

**IN THE COURT OF RANJEEV KUMAR VISHISHT,
JUDGE,SPECIAL COURT, LUDHIANA.
(UID NO.PB0179).**

CNR No: PBLD010318992019

CIS No: NDPS/1113 /2019

Date of Decision :-08.07.2026.

State of Punjab

Versus

1. Hans Raj son of Sh. Bhajan Ram resident of Prem Colony Anandpur Sahnewal, Ward no.14, Sahnewal, P.S Sahnewal, District Ludhiana.

2. Jamna @ Guddi wife of Raja Ram resident of Jhugi Jhopari Paharganj, New Delhi Near Railway Station, New Delhi, P.S Paharganj, New Delhi (PO).

Accused.

FIR No. 271 dated 15.11.2018

U/s 18-61-85 of NDPS Act.

P.S. GRP, Ludhiana.

Present **Sh. Ricky Chodha Addl.PP for the State**
Accused Hans Raj on bail with Defence counsel
Sh. J.S Bhogal Advocate.
Accused Jamna @ Guddi PO.

JUDGMENT :-

1. On the basis of report submitted under Section 173 of Cr.P.C by the police of P.S GRP, Ludhiana in connection with FIR No. 271 dated 15.11.2018, Under Section 18-61-85 of NDPS Act, P.S. GRP, Ludhiana the aforesaid accused are facing trial for the above said offence.

2. In brief, the case of the prosecution is that On 15.11.2018, SI Gurjinder Singh No. 064, accompanied by ASI Naib Singh No. 1258, ASI Sukhdev Singh No. 472, Head Constable Kulwant Singh No. 328, Head

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Constable Surinder Kumar No. 676, and Woman Head Constable Amarjit Kaur No. 1234, was present at the southern end of Platform No. 1, Railway Station Ludhiana (Dhandari side) for checking smugglers and verifying suspicious persons. At about 8:20 PM, a reliable secret informer approached the SI Gurjinder Singh and informed him that Jamna alias Guddi, resident of New Delhi, used to bring narcotic substances from Gwalior (Madhya Pradesh) and smuggle the same into Punjab. The informer further stated that she had again arrived at Ludhiana Railway Station carrying a consignment of narcotic drugs, which she intended to deliver to Hans Raj, resident of Sahnewal, District Ludhiana, who had also come to the railway station to receive the consignment. The informer stated that both persons were sitting on Platform No. 2 towards the Ladhawal side, and if an immediate raid was conducted, they could be apprehended along with the narcotic substance. Believing the information to be reliable, SI Gurjinder Singh informed the accompanying police officials and instructed the secret informer to identify the suspects. The police party, along with the informer, proceeded towards Platform No. 2 (Ladhawal side). The informer pointed out one woman carrying a bag in her right hand and one man was seen sitting on an iron bench. On seeing the police party, both persons stood up and attempted to move away, but the woman was apprehended with the assistance of Woman Head Constable Amarjit Kaur, while the male was apprehended with the help of

the accompanying police officials. Upon inquiry, the woman disclosed her name and address as Jamna alias Guddi, wife of Raja Ram, resident of Jhuggi Jhopri, Paharganj, near New Delhi Railway Station, Police Station Paharganj, New Delhi. The man disclosed his name and address as Hans Raj, son of Shri Bhajan Ram, resident of Prem Colony, Anandpur, Sahnewal, Ward No. 14, Police Station Sahnewal, District Ludhiana. SI Gurjinder Singh requested the passengers present at the spot to join the police proceedings as independent witnesses. However, they expressed their inability due to their travel commitments and declined to join the proceedings. SI Gurjinder Singh sent Head Constable Surinder Kumar No. 676 to the police station to bring a printer. He returned after about 15 minutes. Thereafter, SI Gurjinder Singh introduced himself by his name, designation and place of Posting. He further shown his suspicion of having contraband in possession of apprehended persons. The Sub Inspector expressed his desire to search the accused persons but SI Gurinder Singh apprised both the accused individually that they have legal right to get themselves searched in the presence of a Magistrate or a Gazetted Officer if they so desire. The Gazetted Officer or Magistrate can be called to the spot, or the accused may be taken before such an officer for the search." Jamna alias Guddi replied that she had full faith in the SI and consented for search to be conducted in the presence of SI Gurjinder Singh. Accordingly, SI Gurjinder Singh prepared a written consent memo

and read it over to Jamna Devi and explained it to her in Hindi. After admitting it to be correct, she affixed her right thumb impression under the consent statement, and the witnesses signed the memo. Then SI then took possession of the bag from her right hand and searched it in accordance with law. Inside the bag, he recovered a black plastic packet containing opium. The recovered opium, along with its packet, was weighed using a digital weighing scale carried in the investigation kit and was found weighing 1,200 grams. The opium was packed in a separate plastic container, and along with the bag, a separate parcel was prepared. The parcel was sealed with the seal bearing the impression "G.S.". A specimen seal impression was prepared separately, and Form M-29 was completed. The sealed parcel was taken into police possession through a recovery memo, which was duly signed by the witnesses. The SI Gurinder Singh then informed Hans Raj of his legal right in the same manner, namely that he had the right to be searched before a Gazetted Officer or a Magistrate. Hans Raj stated that he had full faith in the SI Gurjinder Singh and consented to be searched by him only. A written consent memo was prepared, which was signed by Hans Raj after admitting the contents of the same as correct. The consent memo was also attested by the witnesses. Then SI Gurcharan Singh searched Hans Raj in accordance with law. From the right-side of the pocket of his Jacket, the Investigation Officer recovered a black plastic packet containing opium. The recovered opium,

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along with the packet, was weighed through digital weighing scale and was found weighing 500 grams. The opium was packed in a separate plastic container, a separate parcel was prepared, and it was sealed with the seal bearing the impression "G.S.". A specimen seal impression was prepared separately, and Form M-29 was completed. After use, the seal was handed over to ASI Naib Singh No. 1258. The sealed parcel was taken into police possession through a recovery memo signed by the witnesses. Since Jamna alias Guddi was found in unlawful possession of 1,200 grams of opium, and Hans Raj was found in unlawful possession of 500 grams of opium, without any permit or licence, they committed offences punishable under Sections 18/61/85 of the NDPS Act. Accordingly, a written report (ruqa) was prepared and sent through Head Constable Kulwant Singh No. 328 to GRP Police Station, Ludhiana, for registration of a criminal case. After the ruqa was received at GRP Police Station, Ludhiana, the case was formally registered. The investigation of the case was entrusted to ASI Suresh Kumar No. 632, who immediately proceeded to the place of occurrence. Upon reaching the spot, ASI Suresh Kumar took over the investigation. SI Gurjinder Singh handed over to him the accused Jamna alias Guddi, wife of Raja Ram, Hans Raj, son of Bhajan Ram, the sealed case property (both parcels), the specimen seal impressions, and Form M-29. ASI Suresh Kumar affixed his own seal bearing the impression "S.K." on both sealed parcels and formally took

possession of the accused and the case property through a memo. The memo was signed by the witnesses. Thereafter, on the pointing out of SI Gurjinder Singh, ASI Suresh Kumar inspected the place of occurrence and prepared the site plan. He also recorded the statement of SI Gurjinder Singh under Section 161 Cr.P.C. The accused Jamna alias Guddi and Hans Raj were interrogated. As the date had changed, on 16.11.2018, Head Constable Kulwant Singh produced the case file before ASI Suresh Kumar after the registration of the FIR. ASI Suresh Kumar examined the file and made the necessary case diary entries. Both accused were then formally arrested in accordance with law. The personal search of Jamna alias Guddi was conducted by Woman Head Constable Amarjit Kaur in privacy, while the personal search of Hans Raj was conducted according to the prescribed legal procedure. Arrest memos, personal search memos and intimation memos were prepared, which were signed by the accused as well as the witnesses. Statements of the witnesses under Section 161 Cr.P.C. were also recorded. After completing the spot investigation, ASI Suresh Kumar returned to the police station along with both accused, the recovered case property, specimen seal impressions and Form M-29, and produced them before the then Station House Officer (SHO), Inspector Inderjit Singh. Inspector Inderjit Singh carefully examined the seals on both parcels and found them intact and tallied with the specimen seal impressions. He separately interrogated both accused, Jamna alias Guddi

