

CRA-S-1830-SB-2014(O&M)
and other connected matter

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Order Reserved on: 21.07.2023
Order Pronounced on:28.07.2023

1. CRA-S-1830-SB-2014(O&M)

Arjun Singh @ Marra and another

..... Appellants

Versus

State of Punjab

..... Respondent

2. CRA-S-987-SB-2014(O&M)

Sukhwinder Singh @ Billa

..... Appellant

Versus

State of Punjab

..... Respondent

CORAM : HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. A.P.S.Sandhu, Advocate
for the appellants (in CRA-S-1830-SB-2014)

Ms.G.K.Mann, Senior Advocate with
Mr.Anmol Jeevan Singh Gill, Advocate
for the appellant (in CRA-S-987-SB-2014).

Mr.Iqbal Singh Maan, DAG, Punjab.

HARPREET SINGH BRAR, J.

1. The above mentioned two appeals have been directed against
the judgment of conviction and order of sentence dated 05.02.2014 passed

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by Special Court (A), Gurdaspur, in FIR No. 116 dated 18.08.2007, under Section 15-61-85 of the Narcotic Drugs & Psychotropic Substances Act, 1985 (hereinafter referred to as 'the Act' for short), registered at Police Station Ghoman, District Batala, Punjab, vide which the appellants were convicted and sentenced to undergo rigorous imprisonment for a period of 10 years each and to pay a fine of Rs. 1,00,000/- for the commission of offence punishable under Section 15 of the Act and in default of payment of fine, they were further ordered to undergo rigorous imprisonment for a period of 02 years.

FACTUAL BACKGROUND

2. Brief facts of the case are that on 18.08.2007, SI/SHO Makhan Singh (investigating officer) along with other police officials was patrolling the area of canal bridge Athwal where he received a secret information to the effect that Sukhwinder Singh alias Billa, Arjun Singh alias Marra and Manohar Lal were indulging in the sale of poppy husk and other intoxicants. At that time they were sitting on the bags of poppy husk near Mogha Drain Distributary, village Mehmampur on the canal bridge waiting for a vehicle and if a raid was conducted, they could be apprehended. This information was passed on to Ajaib Singh DSP, Qadian on his mobile phone by the investigating officer and he was requested to reach the spot. Thereafter the investigating officer raided the disclosed place and found three persons sitting on six bags. On seeing the police party, they tried to run away but were nabbed with the help of police officials. On interrogation they disclosed their names as mentioned above. They were told that there was a

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suspicion of their being in possession of poppy husk and some intoxicants and were required to be searched. They were made aware of their legal right to be searched in the presence of a Gazetted Officer or a Magistrate. They showed their willingness to be searched by a Gazetted Officer. Dissent memos were prepared. DSP, Qadian came to the spot and conducted the search after disclosing his identity and getting the consent of the aforesaid persons. On the asking of DSP, Qadian, the investigating officer opened the six bags from which poppy husk was recovered. Out of the recovered bags, five were weighed as 24^{3/4} kg each and one bag weighed as 19^{3/4} kg. In total 145 kg of poppy husk was recovered. Samples were taken and sealed with the seals bearing impression 'MS' and 'AS'. The case property was taken into possession. A written information/*ruqa* was sent to the police station through Constable Harjinder Singh on the basis of which formal FIR was registered. Accused were arrested at the spot. After completing all the formalities of investigation, a report under Section 173 Cr.P.C., was prepared and presented in Court.

3. After complying with the provisions of Section 207 Cr.P.C., charge was framed against the accused for the commission of offence punishable under Section 15 of the Act, to which all the accused did not plead guilty and claimed trial.

4. In order to prove its case, prosecution examined as many as five witnesses and its evidence was closed after tendering the report of Chemical Examiner (Ex.PX).

5. Accused in their defence examined one witness i.e. DW1-Amrik Singh and closed their evidence.

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6. After hearing arguments of both sides and perusing the evidence on record, the trial Court convicted and sentenced the appellants/accused as discussed above.

CONTENTIONS

7. Learned counsel for the appellants has invited the attention of the Court towards the shortcomings in the case of the prosecution. He has argued that the secret information allegedly received by the investigating officer was not reduced into writing as mandated under Section 42 of the Act and this fact has been admitted by the prosecution. As per counsel, recovery of contraband has been shown from a public place but no independent witness has been joined in the investigation. Further, conscious possession is not proved.

