

State Vs. Davinder

CHCH010010892020 	Presented on : 05-02-2020 Registered on: 05-02-2020 Decided on : 30-05-2026 Duration : 6 years, 3 months, 25 days
IN THE COURT OF RAMAN GOKLANEY JUDGE, SPECIAL COURT, CHANDIGARH (UID NO. PB0687) <u>NDPS/25/2020</u> State Versus Davinder, aged about 44 years, son of Avinash, resident of # 12, Phabat Zirakpur, S.A.S Nagar (Mohali), Punjab. F.I.R. No.255 dated 05.11.201 Under Section 22 N.D.P.S. Act, Police Station Sector 26, Chandigarh	
PROSECUTION	State
STATE REPRESENTED BY	Sh. Ashok Rohilla, Ld. APP for the State
ACCUSED DETAILS	Davinder aged about 44 years, son of Avinash, resident of # 12, Phabat, Zirakpur, District S.A.S Nagar (Mohali), Punjab.
ACCUSED REPRESENTED BY	Sh. Raj Kumar Gupta and Sh. Lavanya Gupta, Advocates

Date of offence	05.11.2019
Date of FIR	05.11.2019
Date of Charge Sheet/Challan	05.02.2020
Date of Framing of Charge(s)	13.01.2021
Date of Arrest of accused	05.11.2019
Date of Bail	14.12.2019

Date of commencement of Prosecution evidence	02.03.2021
Date on which judgment is reserved	---
Date of the judgment	30.05.2026
Date of the Sentencing (if any)	30.05.2026

Raman Goklaney, Judge, Special Court, Chandigarh. (UID No.PB0687)
Date: 30.05.2026

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Accused Details:

Rank of the Accused	Name of Accused	Date of Arrest	Date of Release on Bail	Offences charged with	Whether Acquitted or convicted	Sentence imposed	Period of Detention Undergone during Trial (for purpose of Section 428 Cr.P.C.)
Accused	Davinder	05.11.19	14.12.19	u/s 22(b) of NDPS Act	Convicted	Under Section 22 of NDPS Act RI for 3 months along with fine of Rs.5000/-, in default of payment of fine, he shall further undergo SI for 15 days	As per record

PRESENT:

On behalf of State : Sh. Ashok Rohilla, Addl. PP for State
On behalf of Accused : Sarv Sh Raj Kumar Gupta & Lavanya Gupta, Advocates

JUDGMENT:

1. INTRODUCTION

This judgment pertains to case title ‘State of UT Chandigarh Vs. Davinder’ bearing case No. 25 of 2020 arising out of FIR No. 255 dated 05.11.2019, under Section 22 of Narcotic Drugs and Psychotropic Substances Act, 1985, registered at Police Station Sector 26, Chandigarh (UT),on accusation of possessing 12 intoxicating

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injections, specifically, 6 injections of Buprenorphine (2 ml each) and 6 injections of Pheniramine Maleate (10 ml each). {Pheniramine Maleate does not fall under the NDPS Act, accordingly accused was tried for possessing 6 injections of Buprenorphine (2 ml each), the quantity falling under intermediate quantity attracting Section 22(b) of NDPS Act}

2. PROSECUTION STORY

- 2.1 The prosecution story, as it emanates from the report under Section 173 Cr.P.C (Challan) and the documents annexed thereto is that on 05.11.2019, a police party headed by SI Gurmeet Singh and comprising HC Karanjeet Singh, Ct. Ajay Kumar and Vol. Balwinder Singh was patrolling in a private vehicle in connection with crime prevention and checking within the area falling under the jurisdiction of PS East Sector 26, Chandigarh. The police party parked their vehicle near Munna Turn Phase 1, BDC, Chandigarh and commenced patrolling on foot.
- 2.2 At about 5:10 PM, while patrolling near the open ground adjacent to the EWS Houses, the police party noticed a man coming on foot along the main road leading from Sant Kabir School towards Shastri Nagar. As he saw the police party, he suddenly became nervous and turned back and started to walk swiftly. Suspecting that the individual might be carrying stolen or snatched property, SI Gurmeet Singh, with the help of the accompanying police officials, chased and apprehended him. Upon questioning, the apprehended man identified himself as

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Davinder aged 39 years son of Avinash, resident of House No. 12, Pabhat, Zirakpur, District Mohali, Punjab.

- 2.3 When cornered, Davinder attempted to pull a white carry bag out of the right pocket of his trousers and throw it away. However, SI Gurmeet Singh grabbed the right hand of the suspect along with the white carry bag. Upon searching the white carry bag, it was found to contain 12 intoxicating injections, specifically, 6 injections of Buprenorphine (2 ml each) and 6 injections of Pheniramine Maleate (10 ml each), with all batch numbers deliberately scratched off. Upon immediate questioning by SI Gurmeet Singh, Davinder admitted that these are narcotic injections used for intoxication and he could not produce any licence, permit or medical prescription authorizing their possession.
- 2.4 Efforts were made by SI Gurmeet Singh to join independent passersby into the police party by narrating the circumstances, but everyone left the spot citing their own compulsions without disclosing their names or addresses. Thereafter, SI Gurmeet Singh verified and counted the recovered injections. The contraband was placed back into the same white carry bag, which was then placed in a white cloth bag to prepare a sealed bulk parcel (case property). The said parcel was then sealed by SI Gurmeet Singh with two seals of 'GS'. A separate sample seal impression sheet was also prepared on the spot.
- 2.5 The bulk parcel along with the sample seal sheet was taken into police possession vide a recovery memo and the CFSL Form (Test Memo)

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was completed at the spot. After usage, the seal 'GS' was handed over to the recovery witness, Ct. Ajay Kumar. Since the unauthorized possession of these 12 psychotropic injections constituted an offence, SI Gurmeet Singh prepared a Ruqa (written information) under Section 22 of the NDPS Act. The ruqa was dispatched to the police station through Vol. Balwinder Singh at 6:49 PM, which led to the registration of the formal FIR No. 255 dated 05.11.2019 under Section 22 of the NDPS Act at PS East Sector 26, Chandigarh.

2.6 SI Gurmeet Singh also telephonically informed the police station Malkhana Clerk to send the Second Investigating Officer to the spot. Subsequently, the Second Investigating Officer, SI Krishan Dev Singh, arrived at the spot. SI Gurmeet Singh briefed him on the facts and handed over the custody of the accused Davinder, the sealed bulk parcel bearing the 'GS' seals, the sample seal impression and the case file to him vide formal handing over memo. SI Krishan Dev Singh inspected the spot, prepared an unscaled rough site plan (Naksha Mauka) at the instance of the first IO, formally arrested accused Davinder, prepared his personal search memo and notified his family member about the arrest.

2.7 In the meantime, Vol. Balwinder Singh returned to the spot and delivered the original ruqa along with a copy of the formal FIR to SI Krishan Dev Singh, who appended it to the case file. SI Krishan Dev Singh then recorded the statements of SI Gurmeet Singh and the other recovery witnesses under Section 161 Cr.P.C. at the spot.