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and Hans Raj, and found the facts regarding the recovery to be correct. Thereafter, the SHO affixed his own seal bearing the impression "I.S." on both sealed parcels. He also prepared and attested the specimen seal impression and verified Form M-29. The sealed parcels, bearing the seals "G.S./S.K./I.S.", together with the specimen seal impressions and Form M-29, were taken into the SHO's custody through the prescribed memo. Jamna alias Guddi was kept seated in the police station, while Hans Raj was lodged in the police lock-up. Since the SHO was occupied with official checking duties on the same day, he directed ASI Suresh Kumar to produce both accused, along with the sealed case property, specimen seal impressions and Form M-29, before the competent Court on the following day. In compliance with the directions of the Station House Officer, ASI Suresh Kumar No. 632 produced the accused Jamna alias Guddi, wife of Raja Ram, and Hans Raj, son of Shri Bhajan Ram, along with the sealed parcels of the recovered opium, the specimen seal impressions, and Form M-29 before the Court of Duty Judicial Magistrate First Class (JMFC) Ms. Lavjinder Kaur. The learned Magistrate conducted the inventory proceedings. From each of the two sealed parcels, two representative samples of 50 grams each were drawn separately. The remaining bulk opium and the sample parcels were sealed by the Magistrate with the seal bearing the impression "L.K.". A specimen seal bearing the impression "L.K." was also prepared. The Magistrate verified and authenticated the

case property, the sample parcels, the specimen seal, and Form M-29. The learned Magistrate ordered that the case property be deposited in the Judicial Malkhana and passed the necessary inventory order. The Court also granted one day's police remand of both accused, Jamna alias Guddi and Hans Raj. In compliance with the Court's order, the investigating officer deposited the two sealed sample parcels of 50 grams each, sealed with the seal "L.K.", in the Judicial Malkhana, District Courts, Ludhiana, vide Receipt No. 419 dated 16.11.2018. As the Centralized Malkhana, Jamalpur, Ludhiana, was not available for receiving the remaining bulk case property on that day, the balance case property—consisting of one sealed parcel containing 1.100 kg of opium and another sealed parcel containing 400 grams of opium, both sealed parcels sealed with the seal "L.K."—were temporarily deposited with the Moharrir Head Constable (MHC) of the Police Station for safe custody. On 17.11.2018, these two bulk parcels were deposited in the Centralized Malkhana, Jamalpur, Ludhiana, vide Road Certificate (R.C.) No. 423 dated 17.11.2018. Meanwhile, Jamna alias Guddi was medically examined at the Civil Hospital Ludhiana under the escort of Woman Constable Rajbir Kaur and was thereafter kept at the police station. Hans Raj continued to remain confined in the lock-up of GRP Police Station, Ludhiana. During police remand on 17.11.2018, Jamna alias Guddi made a disclosure statement that on 14.11.2018, Jeeta, who was the brother-in-law of Hans Raj, had

come to her jhuggi (hut) in Delhi and handed over two packets of opium weighing 1,200 grams and 500 grams, directing her to deliver them at Ludhiana Railway Station. He told her that Hans Raj, whom she already knew, would meet her there and that she should hand over the 500-gram packet to him, while the remaining 1200 grams were to be retained for delivery as instructed. In return, Jeeta had promised to pay her ₹3,000. Acting on this agreement, she brought the opium to Ludhiana. Upon reaching the railway station, she met Hans Raj and handed over the 500-gram packet to him as instructed. The financial transaction regarding the opium was to be settled between Jeeta and Hans Raj, while she was only to receive ₹3,000 from Jeeta for transporting the consignment. She further disclosed that she used to communicate with Jeeta on mobile numbers 81465-17730 and 98769-85443, and that her own mobile number was 78696-06095, which had already been recovered during her personal search. On receipt of FSL report it was added in the investigation file. On completion of Investigation Challan was prepared and then it was presented in court.

3. After investigation the Challan for the offence punishable under Section 18 of NDPS Act was presented against the accused persons. Copies of the challan were supplied to the accused free of cost as envisaged under Section 207 Cr.P.C.

4. It is apposite to mention here that during the pendency of the

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case, accused Jamna @ Guddi defaulted in appearance and thereafter vide order dated 4.11.2022 She was declared proclaimed Offender.

5. Finding a sufficient prima-facie evidence and material for the offence punishable under Section 18 of NDPS Act against the accused Hans Raj, he was charge sheeted for the offence punishable under Sections 18 of NDPS Act vide charge sheet dated 4.11.2022 to which he pleaded not guilty and claimed trial. Hence the trial of the case commenced and prosecution was directed to lead the evidence to prove the charge against the accused facing trial.

6. In order to prove its case, the prosecution has examined Naib Singh as PW1, Inspector Gurjinder Singh as PW2, LSC Rajvir Kaur as PW3, SI Suresh Kumar as PW4, ASI Satwinder Singh as PW5 ASI Amrik Singh as PW6, ASI Surinder Kumar as PW7, Inspector Inderjit Singh as PW8, In addition to the oral evidence of these witnesses prosecution has exhibited and proved the following documents in its evidence:-

Sr.No	Description of the document	Exhibit
1.	Consent Statement of accused Jamna	Ex.P1
2.	Consent statement of accused Hans Raj	Ex.P2
3.	Recovery Memos	Ex.P3 and Ex.P4
4.	Ruqa	Ex.P5
5.	FIR	Ex.P6
6.	Form M29	Ex.P7

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7.	Site Plan	Ex.P8
8.	Arrest cum intimation of arrest memos	Ex.P9 & Ex.P10
9.	Personal search memo of both the accused	Ex.P11 & Ex.P12
10.	Memo vide which case property was handed over to MHC	Ex.P13.
11.	Confessional statement of accused Jamna @ Guddi	Ex.PW3/A
12.	Report under Section 57 of NDPS Act	Ex.PW4/A
13.	Application for inventory proceedings	Ex.PW4/B
14.	Order passed by the Magistrate	Ex.PW4/C
15.	Form M29	Ex.PW4/D
16.	Sample seal chit	Ex.PW4/E
17.	Disclosure statement of accused Hans Raj	Ex.PW4/F
18.	Report of FSL	Ex.PW4/G
19.	Endorsement regarding FIR	Ex.PW8/A.
20.	Sample seal chit of Magistrate	Ex.PX
21.	Form M29	Ex.PY
22.	Sample seal chit	Ex.PX/1

7. Thereafter Prosecution evidence was closed by order vide

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order dated 21.1.2026.

8. Statement of the accused Hans Raj under Section 313 of Cr.P.C/ 351 of BNSS was recorded on 21.2.2026. Accused denied the circumstances as well as incriminating evidence of the prosecution against him. The accused has pleaded that he is innocent and has been falsely implicated in the present case. He has never committed any offence. The police has planted a false case and false recovery upon him. Nothing was recovered from him.

9. In defence evidence, accused Hans Raj has not examined any witness nor he has proved any document in defense evidence and he vide his statement recorded in writing closed his defence evidence.

10. This court has heard the submissions made by learned Addl. PP for the State as well as those of the defence counsel. This court has gone through the challan file and has also examined the documents submitted by the prosecution in challan. This court has examined the statements of witnesses examined by the prosecution and scrutinized the same minutely and thoroughly alongwith documentary evidence proved on record by the prosecution.

Argument advanced by the learned Addl. PP for the State.