He has further argued that Form 29 was not filled at the spot. He has also drawn the attention of the Court towards certain discrepancies like- as per prosecution DSP Ajaib Singh was called at the spot at 3.00 p.m. but he, while deposing as PW2, stated that he received a phone call at 4.15 p.m. and reached the spot 20 minutes thereafter; consent memo contained the number of the FIR which means that the same was registered while sitting in the police station. Another discrepancy highlighted by learned counsel is with regard to depositing of the samples in the office of Assistant Chemical Examiner, Amritsar. HC Sukhdev Singh, while appearing in the witness box as PW1, stated that he received the sample on 24.08.2007 whereas the investigating officer SI Makhan Singh, while appearing as PW3, stated that the sample was handed over to HC Sukhdev Singh on 23.08.2007 and he deposited the same on 24.08.2007. As per learned counsel for the appellants

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the sample should have been deposited within the prescribed period of 72 hours and hence the delay in depositing the sample is fatal to the case of the prosecution and there is every possibility of tampering with the same. The testimony of HC Sukhdev Singh (PW1) is by way of affidavit and the same is not recorded before the trial Court as required in a criminal trial. Moreover, seals were also not sent with the samples and this fact is admitted by the I.O.

8. Learned senior counsel for the appellants has further argued that report of Chemical Examiner is not proved on record. She also pointed out violation of Section 52-A of the Act as the representative samples were not taken before the Magistrate.

9. On the other hand, learned State counsel has supported the case of the prosecution by arguing that the accused were found sitting on the bags of the recovered contraband and hence they were in conscious possession of the same. He has argued that all the procedural safeguards provided under the Act were duly complied with. The appellants were found in possession of a huge quantity of poppy husk which falls within the 'commercial quantity' and the prosecution has proved its case beyond reasonable shadow of doubt and hence the learned State counsel has prayed for dismissal of both the appeals.

OBSERVATION AND ANALYSIS

10. This Court has heard learned counsel for the parties and has perused the record with their able assistance. All the three appellants were found sitting on six bags of poppy husk on the bridge of the canal in village Mehmampur. The contention of learned counsel for the appellants is that the

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FIR was registered on the basis of secret information and the investigating officer has not reduced the same into writing in compliance of Section 42 of the Act which also requires sending the report forthwith to his immediate superior officer. In order to ascertain the adequate or substantial compliance of Section 42 of the Act, the memo of site plan (Ex.PW3/F) is perused and it transpires that the place from where the alleged contraband was recovered is a public place i.e. the road abutting the canal. Thus, the place of recovery is accessible to the public and it is intended for public use. The argument of learned counsel for the appellants with regard to non-compliance of Section 42 of the Act is misconceived. The mandatory compliance of Section 42 of the Act is not applicable when the recovery of any contraband under the Act is made from a public place. Rather, in the facts and circumstances of the case, Section 43 of the Act would be applicable.

11. Learned counsel for the appellants has referred to the statement of PW2-Ajaib Singh, DSP(Retired) who was called at the spot before preparation of the consent memo. In his cross examination the said witness had stated that he received the information at 4.15 p.m. and reached the spot 20 minutes thereafter and remained there for 3 ^{1/2} hours and the alleged contraband was recovered by SI Makhan Singh on searching the gunny bags, whereas a perusal of the FIR (Ex.PW3/E) indicates the recovery having taken place at 4.15 p.m. and the information was received at the police station at 4.35 p.m. vide general diary entry No. 23. This glaring discrepancy lends credence to the argument of learned counsel for the appellants that the procedural safeguards under the Act were not followed. The Gazetted Officer was never called at the spot and all the paperwork had been done

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while sitting in the police station.

