

IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

Cr. A. No. 269/2023

Reserved on: 1.12.2025

Decided on: 23.12.2025

Rakesh Kumar

.....Appellant

Versus

State of Himachal Pradesh

....Respondent

Coram:

The Hon'ble Mr. Justice Vivek Singh Thakur, Judge.

The Hon'ble Mr. Justice Romesh Verma, Judge.

Whether approved for reporting?¹

For the Appellant: Mr. Yashveer Singh Rathore, Advocate.

For the Respondent: Mr. J. S. Guleria & Mr. Raj Negi, Dy.A.Gs.

Romesh Verma, Judge

The present appeal arises out of judgment of conviction, as passed by the learned Special Judge-II, Kinnaur at Rampur Bushahr, District Shimla, dated 27.4.2023, in case FIR No.2/2022, dated 2.1.2022, registered at Police Station Brow, District Kullu, whereby the convict/appellant has been convicted and sentenced to undergo rigorous imprisonment for

¹Whether reporters of the local papers may be allowed to see the judgment? Yes.

a period of 10 years and to pay a fine of Rs.1,00,000/- and in default of payment of fine, to further undergo simple imprisonment for a period of six months for the commission of an offence punishable under Section 29(b)(ii)(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985.

2 The story, as projected by the prosecution, is that on 2.1.2022 PW15 HC Anupam along with HC Jagdish Kumar, PW5 Constable Avinash Badal, Head Constable Sandeep Kumar, HC Kesar, Constable Ajay Kumar and Constable Hukam Chand proceeded on patrolling and traffic checking duty in their private vehicles vide rapat No. Ext.P1/PW5 in the areas of Kullu, Bhuntar, Banjar, Anni, Nirmand etc. They were having IO kit, search light, laptop with them. When the police party was present at place Bazirbowli, at about 5.20 P.M., an HRTC bus bearing No. HP-06A-8283 came from Nirmand side. The police party gave signal to the driver to stop the bus and thereafter, the police party entered the bus. PW15 Investigating Officer enquired names of driver and conductor of the bus, who disclosed their names as Ravinder Singh and Med Ram respectively. The Investigating Officer told the passengers of bus, who were about 13-14 in number, to get their luggage searched. Both conductor and driver were associated as

independent witnesses. The I.O. started checking the luggage of the passengers from front side and when he reached near seat No.5, which was just behind seat of the driver, a person, sitting on the same and carrying a rucksack in his lap tried to hide the same after seeing police officials. He tried to get up from the seat and leave the bus. When the I.O. asked as to why he tried to hide the bag and flee from the bus, he became perplexed. The I.O. asked him to sit on his seat and enquired about his name. The said person disclosed his name to be Rakesh Kumar (convict/appellant herein). The 'pithu' bag of the convict was blue coloured having two zips, two side pockets and two strips, on which 'TOO YOUNG TOO SIMPLE' was embossed. The bag was searched in presence of driver, conductor and other police personnel. Upon opening the knots of the bag, two transparent polythene packets were found therein in which one packet was stated to be containing black coloured substance in the shape of sticks and in other packet it was found in round shape, which after smelling and on the basis of experience, was found to be charas. On weighing, substance was found to be 3.228 kgs charas. The recovered charas was packed in the same manner in the carry bag and the same was put in a cloth parcel and sealed with six seals of 'SIUY-4'. Sample seal, Ex.P2/PW1, was drawn

on separate piece of cloth. The I.O. filled the NCB form Ex.P3/PW11. Apart from it, the passengers list Ex.P3/PW1 was handed over to the police by the conductor. Constable Avinash Badal clicked the photographs Ex.P4 to P11/PW1 at the instance of I.O. Thereafter, the I.O. prepared rukka Ex.P2/PW5 and sent the same to Police Station, Brow through Constable Avinash Badal for registration of an FIR. Upon arrival of the second IO HC Randhir Saklani, the appellant, case file, case property, documents were handed over to him and HC Randhir Saklani recorded the statements of witnesses and interrogated the appellant before arresting him vide memo Ex.P1/PW16. HC Randhir Saklani also prepared spot map Ex.P2/PW16. He handed over the appellant to SHO Chaman Negi at Police Station Brow along with case property for resealing, who resealed the parcel with three seals of impression 'T'. The relevant columns of NCB form were filled by the SHO. The report under Section 52-A of the Act Ex.P1/PW4 was also prepared by the SHO Chaman Negi. The I.O. also procured the CDR Ex.P3/PW16 of the appellant.