11. The learned Addl. PP for the State in support of the argument has placed his reliance on the statement of Retired ASI Naib Singh examined as PW1 who has deposed that on 15.11.2018 he was posted at

PS, GRP, Ludhiana. On that day, he along with Police Party headed by SI Gurjinder Singh were present at Platform No.1 Dhandari Side, Railway Station, Ludhiana for checking of bad elements and suspects. During the checking at about 8.00PM. The investigating officer received secret information that Jamna @ Guddi who used to bring intoxicant material from Gawaliar (MP) and used to smuggle the same in Punjab and that day she came to Railway Station Ludhiana alongwith intoxicant material which she had to supply to Hans Raj resident of Sahnewal and Hans Raj is also present at Railway Station, Ludhiana to receive the said consignment and they were sitting at Platform No.2 Lathowal Side and if raid is conducted they could be apprehended along with intoxicant material. The information was found solid and reliable. There-after, the police party along with secret information started a raid and investigating officer instructed secret informer to make a signal towards both the accused. There-after, the police party conducted a raid at Platform No.2 Lathowal side where one lady having a bag in her right hand and one other person were sitting on Iron bench who on seeing the police party tried to escape. The secret informer made a signal towards them. Investigating officer apprehended the male person and LHC Amarjit Kaur apprehended the said lady. Thereafter, investigating officer inquired about the antecedents of accused persons. They got perplexed and kept mum. investigating officer again asked about the whereabouts of accused, on

which the said lady disclosed her name Jamna @ Guddi wife of Raja Ram and the male person disclosed his name as Hans Raj son of Bhajan Ram. Thereafter, On the basis of suspicion, investigating officer tried to join independent witness from the passengers and passersby but none became ready to join investigation. Thereafter investigating officer sent HC Surinder Kumar to bring the printer at the spot. After 15 minutes HC Surinder Kumar came at the spot with printer. Thereafter, investigating officer introduced himself to the accused Jamna @ Guddi by showing his name plate affixed on his uniform and place of posting. There-after investigating officer told the accused that he has suspicion that accused is carrying some contraband in the bag and further told her that search of bag carried by accused is required to be conducted. Thereupon, investigating officer apprised the accused of her legal right to get the search conducted from GO and Magistrate, if she so desired, they may be called at the spot or the accused may be taken to them. The accused Jamna reposed faith upon investigating officer and her consent statement Ex.P1 was recorded and witnessed by deponent and HC Amarjit Kaur and thumb marked by accused. Thereafter, investigating officer introduced himself to the accused Hans Raj by showing his name plate affixed on his uniform with designation and place of posting. There-after investigating officer told the accused that he has suspicion that accused Hans Raj is carrying some contraband with him and further told him that his search is

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required to be conducted. Thereupon, investigating officer apprised the accused of his legal right to get the search conducted in the presence of GO and Magistrate, if he so desires, they may be called at the spot or accused may be taken to them. The accused reposed faith upon investigating officer and his consent statement Ex.P2 was recorded and witnessed by him and LHC Amarjit Kaur and signed by accused. Thereafter, investigating officer conducted search of bag of accused Jamna @ Guddi. On checking the bag opium was recovered. On weighing it came out to be 1200 gms. Investigating officer put the recovered opium into the same bag and further into a plastic box and prepared sealed parcel of the same. Thereafter investigating officer affixed his seal bearing impression 'GS' on the said parcel. Sample seal chit was prepared separately. Form M29 was filled. The case property along with sample seal chit was taken into police possession vide recovery memo Ex.P3 which was witnessed by him, LHC Amarjit Kaur and thumbmarked by accused. Thereafter, investigating officer conducted search of accused Hans Raj during which one polythene was recovered from the right pocket of the jacket having been worn by him. On checking the said polythene opium was recovered. On weighing it came out to be 500 grams opium. The Investigating officer put the recovered opium into the same polythene and further into a plastic box and prepared sealed parcel of the same. Thereafter investigating officer affixed his seal bearing impression GS on the said

parcel. Sample seal chit was prepared separately. Form M29 was filled. Seal after use was handed over to him by investigating officer. The case property along with sample seal chit was taken into police possession vide recovery memo Ex.P4 which was witnessed by him, LHC Amarjit Kaur and signed by accused. Investigating officer sent ruqa Ex.P5 to police station through HC Kulwant Singh for registration of the FIR. FIR Ex.P6 was registered by SI Inderjit Singh and the deponent identified his signatures. Investigating officer also made request in the ruqa to send another investigating officer on the spot. After some time, ASI Suresh Kumar reached on the spot. Investigating officer narrated him the facts of present cases and also produced both the accused and the entire case property alongwith sample seal and form M29 before ASI Suresh Kumar who appended his seal bearing seal impression 'SK' on both the parcels of case property and also attested sample seal chit with his seal bearing seal impression SK and form M29 and also kept the same in his safe custody vide memo Ex.P7. There-after, ASI Suresh Kumar started the investigation of present case. Rough site plan was prepared and proved as Ex.P8. Investigating officer arrested both the accused vide arrest cum intimation memos Ex.P9 and Ex.P10. Personal search of both the accused were conducted vide memos Ex.P11 and Ex.P12. The above memos were witnessed by above said witnesses. investigating officer recorded statements of witnesses. His statement was recorded by

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investigating officer. On return to police station, the accused persons, witnesses and the entire case property along with sample seal chits, two form M29 and jamatalashi were produced before SHO Inspector Inderjit Singh by investigating officer. He inquired from the accused and the witnesses. He also verified the seals of case property and found the same as intact. After his verification, the SHO Inderjit Singh affixed his seal bearing impression IS on the case property parcel and also on sample seal chits and form M29. He kept the case property in his safe custody vide memo Ex.P13. The accused persons were put behind the bars. Investigating officer recorded the statement of SHO. The deponent identified accused Hans Raj present in the court and he could identify accused Jamuna @ Guddi who was declared Proclaimed offender.

12. The learned Addl. PP for the State in support of the argument has further placed his reliance on the statement of Retired Inspector Gurjinder Singh examined as PW2 who has deposed that on 15.11.2018 he was posted at Police Station GRP, Ludhiana. On that day, the deponent along with other police officials were present at Platform No.1 Dhandari Side, Railway Station, Ludhiana for checking of bad elements and suspects. During the checking at about 8.00PM. The deponent received secret information that Jamna @ Guddi who used to bring intoxicant material from Gawaliar (MP) and used to smuggle the same in Punjab and today she came to Railway Station Ludhiana along with intoxicant

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material which she had to supply to Hans Raj resident of Sahnewal and Hans Raj is also present at Railway Station, Ludhiana to receive the said consignment and they are sitting on platform No.2 Ladhawal Side and if raid is conducted they can be apprehended alongwith intoxicant material. The information was found solid and reliable. There-after, the police party along with secret informer started for raid and the deponent instructed secret informer to make a signal towards both the accused. There-after, the police party conducted a raid at Platform No.2 Ladhawal side where one lady having a bag in her right hand and one other person was sitting on iron bench who on seeing the police party tried to escape. The secret informer made a signal towards them. The deponent apprehended the male person and LHC Amarjit Kaur apprehended the said lady. Thereafter, the deponent inquired about the antecedents of both the accused. They got perplexed and kept mum. The deponent again asked about the whereabouts of accused, on which the said lady disclosed her name Jamna @ Guddi wife of Raja Ram and the male person disclosed his name as Hans Raj son of Bhajan Ram. Thereafter, on the basis of suspicion, the deponent tried to join independent witness from the passengers and passersby but none came forward. There-after the deponent sent HC Surinder Kumar to bring the printer on the spot. After 15 minutes HC Surinder Kumar came on the spot with printer. Thereafter, the deponent introduced himself to the accused Jamna @ Guddi by

showing his name plate affixed on his uniform, designation and place of posting. There-after the deponent told the accused that he has suspicion that accused is carrying some contraband in the bag and further told her that search of bag carried by her is required to be conducted. Thereupon, the deponent apprised the accused of her legal right to get her search conducted in the presence of GO and Magistrate, if she so desires, they may called at the spot or She may be taken to them. The accused reposed faith upon him and her consent statement Ex.P1 was recorded and witnessed by ASI Naib and LHC Amarjit Kaur and thumb marked by accused. Thereafter, the deponent introduced himself to the accused Hans Raj by showing his name plate affixed on his uniform and place of posting. There-after the deponent told the accused that he has suspicion that accused Hans Raj is carrying some contraband with him and further told him that his search is required to be conducted. Thereupon, the deponent apprised the accused of his legal right to get the search conducted from GO and Magistrate, if he so desires, they may be called at the spot or the accused may be taken to them. The accused reposed faith upon the deponent and his consent statement Ex.P2 was recorded and witnessed by ASI Naib Singh and HC Amarjit Kaur and signed by accused. Thereafter, the deponent conducted search of bag of accused Jamna @ Guddi. On checking opium was recovered. On weighing it came out to be 1200 gms opium. The deponent put the recovered opium into the

