

[2023 LiveLaw \(SC\) 570](#)

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
ABHAY S.OKA; J., RAJESH BINDAL; J.

May 09, 2023.

CRIMINAL APPEAL NO.1443 OF 2023 (Arising out of S.L.P.(Crl.) No. 1958 of 2023)

SIMARNJIT SINGH versus STATE OF PUNJAB

Narcotics Drugs and Psychotropic Substances Act, 1985; Section 52-A - the process of drawing of samples under Section 52-A of the NDPS Act has to be in the presence and under the supervision of the Magistrate. The entire exercise of collecting the sample must be certified by the Magistrate to be correct. (Para 8, Relied on *Union of India v. Mohanlal*, (2016) 3 SCC 379)

(Arising out of impugned final judgment and order dated 31-08-2022 in CRAS No. 2030/2006 passed by the High Court of Punjab & Haryana at Chandigarh)

For Petitioner(s) Mr. Puneet Jain, Adv. Mr. Harshit Khanduja, Adv. Mr. Harsh Jain, Adv. Mr. Himanshu Satija, Adv. Mr. Umang Mehta, Adv. Mr. Harsh Saxena, Adv. Ms. Sujal Gupta, Adv. Mr. B. K. Satija, AOR

For Respondent(s) Mr. Karan Sharma, AOR Mr. Mohit Siwach, Adv. Mr. Rishabh Sharma, Adv.

ORDER

Leave granted.

2. Heard the learned counsel appearing for the parties.

3. We make it clear that out of the 3 accused who were before the High Court, only the present appellant has come by way of this appeal.

3. The appellant was convicted by the Special Judge under the Narcotics Drugs and Psychotropic Substances Act, 1985 (for short "the NDPS Act") for the offence punishable under Section 15 of the said Act. The appeal preferred by the present appellant has been dismissed by the impugned judgment of the High Court.

4. The case of the prosecution in brief is that SI Hardeep Singh (PW-7) along with other police officers were present at a bridge on a canal in the area of village Balak Khurd for the purposes of patrolling. When they noticed that a tempo coming from the side of village Matran, they signalled the tempo to stop. The driver and other two persons sitting in the tempo were apprehended. According to the case of the prosecution, search was conducted in the presence of the District Superintendent of Police of the tempo which led to recovery of eight bags of poppy husk which were concealed under tarpaulin. From each bag, two samples of 250 gms were taken out and made into sixteen parcels and residue of poppy husk in each bag was found to be of 29.5 kgs.

5. The learned counsel appearing for the appellant relied upon a decision of this Court in the case of ***Union of India v. Mohanlal & Anr.***¹. He submitted that the prosecution is vitiated as the work of drawing sample was done by PW-7 without taking recourse to sub-section 2 of Section 52A of the NDPS Act. He also pointed out that the examination-in-Chief of PW-7 SI Hardeep Singh which shows that the samples were drawn immediately after the seizure.

6. The learned counsel appearing for the respondent-State supported the impugned judgments.

¹ (2016) 3 SCC 379

7. We have perused the evidence of PW-7 Hardeep Singh in which he has stated that from the eight bags of poppy husk, two samples of 250 gms each were drawn and converted into 16 parcels. This has been done

immediately after the seizure.

8. In paragraphs 15 to 17 of the decision of this Court in *Mohanlal's* case¹, it was held thus:

“15. It is manifest from Section 52-A(2)include (supra) that upon seizure of the contraband the same has to be forwarded either to the officer-in-charge of the nearest police station or to the officer empowered under Section 53 who shall prepare an inventory as stipulated in the said provision and make an application to the Magistrate for purposes of (a) certifying the correctness of the inventory, (b) certifying photographs of such drugs or substances taken before the Magistrate as true, and (c) to draw representative samples in the presence of the Magistrate and certifying the correctness of the list of samples so drawn.

16. Sub-section (3) of Section 52-A requires that the Magistrate shall as soon as may be allow the application. This implies that no sooner the seizure is effected and the contraband forwarded to the officer-in-charge of the police station or the officer empowered, the officer concerned is in law duty-bound to approach the Magistrate for the purposes mentioned above including grant of permission to draw representative samples in his presence, which samples will then be enlisted and the correctness of the list of samples so drawn certified by the Magistrate. In other words, the process of drawing of samples has to be in the presence and under the supervision of the Magistrate and the entire exercise has to be certified by him to be correct.

17. The question of drawing of samples at the time of seizure which, more often than not, takes place in the absence of the Magistrate does not in the above scheme of things arise. This is so especially when according to Section 52-A(4) of the Act, samples drawn and certified by the Magistrate in compliance with subsections (2) and (3) of Section 52-A above constitute primary evidence for the purpose of the trial. Suffice it to say that there is no provision in the Act that mandates taking of samples at the time of seizure. That is perhaps why none of the States claim to be taking samples at the time of seizure.”

9. Hence, the act of PW-7 of drawing samples from all the packets at the time seizure is not in conformity with the law laid down by this Court in the case of *Mohanlal*¹. This creates a serious doubt about the prosecution's case that substance recovered was a contraband.

10. Hence, the case of the prosecution is not free from suspicion and the same has not been established beyond a reasonable doubt. Accordingly, we set aside the impugned judgments insofar as the present appellant is concerned and quash his conviction and sentence.

11. The appeal is accordingly allowed.