3 As per the result of SFSL, the exhibit was found to be extract of cannabis and sample of charas having the quantity of

purified resin as 28.38% ww. On completion of all the codal formalities and investigation, challan was presented in the court.

4 The convict/appellant was charged for an offence punishable under Section 20 of the Act, to which he pleaded not guilty and claimed trial.

5 In order to prove its case, the prosecution examined as many as 16 witnesses in support of its case. Thereafter, the convict/appellant was examined under Section 313 Cr.P.C., in which he denied all set of incriminating evidence led by the prosecution against him and claimed himself to be innocent. However, the convict/appellant did not lead any evidence in his defence.

6 The learned Special Judge, after evaluating the oral as well as documentary evidence, convicted and sentenced the convict/appellant, as aforesaid.

7 Feeling aggrieved by the judgment of conviction, as passed by the learned Special Judge, the convict/appellant has preferred the present appeal.

8 It is submitted by Mr. Yashveer Singh Rathore, Advocate, appearing for the convict/appellant that judgment of conviction as passed by the learned Special Judge is not sustainable in the eyes of law keeping in view various infirmities,

contradictions and inconsistencies in the statements of the prosecution witnesses, more particularly, PW1, PW5 and PW15, therefore, the convict/appellant has wrongly been convicted under the provisions of Section 20 of the Act. He has urged that his client has no role to play in the instant case and he has been falsely implicated in order to hide and conceal the real culprit. He has further contended that the story, as projected by the prosecution, does not inspire confidence and it is full of contradictions, as a result of which present appellant deserves to be acquitted of the charges framed against him and the present appeal deserves to be allowed.

9 On the other hand, Mr. J.S. Guleria and Mr. Raj Negi, learned Deputy Advocate Generals, appearing for the respondent-State have urged that in the present case, the offence having been committed by the appellant is serious in nature and it affects the society as a whole. They have contended that the learned Special Judge after perusing the entire oral as well as documentary evidence on record has rightly convicted the appellant for the offence punishable under the provisions of Section 20 of the Act.

10 We have heard the learned counsel for the parties and have also scanned the records of the case in detail.

11 The case, as putforth by the prosecution, against the appellant/convict is based upon chance recovery of contraband (3.228 kgs of charas) which was alleged to have been effected on 2.1.2022 from one blue coloured pithu bag, which the appellant was holding on his lap while travelling in seat No.5 of HRTC bus bearing registration No. HP-06A-8283. According to the prosecution, the appellant was found in conscious and exclusive possession of the contraband.

12 In order to substantiate its case, the prosecution has examined the Investigating Officer of the case, HC Anupam as PW15, who deposed in his examination-in-chief that he remained posted as HC in SIU Kullu in January 2022. He stated that on 2.1.2022, he along with Constable Avinash Badal, HC Sandeep, HC Jagdish, HC Kesar, Constable Hukam and Constable Ajay proceeded on patrolling and nakabandi in their private vehicles vide raport Ex P1/PW5 in the area of Kullu, Banjar, Anni Nirmand etc. He was having IO kit consisting of search light, laptop. At about 5.20 P.M., when they were present at place Bazirbowli an HRTC bus bearing No. HP06A-8283 came from Nirmand side, which was signaled to stop. The bus was enroute Jabo-Anni-Rampur. The police party entered the bus from front door. On asking, the conductor of bus disclosed his

name as Med Ram, s/o Narottam, R/O Village Banshai Gad P.O. Showad, Tehsil Anni District Kullu and driver of bus divulged his name as Ravinder Singh s/o Lachu Ram, resident of Village Sharan P.O. Narain Tehsil Rampur District Kullu HP. There were about 17-18 passengers in the bus and out of them, 13-14 passengers were holding luggage with them. The passengers were told about their search and their luggage. He started the search from front seat. During search, a person, who was sitting on seat No. 5 and having a rucksack in his lap, tried to move out of the bus. He became nervous and could not give satisfactory reply to the query made by I.O. On asking, he disclosed his name as Rakesh Kumar s/o Budhi Singh, resident of Village Deem P.O. Jaon Tehsil Anni District Kullu (convict/appellant herein). The 'pithu' bag was blue in colour having two strips and two zips, two side pockets on which 'TOO YOUNG TOO SIMPLE' was written. PW15 deposed that the 'pithu' bag of appellant was searched by him in presence of driver, conductor and police personnel. During search, on opening the zip of bag two orange coloured carry bags having knots were found. On opening the knots of said carry bags, transparent polythene packets were found and on opening the same, black coloured hard substance in the shape of sticks was found in one packet and in the other

packet, round shaped black coloured hard substance was found. After smelling and on the basis of experience, the same was found to be Charas. The recovered contraband was weighed on the electronic weighing scale, which was found to be 3.228 Kgs.