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same bag and further into a plastic box and prepared sealed parcel of the same. Thereafter the deponent affixed his seal bearing impression GS on the said parcel. Sample seal chit was prepared separately. Form M29 was partly filled. The case property along with sample seal chit was taken into police possession vide recovery memo Ex.P3 which was witnessed by ASI Naib, LHC Amarjit Kaur and thumbed marked by accused. Thereafter, the deponent conducted search of accused Hans Raj during which one polythene was recovered from the right pocket of his jacket having been worn by him. On checking the said polythene opium was recovered. On weighing it came out to be 500 grams opium. The deponent put the recovered opium into the same polythene and further it was put into a plastic box and prepared a sealed parcel of the same. Thereafter the deponent affixed his seal bearing impression 'GS' on the said parcel. Sample seal chit was prepared separately. Form M29 was partly filled. Seal after use was handed over to ASI Naib by the deponent. The case property alongwith sample seal chit were taken into police possession vide recovery memo Ex.P4 which was witnessed by ASI Naib Singh, LHC Amarjit Kaur and signed by accused. The deponent sent ruqa Ex.P5 to police station through HC Kulwant Singh for registration of the FIR. FIR Ex.P6 was registered by SI Inderjit Singh and the the deponent identified signatures of SI Inderjit Singh. The deponent also made request in the ruqa to send another the deponent on the spot. After some time, ASI

Suresh Kumar reached at the spot. The deponent narrated him the facts of present case and also produced both the accused and the entire case property alongwith sample seal and form M29 before ASI Suresh Kumar who appended his seal bearing seal impression 'SK' on both the parcels of case property and also attested sample seal chit with his seal bearing seal impression 'SK' and form M29 and also kept in his safe custody vide memo Ex.P7. His statement was recorded by ASI Suresh Kumar. The deponent has seen the case property Ex.MO1 and Ex.MO2. The deponent has identified accused Hans Raj present in the court and he could identify accused Jamuna @ Guddi who was declared proclaimed offender.

13. The learned Addl. PP for the State in support of the argument has placed his reliance on the statement of LSC Rajvir Kaur examined as PW3 who has deposed that on 17.11.2018, she was posted at P.S. GRP, Ludhiana. On that day, the deponent was present with ASI Suresh Kumar at P.S. GRP, Ludhiana regarding investigation of the present case where accused Jamna @ Guddi W/o Raja Ram got recorded her confessional statement Ex. PW3/A before ASI Suresh Kumar which was witnessed by the deponent and accused Jamna put her thumb impression on the same. In her confessional statement, she got recorded that on 14.11.2018, one person namely Jeeta, who is brother in law (jija) of Hans Raj met the deponent at the deponent residence (jhuggi) at Delhi and handed over two packets of Opium weighing 1200 Gm and 500 Gm respectively and

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instructed the deponent to supply the said packets at railway station, Ludhiana where Hans Raj who is well known to the deponent would be present to receive the packet containing 500 Gm Opium and he would pay Rs. 3000/- to the deponent. After that the deponent reached at Ludhiana with the packets and Hans Raj met accused Jamna at railway Station, Ludhiana where the deponent handed over the packet containing 500 Gm Opium to Hans Raj and the deponent had to deliver the remaining 1200 Gm Opium to Jeeta. The money of the said Opium was in between Jeeta and Hans Raj and the deponent had to take Rs. 3000/- from Jeeta. The deponent talked with Jeeta on his mobile No.8146517730 and 9876985443 and his mobile number is 7869606095. The said mobile phone was recovered by the police in personal search of the deponent. Statement of the deponent was recorded by investigating officer. Accused Jamna is PO in this case, however, the deponent could identify her , if she appears before her.

14. The learned Addl. PP for the State in support of further argument has placed his reliance on the statement of SI Suresh Kumar examined as PW4 who has deposed that on 15.11.2018, he was posted as ASI at Police Station GRP, Ludhiana. On that day, investigating officer SI Gurjinder Singh requested to send another investigating officer at the spot for further investigation. Thereafter, the deponent went to the spot and after reaching there, SI Gurjinder Singh handed over to him accused, case

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property and further investigation of the case. Thereafter, the deponent took the case property i.e. one parcel of Opium weighing 1200 Gm and one another parcel of Opium weighing 500 Gm both sealed with seal impression GS, form No.29-M partly filled, sample seal chits and personal search of the accused persons after putting his seal on both the parcels SK and the memo regarding the same is Ex. P7 which was witnessed by ASI Naib and LHC Amarjit Kaur. Investigating Officer SI Gurjinder Singh was relieved from the spot. The deponent had prepared rough site plan Ex. P8. The deponent arrested both the accused Jamna @Guddi and Hans Raj in the present case vide arrest-cum-intimation memos Ex. P9 & Ex. P10 respectively . Personal search memos are Ex. P11 & Ex. P12. The deponent also sent the report U/s 57 of NDPS Act Ex. PW4/A. He recorded the statements of the witnesses. On return to police station, the date changed to 16.11.2018 and the deponent produced the accused, witnesses and the case property along with sample seal chits and jamatalashi before SHO SI Inderjit Singh. He inquired from the accused and the witnesses. He also verified the seals of case property and found the same as intact. After his verification, he affixed his seal bearing impression IS on the case property and also on sample seal chits. He kept the case property in his safe custody vide memo Ex. P13. The accused were sent behind the bars. He recorded the statement of SHO. On the same day, SI Inderjit Singh handed over to him the entire case property

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including sample seal chits for inventory proceedings. He produced the same before the magistrate for seen and for inventory proceedings along with accused. The deponent moved an application Ex. PW4/B. Ld. Judicial Magistrate passed order Ex. PW4/C. Form No.29-M Ex. PW4/D and sample seal chit Ex. PW4/E were prepared by Ld. Judicial Magistrate. After the inventory proceedings, he have deposited two sample parcels weighing 50 Gm each with Nazir, Judicial Malkhana and the remaining two bulk parcels and two sample parcels were deposited with MHC Satwinder Singh, P.S. GRP. On 17.11.2018, the deponent deposited two bulk parcels with Centralized Malkhana. On the same day, he inquired from accused Jamna @ Guddi on which, she got recorded her disclosure statement Ex. PW3/A which was witnessed by LC Rajvir Kaur. He also inquired from accused Hans Raj on which, he also suffered a disclosure statement Ex. PW4/F which was witnessed by HC Surinder Kumar. The deponent got recorded statements of witnesses. FSL report is Ex. PW4/G. After completion of investigation, the Challan was presented by the SHO. The deponent has identified the accused Hans Raj present in the court. Whereas accused Jamna was declared Proclaimed offender in this case otherwise the deponent would have identified her also.

15. The learned Addl. PP for the State in support of the argument has placed his reliance on the statement of ASI Satwinder Singh, No.1221/GRP examined as PW5 who has deposed that on 16.11.2018, he

was posted as MHC at P.S. GRP, Ludhiana. On that day, ASI Suresh Kumar deposited with the deponent two sample parcels weighing each 50 Gm Opium sealed with seal bearing impression LK along with sample seal chits, form No.29-M and one parcel weighing 1 Kg 100 Gm Opium sealed with seal impression LK and one parcel weighing 400 Gm sealed with seal impression LK and articles of personal search. The deponent entered the same in register No.19 and deposited the same in the malkhana. On the same day, ASI Suresh Kumar handed over to the deponent one RC No.419 dated 16.11.2018 after depositing two sample parcels weighing 50 Gm each of Opium to District Nazir. Thereafter on 17.11.2018, the deponent handed over one parcel weighing 1 Kg 100 Gm sealed with seal impression LK and one parcel weighing 400 Gm also sealed with seal impression LK to ASI Suresh Kumar to deposit the same at Centralized Malkhana, Jamalpur. After depositing the same, he handed over the RC NO.423 dated 17.11.2018 to the deponent. Thereafter, on 19.11.2018, the deponent handed over two sample parcels weighing 50 Gm sealed with seal impression LK alongwith sample seal chit and form No.29-M to ASI Amrik Singh and instructed him to get the docket issued from the office of SP, GRP, Ludhiana and after getting the docket issued, for the purpose of depositing the same at FSL, Mohali. According to the testimony of deponent, as per instructions, he got the docket issued from the office of SP, GRP, Ludhiana and thereafter, deposited the same to

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FSL, Mohali and handed over the receipt to the deponent. The deponent entered the same in register No.21. The deponent further deposed that as long as the case property remains with him, neither he nor he allowed any body to tamper with the same. His statement was recorded by the Investigating officer.

