

CHCH010016582020



Presented on : 25-02-2020

Registered on : 25-02-2020

Decided on : 22-05-2025

IN THE COURT OF HARGURJIT KAUR,

JUDGE, SPECIAL COURT, CHANDIGARH. (UID NO.PB0230)

NDPS No.38/2020

FIR No.103 dated 23.07.2019

Under Section 22 NDPS Act

Police Station: Maloya, Chandigarh.

COMPLAINANT	State
REPRESENTED BY	Sh. Ashok Rohilla, Additional PP.
ACCUSED	Ravi, aged about 38 years, son of Raju, r/o # 2808, DMC, Chandigarh.
REPRESENTED BY	Sh. Gagan Aggarwal, Advocate, Counsel for accused

Date of offence	23.07.2019
Date of FIR	23.07.2019
Date of Charge Sheet	25.02.2020
Date of Framing of Charges	08.03.2021/13.05.2025

Date of commencement of evidence	10.05.2021
Date on which judgment is reserved	NA
Date of the judgment	22.05.2025
Date of the Sentencing Order, if any	23.05.2025

Accused Details:

Rank of the Accused	Name of Accused	Date of Arrest	Date of Release on Bail	Offences charged with	Whether Acquitted or convicted	Sentence imposed	Period of Detention Undergone during Trial for purpose of Section 428 Cr.P.C.
Accused No.1.	Ravi	23.07.19	On bail	22 NDPS Act	convicted	----	As per record

Present:	Sh. Ashok Rohilla, Addl. PP for the State Accused on bail. (Represented by Sh. Gagan Aggarwal, Advocate)
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J U D G M E N T:

1 The present accused has been sent up to face trial for having committed offence under Section 22 of the Narcotics Drugs and Psychotropic Substances Act, 1985 (here-in-after referred to as the Act) by the Police of Police Station Maloya, U.T, Chandigarh.

2 Brief facts of the prosecution case are that on 23.07.2019 SI Neeraj Kumar along with HC Ved Parkash and C. Parveen were on patrolling duty in private vehicle bearing registration No.HR-03-S-6788 in view of rising incident of theft and snatching and were present near Shahpur Light Point. After parking the said vehicle there, Investigating Officer along with police party proceeded towards DMC, it was about 07:05 pm., one Hindu Gentleman was seen coming carrying white colour carry bag in his left hand from the side of main road of New Stadium Road, who on seeing the police party tried to turn back. Said act of the person raised suspicion that he might be carrying stolen or snatched articles. On the basis of suspicion, said person

was chased for some distance and was apprehended. On asking, said person disclosed his name Ravi son of Raju, r/o # 2808 DMC Chandigarh. Investigating Officer asked him the reason to turn back, then he could not give any satisfactory answer. Said carry bag was checked and on opening the same, it was found containing 5 injections of Buprenorphine of 2 ML each and 5 pheniramine maleate of 10 ML each wrapped in newspaper. The batch numbers were not readable which were smeared with black ink. When Investigating officer asked about the contents recovered from polythene, then said person replied that contraband recovered from polythene is Heroin and injections, which he sells to drug addicts. An attempt was made to join an independent witness, but no body agreed for the same and left the place on one pretext or the other. He could not produce any permit or licence for keeping the same in his possession. The recovered 5 injections of Buprenorphine 2 ml each and 5 injections of pheniramine maleate 10 ml each were kept in the said newspaper in which they were wrapped and were put in the same carry bag, which was converted into parcel of white cloth which was duly sealed with the seal of "VN" at two places. Recovered Heroin was weighed on electronic weighing machine and weight of the same came to be 50 grams. Recovered Heroin was put in the same polythene and further put into white cloth parcel duly sealed with the seal of "VN" at two places. Test memo form was prepared. Separate sample seal was prepared. Seal after use was handed over to HC Ved Parkash. Said sealed parcels containing injections and Heroin along with sample seals were taken into police

possession. Ruka was sent to Police Station Maloya for registration of FIR and message was sent to Police Station Maloya, Chandigarh for calling second IO to the spot. 2nd IO SI Jagpal Ram reached to the spot and conducted the further proceedings by arresting the accused and also the personal search of the accused. On reaching of the 2nd Investigating Officer, the first Investigating Officer handed over the accused, recovered injections and Heroin along with sample seal. Second Investigating Officer verified the factum of recovery. He got prepared the Scaled Site Plan at the instance of Ist IO. During investigation, 2nd Investigating Officer arrested the accused and all the necessary formalities were completed. Upon completion of the necessary formalities at the spot the entire police party alongwith the accused and case property was taken to the Inspector/SHO, Police Station Maloya, Chandigarh, who was present and verified the factum of recovery from the police party as well as the accused and also inspected the case property and related documents. He put his seal "S" at one place on the parcels and also affixed his seal on the sample seals. He deposited the case property in the Malkhanna with the MMHC. On 24.07.2019, the accused and the case property was produced before Learned Magistrate. Learned Magistrate after breaking open seals affixed on the said sealed parcel, verified the correctness of injections and after that converted the same into white cloth sealed parcel duly sealed with seal of "NK". Learned Magistrate opened the sealed parcel which was found to be 50 gm Heroin. Said case property which was duly sealed with seal of "VN" at two places and "S" at one place, two samples

each of 10 grams were taken out in the court. Both the samples were sealed with the seal of “NK”. Photography of all the proceedings were got done from police photographer. Statements of witnesses were recorded. On receipt of the report of the CFSL and after the completion of all the formalities of the investigation, charge sheet against the accused was presented in the Court.

