

A.F.R.

Neutral Citation No. - 2024:AHC-LKO:50682

Reserved on 03.07.2024

Delivered on 26.07.2024

Court No. - 16

Case :- CRIMINAL APPEAL No. - 985 of 2002

Appellant :- Ikrar And Another

Respondent :- Union of India

Counsel for Appellant :- A.P. Mishra

Counsel for Respondent :- Rakesh Kumar Awasthi, Sm Singh Royekwar

Hon'ble Shamim Ahmed, J.

1. The case is taken up in the revised call.
2. This criminal appeal Under Section 374 (2) Cr.P.C. against the judgement and order dated 29.7.2002 passed by Learned Special Judge, B.D.P.S.Act, Lucknow in criminal case no. 650 of 1991 Under Section 8/21/29 N.D.P.S. Act, challaned by C.B. Mohd. Ikrar and other Vs. Union of India by which the appellants have been convicted for 6 years R.I. and fine of Rs 25000/- each with stipulate default
3. Considering the report of the Chief Judicial Magistrate, Barabanki dated 05.03.2024, the appeal in respect of appellant No.1- Ikrar has already been abated vide order dated 03.07.2024. Thus, the present appeal is decided on merit in respect of appellant No.2- Sushail.
4. Heard Sri A.P.Mishra, learned counsel for the appellant No.2- Suhail as well as Sri S.M.Singh Royekwar, learned counsel for the Union of India.
5. The Brief fact of the prosecution, on 13.9.1991, Inspector received confidential information that two individuals, Baijnath and Vinod, residents of Motihari, Bihar, were staying at Anand Hotel in Aminabad. They were expected to receive a consignment of heroin

from Ikrar son of Moh. Anis and Suhail son of Nijju, residents of Tikra Baraki village. Based on this information a team was formed under the orders of Superintendent Radhe Raman, consisting of Inspector B.D. Pandey, S.I. Jayant, and other officers. On 14.9.91, the team surrounded Anand Hotel. Around 2 p.m., two suspicious individuals arrived on a motorcycle (Registration No. R.26/3439) and signaled towards the upper floor of the hotel. Subsequently, Baijnath and Vinod came out and engaged in conversation. During this exchange, a small packet was handed over to Vinod, who placed it in his bag. The team then apprehended Baijnath and Vinod.

6. On this allegation, Complainant had lodged a written report at Police Station- N.C.B, Lucknow District- Lucknow on 14.09.1991 Under Sections 8/21/29 N.D.P.S Act against appellants.

7. This case was entrusted to investigating officer who investigated this case and during investigation, he visited the place of occurrence and prepared the site plan ,recorded the statements of witnesses and after completing the investigation, investigating officer had submitted the charge sheet against the appellant and other accused persons.

8. That further after submission of charge-sheet before Court of learned Magistrate the said case was committed to Court of Session wherein it was registered as S.T. No. 650 of 1991 After committal, the trial court framed charges against the accused under Section 8/21/29 N.D.P.S Act. The accused-appellant denied the charges levelled against them and claimed to be tried.

9. That in order to substantiate its case, prosecution examined Seven witnesses namely PW-1 Inspector Radheraman lal , PW-2 Rama Shankar Prasad, PW-3 Inspector dina Nath Gupta, PW-4 Constable Shiv Shankar Singh, PW-5 Investigating Officer Mohd.Naseem, P.W-6 Constable Cheda Lal , P.W-7 B.D Panday.

10. The Appellant Ikrar, in his statement under Section 313 Cr.P.C., denied involvement in the incident. He claimed that he was not present at the scene and that his signatures were forcibly taken by Abhay Kumar at the D.N.C. office in Lucknow on 14.9.91. Suhel also denied the allegations, stating that no statement was taken from him and his signatures were obtained under duress.

11. The learned counsel for the appellant submitted that the trial court failed to properly consider the evidence adduced by the defense. The judgment and order were passed solely on the basis of the prosecution's evidence, which is not sustainable under the law. Thus, the conviction order is against the principles of justice.