16. The learned Addl. PP for the State in support of the argument has placed his reliance on the statement of ASI Amrik Singh, No.1290/GRP examined as PW-6 who has deposed that on 19.11.2018, he was posted at P.S. GRP, Ludhiana. On that day, MHC ASI Satwinder Singh handed over to the deponent two sample parcels weighing 50 Gm each containing Opium sealed with seal impression LK along with sample seal chits and form No.29-M vide road No.428/18 and instructed the deponent to get the docket issued from the office of SP, GRP, Ludhiana and after getting the docket issued for the purpose of depositing the same in FSL at Mohali. According to his instructions, the deponent got the docket issued from the office of SP, GRP, Ludhiana and thereafter, deposited the same to FSL, Mohali. On return to the police station, the deponent handed over the receipt to MHC. He further deposed that as long as the case property remained with the him, neither he nor allowed any body to tamper with the same. Statement of the the deponent was recorded by the investigating officer.

17. The learned Addl. PP for the State in support of the argument

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has placed his reliance on the statement of ASI Surinder Kumar, No.676/GRP examined as PW-7 Who has deposed that on 15.11.2018, the deponent was posted at P.S. GRP, Ludhiana. On that day, the deponent was member of police party under the supervision of investigating officer SI Gurjinder Singh and along with police party was present at platform No.1, railway station, Ludhiana Dhandari side with regard to search and checking of bad elements. It was around 8:00PM, when secret informer came and gave information to investigating officer that Jamna @ Guddi used to bring intoxicant material from Gwalior, Madhya Pradesh side and sell the same in Punjab and today, she came to railway station, Ludhiana for supplying the intoxicant, which she has to supply the same to Hans Raj, who is also present at the railway station. He further disclosed that he has seen them in platform No.2 Laddowal side and further stated that if raid is conducted, then they can be apprehended with intoxicant material. Believing the information as correct, investigating officer made known about the information to all the police party and raided the place disclosed by the secret informer. Investigating officer further gave instructions to secret informer to give the signal towards both the accused. When the police party along with reached platform No.2 Laddowal side, there one lady, who was having in her right hand one thaila and one male was seen sitting on a bench. They on seeing the police party tried to leave the place. Secret informer gave the signal. Then the above said persons were

apprehended with the help of police party. Investigating officer inquired about their whereabouts. The lady disclosed her name as Jamna Devi @ Guddi W/o Raja Ram and the other person disclosed his name as Hans Raj S/o Bhajan Ram. Investigating officer tried to join independent witness, but no one agreed for the same. Then Investigating officer sent him to bring the printer and he came back with the printer after 15 minutes. Investigating officer made the accused known about his name, rank and posting. He further disclosed to the lady that she was having some intoxicant material in the thaila and therefore, search is required. He further apprised the lady about her legal rights of getting the search done from Magistrate or Gazetted officer, who can be called at the spot or she can be taken to them. On which, Jamna @Guddi reposed faith in investigating officer and stated that she has no objection if the search is done by investigating officer. On which, investigating officer prepared consent memo Ex. P1 witnessed by Naib Singh and Amarjit Kaur and thumb marked by Jamna. Thereafter, Investigating officer disclosed to the male that he was having some intoxicant material with him and therefore, search is required. He further apprised him about his legal rights of getting the search done from Magistrate or Gazetted officer, who can be called at the spot or he can be taken to them. On which, Hans Raj reposed faith in investigating officer and stated that he has no objection if the search is done by investigating officer. On which, investigating officer

prepared consent memo Ex. P2 witnessed by Naib Singh and Amarjit Kaur and signed by the accused. Investigating officer conducted the search of the thaila, which was in possession of Jamna @ Guddi from which, Opium was recovered. On weighing the same, it came out to be 1200 Gm, which was taken into police possession by putting the same in a plastic box and making parcel of the same and sealing the same with seal impression GS by the Investigating officer. Form No.29-M was also prepared. Sample seal chit was prepared. The case property was taken into police possession vide memo Ex.P3. On searching the accused Hans Raj, from the right pocket of the jacket, one polythene was recovered and on checking the same, Opium was recovered. On weighing the same, it came out to be 500 Gm, which was taken into police possession by putting the same in a plastic box and making parcel of the same and sealing the same with seal impression GS by the investigating officer. Form No.29-M was also prepared Sample seal chit was prepared. The case property was taken into police possession vide memo Ex. P4. The seal after use was handed over to ASI Naib Singh. Investigating officer scribed ruqa. Then another Investigating officer ASI Suresh Kumar came at the spot and all the facts were brought to his notice by Investigating officer Gurjinder Singh and the case property along with accused were produced before him along with form No.29-M. ASI Suresh Kumar affixed his seal SK on both the parcels and also attested the sample seal chits and form No.29-M. He

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prepared site plan. Accused were arrested after making personal search. During personal search from the possession of Jamna Rs.150 and mobile phone along with sim was recovered and from the possession of Hans Raj Rs.670 and Aadhar card and mobile phone with sim was recovered. The accused as well as case property, personal search articles and police party were produced before SHO. Then on 17.11.2018, accused Hans Raj made a disclosure statement, which was recorded by the investigating officer, which is Ex. PW4/F. which was witnessed by the deponent. The FSL report are Ex. PW4/G and EX.PX. Investigating officer recorded the statement of the deponent. He identified the accused Hans Raj present in the court. Accused Jamna is PO in this case. However, he could identify her if she would have appeared in court at the time of his deposition.

18. The learned Addl. PP for the State in support of the argument has placed his reliance on the statement of Retd. Insp. Inderjit Singh examined as PW-8 who has deposed that on 15.11.2018, he was posted as SHO at P.S. GRP, Ludhiana. On that day, one ruqa was received through HC Kulwant Singh, which was scribed by Investigating officer Gurjinder Singh for the registration of the case. On the basis of the ruqa, he registered FIR Ex. P6 and he identified his signatures on the same. He also made endorsement regarding FIR, which is Ex. PW8/A on which, he identified his signatures and handed over the same to the said Kulwant Singh to be produced before the Investigating officer concerned.

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Thereafter, on 16.11.2018, ASI Suresh Kumar produced before him police officials alongwith accused Jamna and Hans Raj along with one parcel containing 1200 Gm Opium duly sealed with seal impression GS and SK, one parcel containing 500 Gm Opium duly sealed with seal impression GS and SK recovered from the accused respectively, sample seal chits along with forms No.29-M partly filled and articles of personal search. The deponent after verifying the facts from the accused and police party and seen the case property and finding the seals intact, put his seal impression IS on the said parcels and sample seal chits. The case property was kept by him in the safe custody and the accused were put behind the bars. In this regard, fard peshgi case property and accused was prepared, which is Ex. P13 witnessed by Naib Singh, Kulwant Singh and LHC Amarjit Kaur and also signed by ASI Suresh Kumar. On the same day, he handed over the above said case property alongwith sample seal chits and form NO.29-M partly filled and accused to the Investigating officer ASI Suresh Kumar to be produced before Ld. Illaqa Magistrate for the purpose of inventory. The sample seal chit of Ld. Magistrate is Ex. PX and form No.29-M is Ex. PY. The sample seal chits are Ex. PXI on which, the deponent identified his seal impression as well as signatures. After completion of investigation in the present case, challan was prepared and presented in the court by SI Balbir Singh, the deponent identified signatures of SI Balbir Singh. He has not seen the case property. The

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deponent identified the accused present in the court.