13 After weighing the Charas, the same was packed in the same manner and thereafter the carry bag was put in a cloth parcel and sealed with six seals of 'SIUY4'. Sample seal Ex.P2/PW1 was drawn on a separate piece of cloth. Column Nos. 1 to 4 and 6 & 8 of NCB form Ex.P3/PW11 in triplicate were filled by him and the seal after its use was handed over to Conductor Medh Ram. The parcel was taken into possession vide memo Ex.P1/PW1. The passenger list Ex. P3/PW1 of the bus was taken by him from the conductor. The copy of seizure memo was supplied to appellant free of cost. Constable Avinash Badal clicked the photographs of the proceedings Ex.P4 to P11 from his mobile phone. He prepared a rukka Ex.P2/PW5 and handed over the same to Constable Avinash Badal to carry the same to Police Station, Brow for registration of an FIR. After registration of FIR, HC Randhir Saklani came to the spot with other police officials. PW15 stated that he handed over case property, NCB form, seizure memo, sample seal, passenger list and the accused along with copy of rukka to HC Randhir Saklani vide memo Ex,

P1/PW7. HC Randhir Saklani prepared the spot map on his demarcation and recorded the statements of the witnesses as per their version.

14 In his cross-examination, PW15 deposed that he had entered the bus from the front door. About 13-14 passengers in the bus had their luggage with them, which were checked by the investigating agency. The bag with contraband was detected initially. Thereafter, other bags were also checked. They also checked vehicles at Anni and Banjar. He had not made any announcement, before checking, to the passengers nor to the raiding party that some suspicious article may be found in the bus. He stated that some luggage was lying on the rack of the bus and some passengers were carrying their luggage on their lap. The appellant tried to hide the contraband behind his legs beneath the seat. The appellant was sitting on seat No. 4. Seat No. 6 was vacant. He denied that seat No. 6 was occupied by one lady, namely, Shiksha. PW15 stated that he had asked the appellant about ownership of the bag, who acknowledged the bag to be belonging to him. He had not done any videography. The photograph was clicked while searching the bag. He had not given his search to anyone. The appellant did not try to escape or run away from the bus. The appellant did not try to throw the

bag out of the window of the bus. There was nothing in the bag that connected the appellant with it. PW15 stated that no money was found with the appellant as he had not taken his personal search. The documentation proceedings were conducted inside the bus and the photography was done both inside and outside the bus. Constable Avinash had left the spot at 8:10 PM in his own vehicle. He denied that they had received information that a person from Haryana was transporting contraband in the bus. He admitted that seat No. 6 abuts the window.

15 To corroborate the version putforth by the I.O., the prosecution has examined Med Ram, Conductor, working in HRTC Depot Rampur as PW1, who deposed that on 2.1 2022, he along with driver Ravinder Singh were enroute in bus No. HP-06A-8283 from Anni to Rampur via Jao, Nirmand, Bagipul etc. There were about 17-18 passengers sitting in the bus. At about 5.15 PM, when the bus reached near Bazirbowli, Rampur, the police officials signaled to stop the bus, upon which driver stopped the bus by the side of the road. He was sitting on the conductor's seat. Police boarded from the front window/door of the bus. Thereafter, the police officials asked the passengers to get checked their luggage. The checking was started from seat No. 1. When they reached at seat No. 5, two persons i.e. one lady

and one male were found sitting. There was a bag lying beside the male passenger. The police opened the bag in their presence. On opening the bag, two carry bags were found. On opening the carry bags, black coloured substance in the shape of sticks and balls was found. The black coloured substance was given to him for smelling and checking. Thereafter, police on the basis of experience identified it to be charas. The recovered contraband was weighed in their presence and it was found to be 3.228 kg. The recovered charas was put in the bag and sealed in a cloth parcel and seals were put on the parcel, however, he did not remember how many seals were embossed on the parcel. Seal after use was handed over to him. PW1 stated that the police conducted the proceedings on the spot and they remained associated with the police for about 2.30-3.00 hours. Memo Ex.P-1/PW1 bears his signature in red circle-A. The driver Ravinder Singh had also signed the memo and his signature are in red circle-B. Sample seal Ex.P-2/PW1 also bears his signatures in red circle-A. He had also supplied the list of passengers Ex.P-3/PW1 to the I.O. Photographs Ex.P-4/PW1 to Ex.P-11/PW1 were also clicked on the spot. The appellant had boarded the bus from Pajenda Kenchi to Rampur and had taken a ticket of 90/-rupees. He was shown the ticket Ex.P-12/PW1 in

the court file, which, according to him, was the same ticket which was supplied by him to the appellant in lieu of paying bus fare.

