



2026:HHC:8830
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IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No. 478 of 2015.

Reserved on: 17.03.2026.

Date of decision: 25.03.2026

State of Himachal Pradesh

...Appellant.

Versus

Anil Kumar @ Rinku

...Respondent.

Coram

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

Hon'ble Mr. Justice Ranjan Sharma, Judge.

Whether approved for reporting? ¹ Yes

For the Appellant. Mr. P.K. Nadda, Additional Advocate General.

For the Respondent: Ms. Drishti Sirswal, Advocate.

Vivek Singh Thakur, Judge

This appeal has been preferred by State of Himachal Pradesh against judgment dated 08.04.2015, passed by Special Judge, Mandi, District Mandi, H.P. in Sessions Trial No. 23/2010, titled as State of Himachal Pradesh vs. Anil Kumar alias Rinku in case FIR No. 18/2010, dated 30.01.2010, registered in Police Station Aut, District Mandi, H.P. under Section 20 of Narcotic Drugs & Psychotropic Substances Act, 1985 (in short 'NDPS Act'), whereby respondent has been acquitted of charge

¹ *Whether the reporters of the local papers may be allowed to see the judgment?*



framed for having been found in exclusive and conscious possession of 450 grams of cannabis/charas on 30.01.2010 at about 3:00 P.M. on National Highway at place Jhalogi.

2. Prosecution's case is that on 30.01.2010, PW-9 ASI Satpal Sharma along with police party, consisting of HC Hari Singh, C. Bhav Dev, HHG Chet Ram and HHG Mittar Dev, while on patrolling and coming from Hanogi Mata to Aut, at about 3:00 P.M. at Jhalogi road, situated on NH-21, noticed a person coming from opposite side, who on seeing the police party nearer to him, became perplexed and started walking briskly after turning around, creating doubt of stolen articles with him, whereupon PW-9 ASI Satpal Sharma along with accompanying officials overpowered the said person, who on inquiry disclosed his name and address as Anil Kumar, S/O Sh. Harmesh Kumar, R/O Village Nabha, P.O. Jattanwala, Tehsil Nabha, P.S. City Nabha, Patiala (Punjab).

3. According to police story, because the spot was secluded, no independent witness was available, whereupon Investigating Officer (PW-9) associated two officials accompanying him as witnesses, namely HC Hari Singh and Constable Bhav Dev. Thereafter, police party gave its *jamatalashi* to Anil Kumar and then, thereafter obtaining consent of respondent under Section 50 of NDPS Act, Anil Kumar was searched and during search, a solid substance was found wrapped in polythene below



the knees. On checking and on the basis of experience, this black cylindrical (*battinuma*) substance was found to be Charas, which was weighed on the spot with the measurement balance, brought by the Investigating Officer along with him and it was found 450 grams. After weighing, the wrappers were put in the same bag and, thereafter, NCB form in triplicate (Ext. PW6/B) was filled in and the recovered contraband was taken in possession, vide memo (Ext. PW2/A), after sealing the same with six seals of impression 'T'. Sample seal was also taken and after using the seal, it was handed over to HC Hari Singh. After preparing ruqua (Ext. PW9/B), PW-9 sent the same to SHO, Police Station Aut, District Mandi, H.P. for registration of FIR through PW-2 HC Bhav Dev at 4:30 P.M., whereupon FIR (Ext. PW10/A) was registered at 5:00 P.M. Thereafter, PW-2 brought the case file on spot. On finding prima-facie complicity of the respondent for commission of offence, he was arrested at 6:45 P.M., vide memo (Ext. PW9/D) and information with respect to arrest was given, vide arrest memo (Ext. PW9/D), according to which respondent had expressed his desire to inform his father about his arrest, whereupon his father was informed accordingly.

