



**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**

**Cr. Appeal No. 284 of 2015.**

**Reserved on: 24.04.2026.**

**Date of decision: 12.05.2026**

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State of Himachal Pradesh ...Appellant.

Versus

Harpreet Singh and another ...Respondents.

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**Coram**

***Hon'ble Mr. Justice Vivek Singh Thakur, Judge.***

***Hon'ble Mr. Justice Ranjan Sharma, Judge.***

*Whether approved for reporting? <sup>1</sup>*

*For the Appellant. Mr. J.S. Guleria, Deputy Advocate General.*

*For the Respondents: Appeal stands abated against respondent No. 1-Harpreet Singh.*

*Mr. Bhupinder Singh Ahuja and Mr. Naveen K. Bhardwaj, Advocates, for respondent No. 2-Sukhdeep Singh.*

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**Vivek Singh Thakur, Judge**

State has preferred present appeal against judgment dated 23.02.2015, passed by Special Judge-II (Additional Sessions Judge), Kullu, Himachal Pradesh in Sessions Trial No. 85 of 2014 (2012), titled State of Himachal Pradesh vs. Harpreet Singh and another, whereby respondents have been acquitted in case FIR No. 174 of 2012, dated

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<sup>1</sup> *Whether the reporters of the local papers may be allowed to see the judgment?*



18.07.2012, registered in Police Station Kullu, under Section 21 of Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS Act')

2. Respondent No. 1 Harpreet Singh has expired during pendency of the appeal and appeal against him stands abated.

3. Prosecution's case is that on 18.07.2012, at around 5:30 A.M., police party, headed by PW-4 Head Constable Brij Bhushan with PW-3 Constable Manish Kumar, Constable Bhim Sen (not examined) and HHG Manohar Lal (not examined), was present in a Nakabandi at Suma Chalon in District Kullu. At that time, a Car Indigo bearing registration No. PB-11-AL-0097 came from Manikaran side, which was stopped for checking documents. Car driver and person sitting with him on front seat were perplexed and at once pounced upon a carry bag kept in between them and started looking here and there. On asking by the Investigating Officer (PW-4) Head Constable Brij Bhushan, driver of the vehicle produced Registration Certificate, Insurance and Driving Licence. On inquiry, driver disclosed his name Sukhdeep Singh with his address as respondent No. 2, whereas second person sitting on front seat disclosed his name Harpreet Singh with his address as respondent No. 1.

4. Face expression of both car occupants raised suspicion that both of them were transporting some illegal item or narcotic drug, or both



of them had concealed some narcotic drug, either in the car or in their person. Therefore, Investigating Officer (PW-4) found it necessary to search the vehicle as well as both of them.

5. PW-4 Brij Bhushan (Investigating Officer), prepared a joint consent memo (Ext. PW3/A) and obtained consent of both for search of persons as well as vehicle by the police.

6. Thereafter, both respondents were searched, but nothing was recovered from their persons, except necessary clothes and items. Thereafter, Investigating Officer took out the bag, which was kept between two persons, wherein one T-shirt belonging to driver Sukhdeep Singh, as told by him and one T-shirt and Nikkar belonging to Harpreet Singh, were found and under the clothes, a transparent polythene envelope having brown coloured granular shape substance was found. Another plastic envelope was found in the same bag, whereupon Phenotil was written. On opening, white coloured small seized tablets were found therein. Granular shaped brown coloured substance, on the basis of experience and on disclosure of respondents, was identified Brown Sugar, which on weighing on electronic scale was found 8.79 grams. It was kept in the same bag and seized in a piece of cloth, sealing it with seal impression 'H' and tablets found in second plastic bag, on counting,



was found 65 tablets. On disclosure of respondents, these tablets were found to be Phenotil tablets. These were also kept in the same envelope wherefrom were recovered and were seized in a piece of cloth, sealed with seal 'H'. NCB-1 form (Ext. PW2/D) was filled in triplicate on the spot, which was signed by the witnesses and respondents/accused persons. Seal after use was handed over to PW-3 Constable Manish Kumar. Documents of vehicle along with its keys were also taken into possession.