12. The learned counsel further argued that the prosecution failed to produce any independent witnesses to corroborate their story. The explanation provided for not producing such witnesses is inadequate and not acceptable in the eyes of the law. This failure undermines the credibility of the prosecution's case.

13. The learned counsel further submitted that Section 50 of the N.D.P.S. Act is a mandatory provision. The arresting officer has not complied with that provision. As such, the recovery is illegal which vitiates the trial. Learned counsel further submitted that the alleged place of recovery is public place but no effort to invite the public witness at the time of recovery was made by the police party. Learned trial Court without proper appreciation of the evidence available on record has illegally convicted the appellant vide impugned judgment and order which is liable to be set aside as the prosecution has miserably failed to prove its case beyond reasonable doubt. In support of his argument learned counsel for the appellant has placed reliance on law laid down by Hon'ble Supreme Court in *Vijaysinh Chandubha Jadeja Vs. State of Gujarat, 2010 (2) EFR 755* and *State of Rajasthan Vs. Parmanand and another, (2014) 2 SCC (Cri) 563*.

14. The learned counsel further submitted that the individuals from whom narcotics were allegedly recovered have been acquitted in the same case. However, the present appellants, from whom nothing was recovered, have been convicted. This inconsistency is unjust and against the law.

15. The learned counsel further submitted that The prosecution has failed to prove its case beyond a reasonable doubt. The learned trial court overlooked significant legal aspects and evidence presented by the defense, leading to an erroneous judgment and order of conviction. The prosecution's case was based on conjecture and insufficient evidence.

16. The learned counsel for Union of India for the respondent submitted that the trial court's judgment and order dated 29.7.2002, convicting the appellants under various provisions of the Narcotic Drugs and Psychotropic Substances (N.D.P.S.) Act, 1985, were well-founded and based on substantial evidence. The primary arguments made by the learned counsel for the Union of India are summarized as follows:

17. The learned counsel for Union of India further submitted that The prosecution presented a coherent and consistent narrative supported by the testimonies of investigating officers and other material evidence. The trial court duly considered all evidence on record before passing the judgment of conviction.

18. The learned counsel for Union of India further submitted that The acquittal of other individuals involved in the case does not undermine the evidence against the appellants. Each accused's case was evaluated on its own merits, and the evidence specifically incriminated the appellants in the possession and distribution of narcotics.

19. The learned counsel for Union of India further submitted that The prosecution successfully discharged its burden of proving the appellants' guilt beyond a reasonable doubt. The evidence on record,

including the recovery of narcotics and the appellants' involvement in the transaction, was sufficient to establish the charges against them.

20. After considering the argument advanced by learned counsel for the parties, this Court finds that the prosecution's case rests heavily on the testimonies of the investigating officers and lacks corroboration from independent witnesses. Moreover, the failure to fulfil the requirements of Section 50 of the N.D.P.S. Act, and also the prosecution's failure to produce independent witnesses to corroborate the testimonies of the investigating officers is a significant lapse. Independent witnesses play a crucial role in lending credibility to the prosecution's case, especially in matters involving serious allegations under the N.D.P.S. Act. The absence of such witnesses, without a satisfactory explanation, undermines the reliability of the prosecution's evidence.

21. Severe punishment has been provided in the N.D.P.S. Act to check the misuse of this Act by the police personnel or officers and certain safeguards particularly Section 50 of N.D.P.S. Act has been incorporated in this Act that search of the suspected person must be done before the Magistrate or Gazetted Officer. Similarly Section 55 and 57 of N.D.P.S. Act provides that seized contraband article be kept by Station House Officer in safe custody and report of arrest and seizure be sent immediately to immediate Superior Officer within 48 hours.

Section -50 of N.D.P.S ACT, 1986 is reproduced here-as-under:

Conditions under which search of persons shall be conducted.

(1) When any officer duly authorised under section 42 is about to search any person under the provisions of section 41, section 42 or section 43, he shall, if such person so requires, take such person without unnecessary delay to nearest Gazetted Officer of any of the departments mentioned in section 42 or to the nearest Magistrate.

