

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.201 OF 2019

RAJWANT SINGH

Appellant(s)

VERSUS

THE STATE OF HARYANA

Respondent(s)

O R D E R

This appeal arises from the judgment and order dated 15.05.2018 passed by the High Court of Punjab and Haryana at Chandigarh in CRA-S-2377-SB-2004 by which the High Court dismissed the appeal filed by the appellant herein and thereby, affirmed the judgment and order of conviction passed by the Special Court, Kurukshetra dated 21.10.2004 holding the appellant herein guilty of the offence punishable under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, "the NDPS Act") and sentenced him to undergo rigorous imprisonment for ten years with a fine of Rs.1 lakh.

2. The case of the prosecution may be summarised as under:-

The police had information that the appellant herein and one Dara Singh were dealing in narcotics. The information was that both are drug peddlers. On 23.04.2002, a vigil was kept on the movements of the appellant herein and Dara Singh. According to the case of

the prosecution, the appellant herein was travelling in a Contessa car bearing registration No.HR 01-E-0948. The car was intercepted. The car was searched and the appellant was found to be the only person in the car and he was on the wheels. From the rear seat of the car, three bags filled with poppy straw were recovered and two bags containing poppy straws were recovered from the trunk of the car. The contraband was seized at the spot. The case against the co-accused Dara Singh was that he was following the car on a motorcycle. The trial court held Dara Singh guilty of the alleged offence however, he came to be acquitted by the High Court.

3. At the end of the investigation, chargesheet was filed for the offences enumerated above. The trial court framed charge to which the appellant pleaded not guilty and claimed to be tried. The prosecution examined in all eight witnesses. The prosecution also led documentary evidence in support of its case. The further submission of the appellant herein was recorded under Section 313 of the Code of Criminal Procedure, 1973. In the further statement, the appellant said that he was falsely implicated in the crime.

4. The trial court ultimately held the appellant herein guilty of the offence and sentenced him as above. The High Court dismissed the appeal and affirmed the judgment and order of conviction. In such circumstances, the appellant is here before this Court with the present appeal.

5. We have heard Ms. Jaspreet Gogia, the learned counsel appearing for the appellant-convict and Mr. Devendra Kumar Saini, the learned counsel appearing for the State of Haryana.

6. The only argument canvassed before us by the learned counsel appearing for the appellant is that the conviction could be said to have stood vitiated because of non-compliance of Section 52A of the NDPS Act. In support of her submission, she relied upon the decision of this Court in the case of *Mohammed Khalid and Another vs. State of Telangana* (2024) 5 SCC 393, more particularly, para (26) therein. Para (26) reads thus:-

"26. Admittedly, no proceedings under Section 52-A of the NDPS Act were undertaken by the investigating officer PW 5 for preparing an inventory and obtaining samples in the presence of the jurisdictional Magistrate. In this view of the matter, the FSL report (Ext. P-11) is nothing but a waste paper and cannot be read in evidence. The accused A-3 and A-4 were not arrested at the spot."

7. We are of the view that Section 52A talks about the disposal of seized narcotic drugs and psychotropic substances. Even for the purpose of invoking Section 52A, a foundation has to be laid by putting appropriate relevant questions in that regard to the investigating officer. Out of the blue, the appellant cannot contend that Section 52A was not complied with. We have looked into the evidence of PW-7 - Mahavir Singh, ASI, who had at the relevant point of time attached to the Kurukshetra Police Station. In his examination-in-chief, he has deposed as under:-

" On 23.4.2002 I was posted as ASI in Police station, Babain. On that day, a telephonic information was received in the police station to be effect that

Rajwant Singh @ Billu son of Mohinder Singh, Jat Sikh, resident of Ambassi, District Ambala and Dara Saini, resident of Machhrouli, District Kurukshetra are habitual of smuggling of narcotics and that Rajwant Singh on that date in car bearing registration no. HR- 01E-0948 of sky blue colour and associate Dare Salmi on his motorcycle make Rajdoot had gone to bring the narcotics and would come through villages Dhantori, Machhrouli, Kharindwa, Buhawa and would go in the area of Barara and if the nakabandi would be held then they could be apprehended with the narcotics. It was also informed that the aforesaid car was for the smuggling purpose. On receipt of this information I recorded the formal FIR Ex. PE and formed a raiding party consisting of HC Rohtash Singh, C-I Umed and me and held a nakabandi on Yara-Buhawa road in a government jeep driven by Constable Prem Singh. Prior to proceeding to the place of nakabandi I had sent the special report to the Higher officers. I had also made a request to send a Gazetted Officer at the place of nakabandi. ASI/SHO police station Babain and Dy. S.P. Anil Kumar Dhawan reached at the place of nakabandi.