16 In his cross-examination, he deposed that some other passengers were also carrying luggage with them. Seats No. 4, 5, 6 were in same row. The bag was lying on seat No. 6. He had not noticed anyone keeping the bag on seat No. 6. He feigned ignorance about owner of that bag. He neither noticed the bag with the appellant nor saw the appellant keeping the bag there. When police was checking the luggage of the passengers, he was sitting on conductor seat No. 38. He stated that seat No. 6 was not visible from the conductor's seat. He only noticed the bag when it was in the hands of police. The police in uniform inquired loudly as to who was owner of the bag. Police had searched the luggage of passengers sitting on seat Nos. 1 to 3 also. Ticket Ex.P-12/PW1 was not bearing any seat number. He feigned ignorance from which passenger this ticket was taken by the police. The mobile numbers and addresses of the passengers were not asked by the police. The documents were prepared by the police inside the bus and sealing proceedings were also conducted inside the bus. After checking the bag, police kept the bag in the lap of appellant for clicking photographs. Photos were

clicked outside the bus before the contraband was sealed. After taking the photographs, the bag was taken inside the bus and was sealed, as it had become dark outside. All the police officials of the raiding party remained on the spot till 8.00 PM and none of them left the spot. Some other police officials had also come on the spot during the proceedings. He stated that he did not go through the contents of documents signed by him. He was requested to sign and cooperate with the police being govt. employee.

17 PW2 HC Ravinder stated that he remained posted as HC at SFSL, Junga in crime branch since August 2018. In the year 2021, order No. 5635-60 dated 19.10.2020 was circulated by the Director SFSL vide which the case property in NDPS cases was to be accepted only on Tuesday and Friday. A telephonic conversation was made with Police Station, Brow, with regard to the deposit of case property. He had asked them to bring the case property either on Tuesday or Friday.

18 PW3 Bhag Chand, Adda Incharge, HRTC Depot, Rampur, District Shimla deposed that vide duty register, Ext. P1/PW3, on 31.12.2021, Driver Ravinder and conductor Vinod Kumar IV were deputed on the bus No. HP06A-8283 which was enroute to Rampur-Nirmand-Karana-Jabo.

19 PW4 HHC Pratap Singh deposed that on 3.1.2022, he remained associated with the police. HC Randhir Saklani handed over him special report Ex.P1/PW4, which he submitted to Dy. S.P. Anni at 4.30 pm in his office.

20 PW5 Constable Avinash Badal, deposed that on 2.1.2022, he along with HC Anupam, HC Sandeep, HC Jagdish, HC Kesar, Constable Hukam and Constable Ajay proceeded on patrolling and nakabandi in their private vehicles vide raport Ex.P1/PW5 in the areas of Kullu, Banjar, Anni, Nirmand etc. They were having IO kit, search light, laptop with them. At about 4.45 pm, they were present at place Bazirbowli in connection with nakabandi. At about 5.20 pm, an HRTC bus bearing No. HP06A-8283 came from Nirmand side, which was signaled to stop. The bus was enroute Jabo-Anni-Rampur. The police party entered the bus from front door. On asking the conductor of bus disclosed his name as Medh Ram and driver of bus divulged his name as Ravinder Singh. There were about 13-14 passengers in the bus, who were told about search of the passengers and their luggage. IO/HC Anupam started the search from front seat. During search, the appellant, who was sitting on seat No. 5 having a pithu bag in his lap, tried to throw his pithu bag outside the bus and tried to move out of the bus. The

appellant became nervous and could not give satisfactory reply to the query made by the I.O. On asking, he disclosed his name as Rakesh Kumar. The pithu bag blue in colour was having two strips, two zips and two side pockets on which 'TOO YOUNG TOO SIMPLE' was written.

