

ordered to be run concurrently and benefit of Section 428 CrPC was also given.

3. On the basis of secret information received, the appellant was apprehended on the night of 17.04.2009 at about 9.25 PM. The secret information was conveyed to the senior officers including ACP and on the directions of the senior officers, raiding party was constituted headed by SI Hari Kishan and consisting of Ct. Ved Pal and Ct. Satish and the raiding party left the PS vide DD No.38-A alongwith secret informer in Gypsy No.DL-1C-J-4863 driven by Ct. Hans. The Gypsy was parked at Gali No.11, Krishna Puri, Tilak Nagar and driver was left in the vehicle. Thereafter, efforts by raiding team to join public witness could not succeed.

4. The raiding party took position in Gali No.10 and at about 9.25 PM one Nigerian person, whose identity was subsequently revealed as Sunday Emegha, who is appellant before this Court, was seen coming with a bag on his right shoulder from Outer Ring Road side towards Krishna Puri and on the pointing out of the informer, he was apprehended.

5. As the appellant was not conversant with Hindi, he was communicated in English about the information being received and his legal right to get the search conducted in the presence of Gazetted Officer or Magistrate and notice to this effect under Section 50 NDPS Act Ex.PW4/A was served upon him by handing over carbon copy of the notice. The appellant vide his reply Ex.PW4/B on the reverse side of the notice Ex.PW4/A, refused to get his search conducted in presence of Gazetted Officer or Magistrate. On search of the bag of the appellant,

one plastic transparent polythene, the mouth of which was tied with rubber band, was recovered and it contained brown colour powder. A very small quantity was taken out and checked with the help of narcotic kit and it was found to be heroine. The total quantity was found to be 1400 grams out of which two samples of 5 grams each were taken and thereafter the samples and the remnants were separately sealed with the seal of HK and seized. FSL form was also filled on which seal of HK was affixed. Seal after use was handed over to HC Rajbir. Thereafter rukka was prepared and Ct.Ved Pal was handed over the rukka as well as three sealed parcels, copy of the seizure memo, FSL form with directions to produce the rukka before Duty Officer and other articles before SHO.

6. On registration of the FIR by the Duty Officer, further investigation was assigned to ASI Padam Singh. The SHO affixed his own seal on the parcels. The second IO reached the spot alongwith Ct. Ved Pal alongwith copy of FIR where site plan was prepared. During investigation, the Nigerian Embassy was informed and search was made for Stanley, associate of the appellant and LOC was also issued for him.

7. Efforts were made to verify about the passport and visa of the appellant to verify whether his stay in India was authorized.

8. After completion of investigation, chargesheet was filed against Sunday Emegha for committing the offences punishable under Sections 21/61/85 of NDPS Act and under Section 14 of Foreigners Act. In order to prove its case, the prosecution has examined 13 witnesses. Statement of the appellant was also recorded under Section 313 CrPC wherein he has simply denied the case of prosecution stating that no heroine was recovered from his possession. He was arrested on 17.04.2009 at 4.30

PM when he was empty handed. He being a Negro, the heroine was planted on him to falsely implicate him in this case.

9. The learned Special Judge (NDPS) considered the compliance of mandatory requirements as well the creditworthiness of the testimony of police officials and was of the view that non-joining of public witness in itself is not sufficient to discard the testimony of police officials who were discharging their duties. The link evidence was also considered reliable by the learned Special Judge (NDPS), thus, ruling out any tampering with the case property. Taking into consideration the commercial quantity of the heroine i.e. 1400 grams with purity of 80.1 percent, the Court ruled out the possibility of planting of the case property. Since, as per the information received by the police, the visa of the appellant had already expired on 13.03.2008 and on the date of arrest i.e. 17.04.2009 his stay in India was obviously unauthorised, he was also convicted under Section 14 of Foreigners Act.

10. On behalf of appellant, Mr.S.K.Pandey, Adv. filed brief written synopsis and also made oral submissions. I have also heard Mr.Navin Sharma, learned APP for State.

