

STATE VERSUS AAKASH AND OTHERS

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IN THE COURT OF DANISH GUPTA, ADDITIONAL SESSIONS
JUDGE, YAMUNA NAGAR AT JAGADHRI. (UID NO.HR0256)

C.N.R. No. HRYN01-003372-2021.

HRYN010033722021

CIS No. NDPS-51-2021.

Date of Institution: 16.06.2021.

Date of Decision: 21.07.2026.



State	Versus	1.	Aakash alias Kaash son of Amarjeet, resident of Chhota Baans, Deha Basti, Radaur, Police Station Radaur, District Yamuna Nagar.
		2.	Vijay Kumar son of Hans Raj alias Hansa, resident of Chhota Baans, Deha Basti, Radaur, Police Station Radaur, District Yamuna Nagar
		3.	Bhim son of Om Parkash, resident of Chhota Baans, Radaur, Police Station Radaur, District Yamuna Nagar

.....Accused Persons.

FIR No. 57 dated 07.04.2021

Under Sections 21 and 29 of The Narcotic Drugs
and Psychotropic Substances Act, 1985.

Police Station: Radaur.

Argued by:

Shri Kapil Dev, Learned Public Prosecutor for the State.

Accused Aakash alias Kaash already confessed.

Accused Vijay Kumar and Bhim on bail represented by

Shri S.S. Nehra, Advocate.

JUDGMENT

The above-named accused persons were forwarded by the
S.H.O., Police Station Radaur, District Yamuna Nagar, for facing trial for
the commission of offences punishable under Sections 21 and 29 of the

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Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter to be referred as the Act).

Facts of the prosecution case

2. The case of the prosecution, in brief, is that on 07.04.2021, S.I. Surinder Kumar along with E.A.S.I. Birbal, H.C. Amit, L/E.H.C. Saraswati, C. Sandeep and S.P.O. Sukhwinder Singh was patrolling in the Government vehicle bearing registration no. HR-02AL-1400 near J.M.I.T. Engineering College. In the meantime, secret information was received that the accused Aakash, who was involved in the business of selling heroin, could be apprehended red-handed. Finding the information to be credible, S.I. Surinder Kumar disclosed the same to the other police officials, prepared the notice under Section 42 of the Act and sent the same to D.S.P. Rajat Gulia through C. Sandeep Kumar. Rukka was sent to the Police Station through L/E.H.C. Saraswati for the registration of an F.I.R. On the receipt of information, S.I. Raj Kumar reached the spot, where he met the aforesaid police officials. S.I. Surinder Kumar produced the copy of notice under Section 42 of the Act and copy of Rukka before S.I. Raj Kumar, and disclosed about the secret information to him. S.I. Raj Kumar made efforts to join the passersby but they expressed their inability. The personal search of the police officials was conducted, but except for the daily use articles, nothing was recovered from their possession. On the signal of the secret informer, the accused Aakash was apprehended by the police party. The notice under Section 50 of the Act

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was served upon the accused Aakash, who expressed his willingness to get the search conducted by a Gazetted Officer, after which, the consent memo was prepared. Dr. Anil Saini, S.D.O., Animal Husbandry reached the spot and he disclosed his identity to the accused Aakash, made inquiries from the accused Aakash, perused the notice under Section 50 of the Act as well as the consent memo, and directed S.I. Raj Kumar to search the accused Aakash. On searching the accused Aakash, 6 grams heroin was recovered from his pocket. The case property was sealed and taken into police custody. The accused Aakash was arrested and the notice under Section 55 of the Act was prepared.

The accused Aakash along with the sealed case property, sample seal, witnesses and the notice under Section 55 of the Act was produced before the S.H.O., Police Station Radaur. S.H.O., Police Station Radaur made further inquiries from the accused Aakash and the witnesses. S.H.O., Police Station Radaur affixed his seal on the case property and sample seal, attested the case property and the sample seal, and perused the notice under Section 55 of the Act. The case property was deposited in Malkhana. The case property and the accused Aakash were produced before the Area Magistrate, who passed an order certifying the inventory to be correct. After the completion of the usual formalities of the investigation, the final report under Section 173 Cr.P.C. for the commission of offence punishable under Section 21 of the Act was presented in the Court for the trial of the accused Aakash. It was stated

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that supplementary challan would be presented after the arrest of the accused Vijay, who was named by the accused Aakash in his disclosure statement.