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- 2.8 After completing the initial proceedings at the spot, SI Krishan Dev Singh, along with the police party and the accused, proceeded to the Civil Hospital, Manimajra, Chandigarh, where the medical examination of the accused was conducted. Thereafter, they returned to the police station, where the accused, the case property and the relevant documents were produced before the Officiating SHO/Inspector Karamjit Singh. The Officiating SHO, after verifying the facts and checking the intactness of the parcel, counter-sealed the case property/bulk parcel and the sample seal impression sheet with one seal of 'AS' and appended his signatures. The Officiating SHO then called MMHC Ajesh Kumar and directed him to deposit the counter-sealed case property safely in the police malkhana. The accused Davinder was then lodged in the police station lockup.
- 2.9 On the following day that is on 06.11.2019, SI Krishan Dev Singh prepared the inventory documentation. The accused Davinder was brought out of the police lockup and produced before the Ld. Duty Magistrate, Ms. Meenakshi Gupta, JMIC, Chandigarh, along with an application under Section 52-A of the NDPS Act for certification of the inventory. MMHC Ajesh Kumar simultaneously produced the case property before the court. The Ld. Magistrate checked the seals, opened the bulk parcel containing the 12 injections and drew representative samples in the court room. The Ld. Magistrate then sealed the samples (all 12 injections) in a single parcel with the seal of the court 'MG' and also affixed the seal 'MG' onto the sample seal

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impression sheet. Official photography of the entire inventory and sample drawing process was conducted at the spot by official photographer Ct. Sandeep. A separate inventory certificate under Section 52-A of the NDPS Act was subsequently issued by the Court. The Ld. Magistrate remanded the accused Davinder to judicial custody and he was accordingly lodged in Model Jail, Burail, Chandigarh, while the case property parcel was handed back to MMHC Ajesh Kumar for safekeeping in the Malkhana.

- 2.10 On 08.11.2019, a formal docket was issued and the representative sample parcel, duly sealed with the seal of the court 'MG' along with the corresponding sample seal impression sheet, was sent to the Central Forensic Science Laboratory (CFSL), Sector 36, Chandigarh, through Ct. Sudhir for chemical examination.
- 2.11 During the further course of the investigation, a scaled site map of the spot was prepared by a professional draftsman and remaining statements under Section 161 Cr.P.C. were recorded. On 30.01.2020, the CFSL report issued by CFSL, Sector 36, Chandigarh, confirmed the presence of Buprenorphine in exhibits 1 to 6 whereas Pheniramine in exhibits 7 to 12, thereby establishing that the recovered substance, especially, Buprenorphine fell under the definition of prohibited psychotropic substances under the NDPS Act itemized at Sr. No.169 of the notification specifying small and commercial quantities issued under NDPS Act. According to statutory table, a quantity up to 1 gram is categorized as 'small quantity', whereas a quantity of 20 grams and

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above has been classified as a 'commercial quantity' & recovered substance falling under non-commercial quantity.

- 2.12 Upon completion of the investigation, finding sufficient incriminating evidence connecting the accused to the crime, the final Report Under Section 173 Cr.P.C. (Challan) was prepared and presented before the Court to try the accused Davinder for the commission of the offence punishable under Section 22 of the NDPS Act.

3. COMPLIANCE OF SECTION 207 CR.P.C.

Copies of challan along with documents annexed thereto were supplied to the accused free of costs as envisaged under Section 207 Cr.P.C.

4. FRAMING OF CHARGE

After hearing the learned Addl. PP for the State, learned defence counsel and after going through the documents, a prima facie case punishable under Section 22 of Narcotic Drugs and Psychotropic Substances Act, 1985 was found to be made out against the above said accused on account of he being found in conscious possession of 6 injections of Buperonphine (2 ml each). Contents of charge was read over and explained to the accused, to which accused pleaded not guilty and claimed trial.

5. PROSECUTION EVIDENCE: -

- 5.1 In order to prove charge against the accused, the prosecution has examined seven witnesses. The pith and substance of prosecution's witnesses is as under: -

PWs	Gist of Evidence
PW-1 (Dr. Cijo John – Junior Scientist Officer (Explosives), CFSL, Hyderabad,) {The then Junior Scientific Officer (Explosive) at Chandigarh}	He deposed that he holds a PhD in Chemistry and possesses 18 years of experience in the chemical examination of different forensic exhibits. He stated that he has reported thousands of forensic cases, including narcotics and has received training on scientific instruments at the national level. He testified that on 08.11.2019, a sealed parcel, duly secured with a seal of "MG" at one place along with case-related documents, a sample seal, a test memo form, a road certificate and an order of the learned Court, was received at the CFSL. The parcel was duly signed by the learned J.M.I.C., Chandigarh and was delivered to the CFSL through Constable Sudhir, No. 3857/CP. He confirmed that the seals on the parcel were found intact and tallied with the specimen seal impression provided by the forwarding authority letter. He added that the description of the exhibits inside the parcel corresponds with the examination report issued by him. He further stated that upon opening the parcel, it was found to contain 12 ampoules, which were marked in the laboratory as Ex.1 to Ex.12. Exhibits Ex.1 to Ex.3 were 3 injection ampoules labelled as Buprenorphine injection, IP, Omgesic, each containing a colourless solution, with a total weight of 6.09 grams. Exhibits Ex.4 to Ex.6 were 3 injection ampoules, each labelled as Buprenorphine injection, IP,

	Leegesic, also containing a colourless solution, with a total weight of 6.0 grams. Exhibits Ex.7 to Ex.12 were 6 injection vials, each labelled as Pheniramine Maleate injection, IP, Avil, containing a colourless solution, with a total weight of 6.0 grams. He testified that various laboratory tests, as detailed in his report, were carried out. After the examination, he concluded that the samples marked as Ex.1 to Ex.6 were found to be Buprenorphine and the samples marked as Ex.7 to Ex.12 were found to be Pheniramine. He stated that he prepared the report, marked as Ex.PI/PWI, which bears his signature and the same was forwarded to the SSP Chandigarh through the Director of the CFSL.
PW-2 (C. Sudhir – Sample Carrier)	He deposed that on 05.11.2019, he was posted as a Constable at Police Station Sector 26, Chandigarh. On that day, at about 06:50 PM, he joined the investigation with SI Krishan Dev Singh when a message was received instructing them to reach a spot near the Sukhna pool, behind Bapu Dham, where a person had been apprehended with banned injections. He testified that he, along with the Investigating Officer (IO), reached the spot at about 07:10 PM. Upon reaching the spot, he met SI Gurmeet Singh, Constable Ajay and Head Constable Karamjit Singh, along with the accused person, Davinder, who was present in the court. He stated that the first IO handed over a sealed

	parcel, secured with the seal of "GS" at two places, along with the sample seal and case-related documents, to SI Krishan Dev Singh. He testified that the accused was subsequently arrested by SI Krishan Dev Singh and the arrest memo, marked as Ex. P-1/PW2, bears his signature at Point A. A personal search of the accused was conducted after the arrest vide memo Ex. P-2/PW2, which also bears his signature at Point A. He stated that a Rough Site Plan (RSP) was prepared by SI Krishan Dev Singh and the IO recorded the statements of the witnesses, after which the first IO was relieved from the investigation. Thereafter, the police party took the accused to the hospital for a medical examination and then to the police station. At the police station, the second IO produced all the witnesses and the accused before the officiating SHO, SI Karamjit Singh, who held additional charge of the SHO and was present at the station. The officiating SHO verified the facts from the members of the police party, affixed her seal of "AS" at one place on the parcel and the sample seal, attested the same and then deposited the case property by handing it over to Ajesh Kumar, MMHC. He identified the accused present in the court. He further testified that on 08.11.2019, he was instructed by the IO to carry the sealed parcel from the Malkhana to the CFSL and the IO handed over a docket to him for this purpose.
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	<u>During his cross-examination,</u> he stated that he along with SI Krishan Dev reached at the spot on Lima vehicle and police party remained at the spot till 8:00 PM. He stated that he left the spot at about 7:50 PM and he does not know in whose hand, the arrest memo and personal search memo was prepared. Voluntarily, he stated that he was holding the accused and as such he does not know in whose hand, arrest memo and personal search memo was prepared. He further stated that police party reached at the Police Station at about 9:15 PM and he had not seen the object seal of first IO at the spot. He further stated that he does not know as to in whose possession the seal of the SHO was. He further stated that the case property parcel was handed over to MMHC at about 9:40 PM. He deposited the representative sample parcels at CFSL at about 12:00 noon and same was handed over to him at 10:15 PM.
PW-3 (Retired Inspector Ajay Kumar – Recovery witness)	He deposed that on 05.11.2019, he was posted as a Constable at Police Post BDC, Sector 26, Chandigarh. On that day, he, along with SI Gurmeet Singh, Head Constable Karanjeet Singh and government vehicle driver Volunteer Balwinder, went for patrolling in the area of EWS Colony, BDC, Sector 26, Chandigarh, in a government vehicle. The vehicle was parked near Munna Turn, BDC and they commenced patrolling on foot towards the main road on the Shastri Nagar side. He testified that a person