3 On appearance of the accused in the court, copiers of all the documents as required u/s 207 Cr.P.C. were supplied to him free of costs.

4 From the perusal of record and hearing learned Addl. PP for the State and the learned defence counsel, a prima facie case u/s 22 of N.D.P.S Act was made out against the accused and charge was accordingly framed against him, to which he pleaded not guilty and claimed trial.

5 In order to substantiate the charge against the accused, prosecution examined the following witnesses:-

Rank	Name	Nature of Evidence
PW1	SI Neeraj	Ist Investigating Officer
PW2	ASI Ved Parkash	Recovery Witness
PW3	C. Virender	Sample Carrier
PW4	Dr. Atul Bajaj	Expert from CFSL
PW5	Inspector Harinder Singh Sekhon	SHO
PW6	ASI Bir Bhan	Malkhana Munshi

6 Thereafter, the learned Additional Public Prosecutor has given up PWs SI Ashwani Kaushal, C. Parveen Kumar, C. Ravinder Kumar, MHC PS Maloya, HC Yash Pal and ASP South Neha Yadav and thereafter learned Addl. PP closed the evidence of prosecution.

7 Statement of the accused u/s 313 Cr.P.C was recorded, wherein

entire incriminating evidence appearing against him was put to him to which he pleaded innocence and false implication. He has submitted that nothing incriminating has been recovered from his possession or at his instance. He was picked up by the police from outside of his house at about 11:30/12:00 noon and taken to Police Station where they have implanted the contraband.

8 In defence, accused did not examine any witness and closed his defence evidence..

9 Learned APP for the State argued that the prosecution has been able to prove all the essentials and required ingredients of Section 22 of the NDPS Act for which the accused was charge sheeted. The witnesses of the prosecution have fully corroborated the stand of the prosecution through their respective testimonies. The presence of the accused at the place of occurrence and thereafter before the Court has also been proved. It is proved that the accused was found in his conscious possession 5 injections were of Buprenorphine 2 ml each and 50 gram of Alprazolam (as per CFSL report) on the relevant date, time and place that too without having any license or permit to keep the said narcotic substance in his possession. There was no enmity of the police officials with the accused who had apprehended him with the case property. Thus, the question of any false implication of the accused does not arise at all. Further, it was argued that each and every part of investigation related to the place of occurrence was completed at the spot itself.

10 The learned APP for the State further argued that the recovery of

case property from the custody of accused was a chance recovery and for that no prior notice was required to be issued under Section 50 of the Act. The case property was thereafter produced by the 2nd Investigating Officer before the concerned SHO and upon directions of the SHO, the case property was promptly deposited in the Malkhana in the custody of MMHC. Learned APP for the State submitted that 2nd Investigating Officer of the case has expired before his evidence in the court, but his part has been duly proved on record by the remaining prosecution witnesses. The learned APP for the State argued that the case property was thereafter produced before learned Magistrate in accordance with the rules and procedure and the inventory was accordingly got certified from the learned Magistrate.

11 Further, it was argued on the part of the prosecution that no contradictions have come with the testimonies of the prosecution witnesses and they all have stood with the case of the prosecution. If there is any minor contradictions through the testimony of any of the witnesses then that minor contradictions rather has strengthened the case of the prosecution for the reason that the witnesses have deposed their natural testimony without any manipulation. Lastly, it was argued that the accused, in the light of the corroborated evidence of the prosecution may be held guilty and convicted for the charges framed against him and he be punished accordingly.

12 On the other hand, learned defence counsel argued that the prosecution has miserably failed to bring home the guilt of the accused. It is further submitted that the prior notice u/s 50 of Act has not been given to the

accused which is the mandatory provision under the Act which makes the case of prosecution highly doubtful. It is further argued that no independent witness was joined to corroborate the version of prosecution case despite the fact that recovery spot is a public place. Learned defence counsel argued that the accused has been falsely implicated in the false case and the above-said injections has been planted upon him. The witnesses of prosecution could not corroborate the stand of prosecution. Lastly, prayer is made for acquittal of the accused.