12. Another conspicuous fact which creates a serious dent in the story of the prosecution is that a perusal of Ex.PW3/A to Ex.PW3/C (memos of non-consent), Ex.PW3/F (memo of site plan), Ex.PW3/G, EX.PW3/H and Ex.PW3/J (memos of search of the appellants), Ex.PW3/K (memo of arrest), Ex.PE (memo of recovery), Ex.PB, Ex.PC and Ex.PD (the consent memos of the appellants) shows that they all bear the FIR Number '116'. When *ruqa* (Ex.PW3/D) is perused, it transpires that the same was sent through Constable Harjinder Singh belt No. 2836 to police station and it was recorded in the *ruqa* that the FIR be registered and its number be intimated to the investigating officer. It is the case of the prosecution that *ruqa* was sent through Constable Harjinder Singh after preparing all the consent memos and the poppy husk was recovered from the gunny bags and the same were taken into possession vide recovery memo (Ex.PE). The samples were drawn and other formalities were done at the spot. However, there is no explanation by any of the witnesses as to how the FIR number came to be reflected on those memos when admittedly the same was lodged later in time. The above aspect raises a serious suspicion over the investigation conducted by the investigating officer. In the absence of any reasonable explanation by the prosecution with regard to reflecting the complete details of the FIR on the consent memos as well as on the recovery memo which, according to the case of the prosecution, was prepared at the first instance before registration of the FIR, the case of the prosecution has become highly doubtful.

13. The Hon'ble Supreme Court in **Kamaljit Singh @ Pappu vs.**

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State of Punjab, 2020(14) SCC 9 dealt with a similar issue where the investigation was found to be suspicious on the ground that the FIR number was mentioned on the memos which were prepared much prior to the registration of FIR. Similarly, this High Court has also discarded the investigation on the ground of mentioning of FIR number on the memos prepared during investigation prior to registration of the FIR. A reference is made to **Sunny alias Siti vs. State of Punjab, Crl. Appeal No. 3730-SB of 2016** decided on 05.12.2022, **Netar Pal vs. State of Haryana , 2018 (8) RCR(Criminal) 352** and **Kewal Singh vs. State of Punjab 2018(4) RCR(Criminal) 580**.

14. Another glaring omission in the investigation of the case is the non-compliance of Section 52-A of the Act which requires reproduction and the same is as follows:-

“52A. Disposal of seized narcotic drugs and psychotropic substances.

(1) The Central Government may, having regard to the hazardous nature of any narcotic drugs or psychotropic substances, their vulnerability to theft, substitution, constraints of proper storage space or any other relevant considerations, by notification published in the Official Gazette, specify such narcotic drugs or psychotropic substances or class of narcotic drugs or class of psychotropic substances which shall, as soon as may be after their seizure, be disposed of by such officer and in such manner as that Government may from time to time, determine after following the procedure hereinafter specified.

2) Where any narcotic drug or psychotropic substance has been seized and forwarded to the officer-in-charge of the nearest police station or to the officer empowered under section 53, the officer referred to in sub-section (1) shall prepare an

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inventory of such narcotic drugs or psychotropic substances containing such details relating to their description, quality, quantity, mode of packing, marks, numbers or such other identifying particulars of the narcotic drugs or psychotropic substances or the packing in which they are packed, country of origin and other particulars as the officer referred to in sub-section (1) may consider relevant to the identity of the narcotic drugs or psychotropic substances in any proceedings under this Act and make an application, to any Magistrate for the purpose of

- (a) certifying the correctness of the inventory so prepared; or*
- (b) taking, in the presence of such Magistrate, photographs of such drugs or substances and certifying such photographs as true; or*
- (c) allowing to draw representative samples of such drugs or substances, in the presence of such Magistrate and certifying the correctness of any list of samples so drawn.*

(3) Where an application is made under sub-section (2), the Magistrate shall, as soon as may be, allow the application.

(4) Notwithstanding anything contained in the Indian Evidence Act, 1872 (1 of 1872) or the Code of Criminal Procedure, 1973 (2 of 1974), every court trying an offence under this Act, shall treat the inventory, the photographs of narcotic drugs or psychotropic substances and any list of samples drawn under sub-section (2) and certified by the Magistrate, as primary evidence in respect of such offence.”

The safeguard provided under Section 52-A is in furtherance of Article 21 of the Constitution of India which guarantees fair and impartial investigation. A perusal of Ex.P6-Chemical Examiner’s report along with the statement of PW1-HC Sukhdev Singh indicates that the sample was drawn