	was seen coming from the side of Saint Kabir School towards Shastri Nagar. Upon seeing the police party, the individual turned back and started walking swiftly. The IO developed a suspicion that the individual was in possession of stolen or snatched articles and on this suspicion, he was apprehended with their assistance. While being apprehended, the accused pulled something out of the right pocket of his pants and attempted to throw it away, but he was stopped by the IO. The item was a polythene bag containing injections. Upon checking, the polythene bag was found to contain 6 injections of Buprenorphine (2 ml each) and 6 injections of Pheniramine Maleate (10 ml each). The batch numbers on the said injections were not visible. On being questioned, the accused disclosed his name as Devinder Singh, son of Avniash, resident of H. No. 12, Phabat Zirakpur. The IO asked him to produce a licence or permit, but he failed to produce any licence or permit for carrying the aforementioned injections in his conscious possession. He stated that an attempt was made by the IO to involve independent witnesses, but no one came forward. The recovered injections were placed in a white cloth, converted into a parcel and sealed with the seal of "GS" at two places and a sample seal was prepared separately. The IO prepared the test memo form and the seal was handed over to him after use.
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	The sealed parcel was taken into possession vide seizure memo Ex.P1/PW3, which bears his signature at Point A. The IO prepared the ruqa, marked as Ex.P2/PW3, which was sent through Volunteer Balwinder for the registration of an FIR. He further testified that SI Gurmeet Singh sent a message to the MHC of Police Station Sector 26 to send a second IO to the spot. After some time, the second IO, SI Krishan Dev Singh, arrived at the spot and was apprised of the recovery of the injections contained in the sealed parcel by SI Gurmeet Singh. The accused, case property, sample seal and other related documents were handed over to SI Krishan Dev Singh by SI Gurmeet Singh. SI Krishan Dev Singh prepared the RSP at the instance of SI Gurmeet Singh, completed other necessary formalities at the spot and recorded the statements of the witnesses, including his statement and that of SI Gurmeet Singh. After their statements were recorded, he and SI Gurmeet Singh were relieved from the spot. He identified the accused through Video Conferencing. <u>During his cross-examination</u>, he stated that the company name and batch number were not readable on the ampules of injections as the same were scratched. He stated that seal of the Ist IO was in square shape and he affixed seal at two places on the case property and at one place on the sample seal (impression sheet). He stated that no notice was served upon the
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	accused during his search and seizure.
PW-4 (Retired SI Krishan Dev – 2nd Investigating Officer)	He deposed that on 05.11.2019, he was posted as an SI at Police Station Sector 26 and was on duty. On that day, he was informed by the MHC of Police Station Sector 26 to reach the spot, which was an empty space near the EWS Flats, BDC. After some time, he, along with Constable Sudhir, reached the spot from the police station. He testified that he was apprised of the recovery of 6 injections of Buprenorphine and 6 injections of Pheniramine Maleate, which had been secured in a parcel sealed with two seals of "GS" by Sub-Inspector Gurmeet Singh. SI Gurmeet Singh handed over the accused, the sealed parcel, sample seal, seizure memo, test memo and other case-related documents vide memo Ex.P1/PW4. He inspected the spot and prepared a rough site plan, marked as Ex.P2/PW4, at the instance of Sub-Inspector Gurmeet Singh. He stated that after some time, Volunteer Balwinder Singh returned to the spot with the ruqa and a copy of the FIR (Ex.P3/PW3) and handed them over to him. He then recorded the FIR number, date and other particulars on all the documents. The accused, Devender, was formally arrested vide memo Ex.P1/PW2 and his personal search was conducted vide memo Ex.P2/PW2. Statements of the witnesses were recorded at the spot and Sub-Inspector Gurmeet Singh, Head Constable Karamjit Singh and Volunteer Balwinder were

	relieved from the spot. He testified that after completing the investigation at the spot, he, along with Constable Ajay Kumar, Constable Sudhir, the accused and the case property, proceeded towards Police Station Sector 26, Chandigarh. There, he produced them before the officiating SHO, SI Karamjeet Singh, who verified the recovery of the contraband contained in the sealed parcel bearing the "GS" seals. After verification, the officiating SHO affixed her seal of "AS" at one place on the sealed parcel along with her attestation, prepared a sample seal of "AS" and deposited the case property and sample seal with M.M.H.C. Ajesh Kumar. He recorded the statements of the witnesses. The officiating SHO also prepared an inventory, an application for pre-trial disposal and an application for the certification of the inventory, marked as Ex.P4/PW4 to Ex.P6/PW4 respectively. He stated that on 06.11.2019, the accused, the case property and the sample seal were produced by him and M.M.H.C. Ajesh Kumar before the court of Ms. Meenakshi Gupta, the learned Duty Magistrate, Chandigarh, for inventory certification. During the inventory proceedings, the learned Duty Magistrate certified the correctness of the inventory. After breaking the existing seal on the parcel, all the injections were sealed as a sample parcel and the seal impression "MG" was affixed at one place,
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	alongside the preparation of a sample seal. A police photographer, Constable Sandeep, took photographs of the inventory proceedings, marked as Ex.P7/PW4 to Ex.P9/PW4. The case property was handed back to the MMHC for deposition in the Malkhana, with directions to deposit the sample parcel at the CFSL for examination. The order of the court was marked as Ex.P10/PW4 and he recorded the statements of the witnesses. He testified that on 08.11.2019, he handed over the docket to Constable Sudhir, who obtained the sample parcel sealed with the seal of "MG", the sample seal and relevant documents from the MMHC to deposit them at the CFSL. Constable Sudhir deposited the parcel at the CFSL in an intact condition and subsequently handed the receipt over to the MMHC. During the investigation, he took into possession the photographs of the inventory proceedings (Ex.P11/PW4), obtained a certificate under Section 65-B of the Evidence Act from Constable Sandeep (Ex.P12/PW4) and had a scaled site map prepared (Ex.P13/PW4). Statements of the witnesses were recorded. The CFSL report was eventually received and upon completion of the investigation, the challan was prepared by Inspector Juldan Singh. He identified the accused present in court. He also identified the case property shown to him in court, which was a sealed parcel bearing two seals of CFSL/EXP/CHD and one seal of
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	"MG", marked as Ex.MO1, brought by the MMHC. <u>During his cross-examination</u>, he stated that he had no conversation with Ist IO Karamvir Singh before he reached at the spot. He stated that he had seen the case property in open condition in the court and before that he came to know about the contraband in the parcel from first IO. He stated that he had seen the name of manufacturing company, date of manufacturing and expiry date, but he does not remember the same. He further stated that he had not seen the batch number and lot number on the ampule of injections. He further stated that he had not investigated how the injections came in the possession of the accused from the company. He further stated that he does not remember whether any brand name was written on the ampule. He stated that since buprenorphine and Pheniramine Maleate was written on the ampule so he came to know that these injections are of buprenorphine and Pheniramine Maleate. He stated that he was asked to reach near the EWS Flats open area and not the Police Post. He stated that he had not prepared any document regarding ground of arrest. He admitted that no narcotic was recovered from the personal search of the accused. He stated that Ist IO disclosed him that accused was trying to throw the injections after taking the same from his pocket. He denied the suggestion that he had completed the
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	formalities while sitting in the Police Station. He further denied the suggestion that the investigation was tainted and he helped the other IO to plant the recovery upon the accused.
PW-5 (ASI Ajesh Kumar - MMHC)	He brought Register No. 19 to court regarding entry number 1117 dated 05.11.2019. He deposed that vide this entry, SI Karamjit Singh, the officiating SHO of Police Station Sector 26, had deposited a sealed parcel with him at 09:49 PM. The parcel was sealed with the seal of "GS" at two places and "AS" at one place, containing 6 injections of Buprenorphine (2 ml each) and 6 injections of Pheniramine Maleate (10 ml each). The parcel and the sample seal were attested by SI Karamjeet Singh and he made a corresponding entry in Register No. 19. He testified that on 06.11.2019, he, along with the second IO, SI Krishan Dev Singh, produced the case property before the court of Ms. Meenakshi Gupta, the learned JMIC, for the certification of the inventory (Ex.P4/PW4), along with applications marked as Ex.P6/PW4 and Ex.P5/PW4. The application Ex.P5/PW4 was signed by the then SHO, whose signatures he identified. He further deposed that the learned Court opened the parcel by breaking the seal, verified its contents and then resealed the parcel with the seal of "MG" at one place. Police photographer Constable Sandeep took photographs in the court, which were developed and handed over to the court. The photograph