7. Finding commission of offence under Section 21 of NDPS Act, Investigating Officer (PW-4) Brij Bhushan sent ruqua (Ext. PW4/A) to Police Station through Constable Manish Kumar (PW-3) for registration of FIR, whereupon PW-2 Inspector Sher Singh registered FIR (Ext. PW2/A) and made endorsement (Ext. PW2/A) to this effect on ruqua (Ext. PW4/A). PW-3 Constable Manish Kumar came back to the spot for handing over the file to PW-4 Investigating Officer, Head Constable Brij Bhushan.

8. At 4:10 P.M. on 18.07.2012, Investigating Officer (PW-4) Head Constable Brij Bhushan handed over two parcels of cloth, sealed with seal 'H' along with sample of seal taken on piece of cloth, NCB-1 form in triplicate and other relevant documents for the purpose of resealing, to PW-2 Inspector Sher Singh.



9. PW-2 Inspector Sher Singh resealed the recovered contraband and filled relevant column of NCB-1 form in triplicate (Ext. PW2/D). Impression of seal 'T' was taken on cloth (Ext. PW2/C).
10. Partial investigation was done by PW-7 SI Sher Singh, who recorded statements of HC Keshav Ram (PW-6), HHC Khub Ram (PW-5), HC Nirat Singh, reader to Dy.S.P. (PW-1) under Section 161 of Cr.P.C. and during investigation, he procured extract of malkhana register and RC from MHC and attached the same with case file.
11. After completion of investigation, case file was handed over to Station House Officer, Inspector Sher Singh, who prepared the challan and submitted in the Court.
12. After finding *prima facie* material, Trial Court framed charge against respondents under Section 21 of NDPS Act. For not pleading guilty, respondents were subjected to trial.
13. Prosecution examined seven witnesses to prove its case, whereas after recording statement under Section 313, Cr.P.C., no defence evidence was led.
14. PW-4 is Investigating Officer, whereas PW-3 is constable accompanying the Investigating Officer along with other police officials in a *Nakka* at Suma Chalon. PW-1 is reader to Dy.S.P., who has proved



receipt of Special Report (Ext. PW1/A) by Dy.S.P. and handing over the same to this witness after putting his endorsement by Dy.S.P. on same in red circle. PW-2 Inspector Sher Singh, who resealed the recovered contraband and registered FIR (Ext. PW2/A) on ruqua received through PW-3 Manish Kumar. He, on completion of investigation, prepared challan and presented the same in the Court.

15. PW-5 HHC Khub Ram took the parcels from MHC Head Constable Keshav Ram (PW-6) along with documents and deposited the same in FSL, vide RC No. 165/2012 (Ext. PW3/E). After depositing the case property in FSL, he handed over receipt thereof to PW-6 MHC Head Constable Keshav Ram. He certified that so long as case property remained in his possession, he kept the same intact.

16. PW-6 Head Constable Keshav Ram was MHC, who received the case property in the Police Station and kept the same in malkhana. He filled column No. 12 of NCB-1 form before sending the parcels for chemical examination to State FSL. He proved extract of malkhana register as Ext. PW6/B and abstract of RC as Ext. PW6/A.

17. PW-7 Sub Inspector Sher Singh has recorded statements of some witnesses and after procuring extract of malkhana register and RC from MHC, attached the same with case file.



18. Admittedly, there is no independent witnesses associated in search and seizure process, and the car was stopped at 5:30 A.M. in the morning before sunrise and it was checked before sunrise.

19. It is settled law that where ever it is possible, independent witnesses should be associated in search and seizure process, however, in absence of non official independent witnesses, a person can be convicted on the basis of cogent, reliable and convincing evidence of the official witnesses.