At 4.35 p.m. a contessa car bearing no.HR-01E-0948 came from the side of village Yara followed by a motorcycle make Rajdoot. The car was got stopped by signal which was seine driven by accused Rajwant Singh present in the court today. The motorcyclist on seeing the car stopped by us turned back and fled away. The car driver on interrogation told his name Rajwant Singh @ Billu son of Mohinder Singh, Jat Sikh, resident of Kambassi. He also told that the motorcyclist who was following the car was his associate and his name was Dara Saini of village Machhoruli. On checking of the car three gunny begs were found lying on the rear seat of the car whereas two gunny bees were found kept in the dicky of the car. On checking Ore all the five gunny bags were found to contain poppy husk. Two samples of 250 grams each were taken out from each bag and the residue poppy husk of each bag was found to be 36-500 Kgs. The samples of 250 grams were weighed with the help of spring balance; whereas the residue were weighed with the help of farsi kanda", The residue were sealed on the respective gunny bags and the samples were converted into parcels. The residues and the samples were sealed with my seal MS, and the Dy. S.P. also affixed his seal AKD and ASI Baljit Singh SHO P.S. Babain affixed is seal DS on the samples, residues. Specimen seal impressions of all the three seals was prepared separately and then the sample residue and specimen seal impression were taken into possession vide recovery memo Ex.PD attested by HC Rohtash Kumar, Constable Urned Singh and Dy. S.P. Anil Dhawan. I

handed over my seal to HC Rohtash Kumar; whereas the SHO and the Dy. S.P. retained their seals with them after use. The contessa car No.HR-01E-0948 was also taken into possession vide recovery memo Ex.PD. I also prepared the report Ex.PA under section 57 of the Act and put up the same to Baljit Singh ASI/SHO. After the recovery of the poppy husk notice EX. PF u/s 50 of the Act was served upon accused Rajwant Singh to the effect that poppy husk had been recovered from his possession and if he wanted to he produced before a Gazetted Officer. The accused Raj Want Singh vide his reply Ex.PF/1 opted not to be produced before any Gazetted Officer. The accused was arrested after serving him the grounds of his arrest vide memo Ex.PG attested by HC Rohtash Kumar and Constable Umed Singh. A memo of personal search Ex.PG/1 was prepared at the time of arrest of Rajwant Singh and a golden ring and a wrist watch were taken into possession. I prepared the rough site plan Ex.PH with correct marginal notes on it and recorded the statement of the witnesses. On return in the police station after completion of the investigation at the spot, I deposited the case property intact with the MHC and put the accused behind the bar. On 24.4.2002 the accused got recorded his disclosure statement Ex.PJ to the effect that he had kept concealed 4 gunny bags of poppy husk in the Sugar-cane field near G.T. road in the area of village Dhantori and he could get the same recovered. But no recovery could be effected from the sugar-cane field in pursuance of the disclosure statement. On 2.5.2002 I recorded the statements of MHC Balbir Singh, Constable Rajiv Kumar and HC Baljit Singh. On 27.5.2002 the accused was arrested in this case who had surrendered in the Court. The residue case property is Ex.Pl which consists of 5 gunny bags containing poppy husk and the car no. HR-01E-0948 is Ex.P2.

xxx by Shri J.S. Waraich, Advocate for Dara Saini, and Shri Amit Choudhary, Advocate for Rajwant.

The secret information was received by me at 2:15 p.m. I took departure from the police station after recording the formal FIR at 2.30 p.m. I had informed to SHO Baljit Singh and at Head Quarter Kurukshetra through wireless regarding this information with a request to reach at the spot. The place of nakabandi and recovery is at a distance of 9 K.M. from police station Babain. We had reached at the place of nakabandi at 3.10 p.m. the nakabandi was held by way of parking the jeep on the road. The car was got stopped by hand signal. It is correct that on signal the person to whom the signal is made may stop or may flee away as per the circumstances. The car was got stopped at 4.35

