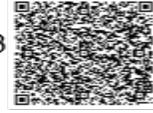


2025:PHHC:042952-DB



CRM-A-731-2024 (O&M) -1-

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**CRM-A-731-2024 (O&M)
Reserved on:18.03.2025
Pronounced on:28.03.2025**

State of Punjab ... Applicant

Vs.

Gurdit Singh @ Vishal & another ... Respondents

**CORAM: HON'BLE MR. JUSTICE SUDHIR SINGH.
HON'BLE MRS. JUSTICE SUKHVINDER KAUR**

Present: Mr. Neeraj Madaan, Sr. DAG, Punjab.

...

SUKHVINDER KAUR, J.

1. Applicant – State of Punjab has preferred the instant application under Section 378(3) Cr.P.C. seeking leave to appeal against judgment dated 25.09.2023 passed by learned Judge, Special Court, Faridkot vide which the respondents have been acquitted of the charges under Sections 22(a)/29 of the NDPS Act.

2. Factual scenario, as unfolded by prosecution is that on 07.11.2020, Inspector Sanjeev Kumar, Incharge Narcotic Cell, Faridkot received information from HC Beant Singh regarding apprehending of a person on Hari Nau-Matta link road under suspicious circumstances, who was found carrying a polythene bag hanging on the handle of his motorcycle. On seeing the police party, he became perplexed and tried to turn back but his motorcycle did not start. Since HC Beant Singh was not

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competent to investigate the matter falling under NDPS Act, so he had called Inspector Sanjeev Kumar to take further necessary steps in this respect. Inspector Sanjeev Kumar accompanied by Bhupinder Singh and other police officials reached at the location at about 1:45 P.M. Inspector Sanjeev Kumar tried to join some independent witness but none was available. After giving his introduction to the accused, he inquired about his name and other particulars. He was also apprised regarding his right and was given the option to have his search conducted before a Gazetted officer or a Magistrate. Notice under Section 50 of the NDPS Act was served. Accused opted for getting his search conducted in the presence of a Gazetted Officer. As such, DSP, Sub Division, Kotkapura was called through PCR, Faridkot, who arrived at the spot at about 4:30 p.m. DSP Balkar Singh also made efforts to join some independent witness from the public, but nobody was ready for the same. DSP Balkar Singh disclosed his identity to the accused and ascertained his name and particulars and expressed his suspicion regarding carrying some intoxicated material by the accused, in the polyethylene bag hanging with the handle of his motorcycle. DSP Balkar Singh further apprised the accused about his right to get his search conducted through a Magistrate or any Gazetted Officer, but accused reposed faith in DSP Balkar Singh. Thereafter, Inspector Sanjeev Kumar under supervision and instructions of DSP Balkar Singh conducted search of polythene bag being carried by the accused which led to recovery of three boxes of NRx Tramadol Hydrochloride Tablets labelled as Clovil-100 SR, each box containing 50

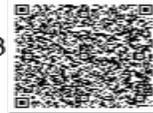
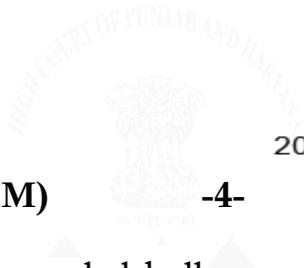
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strips and each strip having 10 tablets, thus, total 1500 tablets. These tablets had a consistent batch number, manufacture date (10/2020) and expiry date (09/2022). Seized items were converted into a sealed bulk parcel duly sealed with seal impressions of Inspector Sanjeev Kumar 'SK' and DSP Balkar Singh 'BS' respectively. Specimen sealed chit was also prepared. DSP Balkar Singh retained his seal with him. Apart from the tablets, registration certificate of said motorcycle in name of one Charanjit Kaur along with pollution and insurance certificate were also recovered by Inspector Sanjeev Kumar. Sealed bulk parcel and seized motorcycle were taken into police possession vide memo Ex.P3.