13 The court has heard arguments and have gone through the record of the case carefully.

14 In order to prove its case, the prosecution has examined PW1 SI Neeraj Kumar, who is Ist Investigating Officer of the case. The purpose of his examination was to prove various important documents in the present case. Relevant portion of the evidence of this witness will be discussed at the later part of the judgment and same is not reiterated here in order to avoid repetition. However, this witness proved on record the following documents:-

Sr. No.	Exhibit Number	Description
1	Ex.P1	Test Memo Form
2	Ex.P2	Recovery Memo
3	Ex.P3	Ruqa
4	Ex.P4	Handing Over Memo
5	Ex.P5	Arrest Memo
6	Ex.P6	Personal Search Memo
7	Ex.P7	Rough Site Plan
8	Ex.P8	Endorsement
9	Ex.P9	FIR

15 Another witness examined by the prosecution is PW2 ASI Ved Parkash, who is recovery witness of the case. The purpose of his examination was to prove various important documents in the present case. Relevant portion of the evidence of this witness will be discussed at the later part of the judgment and same is not reiterated here in order to avoid repetition. However, this witness proved on record the following documents:-

Sr. No.	Exhibit Number	Description
1	Ex.P2	Recovery Memo
2	Ex.P3	Ruqa
3	Ex.P4	Handing Over Memo
4	Ex.P5	Arrest Memo
5	Ex.P6	Personal Search Memo
6	Ex.P7	Rough Site Plan

16 Further, prosecution has examined PW3 C. Virender, who has deposed that on 29-07-2019, as per docket, he was handed over two sealed cloth parcels sealed with the seal of “NK” on each parcel, along with sample seal and documents by M.M.H.C. Sanjeev Kumar, Police Station, Maloya, Chandigarh vide road certificate No.826/2019 for depositing the same in C.F.S.L., Sector-36, Chandigarh and accordingly he deposited the same in an intact condition with C.F.S.L., Sector-36, Chandigarh. After depositing the same, the Road certificate along with receipt issued by C.F.S.L. was handed over to M.M.H.C. Sanjeev Kumar. During the time the case property remained in his possession neither he himself nor anybody else had tampered with the same.

17 Then, prosecution has examined PW4 Dr. Atul Bajaj, who has

deposed that on 29-07-2019, two sealed parcels duly sealed with seal of “NK” bearing case details, signatures of learned J.M.I.C., Chandigarh, sample seal and documents were received in C.F.S.L. through Constable Virander, No.4124/CP. The seal upon the parcels were intact and were tallied with the specimen seal. He deposed that after various laboratory tests such as Chemical tests, Thin Layer Chromatography and Gas Chromatography Mass Spectrometry, the results thus obtained have been analysed as given below:-

1. Alprazolam, Trimethoprim and Acetaminophen (Paracetamol) have been detected in exhibit: 1.
2. Buprenorphine has been detected in the solution contents of the exhibits 2/1 – 2/5.
3. The total weight of the solution content of the exhibits 2/1 – 2/5 was found to be 10.16 grams.
4. Phenaramine has been detected in the solution contents of the exhibits 2/6 – 2/10.
5. The total weight of the solution content of the exhibits 2/6 – 2/10 was found to be 50.19 grams.

He deposed that after examination, the parcels containing the exhibits/remnant as detailed in the report were sealed with seal impression of “CFSL EXP CHD” as per specimen provided in the report, which is in his hand and the same is Ex.P1/PW4. He identified his signatures on the same.

18 Next witness examined by the prosecution is PW5 Inspector Harinder Singh Sekhon, who has deposed that in the year 2019, he was

posted as Inspector/S.H.O., at Police Station, Maloya, Chandigarh. He deposed that as per record, on 23-07-2019, Sub-Inspector Jagpal Ram (now expired) went to the spot i.e. near Light Point, Shahpur being second I.O. and carried the further investigation at the spot. He had met the first I.O. Sub-Inspector Neeraj Kumar there, who had handed over to him the parcel, accused and documents of the present case. He has seen the handing over memo Ex.P4, arrest memo Ex.P5, personal search memo Ex.P6 and rough site plan Ex.P7 and he identified the signatures of Sub-Inspector Jagpal Ram on the same at Point A on each document as he had worked under his supervisory control. He deposed that on the same day, at about 10:00 P.M., Sub-Inspector Jagpal Ram, Head Constable Ved Parkash and Constable Parveen had produced before me accused Ravi along with two sealed parcels sealed with seal of "VN" at two places on each parcel along with sample seal and case related documents. The referred sealed parcels were stated to be containing 10 injections i.e. 05 injections of Buprenorphine 02 ml each and 05 injections of Phenaramine 10 ml each and another parcel was containing 50 grams of Heroin. He verified the factum of recovery of contraband from the conscious possession of accused from members of police party and accused. Thereafter, he affixed seal of "S" at one place on each parcel along with my attestation. Sample seal of "S" was also prepared. Thereafter case property along with sample seal was deposited in malkhana with M.M.H.C. Head Constable Birbhan. He deposed that on 24-07-2019, Sub-Inspector Jagpal Ram along with M.M.H.C. had produced the case property i.e.

referred sealed parcel along with accused before the court of Ms. Navneet Kaur, learned J.M.I.C., Chandigarh, who verified the factum of content of parcels by opening the sealed parcels and draw two representative samples of 10 grams each of Heroin were marked as Sample I and Sample II and separately sealed them with the seal of “NK” at one place on each parcel. The remnant contraband i.e. 30 grams was separately converted into sealed parcel sealed with the seal of “NK” at one place. The learned Court also opened the parcel containing injections and after verifying its contents, resealed the same with the seal of “NK” at one place. Sample seal of “NK” was also prepared by learned Magistrate. The inventory applications are Ex.P1/PW5 and Ex.P2/PW5, which bears the signature of the then A.S.P. Neha Yadav, whose signatures he identified being worked together. The learned Magistrate certified the inventory and the order passed by learned Magistrate is Ex.P3/PW5. Police photographer namely Constable Ravinder clicked the photographs Ex.P4/PW5 and Ex.P5/PW5. The case property after inventory proceedings was handed over to M.M.H.C. Birbhan for safe custody and for deposit of sample I and other sample containing the injections to C.F.S.L.