	was marked as Ex.P2/PW5 and the court orders were marked as Ex.P10/PW4. A certificate issued under Section 52-A of the NDPS Act was marked as Ex.21/PW5. The learned Court also affixed the seal of "MG" on a cloth for sample seal purposes. Following certification, the case property was handed back to him and was redeposited in the Malkhana in an intact condition. He further stated that during the investigation on 08.11.2019, Constable Sudhir (No. 3857) came to the Malkhana and handed over a docket (No. 1518-20 DSP, marked as Ex.P3/PW5) to transport the parcel from the Malkhana to the CFSL. He issued road certificate No. 102/19 to him and handed over the sealed parcel, which was secured with the seal of "MG" at one place and contained the 6 injections of Buprenorphine (2 ml each) and 6 injections of Pheniramine Maleate (10 ml each). Constable Sudhir transported the parcel to the CFSL and after depositing it in an intact condition, returned the CFSL receipt to him. He identified the CFSL receipt as Ex.P3/PW2. He affirmed that during the period the case property remained in his custody, it was never tampered with by him, nor did he allow anyone else to do so and it remained in a completely intact condition throughout. He stated that the true copy of the entry in Register No. 19 was marked as Ex.P4/PW5. He identified the case property already exhibited as Ex.MO1, which
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	bore two seals of CFSL/EXP/CHD and one seal of "MG". He noted that his statement was recorded and the CFSL report, along with the case property, was received back on 30.01.2020, with an entry made to that effect. <u>During his cross-examination</u>, he stated that the parcel was received from SI Karamjit (SHO) in sealed condition having seal of "GS" at two places and "AS" at one place. He further stated that the parcel was produced before the court by him along with SI Krishan Dev. He stated that Ld. Court opened the parcel and checked the contents, signed the inventory and thereafter again sealed the parcel by putting the contents in the same and then sealed with the seal of "MG" at one place. He denied the suggestion that the case property was tampered during the transit to the court.
PW-6 (Retired Inspector Karamjit Singh – Officiating SHO)	He deposed that he is well conversant with the English language. He stated that on 05.11.2019, he was posted as an SI at Police Station Sector 26, Chandigarh and was working as the officiating SHO. He testified that SI Krishan Dev, along with members of the police party, produced the accused Davinder (present in court) before him, along with one sealed parcel secured with the seal of "GS" at two places. The parcel contained 6 injections of Buprenorphine (2 ml each) and 6 injections of Pheniramine (10 ml each). He stated that he verified the facts of the recovery from the members of the police

	party, attested the parcel and placed his own seal of "AS" at one place on the parcel. Thereafter, he handed over the parcel to ASI Ajesh Kumar for further proceedings and safe custody. The case property was subsequently deposited in the Malkhana by ASI Ajesh Kumar. He stated that his statement was recorded in the present case by the IO. He identified the accused present in court through video conferencing. <u>During his cross-examination</u>, he stated that he handed over the case property to MMHC at about 9:50 PM and he took around 15 to 20 minutes for verification of the facts prior to handing over the property to MMHC. He stated that he had not prepared any handing over memo when the property was produced before him and at the time it was deposited in the malkhana. He denied the suggestion that neither the accused nor the case property was ever produced before him by SI Krishan Dev.
PW-7 (Retired Inspector Gurmeet Singh - Complainant/ Informant)	He deposed that on 05.11.2019, he was posted as a Sub-Inspector at Police Post BDC, Sector 26, Chandigarh. On that day, he, along with Constable Ajay, Head Constable Karanjeet Singh and government vehicle driver Volunteer Balwinder, went for patrolling in the area of EWS Colony, BDC, Sector 26, Chandigarh, in a government vehicle. The vehicle was parked near Munna turn, BDC and they commenced patrolling on foot towards the main road on the

	Shastri Nagar side. He testified that the accused was seen coming from the side of Saint Kabir School towards Shastri Nagar. Upon seeing the police party, the individual turned back and began walking swiftly. He developed a suspicion that the individual was carrying a stolen or snatched article in his possession and on this suspicion, the individual was apprehended with the help of the police party. While being apprehended, the accused pulled out an object from the right pocket of his pants and tried to throw it away, but he was stopped by him. The item was a polythene bag containing injections. Upon checking, the polythene bag was found to contain 6 injections of Buprenorphine (2 ml each) and 6 injections of Pheniramine Maleate (10 ml each). The batch numbers of the injections were not visible. On being questioned, the accused disclosed his name as Davinder Singh son of Avniash, resident of H. No. 12, Phabat Zirakpur. He asked the accused to produce a licence or permit, but the accused failed to produce any licence or permit for carrying the mentioned injections in his conscious possession. He stated that an attempt was made to involve independent witnesses, but no one came forward. Thereafter, the recovered injections were placed in a white cloth, converted into a parcel and sealed with the seal of "GS" at two places by him and a sample seal
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	was prepared separately. He prepared the test memo form, marked as Exh.P1/PW7. The seal was handed over to Constable Ajay after use. The sealed parcel was taken into possession vide seizure memo Ex.P1/PW3, which bears the signatures of Constable Ajay. He prepared the ruqa, marked as Ex.P2/PW3, which was sent through Volunteer Balwinder for the registration of an FIR. He further testified that he sent a message to the MHC of Police Station Sector 26 to send a second IO to the spot. After some time, the second IO, SI Krishan Dev Singh, arrived at the spot and was apprised by him regarding the recovery of the injections contained in the sealed parcel. The accused, case property, sample seal and other related documents were handed over to SI Krishan Dev Singh by him. SI Krishan Dev Singh prepared the Rough Site Plan at his instance and completed the other necessary formalities at the spot. SI Krishan Dev Singh recorded the statements of the witnesses, including his statement and the statement of Constable Ajay. After their statements were recorded, he was relieved from the spot. He identified the accused through Video Conferencing. <u>During his cross-examination</u>, he stated that there was no trade name of the company on the contraband. He stated that it was the accused, who disclosed him about the weight and the name of the injections. He stated that arrest of
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	the accused was made by second IO and he cannot tell any reason for not making the arrest of the accused himself after the recovery of the contraband from the accused. He stated that the place of recovery was a thoroughfare and many persons were passing through the area. He and C. Ajay along with HC Karamjit left the spot after handing over the accused and the case property to SI Krishan Dev. He further stated that the seal was handed over by him to C. Ajay and he had taken the seal along with him. He stated that he had not shown the seal used by him to the second IO. He admitted that after arrival of second IO, he had not prepared any document nor the second IO had prepared any document in his presence. He stated that he handed over the recovery memo, test memo, parcels, copy of ruqa to second IO. He stated that accused was not served with notice under Section 50 of the NDPS Act nor such offer was made orally. He stated that he affixed round seal at two places. He denied the suggestion that he had made all proceedings while sitting in the Police Station.
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5.2 Further, the entire proceedings starting from the point of recovery of contraband from accused till presentment of challan documented by investigator and other witnesses, the sum & substance of documents proved and exhibited on file are as follows: -

