*"16. A bare reading of Section 50 shows that it only applies in case of personal search of a person. It does not extend to search of a vehicle or a container or a bag or premises (see **Kalema Tumba v. State of Maharashtra and Anr. (1999) 8 SCC 257, State of Punjab v. Baldev Singh (1999) 6 SCC 172 and Gurbax Singh v. State of Haryana (2001) 3 SCC 28**). The language of section is implicitly clear that the search has to be in relation to a person as contrast to search of premises, vehicles, or articles. This position was settled beyond doubt by the Constitution Bench in Baldev Singh's case. Above being the position, the contention regarding noncompliance of Section 50 of the Act is also without any substance."*

16. x x x

17. x x x

18. It appears from the evidence on record that the accused was confronted by ASI Maya Ram and other police officials on 24.1.1996 and he was informed that he has the right to either be searched before the gazetted officer or before a Magistrate and the accused chose the later (sic former). Thereafter, the accused was taken to the DSP, Pehowa, Shri Paramjit Singh Ahalawat and as directed by him, the bag carried by accused



on his shoulder was searched and the charas was found in that bag. Thus, applying the interpretation of the word "search of person" as laid down by this Court in the decision mentioned above, to facts of present case, it is clear that the compliance of Section 50 of the Act is not required. Therefore, the search conducted by the investigation officer and the evidence collected thereby, is not illegal. Consequently, we do not find any merit in the contention of the learned counsel of the appellant as regards the noncompliance of Section 50 of the Act."

16. More recently, in the matter of ***Mehboob Shah v. State of Madhya Pradesh, Criminal Appeal No(s). 3305-3306 of 2026 D/d.21.07.2026***; the Hon'ble Supreme Court has held as under:-

*"12. The next contention of the appellant pertains to the alleged non-compliance of Section 50 of the NDPS Act. We find the same to be devoid of merit. Section 50 of the NDPS Act confers upon an accused a valuable right to have his personal search conducted before a Gazetted Officer or a Magistrate, if he so requires. Such right is sacrosanct and indefeasible which cannot be disregarded by the prosecution except at its own peril. [See: ***State of Punjab v. Baldev Singh, (1999) 6 SCC 172***] The protection under Section 50 is confined to cases where the recovery is sought to be effected through the personal search of the accused. It has no application where the search is*



of an article, such as a bag, container, suitcase or any other object, which the accused may be carrying. [See: **State of H.P. v. Pawan Kumar, (2005) 4 SCC 350 and Ranjan Kumar Chadha v. State of H.P., 2023 SCC Online SC 1262**]."

.....emphasis supplied

17. Since the recovery of charas was effected from the bag which the appellant was carrying on his shoulder, so Section 50 of the NDPS Act was not applicable in the present case. Even otherwise, in the present case, the prosecution has gone a step further by serving a written notice under Section 50 NDPS Act (Ex.PE), despite the fact that the recovery was from a bag. The appellant exercised his option to be searched before a Gazetted Officer and, accordingly, he was searched before PW9 DSP Rattan Singh. Though Section 50 of the NDPS Act is not applicable in the present case but still the same has been complied with. Thus, in view of the settled law as discussed above, the submissions made by learned counsel for the appellant with regard to non compliance of Section 50 of the NDPS Act are without any substance.

18. On a comprehensive appreciation of the entire evidence on record, this Court finds that the prosecution has proved its case against the appellant beyond reasonable doubt. The evidence of the official witnesses is trustworthy, consistent and inspires confidence. Their testimony is duly corroborated by the documentary evidence and the report of the Forensic Science Laboratory. No material contradiction, omission or discrepancy has



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been pointed out which goes to the root of the prosecution case or is sufficient to discredit the otherwise reliable evidence led by the prosecution.

19. Thus, this Court concludes that the findings recorded by the learned Special Judge are based upon proper appreciation of oral as well as documentary evidence and do not suffer from any illegality, perversity or misreading of evidence warranting interference by this Court. The prosecution has successfully established that the appellant was found in conscious possession of 1.5 kilograms of Charas in contravention of the provisions of the NDPS Act.

20. Consequently, the appeal, being devoid of merit, is hereby dismissed. The judgment of conviction dated 08.07.2004 and the order of sentence dated 09.07.2004 passed by the learned Special Judge, Panipat, are affirmed.

21. The appellant, if on bail, shall surrender before the learned trial Court forthwith to undergo the remaining part of the sentence. The trial Court shall take appropriate steps to secure his custody in accordance with law.

22. Pending miscellaneous application(s), if any, shall also stand disposed of.

27.07.2026
Puneet

(RUPINDERJIT CHAHAL)
JUDGE

Whether speaking/reasoned	:	Yes
Whether reportable	:	Yes