(2) If such requisition is made, the officer may detain the person until he can bring him before the Gazetted Officer or the Magistrate referred to in sub-section (1).

(3) The Gazetted Officer or the Magistrate before whom any such person is brought shall, if he sees no reasonable ground for search, forthwith discharge the person but otherwise shall direct that search be made.

(4) No female shall be searched by anyone excepting a female.

(5) When an officer duly authorised under section 42 has reason to believe that it is not possible to take the person to be searched to the nearest Gazetted Officer or Magistrate without the possibility of the person to be searched parting with possession of any narcotic drug or psychotropic substance, or controlled substance or article or document, he may, instead of taking such person to the nearest Gazetted Officer or Magistrate, proceed to search the person as provided under section 100 of the Code of Criminal Procedure, 1973 (2 of 1974).

(6) After a search is conducted under sub-section (5), the officer shall record the reasons for such belief which necessitated such search and within seventy-two hours send a copy thereof to his immediate official superior.

22. Hon'ble Supreme Court in *Vijaysinh Chandubha Jadeja Vs. State of Gujarat, 2010 (2) EFR 755*, while discussing the importance and relevancy of section 50 of N.D.P.S. Act, in para-22, has opined as under:-

"22. In view of the foregoing discussion, we are of the firm opinion that the object with which right under Section 50(1) of the NDPS Act, by way of a safeguard, has been conferred on the suspect, viz. to check the misuse of power, to avoid harm to innocent persons and to minimise the allegations of planting or foisting of false cases by the law enforcement agencies, it would be imperative on the part of the empowered officer to apprise the person intended to be searched of his right

to be searched before a gazetted officer or a Magistrate. We have no hesitation in holding that in so far as the obligation of the authorised officer under sub-section (1) of Section 50 of the NDPS Act is concerned, it is mandatory and requires a strict compliance. Failure to comply with the provision would render the recovery of the illicit article suspect and vitiate the conviction if the same is recorded only on the basis of the recovery of the illicit article from the person of the accused during such search. Thereafter, the suspect may or may not choose to exercise the right provided to him under the said provision. As observed in Re Presidential Poll (1974) 2 SCC 33, it is the duty of the courts to get at the real intention of the Legislature by carefully attending to the whole scope of the provision to be construed. "The key to the opening of every law is the reason and spirit of the law, it is the animus imponentis, the intention of the law maker expressed in the law itself, taken as a whole." We are of the opinion that the concept of "substantial compliance" with the requirement of Section 50 of the NDPS Act introduced and read into the mandate of the said Section in Joseph Fernandez (supra) and Prabha Shankar Dubey (supra) is neither borne out from the language of sub-section (1) of Section 50 nor it is in consonance with the dictum laid down in Baldev Singh's case (supra). Needless to add that the question whether or not the procedure prescribed has been followed and the requirement of Section 50 had been met, is a matter of trial. It would neither be possible nor feasible to lay down any absolute formula in that behalf. We also feel that though Section 50 gives an option to the empowered officer to take such person (suspect) either before the nearest gazetted officer or the Magistrate but in order to impart authenticity, transparency and creditworthiness to the entire proceedings, in the first instance, an endeavour should be to produce the suspect before the nearest Magistrate, who enjoys more confidence of the common man compared to any other officer. It would not only add legitimacy to the search proceedings, it may verily strengthen the prosecution as well."

23. Hon'ble Supreme Court in ***State of Rajasthan Vs. Parmanand and another, (2014) 2 SCC (Cri) 563***, again in paragraph-17, has opined as under:-

"In our opinion, a joint communication of the right available under Section 50(1) of the NDPS Act to the accused would frustrate the very purport of Section 50. Communication of the said right to the person who is about to be searched is not an empty formality. It has a purpose. Most of the offences under the NDPS Act carry stringent punishment and, therefore, the prescribed procedure has to be meticulously followed. These are minimum safeguards available to an accused against the possibility of false involvement. The communication of this right has to be clear, unambiguous and individual. The accused must be made aware of the existence of such a right. This right would be of little significance if the beneficiary thereof is not able to exercise it for want of knowledge about its existence. A joint communication of the right may not be clear or unequivocal. It may create confusion. It may result in diluting the right. We are, therefore, of the view that the accused must be individually informed that under Section 50(1) of the NDPS Act, he has a right to be searched before a nearest gazetted officer or before a nearest Magistrate. Similar view taken by the Punjab & Haryana High Court in Paramjit Singh and the Bombay High Court in Dharamveer Lekhram Sharma meets with our approval."