The accused Vijay and Bhim were also arrested in the present case. After the completion of the investigation, the supplementary challans qua the accused Vijay and Bhim were presented in the Court for their trial.

Compliance of Section 207 Cr.P.C.

3. Copies of challan and other documents were supplied to the accused persons free of costs as envisaged under Section 207 of Cr.P.C.

Charge-sheet

4. On finding a prima facie case for the commission of offences punishable under Sections 21 (b) and 29 of the Act, the accused Aakash was charge-sheeted for the commission of offence punishable under Section 21 (b) of the Act, whereas the accused Vijay and Bhim were charge-sheeted for the commission of offence punishable under Section 29 of the Act, vide order dated 09.11.2023, to which they did not plead guilty and claimed trial.

Prosecution Evidence

5. In support of its case, the prosecution examined the following witnesses:-

PW1	Rajat Gulia, Deputy Superintendent of Police, Ambala Cantt.
PW2	A.S.I. Harjeet Singh

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PW3	C. Sandeep
PW4	S.I. (Retired) Surender
PW5	Dr. Anil Saini, S.D.O. (Retired) Animal Husbandry and Dairy (AH&D, Radaur)
PW6	Harish Kumar
PW7	S.I. Birbal Singh
PW8	A.S.I. Vikas
PW9	Inspector Sukhvinder
PW10	Anil Kumar, Senior Scientific Officer, N.D.P.S., R.F.S.L., Hissar
PW11	Deepika Vyas, Ahlmad
PW12	Inspector (Retired) Raj Kumar
PW13	Inspector (Retired) Krishan Lal
PW14	Inspector (Retired) Raj Kumar
PW15	H.C. Pankaj
PW16	S.I. Bhoop Singh

The prosecution proved/tendered the following documents in evidence:-

Ex. P1	Notice under Section 42 of the Act
Ex. P2	F.I.R.
Ex. P3	Endorsement
Ex. P4	Police Information
Ex. P5	Notice under Section 50 of the Act
Ex. P6	Consent memo
Ex. P7 and Ex. P8	Jamatalashi Memos
Ex. P9	Identification Memo
Ex. P10	Seizure Memo
Ex. P11 to Ex. P22	Photographs

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Ex. P23	Notice under Section 52 of the Act
Ex. P24	Arrest memo
Ex. P25	Disclosure statement of the accused Aakash
Ex. P26	Report under Section 57 of the Act
Ex. P27	Notice under Section 55 of the Act
Ex. P28	Report
Ex. P29 and Ex. P34	Final Reports under Section 173 Cr.P.C.
Ex. P30	Inventory and Order dated 08.04.2021
Ex. P31	Site-plan
Ex. P32	Application
Ex. P33	Disclosure statement of the accused Vijay
Ex. P35	Disclosure statement of the accused Bhim
Ex. PX	F.S.L. Report

PWs H.C. Amit Kumar and H.C. Rajinder were given up by the learned Public Prosecutor for the State. Thereafter, the learned Public Prosecutor for the State closed the prosecution evidence vide statement dated 17.07.2026.

6. Before proceeding further, it would be just and proper to examine the statements of the following prosecution witnesses in brief:-

PW1 Rajat Gulia, Deputy Superintendent of Police, Ambala

Cantt.: He proved notice under Section 42 of the Act Ex. P1.

PW2 A.S.I. Harjeet Singh: He proved F.I.R. Ex. P2 and endorsement Ex. P3. He also tendered affidavit Ex. PW2/A in evidence deposing regarding the deposit of case property in Malkhana.