As accused Gurdit Singh @ Vishal could not produce any valid permit, license or bill for having in his possession the aforesaid intoxicant tablets, so ruqa was sent to police station through Constable Varinder Singh and formal FIR was registered by SI Surinder Singh. Rough site plan of place of recovery was prepared. Accused Gurdit Singh @ Vishal was formally arrested.

During the spot inspection, accused suffered a disclosure statement that the recovered tablets were supplied to him by accused Satyam Kumar, so Satyam Kumar was nominated as an accused for offence punishable under Section 29 of the NDPS Act.

After spot inspection, police party returned to the police station. Accused along with sealed bulk parcel and recovered contraband was presented before SI Surinder Singh, officiating SHO, who after verification, affixed his seal bearing impression 'SS'. Thereafter, SI



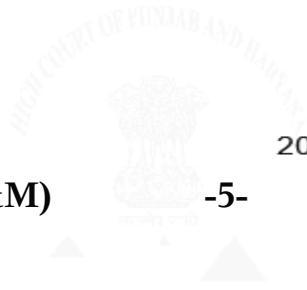
CRM-A-731-2024 (O&M) -4-

Surinder Singh took the sealed bulk parcel into his custody vide memo Ex.P10.

On 08.11.2020, SI Surinder Singh presented accused along with sealed bulk parcel before learned Judicial Magistrate 1st Class, Faridkot. SI Surinder Singh moved applications for inventory verification and for initiating proceedings under Section 52-A of the NDPS Act. Inventory was verified vide order Ex.P39. Under the proceedings initiated under Section 52-A of the NDPS Act, two sample parcels of one strip of 10 tablets each were withdrawn. The newly drawn sample parcels and remaining bulk parcels were sealed with seal impression 'CS' of learned Judicial Magistrate 1st Class, Faridkot. These proceedings were documented through photographs Ex.P22 to P27 and CFSL form Ex.P13 was also prepared. A detailed order Ex.P37 was passed regarding the aforesaid samples.

On 11.11.2020, SI Surinder Singh handed over sample parcels vide road certificate No.359 dated 11.11.2020 through LHC Harmeet Kaur for depositing the same in FSL. After receipt of FSL report disclosing that chemical analysis detected the presence of Tramadol Hydrochloride in the tablets and after completion of other investigation, final report under Section 173 Cr.P.C. was submitted in the Court for trial against both the accused.

3. After finding a prima facie case against the accused, they were charge sheeted for commission of offence punishable under Sections 22-C and 29 of the NDPS Act, to which they did not plead guilty and



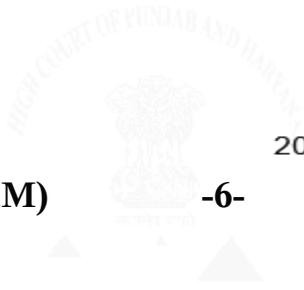
claimed trial.

4. In order to prove its case, prosecution had examined as many as 11 witnesses – PW1 Inspector Sanjeev Kumar, PW2 HC Bhupinder Singh, PW3 ASI Karam Singh, PW4 MHC Jaswant Singh, PW5 LHC Harmeet Kaur, PW6 ASI Jaslabh Singh, PW7 ASI Jaswinder Singh, Reader to DSP Sub Division, Kotkapura, PW8 SI Surinder Singh, PW9 Charanjit Kaur, PW10 DSP Balkar Singh and PW11 Mohal Lal, Junior Assistant, SDM Office, Kotkapura.

5. Statements of accused under Section 313 Cr.P.C. were recorded while putting incriminating evidence against them. They pleaded innocence and false implication. Accused Satyam Kumar also stated that two false FIRs were lodged against him concerning the same batch of tablets.

6. In defence evidence, accused examined DW1 Shinderpal Singh and accused Gurdit Singh @ Vishal also produced on record Ex.D1 to Ex. D3 police charge sheet in FIR No.243 dated 08.11.2020 including list of witnesses and statement of PW10 DSP Balkar Singh and Ex.D4 to Ex.D5 police charge sheet in FIR No.244 dated 09.11.2020 along with list of witnesses and statement of PW10 DSP Balkar Singh.

