



\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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*Reserved on: 22<sup>nd</sup> April, 2025  
Pronounced on: 28<sup>th</sup> August, 2025*

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**CRL.L.P. 47/2021**

**STATE OF NCT DELHI**

**.....Petitioner**

Through: Mr. Yudhvir Singh Chauhan, APP for  
the State with Insp. Vikas Pannu,  
ANTF/Crime Branch.

versus

**CHANDER KALA**

W/o Sh. Padam Singh  
R/o H.No.195, Gali No.22,  
Panna Bichli Gali,  
Village Mangol Pur Kalan,  
Delhi.

**.....Respondent**

Through: Ms. Pallavi Vashisht, Advocate.

**CORAM:**

**HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA**

**J U D G M E N T**

**NEENA BANSAL KRISHNA, J.**

1. An Application under Section 378(3) Cr.P.C has been filed on behalf of the Petitioner/State for grant of Leave to Appeal against judgement dated 25.10.2019 of Learned Special Judge, NDPS Act, Delhi acquitting the Respondent Chander Kala, for the offence under Section 21(c) of Narcotic Drugs Psychotropic Substance Act.



2. It is stated that there is ample material on record to show that the acquittal of the accused is liable to be set aside.

3. **Submissions heard.**

4. For the reasons stated in the Petition, the Leave to Appeal is allowed and is accordingly disposed of.

**CRL.A. \_\_\_\_\_/2025 (To be numbered by the Registry)**

5. Criminal Appeal under Section 378 Cr.P.C. has been filed by the State challenging the Judgment dated 25.10.2019 passed by Special Judge, NDPS Act whereby the accused was acquitted of the charges under Section 21(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter “NDPS Act”) in FIR No. 200/2016, P.S. Crime Branch, Delhi.

6. **Briefly stated**, on 16.12.2016 on receiving secret information which was reduced to writing by ASI Om Prakash and put to the senior in compliance of the provisions of Section 42 of the Act, a raiding party headed by ASI Om Prakash was constituted which apprehended the Respondent from near the Ganda Nala under the flyover, Wazirabad, Delhi and recovered 1Kg of heroin from his possession, which was seized after due compliance of the mandatory provisions of law.

7. FIR No.200/2016 was registered. On completion of the investigations, Chargesheet was filed in the Court. Charge under Section 21(c) of NDPS Act was framed on 08.05.2017 to which the Respondent pleaded not guilty and claimed trial.

8. The Prosecution examined ten witnesses in all.

9. **PW6 Inspector Vijender Singh** deposed that on 16.12.2016 at about 10:45 A.M ASI Om Prakash produced one secret informer who gave



information about the Respondent carrying smack from Bareilly for supply in Delhi. The Raiding Team was prepared and he along with **PW9/ASI Om Prakash** and **PW10/HC Yogender** conducted the raid and apprehended the Respondent along with the smack.

**10. PW1 W/Const. Janita Meena** was member of the Raiding Party, which apprehended the Accused. The Personal Search was conducted by ASI Om Prakash on the spot. Carbon Copy of the Notice given to the Respondent is Ex.PW1/A. The Reply of the respondent on the Caron Copy is Ex.PW1/B. The Seizure Memo is Ex.PW1/C.

**11. PW2/Inspector Vivek Pathak** the then SHO had deposed about the production of the case property before him in compliance of Section 55 of the Act and its deposit thereof in the Malkhana, after affixation of the seal thereon. The photocopy of the entry in the Malkhana Register is Mark A1. He also recorded DD No.10 Ex.PW2/A at about 04:30 P.M. He identified the parcels Mark B and C along with one more parcel bearing Mark A, produced by HC Yogender in his office and identified the seals.

**12. PW3/Sanjeev Kumar Dahiya,** ACP Narcotics and Crime Prevention, deposed that on 16.12.2016 on the compliance of Section 42 of the Act, DD No.10 dated 16.12.2016 Ex.PW3/A was received in the office, which was put before him and entry was made in Diary Register vide entry No.3045, copy of which is Ex.PW3/B. The Report under Section 57 NDPS Act regarding recovery of 1 Kg of heroin was prepared by ASI Om Prakash and forwarded by the Inspector, which is Ex.PW3/C and was received in his office.