19. By placing reliance on the oral evidence of the witnesses from PW1 to PW8 and documentary evidence proved on file as discussed above, the learned Addl. PP for the State has further contended that the statements of witnesses and other evidence of the prosecution led on record of this file during trial proceedings of this case, proves the offence punishable under Section 18 of NDPS Act against the accused beyond any reasonable of shadow of doubt. Accused facing trial is proved guilty for the said offence. He deserves to be held guilty and is liable to be convicted and be sentenced with the maximum sentences as provided under the Law. Hence prayed for accordingly.

Argument advanced by the learned Defence Counsel.

20. On the other hand, learned defence counsel argued that accused is innocent and he has been falsely implicated in this case. He has not committed any offence as claimed by the prosecution. The prosecution has not proved its case beyond reasonable shadow of doubt. There are considerable contradictions and discrepancies in the statements of the witnesses of the prosecution which have made the case of the prosecution doubtful one. The accused is entitled to acquittal on the basis of the benefit of doubt. Further arguing on the point that the prosecution failed in proving its case and strong dent has got created in the prosecution case, thus, after giving the benefit of doubt, accused should be acquitted of the charges leveled against him. So by raising argument

as discussed above, the Ld. defense counsel has ultimately prayed for acquittal of accused by giving him benefit of doubt for want of cogent and convincing prosecution evidence.

21. After going through the entire record available on file, this court is of the considered view that the following points of determination emerge in the case:-

1. Whether on dated 15.11.2018 the accused Hans Raj was found in conscious Possession 500 grams opium, within the area falling under P.S. GRP, Ludhiana, without any valid permit or license and thereby committed offence punishable under Section 18 of NDPS Act ?

2. Whether the evidence led on record by the prosecution is sufficient to prove the offence against the accused beyond reasonable shadow of doubt?

Finding of the Court:-

22. After giving thoughtful consideration to the rival submissions and having perused and gone through the entire prosecution evidence in this case, this court is of the considered view that burden to prove guilt of the accused to hilt is stationary on the prosecution and it never shifts. The prosecution is required to prove the guilt of the accused conclusively and affirmatively. Accused is required to point out dents in the investigation and also to point out discrepancies occurring in the investigation and then contradictions occurring in the prosecution witnesses so as to create reasonable doubt about in the prosecution case. It is cardinal principle of criminal law that the prosecution has to prove its case beyond reasonable

shadow of doubt whereas the accused are not only bound to remain silent but also to show dents, contradictions and discrepancies in the investigation of the case, so as to create considerable doubt in the same.

23. Applying this principle of the criminal law in this case, this court is of the considered view that the prosecution has failed to prove its case on the following grounds and reasons:-

24. In this case allegedly the recovery was effected on the basis of secret information stated to have been received by SI Gurjinder Singh First investigation officer of this case. But compliance of section 42 of NDPS Act has not been made by the investigation officer. Before advertng to the facts of the instant case it is essential to discuss as to what Section 42 of NDPS Act and the said section is reproduced as under:-

Section 42 of NDPS Act:- Power of entry, search, seizure and arrest without warrant or authorization.—(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 para - military 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 personal

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 V A 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 V A 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 authorization 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.

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.

25. The secret information was received by Inspector Gurjinder Singh in this case on 15.11.2018. In compliance of the legal provision as discussed above it was mandatory for him to record that information in writing and then to send the same to the official superior to him for taking further necessary action as per law. Inspector Gurjinder Singh has been examined by the prosecution as PW2 and he while stepping into the witness box in his cross examination has stated, "I am well aware of the

provision of Section 42 of and Section 50 of the NDPS Act. I have investigating number of cases under the NDPS Act”. He further admitted by stating, “I did not send ruqa immediately after receiving the secret information, I did not assign any reason for not sending the ruqa immediately after receiving the information. The secret information was not recorded separately. I did not send any report under Section 42 of NDPS Act in writing to the higher official. I did not comply with the provisions of Section 42 of NDPS Act”. In the light of this admission, of the investigation officer who conducted the initial investigation of this case, it is clear that the case of the prosecution is lacking for compliance of Section 42 of NDPS Act. Therefore, on account of this discrepancy, the case of the prosecution has shattered. This is the most serious dent in the investigation of the case which goes to the root of defective investigation. In this regard the view of this court is found supported by a Judgment of Hon’ble Division Bench of Hon’ble Punjab and Haryana High Court in a case reported in 2006(3) RCR (Criminal) Page 16 (DB) titled as Bikkar Singh Vs. State of Punjab.

26. As per the prosecution case the alleged recovery of the opium was effected from the right pocket of the jacket that was worn by the accused Hans Raj at the time of alleged recovery. It means it is a case of search of the person of accused and in such a case the strict and proper compliance of Section 50 of NDPS Act was mandatory for the

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investigating officer. This compliance is not merely confined to the papers which were prepared during the course of investigation but the same must be proved in evidence that it was duly complied as per the requirement of the law. Although, the investigating officer in this case has stated that he had apprised to the accused about his legal right for his search either before the gazetted officer or before the magistrate. To that effect consent statement of accused Hans Raj was recorded in investigation and that consent statement of the accused has been exhibited as Ex.P2 in trial of this case. In this regard, the statement of the Investigating Officer SI Gurjinder Singh examined as PW2 is highly essential to be scrutinized as to what he has deposed proving the compliance of Section 50 of NDPS Act. Although, in his examination in chief the investigating officer has deposed that before conducting the search of the person of accused Hans Raj he had told him that he has suspicion on him of carrying some contraband and further told him that he wanted to search him and he apprised the accused Hans Raj about his legal right to get the search conducted from GO and Magistrate, if he so desire. He further apprised the accused that they may be called at the spot or accused may be taken before them. But the accused reposed faith in the Investigating officer and offered for his search by the investigating officer himself. As such, the search of the person was conducted. When this part of the statement of investigating officer was subjected to cross examination, then the

contradiction arose where the investigating officer stated, “I had offered the accused for their search either by me, or by GO of police or Magistrate then they can be called at the spot”. This contradiction has diluted the investigation of this case with regard to compliance of Section 50 of NDPS Act. This view of this court is found supported by a Judgment of Hon’ble Supreme Court of India in a case reported in 2014(2) Criminal Court Cases Page 077(SC) titled Parmanand vs State of Rajasthan . The investigating officer cannot give the offer to the accused for the search of his person by saying word GO instead of the word Gazetted Officer and if it is so then it is not a strict compliance to the mandatory provision of NDPS Act and it is a case of parcel offer which makes a good ground for acquittal of the accused. So similarly, in this case also the investigating officer has not complied with the provision of Section 50 of NDPS Act, truly and strictly and due to that reason the case of the prosecution stands diluted and the trial stands vitiated. Even partial compliance of Section 50 of NDPS Act gives acquittal to the accused.

27. Before arriving at a conclusion or finding on this aspect of the case of the prosecution, this court is of considered view that before adverting to the factual matrix of this case in this regard, it is essential to examine what section 50 of NDPS Act speaks about. Section 50 of NDPS Act is reproduced as under:-

Section 50 of NDPS Act:- Conditions under which search of

persons shall be conducted:-

Section 50 in The Narcotic Drugs And Psychotropic Substances Act, 1985

(1) When any officer duly authorized under section 42 is about to search any person under the provisions of section 41, section 42 or section 43, he shall, if such person so requires, take such person without unnecessary delay to the nearest Gazette Officer of any of the departments mentioned in section 42 or to the nearest Magistrate.

(2) If such requisition is made, the officer may detain the person until he can bring him before the Gazetted Officer or the Magistrate referred to in subsection (1).

(3) The Gazette Officer or the Magistrate before whom any such person is brought shall, if he sees no reasonable ground for search, forthwith discharge the person but otherwise shall direct that search be made.

(4) No female shall be searched by anyone excepting a female.

(5) When an officer duly authorized under section 42 has reason to believe that it is not possible to take the person to be searched to the nearest Gazetted Officer or Magistrate without the possibility of the person to be searched parting with possession of any narcotic drug or psychotropic substance, or controlled substance or article or document, he may, instead of taking such person to the nearest Gazette Officer or Magistrate, proceed to search the person as

provided under section 100 of the Code of Criminal Procedure, 1973 (2 of 1974).