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on 18.08.2007 and it was sent to the Chemical Examiner on 23.08.2007 which was received in his office on 24.08.2007. As such, there is a delay of more than five days in sending the samples to the Chemical Examiner. As per the prescribed procedure, representative sample of any contraband after seizure and deposit in the Malkhana or with the concerned SHO is required to be sent to Chemical Examiner within 72 hours as per instructions issued vide Standing Order No. 1 of 1988 dated 15.03.1988 by the Narcotics Control Bureau. A further scrutiny of the evidence reveals that after drawing the sample on 18.08.2007, it is not discernible who was the custodian of the same till 23.08.2007 when PW1-HC Sukhdev Singh received the same and further deposited it on the next day i.e. 24.08.2007 in the office of the Chemical Examiner. Neither the concerned MHC was produced as a witness nor Register No. 19 was produced to establish the deposit of the samples in safe custody which was necessary to be produced to rule out the possibility of any tampering. Reliance in this regard can be made on **Narcotics Control Bureau vs. Ajmer Kumar and another, 2016 ILR (HP) 1090** and **Jitender Singh Rathore vs. State of U.P. 2014 (4) RCR (Criminal) 462** wherein on the basis of the above lapse, accused were acquitted.

15. Even Form 29 was not filled at the spot which was required to be verified by the Magistrate along with inventory and the representative samples were also required to be drawn in the presence of the concerned Magistrate as mandated under Section 52-A of the Act. The case of the appellants is fully covered by the ratio of law laid down in **Union of India vs. Bal Mukund and others, 2009(2) RCR (Criminal) 574**. As such, there is a clear non-compliance of Section 52-A of the Act as also the guidelines

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issued by a two Judge Bench of the Hon'ble Supreme Court in **Union of India vs. Mohan Lal, 2016 (1) RCR (Criminal) 858**, speaking through Justice T.S.Thakur, which are reproduced hereasunder:-

“20. To sum up we direct as under:

(1) No sooner the seizure of any Narcotic Drugs and Psychotropic and controlled Substances and Conveyances is effected, the same shall be forwarded to the officer in-charge of the nearest police station or to the officer empowered under Section 53 of the Act. The officer concerned shall then approach the Magistrate with an application under Section 52A(ii) of the Act, which shall be allowed by the Magistrate as soon as may be required under Sub-Section 3 of Section 52A, as discussed by us in the body of this judgment under the heading 'seizure and sampling'. The sampling shall be done under the supervision of the magistrate as discussed in paras 13 and 14 of this order.”

16. It is a well settled proposition that the representative samples must be drawn before the Magistrate as per the ratio laid down in **UOI vs. Mohan Lal (supra)**. Recently, a two Judge Bench of the Hon'ble Supreme Court in **Mangilal vs. The State of M.P., Crl. Appeal No. 1651 of 2023** decided on July 12, 2023, speaking through Justice M.M.Sundresh, while acquitting the accused, has observed that the mandate of Section 52-A of the Act has to be duly complied with. The following was observed:-

“8. Before any proposed disposal/destruction mandate of Section 52A of the NPDS Act requires to be duly complied with starting with an application to that effect. A Court should be satisfied with such compliance while deciding the case. The onus is entirely on the prosecution in a given case to satisfy the Court when such an issue arises for consideration. Production

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of seized material is a factor to establish seizure followed by recovery. One has to remember that the provisions of the NDPS Act are both stringent and rigorous and therefore the burden heavily lies on the prosecution. Non-production of a physical evidence would lead to a negative inference within the meaning of Section 114(g) of the Indian Evidence Act, 1872 (hereinafter referred to as the Evidence Act). The procedure contemplated through the notification has an element of fair play such as the deposit of the seal, numbering the containers in seriatim wise and keeping them in lots preceded by compliance of the procedure for drawing samples.”

17. This Court in **Malkeet Singh alias Kala vs. State of Punjab, 2009(1) RCR (Criminal) 353** has relied upon the observations made by the Hon’ble Supreme Court in **State of Rajasthan vs. Gurmail Singh, 2005(2) RCR(Criminal) 58** with regard to delay in sending the samples to the Chemical Examiner and observed as under:-

*“11. It was next submitted by the Counsel for the appellant, that though the alleged recovery was effected on 03.07.1997, yet the samples were sent to the office of the Chemical Examiner on 08.07.1997 and, thus, the delay of 5 days, in sending the same to the office of the Chemical Examiner, remained unexplained and, as such the possibility of tampering with the same, until the same reached the Laboratory, could not be ruled out. No explanation, whatsoever, was furnished, as to why the samples were not sent to the office of the Chemical Examiner, for about 05 days. Had any explanation been furnished, the matter would have been considered, in the light thereof, but in the absence of any explanation, having been furnished, in this regard, the Court cannot coin any of its own. In **Gian Singh v. State of Punjab, 2006(2) RCR (Criminal) 611 (P&H)**, there was a delay of 14 days, in sending the sample to*