**13. PW5/ASI Geeta** is the Duty Officer who registered the FIR.



- 14. PW4/HC Sandeep Kumar** is the formal witness who collected the sealed parcel from P.S. Crime Branch, Malviya Nagar along with FSL Form and other documents on 19.12.2016 and deposited with the FSL, Rohini.
- 15. PW7/ASI Jag Narain MHC(M)** has produced the Register No.19 of the Malkhana Ex.PW7/B.
- 16. PW8/SI Jai Prakash** is the Investigating Officer, who had conducted the investigation in the present case.
- 17. The statement of the Respondent** was recorded under *Section 313 Cr.P.C.* wherein she denied the recovery of any contraband from her possession.
- 18. The Respondent** stepped in the witness box as **DW1** and deposed that on the date of her arrest i.e. 16.12.2016, she was present at her residence at H.No.195, Mangolpur Kala, Delhi, when at about 10-11 A.M, two police officials in civil dress came to her house and told her to accompany them to the Police Station. They demanded Rs.20 lakhs as they were getting Rs.10 lakhs from someone else, whose name they did not disclose. She refused to pay them Rs.20 lakhs. They then enquired about the name of the owner of the house in which she resided, but she did not tell them anything about the ownership. She was made to sit in the Police Station and was then taken to an undisclosed place, in the Government vehicle. She was forced to sign some blank papers. Her son came to the Police Station. She was produced in the Court. She admitted having enmity against some unnamed person and alleged to have filed Criminal Complaints in 2007 or 2008 to 2010, though she did not remember the contents of her representation/Complaint.



**19. DW2 Shri Virender Singh**, son of the Respondent deposed that on 16.12.2016 at about 4-5 P.M., he received a call from Police Station Daryaganj, who enquired from him about his relationship with the Respondent. He told the caller that the Respondent was his mother, on which he was told to come to Police Station Daryaganj. He reached the Police Station when he was informed that his mother has been arrested for selling narcotic drugs, smack, i.e. and it was enquired if he knew about the acts of his mother, to which he declined. He was then asked to bring Rs.20 lakhs to leave the mother. He told the Police that he could not arrange the money on which he was told to come to Tis Hazari Court, where the mother was to be produced. He also deposed that his signatures were taken on blank papers. Thereafter, Police harassed him by calling on phone and making demands of money.

**20.** The learned Special Judge in his detailed judgment dated 25.10.2019 considered the entire Prosecution Evidence and acquitted the Respondent.

**21.** Aggrieved by the acquittal of the Respondent, the State has preferred the present Appeal.

**22.** The *grounds of challenge* are that the acquittal is based on conjectures and inferences and wrong conclusions drawn which is not based on the factual matrix of the case. The testimony of recovery witnesses i.e. PW1, PW9 and PW10 has not been appreciated correctly. Moreover, mandatory procedure of *Section 50* was not attracted as the recovery was effected by PW9 from the bag which she was carrying in her hand, at the time of recovery. It has not been appreciated that the testimony of PW3,



PW6 and Report under Section 57 NDPS Act Ex.PW3/C established that arrest under Section 57 NDPS Act, was prepared by PW9.

23. It is further submitted that minor contradictions in the testimony of the witnesses is natural. It has been wrongly observed that Seizure Memo Ex.PW1/C was prepared by second I.O. SI Jai Prakash, while as per the testimony it has been proved that the Seizure Memo was prepared by PW9/ASI Om Prakash.

24. It has also not been appreciated that the contradiction in the colour of the recovered contraband as deposed by the recovery witnesses to be brown/matiala colour and that mentioned in the FSL Report as Pink colour, was a minor difference. It cannot be overlooked that the Recovery Witnesses are not the experts.

25. It is, therefore, submitted that the Respondent has been wrongly acquitted vide Judgement dated 25.10.2019 which is liable to be set aside and the Respondent be convicted and sentenced accordingly.

26. The Respondent who was in Judicial Custody was duly served and appeared through Video Conferencing and a counsel from DHCLSC had also been appointed to represent the Respondent.

#### **Submissions Heard and Record Perused.**

27. The case of the Prosecution is that on the secret information received on 16.12.2016 by PW9/ASI Om Prakash, that the Respondent resident of Mangol Puri, who supplies smack in the areas of Delhi after procuring it from Bareilly, would be coming near Ganda Nala, Wazirabad Flyover, between 11:30 to 12:30 PM to supply Heroin to someone. The raiding



Team was constituted and she was apprehended and 1 KG Heroin was recovered from her.