p.m. The independent witness could not be joined as none was available on the road. Village Buhawa is situated at a distance of 1 1/2 K.M. from the place of recovery whereas village Yara is at a distance of 1 K.M. No person was present in the fields or on the road at that time. No Sarpanch, Lambardar or Panch from Villages Buhawa and Yara were summoned at the spot at the time of nakabandi or thereafter. I had not sent any specific information under section 42 to the Higher authorities but I had sent the copies of FIR to the Higher Authorities to serve as a special report. In addition to that I had also informed SHO Babain and head quarter (Police), Kurukshetra regarding the secret information and holding of nakabandi. SHC Baljit Singh was not present in the police station at the time of receipt of secret information. He was in the field area and he was informed through wireless. I do not know for what purpose SHO had gone in the area. After our arrival at the place of nakabandi first of all ASI/SHO Baljit Singh reached there and thereafter Dy. S.P. reached there. Dy.S.P. reached at the spot after 15 minutes of the arrival of the SHO. There were three officials with the Dy. S.P. SHO was accompanied by one Constable. The motorcyclist was at a distance of 200 yards from the car. It is correct that when we got stopped the car the Motorcycle turned back and ran away. Dara Saini was not earlier known to me. I do not know if Dara Saini accused is a patient of paralyses since 1998 or he is under the constant treatment of PGI Chandigarh. The car was stopped by the accused Rajwant Singh just near to us, on our signal. The car driver did not try to run away. The spring balance was with me in the investigating bag; whereas the farsi kanda was brought from village Yara by Constable Prem Singh in the jeep. I do not know from whom the farsi kanda was borrowed. The owner of the farsi kanda was not called at the spot. I do not remember the colour of farsi kande again said it was of sky colour. Farsi kanda had five weights i.e. 1 Kg., 2 Kg., 5 Kg., 10 Kg. 500 grams. It is correct that to weigh the weight of 1 quintal, 1 Kg. weight is used on farsi kanda. The each bag was weighed separately. The weight spring was of 5 Kg. It was pen type and not watch type I affixed three seals of mine on the samples and residues, three seals were affixed by the SHO on them. The Dy. S.P. affixed his one seal on each parcel. The seal of the SHO and of mine were made of silver whereas the seal of Dy.S.P. was some what of iron. My seal was square type (CHAKAUR); whereas the seals of SHO was round; whereas the seal of Dy.S.P. was not round but was of lengthy shape. It took about 3 and a half hours in completing the proceedings at the spot. There was the field of Devi Chand Pandit in the Northern side, field of

Krishan Pandit in the Southern side and there are roads in the Eastern and Western side. The description of the surroundings of the place of nakabandi had been asked by from a passers bye at my arrival at the place of nakabandi. I did not ask the name of the passers bye. We reached in the police station from the place of nakabandi at about 8.00 p.m. It is correct that I had mentioned the weight of the golden ring as 6 tola in the memo of personal search. It is incorrect that nothing was covered from the possession of accused. It is further incorrect that the car was found parked abundant. It is further incorrect that the number HR-01E-0948 was of a scooter. It is further incorrect that on enquiry it was found that scooter was of Rajwant Singh prior to this case. It is incorrect that I have falsely implicated accused Rajwant Singh or Dara Saini accused in this case. It is incorrect that I have deposed falsely."

8. We have looked into the entire cross-examination of PW-7 and we do not find any question put by the defence counsel to PW-7 as regards Section 52A of the NDPS Act.

9. This Court in its recent decision in *Bharat Aambale v. State of Chhattisgarh* [2025 INSC 78] summarized the position of law as regards the scope of Section 52A of the NDPS Act and the consequences of any non-compliance of the same as under: -

"50. We summarize our final conclusion as under: -

(I) Although Section 52A is primarily for the disposal and destruction of seized contraband in a safe manner yet it extends beyond the immediate context of drug disposal, as it serves a broader purpose of also introducing procedural safeguards in the treatment of narcotics substance after seizure inasmuch as it provides for the preparation of inventories, taking of photographs of the seized substances and drawing samples therefrom in the presence and with the certification of a magistrate. Mere drawing of samples in presence of a gazetted officer would not constitute sufficient compliance of the mandate under Section 52A sub-section (2) of the NDPS Act.

(II) Although, there is no mandate that the drawing of samples from the seized substance must take place at the time of seizure as held in *Mohanlal* (supra), yet we are

of the opinion that the process of inventorying, photographing and drawing samples of the seized substance shall as far as possible, take place in the presence of the accused, though the same may not be done at the very spot of seizure.

(III) Any inventory, photographs or samples of seized substance prepared in substantial compliance of the procedure prescribed under Section 52A of the NDPS Act and the Rules / Standing Order(s) thereunder would have to be mandatorily treated as primary evidence as per Section 52A sub section (4) of the NDPS Act, irrespective of whether the substance in original is actually produced before the court or not.

(IV) The procedure prescribed by the Standing Order(s) / Rules in terms of Section 52A of the NDPS Act is only intended to guide the officers and to see that a fair procedure is adopted by the officer in-charge of the investigation, and as such what is required is substantial compliance of the procedure laid therein.

(V) Mere non-compliance of the procedure under Section 52A or the Standing Order(s) / Rules thereunder will not be fatal to the trial unless there are discrepancies in the physical evidence rendering the prosecution's case doubtful, which may not have been there had such compliance been done. Courts should take a holistic and cumulative view of the discrepancies that may exist in the evidence adduced by the prosecution and appreciate the same more carefully keeping in mind the procedural lapses.

(VI) If the other material on record adduced by the prosecution, oral or documentary inspires confidence and satisfies the court as regards the recovery as-well as conscious possession of the contraband from the accused persons, then even in such cases, the courts can without hesitation proceed to hold the accused guilty notwithstanding any procedural defect in terms of Section 52A of the NDPS Act.