19 Lastly, prosecution has examined PW6 ASI Bir Bhan, who has deposed that in the year 2019, he was posted as M.M.H.C., Police Station, Maloya, Chandigarh. On 23-07-2019 at about 10:11 P.M. vide entry No.440, Inspector Harinder Singh Sekhon, S.H.O., Police Station, Maloya, Chandigarh deposited with him two sealed parcels bearing seal of “VN” at two places and “S” at one place on each parcel along with sample seal. The

said sealed parcels stated to be containing 10 injections i.e. 05 injections of Buprenorphine 02 ml each and 05 injections of Phenaramine Maleate 10 ml each and other parcel was containing 50 grams of Heroin. He has deposed that on 24-07-2019, the case property along with sample seal was produced by him along with Sub-Inspector Jagpal Ram before the Court of Ms. Navneet Kaur, learned J.M.I.C., Chandigarh for purpose of certification of inventory. The learned J.M.I.C. during the inventory proceedings, certified the correctness of inventory and after breaking the seal affixed on the said sealed parcel containing Heroin, draw two representative sample of 10 grams each, and were converted into sealed parcel with seal bearing impression "NK" and were marked as Sample I and Sample II. The remnant contraband i.e. 30 grams of Heroin (31.65 grams of Heroin along with polythene) was also converted into sealed parcel with seal bearing impression "NK". The learned J.M.I.C. during the inventory proceedings, certified the correctness of inventory and after breaking the seal affixed on the said sealed parcel containing all the recovered injections, resealed its contents and converted into sealed parcel with seal bearing impression "NK" The sample seal of "NK" was also prepared by learned J.M.I.C., Chandigarh. The police photographer clicked the proceedings of inventory. After inventory proceedings, the learned J.M.I.C., Chandigarh handed over the case property along with sample seal to him for its safe custody and for the purpose of sending the representative Sample I and another Sample containing injections to C.F.S.L. He deposed that on 29-07-2019, as per docket he handed over the

above referred representative samples i.e. Sample I and Sample containing all the recovered injections bearing seal impression “NK” along with sample seal and document to Constable Varinder No.4124/CP vide road certificate No.61/2019 for the purpose of depositing the same with C.F.S.L. Accordingly, Constable Varinder after depositing the same with C.F.S.L., handed over the receipt to him. His statement was recorded in the case by the I.O. During the time the case property remained in his custody, neither he himself nor he allowed anybody else to tamper with the same. He has brought original register No.19 in the Court containing the referred entry, which is in his hand and true photocopy of the same is Ex.P1/PW6, which is correct as per the original and be read as part of his detailed statement. The report of the C.F.S.L. along with sample after analysis from the office of C.F.S.L., Chandigarh on 04-10-2019 through Constable Surinder Kumar, No.3786/CP. The remnant bulk parcel was destroyed as per rules/Court order on 08-02-2022 in compliance of order dated 06-01-2022. He has brought the case property parcels Ex.MO1 to Ex.MO3.

20 In the light of above-said submissions and rival submissions made by learned APP for State and learned defence counsel, now the court is to see whether the prosecution has proved on record that on 23.07.2019 at about 07:05 pm in the area near New Stadium Light Point of Shahpur Colony, Chandigarh, accused was found in conscious and illegal possession of 05 intoxicated injections of Buprenorphine of 2 ml each and 50 grams of mixture containing various prohibited drugs i.e., Alprazolam without any

permit or licence and thereby the accused has committed offence punishable u/s 22 of the Act or not?

21 In the present case PW1 SI Neeraj (first Investigating Officer) and PW2 ASI Ved Parkash (recovery witness) are the star witnesses of the case. The evidence of both these witnesses was very much material in the present case as both these witnesses played a major role in the investigation of the present case. PW1 SI Neeraj is the First Investigating Officer of the case and PW2 ASI Ved Parkash is one of the the recovery witness, who remained present with first Investigating Officer at the time of apprehension and seizure of case property from the accused. If the evidence of both these witnesses is evaluated, both these witnesses have deposed as per the prosecution case and their evidence inspire confidence of the court. The evidence of both these witnesses is discussed as under:-