**Compliance of Section 42 NDPS:**

28. The *first aspect* of importance is the compliance of Section 42 NDPS Act which has been incorporated to ensure the fairness of the investigations and to safeguard against the false implication of the Accused. It reads as under:

***“42. Power of entry, search, seizure and arrest without warrant or authorisation.—***

*(l) Any such officer (being an officer superior in rank to a peon, sepoy or constable) of the departments of central excise, narcotics, customs, revenue intelligence or any other department of the Central Government including para-military forces or armed forces as is empowered in this behalf by general or special order by the Central Government, or any such officer (being an officer superior in rank to a peon, sepoy or constable) of the revenue, drugs control, excise, police or any other department of a State Government as is empowered in this behalf by general or special order of the State Government, if he has reason to believe from personal knowledge or information given by any person and taken down in writing that any narcotic drug, or psychotropic substance, or controlled substance in respect of which an offence punishable under this Act has been committed or any document or other article which may furnish evidence of the commission of such offence or any illegally acquired property or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act is kept or concealed in any building, conveyance or enclosed place, may between sunrise and sunset-*



- (a) *enter into and search any such building, conveyance or place;*
- (b) *in case of resistance, break open any door and remove any obstacle to such entry;*
- (c) *seize such drug or substance and all materials used in the manufacture thereof and any other article and any animal or conveyance which he has reason to believe to be liable to confiscation under this Act and any document or other article which he has reason to believe may furnish evidence of the commission of any offence punishable under this Act or furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act; and*
- (d) **detain and search, and, if he thinks proper, arrest any person whom he has reason to believe to have committed any offence punishable under this Act:**

*[Provided that in respect of holder of a licence for manufacture of manufactured drugs or psychotropic substances or controlled substances granted under this Act or any rule or order made thereunder, such power shall be exercised by an officer not below the rank of sub-inspector:*

*Provided further that] if such officer has reason to believe that a search warrant or authorisation cannot be obtained without affording opportunity for the concealment of evidence or facility for the escape of an offender, he may enter and search such building, conveyance or enclosed place at any time between sunset and sunrise after recording the grounds of his belief.*

(2) *Where an officer takes down any information in writing under sub-section (1) or records grounds for his belief*



*under the proviso thereto, he shall within seventy-two hours send a copy thereof to his immediate official superior.”*

29. The Constitution Bench of the Apex Court in the case of of Karnail Singh v. State of Haryana (2009) 8 SCC 539 had the occasion to consider the conflict between the two judgments, i.e. in the case of Abdul Rashid Ibrahim Mansuri v. State of Gujarat, (2000) 2 SCC 513 and Sajan Abraham v. State of Kerala, (2001) 6 SCC 692, and it was held as under: -

*“35. In conclusion, what is to be noticed is that **Abdul Rashid** did not require literal compliance with the requirements of Sections 42(1) and 42(2) nor did **Sajan Abraham** hold that the requirements of Sections 42(1) and 42(2) need not be fulfilled at all. The effect of the two decisions was as follows:*

*(a) The officer on receiving the information [of the nature referred to in sub-section (1) of Section 42] from any person had to record it in writing in the register concerned and forthwith send a copy to his immediate official superior, before proceeding to take action in terms of clauses (a) to (d) of Section 42(1).*

*(b) But if the information was received when the officer was not in the police station, but while he was on the move either on patrol duty or otherwise, either by mobile phone, or other means, and the information calls for immediate action and any delay would have resulted in the goods or evidence being removed or destroyed, it would not be feasible or practical to take down in writing the information given to him, in such a situation, he could take action as per clauses (a) to (d) of Section 42(1) and thereafter, as soon as it is practical, record the information in writing and forthwith inform the same to the official superior.*

*(c) In other words, the compliance with **the requirements of Sections 42(1) and 42(2) in regard to***



*writing down the information received and sending a copy thereof to the superior officer, should normally precede the entry, search and seizure by the officer. But in special circumstances involving emergent situations, the recording of the information in writing and sending a copy thereof to the official superior may get postponed by a reasonable period, that is, after the search, entry and seizure. The question is one of urgency and expediency.*