11. The main contentions raised on behalf of the appellant are that despite the place of apprehension being thickly populated area, no sincere effort was made to join the public witness which cast serious doubt regarding the manner of apprehension of the appellant and the recovery effected from him. It has been further submitted that compliance of Section 50 of NDPS Act is not a mere ritual, it is a substantial right given to an accused to protect him from false implication. Compliance is not to be inferred from the paper containing

the notice but from the evidence and the circumstances, the Court has to satisfy itself about the substantial compliance of the mandatory requirement of Section 50 of NDPS Act. Learned counsel for the appellant has drawn the attention of this Court to the notice under Section 50 of NDPS Act wherein FIR number has been mentioned though at the time of service of notice, FIR was not registered. It has been urged on behalf of the appellant that site plan does not indicate the source of light under which the writing work was done and even otherwise, the quantum of writing work is such that it could not have been done under the street light. Not only that, Ct. Ved Pal who is also a member of the raiding party, had taken the samples to FSL on 24.04.2009 and the seal has been returned by him to the SHO on 25.04.2009. Thus, when the samples were taken by him to FSL, the seal was with him which does not rule out the possibility of tampering with the case property.

12. Mr.S.K.Pandey, Advocate for the appellant has also referred to the discrepancies in the weight of the samples as drawn by the IO and the weight as measured in FSL. He contended that as per PW SI Hari Kishan, he had drawn two samples of 5 grams each but when the samples were weighed in FSL, sample 'A' weighed 6.5 grams and sample 'B' weighed 5.5 grams which also indicate tampering with the case property, otherwise weight would not have differed.

13. Learned counsel for the appellant has also referred to arrest memo wherein in the column, 'Date of Arrest', there is overwriting in the date as the date 17th April has been made 18th April by overwriting which also cast a serious doubt in the case of prosecution. It has also been

submitted by learned counsel for the appellant that PW4 HC Jagbir has stated that rukka and case property, copy of seizure memo and FSL form were taken by Ct. Ved Prakash. The raiding team did not consist of Ct. Ved Prakash so how the above mentioned articles could be handed over to him. The discrepancies in the testimony of various material prosecution witnesses about the nature of bag being carried by the appellant also make their presence at the spot doubtful as some have referred the bag as handbag and some as carry bag. The failure of the investigating agency to ascertain the source of recovered heroine from the appellant also shows that nothing was recovered from him and he has been falsely implicated in this case after planting heroine on him. Thus, the case of prosecution being dented with so many flaws, the appellant needs to be acquitted. Learned counsel for the appellant has relied upon ***Vijaysinh Chandubha Jadeja vs. State of Gujarat (2011) 1 SCC 609*** in support of his contentions.

14. On behalf of State, it has been submitted that it is a matter of common knowledge that public witnesses are reluctant to associate themselves, sometimes due to fear and sometimes to avoid the harassment faced by them, while appearing as a witness in the Court. It has been contended that no doubt, the investigating agency should make genuine efforts to associate public witnesses but non-joining of public witnesses in itself is no ground to discard police officials who had apprehended the appellant and effect the recovery in discharge of their official function without any animus towards the appellant. It has been contended that in this case, not only the sample was sent to FSL at the earliest but FSL result was also obtained and filed alongwith the

chargesheet. The level of purity of heroine i.e. 80.1 percent and the heavy quantity i.e. 1400 grams in itself rules out the possibility of planting the case property by the police. It has been contended that minor discrepancies in the testimony of witnesses are bound to occur with the passage of time which can be ignored by the Court and the conviction and the sentence of the appellant may be maintained.

15. I have considered the rival contentions and carefully gone through the evidence adduced by the prosecution as well statement of the appellant recorded under section 313 CrPC. In the report ***Vijaysinh Chandubha Jadeja vs. State of Gujarat*** (Supra) relied upon by learned counsel for the appellant in respect of compliance of Section 50 of NDPS Act, it was held :

‘It is imperative on the part of the empowered officer to apprise the person intended to be searched, of his right under Section 50 of the NDPS Act to be searched before a gazette officer or a Magistrate. It is not necessary that the information required to be given under Section 50 should be in a prescribed form or in writing, but it is mandatory that the suspect is made aware of the existence of his right to be searched before a gazette officer or a Magistrate, if so required by him and this mandatory provision requires strict compliance. Thereafter, the suspect may or may not choose to exercise the right provided to him under the said provision.

*The concept of “substantial compliance” is neither borne out from the language of Section 50(1) nor it is in consonance with the law laid down in **Baldev Singh case (1999) 6 SCC 172**’*

16. The contention of learned counsel for the appellant regarding non-compliance of Section 50 of NDPS Act has to be ignored in this case for the reason that recovery of heroine was not effected from the person of

the appellant but from the handbag carried by him, hence the prosecution was not under an obligation to serve a notice under Section 50 of NDPS Act on the accused. Thus, the reliance placed on ***Vijaysinh Chandubha Jadeja vs. State of Gujarat*** (Supra) by learned counsel for the appellant is of no advantage to the appellant.