‘Both PW1 SI Neeraj and PW2 ASI Ved Parkash categorically deposed that on 23.07.2019, they along with Constable Parveen went for patrolling in private vehicle bearing No. HR03-S-6788 in connection with rising theft and snatching incidents. Upon reaching Shahpur light point, Chandigarh and after parking the vehicle, the police party started patrolling on foot. They deposed that when the police party was patrolling towards DMC, Chandigarh. It was about 7:05 pm, from the side of new Stadium road, one person was seeing coming while carrying white coloured carry bag in his left hand and was going towards

main road. They deposed that the accused upon seeing the police party took left turn toward DMC, Chandigarh and tried to flee, but was chased by police party at some distance and then apprehended on the basis of suspicion that he might be carrying some stolen or snatched articles. They deposed that accused was enquired about his name and particulars, who disclosed himself as Ravi S/o Raju, R/o H. No. 2808, DMC, Chandigarh. PW1 deposed that accused was enquired by him about the reason for trying to flee, but he gave lame excuse. They deposed that the said carry bag which was carried by accused upon checking was found containing 5 injections of Buprenorphine of 2 ML each and 5 pheniramine maleate of 10 ML each wrapped in newspaper. The batch numbers were not readable which were smeared with black ink. One polythene pouch was also found in said carry bag, which was found containing heroin. Accused upon enquiry disclosed that he is indulged in selling the intoxicant to addicts. They deposed that an attempt was made by police to join an independent witness, but nobody agreed for the same. The accused failed to produce any licence or permit for carrying said injections and Heroin. They deposed that the recovered 5 injections of Buprenorphine 2 ml each and 5 injections of pheniramine maleate 10 ml each were kept in the said newspaper in which they were wrapped and were put in the

same carry bag, which was converted into parcel of white cloth which was sealed with the seal of “VN” at two places. They deposed that Heroin was weighed on Electronic Scale and found to be 50 grams with polythene which was converted into white cloth parcel sealed with seal of “VN” at two places. PW1 deposed that the sample seal was also prepared by him. The test memo form was also prepared in triplicate. They deposed that the aforesaid two sealed parcel containing injections and Heroin along with sample seal were taken into police possession which was duly attested by PW2 HC Ved Parkash to whom seal after use was handed over. PW1 deposed that he then sent ruqa at about 8:00 pm through C. Parveen to Police Station Maloya, Chandigarh for registration of FIR and message was sent to PS Maloya, Chandigarh for calling second IO to the spot. Then at about 8:20 pm SI Jagpal Ram reached at the spot from PS Maloya, Chandigarh, who was apprised of the facts of the case and to whom the said sealed parcels containing said injections, heroin i.e. case property and seizure memo, test memos along with accused and other case related documents were handed over by PW1. They deposed that the accused was arrested by SI Jagpal Ram and after arrest, his personal search was conducted. After sometime, C. Parveen came to the spot along with ruqa and copy of FIR which was handed over to SI Jagpal who

completed the proceedings. PW1 deposed that the spot was inspected and rough site plan was prepared by SI Jagpal at his instance. Both the witnesses identified the accused present in the court.”

22 Both these witnesses have specifically deposed regarding the apprehension of accused and recovery of 5 injections of Buprenorphine and 50 gram Alprazolam from his conscious possession without any permit or license. PW1 SI Neeraj Kumar proved on record Test Memo Ex.P1, recovery memo Ex.P2 and ruqa Ex.P3. PW1 SI Neeraj Kumar categorically deposed that seal after use was handed over to PW2 ASI Ved Parkash. Both these witnesses identified the accused, who was present in the court at the time of their respective evidence. PW2 has fully corroborated the testimony of PW1 SI Neeraj on all major aspects. Both these witnesses were cross-examined at length by learned defence counsel, however, nothing material came out during their cross-examination which could have raised any doubt in the prosecution case.

23 Although in the police documents, it has been mentioned that 50 grams of Heroin was recovered from the accused, but as per CFSL report Ex.P1/PW4 the representative sample which was sent to CFSL (stated to be Heroin) was detected with the prohibited substance Alprazolam (serial No.178 of the table of NDPS Act).

24 It is pertinent to mention here that as 2nd Investigating Officer has expired during trial proceedings, as such, the investigation being conducted by

him is proved by PW5 Inspector Harinder Singh Sekhon, PW1 SI Neeraj Kumar and PW2 HC Ved Parkash. These witnesses proved on record handing over memo Ex.P4, arrest memo Ex.P5, personal search memo Ex.P6, rough site plan Ex.P7. This witness further proved on record inventory applications Ex.P1/PW5 and Ex.P2/PW5, order of learned Magistrate Ex.P3/PW5, photographs Ex.P4PW5 and Ex.PW5 and scaled site plan Ex.P6/PW5.

25 Learned defence counsel argued that the provisions of section 50 of the Act has not been followed in the present case which is the mandatory provisions, which further makes the case of prosecution highly doubtful. At the same time, learned APP for the State submitted that in the present case there was no requirement to comply with the provisions of section 50 of the Act as the recovery was not effected from the person of the accused. After hearing both the sides on this point, the court does not find any force in this argument of learned defence counsel as it is clear from the testimony of PW1 SI Neeraj Kumar and PW2 ASI Ved Parkash (as discussed above) that the recovery was effected from white colour carry bag which the accused was carrying in his left hand. It is not a case of recovery from the personal search of accused. The notice u/s 50 of the Act is required to be served upon the accused, if the recovery is effected from the personal search of the accused and not otherwise.