Exhibits	Nature of documents
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Ex.P1/PW1	CFSL Report dated 27.01.2020
Ex.P1/PW2	Arrest-cum-intimation memo
Ex.P2/PW2	Personal search memo
Ex.P3/PW2	Receipt of CFSL
Ex.MO1	Case property
Ex.P1/PW3	Seizure memo
Ex.P2/PW3	Ruqa (Written information)
Ex.P1/PW4	Handing over memo
Ex.P2/PW4	Rough site plan
Ex.P3/PW4	FIR No. 255 dated 05.11.2019 registered at PS. Sector 26, Chandigarh under Section 22 of NDPS Act
Ex.P4/PW4	Inventory list
Ex.P5/PW4	Application for pre-trial disposal of the contraband
Ex.P6/PW4	Application for Certifying the correctness of inventory
Ex.P7/PW4 to Ex.P9/PW4	Photographs
Ex.P10/PW4	Order passed by Ld. Magistrate during the proceedings under Section 52-A of NDPS Act
Ex.P11/PW4	Possession memo of photographs
Ex.P12/PW4	Certificate under Section 65-B of Evidence Act
Ex.P13/PW4	Scaled site plan
Ex.P1/PW5	Certificate issued by Ld. Magistrate under Section 52-A of NDPS Act
Ex.P2/PW5	Photograph attested by Ld. Magistrate (pasted on order under Section 52-A of NDPS Act)
Ex.P3/PW5	Letter moved by SSP, Chandigarh before the Director of CFSL, Chandigarh
Ex.P4/PW5	Copy of register No. 19 (relevant extract)
Ex.P1/PW7	Test memo

6. Ld. APP for state closed the prosecution evidence on 15.04.2026.

7. EXAMINATION OF ACCUSED U/S 313 CR.P.C:

Evidence led by the prosecution put to the accused during his examination under Section 313 Cr.P.C., so as to apprise him of the incriminating material appearing against him in the prosecution

evidence. The accused pleaded that he is innocent and has been falsely implicated in the present case.

8. HEARING OF PUBLIC PROSECUTOR AND DEFENCE COUNSEL

- 8.1 Sh. Ashok Rohilla, Ld. Addl. PP for the State, contended that the prosecution has conclusively established the conscious possession and recovery of contraband from the accused, alongside an unbroken, tamper-proof chain of custody. It is argued that PW3 (recovery witness) and PW7 (1st IO/complainant) provided collaborative eyewitness testimonies regarding the interception of the accused at the spot and the recovery of 12 intoxicant injections (6 Buprenorphine and 6 Pheniramine Maleate) with scratched batch numbers. It is next argued that PW7 immediately sealed the bulk parcel with his seal “GS” and handed it over to the second IO, PW4. It is further argued that PW4 produced the intact parcel before the officiating SHO (PW6), who affixed his seal “AS” on the bulk parcel and it was kept in safe custody through MHC Ajesh Kumar (PW5). It is then argued that the inventory was verified and the sample was drawn under the judicial supervision of the Ld. Magistrate under Section 52-A of the NDPS Act and thereafter case property transmitted to CFSL in intact condition. Finally it is contended that CFSL report issued by CFSL, Sector 36, Chandigarh, confirmed the presence of Buprenorphine in exhibits 1 to 6, thereby establishing that the recovered substance, especially, Buprenorphine fell under the definition of prohibited

psychotropic substance under the NDPS Act itemized at Sr. No.169 of the notification specifying small and commercial quantities issued under NDPS Act. With the aforesaid submissions and after referring to the ocular and documentary evidence presented on record by the prosecution, the Ld. APP prayed for convicting the accused for the offence for which he has been charge-sheeted.

8.2 Per contra, Sh. Raj Kumar Gupta and Sh. Lavanya Gupta, Advocates representing the accused, vehemently argued that the prosecution has failed to prove the guilt of the accused beyond a shadow of reasonable doubt. It is vehemently argued that the mandatory provisions under Section 50 of the NDPS Act were completely bypassed in the present case, as the accused was never served a written or oral option to be searched before a Gazetted Officer or a Magistrate. The Ld. Defence counsel(s) argued that in view of peculiar facts and circumstances of the present case, Section 50 of the NDPS Act is attracted and submitted that the prosecution's theory regarding allegedly retrieving the contraband directly from the pocket of the trousers brings the case within the realm of Section 50 of the Act. They argued that since neither a Gazetted Officer nor a Magistrate was called to the spot while carrying out the search and seizure operation, the entire recovery as allegedly effected from the accused stands vitiated. The Ld. Defence counsel(s) further pointed out that despite the recovery allegedly taking place at 5:10 PM in a highly populated open ground adjacent to a thoroughfare and residential buildings, the police party

failed to join a single independent public witness. It is next argued that the official testimonies are highly interested and stereotyped, thus creating severe doubt in the story in the absence of independent witnesses. It is next argued that the grounds of arrest, even as per the story of the investigating agency, much less the prosecution, were never formally communicated to the accused upon his apprehension. In this regard, the Ld. Defence counsel placed reliance upon the judgment passed in 'Dr. Rajinder Rajan Vs. Union of India and Anr' [SLP (Criminal) Appeal No. 3327 of 2026, decided on 01.04.2026] to contend that when the grounds of arrest are not apprised to the accused at the time of his arrest, his detention as well as the entire search and seizure operation carried out by the investigator shatters. The Ld. Defence counsel invited the attention of this court towards the cross-examination of the witnesses and vehemently argued that the witnesses were unable to uniformly detail the actual manufacturing name, brand name or other batch parameters on the ampoules allegedly recovered from the accused. It is argued that since there is uncertainty over the exact labels of the seized property, this has damaged the link evidence and indicates potential tampering. Further, the attention of this court has been invited towards the cross-examination of the 1st IO/complainant (PW7) to demonstrate that despite having an opportunity to formally arrest the accused immediately upon the recovery of the alleged contraband he waited for the arrival of the second IO (PW4). Continuing with these

arguments, it is submitted that this operational gap, coupled with the 1st IO's failure to furnish a satisfactory explanation during his cross-examination regarding not making formal arrest by him, reveals that the entire spot proceedings were a sham and entire paper work was done while sitting at police station. With the aforesaid submissions, a prayer is made for the acquittal of the accused.

