

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

Case:-**CRAA No. 51/2012**

Reserved on: 21.05.2026

Pronounced on: 03.06.2026

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Whether the operative part or full
judgment is pronounced: **Full**

State of J&K through Police
Station Gangyal

.....Appellant(s)/Petitioner(s)

Through: Ms. Mehar Bali, Advocate vice
Mr. Ravinder Gupta, AAG

vs

Mohd. Irfan
S/o Mohd Saleem Malik
R/o Silbula Gool, Tehsil & District
Ramban

..... Respondent(s)

Through: Mr. Vikas Sharma, Advocate

CORAM: HON'BLE MRS. JUSTICE SINDHU SHARMA, JUDGE
HON'BLE MR. JUSTICE SHAHZAD AZEEM, JUDGE

JUDGMENT

Shahzad Azeem-J

1. This acquittal appeal arises from the judgment dated 29 February 2012, passed by learned Special Judge (Principal Sessions Judge), Jammu [the trial Court] in file No. 56/Special Challan, titled "***State v. Mohd Irfan***", whereby the trial Court has acquitted the respondent-accused of the offences punishable under Section 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act).

PROSECUTION CASE: -

2. The prosecution case, in brief, is that on 08 March 2010 at about 5:00 P.M., PW-8 Doulat Khan, Sub Inspector and In-charge Police Post, Greater Kailash, along with posse of cops, had laid a naka at City Farm, Greater Kailash, on the National Highway. While the accused was proceeding from the Kunjwani side, he was intercepted. On his personal search, a yellow plastic envelope containing 680 grams of heroin was recovered from his arm-pit. The contraband was seized and the accused was arrested for commission of offence punishable under Section 8/21 NDPS Act. FIR was registered and investigation was set in motion, which culminated in the presentation of the challan before the competent Court.

3. In order to bring home the charge against the accused, the prosecution examined 12 out of 13 listed witnesses, including PW-6 Raj Singh and PW-7 Jagdish Singh, the independent witnesses.

FINDINGS OF THE TRIAL COURT: -

4. The trial Court recorded the judgment of acquittal, primarily on the ground that the accused was not given a proper option to be searched before a Gazetted Officer or a Magistrate, as mandated under Section 50 of the NDPS Act. The trial Court further noted that no written information under Section 42 (1) of the NDPS Act was recorded and no copy thereof was sent to the immediate superior officer. In addition to the non-compliance of these

mandatory provisions, the trial Court also took note of major contradictions and discrepancies in the prosecution evidence with regard to the colour of the envelope containing the alleged contraband, the place of recovery, the weighing of the contraband, the identity of the person who conducted the search, the colour of the jacket worn by the accused, the procedure of sealing and sampling and the failure to join independent civilian witnesses.

5. The trial Court placed heavily reliance on the settled principle that in NDPS cases, strict compliance with procedural safeguards is mandatory and that any major contradiction touching the core of the prosecution story entitles the accused to acquittal.

GROUND OF CHALLENGE AND SUBMISSIONS: -

6. The appellant-State has assailed the impugned judgment primarily on the ground that the trial Court failed to appreciate the oral and documentary evidence adduced by the prosecution. It is contended that the impugned judgment has been passed in a mechanical manner without proper appreciation of the material on record. According to the appellant, the trial Court adopted a hyper-technical approach, whereas the direct and circumstantial evidence led by the prosecution was sufficient to prove the guilt of the accused. The judgment under challenge is, therefore, liable to be set aside.

7. *Ex adverso*, learned counsel for the respondent has supported the reasoning adopted by the trial Court while

acquitting the accused, which shall be dealt with at the appropriate stage.

ANALYSIS: -

8. Before addressing the core issue involved in the appeal, we deem it appropriate to set the record straight. The trial Court framed the charge against the accused by specifically stating that on 08 March 2010, during the search of the accused, 680 gms heroin was recovered. However, instead of alleging the complicity of the accused in the commission of offence under Section 21 of the NDPS Act, the trial Court erroneously mentioned Section 18 of the NDPS Act.

9. It is a settled proposition of law that mere wrong mention of Section does not vitiate the trial if the substance of the offence and the facts are clearly discernible from the charge-sheet and evidence on record. Therefore, the incorrect mentioning of the Section is clerical/technical error that causes no prejudice to the accused as the ingredients of the offence and the punishment structure are materially the same.

10. Now coming to the merits of the appeal, be it noted that the trial Court, while acquitting the accused, primarily relied upon the non-compliance of the mandatory provisions of NDPS Act, as envisaged under Sections 42, 50 and 57 of NDPS Act, besides noting material contradictions and discrepancies in the evidence relating to the search and recovery of the alleged contraband.

11. The case set up by the prosecution against the accused is that the recovery of contraband was effected from the person of the accused, who was intercepted on foot while crossing the police naka laid by PW-8 Doulat Khan, In-charge Police Post.

12. The prosecution examined PW-1 Hardev Singh, PW-2 Rajinder Singh, PW-3 Kaim Din (constable), PW-4 Rakesh Kumar (constable), PW-5 Mohd. Manjeed (SPO) and PW-8 Doulat Khan as eye witnesses to the occurrence. PW-3 Kaim Din categorically deposed that when the accused tried to run away on seeing the police party, he was apprehended and the officer In-charge asked him from which officer he wished to be searched. The accused opted to be searched by a Gazetted Officer. Thereafter, the SDPO arrived at the spot and, on his search, one white-coloured material was recovered from an envelope.