20. In absence of independent witnesses, depositions of two spot official witnesses, i.e., PW-3 Constable Manish Kumar and PW-4 Head Constable Brij Bhushan, are required to be scrutinized with utmost care and caution.

21. It is admitted case that before searching the persons of respondents as well as car being used by them, Investigating Officer and police party had suspected transportation of some narcotic drug by the respondents in their car or in their persons. The search was conducted prior to sunrise. The vehicle was not a public conveyance, but a private vehicle and in these situations, where there is an apprehension of recovery of narcotic drug from the accused, provisions of Section 42 of NPDS Act are attracted, which read as under:-



**[42. Power of entry, search, seizure and arrest without warrant or authorisation.—** (1) Any such officer (being an officer superior in rank to a peon, sepoy or constable) of the departments of central excise, narcotics, customs, revenue intelligence or any other department of the Central Government including paramilitary forces or armed forces as is empowered in this behalf by general or special order by the Central Government, or any such officer (being an officer superior in rank to a peon, sepoy or constable) of the revenue, drugs control, excise, police or any other department of a State Government as is empowered in this behalf by general or special order of the State Government, if he has reason to believe from persons knowledge or information given by any person and taken down in writing that any narcotic drug, or psychotropic substance, or controlled substance in respect of which an offence punishable under this Act has been committed or any document or other article which may furnish evidence of the commission of such offence or any illegally acquired property or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act is kept or concealed in any building, conveyance or enclosed place, may between sunrise and sunset,-

- (a) enter into and search any such building, conveyance or place;
- (b) in case of resistance, break open any door and remove any obstacle to such entry;
- (c) seize such drug or substance and all materials used in the manufacture thereof and any other article and any animal or conveyance which he has reason to believe to be liable to confiscation under this Act and any document or other article which he has reason to believe may furnish evidence of the commission of any offence punishable under this Act or furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act; and
- (d) detain and search, and, if he thinks proper, arrest any person whom he has reason to believe to have committed any offence punishable under this Act:



[Provided that in respect of holder of a licence for manufacture of manufactured drugs or psychotropic substances or controlled substances granted under this Act or any rule or order made thereunder, such power shall be exercised by an officer not below the rank of sub-inspector:

Provided further that] if such officer has reason to believe that a search warrant or authorisation cannot be obtained without affording opportunity for the concealment of evidence or facility for the escape of an offender, he may enter and search such building, conveyance or enclosed place at any time between sunset and sunrise after recording the grounds of his belief.

(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.]”

22. In terms of aforesaid Section, Investigating Officer had to record reason to believe in writing and to record reason to believe that a search warrant or authorisation cannot be obtained without affording opportunity for the concealment of evidence or facility for the escape of the offenders, because Investigating Officer may enter and search such building, conveyance or enclosed place at any time between sunset and sunrise but after recording the grounds of his belief. After taking down the information in writing under Sub Section (1) and recording grounds for his belief under Proviso thereto, Investigating Officer within seventy two hours has to send a copy of reasons recorded by the Investigating Officer in writing to his immediate superior officer.



23. In present case, admittedly, no reasons for believe, grounds for searching the vehicle, on arising suspicion has been recorded at any point of time. It is settled law that compliance of Section 42 of NDPS Act is mandatory, but Investigating Officer has failed to follow the proper procedure, which is fatal to the prosecution's case in given facts and circumstances.

24. PW-4 Investigating Officer in ruqua and Special Report has categorically stated that he had suspected that respondents might be keeping some illegal contraband in the bag and, therefore, he apprised the respondents about their right under Section 50 of NDPS Act, who consented to be searched by the police, vide memo Ext. PW3/A. Police party gave search to the accused vide memo (Ext. PW3/B) and, thereafter, Investigating Officer took personal search of the respondents, but nothing incriminating was recovered from their possession. Consent memo (Ext. PW3/A) indicates that a joint memo of consent under Section 50 of NDPS Act was prepared and joint consent was taken by both of them. It is settled law that joint consent memo as well as consent obtained jointly is illegal and it vitiates further proceedings conducted on the basis of such consent.