26 It is also settled proposition of law that any recovery from the bag, brief case or any other articles, which can easily be searched without touching the accused or as an independent identity from the accused, that cannot fall

under the category of personal search. At the same time, the test applied to these types of cases are that wherein the process of search, the human body comes into contact or shall have to be touched by the person by carrying out the search, it will be search of a person. Applying the aforesaid principle, recovery in the present case cannot be considered as the recovery from the personal search of the accused. For this purpose reliance can be placed upon the judgment passed by the Hon'ble Supreme Court in "State of H.P. Vs. Pawan Kumar (2005) 4 SCC 350."

27 Further, in Jarnail Singh Vs. State of Punjab, AIR 2011, Supreme Court 964, Hon'ble Supreme Court held that "*section 50 can be invoked only in cases where the drug/narcotic/NDPS substance is recovered as a consequence of the body search of the accused. In case, the recovery of the narcotic is made from a container being carried by the individual, the provisions of section 50 would not be attracted.*"

28 Further, in Ajmer Singh Vs. State of Haryana, (2010) 3 SCC 746, Hon'ble Supreme Court held that "*section 50 is applicable only where search of a person is involved and said section is not applicable nor attracted where no search of a person is involved. Thus search and recovery from a bag, brief case, container, etc. does not come within the ambit of section 50 of the Act.*"

29 If the above-said principles and case law are applied to the present case, then it is clear that in the present case the recovery which was effected from white colour carry bag which the accused was carrying in his left hand, does not fall under the purview of personal search and further the provisions

of section 50 of the Act does not attract in the present case and the same are not required to be followed.

30 Learned defence counsel argued that the rough site plan and scaled site plan are not as per the actual position at the spot and even the point from where accused started running back has not been shown in the rough site plan. It is further argued that this lapse on the part of Investigating Agency create doubt regarding the presence of members of the police party at the spot. On the other hand, learned APP for the State submitted that this is minor discrepancy which does not hit the merits of the case and this deserve to be ignored. After hearing both the sides on this point, the court does not find much force in the argument raised by ld. Defence counsel. Even if there is some discrepancy in the rough site plan and the scaled site plan, the same cannot be considered as major discrepancy. The apprehension and recovery of both the contrabands from the conscious possession of the accused has been duly proved on record by PW1 and PW2. In such situation, any discrepancy in the rough site plan and the scaled site plan cannot be considered as a ground for acquittal of the accused.

31 Further, during arguments, learned defence counsel brought into notice contradictions in the evidence of prosecution witnesses, where there is contradiction as to how the ruqa carrier left the spot and returned back at the spot, contradiction in the evidence of PW1 and PW2 as to whom the recovery witness (PW2) returned back the seal of Ist IO. It is further argued that these discrepancies create doubt in the case of prosecution. The court has gone

through the evidence of prosecution witnesses and is of the considered opinion that the above mentioned contradictions are minor in nature and these are deserve to be ignored. PW1 has deposed that PW2 returned back his seal to him after 3-4 days, whereas, as per PW2, he deposited the seal of Ist IO in the malkhana on the next day of incident. This contradiction also does not hit the case of prosecution, as on the next date of incidence, the case property was produced before the ld. court for inventory purposes and the ld. court affixed its seal on the parcel of injections and on the representative samples and bulk parcel of other contraband. So, in any case there is no reason to doubt on the authenticity of the case property which was produced before the learned court for the inventory purposes. Even otherwise some minor contradictions are bound to occur in the evidence of prosecution witnesses as they depose in the court after gap of long time and human memory is bound to fade.

32 Further, learned defence counsel brought into notice the evidence of PW2 (recovery witness) where he admitted that Ist IO mentioned batch number, company name, manufacturer of the alleged recovered injections in the recovery memo and ruqa and further argued that on the contrary as per prosecution case, all the above mentioned details were smeared with black ink and this deposition by PW2 shows that he was not present at the spot. But the court is not convinced with the argument raised by ld. Defence counsel. It has come in the evidence of PW1 that all the above mentioned details were smeared with black ink. Mere the fact that PW2 deposed the above mentioned deposition in his cross-examination, does not hit the case of prosecution, when

the case of prosecution has been duly proved on record by the remaining evidence of PW1 and PW2.

33 Further, learned defence counsel brought into notice cross-examination of PW1 where the witness deposed that he had not weighed the quantity of Heroin/Smack. Learned defence counsel argued that when PW1 has not weighed the quantity of Heroin/Smack at the spot, then how its weight i.e., 50 gram came on record. Again the court is not convinced with the argument raised by ld. Defence counsel. If the case of prosecution, its documents and evidence of PW1 and PW2 is considered in consonance with each other, then it is clear that the recovered contraband was weighed at the spot which came to be 50 grams. Mere the fact that PW1 deposed in his cross-examination that the contraband was not weighed at the spot does not itself vitiate whole of the case of prosecution. PW1 and PW2 has duly proved on record that whole of the contraband was converted into sealed parcel and on the next date, same was produced before the learned court for inventory proceedings. Even the learned Court/Magistrate weighed the contraband during the inventory proceedings, so the above mentioned discrepancy in the cross-examination of PW2 cannot be considered as material.