13. In stark contradiction to the testimony of PW-3 the In-charge naka, PW-8 Doulat Khan deposed that after lodging of the FIR, the SHO along with SDPO City reached the spot, whereafter he handed over the packets to the SHO and prepared the seizure memo. PW-8 Doulat Khan was specific in deposing that he himself had recovered the packets from the arm-pit of the accused and that neither the SDPO nor the SHO had conducted the personal search of the accused.

14. PW-9 Kulwant Singh, Dy. S.P. (SDPO), when entered in the witness box deposed that on 08 March 2010, while he was posted

as SDPO Gandhi Nagar, he received information at about 5/5:30 PM, from the SHO Gangyal that the In-charge Police Post, Greater Kailash, had apprehended the accused at City Farm and recovered a leather packet wrapped in a yellow envelope from his personal search.

15. The Investigating Officer, PW-13 Ajay Jamwal corroborated the version of PW-8 and PW-9. According to him, the In-charge Police Post had laid a naka near City Farm, a busy thoroughfare, on 08 March 2010 and, In-charge Police Post has intercepted the accused and during his search, a yellow coloured envelope containing heroin was recovered. According to prosecution case, the narcotic contraband was recovered during personal search of the accused conducted by PW-8 Doulat Khan, a Non-Gazetted Officer. However, the accused was not informed of his legal right under Section 50 of the NDPS Act to be searched in the presence of a Gazetted Officer or a Magistrate.

16. The short question that arises for consideration in this appeal is whether the search and recovery effected by the police naka party from the person of the accused was in accordance with the procedure prescribed under Section 50 of the NDPS Act.

17. The question whether the requirements of Section 50 of the NDPS Act are mandatory or directory, is no more *res integra*, the same has been settled by the constitution Bench of the Hon'ble Supreme Court in ***VijaySinh Chandubha Jadeja v. State of***

Gujarat (AIR 2011 SC 77), wherein it has been held that the provisions of Section 50 of the NDPS are mandatory and, must be strictly complied with. It is imperative for the empowered officer to apprise the person to be searched of his right to be searched before a gazetted officer or a Magistrate. It is equally mandatory for the authorised officer to make the suspect aware of the existence of such right, if so required by him, strict compliance is required.

18. In the present case, the evidence adduced by the prosecution neither suggests nor proves that the search and recovery were conducted in the presence of a Magistrate or a Gazetted Officer. The police search party miserably failed even to apprise the accused of his right under Section 50 of the NDPS Act. There is complete non-compliance of the mandatory requirement.

19. For the aforementioned reasons, we are of the considered opinion that the prosecution has failed to prove that the search and recovery of the contraband (heroin) from the person of the accused was in accordance with the procedure prescribed under Section 50 of the NDPS Act. The non-compliance of this mandatory procedure is fatal to the prosecution case. The trial Court has rightly extended the benefit of such non-compliance and acquitted the respondent-accused. We have no hesitation in holding that there was no compliance whatsoever with the mandatory provisions of Section 50 of the NDPS Act and, therefore, the recovery stands vitiated.

20. Apart from the non-compliance of Section 50 of the NDPS Act, there are glaring contradictions in the prosecution evidence regarding the part of the body from which the envelope containing the contraband was recovered, the colour of the envelope, the place where the contraband was weighed, whether on the spot or at the Police Station, and the type of weighing scale used. PW-2 Rajinder Singh deposed that Hardev Singh was sent to a shopkeeper and weighing stones were brought by him, whereas PW-8 Doulat Khan deposed that an electronic weighing scale was brought from the shop.

21. In a recent judgment of the Hon'ble Supreme Court in ***State of Himachal Pradesh v. Surat Singh (2026 SCC Online SC 376)***, while dealing with similar contradictions regarding the type of weighing scale, it was held that such inconsistencies render the prosecution version doubtful and ultimately unacceptable. In this regard, para 18 of the judgment reads thus:-

“The oral testimony of the witnesses clearly established that the Investigating Officer took a departure from the provisions of law and on the contrary committed an act which is clearly contrary to the provisions of law. It may not be out of place to state at the cost of repetition that the testimony of PW-8 reveals that there was no electronic weighing scale available in the shop and he was using only the traditional weighing scale as such the story of prosecution that an electronic weighing scale was used for weighing the contraband article charas falls flat on the face of it and the version of the prosecution

and the story of the prosecution becomes doubtful and ultimately unacceptable. The High Court was also justified in placing reliance on the judgment of this Court in State of Rajasthan v. Parmanand (2014) 5 SCC 345, in support of the conclusions drawn by it.”

22. In view of the mandatory provision of Section 50 of the NDPS Act and the failure of the prosecution to comply with the procedure prescribed therein, the recovery itself stands vitiated, thereby rendering the alleged contraband inadmissible in evidence. Consequently, the entire prosecution case collapses.

23. Once the recovery is held to be vitiated, there is no justifiable ground to interfere with the judgment of acquittal recorded by the Trial Court.

24. Accordingly, while concurring with the judgment of the trial Court, the instant appeal is **dismissed** being devoid of merit.

**(Shahzad Azeem)
Judge**

**(Sindhu Sharma)
Judge**

Jammu
03.06.2026
Nikhil

<i>Whether the order is speaking?</i>	<i>Yes</i>
<i>Whether the order is reportable?</i>	<i>Yes</i>