4. After returning from the spot, Investigating Officer produced the contraband and case property along with documents to SI/SHO Shreshtha Thakur (PW-10), who resealed the parcel with seal impression



'A' and prepared memo (Ext. PW10/B) in this regard. Sample seal (Ext. PW10/C) was also prepared and case property along with documents was handed over to MHC Kashmir Singh (PW-6), who entered the same in malkhana register, extract whereof has been placed on record as Ext. PW6/A.

5. After completing documentation work, police party came back to the Police Station. PW-9 ASI Satpal Sharma prepared the special report (Ext. PW3/A) and sent it to Additional S.P. through C. Ganesh Lal (PW-5), who delivered it to PW-3 Hira Singh Thakur, the then Dy.S.P. PW-9 ASI Satpal Sharma-Investigating Officer has proved handing over the special report to PW-5, and it also stand proved that the special report was received by PW-3 Hira Singh Thakur from PW-5 HC Ganesh Lal.

6. On 01.02.2010, MHC Kashmir Singh (PW-6) handed over the case property to PW-1 C. Sudeep Kumar along with sample of both seal impressions, vide RC No. 150/09-10 (Ext. PW1/A). The case property was deposited in FSL Junga on 02.02.2010, receipt whereof is Ext. PW1/B, which was handed over by him to MHC on his arrival at Police Station.

7. PW-4 Kashmir Singh under instructions of MHC Kashmir Singh (PW-6) brought the case property and FSL result (Ex. PA) from FSL Junga and handed over the same to MHC in safe and intact



condition. PW-10 SHO Shreshtha Thakur, on receiving the report (Ext. PA) from FSL, prepared challan and forwarded the same to the Court.

8. Special Court, on finding sufficient reasons to proceed further, framed charge against the respondent under Section 20 of NDPS Act.

9. Prosecution has examined 10 witnesses to prove its case, whereas after recording statement under Section 313 of Cr.P.C., no evidence has been led by the respondent.

10. Out of five witnesses on the spot, only two witnesses, i.e., PW-9 ASI Satpal Sharma and PW-2 Bhav Dev have been examined in the Court. Other witnesses have been given up.

11. According to PW-2, police had left the Police Station at 2:20 P.M., whereas according to PW-9, police party left the Police Station at about 11:00 A.M. and reached Hanogi Mata at 12:00 noon. According to the challan presented in the Court as also stated in the ruqua, on the basis of which FIR has been registered, it has been stated that respondent was overpowered on the basis of suspicion of having stolen property with him, but at the same time it has been further stated that area was secluded and, therefore, independent witness was not available. Therefore, officials were associated as witnesses and after giving *jamatalashi* by the police party to the said person, consent of



respondent was obtained, as provided under Section 50 of NDPS Act and, thereafter, personal search of the respondent was conducted.

12. In the Court, PW-9 has stated that he asked the respondent as to whether he was having some NDPS substance and, therefore, he wanted to search him, whereupon consent was given by the respondent and respondent was searched.

13. In examination-in-chief, PW-9 ASI Satpal Sharma is completely silent about the suspicion that respondent was having stolen property. He has clearly stated that respondent was informed about the desire of the police to search him for having some NDPS substance.

14. According to PW-2, police party reached on the spot after 20 minutes, i.e., at about 2:40 P.M., whereas according to PW-9, they arrived at Hanogi temple at about 12:00 noon.

15. According to PW-2, Investigating Officer had developed suspicion regarding possession of some contraband with the respondent, which is contrary to the facts recorded in FIR. PW-2 has further stated that he nabbed the respondent and immediately searched the body of the respondent and, thereafter, documentation was prepared by the Investigating Officer on the spot, whereas according to PW-9, firstly police party gave search to the respondent vide memo (Ext. PW2/C) and,



thereafter, consent of the respondent was obtained, vide consent memo (Ext. PW2/B).

16. It is claim of the police party that it was secluded place as also deposed by PW-9. PW-2 is silent about this fact in examination-in-chief, however, in cross-examination, he has admitted that there is office of Him Urja, Power Project and Camp of SSB at that place and it was National Highway and thousands of vehicles pass through this highway. According to PW-9, he tried to associated independent witness by stopping the vehicle, but none agreed to be associated, whereas according to PW-2, the respondent was searched immediately after overpowering him. He has also admitted that near the place Jhalogi, there is Thalot Bazaar, having hundreds of shops and houses.