*(d) While total non-compliance with requirements of sub-sections (1) and (2) of Section 42 is impermissible, **delayed compliance with satisfactory explanation about the delay will be acceptable compliance with Section 42.** To illustrate, if any delay may result in the accused escaping or the goods or evidence being destroyed or removed, not recording in writing the information received, before initiating action, or non-sending of a copy of such information to the official superior forthwith, may not be treated as violation of Section 42. But if the information was received when the police officer was in the police station with sufficient time to take action, and if the police officer fails to record in writing the information received, or fails to send a copy thereof, to the official superior, then it will be a suspicious circumstance being a clear violation of Section 42 of the Act. Similarly, where the police officer does not record the information at all, and does not inform the official superior at all, then also it will be a clear violation of Section 42 of the Act. Whether there is adequate or substantial compliance with Section 42 or not is a question of fact to be decided in each case. The above position got strengthened with the amendment to Section 42 by Act 9 of 2001.”*



**30.** Again, in Sukhdev Singh vs. State of Haryana, Criminal Appeal No. 2118/2008 decided on 13.12.2012, while relying on Karnail Singh (supra) the Apex Court endorsed the view that Section 42 NDPS Act requires any Officer who has the power of entry, search, seizure and arrest without warrant or authorization to reduce the information given by any person in writing. The Investigating Officers should duly comply with the provisions of Section 42 of NDPS Act at the appropriate stage to avoid acquittal.

**31.** This secret information was recorded by PW9/ASI Om Prakash *vide* DD No.10 Ex.PW3/A which was duly forwarded to the PW3/ACP Sanjiv Kumar Dahiya, Inspector Narcotic Cell. At the same time, this information was also mentioned in the DD Register *vide* entry Ex.PW3/B. A Raiding Team was constituted of Const. Janita Meena, HC Yogender and ASI Om Prakash and the Departure Entry *vide* DD No.11 Ex.PW9/A was recorded at 11:15 PM.

**32.** In the instant case, secret Information was received on 16.12.2016 at about 10:30 AM, by PW9/ASI Om Prakash regarding Accused/Chander Kala coming to Wazirabad Flyover to dispose of Smack procured from Bareilly. Thereafter, he produced the secret informer before PW6/Inspector Vijender Singh at about 10:45 AM, who satisfied himself to the veracity of the information and proceeded to the Office of PW3/ACP Sanjeev Kumar Dahiya.

**33.** PW6/Inspector Vijender Singh affirmed in his testimony that on 16.12.2016 at about 10.45 am, ASI Om Prakash had produced one secret informer before him and upon enquiry the secret informer had disclosed about Accused/Chander Kala and that after having satisfied himself, he



informed the ACP personally by going to his office and that the ACP had directed that raid be conducted and necessary steps be taken. Accordingly, he had directed ASI Om Prakash to constitute a raiding party and conduct raid in accordance with the secret information. ASI Om Prakash had recorded DD No. 10 in respect of the secret information at about 11:00 AM.

**34.** PW3/ACP Sanjiv Kumar Dahiya, has corroborated the testimony of both PW9 & PW6. The DD entry prepared by PW9/ASI Om Prakash in regard to the information received by him about the recovery of drug, was produced by him in his testimony and is Ex.PW3/A.

**35.** The aforesaid evidence establishes that there was proper compliance of Section 42 NDPS Act.

**Compliance of Section 50 NDPS:**

**36.** Once, the secret information had been duly recorded and its veracity checked, the Raiding Team was constituted and it was sent to the designated spot near Ganda Nala, Wazirabad Flyover. At about 11:15 A.M., the Respondent/Chander Kala was found coming on foot with a cloth bag in her right hand. She was apprehended and was given a Notice under Section 50 NDPS whereby she declined that her search may be conducted before a Gazetted Officer or Magistrate and the search was conducted by the police officials.

**37.** Thus, *what* needs to be considered is whether the Notice under Section 50 NDPS Act was given to the Respondent as mandatorily required, before conducting the search of the person of the Accused?