34 Learned defence counsel further brought into notice contradiction regarding the date when docket was issued for deposit of parcel of injections and representative sample of other contraband to CFSL. In this regard, ld. Defence counsel brought into notice the evidence of PW3 C. Virender, Sample Carrier, where he deposed in his cross-examination that docket was issued on

26.07.2019 and he deposited the parcel and representative sample to CFSL on 29.07.2019. It is argued by Id. Defence counsel that this aspect create doubt on the authenticity of parcel and representative sample which was so deposited to the CFSL. The court has gone through the case file, order of inventory Ex.P3/PW5 and report of CFSL Ex.P1/PW4. All these clearly shows that sealed parcel of injections and one representative sample sealed with seal of "NK" (in intact position) was deposited with CFSL on 29.07.2019. There is nothing on record to show that on 26.07.2019 the parcels were ever handed over to PW3 C. Virender, Sample Carrier, rather it is clear that the parcels were handed over to him on 29.07.2019 only. So, there is no reason to doubt on the authenticity of the parcel and representative sample and there is no reason to doubt that they were ever tempered with.

35 Further, learned defence counsel brought into notice evidence of PW6 MMHC ASI Bir Bhan, where he denied his statements recorded u/s 161 Cr.P.C on 23.07.2019 and 24.07.2019. If the case of prosecution particularly evidence of PW5 SHO, PW6, MMHC and entries in register No.19 Ex.P1/PW6 are considered jointly, then it is clear that on 23.07.2019 the case property was handed over to PW6 and on 24.07.2019 the same was produced before the court. So, mere the fact that PW6 MMHC has denied his statements so recorded under section 161 Cr.P.C does not vitiate the case of prosecution. The witness while deposing in the court deposed the proceedings of 23.07.2019 and 24.07.2019 on oath, which is also corroborated by entries of register No.19 Ex.P1/PW6.

36 Further, learned defence counsel had argued that no independent witness was joined at the time of recovery from the accused so there is no independent corroboration to the case of prosecution. However, the court does not find any strength in this argument as it is not necessary that in each and every case, independent witness from the public has to be joined. No doubt in a criminal case, where recovery is effected, it is always desirable for the police to join private persons to witness that recovery. But, joining of independent witnesses is not a mandatory rule. It is settled law that where the testimonies of official witnesses inspire confidence and are trustworthy, then mere the fact that independent witness has not been joined does not render the case of prosecution doubtful. Moreover, in the present case, PW1 SI Neeraj Kumar and PW2 ASI Ved Parkash have specifically explained that they had tried to join independent witnesses but nobody agreed for the same, which shows that the Investigating Agency made efforts to join the independent witness. It is commonly seen that the private persons are reluctant to join investigation because no one wants to become a witness in a criminal case. Moreover, none wants to take annoyance of others by becoming a witness.

37 On this point, court is fortified with case law in case **Appa Bai and another Vs. State of Gujarat, AIR 1988 SC 696**, where Hon'ble Supreme Court held that *"the prosecution story cannot be thrown out, only on the ground that independent witness has not been examined. It was further observed that the civilized people are generally insensitive when a crime is*

committed even in their presence. They keep themselves away from the Courts unless it is inevitable. Moreover, they think the crime like a civil dispute, between two individuals, and do not involve themselves.”

38 In **State of NCT of Delhi Vs. Sunil, 2000 (1) SCC 748**, the Hon’ble Supreme Court held that *“evidence of police official/officer should not be approached with initial distrust; time has come to start placing reliance, at least initial trust on the actions and the documents made by the police.”*

39 Furthermore, in **Akmal Ahmed Vs. State of Delhi, 1999 (2) RCC 297 (SC)**, it was held by Hon’ble Supreme Court that *“it is now settled that the evidence of search or seizure, made by the police will not become vitiated, solely for the reasons that the same was not supported by an independent witness.”*

40 Further, there is no principle that without corroboration by independent witness, the testimony of official witnesses cannot be relied upon. For this the reliance can be placed on case titled as **Triloki Nath Vs. State of U.P., 2006 SC 321**, where Hon’ble Supreme Court held that *“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.”*

41 The prosecution witnesses PW5 Inspector Harinder Singh Sekhon

SHO, PW6 ASI Bir Bhan, MMHC and PW3 C. Virender, Sample Carrier have duly proved on record the chain of link evidence regarding the fact that the case property parcel remained intact till it reached to C.F.S.L., Chandigarh. PW-1 SI Neeraj Kumar, first Investigating Officer and PW-2 ASI Ved Parkash, Recovery witness, have duly proved on record the recovery as well as seizure of case property from the conscious possession of accused. Both these witnesses had duly proved on record that the case property i.e. 5 injections of Buprenorphine of 2 ml each and 50 grams Alprazolam was sealed with seal of “VN” at two places. As SI Jagpal Ram (who was 2nd Investigating Officer) died during the trial proceedings, so further investigation conducted by him is proved by PW5 Harinder Singh Sekhon i.e., production of case property and accused before him. Thereafter, this witness (PW5 Inspector Harinder Singh Sekhon) had duly proved on record that after arrest and seizure, the case property and accused were produced before him and at that time, the case property containing 5 injections of Buprenorphine of 2 ml each and 50 gram Alprazolam was already sealed with seal of “VN” at two places. This witness further proved on record that he affixed one seal of “S” at one place on case property i.e. sealed parcels. He further deposed that thereafter, he handed over the case property to M.M.H.C. Head Constable Birbhan. PW-6 ASI Bir Bhan categorically deposed that on 23.07.2019 at about 10:11 pm., he was handed over two sealed parcels sealed with the seal of “VN” at two places and “S” at one place which was containing 05 injections of Buprenorphine of 2 ML each and 50 grams Alprazolam. This