21 The pithu bag of the appellant was searched by the I.O. in presence of driver and conductor and carry bags having knots were found. On opening the knots of said carry bags, transparent polythene packets were found and on opening the same, black coloured hard substance in the shape of sticks was found in one packet and in the other packet round shaped black colour hard substance was found. The recovered contraband after weighing on the electronic scale was found to be 3.228 kgs charas. After weighing the charas, the same was packed in the same manner and thereafter the carry bag was put in a cloth parcel and sealed with six seals of 'SIUY4'. Sample seal Ex.P2/PW1 was drawn on separate piece of cloth. NCB form in triplicate was filled by the I.O. and the seal after its use was handed over to conductor Medh Ram by the I.O. The parcel was taken into possession vide memo Ex.P1/PW1 which bears his signature in red circle-C. The list of passengers was taken by the I.O. from the conductor of the bus. PW5 stated that he clicked

the photographs Ex.P4 to P11 with the mobile phone of I.O. Thereafter, I.O. HC. Anupam prepared a rukka, Ex.P2/PW5 and handed over to him to carry to Police Station Brow. He handed over the same to MHC, on which FIR was registered in Police Station Brow. After registration of FIR, he handed over the case file to I.O. HC Randhir Saklani at the spot.

22 In his cross-examination, he deposed that they travelled to spot in two private vehicles, one owned by him and the other was of HC Anupam. There were 2-3 passengers having luggage with them, out of whom only 1-2 passengers had kept their luggage in their lap. They had also checked the luggage of other passengers, who were occupying the rear seats. One female passenger was sitting on seat No. 4, who was not known to the appellant. They had not checked any bus on that day, however, they had checked other vehicles at Banjar, Anni and Bazirbowli. I.O. had asked the appellant about ownership of the bag but the appellant did not answer. I.O. had expressed suspicion that some objectionable article might be found. No photography or videography was done while conducting the search. I.O. had introduced himself and had also given his search to the appellant. He stated that the appellant had tried to flee from the bus after the witnesses were asked to join the proceedings. The

appellant tried to throw the bag through the window and he tried to get up in hurry. The appellant did not try to hide the bag from the police party. He stated that in his statement recorded under Section 161 Cr.P.C, he had stated about an attempt to hide the bag by appellant. There was no personal belonging of the appellant in the bag. He denied that they had inquired in loud voice about the ownership of the abandoned bag. He denied that they had concealed the fact of prior information of some Haryanvi person travelling in the bus. After taking the photographs outside the bus, the documentation was done inside the bus. However, no photographs were taken inside the bus.

23 PW6 HC Rajesh Gupta, deposed that he remained posted as reader to SDPO, Anni since August, 2021. On 03.01.2022, SDPO Anni, Ravinder Negi handed over to him special report, Ex.P1/PW-4 for necessary action and he accordingly made an entry in the concerned register at Sr. No. 1, Ex.P1/PW-6.

24 In his cross-examination, he stated that special report was not bearing any dispatch number of police station Brow.

25 PW7 Constable Chaman Lal stated that on 02.01.2022, he remained associated with police during investigation of the present case. In his presence, I.O. HC Anupam Kumar handed over a parcel alleged to be containing 3 kg 288 grams Charas sealed with seal impression 'SIUY4' alongwith sample seals, NCB form in triplicate, passenger list, seizure memo (3 pages) and appellant to second I.O. HC Randhir Saklani, vide rapat Ex.P1/PW-7 which bears his signatures in red circle-A.

26 PW8 HASI Jiwa Nand deposed that on 02.01.2022, MHC, Ajay Kumar handed over to him case property i.e. a parcel sealed with six seals of 'SIU-4', five seals of impression 'T' and three seals of five rupee coin vide RC No. 2/2022 alongwith sample seal and document for depositing the same with SFSL, Junga. He deposited the aforesaid case property at SFSL, Junga on the same day and on his return he handed over the receipt to MHC, Police Station Brow. On 01.02.2022, on direction of I.O. and MHC, he went to SFSL and brought the case property and result of the case property and handed over the same to MHC on 02.02.2022. He stated that so long as case property remained with him it was not tampered in any manner.

27 PW9, Ramesh Kumar Gupta, deposed that he remained posted as Adda Incharge HRTC, Sub Depot, Anni since February 2020. On 28.01.2022, on demand of police he handed over the extract of duty register to the police. He stated that on 02.01.2022, on Bus No. HP-06-8283 Ravinder Singh driver and Medh Ram conductor were deputed which was enrouted from Jabo to Rampur via Nirmand-Bagipul. On the same day the bus started its journey at 8:15 am. In the said bus from Rampur Vinod Kumar conductor was deputed, however Medh Ram was replaced as conductor from Anni.