(VII) Non-compliance or delayed compliance of the said provision or rules thereunder may lead the court to drawing an adverse inference against the prosecution, however no hard and fast rule can be laid down as to when such inference may be drawn, and it would all depend on the peculiar facts and circumstances of each case.

(VIII) Where there has been lapse on the part of the police in either following the procedure laid down in Section 52A of the NDPS Act or the prosecution in proving the same, it will not be appropriate for the court to

resort to the statutory presumption of commission of an offence from the possession of illicit material under Section 54 of the NDPS Act, unless the court is otherwise satisfied as regards the seizure or recovery of such material from the accused persons from the other material on record.

(IX) The initial burden will lie on the accused to first lay the foundational facts to show that there was non-compliance of Section 52A, either by leading evidence of its own or by relying upon the evidence of the prosecution, and the standard required would only be preponderance of probabilities.

(X) Once the foundational facts laid indicate non-compliance of Section 52A of the NDPS Act, the onus would thereafter be on the prosecution to prove by cogent evidence that either (i) there was substantial compliance with the mandate of Section 52A of the NDPS Act OR (ii) satisfy the court that such non-compliance does not affect its case against the accused, and the standard of proof required would be beyond a reasonable doubt."

10. From the above exposition of law, it is clear that the initial burden lies on the accused to first lay the foundational facts to show that there was non-compliance of Section 52A on a preponderance of probabilities, either by leading evidence of its own or by relying upon the evidence of the prosecution. In the present case, no question whatsoever was put by the defence counsel to PW-7 as regards Section 52A of the NDPS Act. Moreover, apart from a mere bald assertion that there has been a contravention of the mandate of Section 52A of the NDPS Act, nothing cogent has been pointed out to us by the appellant herein that would show that there had been a violation of the requirements of Section 52A of the NDPS Act.

11. The reliance of the appellant herein on the decision of this Court in *Mohammed Khalid* (supra) to assail the order of conviction

is completely misplaced. In the said, this Court had set-aside the conviction of the accused therein not solely on the ground of non-compliance of Section 52A of the NDPS Act, but on the strength of the other glaring loopholes in the prosecution's case that made it doubtful as to whether the samples drawn remained untampered or in safe custody from the time of seizure till it reached the FSL. In the said case, this Court found that the FSL report did not disclose about the seals on the sample and although it was stated that two samples were sent to FSL, yet in fact a total of three samples had actually reached the lab.

12. In the present case, the High Court in its impugned judgment and order of conviction had clearly observed that after drawing the samples from the seized substance, they were put into separate parcels and were sealed bearing the initials of PW-7. Unlike *Mohammed Khalid* (supra) there is nothing on record that would even remotely indicate that the samples that were drawn were not sealed or that the chain of custody of the said samples to the FSL was in any way compromised.

13. In such circumstances, we do not find any error much less any error of law in the impugned judgment of the High Court. In the result, this appeal fails and is hereby dismissed. We are informed that so far the appellant has undergone four years of the sentence imposed by the trial court. When this appeal came to be admitted at the time of the admission of the appeal, he was ordered to be released on bail. The appellant shall now surrender before the

trial court who in turn, shall hand him over to the jail authorities for the purpose of serving his remaining part of the sentence. He shall surrender within a period of four weeks from today.

14. Pending application(s), if any, shall stand disposed of.

.....J.
[J.B. PARDIWALA]

.....J.
[R. MAHADEVAN]

NEW DELHI;
09th JANUARY 2025

ITEM NO.110

COURT NO.14

SECTION II-B

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Criminal Appeal No(s).201/2019

RAJWANT SINGH

Appellant(s)

VERSUS

THE STATE OF HARYANA

Respondent(s)

Date : 09-01-2025 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE J.B. PARDIWALA
HON'BLE MR. JUSTICE R. MAHADEVAN

For Appellant(s) Ms. Jaspreet Gogia, AOR
Mr. Vipin Gogia, Adv.
Mr. Karanvir Gogia, Adv.
Ms. Varnika Gupta, Adv.
Mr. Aditya Goyal, Adv.

For Respondent(s) Mr. Devendra Kumar Saini, Adv.
Mr. Samar Vijay Singh, AOR
Ms. Sabarni Som, Adv.
Mr. Aman Dev Sharma, Adv.
Mr. Fateh Singh, Adv.
Mr. Rajat Sinha Roy, Adv.

UPON hearing the counsel the Court made the following
O R D E R

The appeal is dismissed in terms of the signed order.

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

(SAPNA BISHT)
COURT MASTER (SH)

(Signed order is placed on the file)

(POOJA SHARMA)
COURT MASTER (NSH)