17. In the case ***State of Himachal Pradesh vs. Pawan Kumar (2005) 4 SCC 350***, in view of difference of opinion between two learned Judges who heard the appeal, the matter was placed before the larger bench. The question for consideration was whether the safeguards provided by Section 50 of NDPS Act regarding search of any 'person' would also apply to any bag, briefcase or any such article or container etc., which is being carried by him. The rival contentions before the Apex Court were:-

'6. What is the meaning of words 'search any person' occurring in Sub-section (1) of Section 50 of the Act. Learned counsel for the accused has submitted that the word "person" occurring in Section 50 would also include within its ambit any bag, briefcase or any such article or container, etc., being carried by such person and the provisions of Section 50 have to be strictly complied with while conducting search of such bag, briefcase, article or container, etc. Learned counsel for the State has, on the other hand, submitted that there is no warrant for giving such an extended meaning and the word "person" would mean only the person himself and not any bag, briefcase, article or container, etc., being carried by him.'

While dealing with the above contention, the Apex Court observed:

'11. A bag, briefcase or any such article or container, etc. can, under no circumstances, be treated as body of a human being. They are given a separate name and are identifiable as such. They

cannot even remotely be treated to be part of the body of a human being. Depending upon the physical capacity of a person, he may carry any number of items like a bag, a briefcase, a suitcase, a tin box, a thaila, a jhola, a gathri, a holdall, a carton, etc. of varying size, dimension or weight. However, while carrying or moving along with them, some extra effort or energy would be required. They would have to be carried either by the hand or hung on the shoulder or back or placed on the head. In common parlance it would be said that a person is carrying a particular article, specifying the manner in which it was carried like hand, shoulder, back or head, etc. Therefore, it is not possible to include these articles within the ambit of the word "person" occurring in Section 50 of the Act,

13. The scope and ambit of Section 50 of the Act was examined in considerable detail by a Constitution Bench in State of Punjab v. Baldev Singh MANU/SC/0981/1999 : 1999CriLJ3672 and para 12 of the reports is being reproduced below :

"12. On its plain reading, Section 50 would come into play only in the case of a search of a person as distinguished from search of any premises etc. However, if the empowered officer, without any prior information as contemplated by Section 42 of the Act makes a search or causes arrest of a person during the normal course of investigation into an offence or suspected offence and on completion of that search, a contraband under the NDPS Act is also recovered, the requirements of Section 50 of the Act are not attracted."

The Bench recorded its conclusion in para 57 of the reports and sub-paras (1), (2), (3) and (6) are being reproduced below :

57. On the basis of the reasoning and discussion above, the following conclusions arise:

(1) That when an empowered officer or a duly authorized officer acting on prior information is about to search a person, it is imperative for him to inform the person

concerned of his right under Sub-section (1) of Section 50 of being taken to the nearest gazetted officer or the nearest Magistrate for making the search. However, such information may not necessarily be in writing.

(2) That failure to inform the person concerned about the existence of his right to be searched before a gazetted officer or a Magistrate would cause prejudice to an accused.

(3) That a search made by an empowered officer, on prior information, without informing the person of his right that if he so requires, he shall be taken before a gazetted officer or a Magistrate for search and in case he so opts, failure to conduct his search before a gazetted officer or a Magistrate may not vitiate the trial but would render the recovery of the illicit article suspect and vitiate the conviction and sentence of an accused, where the conviction has been recorded only on the basis of the possession of the illicit article, recovered from his person, during a search conducted in violation of the provisions of Section 50 of the Act.

(6) That in the context in which the protection has been incorporated in Section 50 for the benefit of the person intended to be searched, we do not express any opinion whether the provisions of Section 50 are mandatory or directory, but hold that failure to inform the person concerned of his right as emanating from Sub-section (1) of Section 50, may render the recovery of the contraband suspect and the conviction and sentence of an accused bad and unsustainable in law."

14. The above quoted dictum of the Constitution Bench shows that the provisions of Section 50 will come into play only in the case of personal search of the accused and not of some baggage like a bag, article or container, etc. which he may be carrying.'