28 PW10 Ravinder Negi, deposed that he remained posted as Dy. S.P. Anni since November 2020. On 3.1.2022, at about 4.30 pm, he received special report Ex.P-1/PW4 in case FIR No. 2/2022, through HHC Pratap and thereafter he put his endorsement Ex.P1/PW10 and handed over the same to the reader for making necessary entry in the relevant register.

29 PW11 Chaman Negi, stated that on 2.1.2022, rukka Ex.P2/PW5 was received in the Police Station through Constable Avinash, on the basis of which FIR Ex.P1/PW11 came to be registered and the endorsement, Ex.P2/PW11 was made on the rukka. On the same day, HC Ravinder Saklani handed over to him case property consisting of one sealed parcel sealed with six

seals of 'SIUY4' stated to be containing 3 kg 228 grams charas, along with NCB form in triplicate, sample seal and memo. The seals were found intact and after inspection he put three seals of impression 'T' on the parcel and filled the necessary column of the NCB form in triplicate, Ex.P-3/PW11 and handed over the case property along with sample seal and other documents to the MHC with direction to deposit the same in the malkhana. After the receipt of SFSL report, Ex.P-6/PW11, supplementary challan was prepared and presented before the court.

30 PW12 HC Ajay Kumar deposed that he remained posted as MHC Police Station Brow in the year 2022. On 2.1.2022, SI/SHO Chaman Lal handed over to him a sealed parcel sealed with six seals of 'SIUY4', three seals of 'T' stated to be containing 3 kg 223 grams charas along with sample seal, NCB form in triplicate with direction to deposit the same in the malkhana. In this regard, he made entry in malkhana register at Sr. No. 256 and the case property was deposited in the malkhana. The abstract of malkhana register is Ex.P-1/PW12. On 3.1.2022 the case property was taken to the court of learned JMFC, Anni for preparing the inventory and after getting done the inventory proceedings, the case property was again deposited in the malkhana. On 7.1.2022, the aforesaid case property along

with sample seal, NCB form in triplicate and memo was sent to SFSL, Junga, vide R/C No. 2/2022 Ex.P-2/PW12 through HAS Jiwa Nand. The receipt was handed over to him by the HASI Jiwa Nand on his return from SFSL Junga. Certificate under Section 65-B of Indian Evidence Act Ex.P-3/PW12 regarding FIR and DD entry was issued by him. He stated that till the case property remained in his possession the same was not tampered with in any manner.

31 In his cross-examination, he admitted that at entry dated 2.2.2022, there is no mention of the seal 'T' and 'SIU Y4' in the case property received back. There is no mention of details of case property in column No. 12 of the NCB form. Self stated that it was mentioned in docket. He admitted that in R/C Ex.P-2/PW12, there was no mention of sending NCB form, FIR, and specific seal samples.

32 PW13 LHHC Nitu Sharma deposed that she remained posted as MC SIU Kullu since December 2019. She stated that vide Rapat No.5, Ext. P-1/PW5, on 02.01.2022, at 5:10 AM, the police party proceeded in connection with patrolling and Nakabandi in the areas of Kullu-Bhuntar-Anni-Banjar-Nirmand etc.

33 PW14 ASI Gyan Chand stated that on 08.01.2022, the case file was handed over to him for further investigation. On 20.01.2022, he obtained the duty roster Ex. P-1/PW-3 from Adda In-charge HRTC Rampur. On 28.01.2022, he obtained the extract of bus route Ex. P-1/PW-9 from Adda In-charge HRTC depot Anni. On the same day, he obtained copy of special report Ex. P-1/PW-4 and extract of entry register Ex. P-1/PW-6 from Reader O/O SDPO Anni. He recorded the statements of the witnesses as per their version.