7. After considering the evidence on record, learned trial Court, acquitted both the accused of the offences for which they have been charge sheeted vide judgment dated 25.09.2023. Aggrieved of said decision dated 25.09.2023, applicant/State has preferred the present application for seeking leave to appeal against acquittal of the



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accused/respondents.

8. Learned trial Court acquitted the accused vide impugned judgment *inter alia* on the following grounds:

(i) HC Beant Singh, who was a material witness, had informed PW1 Inspector Sanjeev Kumar regarding apprehension of accused Gurdit Singh @ Vishal under suspicious circumstances while carrying a polythene bag hanging with handle of motorcycle bearing No.PB-79-6352, was not examined.

(ii) The entire haul of three boxes containing 1500 NRx Tramadol Hydrochloride tablets were bearing same batch number, manufactured on 10/2020 and with expiry date of 09/2022. Consistent pattern of police was observed in three consecutive cases i.e. present FIR No.139 dated 07.11.2020, FIR No.243 dated 08.11.2020 and FIR No.244 dated 09.11.2020, wherein a similar recovery of 1500 tablets in each of these cases was allegedly effected. In all the aforesaid cases, the person on these dates were found in possession of three boxes, containing 1500 tablets of Tramadol Hydrochloride, containing same batch numbers and with similar manufacturing and expiry dates. The supplier in all three consecutive cases was also identified and nominated for enhanced offence under Section 29 of the NDPS Act.

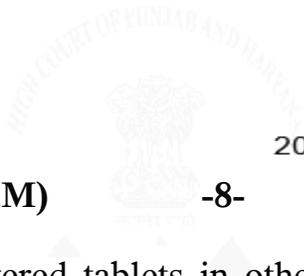
(iii) There was no independent corroboration and non-examination of informer HC Beant Singh adversely effected the case of the prosecution.

(iv) It was not disclosed that what was the relation of accused

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Gurdit Singh @ Vishal with Satyam Kumar as they were residents of different localities in Kotkapura. It was not disclosed that from where accused Satyam Kumar had obtained the contraband which he allegedly supplied to accused Gurdit Singh @ Vishal. It was also not explained that how the motorcycle belonging to Charanjit Kaur came into possession of accused Gurdit Singh @ Vishal.

9. Learned State counsel has assailed the impugned judgment by vehemently contending that prosecution has duly proved its case by leading cogent and convincing evidence. The prosecution witnesses have given a cogent and convincing account of search and seizure and subsequent apprehension of accused Gurdit Singh @ Vishal with 1500 intoxicant tablets supplied by accused Satyam Kumar. He further contended that link evidence is also complete in the present case and provisions of Section 52-A of the NDPS Act were also duly complied with. He has urged that no evidence has been brought on record even to suggest that there was a motive on the part of police officials to falsely implicate the accused and in such circumstances, finding regarding fabricated recovery is uncalled for. Non-examination of HC Beant Singh cannot be said to be fatal to the prosecution case in any manner. He argued that even lack of independent corroboration cannot be taken to be a ground for acquittal in a case involving recovery of commercial quantity in the absence of any evidence to show any malafide or lacking credibility of the official witnesses. He has also submitted that learned trial Court has wrongly observed that batch number in the present case is similar with



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batch number of recovered tablets in other two abovesaid cases. In the light of the aforesaid submissions, he prayed that the impugned judgment be set aside and accused be convicted for the offence charged with and sentenced accordingly as per law.

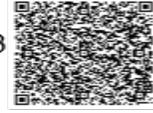
10. We have heard learned State counsel for the applicant and have also gone through the record of the case.

11. Issue that arises for determination in the present case is that whether finding of acquittal recorded by learned trial Court requires any interference by this Court.