18. Even if it is assumed by the sake of arguments that prosecution was supposed to comply with Section 50 of NDPS Act, the notice Ex. PW4/A under Section 50 of NDPS Act shows that the accused has been duly informed about his legal right to get his search conducted before a Gazetted Officer or Magistrate and in the reply which is in his own handwriting and duly signed by him, he has refused to get his search conducted in the presence of a Gazetted Officer or Magistrate. It has been deposed by material prosecution witnesses i.e. PW-5 Ct.Ved Pal, PW-6 Ct.Satish Kumar and PW-8 SI Hari Kishan, who were members of raiding party that the accused was served with a notice Ex.PW4/A informing him that if he so desires, he can be searched in presence of a Gazetted Officer or Magistrate, the accused on the reverse of the notice in his own handwriting has recorded his reply as extracted hereunder :

‘As I am carrying heroine in my bag and I have already being apprehended by you, so I don’t want to take the search of the members of police party. You may take my search.’

19. The Constitution Bench of the Apex Court in the case ***State of Pubjab vs. Baldev Singh (1999) 6 SCC 172***, has held that *such information need not be in writing and that orally conveying such information is sufficient.*

20. In another cases ***Krishan Mohar Singh Dugal vs. State of Goa (1999) 8 SCC 552*** and ***Sajan Abraham vs. State of Kerala (2001) 6 SCC 692***, it was held :

‘What is required is substantial compliance and thus informing the accused that if he wants the search to be carried out in the presence of a Magistrate or a gazetted officer is sufficient compliance with Section 50 of the NDPS Act.’

21. Therefore, it can be safely held that compliance of Section 50 NDPS Act has been done by the raiding party before conducting the search. So on this score, the appellant cannot avail any benefit.

22. The contention of learned counsel for the appellant regarding tampering of case property does not stand proved from the record. No doubt, Ct. Ved Pal was having the seal of SHO at the time of taking the case property to FSL on 24.04.2009 but it cannot be ignored that the samples and FSL form were sealed with the seal of HK and SD. The seal of HK was given to HC Rajbir. The FSL report Ex.PW6/B specifically contains the information that two sealed parcels marked as 'A' and 'B' received with intact seals and tallied with the specimen seals as on the forwarding letter (FSL form). HC Ram Lal Meena, the MHC(M) has been examined as PW-2 by the prosecution who has produced Register No.19 and placed on record the relevant extract as Ex.PW2/A.

23. The contentions regarding discrepancy in the weight of two samples as pointed out by learned counsel for the appellant also stands answered by the result Ex.PW6/B wherein while mentioning the weight, it is also mentioned 'with polythene'. Thus, it is clear that the difference in the weight is due to the weight of the polythene in which the samples were kept and not as a result of any tampering with the case property.

24. So far as difference in weight of the samples is concerned, reference can be placed on *State by CBI vs. Dilbagh (2004) 13 SCC 99*, wherein one of the contentions raised was that there was a difference in weight of the sample as extracted by the IO and the weight of the sample

as reflected in the FSL result and benefit of doubt was sought to be claimed on this score. Rejecting this contention, in para 9 of the report, it was held :

'9. It must be noted that the weight of the samples was "about 50 grams". "About 50 grams" necessarily means not exactly "50 grams". The weight could be a little less or more. The deposition of PW3 shows that the samples were sealed with CBI seal bearing impression "JS/4". PW3 has further deposed that samples, on being sealed, were sent to malkhana. PW5 i.e. ASI Ram Kumar deposed that he was in charge of the malkhana. He deposed that he had received the samples in a sealed condition and they remained with him in the sealed condition. He has deposed that one of the samples was given by him to ASI B.K. Sharma to be taken to the Chemical Analyser along with a forwarding letter. ASI B.K. Sharma was examined as PW4. He deposed that he received the sample in a sealed condition and that he delivered the sample to the Chemical Analyser. He deposed that while the sample was in his possession it was not tampered with. The Chemical Analyser was examined as PW2. He deposed that he received the sample with the seal intact along with the forwarding letter. The forwarding letter had been marked as PW3/F. The forwarding letter does not contain any weight. It was only when the Chemical Analyser weighed the sample that the exact weight was found to be 55.5 grams. At this stage it must be noted that not a single question was put to any of the above witnesses, in the cross-examination, that the seal had been tampered with. All that is asked of PW4 is that CFSL form in triplicate was not prepared or sent to the Chemical Analyser. Merely because no such form was prepared or sent, does not in any way reflect on the fact that the sample which was extracted, was the sample which reached the Chemical Analyser with the seal intact. In this case the prosecution has been careful enough to prove that the same sample was sent to the Chemical Analyser with the seal intact. It is thus established by evidence that the sample which was extracted was what was sent to the Chemical Analyser. We are thus unable to uphold the reasoning of the High Court.'