24. In addition to above, admittedly the appellant, prior to his search, was not produced before any Gazetted Officer or Magistrate, whereas according to prosecution before his search the police personnel were informed by the appellant that he was carrying the charas. Prosecution has also not produced any written consent of the appellant for his search. From perusal of testimony of prosecution witnesses, it does not transpire that any efforts were made by them to produce the appellant before any Gazetted Officer or Magistrate, as required by Section 50 of N.D.P.S. Act, in view of law laid down by Apex Court in ***Vijaysinh Chandubha Jadeja (Supra)***.

25. It is a matter of fact that the Investigating Officer acted on prior information as deposed by him below Exhibit-18 as PW . In view of such position, PW-1 , complainant-IO while acting on prior information and before making search of a person, it is imperative for

him to inform the respondent-accused about his right to sub-section (1) of Section 50 of the NDPS Act for being taken to the nearest Gazetted Officer or the Magistrate for making search in their presence. It also appears that neither such procedure is followed; nor any note to the said effect is made in the Panchnama drawn while making search of the person of the respondent-accused.

As laid down in the case of **State Of Punjab vs Baldev Singh [1999 (6) SCC 172]**,

18. A three-Judge Bench in Saiyad Mohd. Saiyad Umar Saiyad v. State of Gujarat [(1995) 3 SCC 610 : 1995 SCC (Cri) 564] upheld the view taken in Balbir Singh case [(1994) 3 SCC 299 : 1994 SCC (Cri) 634] on the point of duty of the empowered officer to inform the suspect about his right to be searched before a gazetted officer or a Magistrate. It considered the provisions of Section 50 and opined: (SCC p. 615, para 8)

“8. We are unable to share the High Court's view that in cases under the NDPS Act it is the duty of the court to raise a presumption, when the officer concerned has not deposed that he had followed the procedure mandated by Section 50, that he had in fact done so. When the officer concerned has not deposed that he had followed the procedure mandated by Section 50, the court is duty-bound to conclude that the accused had not had the benefit of the protection that Section 50 affords; that, therefore, his possession of articles which are illicit under the NDPS Act is not established; that the precondition for his having satisfactorily accounted for such possession has not been met; and to acquit the accused.”

19. In State of H.P. v. Pirthi Chand [(1996) 2 SCC 37 : 1996 SCC (Cri) 210] the Bench agreed with the view in Balbir Singh case [(1994) 3 SCC 299 : 1994 SCC (Cri) 634] regarding the duty to inform the suspect of his right as emanating from Section 50 of the NDPS Act. The Court opined: (SCC p. 41, para 3)

“Compliance of the safeguards in Section 50 is mandatory obliging the officer concerned to inform the person to be searched of his right to demand that search could be conducted in the presence of a

gazetted officer or a Magistrate. The possession of illicit articles has to be satisfactorily established before the court. The officer who conducts search must state in his evidence that he had informed the accused of his right to demand, while he is searched, in the presence of a gazetted officer or a Magistrate and that the accused had not chosen to so demand. If no evidence to that effect is given, the court must presume that the person searched was not informed of the protection the law gives him and must find that possession of illicit articles was not established. The presumption under Article 114 Illustration (e) of the Evidence Act, that the official duty was properly performed, therefore, does not apply.”

20. *In State of Punjab v. Labh Singh [(1996) 5 SCC 520 : 1996 SCC (Cri) 1036]* again it was reiterated that the accused has been provided with a protection of being informed of his right to be searched in the presence of a gazetted officer or a Magistrate and failure to give an opportunity to the person concerned to avail of the protection would render the prosecution case unsustainable.