12. It is well settled proposition of law that the Appellate Court is to interfere with the order of acquittal only when there is perversity of facts and law. Reference in this regard can be made to judgments of Hon'ble the Supreme Court in '**Mahamadkhan Nathekhan vs. State of Gujarat**' 2014 (14) SCC 589 and **Mallappa and others Vs. State of Karnataka, 2024 AIR (SC) 1252.**

13. Moreover, the NDPS Act provides for very stringent punishment in case the accused is found to have committed an offence under the same and, therefore, it is all the more important and imperative for the prosecution to prove its case beyond the reasonable doubt. It is for this reason that several safeguards have been provided under the Act and it is obligatory upon the investigating agency and then the prosecution to comply with these provisions.

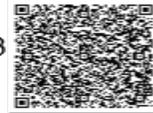
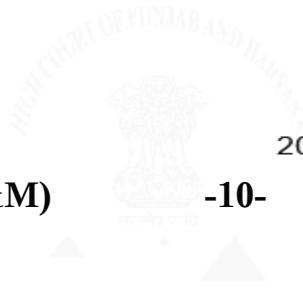
14. Now adverting to the present case, after having heard learned counsel for the applicant/State and having perused the judgment as well as



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the other relevant record, we are of the considered opinion that the prosecution has not been able to prove its case against the accused/respondents beyond the shadow of the reasonable doubt.

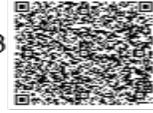
15. As per the prosecution version, the sequence of event started with the phone call made by HC Beant Singh to PW1 Inspector Sanjeev Kumar on 07.11.2020 at about 12:59 p.m., reporting regarding apprehension of accused Gurdit Singh @ Vishal under suspicious circumstances while carrying a polythene bag hanging with the handle of motorcycle bearing registration No.PB-79-6352. He was a material witness of the prosecution who first of all, suspected of carrying some narcotic material by accused Gurdit Singh @ Vishal in a polythene bag, hanging with the handle of motorcycle driven by him. As per prosecution version, as HC Beant Singh was not capable of conducting search for contraband under the NDPS Act, so PW1 Inspector Sanjeev Kumar was informed regarding the same, which later on led to the alleged search, seizure and recovery of contraband from possession of accused. Thus the present case is having the peculiar facts and it is not the case of the prosecution that search and seizure was made on the basis of some secret information. Name of HC Beant Singh was specifically disclosed by prosecution and it has also been alleged that since he was not capable for conducting search for contraband under the NDPS Act, so he had to inform the matter to PW1 Inspector Sanjeev Kumar. Thus, it was imperative for the prosecution to examine HC Beant Singh to complete the link, but non-examination of this witness has caused a dent in the case



of the prosecution.

16. There is also another aspect in this case. Substantial documentary evidence has been led in defence that within a short timeframe besides this FIR, two more FIRs were registered with strikingly similar allegations. In FIR No.243 dated 08.11.2020 registered at Police Station City Kotkapura, again information was provided by HC Beant Singh along with HC Kulwinder Singh. Thus, non-examination of HC Beant Singh raises doubt regarding credibility of the narrative presented by PW1 Inspector Sanjeev Kumar and other official witnesses. Learned trial Court has rightly observed that absence of HC Beant Singh's testimony leaves room for unanswered questions as his examination could have subjected his version of apprehending accused Gurdit Singh @ Vishal to meticulous cross-examination. Examination of HC Beant Singh assumes more significance as case of the prosecution is also lacking any independent corroboration. Though, it is not necessary to join independent witnesses in each and every case but in the peculiar facts of this case when prosecution case has not been corroborated by examining HC Beant Singh, then it has adversely effected credibility of prosecution version as projected by the prosecution.