(6) After a search is conducted under sub-section 5 of Section 50, the officer shall record the reasons for such belief which necessitated such search and within seventy-two hours send a copy thereof to his immediate official superior.

28. Now in the light of this legal provision it is to be seen and to examine that whether the investigation officer has properly complied with the conditions as envisaged in section 50 of NDPS Act or not. This Court is of considered opinion that perusal of the file of this case shows that the investigating officer has not strictly and properly complied with the provisions of Section 50 of the NDPS Act before or at the time of conducting search of the person of the accused Hans Raj. The sentencing provisions of NDPS Act are so stringent and rigorous that the accused has no safe guard against the false implication in any NDPS Act case and the settled law is that more the stringent provisions are there, more is the stricter compliance of provisions of Section 50 of NDPS Act is required from the investigation agency.

29. More over Section 50 in itself is encompassed with 6 components. The compliance of sub section 5 of section 50 of NDPS Act is also mandatory which provides that when an officer duly authorized under section 42 has reasons to believe that it is not possible to take the person to be searched to the nearest Gazetted Officer or Magistrate

without the possibility of the person to be searched parting with possession of any narcotic drug or psychotropic substance, or controlled substance or article or document, he may, instead of taking such person to the nearest Gazetted Officer to search the person as provided under section 100 of the Code of Criminal Procedure. Now analyzing the case in hand there is no substance brought on record that Investigation officer complied with sub-section 5 of Section 50 NDPS Act also which has also caused undue prejudice to the accused and thereby causing serious dent in the prosecution case. In the present case, the alleged recovery has been effected on platform no.2 of the Railway Station, Ludhiana and the investigating officer as well as the recovery witnesses in their respective statements have admitted that the DSP being a gazetted officer has his office at the Railway Station itself. Therefore, there was no reason for the investigating officer that the accused could not be produced before the gazetted officer. All these facts created grave suspicion in the credibility of the investigation and presumption can be drawn that the investigating officer has not conducted the investigation in consonance with the strict provisions of the NDPS Act and the prosecution case due to that reason is bound to fail.

30. There is no substance on file that after the search is conducted in consonance with the provision of sub-section 6 of NDPS Act, the officer shall record the reasons for such belief which necessitated

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such search and within seventy two hours send a copy thereof to his immediate official superior. In this case there is no evidence on behalf of the prosecution that the search officer complied with the provisions of sub section 6 of Section 50 of NDPS Act showing that immediate search was an imminent necessity for him and there was apprehension that time to be taken in producing the accused before a gazetted Officer, it would have caused the disappearance of the contraband by accused or that he might have parted away with the same. This non compliance makes the recovery illegal being effected without complying with the provisions of section 50 of NDPS Act. As contended by Ld. Additional PP for the state that ruqa was sent to SHO of Police Station and then copy of FIR was then sent Illaqa Magistrate but this court disagrees with the argument advanced by Ld. Additional PP for the state and reason for the same is that in Ruqa there is not an iota of word giving such justification by the Investigation officer that necessitated search of accused by him, no reasons have been assigned by the Investigation officer that why such intimation was not forwarded by him even subsequently to his immediate superior officers what was the reason behind him that he had to dispense with the producing the accused before a Magistrate or before the gazetted officer and the search was required to be conducted by him.

31. In view of the foregoing discussion, this court is of the firm opinion that the object with which right under Section 50 of the NDPS

Act, as a safeguard, has been conferred on the suspect / accused , viz. to check the misuse of power, to avoid harm and implicate innocent persons and to minimize the allegations of planting or foisting of false cases by the law enforcement agencies, it would be imperative on the part of the empowered officer to apprise the person intended to be searched of his right to be searched before a gazetted officer or a Magistrate and nothing less than that. There is no hesitation in holding that in so far as the obligation of the authorized officer under sub-section (1) of Section 50 of the NDPS Act is concerned, it is mandatory and it requires a strict compliance. Failure to comply with the provision would render the recovery of the illicit article from suspect and would vitiate the conviction if the same is recorded only on the basis of the recovery of the illicit article from the person of the accused during such search. It is the duty of the courts to get at the real intention of the Legislature by carefully attending to the whole scope of the provision to be construed. "The key to the opening of every law is the reason and spirit of the law, it is the animus imponentis, the intention of the law maker expressed in the law itself, taken as a whole." We are of the opinion that the concept of "substantial compliance" with the requirement of Section 50 of the NDPS Act introduced and read into the mandate of the said Section in **Joseph Fernandez (supra)** and **Prabha Shankar Dubey (supra)** is neither borne out from the language of sub-section (1) of Section 50 nor it is in consonance

with the dictum laid down in **Baldev Singh's case (supra)**. Needless to add that the question whether or not the procedure prescribed has been followed and the requirement of Section 50 had been met, is a matter of trial. It would neither be possible nor feasible to lay down any absolute formula in that behalf. We also feel that though Section 50 gives an option to the empowered officer to take such person (suspect) either before the nearest gazetted officer or the Magistrate but in order to impart authenticity, transparency and creditworthiness to the entire proceedings, in the first instance, an endeavour should be made to produce the suspect before the nearest Magistrate, who enjoys more confidence of the common man compared to any other officer. It would not only add legitimacy to the search proceedings, it may verily strengthen the prosecution case as well. Therefore in considered opinion of this court, the investigation officer in the instant case has miserably failed to comply with provision of section 50 of NDPS Act strictly as per law. This view is supported by judgment of the Hon'ble Supreme Court of India reported **2010(3) ACJ 619 in Vijaysinh Chandubha Jadeja v/s State of Gujrat** whereby it was held that it is Imperative on the part of the empowered officer to apprise the person intended to be searched of his right and to be searched before a Gazetted officer or a Magistrate. So far as the obligation of the authorized officer u/s 50 (1) of the Act is concerned, It is mandatory and requires a Strict Compliance- Failure to comply with

the provisions would render the recovery illicit article suspect and vitiate the conviction if the same is recorded only basis of recovery of illicit article from the person of accused during such search. Thereafter the suspect may or may not choose to exercise the right provided to him under the said provisions. Hence the accused deserves acquittal in this case.

32. The another dent in the investigation is that the recovery memo Ex.P4 has been signed by the investigating officer SI Gurjinder Singh. Whereas the body of the recovery memo shows that the parcel was sealed by him with his seal bearing impression SK whereas the seal impression of the seal of investigating officer SI Gurjinder Singh was GS. If the sealing process was done by SI Gurjinder Singh then in the recovery memo Ex.P4 the version should have come that the parcel was sealed by SI Gurjinder Singh with his seal bearing impression GS. Learned Addl. PP for the State has stated that this may be due to typographical mistake but this contention cannot be accepted. By the time recovery memo was prepared ASI Suresh Kumar had not reached at the spot and the seal bearing impression SK could not have been mentioned in the recovery memo but it finds mention therein. The investigating officer at no point of time has made any effort to get this typographical mistake correct. But however, the recovery memo has become a suspected document and it cannot be relied upon to hold the accused guilty.

33. There is no compliance of section 57 of NDPS Act it is a serious dent in the credibility of investigation. Although the provision of Section 57 of NDPS Act is not mandatory and is directory but investigation cannot ignore the same out rightly. Although the sending of ruqa to the SHO of Police Station or FIR and its copies were sent to Superior Officers but it does not constitute compliance of section 57 of NDPS Act because by that time recovery is not effected. The view of the court is found fortified by a Judgment of Hon'ble Supreme Court of India in a case reported in 2016 (1) Criminal Court Cases Page 331(Supreme Court of India), titled as Gurbax Singh Vs. State of Haryana, 2024(4) Criminal Court Cases Page 312 (Punjab and Haryana High Court) (Hon'ble Division Bench). No explanation has been tendered by Investigation officer that as to what prevented him from complying with the provisions of section 57 of NDPS Act. Had any plausible explanation been furnished by him in that regard, the matter would have been considered in the light thereof. In the absence of any explanation what to speak plausible the court cannot coin any of its own to fit in with the prosecution case accused deserve acquittal. Supported by Judgment of Hon'ble High Court of Punjab and Haryana in a case reported in 2020(1) Criminal Court Cases Page 562 (Punjab and Haryana High Court).