17. According to PW-2, search was conducted first and, thereafter, documents were prepared. In the challan as well as in his deposition PW-9 has stated that he before searching the accused had obtained the consent under Section 50 of NDPS Act.

18. According to prosecution, contraband was recovered from the person of the respondent. Consent memo depicts that it was stated to the respondent by PW-9 that he had a doubt that respondent was having some narcotic drug, therefore, he intended to search the respondent and, thereafter, respondent was asked to give consent for search to some



Magistrate or Gazetted Officer by stating that it was the right of the respondent under NDPS Act.

19. Out of five spot witnesses, only two witnesses have been examined and out of them one witness (PW-2) remained on the spot till preparation of ruqua, i.e., 4:30 P.M. With respect to remaining investigation, no other witnesses except PW-9 Investigating Officer has been examined. No doubt, it is not the quantity of the witnesses' evidence, but the quality of the witnesses, which matters, but in present present, neither quantity nor quality of the witnesses' evidence is no record. There is a considerable serious contradiction and discrepancy in the two spot witnesses, who are police officials.

20. No doubt, on the basis of evidence of official witnesses only, an accused can be convicted, but at the same time, when there are serious discrepancies and contradictions in statements of official witnesses and no independent witness has been associated, despite possibility thereof, as evident from statement of PW-2, it creates doubt about the veracity of the prosecution's story.

21. As per consent alleged to be given by the respondent, it has been stated that respondent had stated that he voluntarily wanted to give his search to the Investigating Officer.



22. Law with regard to compliance of Section 50 of NDPS Act is well settled. Apex Court in ***Ranjan Kumar Chaddha vs. State of Himachal Pradesh, AIR 2023 Supreme Court 5164*** has observed as under:

“33. Ordinarily, it could be said or argued that “to search any person” would mean, to search the articles on the person or body of the person to be searched and would normally not include the articles which are not on the body of the person to be searched. When we are deliberating on the scope and true purport of Section 50 of the NDPS Act, we should bear in mind that the main object of Section 50 of the NDPS Act is to avoid the allegation of planting something or fabricating evidence by the prosecution or the authorized officer.

....

36. Considering the aforesaid provisions, the inference which can be drawn is that “to search any person” would mean only search of the body or wearing apparels of such person and in that case the procedure which is required to be followed would be the one prescribed under Section 50 of the NDPS Act. In contrast, if search of any building, conveyance or place, including a public place, is to be carried out, then there is no question of following the procedure prescribed under Section 50. However, when a suspected or arrested person is to be searched, then the procedure prescribed under Section 50 comes into operation and the procedure thereunder is required to be followed. This can be seen by referring to Section 100(3) of the CrPC 1973 which provides that where any person is reasonably suspected of concealing about his person any article for which search should be made, such person may be searched and if such person is a woman, the search shall be made by another woman with strict regard to decency. The concealment which is suspected is on the person or about his person.

....

56. Thus, the person intended to be searched under Section 50 must be told in clear and unambiguous words that he has a right to have the search conducted in presence of either a Gazetted Officer or Magistrate. The person concerned must be made aware of his right and must be given only two options that have been provided under the section.

....

63. However, we propose to put an end to all speculations and debate on this issue of the suspect being apprised by the empowered officer of his right under Section 50 of the NDPS Act to be searched before



a Gazetted Officer or Magistrate. We are of the view that even in cases wherein the suspect waives such right by electing to be searched by the empowered officer, such waiver on the part of the suspect should be reduced into writing by the empowered officer. To put it in other words, even if the suspect says that he would not like to be searched before a Gazetted Officer or Magistrate and he would be fine if his search is undertaken by the empowered officer, the matter should not rest with just an oral statement of the suspect. The suspect should be asked to give it in writing duly signed by him in presence of the empowered officer as well as the other officials of the squad that "I was apprised of my right to be searched before a Gazetted Officer or Magistrate in accordance with Section 50 of the NDPS Act, however, I declare on my own free will and volition that I would not like to exercise my right of being searched before a Gazetted Officer or Magistrate and I may be searched by the empowered officer." This would lend more credence to the compliance of Section 50 of the NDPS Act. In other words, it would impart authenticity, transparency and credit worthiness to the entire proceedings. We clarify that this compliance shall henceforth apply prospectively.