**38.** In State of Punjab v. Baldev Singh, (1999) 6 SCC 172 the Apex Court has held that the requirement of informing the accused about his right under Section 50 comes into existence only when person of the accused is to be searched and *would not apply to the search of a bag belonging to the accused*. The relevant paragraph is as under -

*“4. ... As rightly pointed out by the High Court search of baggage of a person is not the same thing as search of the person himself. If a person is carrying a bag or some other article with him and narcotic drug or the psychotropic substance is found from it, it cannot be said that it was found from his “person”. In this case heroin was found from a bag belonging to the appellant and not from his person and therefore it was not necessary to make an offer for search in presence of a Gazetted Officer or a Magistrate.”*

**39.** Similarly, in State of Punjab v. Makhan Chand, (2004) 3 SCC 453, the accused was apprehended from a bus with a tin box in his hand from which the contraband was recovered. It was held that *that Section 50 of the Act would not apply*.

**40.** In Kanhaiya Lal v. State of M.P. (2000) 10 SCC 380, opium was recovered from the bag which was being carried by the accused. Section 50 was not made applicable as it was held that the recovery was made from the bag and not the person.

**41.** In the case of State of H.P. v. Pawan Kumar, (2005) 4 SCC 350, the matter when referred to a larger bench, to consider whether the term “person” under Section 50 would mean a natural person or a living unit and not an artificial person i.e., a bag or a briefcase.



42. In State of Punjab v. Baljinder Singh, (2019) 10 SCC 473 the Apex Court went on to hold that Section 50 would be applicable only to the personal searches and not to the searches of vehicles or bags.

43. In SK. Raju alias Abdul Haque alias Jagga vs. State of West Bengal, (2018) 9 SCC 708, it was held by the Apex Court that if the search is of both the bag as well as the person of the accused, Section 50 of the NDPS Act would be attracted.

44. This apparent conflict was noted and came to be considered by the Apex Court in the case of Ranjan Kumar Chadha v. State of Himachal Pradesh, 2023 INSC 878, wherein the

“...119. As such, there is no direct conflict between SK. Raju (supra) and Baljinder Singh (supra). It is pertinent to note that in SK. Raju (supra) the contraband was recovered from the bag which the accused was carrying, whereas in Baljinder Singh (supra) the contraband was recovered from the vehicle. This makes a lot of difference even while applying the concept of any object being “inextricably linked to the person”. Parmanand (supra) relied upon the judgment in Dilip (supra) while taking the view that if both, the person of the accused as well as the bag is searched and the contraband is ultimately recovered from the bag, then it is as good as the search of a person and, therefore, Section 50 would be applicable. However, it is pertinent to note that Dilip (supra) has not taken into consideration Pawan Kumar (supra) which is of a larger Bench. It is also pertinent to note that although in Parmanand (supra) the Court looked into Pawan Kumar (supra), yet ultimately it followed Dilip (supra) and took the view that if the bag carried by the accused is searched and his person is also searched, Section 50 of the NDPS Act will have application. This is something travelling beyond what has been stated by the large Bench in Pawan Kumar (supra). Baljinder Singh (supra), on the other hand, says that Dilip (supra) does not lay down a good law. ...”



**45.** From the aforesaid observations in various cases, it is evident that rigor of S.50 is applicable essentially when the recovery is made from the person and not from the bag that the accused may be carrying. Therefore, before conducting the search of her person, the Notice was mandatorily required to be served.

**46.** In the present case, the Notice under Section 50 NDPS Act, Ex.PW1/A had been given before conducting her personal search. The compliance to this effect stands satisfied. However, there is more to compliance of S.50 NDPS Act than merely giving the Notice. Communication of the said right to the person who is about to be searched, is not an empty formality. 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. It is stated that she was informed about the secret information received in relation to her bringing smack from Bareilly and selling it in Delhi and that it was her legal right to get her search conducted in the presence of any Gazetted Officer or the Magistrate, if she so desired.

**47.** Pertinently, this Notice had an endorsement in Hindi that she can read somewhat and sign in Hindi, though she cannot write it. The Notice was read to her and explained and after understanding her legal rights that she can get the search conducted in the presence of a Gazetted Officer or Magistrate, she stated that she does not want to get her search conducted before a Magistrate or Gazetted Officer. She also did not want to conduct the search of the Police Team or the Government vehicle i.e. Gypsy and that her search can be conducted. It is further stated that this statement of refusal



has been recorded on her instructions, which she has understood. The Reply which is written on the Notice under Section 50 itself bears her signatures at point B. This Notice has been prepared by PW9/ASI Om Prakash.