34 PW16 HC Randhir Singh stated that on 02.01.2022, case file was handed over to him under direction of SHO for conducting the investigation. During investigation, HC/IO Anupam handed over to him the case property along with the relevant documents and the appellant. Memo Ex. P1/PW7 was prepared in that regard, which bears his signatures in red circle 'C'. He stated that he recorded the statements of the witnesses as per their version. The appellant was interrogated and an offence under Section 20 of the Act was found to be made out against the appellant. Thereafter, at 11.05 PM, the appellant was arrested vide arrest memo Ex. P1/PW16 and information of arrest was given to his wife Anita Devi on her mobile number. He also prepared the spot map Ex. P2/PW16 on the demarcation of

HC Anupam. Thereafter he along with the case property and appellant came back to Police Station Brow and handed over the case property and appellant to SHO Chaman Lal who interrogated the accused, checked the case property and resealed the parcel with three seals of impressions 'T'. Sample seal Ex. P2/PW1 was drawn on separate piece of cloth. NCB form Ex. P3/PW11 was filled by SHO. He also filled the column No. 7 of NCB form.

35 In his cross-examination, he deposed that he travelled to the spot in official vehicle, but he did not remember the registration number of the vehicle.

36 Having gone through the judgment as passed by the learned Special Judge, he has heavily relied upon the statements of PW1, PW2 & PW15 to bring home the guilt of the appellant. However, there are lot of inconsistencies and infirmities in their statements, which create doubt and suspicion as regards the prosecution story.

37 It is well settled that minor contradictions, inconsistencies, embellishments or improvements on trivial matters, which do not affect core of the prosecution case, should not be made a ground to reject the prosecution evidence.

38 Exaggerations per se do not render the evidence brittle. But it can be one of the factors to test credibility of the prosecution version, when the entire evidence is put in a crucible for being tested on the touchstone of credibility. Therefore, mere marginal variations in the statements of witnesses can be dubbed as improvements as the same may be elaborations of the statement made by the witness earlier. The omissions, which amount to contradictions in material particulars, which go to root of the case, materially affect the trial or core of the prosecution's case, render the testimony of the witness liable to be discredited.

39 Adverting to the present case, contradictions, as pointed out by the learned counsel for the appellant, certainly affect the core or substratum of the prosecution case. Where the omissions amount to a contradiction, creating a serious doubt about the truthfulness of the witness and other witnesses also make material improvement while deposing in the court, such evidence cannot be safe to rely upon.

40 Further, even if a witness is found false on a point, it does not mean that his entire testimony has to be disbelieved, rather it is duty of the court to separate the grain from the chaff. At the same time, the Court cannot also ignore that the offence

under the NDPS Act is quite grave and it provides stringent punishment. Graver is the offence severe should be the punishment.

41 Coming to the statement of PW1 Med Ram, he deposed that the police boarded from the front window/door of the bus. Thereafter, the police officials asked the passengers to get checked their luggage. The checking was started from seat No.1. When they reached at seat No.5, two persons i.e. one female and one male were found sitting. There was a bag lying besides the male passenger. The police opened the bag in their presence. On opening the bag, two carry bags were found to be containing black coloured substance in the shape of sticks and balls.

42 On the contrary, PW5 Constable Avinash Badal, has stated that PW15 HC Anupam started the search from front seat. During search, the appellant, who was sitting on seat No. 5 and having a pithu bag in his lap, tried to throw his pithu bag outside the bus and tried to move out of the bus.

43 The aforesaid version of PW5 is contrary to the statement of PW1 since PW1 has stated that on seat No.5, two persons i.e. one male and one female were sitting, whereas PW5 stated that on seat No.5 the appellant was sitting. PW1 has

stated that there was a bag lying beside the male passenger. On the contrary, PW5 has stated that during search, person seating on seat No.5 was having a pithu bag in his lap. PW5 has stated that appellant tried to throw his bag out of the bus and tried to move out of the bus. He further stated that the appellant became nervous and could not give satisfactory reply to the query made by the I.O. On asking, the appellant disclosed his name as Rakesh Kumar. This part of the statement is contrary to PW1 since he has not stated this fact that the appellant was having pithu bag in his lap and he tried to throw the bag outside and move out of the bus. These are material infirmities and inconsistencies in the statements of PW1 and PW5.

44 The prosecution has tried to connect the appellant with the alleged offence by associating PW1 Med Ram, who was conductor in HRTC bus, as an independent witness. However, statement of PW1 does not inspire confidence and it is full of variations. In his examination-in-chief, he stated that on seat No.5 one male and one female were sitting and there was a bag lying beside the male passenger, however in his cross-examination, he has created suspicion by saying that the bag was lying on seat No.6. On the close scrutiny of his examination-in-chief, this fact has not been disclosed by PW1.