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*the office of the Chemical Examiner. Under these circumstances, it was held that the possibility of tampering with the sample, could not be ruled out, and the link evidence was incomplete. Ultimately, the appellant was acquitted, in that case. In **State of Rajasthan v. Gurmail Singh, 2005(2) RCR (Criminal) 58 : 2005(1) Apex Criminal 521 (SC).**, the contraband remained in the Malkhana for 20 days. The malkhana register was not produced, to prove that it was so kept in the malkhana, till the sample was handed over to the Constable. In these circumstances, in the aforesaid case, the appellant was acquitted. In **Ramji Singh v. State of Haryana, 2007(3) RCR (Criminal) 452 (P&H)**, the sample was sent to the office of the Chemical Examiner after 72 hours, the seal remained with the police official, and had not been handed over to any independent witness. Under these circumstances, it was held that this circumstance would prove fatal to the case of the prosecution. No doubt, the prosecution could lead other independent evidence, to prove that none tampered with the sample, till it reached the office of the Forensic Science Laboratory. The other evidence, produced by the prosecution, in this case, to prove the link evidence, is not only deficient, but also unreliable. In the instant case, the principle of law, laid down, in the aforesaid authorities, is fully applicable to the facts of the present case. The delay of 05 days, in sending the samples to the office of the Chemical Examiner, and non-strict proof, by the prosecution, that the same was not tampered with, till it was deposited, in that office, must prove fatal to the case of the prosecution, as the possibility of tampering with the same, could not be ruled out. The submission of the Counsel for the appellant, in this regard, being correct, is accepted.”*

18. Admittedly, Section 52-A of the Act was inserted by Act 2 of 1989 which came into force w.e.f. 29.05.1989. Section 52-A (2) (c) of the

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Act provides for drawing a representative sample of the seized contraband in the presence of a Magistrate. On the other hand, para 1.5 of the Standing Order No. 1 of 1988 requires that the samples of the seized contraband must be drawn on the spot of recovery in duplicate. Similar provision is provided in Standing Order No.1 of 1989 dated 13.06.1989. As such, the Standing Orders cannot supersede the implication of Section 52-A of the Act. Further, the law is well settled that whenever there is a conflict between the Act and the instructions relating to the same subject matter, the Act would prevail but where the instructions supplement the Act, the former would have a binding force.

19. The sanctity of the statutory instructions contained in the Standing Orders issued by the Narcotics Control Bureau came up for consideration before the Hon'ble Supreme Court in **Noor Aga vs. State of Punjab, 2008 (16) SCC 417**, where a two Judge Bench, speaking through Justice S.B.Sinha, held as under:-

“32. Recently, this Court in State of Kerala & Ors. v. Kurian Abraham (P) Ltd. & Anr. [(2008) 3 SCC 582], following the earlier decision of this Court in Union of India v. Azadi Bachao Andolan [(2004) 10 SCC 1] held that statutory instructions are mandatory in nature.

Logical corollary of these discussions is that the guidelines such as those present in the Standing Order cannot be blatantly flouted and substantial compliance therewith must be insisted upon for so that sanctity of physical evidence in such cases remains intact. Clearly, there has been no substantial compliance of these guidelines by the investigating authority which leads to drawing of an adverse inference against them to the effect that had such evidence been produced, the same

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would have gone against the prosecution.”

A comparison of the Standing Order No.1 of 1988 with Section 52-A (2) (c) of the Act shows that there there is a divergence with regard to drawing of the representative samples. Standing Order No.1 of 1988 provides for drawing of sample at the spot, whereas Section 52-A of the Act provides for drawing of sample in the presence of a Magistrate. Therefore, in the light of Act 2 of 1989, inserting Section 52-A in the Act as well as the ratio of law laid down in **UOI vs. Mohan Lal (supra)**, it is clear that as far as the manner in which representative samples are required to be drawn, the investigating agency is bound to follow the drill of Section 52-A of the Act. As far as the mode and time limit for dispatch of samples is concerned, para 1.13 of the Standing Order No. 1 of 1988 provides that samples must be dispatched to the laboratory within 72 hours of seizure to avoid any legal objection and this time limit. In view of the ratio of law laid down by the Hon'ble Supreme Court in **Noor Aga (supra)**, **Bal Mukund (supra)** and **Mangilal (supra)**, the Investigating Officers are bound to follow the procedural safeguards provided under Standing Order No. 1 of 1988 and Standing Order No. 1 of 1989 as these are in addition to the procedural safeguards provided under the Act and the same further strengthen the procedural protection keeping in view the stringent punishment provided under the Act. These Standing Orders are mandatorily required to be adhered to as long as they do not override the provisions of the NDPS Act. Some of the relevant provisions of the Standing Order No. 1/88 are as follows:-