9. POINTS OF DETERMINATION:

The point(s) of determination as envisaged under Section 354(1) (b) of Chapter XXVII of Code of Criminal Procedure, 1973 and laid down by Division Bench of our Hon'ble High Court in 'Mahender Singh Vs. State of Punjab', 1995(3) R.C.R., 348 is/are framed as under: -

- I Whether the prosecution has conclusively established that the accused Davinder was found in conscious physical possession of 6 injections of Buprenorphine on 05.11.2019 within the area falling under the jurisdiction of PS East Sector 26, Chandigarh?
- II Whether the recovered substance constitute prohibited psychotropic substances falling within the definition and scheduled thresholds of the NDPS Act, 1985?
- III Whether the prosecution has successfully demonstrated a secure, unbroken and unmanipulated chain of custody of the seized contraband from the moment of spot recovery until its testing at the CFSL?
- IV Whether the statutory mandates under the NDPS Act specifically Section 52-A of NDPS Act regarding inventory certification and sampling were complied with by the investigating authorities?

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- V Whether the testimony of official recovery witnesses (PW3 & PW7) is consistent and reliable enough to establish possession of contraband from accused?
- VI Whether non joining of independent witness has caused any dent to the case of prosecution?
- VII Whether the provisions of Section 50 of the NDPS Act are applicable in the present case, where the recovery was affected from carry bag in the right hand of the accused?
- VIII Whether the accused has successfully rebutted the statutory presumptions under Section 35 and 54 of the Act?

FINDINGS AND OBSERVATIONS:

- 10. Upon a comprehensive appraisal of the documentary and ocular evidence and after hearing the arguments addressed by both the Ld. Addl. Public Prosecutor for the State and the Ld. Defence Counsel, this Court has reached the conclusion that all the points for determination as formulated above are decided in favour of the prosecution and against the accused, for the reasons mentioned hereinafter.
- 11. The case of the prosecution hinges on establishing the actual recovery of 12 injections (6 injections of Buprenorphine and 6 injections of Pheniramine Maleate) especially 6 injections of Buprenorphine falling under NDPS Act, from the conscious possession of the accused and on proving the link evidence to ensure the integrity of the contraband from the moment of seizure until its delivery to the CFSL. To prove

the guilt of the accused under the NDPS Act, the above is the core evidence which the prosecution was required to prove on record.

12. In order to prove the recovery of the contraband from the accused at the spot and to establish an unbroken, tamper-proof chain of custody, the prosecution has examined 7 prosecution witnesses. PW7 (1st IO/complainant) and PW3 (recovery witness) deposed clearly regarding the initial interception of the accused at the police checkpoint. It has been deposed by both the witnesses that upon seeing the police party, the individual turned back and started walking swiftly and while he was apprehended on the basis of suspicion, he pulled a polythene bag out from the right pocket of his pants and attempted to throw it away. However, he was stopped by PW7. Both the witnesses explicitly stated that upon a search of the polythene bag, 12 injections, that is, 6 injections of Buprenorphine (2 ml each) and 6 injections of Pheniramine Maleate (10 ml each), were found in the polythene bag carried by the accused in his right hand which he was about to throw. The accused's attempt to flee and discard the polythene bag upon seeing the police party, at the juncture when he was cornered by the police party, serves as strong circumstantial evidence of conscious possession of the illicit substance. Despite being a chance recovery, the prosecution witnesses, especially PW3 and PW7, deposed that the contraband recovered from the accused was immediately sealed by PW7 with his seal impression "GS". Further, efforts were made by the IO to join independent witnesses;

however, the passersby, citing their personal compulsions, refused to join the police party. The minor variations in the timeline during the cross-examination of the prosecution witnesses are considered natural and trivial, as such variations often reinforce the truthfulness of the witnesses, indicating that the witnesses have not been coached to provide a perfect or identical version of the events. Consequently, the collective and harmonious testimonies of PW3 and PW7, along with the contemporaneous documents presented on record which were prepared at the time of the seizure of the contraband from the accused, successfully establish that the accused was in conscious possession of the recovered contraband.

13. The prosecution, through the testimonies of PW2 (Sample Carrier), PW1 (Seizure Officer), PW4 (Second IO), PW5 (MHC) and PW6 (Officiating SHO), in addition to recovery witnesses PW3 & PW7, has successfully established the procedural integrity and unbroken chain of custody regarding the transmission of the case property. PW3 and PW7 proved on record that the contraband recovered from the accused at the spot was immediately converted into a separate parcel, which was sealed by PW7 with his seal impression "GS". Following the recovery of the contraband and its conversion into a sealed bulk parcel, a ruqa (Ex.PW3/A) containing the details was immediately reduced to writing and sent to the Police Station for the registration of the FIR. Further, on the arrival of the second IO (PW4), the case property and relevant documents, along with the accused, were

handed over to him by PW7. Thereafter, PW4 carried out the investigation and after concluding the same, he immediately returned to the Police Station and produced the sealed bulk parcel before the officiating SHO (PW6). PW6 verified the facts from the police party and affixed his counter-seal “AS” on the bulk parcel produced before him. The case property, sealed with the seal impressions “GS” and “AS”, was then shifted to the Malkhana. ASI Rajesh (PW5) kept the case property in the Malkhana and entered the details in Register No. 19 as well. On the following day, that is, 06.11.2019, PW5 and PW4 produced the intact bulk parcel and the accused before the court of the Ld. JMIC, Chandigarh, for inventory proceedings under Section 52-A of the NDPS Act. The Ld. Magistrate, in their order dated 06.11.2019, observed that the bulk parcel produced before the court was intact and a certificate was issued by the Ld. JMIC. Under judicial scrutiny, the bulk parcel was inspected for representative sampling and was then resealed with the seal of the court bearing the seal impression “MG”. The case property, as resealed before the Ld. Magistrate, was then transmitted to the CFSL.

14. As far as the contention of the Ld. Defence Counsel that the accused was not informed of the grounds of his arrest at the time of his apprehension is concerned, it suffices to mention that upon reviewing the evidence in its entirety, including the formal arrest memo which bears the signatures of the accused, it is observed that the arrest memo contains the full particulars of the FIR registered against the accused.

More importantly, the contraband was recovered directly from the physical possession of the accused and the entire inventory, sealing and recovery proceedings were conducted at the spot in his immediate presence. Thus, the objection raised by the Ld. Defence Counsel is not sustainable. It is further pertinent to mention that the judgment passed in the case titled Dr. Rajinder Rajan (supra), relied upon by the Ld. Defence Counsel, was passed while adjudicating a bail application. In contrast, in the present matter, when the entirety of the evidence led by the prosecution is coupled with the contemporaneous documents presented on record, it clearly emerges that the accused was duly informed about the grounds of his arrest. Consequently, this court holds that the inclusion of the FIR particulars on the signed arrest memo, combined with the accused's direct participation in the recovery proceedings immediately beforehand to arrest memo in question, constituted sufficient compliance regarding informing the accused of the grounds of his arrest, leaving no room for the defence's contention.