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PW3 C. Sandeep: He deposed that on 07.04.2021, while he along with other police officials was patrolling in a Government Vehicle, S.I. Surinder Kumar received secret information that the accused Aakash, who dealt in the sale and purchase of narcotic substance, could be apprehended. He produced the notice under Section 42 of the Act Ex. P1 before D.S.P. Rajat Gulia, who saw the same and handed over the same to him. On 04.05.2021, he deposited the sealed case property in F.S.L., Madhuban.

PW4 S.I. (Retired) Surender: He deposed that on 07.04.2021, he along with C. Sandeep, E.A.S.I Birbal, H.C. Amit and L/E.H.C. Saraswati was patrolling in the Government vehicle bearing registration no. HR-02AL-1400, which was driven by S.P.O. Sukhvinder. When they reached near J.M.I.T. Engineering College, Radaur, he received secret information that the accused Aakash, who dealt in the sale and purchase of narcotic substance, could be apprehended red-handed. Thereafter, he sent the notice under Section 42 of the Act Ex. P1 to D.S.P. Rajat Gulia, and Rukka Ex. P4 to Police Station. On his request, S.I. Raj Kumar reached the spot and he handed over the copy of notice under Section 42 of the Act and copy of Rukka to him.

PW5 Dr. Anil Saini, S.D.O. (Retired) Animal Husbandry and Dairy (AH&D, Radaur): He deposed regarding the recovery of contraband from the accused Aakash. He proved jamatalashi memos Ex. P7 and Ex. P8, identification memo Ex. P9 and seizure memo Ex. P10.

PW6 Harsh Kumar: He proved photographs Ex. P11 to Ex. P22.

PW7 S.I. Birbal Singh: He deposed that on 07.04.2021 at about 06:50 p.m., while he along with the other police officials was patrolling near J.M.I.T. Engineering College, Radaur, S.I. Surender Kumar received secret information that the accused Aakash could be apprehended along with the narcotic substance. S.I. Surender Kumar prepared the notice under Section 42 of the Act and sent Rukka to Police Station. On the request of S.I. Surender Kumar, S.I. Raj Kumar reached the spot and conducted the personal search of the other police officials. He conducted the personal search of S.I. Raj Kumar. A raiding party was constituted and the accused Aakash was apprehended at the spot. S.I. Raj Kumar prepared the notice under Section 50 of the Act Ex. P5 and consent memo Ex. P6. Anil Saini, S.D.O., Animal Husbandry, Radaur reached the spot and saw the notice under Section 50 of the Act and consent memo. S.I. Raj Kumar

conducted the personal search of the accused Aakash and heroin weighing 6 grams was recovered from him. He proved jamatalashi memos Ex. P7 and Ex. P8, identification memo Ex. P9, seizure memo Ex. P10, notice under Section 52 of the Act Ex. P23, arrest memo Ex. P24 and disclosure statement of the accused Aakash Ex. P25.

PW8 A.S.I. Vikas: He identified the signature of Shri Kamal Deep Goyal, Superintendent of Police, Yamuna Nagar on the report under Section 57 of the Act Ex. P26.

PW9 Inspector Sukhvinder: He deposed that on 05.06.2021, after the completion of the investigation, he prepared the final report under Section 173 Cr.P.C. Ex. P29. He proved notice under Section 55 of the Act Ex. P27 and report Ex. P28.

PW10 Anil Kumar, Senior Scientific Officer, N.D.P.S., R.F.S.L., Hissar: He proved Report Ex. PX.

PW11 Deepika Vyas, Ahlmad: She identified the signature of Shri Sher Singh, the then learned Judicial Magistrate First Class, Jagadhri on order Ex. P30.