64. From the aforesaid discussion, the requirements envisaged by Section 50 can be summarised as follows:-

(i) Section 50 provides both a right as well as an obligation. The person about to be searched has the right to have his search conducted in the presence of a Gazetted Officer or Magistrate if he so desires, and it is the obligation of the police officer to inform such person of this right before proceeding to search the person of the suspect.

(ii) Where, the person to be searched declines to exercise this right, the police officer shall be free to proceed with the search. However, if the suspect declines to exercise his right of being searched before a Gazetted Officer or Magistrate, the empowered officer should take it in writing from the suspect that he would not like to exercise his right of being searched before a Gazetted Officer or Magistrate and he may be searched by the empowered officer.

(iii) Before conducting a search, it must be communicated in clear terms though it need not be in writing and is permissible to convey orally, that the suspect has a right of being searched by a Gazetted Officer or Magistrate.

(iv) While informing the right, only two options of either being searched in presence of a Gazetted Officer or Magistrate must be given, who also must be independent and in no way connected to the raiding party.

(v) In case of multiple persons to be searched, each of them has to be individually communicated of their right, and each must



exercise or waive the same in their own capacity. Any joint or common communication of this right would be in violation of Section 50.

(vi) Where the right under Section 50 has been exercised, it is the choice of the police officer to decide whether to take the suspect before a Gazetted Officer or Magistrate but an endeavour should be made to take him before the nearest Magistrate.

(vii) Section 50 is applicable only in case of search of person of the suspect under the provisions of the NDPS Act, and would have no application where a search was conducted under any other statute in respect of any offence.

(viii) Where during a search under any statute other than the NDPS Act, a contraband under the NDPS Act also happens to be recovered, the provisions relating to the NDPS Act shall forthwith start applying, although in such a situation Section 50 may not be required to be complied for the reason that search had already been conducted.

(ix) The burden is on the prosecution to establish that the obligation imposed by Section 50 was duly complied with before the search was conducted.

(x) Any incriminating contraband, possession of which is punishable under the NDPS Act and recovered in violation of Section 50 would be inadmissible and cannot be relied upon in the trial by the prosecution, however, it will not vitiate the trial in respect of the same. Any other article that has been recovered may be relied upon in any other independent proceedings."

23. In present case, respondent did not decline to exercise his right, rather his consent has been recorded for giving search to the Investigating Officer. As per mandate of the Apex Court that only two options are to be given to the respondent and any third option will vitiate the proceedings. In present case, there is nothing on record in writing that respondent declined to exercise his right, rather a third option appears to have been given, as evident from the consent alleged to have been recorded in the consent memo. The memo is not in consonance with the



requirement envisaged by Section 50 of NDPS Act, as summarized in **Ranjan Kumar Chaddha's case** and therefore also, the trial vitiates.

24. Respondent has been acquitted by Trial Court, fortifying his presumption of innocence. As evident from the above discussion, State has failed to establish its case by leading cogent, reliable and convincing evidence beyond reasonable doubt to establish the guilt of the respondent.

25. In view of above discussion, we are of the considered opinion that respondent deserves benefit of doubt and we do not find any ground for interfering in the judgment of acquittal for the reasons stated here-in-above. Accordingly, appeal is dismissed.

26. Appeal disposed of in aforesaid terms along with pending applications, if any.

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

**(Ranjan Sharma),
Judge.**

25th March, 2026
(Susheel)