**48.** The mere perusal of the Notice along with the Reply shows that it is only a paper formality which has been done and all the legal requirements have been covered in the Reply. It is difficult to accept that a lady, that too an illiterate one, would state the detailed Reply as has been recorded. The learned ASJ has rightly observed that the option had been given in the most mechanical manner and it was evident that no endeavour was made to ensure that the Accused actually understood her legal right to her search conducted before a Gazetted Officer/Magistrate or to conduct the search of Police Officials before her search was conducted. The Reply which is written in the handwriting of PW9/ASI Om Prakash who prepared the Notice, raises a serious doubt about its genuineness. Pertinently, PW9/ASI Om Prakash in his testimony while deposing that he served a Notice under Section 50 NDPS Act has nowhere stated that he explained the contents of the Notice in a manner which is comprehensible to the Accused/Chander Kala.

**49.** *The learned ASJ has rightly noted that the fault in the Notice lies in it being too perfect.* The service of the Notice under Section 50 was nothing but a mere formality which appears to have been complied on paper.

**50.** There is no proper compliance of Section 50 NDPS Act which confers a valuable right on the Accused to safeguard their interest and to avoid false implication.

**Seizure Memo Of the Contraband:**



**51.** The saving factor for the Prosecution was that nothing was recovered from her person but allegedly, the contraband was recovered from the bag that she was carrying. The manner, in which the recovery is affected from the bag, also needs some discussion.

**52.** According to PW1/Const. Janita, she had conducted the personal search of the person of the Accused inside the Government vehicle, but nothing was recovered. Then the back door of the vehicle was opened and she opened the bag which the accused was carrying in her hand. *On opening the zip, she found one polythene bag which she then handed over to PW9/ASI Om Prakash, who then opened the bag to recover the contraband.*

**53.** On the other hand, PW9/ASI Om Prakash had stated that the bag was opened by him and the polythene bag had been retrieved by him. *There is a material discrepancy as to who had taken out the polythene containing Contraband from the bag allegedly being carried by the Accused.*

**54.** This mode of recovery assumes significance in the light of the entries made in the MHC(M) Register. *PW7/ASI Jag Narain, Incharge MHC(M)* had deposed that on the same day i.e. 16.12.2016, Inspector Vivek Pathak, SHO P.S Crime Branch had deposited three sealed parcels bearing the seals of 8B, P.S. MB Delhi and BP Marked A, B and C along with the FSL Form and the Carbon Copy of the Seizure Memo of Heroin prepared by *PW8/ASI Jai Prakash*, for which entry Ex.PW7/A was made in Register No.19 of Malkhana. The entry bears his signatures at point A and the signatures of SHO in Column III, at Point B.



**55.** Pertinently, the Seizure memo as per *PW9/ASI Om Prakash* had been prepared by him on the spot, which is also corroborated by the Seizure Memo itself.

**56.** The evidence shows that *PW8/SI Jai Prakash* had been deputed subsequently as an I.O who later went to the spot and took the parcels, Seizure Memos and other documents prepared by *PW9/ASI Om Prakash* and later handed it over to the SHO, who then got it deposited in the Malkhana.

**57.** What is more significant is that according to *PW7/ASI Jag Narain*, the Carbon Copy of the Seizure Memo that was handed over to him had been prepared by *ASI Jai Prakash*, a fact which is absolutely contrary to the Seizure Memo which had been prepared by *PW9/ASI Om Prakash*. This contradiction had not been explained in the testimony of any of the Prosecution witness. There is nothing on record to show that it was a typographical error. The best way to show that the Carbon Copy of the Seizure Memo handed over to the MHC(M) was the one prepared by *PW9/ASI Om Prakash*, was to produce the Carbon copy of this Seizure Memo from the Malkhana, which has not been done.

**58.** The learned ASJ has rightly observed that if the parcels handed over had been seized *vide* Seizure Memo prepared by *PW8/ASI Jai Prakash*, then it creates a doubt if the parcels deposited in the Malkhana were those that were seized by *PW9/ASI Om Prakash vide* Seizure Memo Ex.PW1/C or were some other parcels which were seized by *PW8/ASI Jai Prakash*.



59. This discrepancy should have been explained by the Prosecution and their failure to do so definitely creates a doubt about the parcels deposited in the Malkhana, being those that were seized from the Accused/Respondent.