21. *In State of Punjab v. Jasbir Singh [(1996) 1 SCC 288 : 1996 SCC (Cri) 1]* it was opined: (SCC p. 289, para 2)

“2. Having considered the evidence we find it difficult to set aside the order of acquittal recorded by the Additional Sessions Judge. Though the offence involved is of a considerable magnitude of 70 bags containing 34 kgs of poppy husk, each without any permit/licence, this Court is constrained to confirm the acquittal for the reasons that the mandatory requirements of Section 50 of Narcotic Drugs and Psychotropic Substances Act, 1985 has not been complied with. Protection given by Section 50 is a valuable right to the offender and compliance thereof intended to be mandatory. In case the police officers had prior knowledge that illegal transport of the contraband is in movement and persons are in unlawful possession and intends to intercept it, conduct search and consequentially to seize the contraband, they are required to inform the offender that he has the right that the search will be conducted in the presence of a gazetted officer or a Magistrate. Thereafter on their agreeing to be searched by the police officers, the

search and seizure of the contraband from their unlawful possession would become legal and valid. However, the evidence collected in breach of mandatory requirement does not become inadmissible. It is settled law that evidence collected during investigation in violation of the statutory provisions does not become inadmissible and the trial on the basis thereof does not get vitiated. Each case is to be considered on its own backdrop.”

22. *In Ali Mustaffa Abdul Rahman Moosa v. State of Kerala [(1994) 6 SCC 569 : 1995 SCC (Cri) 32] a two-Judge Bench of this Court (to which one of us, C.J., was a party) it had been found that the appellant had not been given any choice as to whether he desired to be searched in the presence of a gazetted officer or a Magistrate as envisaged under Section 50 of the NDPS Act. The argument raised in that case to the effect that Section 50 of the Act could not be said to have been violated because the appellant did not “require” to have himself searched before a gazetted officer or a Magistrate was rejected following the law laid down in Balbir Singh case [(1994) 3 SCC 299 : 1994 SCC (Cri) 634] . The Court opined that to enable the person concerned to require that his search be carried out in the presence of a gazetted officer or a Magistrate makes, it is obligatory on the part of the empowered officer to inform the person concerned that he has a right to require his search to be conducted in the presence of a gazetted officer or a Magistrate.*

23. *In Mohinder Kumar v. State, Panaji, Goa [(1998) 8 SCC 655] a three-Judge Bench (to which one of us, Sujata V. Manohar, J., was a party) once again considered the requirements of Sections 42 and 50 of the Act. In that case the police officer “accidentally” reached the house while on patrol duty and had it not been for the conduct of the accused persons in trying to run into the house on seeing the police party, he would perhaps not have had any occasion to enter the house and effect search. But when the conduct of the accused persons raised a suspicion, he went into the house and effected the search, seized the illicit material and caused the arrest. The Court opined that in the facts and circumstances of the case, when the investigating officer accidentally stumbled upon the*

offending articles and himself not being the empowered officer, then on coming to know that the accused persons were in possession of illicit articles, then from that stage onwards he was under an obligation to proceed further in the matter only in accordance with the provisions of the Act. On facts it was found that the investigating officer did not record the grounds of his belief at any stage of the investigation, subsequent to his realising that the accused persons were in possession of charas and since he had made no record, he did not forward a copy of the grounds to his superior officer nor did he comply with the provisions of Section 50 of the Act, inasmuch as he did not inform the person to be searched that if he required, his search could be conducted before a gazetted officer or a Magistrate. The Bench held that for failure to comply with the provisions of Sections 42 and 50, the accused was entitled to an order of acquittal and consequently the appeal was allowed and the order of conviction and sentence against the accused was set aside.