“1. Quantity of different drugs required in the sample – The

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quantity to be drawn in each sample for chemical test should be 5 grams in respect of all narcotic drugs and psychotropic substances except in the cases of Opium Ganga and Charas/Hashsish where a quantity of 24 grams in each case is required for chemical test. The same quantities should be taken for the duplicate sample also.

2. *The seized drugs in the packages/containers should be well mixed to make it homogeneous and representative before the sample in duplicate is drawn.*

3. *When more than one sample is drawn, each sample should also be serially numbered and marked as S-1, S-2, S-3 and so on, both original and duplicate sample. It should carry the serial number of the packages and marked as P1, 2, 3, 4 and so on.*

4. *It needs no emphasis that all samples must be drawn and sealed in presence of the accused, Panchnama witnesses and seizing officer and all of them shall be required to put their signature on each sample.*

5. *Samples must be dispatched to the Laboratory within 72 hours of seizure to avoid any legal objection.”*

The above omission on the part of the investigating officer with regard to total non-compliance of the instructions issued vide Standing Order No.1 of 1988 coupled with the delay and non-filing of Form 29 at the spot would tantamount to a serious flaw in the investigation and it suffocates the prosecution case completely.

20. It is settled law that non-examination of an independent witness is not fatal for the case of the prosecution but in the instant case neither any effort was made to associate any independent witness nor any explanation is forthcoming for not doing so. The Hon'ble Supreme Court in **Kishan Chand vs. State of Haryana AIR 2017 (SC) 3751** has laid down the ratio

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that the failure of the investigating officer to associate an independent witness at the time of recovery creates a dent in the case of the prosecution.

A two Judge Bench of the Hon'ble Supreme Court in **Gorakh Nath Prasad vs. State of Bihar, 2018(1) RCR (Criminal) 108** has acquitted the accused holding that the case of the prosecution cannot be entirely based upon the statements of the official witnesses when no independent witness has been joined in the investigation.

21. In the present case the investigating officer, SI Makhan Singh-PW3 is also the complainant of the case. He should have refrained himself from investigating the case as this would negate the concept of fair and impartial investigation which is the bedrock of the principle of fairness of official action in terms of Article 21 of the Constitution of India. The Hon'ble Supreme Court in **State by Inspector of Police, Narcotic Intelligence Bureau, Madurai, Tamil Nadu v. Ranjangam 2010(15) SCC 369**, reaffirmed that since the arrest and search is made by the complainant, he should not involve himself with the investigation of the case. Such an officer leading the investigation would forthrightly raise questions as to the fairness and impartiality of the said investigation process. Following the suit, a Division Bench of Calcutta High Court in **Laltu Prasad v. The State of West Bengal 2017(2) RCR(Criminal) 237** set aside a conviction in view of delayed depositing of sample and the complainant acting as the investigating officer. Similarly, the Hon'ble Supreme Court in **Megha Singh v. State of Haryana 1996(11) SCC 709**, opined that the complainant who had intercepted the accused, recovered the arms and registered the case should have recused himself from the investigation as it raises doubts

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regarding the impartial nature of the investigation. Free and fair trial inspiring confidence in the public is the cornerstone of the criminal justice system.

22. As discussed by the Hon'ble Supreme Court in **Ajay Singh and another v. State of Chhattisgarh and another 2017(1) RCR(Criminal) 559**, all litigants deserve to be treated with the fair hand, without being partial to the agony of the victim or too sympathetic to the cause of the accused. The parties rightly expect certain principles of natural justice and fundamental postulates of substantive and procedural law to be adhered to. Criminal jurisprudence is rooted in the assumption that the accused is innocent until proven guilty.

