

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1196 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE N.J.PANDYA and

MR.JUSTICE R.BALIA.

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

CHHIBUBHAI SOMABHAI PATEL

Versus

STATE OF GUJ

Appearance:

MR PM VYAS for Petitioner

MR AJ DESAI ASST. PUBLIC PROSECUTOR for respondent

CORAM : MR.JUSTICE N.J.PANDYA and
MR.JUSTICE R.BALIA.

Date of decision: 30/09/96

ORAL JUDGEMENT

(PER N.J. PANDYA, J)

1. The accused appellant was tried before the learned Additional Sessions Judge, Valsad at Navsari for

offence under Section 8(c) read with Section 21 of the NDPS Act. The learned trial Judge by the order dated 28.9.1993 found the accused guilty and awarded sentence of ten years rigorous imprisonment and a fine of Rs.1.00 lakh and by way of default, for non payment of fine, further rigorous imprisonment for one year was ordered.

2. The learned advocate Shri Vyas appearing for the accused appellant has drawn our attention to the deposition of P.S.I. Shri Gandhi, Exh. 15, page 59. In the cross-examination, page 67 onwards, it has been brought out before the trial court that when the premises of the accused were raided and search of the person of the accused carried out, he was not given an option of being taken before either a gazetted officer or a magistrate.

3. This fact has been admitted more than once in the course of the cross-examination that the person who carried out raid is a P.S.I.

4. In view of the judgement of the Supreme Court in State of Punjab vs. Balvirsingh (AIR 1994 SC 1872), the requirement of Section 50 is mandatory. The provision made thereunder affords protection to the accused, as under the NDPS Act, once possession is believed, burden is on the accused to explain it. The mandatory requirement thus having been violated, the prosecution must fail.

5. The result is that the appeal is allowed. The order of conviction is set aside. The appellant-accused is ordered to be set at liberty forthwith, if not required for any other purpose. Fine, if paid, is ordered to be refunded.