24. It would, thus, be seen that none of the decisions of the Supreme Court after Balbir Singh case [(1994) 3 SCC 299 : 1994 SCC (Cri) 634] have departed from that opinion. At least none has been brought to our notice. There is, thus, unanimity of judicial pronouncements to the effect that it is an obligation of the empowered officer and his duty before conducting the search of the person of a suspect, on the basis of prior information, to inform the suspect that he has the right to require his search being conducted in the presence of a gazetted officer or a Magistrate and that the failure to so inform the suspect of his right, would render the search illegal because the suspect would not be able to avail of the protection which is inbuilt in Section 50. Similarly, if the person concerned requires, on being so informed by the empowered officer or otherwise, that his search be conducted in the presence of a gazetted officer or a Magistrate, the empowered officer is obliged to do so and failure on his part to do so would also render the search illegal and the conviction and sentence of the accused bad.

25. To be searched before a gazetted officer or a Magistrate, if the suspect so requires, is an extremely valuable right which the legislature has

given to the person concerned having regard to the grave consequences that may entail the possession of illicit articles under the NDPS Act. It appears to have been incorporated in the Act keeping in view the severity of the punishment. The rationale behind the provision is even otherwise manifest. The search before a gazetted officer or a Magistrate would impart much more authenticity and creditworthiness to the search and seizure proceeding. It would also verily strengthen the prosecution case. There is, thus, no justification for the empowered officer, who goes to search the person, on prior information, to effect the search, of not informing the person concerned of the existence of his right to have his search conducted before a gazetted officer or a Magistrate, so as to enable him to avail of that right. It is, however, not necessary to give the information to the person to be searched about his right in writing. It is sufficient if such information is communicated to the person concerned orally and as far as possible in the presence of some independent and respectable persons witnessing the arrest and search. The prosecution must, however, at the trial, establish that the empowered officer had conveyed the information to the person concerned of his right of being searched in the presence of a Magistrate or a gazetted officer, at the time of the intended search. Courts have to be satisfied at the trial of the case about due compliance with the requirements provided in Section 50. No presumption under Section 54 of the Act can be raised against an accused, unless the prosecution establishes it to the satisfaction of the court, that the requirements of Section 50 were duly complied with.

26. The safeguard or protection to be searched in the presence of a gazetted officer or a Magistrate has been incorporated in Section 50 to ensure that persons are only searched with a good cause and also with a view to maintain the veracity of evidence derived from such search. We have already noticed that severe punishments have been provided under the Act for mere possession of illicit drugs and narcotic substances. Personal search, more particularly for offences under the NDPS Act, are critical means of obtaining evidence of possession and it is, therefore, necessary that the safeguards provided in Section 50 of the Act are

observed scrupulously. The duty to inform the suspect of his right to be searched in the presence of a gazetted officer or a Magistrate is a necessary sequence for enabling the person concerned to exercise that right under Section 50 because after Maneka Gandhi v. Union of India [(1978) 1 SCC 248] it is no longer permissible to contend that the right to personal liberty can be curtailed even temporarily, by a procedure which is not “reasonable, fair and just” and when a statute itself provides for a “just” procedure, it must be honoured. Conducting a search under Section 50, without intimating to the suspect that he has a right to be searched before a gazetted officer or a Magistrate, would be violative of the “reasonable, fair and just procedure” and the safeguard contained in Section 50 would be rendered illusory, otiose and meaningless. Procedure based on systematic and unconscionable violation of law by the officials responsible for the enforcement of law, cannot be considered to be a “fair”, just or reasonable procedure. We are not persuaded to agree that reading into Section 50, the existence of a duty on the part of the empowered officer, to intimate to the suspect, about the existence of his right to be searched in the presence of a gazetted officer or a Magistrate, if he so requires, would place any premium on ignorance of the law. The argument loses sight of a clear distinction between ignorance of the law and ignorance of the right to a “reasonable, fair and just procedure”.

27. Requirement to inform has been read in by this Court in other circumstances also, where the statute did not explicitly provide for such a requirement. While considering the scope of Article 22(5) of the Constitution of India and various other provisions of the COFEPOSA Act and the NDPS Act as amended in 1988, a Constitution Bench of this Court in Kamleshkumar Ishwardas Patel v. Union of India [(1995) 4 SCC 51 : 1995 SCC (Cri) 643] concluded: (SCC p. 59, para 14)

“14. Article 22(5) must, therefore, be construed to mean that the person detained has a right to make a representation against the order of detention which can be made not only to the Advisory Board but also to the detaining authority, i.e., the authority that has made the order of detention or the order for continuance of such detention, which

is competent to give immediate relief by revoking the said order as well as to any other authority which is competent under law to revoke the order for detention and thereby give relief to the person detained. The right to make a representation carries within it a corresponding obligation on the authority making the order of detention to inform the person detained of his right to make a representation against the order of detention to the authorities who are required to consider such a representation.”