23. The Hon'ble Supreme Court in **State of Gujarat v. Hon'ble Mr. Justice R.A. Mehta (Retd) 2013(3) SCC 1** observed that the doctrine of bias is a leg of principles of natural justice and stems from the legal maxim *nemo debet esse judex in sua propria causa* - one shall not be the judge in his own case. If the circumstances are such that it would create a reasonable apprehension of bias in the minds of the onlookers, it is sufficient to invoke the doctrine of bias. The test for likelihood of bias and reasonable apprehension of bias are interchangeable and hence, the parameters for both can be construed to be similar.

24. A three Judge bench of the Hon'ble Supreme Court of India in **Mohan Lal v. State of Punjab AIR 2018 SC 3853**, speaking through Justice Navin Sinha, made the following observations in this regard:-

“25. In view of the conflicting opinions expressed by different two Judge Benches of this Court, the importance of a fair

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investigation from the point of view of an accused as a guaranteed constitutional right under Article 21 of the Constitution of India, it is considered necessary that the law in this regard be laid down with certainty. To leave the matter for being determined on the individual facts of a case, may not only lead to a possible abuse of powers, but more importantly will leave the police, the accused, the lawyer and the courts in a state of uncertainty and confusion which has to be avoided. It is therefore held that a fair investigation, which is but the very foundation of fair trial, necessarily postulates that the informant and the investigator must not be the same person. Justice must not only be done, but must appear to be done also. Any possibility of bias or a predetermined conclusion has to be excluded. This requirement is all the more imperative in laws carrying a reverse burden of proof.”

25. A three Judge bench of the Hon’ble Supreme Court in **Varinder Kumar v. State of Himachal Pradesh 2020(3) SCC 321**, speaking through Justice Navin Sinha, has further clarified the applicability of the ratio of law laid down in **Mohan Lal (supra)** in cases pending before the decision in this case and observed as follows:-

“18. The criminal justice delivery system, cannot be allowed to veer exclusively to the benefit of the offender making it unidirectional exercise. A proper administration of the criminal justice delivery system, therefore requires balancing the rights of the accused and the prosecution, so that the law laid down in Mohan Lal (supra) is not allowed to become a spring board for acquittal in prosecutions prior to the same, irrespective of all other considerations. We therefore hold that all pending criminal prosecutions, trials and appeals prior to the law laid down in Mohan Lal (supra) shall continue to be governed by the individual facts of the case.”

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The instant appeals pertain to the year 2014. As such, even without applying the ratio of law laid down in **Mohan Lal (supra)** in view of the directions issued by the Hon'ble Supreme Court in **Varinder Kumar (supra)**, still there are gaping holes and inadequacies in prosecution evidence. The link evidence is completely missing. The prosecution has miserably failed to knit together the circumstances which point towards the hypothesis of complicity of the appellants beyond a reasonable shadow of doubt.

CONCLUSION

26. In **Mousam Singha Roy vs. State of West Bengal, (2003) 12 SCC 377**, the Hon'ble Supreme Court has observed that it is a settled principle of criminal jurisprudence that more serious the offence, stricter the degree of proof, since a higher degree of assurance is required to convict the accused.

27. The foundation of justice dispensation rests upon the public faith and trust. Every accused is entitled to the procedural safeguards and the investigating agencies cannot deviate therefrom. Hence, the fundamental right to a fair trial, as envisaged under Article 21 of the Constitution, becomes all the more essential to dispensation of justice. An investigating officer, in this context, becomes the linchpin of criminal justice delivery system. Articles 14, 21 and 39-A of the Constitution cast an obligation on him to follow the procedural safeguards in ensuring fair investigation.

28. In view of the above discussion, the aforesaid appeals are allowed. The judgment of conviction and order of sentence dated

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05.02.2014 passed by passed by Special Court (A), Gurdaspur, are set aside.

Appellants namely Arjun Singh @ Marra, Manohar Lal and Sukhwinder Singh @ Billa are acquitted of the charges framed against them. Their bail bonds and surety bonds stand discharged.

29. Pending miscellaneous application(s), if any, shall also stand disposed of.

30. The case property, if any, may be dealt with as per rules after the expiry of period of limitation for filing the appeal(s). Record of the case be sent back to the Court below.

**(HARPREET SINGH BRAR)
JUDGE**

**28.07.2023
sunita**

Whether speaking/non speaking : Yes/No
Whether reportable/non reportable : Yes/No