25. In present case, nothing was recovered from the persons of the respondents, but bag containing contraband was recovered from the car, being occupied by them and, therefore, as nothing was recovered from the personal search, in view of **Ranjan Kumar Chadha versus State of Himachal Pradesh**, reported in **2023 SCC Online SC 1262 (AIR 2023 Supreme Court 5164)**, the illegality in memo prepared under Section 50 of NPDS Act is inconsequential for having no impact on merits of the case.

26. No independent witnesses were associated. According to PW-3 Constable Manish Kumar, other vehicles were signaled to stop, but no vehicle stopped there and village Suma Chalon was at a distance of 1 kilometer from the spot and no person was called from the village during investigation. PW-4 has also deposed on the same line.

27. Requirement of associating independent witnesses in search and seizure is not a mere formality. Village Suma Chalon was at a distance of 1 kilometer and it is also strange that police had led *Nakka* and in that *Nakka*, despite signaling by the police, no vehicle was stopped by any driver except respondents who allegedly were transporting contraband. This plea appears to be false. It is admitted fact that no effort was made to have independent witnesses from the nearby village. This



omission on the part of Investigating Officer is also fatal to the prosecution's case.

28. According to PW-3 Constable Manish Kumar, no other bag was recovered from the vehicle during search of the vehicle, except one carry bag, but PW-4 Investigating Officer has stated that during search of the respondents, apart from bag (Ext. P-8) two more bags were found.

29. As per PW-3, no document was prepared after personal search of the respondents, whereas according to PW-4 Investigating Officer, after arrest of the respondents, personal search of the respondents was conducted, regarding which memos (Ext. PW4/D & Ext. PW4/E) were prepared.

30. It is also apt to record that respondents were arrested on the spot and their personal search was also conducted on the spot and both of them arrested on 18.07.2012 at 12:50 P.M. It is also apt to record that at the time of arrest of the respondents, PW-3 Constable Manish Kumar was not there, as he had, according to prosecution's story, gone to Police Station along with ruqua, therefore, he is not the person, who remained on the spot throughout the investigation, but except him, none of other two official witnesses, namely, Bhim Sen and Manohar Lal, who were present at the Nakka, has been examined as witness. Atleast one of them



was necessary to be examined to corroborate the statement of PW-4 regarding the investigation carried out after PW-3 Constable Manish Kumar left the spot with ruqua for registration of FIR.

31. The contradictions between statements of PW-3 and PW-4 are creating doubt about the veracity of the prosecution's version placed before the Court. It appears that some material facts are being concealed by the prosecution from the Court.

32. For non-compliance of Section 42 of NDPS Act and not making any sincere effort to associate independent witnesses in search and seizure process, the respondents are entitled for benefit of doubt.

33. It is settled law that harsher is the punishment, more the requirement to establish the case of prosecution by strict proof and failure to associate independent witnesses, where it was possible, is fatal for the case of prosecution.

34. As the prosecution story is doubtful and there is non-compliance of mandatory provisions of Section 42 of NDPS Act, other evidence led by the prosecution, is of no help to the prosecution's case.

35. Respondents are having advantage of being acquitted by the Trial Court, fortifying the presumption of their innocence, whereas learned Deputy Advocate General has not been able to point out any



cogent, reliable and convincing evidence to establish the case of prosecution beyond reasonable doubt, so as to warrant interference in the judgment passed by the Trial Court impugned in this appeal.

36. Accordingly, appeal is dismissed, being devoid of merit. Pending miscellaneous application(s), if any, are also disposed in the same terms.

***(Vivek Singh Thakur),  
Judge.***

***(Ranjan Sharma),  
Judge.***

***12<sup>th</sup> May, 2026***  
*(Susheel)*