26. Thus, there is breach or violation of Section 50 of the NDPS Act on behalf of the prosecution, because it is a statutory requirement of writing down or conveying information to Superior Officer.

In the case on hand, neither such intimation is sent to Superior Officer; nor any entry is made in the station diary. the respondent-accused must be made aware of his right for being search to be carried out in presence of a Gazetted Officer or a Magistrate. Learned Public Prosecutor could not point out any evidence or document showing that respondent-accused was made aware of his right before the Magistrate or Gazetted Officer. On perusal of deposition of PW, the complainant, no evidence has been adduced to show that respondent-accused was communicated of his such right and thus there is a noncompliance of provisions of Section 50 read with Section 43 of the NDPS Act.

27. Section 50 of the N.D.P.S. Act mandates that the accused must be informed of their right to be searched in the presence of a Gazetted Officer or a Magistrate. This is a crucial safeguard to ensure the fairness of the search process and to protect the rights of the accused. In this case, there is clear non-compliance with this mandatory provision, rendering the search and subsequent seizure legally flawed. The prosecution's failure to adhere to this statutory requirement further weakens its case.

28. Admittedly, the prosecution has not produced other independent eye-witnesses of the alleged recovery and even no explanation has

been offered by the prosecution for their non-production. All the witnesses are police personnel. Non-production of independent eye witness is serious lacuna which has made the prosecution case very doubtful.

29. The defense has raised serious allegations regarding the manner in which the investigation was conducted. Accused Ikrar stated that his signatures were forcibly obtained at the D.N.C. office in Lucknow, and Suhail denied giving any statement voluntarily, claiming that his signatures were obtained under duress. These allegations cast doubt on the integrity of the investigation process and were not adequately addressed by the trial court.

30. The handling and examination of the recovered narcotic substances did not comply with the prescribed legal protocols, raising doubts about the integrity and reliability of the evidence. Proper chain of custody and forensic examination are critical in cases involving narcotics to ensure that the evidence has not been tampered with or contaminated.

31. The prosecution's case is primarily based on circumstantial evidence, with no direct evidence linking the appellants to the possession and distribution of the narcotics. In the absence of direct evidence, the prosecution has failed to establish the guilt of the appellants beyond a reasonable doubt.

32. It is noteworthy that the individuals from whom the narcotics were allegedly recovered have been acquitted, while the appellants, from whom no recovery was made, have been convicted. This inconsistency highlights the arbitrary and unjust nature of the trial court decision.

33. Therefore, based on the analysis of the evidence and the legal precedents cited, this Court concludes that the prosecution has failed to establish its case beyond a reasonable doubt. The non-compliance with Section 50 of the NDPS Act, coupled with procedural

irregularities and discrepancies in the evidence, casts serious doubt on the guilt of the accused. Consequently, the accused is entitled to the benefit of doubt, Therefore, unable to uphold the conviction and sentence of the appellant. The appellant is entitled to be acquitted. The impugned judgment and order is liable to be set aside and accordingly, appeal is liable to be allowed.

34. Therefore, the appeal is **allowed**, and the judgment and order dated 29.7.2002, passed by the trial court in Criminal Case No. 650 of 1991, Ikrar and others vs. Union of India is hereby **set aside and reversed**. The appellant, **Suhail**, is acquitted of all charges levelled against him. The appellant is on bail. Their personal bond and surety bonds are canceled and sureties are discharged.

35. . Let a copy of this judgment alongwith the lower court record be sent immediately to the Trial Court concerned for necessary compliance.

36. No order as to the costs.

Order Date :- 26.07.2024

Arvind

(Shamim Ahmed,J.)