25. Here, in the instant case also, the link witnesses examined by the prosecution as well as the FSL report duly proved that the samples which were taken were sent to FSL, were examined there and further that at the time of examination, the seals were found intact and tallied with the specimen seal. So the contention of learned counsel for the petitioner to claim benefit of doubt on this ground has to be rejected.

26. No doubt, the site plan Ex.PW12/A does not show the source of light but at the same time, it cannot be ignored that point 'A' from where the appellant was apprehended is just adjacent to Outer Ring Road, thus, the light under which the writing work was done cannot be said to be so insufficient as to make the writing work of the nature required while conducting proceedings in a case under NDPS Act, to be rendered impossible.

27. The contention regarding handing over of rukka and case property to Ct. Ved Prakash has to be rejected for the simple reason that in all the documents Ct.Ved Pal alongwith his No.1997/West, PS Tilak Nagar is mentioned and it appears that due to slip of tongue or lapse of memory of PW4 HC Jagbir. Ct. Ved Pal was referred as Ct.Ved Prakash.

28. With reference to overwriting on the arrest memo Ex.PW4/C, no doubt in column No.6 while giving the date of arrest, there is cutting on the digit '7' which has been made '8' meaning thereby the date written was 17.04.2009 has been made 18.04.2009 by overwriting but it has to be read in the context that time of arrest is 12.30 am meaning thereby that it was just after midnight on the night intervening 17/18.04.2009 that the arrest memo was prepared. The FIR is dated 17.04.2009 and arrest is just after midnight by which time, the date changed to 18.04.2009

resulting into overwriting on realizing that after midnight, the date has changed. The cutting is duly initialed by the arresting officer ASI Padam Singh and arrest memo also bears the signature of the arrestee i.e. of the appellant in English. Under the signature of arresting officer, the date is correctly mentioned as 18.04.2009 without any cutting. So, this overwriting in itself cannot be termed so serious so as to entitle the appellant to seek acquittal.

29. Perusal of the evidence adduced by the prosecution proves that the secret information was received on 17.04.2009 at 8.25 pm and recorded vide DD No.35-A Ex.PW3/A which was immediately communicated to the SHO who was present in the police station. Another DD No.37-A Ex.PW3/B was recorded at 8.40 pm whereby the SHO after recording his satisfaction and communicating the information to Mr.Paramaditya, IPS, ACP, Tilak Nagar and on getting information, directed to constitute a raiding party for necessary action.

30. At 8.50 pm vide DD No.38-A Ex.PW3/C, the raiding party left the police station for the spot in Gypsy No. DL-1C-J-4863 driven by Ct. Hans. DD No. 2-A dated 18.04.2009 was recorded at 12.15 midnight after arrival of Ct. Ved Pal with rukka, case property, FSL form, seizure memo etc. for production of the case property, carbon copy of seizure memo and FSL form before the SHO who put the FIR number after making inquiry from the Duty Officer and affixed his own seal and handed over to MHC(M) with necessary instructions. It also mentions about the information being given to the senior officer ACP, Tilak Nagar and DCP (West) about the apprehension and recovery. Not only that, compliance of Section 57 of NDPS Act has also been done within

stipulated time and to prove the compliance of Section 57 of NDPS Act, the prosecution examined Mr.Paramaditya, ACP as PW-9 as well as his reader HC Mukhtiar Singh as PW-10.

31. The appellant in his statement under Section 313 CrPC had given his address in India as WZ-15/B/2, Gali No.10, Krishna Puri and it is the same address referred to by the secret informer. However, when in Question No.40, it was put to him that on 19.04.2009 in the morning he was taken to the house of Stanley at H.No. WZ-15/B/2, Street No.10, 2nd floor, Krishna Puri and the landlord produced tenant verification form in triplicate which was seized vide memo Ex.PW12/B, he denied it as incorrect. He also denied that PW-13 Meena Awasthi had rented third floor of her house to one Stanley (also a Nigerian national) for a period of six months and pleaded ignorance saying he did not know. In Question No.42 when it was put to him that he was seen by Smt. Meena Awasthi in the company of Stanley on the roof of House No.WZ-15/B/2, Krishna Puri, he admitted that he visited that place once. What is more startling in this case is that throughout the appellant has not mentioned that after his arrival in India till his date of arrest, where he was staying. This fact could be only in the special knowledge of the appellant but on the one hand, he is giving address of Meena Awasthi as his own address and on the other hand claiming that he had visited that place only once.