**Discrepancy in Colour of the Contraband:**

60. In view of the aforesaid discrepancy of the parcels deposited in the Malkhanna were indeed those that were seized from the Respondent, the *colour of seized contraband* assumes significance. As per PW1/Const. Janita and PW9/ASI Om Prakash, the parcel containing the Contraband Ex.P1 was of “*Matiala colour*” and is so mentioned in the Seizure Memo.

61. The Contraband had been sent to FSL through HC Sandeep on 19.12.2016 and after the examination, the FSL Report was returned on 17.03.2017. Pertinently, when the sample was opened by the FSL, the contraband was stated to be of *Pink colour*. Pertinently, in the testimony of PW1 Const. Janita and PW9/ASI Om Prakash, the colour of contraband was again *Matiala*.

62. There is no explanation forthcoming as to how the colour of the Contraband kept changing from Matiala to Pink and back to Matiala, when produced in the Court.

63. This is again a discrepancy left unexplained by the Prosecution and raises a serious doubt about the contraband produced in the Court, was the same that was tested in FSL, and about the genuineness of the alleged seizure of Contraband from the Accused.

**Notice Under Section 57 NDPS Act:**



64. Another aspect is Section 57 NDPS Act, which states that the Report of *arrest and seizure* has to be prepared within 48 hours next after such arrest or seizure, and the full Report must be made to the immediate superior Officer. It states:

***“57. Report of arrest and seizure—***

*Whenever any person makes any arrest or seizure, under this Act, he shall, within forty-eight hours next after such arrest or seizure, make a full report of all the particulars of such arrest or seizure to his immediate official superior.”*

65. Again, this Report, on the aspect of seizure under S.57 which is an important step towards the investigation, was prepared by PW9/ASI Om Prakash, but unfortunately he was absolutely silent about this Report in his testimony. It has not been proved by PW9/ASI Om Prakash, which is a serious procedural lapse. It has been proved by PW3/ACP Sanjiv Kumar Dahiya as Ex.PW3/C, who is not the author of the document and thus, cannot be a witness to its authenticity.

66. The subsequent investigations were taken over by PW8/SI Jai Prakash whose compliance Report under Section 57 Ex.PW3/E only states about preparation of Site Plan, recording of witness and of arrest of Respondent/Chanderkala at 05:00 PM on 16.12.2016. This information was proved by PW8/SI Jai Prakash and has been corroborated and confirmed by PW3/ACP Sanjiv Kumar Dahiya, in their respective testimony.

67. The Report under S.57 prepared by PW8 does not however, state a word about the recovery which had been made by PW9/ASI Om Prakash, or the seized Parcels being handed over to him which again raises a doubt about recovery of contraband from the respondent.



68. There is no explanation as to why there is no mention about him taking over the possession of the seized articles from ASI Om Prakash.

**Recovery Of Mobile Phone:**

69. Another factor of consequence is that a **Mobile phone** was also recovered from the Respondent on her search and was seized vide Memo Ex.PW1/F on 16.12.2016 and was deposited in the Malkhana on 21.12.2016 vide DD entry No.2705/2016 in the MHC(M) Register. On the Seizure Memo of the Mobile Phone Ex.PW1/F, it is mentioned that it was kept for investigations and eventually deposited on 21.12.2016.

70. Pertinently, the assertion of the Prosecution was that the Respondent was a supplier of the Contraband, but even her mobile phone surveillance, did not produce any lead of she having any network or of being in contact with other vendors or being a supplier, as was claimed by the Prosecution.

71. The learned ASJ thus, had rightly concluded that there were discrepancies in regard to the person who had prepared the Seizure memo as per the Malkhana Register Ex.PW7/A, raising a doubt about the recovery of the Contraband.

**Conclusion:**

72. There are serious doubts in the Prosecution case about the mode of recovery of contraband from the spot which is further compounded by an eye wash compliance of Section 50 and not proving of the Report under Section 57 by PW9/ASI Om Prakash.



73. The colour of the Contraband as recovered from the Site was Matiala/Brownish, but the Contraband examined by the FSL was of Pink colour, which has again not been explained by the Prosecution.

74. The learned ASJ has thus, rightly given the benefit of doubt to the Respondent and has acquitted her.

75. There is no merit in the present Appeal, which is hereby dismissed.

**(NEENA BANSAL KRISHNA)**  
**JUDGE**

**AUGUST 28, 2025**  
**VA**