PW12 Inspector (Retired) Raj Kumar: He deposed that on 07.04.2021 at about 07:25 p.m., he reached near J.M.I.T. College, Radaur for further investigation of the present case. He along with the other police officials apprehended the

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accused Aakash at the spot. He conducted the personal search of the accused Aakash in the presence of Dr. Anil Saini, S.D.O., Animal Husbandry, Radaur, and recovered heroin weighing 6 grams from him. He proved notice under Section 50 of the Act Ex. P5, consent memo Ex. P6, jamatalashi memo Ex. P8, identification memo Ex. P9, seizure memo Ex. P10, notice under Section 52 of the Act Ex. P23, arrest memo Ex. P24, disclosure statement of the accused Aakash Ex. P25, report under Section 57 of the Act Ex. P26, site-plan Ex. P31 and application Ex. P32.

PW13 Inspector (Retired) Krishan Lal: He proved disclosure statement of the accused Vijay Ex. P33.

PW14 Inspector (Retired) Raj Kumar: He deposed that on 25.11.2022, after the completion of the investigation, he prepared challan Ex. P34 against the accused Bhim.

PW15 H.C. Pankaj: He proved disclosure statement of the accused Vijay Ex. P33 and disclosure statement of the accused Bhim Ex. P35.

PW16 S.I. Bhoop Singh: He proved disclosure statement of the accused Bhim Ex. P35.

7. It is pertinent to mention here that during the course of trial, the accused Aakash confessed his guilt and he was convicted vide judgment and order of sentence dated 21.07.2026.

Examination of the accused under Section 313 Cr.P.C.

8. The statements of the accused Vijay and Bhim under Section 313 Cr.P.C. were recorded, wherein the entire incriminating evidence was put to them, to which they pleaded innocence, alleging themselves to have been falsely implicated in the present case and also opted to lead evidence in defence.

Defence Evidence

9. No defence evidence has been led by the accused Vijay and Bhim.

10. I have heard the learned Public Prosecutor for the State and the learned defence counsel and have gone through the entire record available on the case file meticulously.

Contentions of the learned Public Prosecutor

11. While summing up the case of the prosecution, the learned Public Prosecutor for the State has argued that the prosecution has proved the case against the accused Vijay and Bhim beyond reasonable doubt. It has been further contended that the statements of all the prosecution witnesses are cogent, reliable and trustworthy. Their statements cannot be doubted merely because they are official witnesses and no independent witness was joined at the time of recovery, recording disclosure statements and other compliance as per law. It has been further submitted that there is nothing on record to suggest that the accused Vijay and Bhim have been falsely implicated in the present case. It has been further argued

that there are minor contradictions in the testimonies of the prosecution witnesses, which do not go to the root of the investigation. It has been further argued that on the basis of the disclosure statement of the co-accused, the accused Vijay and Bhim were apprehended, who admitted themselves as the suppliers of contraband. It has been further contended that the accused Aakash has confessed his guilt. It has been further submitted that the prosecution has been able to prove the guilt of the accused beyond the shadow of reasonable doubt. It has, thus, been prayed that the accused Vijay and Bhim may be convicted of the charge framed against them.

Contentions of the learned defence counsel

12. Per Contra, the learned defence counsel has argued that the evidence adduced by the prosecution against the accused Vijay and Bhim is unreliable and does not inspire confidence. It has been further contended that the statements of the prosecution witnesses suffer from material contradictions and discrepancies. It has been further submitted that the disclosure statements of the accused Vijay and Bhim are not sufficient to convict them for the commission of the offence punishable under Section 29 of the Act. It has been further argued that no recovery was affected from the accused Vijay and Bhim. It has, thus, been prayed that the accused Vijay and Bhim may be acquitted of the charge framed against them.