witness proved that on 24.07.2019 the case property along with sample seal were taken to the Court of Ms. Navneet Kaur, Judicial Magistrate Ist Class, Chandigarh for the purpose of inventory. On 29.07.2019, as per docket, he was handed over the above referred representative samples for depositing the same in CFSL. He after depositing the same in CFSL handed over the receipt to him. PW3 C. Virender has deposed that on 29.7.2019, as per docket, he was handed over two sealed cloth parcels sealed with the seal of "NK" on each parcel along with sample seal and documents by MMHC for depositing the same in CFSL. He after depositing the same handed over the receipt to him. Both the witnesses deposed that till the time case property remained in their possession neither they nor allowed anybody else to temper with the same.

42 The case property remained in the custody of PW6 ASI Bir Bhan, Malkhana Munshi and PW3 C. Virender, sample carrier. There is no material on record to suggest that the case property was ever tempered with till the time the same remained in their custody.

43 The C.F.S.L. report Ex.P1/PW4, gives the result of examination of the sealed parcel of the case property. Ex.P1/PW4 has resulted with the following effect:-

(I) Alprazolam has been detected in exhibit-I.

(ii) Buprenorphine has been detected in exhibits 2/1-2/5

The total weight of solution in exhibits 2/1-2/5 was found to be 10.16 gms.

44 Thus, from the report Ex.P1/PW4 it has been clearly reported by

C.F.S.L. that the recovered case property from the conscious possession of the accused was Buprenorphine and Alprazolam. Further, the report Ex.P1/PW4 shows that one sealed parcel along with specimen seals of “NK” was received by the CFSL and the seals were intact and tallied with the specimen seals.

45 After considering the testimonies of prosecution witnesses, it is clear that recovery was effected from the conscious possession of accused and by virtue of Sections 35 and 54 of the Act, it is for the accused to rebut the said presumption. Once possession is established the person who claims that it was not a conscious possession has to establish it, because how he came to be in possession is within his special knowledge. Similar is the position in terms of Section 54 of the Act where also presumption is available to be drawn from possession of illicit articles.

46 Further in “Madan Lal Vs. State 2003 (4) RCR (Crl). 100” Hon’ble Supreme Court held that possession is polymorphous term which assumes different colour in different context. It may carry different meanings in contextually different background and, therefore, it is difficult to lay down a completely logical and precise definition uniformly applicable to all situations with reference to all the statutes. This Court is of the considered view that testimony given by the prosecution in the aforesaid case connect the contraband with the accused as they were found in conscious possession in the aforesaid case and it is for the accused to rebut the presumption beyond reasonable doubt in accordance with the aforesaid provisions U/s 35 and 54 of the N.D.P.S Act and not merely by way of preponderance of probability.

However, the accused has failed to rebut the aforesaid presumption by virtue of Section 35 and 54 of the Act.

47 The conjoint reading of provisions of Section 35 and 54 of the NDPS Act makes abundantly clear that once the accused is found to be in possession of contraband, he is presumed to have committed the offence until the contrary is proved.

48 The accused has taken the plea u/s 313 Cr.P.C that he has been falsely implicated in the present case by planting false recovery upon him. But the accused has failed to prove the same. Mere bald assertions by the accused will not help him for the rebuttal of presumption drawn u/s 35 and 54 of N.D.P.S. Act. The accused has not examined any witness in his defence in order to prove the fact that Police officials were having any enmity with him. In the absence of any substantial evidence in this regard, the plea taken by accused in his defence cannot be considered.

49 All the arguments raised by both the sides have been addressed accordingly.

50 In view of my aforementioned discussion and in view of sufficient, consistent and cogent evidence on record, led by prosecution, the guilt of the accused Ravi is proved beyond shadow of reasonable doubt. The prosecution has been able to prove its case beyond any reasonable doubt that the accused was found in conscious possession of 05 injections of Buprenorphine of 2 ml each and 50 gram Alprazolam without any permit or licence. The possession of both these contrabands without any permit or licence is an offence under

NDPS Act and as such, accused is held guilty for the offence punishable u/s 22 of the Act and is convicted thereunder. As accused is on bail, as such, he be taken into custody. He be produced for hearing on the quantum of sentence on 23.05.2025.

Pronounced in Open Court:
22.05.2025
(Direct Dictation)
Surinder Singh Stenographer Grade-I

(Hargurjit Kaur)
Judge, Special Court,
Chandigarh/UID No.PB0230.