32. The stand of the appellant regarding his valid travel document i.e. passport and visa is self contradictory. While giving suggestions to the witnesses, it has been suggested that the passport of the appellant was with his friend. It has been suggested to PW-8 ASI Hari Kishan, the second IO that he was having valid passport which was in possession of

his friend but immediately thereafter another suggestion has been given that accused was having a valid passport which was forcibly taken by the police and deliberately not placed on record. The name or address of the friend has not been disclosed by the appellant either during investigation or while cross examining the prosecution witnesses. Even in his statement under Section 313 CrPC, he has not disclosed the particulars of his friend who might be having his passport or visa. It is only on the inquiries being made by PW-12 ASI Padam Singh, the second IO through proper channel that the information was received about his unauthorized stay in India and expiry of his visa on 13.03.2008.

33. Learned counsel for the appellant urged that it is a case where the recovery has been effected from near a residential area and despite that no public person has been joined. It has been further submitted that despite the availability of the public witnesses, the police officials who were members of the raiding party have made a vague statement that 4-5 passers-by were requested to join but they refused, which cannot be believed. It has been further submitted that conviction cannot be based solely on the testimony of police officials who may be interested in success of their case. The contention raised in this regard cannot be accepted for the simple reason that it is not the case of the appellant that all the Negros visiting India are being falsely implicated by Delhi Police. It is worth mentioning that the appellant continued to live in India after expiry of his visa period without disclosing his whereabouts or even the place where he was staying during this period. The police officials had no enmity with him and they just acted upon the information received. The place of apprehension of the appellant is near the house where

another Negro namely Stanley was staying i.e. in the premises of PW-13 Meena Awasthi where he also used to visit. Merely because the material witnesses are police officials in itself is no ground to discard their otherwise creditworthy testimony. It was so held in the case of **Ajmer Singh vs. Haryana (2010) 2 SCC (Crl.) 475** :

'Testimony of official witnesses, even in absence of its corroboration by independent evidence can form basis of conviction if Court is satisfied, on careful and cautious appreciation of evidence, that it is otherwise believable.'

34. Effect of non-joining of public witnesses was also considered in **Mahatam Parshad vs. State** 63 (1996) DLT 884 and it was observed:

'It is no doubt true that the Court should always be reluctant in convicting a person solely on the basis of the testimony of the police officials, however, we have also to keep in view that the prosecution case cannot be thrown out or doubted on that ground alone. One cannot ignore the handicap with which the investigating agency discharge their duties as there is a general apathy in the public to come forward and appear as witness in Court cases. Even in this case one independent witness was associated at the time of search of the appellant and one seal was also kept with him, however, when the summons were sent to him, it was found that he had left the address where he was living as a tenant. The prosecution has done everything within its power to have the statement of the independent witness recorded in Court, however, in case for some reason the said witness has not been produced in the Court, in my opinion, the conviction of the appellant cannot be set aside merely on that ground. It is in the statement of the witnesses that many public independent witnesses were asked to join the raiding party, however, they refused. What the police should have done in these circumstances? No doubt if public witnesses decline to cooperate without any reasonable cause, they would be deemed to have committed an offence under Section 187 of IPC. However, we must also keep in view the

ground realities in the sense that public witnesses, normally, do not want them to be associated in cases where they are asked to appear in Courts.’

35. Thus, from the evidence adduced by the prosecution, the recovery of heroine weighing 1400 grams with purity of 80.1 percent was proved beyond any reasonable doubt. The arrest of the appellant, who is a Nigerian national, in a case under NDPS Act was duly informed to the concerned Embassy through proper channel. It has also been proved by the prosecution that visa of the appellant had already expired much prior to his arrest in this case. Thus the conclusion arrived at by learned Special Judge (NDPS) convicting the appellant under Section 21(c) of NDPS Act and under Section 14 of Foreigners Act is based on sound reasoning and proper appreciation of the testimony of prosecution witnesses. The impugned order cannot be termed as perverse or suffering from any illegality as all the necessary requirements have been duly complied with by the police in this case and the recovery of contraband i.e. heroine weighing 1400 grams which is the commercial quantity (purity level 80.1 percent) stands duly proved.

36. The appeal has no merits and the same is hereby dismissed. Trial Court Record be sent back along with copy of this order. A copy of this order be sent to Jail Superintendent informing the appellant about the dismissal of the appeal.

PRATIBHA RANI, J

September 28, 2012
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