15. With regard to the arguments raised by the defence that the prosecution witnesses could not specify the trade name, batch number, etc., whereas the words "Omgesic" and "Leeagesic" were included in the CFSL report, the Ld. Defence Counsel, in order to develop his argument in this regard, invited the attention of this court to the CFSL report and also to the cross-examination of the witnesses. The Ld. defence counsel strongly contended that the case of the prosecution is

full of inconsistencies regarding the manufacturing details and brand names of the recovered psychotropic injections. Much emphasis was placed on the deposition of the SHO, the Malkhana Munshi and the Second IO. In this regard, it suffices to mention that it was the 1st IO/Complainant (PW7) who had the opportunity to observe the contraband at the spot of recovery. Pertinently, the entire bulk parcel was sealed with the "GS" seal at the spot by the 1st IO before it was handed over to the second IO. The sealed bulk parcel was prepared even before the arrival of the second IO, therefore, the subsequent officers had no direct visual access to the unsealed contents of the parcel. Further, from the testimonies of the recovery witnesses, it emerges that the batch numbers on the ampules were deliberately scratched off prior to the seizure. Thus, the defence's expectation of a detailed manufacturing description from the witnesses is logically flawed. As observed above, there is an intact chain of custody of the contraband from the spot until it reached the CFSL. The bulk parcel was systematically opened for the first time before the Ld. Magistrate during the formal inventory and sampling process under Section 52-A of the NDPS Act. The inventory was judicially certified and resealed with the seal of the court "MG" and the CFSL received this judicially certified parcel with its seals perfectly intact. While the CFSL report noted trade/brand terms like "Omgesic" and "Leegesic" on the labels, these details are commercial brand labels printed on the ampoules to signify that they contain the salt Buprenorphine and cannot be

construed as a discrepancy in the manufacturer or brand name not narrated in the story of prosecution in section 173 Cr.P.C. or during examination in chief of recovery witnesses. Consequently, the minor verbal variations regarding the labels that appeared in the testimonies of the prosecution witnesses have not vitiated the otherwise intact chain of custody of the contraband which has been successfully proved by the prosecution.

16. The learned Defence Counsel(s) argued that no justifiable or legally sound reason was furnished by the 1st IO as to why he abstained from arresting the accused immediately upon discovering the contraband. During the course of arguments, the Ld. Defence Counsel contended that the first IO intentionally delayed the arrest and instead chose to wait for the arrival of the second IO (PW4). The defence has pointed out this procedural gap and the 1st IO's inability to provide a satisfactory explanation during his cross-examination to submit that the proceedings were not carried out at the spot as alleged. This court has thoroughly evaluated the prosecution evidence and finds that the argument raised by the defence is not sustainable, for the reason that the contraband recovered in the present case was through a chance recovery because the 1st IO had intercepted the accused, whereby he legally became the complainant in the case. To ensure a completely fair and impartial investigation and to avoid the legal vulnerability of the complainant acting as the sole investigator, it was procedurally sound for him to hand over the further investigation, such as the

formal arrest and other investigative steps, to another Investigating Officer, one who had not apprehended the accused on the basis of suspicion. The evidence on record reveals that the 1st IO, after effecting the recovery of the contraband immediately dispatched the ruqa (written information) to the Police Station for the formal registration of the FIR. In the meantime, the 1st IO also requisitioned the second IO to the spot. The second IO arrived at the spot precisely when the formal FIR particulars became available. It was only after the registration of the case that PW4 (second IO) took over the further investigation and formally executed the arrest. This sequence of events, especially the investigation carried out by both officers, reflects a meticulous adherence to due process rather than an arbitrary delay.

17. The defence argued that the non-joining of independent public witnesses during the recovery proceedings casts doubt on the prosecution's case. It is a settled legal principle that while it is desirable to have independent witnesses, the mere non examination of such witnesses does not, in every case, prejudice the accused or affect the credibility of the prosecution case, especially when the entire prosecution case is proved by reliable official witnesses. There has been no animosity or oblique motive established on the part of the official witnesses to depose falsely against the accused. Reliance is placed on judgments in 'Bachan Singh vs. State of Haryana', [2004(2) RCR (Cr1.) 394: Law Finder Doc ID # 70457] and 'Sumit Tomar vs.

State of Punjab’, [2013(1) SCC395: Law finder Doc ID # 398889] which support the reliability of official testimonies in the absence of independent witnesses.

18. The defence contended that Section 50 of the NDPS Act was not complied with, rendering the recovery doubtful. However, it is observed that the recovery of the contraband was effected from a polythene packet which the accused himself took out from his pocket and was about to throw, thus recovery of contraband not effected from his personal search. As per the settled law, including the observation in ‘Ranjan Kumar Chadha Vs. State of Himachal Pradesh’ [2023 AIR (SC) 5164: Law Finder Doc ID : 2340308], the provisions of Section 50 of the NDPS Act apply only in the case of personal search of the accused and not when contraband is seized from baggage, articles, or containers carried by them. Therefore, compliance with Section 50 of the NDPS Act was not required in this case and its non-applicability does not vitiate the search or recovery.
19. It is settled proposition of law that an accused is always presumed to be innocent until he is proved guilty by cogent evidence. But contrary to this a special statute has been enacted with a special provision enumerated under Section 54 of the NDPS Act which deals with a presumption of guilt of accused. The same is reproduced in verbatim hereunder for ready reference:

“Section 54: Presumption from possession of illicit articles-

In trials under this Act, it may be presumed, unless and until the contrary is proved, that the accused has committed an offence under this Act, in respect of:

- a) any narcotic drug or psychotropic substance or controlled substance:
- b) any opium poppy, cannabis plant or coca plant growing on any land which he has cultivated:
- c) any apparatus specially designed or any group of utensils specially adopted for the manufacture of any narcotic drug or psychotropic substance or controller substance: or
- d) any materials which have undergone any process towards the manufacture of a narcotic drug or psychotropic substance or controlled substance or any residue left of the materials from which any narcotic drug or psychotropic substance or controlled substance has been manufactured for the possession of which he fails to account satisfactorily.”

Thus section 54 of the NDPS Act raised a presumption from possession. It followed with a condition that unless and until the contrary is proved, it may be presumed that the accused has committed an offence under this Act. Further, Section-35 of the NDPS Act, which relates to the presumption of culpable mental state, is extracted as under:

“Section 35: Presumption of culpable mental state: - In any prosecution for an offence under this Act, which requires a culpable mental state of the accused, the Court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state

with respect to the Act charged as an offence in that prosecution.

Explanation: - In this section “culpable mental state” includes intention, motive, knowledge of a fact and belief in, or reason to believe, a fact.

(2) For the purpose of this section, a fact is said to be proved only when the court believes it to exist beyond a reasonable doubt and not merely when its existence is established by a preponderance of probability.”

From the conjoint reading of the provisions of Sections 54 and 35 of NDPS Act, referred above, it becomes abundantly clear that once an accused is found to be in possession of a contraband he is presumed to have committed the offence, under the relevant provisions of the act, until the contrary is proved. According to Section 35 of the NDPS Act, the Court shall presume the existence of mental state for the commission of an offence and it is for the accused to prove otherwise. In ‘Union of India and Another v. Sanjeev V. Deshpande’ [A.I.R. 2014 SC 3625 : Law finder Doc ID # 599370]; it is held that accused committing an offence under NDPS Act, there is no presumption of innocence in favour of accused. It is further held that Section 35 departs from the long established principle of presumption of innocence in favour of an accused person until proved otherwise. In ‘Baldev Singh v. State of Haryana’ [2015(4) R.C.R(Crl) 1014 : Law Finder Doc ID # 716864]; there was huge quantity of poppy straw was recovered from the possession of the

appellant-accused. The recovery was proved by single witness that too a police official. In this case it is further held that once the possession of the contraband by the accused has been established, it is for the accused to discharge the onus of proof that he was not in conscious possession. So, it is settled that once the possession of the accused and his control over the contraband is proved then statutory presumption under section 54 and 35 of the NDPS Act, operates against him; that he was in conscious possession thereof. It is for him to rebut the presumption by leading cogent and convincing evidence. In this case accused failed to rebut the presumption as mentioned in Section 54 and 35 of the NDPS Act and they could not produce any authentic evidence in their favour to show that he has been falsely implicated in this case.