Analysis of the Evidence and Findings

13. In the present case, the following point arises to be considered by this Court:

(i) *Whether the prosecution has been able to prove beyond the shadow of reasonable doubt that the accused Vijay and Bhim supplied the contraband to the co-accused for the purpose of sale?*

14. Needless to mention, in criminal law, the burden of proof on the prosecution is that of beyond a reasonable doubt. The presumption of innocence of the accused has to be rebutted by the prosecution by adducing cogent evidence that points towards the guilt of the accused. In this regard, it is pertinent to reproduce the relevant portion of paragraph 5 of Kuldip Singh v. State of Punjab, (Punjab and Haryana)(DB): Law Finder Doc Id # 46368 :1988(2) R.C.R.(Criminal) 305, which reads as under:-

“5. ... The burden which rests on the prosecution to establish its case beyond a reasonable doubt is neither neutralised nor shifted because of the said circumstance. The accused can be convicted only when the prosecution succeeds in proving that the incident in question had taken place in the way as alleged by it. The prosecution must stand on its own legs and cannot take advantage of the weaknesses of the defence. Nor can the Court on its own, make out a new case for the prosecution and convict the accused on that basis. It is now well

established that when the substratum of the evidence given by the eyewitnesses examined by the prosecution is found to be false, then the only prudent course left to the Court is to throw away the prosecution case in its entirety. ...”

15. The evidence in the present case is to be weighed keeping in view the above legal standards. Moreover, it is a well-set principle of criminal jurisprudence that the more stringent the punishment, the heavier the burden upon the prosecution to prove the offence.

16. As per the prosecution case, on 07.04.2021, the co-accused Aakash was apprehended by the police officials and 6 grams heroin was recovered from him. During the course of investigation, the co-accused Aakash suffered a disclosure statement naming the accused Vijay as the supplier of contraband to him and the accused Vijay suffered a disclosure statement naming the accused Bhim as the supplier of contraband to him.

17. At the cost of repetition, it may be stated here that the accused Aakash has already been held guilty and convicted for the commission of the offence punishable under Section 21 (b) of the Act. So far as the commission of offence under Section 29 of the Act by the accused Vijay and Bhim is concerned, we have the testimonies of PW13 Inspector (Retired) Krishan Lal, PW15 H.C. Pankaj and PW16 S.I. Bhoop Singh. PW13 Inspector (Retired) Krishan Lal and PW15 H.C. Pankaj have proved the disclosure statement suffered by the accused Vijay admitting his involvement in the commission of crime by supplying the

recovered contraband to the accused Aakash. Further, PW15 H.C. Pankaj and PW16 S.I. Bhoop Singh have proved the disclosure statement suffered by the accused Bhim admitting his involvement in the commission of crime by supplying the recovered contraband to the accused Vijay. Undisputedly, no recovery was affected from the accused Vijay and Bhim. Meaning thereby, no new fact has been discovered pursuant to the disclosure statements of the accused Vijay and Bhim. Consequently, the disclosure statements of the accused Vijay and Bhim are not relevant for the purpose of Section 27 of the Indian Evidence Act, 1872, and since, the statements were made when the accused Vijay and Bhim were in police custody, therefore, the same are hit by Section 25 of the Indian Evidence Act, 1872.

18. Furthermore, the Investigating Officer, for reasons best known to him, did not collect the Call Detail Records of the accused Vijay and Bhim to connect them with co-accused. The accused Vijay and Bhim cannot be convicted merely on the basis of assumptions and presumptions. There is no other evidence on record except the disclosure statements of the accused Vijay and Bhim to connect them with the offence in question. There is no cogent evidence on record regarding the sale of contraband by them.

19. As a sequel to the above, this Court is of the considered opinion that the point for consideration before this Court is decided in favour of the accused Vijay and Bhim. The prosecution has failed to prove

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the commission of offence punishable under Section 29 of the Act against the accused Vijay and Bhim beyond the shadow of reasonable doubt, therefore, the accused Vijay and Bhim are acquitted for the commission of offence under Section 29 of the Act.

Pronounced in Open Court:

Dated: 21.07.2026

(Danish Gupta)
Additional Sessions Judge,
Yamuna Nagar at Jagadhri,
(UID No.HR0256)

Note: Each page of this judgment has been checked and signed by me.

(Danish Gupta)
Additional Sessions Judge,
Yamuna Nagar at Jagadhri,
(UID No. HR0256)

Sanjay

(Danish Gupta)
ASJ/Yamuna Nagar.