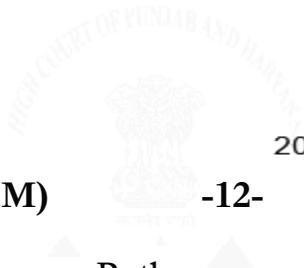
17. In the present case, accused Gurdit Singh @ Vishal was allegedly found in possession of 1500 tablets of tramadol hydrochloride in three boxes on 07.11.2020. Accused has produced on record Ex.D1 to Ex.D3 i.e. police charge sheet in FIR No.243 dated 08.11.2020, list of witnesses and statement of PW10 DSP Balkar Singh. He has also

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produced on record Ex.D4 and Ex.D5 i.e. police charge sheet in FIR No.244 dated 09.11.2020, list of witnesses and statement of PW10 DSP Balkar Singh. The aforesaid cases also pertain to recovery of 1500 tablets of Tramadol Hydrochloride in three boxes. In FIR No.243 dated 08.11.2020 as already observed, again the information was provided by HC Beant Singh and HC Kulwinder Singh. It has been rightly observed by learned trial Court that although the incidents allegedly occurred at different locations, a discernible pattern arises as the apprehended persons on these dates were allegedly found in possession of three boxes containing 1500 tablets of Tramadol Hydrochloride, sharing same batch numbers along with similar manufacturing and expiry dates.

18. The supplier Satyam Kumar named in this FIR was identified on 07.11.2020 and arrested on 08.11.2020. Similarly in aforesaid FIR No.243, supplier was identified on 08.11.2020 and was apprehended on 09.11.2020. Thus, in the aforesaid cases, supplier was identified and nominated for enhanced offence under Section 29 of the NDPS Act on the same day. Learned trial Court has compiled the material facts and circumstances arising from aforesaid three cases in a tabular form in paragraph No.47 of its judgment. The sequence of nominating the supplier on one day and apprehended on the next day, highlighted overall pattern observed in all the aforesaid three cases and in this light the entire prosecution narrative appears to be highly doubtful and suspicious.

19. We do not agree with this contention of learned State counsel that learned trial Court has wrongly observed that batch number of tablets



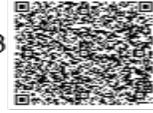
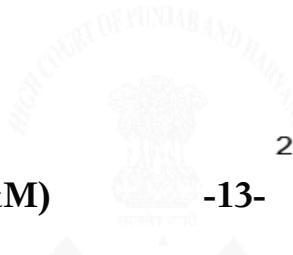
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in all the cases was same. Rather perusal of the impugned judgment reveals, that it has been observed that batch number of the tablets in all the three boxes, allegedly recovered in each case was same and it has not been observed that batch numbers of tablets in the other FIRs was also the same.

20. Prosecution has also not been able to prove the offence under Section 29 of the NDPS Act. It has not been disclosed that what was the relationship between accused Gurdit Singh @ Vishal and Satyam Kumar as they were residents of different localities in Kotkapura. There is no evidence on record that from where did accused Satyam Kumar obtained the contraband for allegedly supplying to accused Gurdit Singh @ Vishal. It has also not been explained that how the motorcycle belonging to PW9 Charanjit Kaur upon which accused was allegedly carrying the contraband, came into possession of accused Gurdit Singh @ Vishal. Thus, nomination of accused Satyam Kumar is without any evidence of his involvement in procuring the recovered contraband, just on the statement of co-accused.

21. In the backdrop of the abovesaid facts and circumstances, prosecution has not been able to prove its case against both the accused/respondents persons and they have been rightly acquitted by giving the benefit of doubt.

22. Learned counsel for the applicant was unable to point out any illegality, infirmity or perversity in the impugned judgment dated 25.03.2023 calling for any interference.



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23. No other argument was raised.
24. In view of the above, there is no reason to interfere with the well reasoned judgment of acquittal passed by learned trial Court. Therefore, the application for seeking grant of leave to appeal stands declined and is dismissed.
25. Pending application(s), if any, shall also stand disposed of.

**(SUKHVINDER KAUR)
JUDGE**

**(SUDHIR SINGH)
JUDGE**

28.03.2025

harjeet

Whether speaking/reasoned?
Whether reportable?

Yes/No
Yes/No