20. In the facts and circumstances of the case, it has emerged that it is a case where there is no oblique motive has been brought against the prosecution witnesses for deposing falsely against the accused. Thus, the prosecution witnesses cannot be branded false, merely at the asking of accused who is naturally interested in wriggling out of the rigors of the likely criminal liability.

CONCLUSION

21. In view of the sequel to the discussion made here in above, the prosecution has successfully established the factum of recovery and infallible chain of custody of the case property through consistent

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testimonies of prosecution witnesses. Thus, all the points of determination are decided in favour of the prosecution and against the accused. The accused is thus convicted for the offence under Section 22(b) of the NDPS Act. Let, the accused be heard on the quantum of sentence.

Pronounced in open Court on: 30.05.2026

(Raman Goklaney)
Judge, Special Court, Chandigarh
(UID No. PB0687)

APPENDIX

A.1 Material witnesses Examined by Prosecution:

Prosecution Witness No.	Name of Witness	Description
PW1	Dr. Cijo John	Junior Scientific Officer (Explosives), CFSL, Hyderabad {The then Junior Scientific Officer (Explosive) at Chandigarh}
PW2	C. Sudhir	Sample carrier
PW3	Retired Inspector Ajay Kumar	Recovery witness
PW4	Retired SI Krishan Dev	2nd Investigating Officer
PW5	ASI Ajesh Kumar	MMHC
PW6	Retired Inspector Karamjit Singh	Officiating SHO
PW7	Retired Inspector Gurmeet Singh	Complainant/Informant

A.2 Material Documents Exhibited by Prosecution:

Exhibit No.	Description of the Exhibit	Proved by/Attested by
Ex.P1/PW1	CFSL Report dated 27.01.2020	Dr. Cijo John (PW1)
Ex.P1/PW2	Arrest-cum-intimation memo	C. Sudhir (PW2)
Ex.P2/PW2	Personal search memo	C. Sudhir (PW2)
Ex.P3/PW2	Receipt of CFSL	C. Sudhir (PW2)
Ex.P1/PW3	Seizure memo	Retired Inspector Ajay Kumar (PW3)
Ex.P2/PW3	Ruqa (Written information)	Retired Inspector Ajay Kumar (PW3)
Ex.P1/PW4	Handing over memo	Retired SI Krishan Dev (PW4)
Ex.P2/PW4	Rough site plan	Retired SI Krishan Dev (PW4)
Ex.P3/PW4	FIR No. 255 dated 05.11.2019 registered at PS. Sector 26, Chandigarh under Section 22 of NDPS Act	Retired SI Krishan Dev (PW4)
Ex.P4/PW4	Inventory list	Retired SI Krishan Dev

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		(PW4)
Ex.P5/PW4	Application for pre-trial disposal of the contraband	Retired SI Krishan Dev (PW4)
Ex.P6/PW4	Application for Certifying the correctness of inventory	Retired SI Krishan Dev (PW4)
Ex.P7/PW4 to Ex.P9/PW4	Photographs	Retired SI Krishan Dev (PW4)
Ex.P10/PW4	Order passed by Ld. Magistrate during the proceedings under Section 52-A of NDPS Act	Retired SI Krishan Dev (PW4)
Ex.P11/PW4	Possession memo of photographs	Retired SI Krishan Dev (PW4)
Ex.P12/PW4	Certificate under Section 65-B of Evidence Act	Retired SI Krishan Dev (PW4)
Ex.P13/PW4	Scaled site plan	Retired SI Krishan Dev (PW4)
Ex.P1/PW5	Certificate issued by Ld. Magistrate under Section 52-A of NDPS Act	ASI Ajesh Kumar (PW5)
Ex.P2/PW5	Photograph attested by Ld. Magistrate (pasted on order under Section 52-A of NDPS Act)	ASI Ajesh Kumar (PW5)
Ex.P3/PW5	Letter moved by SSP, Chandigarh before the Director of CFSL, Chandigarh	ASI Ajesh Kumar (PW5)
Ex.P4/PW5	Copy of register No. 19 (relevant extract)	ASI Ajesh Kumar (PW5)
Ex.P1/PW7	Test memo	Retired Inspector Gurmeet Singh (PW7)

A.3 Material Objections presented by Prosecution:

Material Object No.	Description of the Exhibit	Proved by/Attested by
Ex.MO1	Case property	C. Sudhir (PW2)

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Present:- Sh. Ashok Rohilla, Ld. Addl. PP for State.
Convict with Sh. Lavanya Gupta, Advocate.

Order of quantum of sentence

22. This Court has heard Sh. Ashok Rohilla, Ld. APP for the State and Sh. Lavanya Gupta, Defence Counsel for the convict Davinder on the quantum of sentence. Convict vide his separate statement, stated that he is 45 years of age. He is having old aged mother, who is fully dependent on him. He stated that he never indulged himself in sale of the contraband further and having remorse of his previous act of consuming due to bad company. Lastly, prayer is made for taking lenient view while awarding sentence by submitting that there is no one to take care of his old aged mother.
23. Ld. APP for the State has vehemently argued that the menace of drug trafficking has severe ramifications for the society at large, particularly affecting the youth. It is argued that the NDPS Act was enacted with stringent objective to curb drug abuse and therefore, the convict deserves a sentence that serves as a deterrent to others.
24. Per contra, Ld. Defence Counsel for the convict has submitted that quantity of 6 injections of Buprenorphine (2 ml each) falls under non-commercial quantity under the NDPS Act and Rule 66 of NDPS Rules allowed for an individual's personal medical use. Finally prayer is made for taking lenient view.
25. This Court has considered the rival submissions of both the sides. While the impact of narcotics on society cannot be ignored, the court

must balance the reformatory and retributive theories of punishment.

In the present case, the recovery of 6 injections of Buprenorphine (2 ml each) does not fall under the category of commercial quantity. The record of the case reflects that the convict was apprehended on 05.11.2019 and sent to judicial custody on 06.11.2019. As of today that is till the date of pronouncement of judgment, the convict has undergone the detention period of approximately 1 month and 6 days.

26. Taking in account convict's plea and considering that contraband recovered falls under non-commercial quantity, the ends of justice would be met if the convict is sentenced as follows: -

Offence under section	Sentence imposed
Section 22(b) NDPS Act (For recovery of 6 injections of Buprenorphine)	RI for 3 months along with payment of fine of Rs.5000/- and in default of payment of fine, he shall further undergo SI for 15 days.

27. The period of detention already undergone by the convict during the enquiry, investigation and trial of this case as such is set off against the substantive sentence of imprisonment as per provision of Section 428 of Cr.P.C. Fine not paid. It is further directed that in case the convict deposits the fine in jail, the same shall be intimated to this Court immediately and the default sentence as ordered above shall be deducted/reduced proportionately.
28. A copy of this order and the judgment of the conviction be supplied to the convict free of costs.

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29. The case property be disposed of as per the rules after the expiry of the period of appeal, revision, if any.
30. File be consigned to the record room after due compliances.

Pronounced in open Court on: 30.05.2026

(Raman Goklaney)
Judge, Special Court, Chandigarh
(UID No. PB0687)

Surinder Singh
Stenographer Gr-1

Raman Goklaney, Judge, Special Court, Chandigarh. (UID No. PB0687)
Date: 30.05.2026