34. There are material contradictions in the statement of the investigating officers of this case and that of the recovery witness ASI

Surinder Kumar examined as PW7 in this case. PW7 SI Surinder Kumar has deposed that both accused Jamna Devi and Hans Raj were produced before DSP Balram Rana at about 2/3:00PM on 15.11.2018. DSP Balram Rana had also affixed his seal on the case property in the police station. This new story has been introduced by the recovery witness for the first time. Both the investigating officers have deposed nothing about the same in their entire testimony /statement nor any such document has been produced and proved on record which is bearing the seal of DSP Balram Rana. This contradiction in the statement of recovery witness ASI Surinder Kumar has totally diluted and smashed the credibility of the investigation of this case. Moreover, it is also important to discuss here that the alleged recovery has been effected at Platform no.2 whereas the material prosecution witnesses, recovery witness ASI Surinder Kumar examined as PW8 and ASI Naib being another recovery witness deposed as PW1 deposed about the recovery having been effected at platform no.1 and this fact further dilutes the credibility of the prosecution when the witnesses deposed that the entire writing work was done at platform no.1 whereas as the recovery was allegedly effected at platform no.2. These material contradictions dilute the credibility of the prosecution and thus the accused deserves acquittal in this case.

35. Admittedly no photography, videography was conducted at the spot. Although it was not mandatory for the investigation officer to

record the same but had it been done so then it would have strengthened the credibility of the investigation so far as transparency of the same. Admittedly mobile phones were available with the Police party and then it was very easy for them to record the recovery through videography but nothing was done by the investigation officer and no reasons have been explained in this regard by the prosecution. It also casts serious doubt in the credibility of the investigation.

36. The recovered articles besides the case property i.e. Thaila from which the recovery was effected has not been produced in court being part of the case property. Where that has gone nothing has been explained about the same by the prosecution. The mobile Phone consisting SIM Card bearing number 78696-06095 stated to have been recovered from personal search of accused Jamna were not produced in trial of the case and no reasons have been given to justify the non-production of the same and hence the prosecution case stood diluted on this ground also. Similar is the position with regard to the case of Hans Raj as is clear from Personal Search Memo proved on file as EXP12.

37. Although disclosure statement of Accused Jamna was recorded and the same has been proved on file as EXPW3/A but no further investigation was conducted thereon. It also creates substantial doubt in the credibility of the investigation and benefit of the same has to be granted in favour of accused.

38. The seal used by the Investigating Officers on the parcel of the case property till it was produced before the Magistrate, remained in the possession and hands of the police officials who were part of the investigating team and the possibility of tampering or change in the case property cannot be ruled out. Admittedly, in this case the seal used by the investigating officer at the spot bearing impression GS after its use was handed over to ASI Naib. ASI Naib examined as PW1 in his cross examination has deposed that the seal of the IO was returned to the IO after a week. The seal remained in the custody of the police official before the inventory order under Section 52-A of the NDPS Act was passed by the learned Illaqa Magistrate. It also creates doubt in the credibility in the investigation that possibility of tempering with the seals cannot be ruled out. In this regard, the view of this court is fortified by the judgment of Hon'ble Punjab & Haryana High Court in a case reported in 2005 (2) Criminal Court Cases, page 29(P&H) whereby it was observed and held that till the case property is dispatched to the FSL, seal should not be available to the prosecution agency and in the absence of such safe guard, the possibility of seal being tampered with and substance being changed, cannot be ruled out.

39. Moreover, while conducting the proceedings under Section 52A of NDPS Act, by the Duty Magistrate on 16.11.2018, no photography / videography of those proceedings was done which is also violation of

Section 52 A of NDPS Act and it also dilutes the credibility of the prosecution. No satisfactory and justifiable reason has been brought on record by the prosecution that as to why it was not done so. It shows that proceedings under Section 52 A of NDPS Act. Section 52A(2) of the Act mandates that seized substances or vehicles be photographed in the presence of a Magistrate, who also certifies the inventory and samples. These, along with certified photographs, serve as primary evidence in court, and failure to follow this process can severely weaken the prosecution's case.

40. The alleged recovery is stated to have been effected admittedly at a thorough place i.e. railway station, Ludhiana which remains thickly crowded 24 hours, but no independent witness was joined by the investigating officer at the time of recovery. Even there is no evidence that the investigating officer made efforts to join any independent witness from the public in the investigation. Accordingly, the case of the prosecution lacks independent corroboration. Although, law is that the statements of the officials witnesses cannot be discarded or thrown away but if the totality of the facts and circumstances brought on record show and cast doubt in the integrity of the investigation than it is imperative on part of the investigating officer to join independent witness in order to render fair and unbiased investigation. In the absence of the independent corroboration, the case of the prosecution becomes doubtful.

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In this regard, the view of the court is found supported by a judgment of the Hon'ble Punjab & Haryana High Court reported in 2020(1) RCR (Criminal) Page 302(P&H) titled as Jarnail Singh @ Jaila vs State of Punjab. Wherein it was so held that no independent witness joined at the place and time of alleged recovery and through out investigation despite the fact that there was no dearth shortage of private witness at the spot as public was passing. Prosecution case fails beyond reasonable shadow of doubt. Accused acquitted.

41. The DDR entries of departure of the police party from the police station and arrival of the police party after investigation from the spot have not been proved by the prosecution in evidence. In the absence of this evidence, it shows that the entire documentary work of the investigation was done while sitting in the police station itself.

42. Register no.19 has not been produced into evidence by the prosecution which has to show the deposit of the case property in the police malkhanna and thereafter taking out the same for production of the same before the court of illaqa/Duty Magistrate for the purpose of inventory order and thereafter depositing the sample parcel in the police station for sending the same for the purpose of analysis. The entries made in register no.19 with regard to taking out of the sample parcel and handing over the same to the police official for the purpose of delivering the same to the FSL and then the entry has not been proved regarding the

receipt that the police constable received from the FSL after depositing the sample parcel there at. All these entries are very material to establish complete link evidence of the investigation which the police is otherwise bound to make in register no.19. The absence of register no.19 in prosecution evidence makes the case of the prosecution doubtful with regard to the link evidence. In the absence of register no.19 in the trial, despite availability of the same with the investigating agency, it draws the attention of the court to draw adverse inference against the prosecution.

43. The investigating agency has not made efforts to verify the source of the recovery from where it was brought by the accused. It also creates serious dent in the prosecution case. In this regard, the view of the court is found supported by judgment of Hon'ble Punjab & Haryana High Court, reported in 2020(1), Criminal Court Cases, Page 562(P&H) titled as Jarnail Singh @ Jaila vs State of Punjab.

44. On the basis of the discussion as made above, this court has come to the considered conclusion that the prosecution has miserably failed to prove its case beyond reasonable shadow of doubt. Thus, points no.1 and 2 for determination as framed above are decided against the prosecution but in favour of the accused. Accused Hans Raj is hereby acquitted of the charges framed against him for the offence punishable under Section 18 of NDPS Act by giving them benefit of doubt for want of cogent, reliable and convincing prosecution evidence.

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45. Bail bonds and surety bonds furnished by the accused Hans Raj is kept intact in compliance of section 481 of BNS for the appeal period. It is further directed that in case the appeal is filed before the Hon'ble Higher Court and the accused will be bound to comply with the directions of the Hon'ble Higher/appellate court and he will be bound to appear before the learned Appellate Court as and when directed. In case, the State fails to file appeal within the time stipulated for filing appeal then the bonds which are kept intact here, after the period of 90 days, will stand discharged ipso-facto without any fresh order on the same.

46. It is apposite to mention here that accused Jamna @ Guddi is already declared PO in this case, proceedings of this case for the time being are ordered to be consigned sine die qua her and those will be revived as and when either she is arrested by the police and produced in court or she herself surrenders in the court.

Pronounced in open Court
on 8th July, 2026

(Ranjeev Kumar Vishisht),
Judge, Special Court.
Ludhiana (UID No.PB-0179).

Note: Certified that all the pages of this judgment are signed by me which have been dictated and typed directly on the computer.
Deepak Spal,SG-I

(Ranjeev Kumar Vishisht),
Judge, Special Court.
Ludhiana (UID No.PB-0179).
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