He has stated in his cross-examination that he did not notice anyone keeping the bag on seat No. 6. He could not say as to who was owner of that bag. He categorically stated that neither he noticed the bag with the appellant nor he saw the appellant keeping the bag there. According to PW1, when police was checking the luggage of the passengers in the bus, he was sitting on conductor seat No. 38 and from there seat No. 6 was not visible. He only noticed the bag when it was in the hands of police. The police, in uniform, inquired loudly as to who was owner of the bag. This part of the cross-examination is totally contrary to the statement made by this witness (PW1) in his examination-in-chief and it does not tally with the other statements of the prosecution witnesses. In his cross-examination, he has stated that he cannot say who was the owner of the bag. PW1 stated that he had not noticed the bag with the appellant nor saw the appellant keeping the bag there. Neither in his examination-in-chief nor in his cross-examination, he stated that the bag was owned by the appellant and the same was found from the conscious and exclusive possession of the appellant.

45 Most important part of the cross-examination of PW1 is that when he states that after checking the bag, the

police had kept the bag in the lap of the appellant for clicking photographs. He further stated that photographs were clicked outside the bus before the contraband was sealed. After taking photographs, bag was taken inside the bus and the same was sealed as it had become dark outside.

46 A close perusal and scrutiny of statement of PW1 clearly reveals that instead of proving the case of the prosecution, he has virtually created suspicion with respect to the prosecution story.

47 The prosecution has mainly relied upon statements of PW1 conductor of HRTC bus, PW5 Constable Avinash Badal, I.O. PW15 HC Anupam. However, testimonies of these witnesses do not match with each other, as a result of which, story of the prosecution does not inspire confidence and it creates suspicion in the story, as projected by the prosecution.

48 PW5 has stated in contrast to PW1. He stated that during search, a person was sitting on seat No.5 and he was having pithu bag in his lap. He tried to throw his bag outside the bus and tried to move out of the bus. The appellant became nervous and could not give satisfactory reply to the query of the I.O. On asking he disclosed his name as Rakesh Kumar, son of Budhi Singh. The bag blue in colour having two strips and two

zip, was recovered and the search was made by the I.O. in the presence of driver and conductor of the bus and in the bag, contraband was found, which on weighing was found to be 3.228 kg of charas. His statement is totally in conflict with statement of PW1.

49 Testimony of PW1 reveals that photographs, Ext. P-4/PW1 to P-11/PW1 were clicked on the spot, but on the contrary, PW5 stated in his cross-examination that no photography or videography was done while conducting search. Rather, he has stated after taking photographs outside the bus, documentation was done inside the bus, however no photographs were taken inside the bus. The said statement of PW5 is in contrast to the statement of PW1.

50 Statement of PW15 is in contrast to the statement of PW1 and PW5. PW15 in his deposition stated that there were about 17-18 passengers in the bus and out of them, 13-14 passengers were holding luggage with them. When testimony of PW15 is read with the statement of PW5, he stated that there were about 2-3 passengers having luggage with them, out of whom only 1-2 passengers had kept their luggage in their lap. PW15 has also stated contrary to the statement of PW1. PW15 has stated that during search a person, who was sitting on seat

No.5 and having a pithu bag in his lap, tried to throw his bag outside. This statement is contrary to the statement of PW1, who has stated otherwise.

51 Material contradictions which have arisen in the present case are that PW1 has stated that on seat No.5 two persons, one male and one female were sitting on the said date. PW5 states that a person who was sitting on seat No.5 and having a pithu bag in his lap tried to throw his pithu bag outside the bus and tried to move out of the bus. Most relevant portion of cross-examination of PW15 reveals that the appellant was sitting on seat No.4. Seat No.6 was vacant. PW15 denied the suggestion that seat No.6 was occupied by one lady Shiksha. He specifically deposed that he had asked the appellant about ownership of the bag, who had acknowledged the bag to be belonging to him. However, surprisingly, acknowledgement part regarding bag has not been stated by either PW1 or PW5. PW15 also stated that photograph was clicked while searching the bag. On the contrary PW5 stated that no photography or videography was done while conducting the search. PW15 has also deposed in his cross-examination that the appellant did not try to escape or run away from the bus. He further stated that the appellant did not try to throw the bag out of the window of the

bus. On this aspect, PW5 has stated contrary when he stated that the accused tried to throw his pithu bag outside the bus and tried to move out of the bus. Even PW15 also stated in his examination-in-chief that during search a person who was sitting on seat No.5 and having a pithu bag in his lap tried to throw his pithu bag outside the bus and tried to move out of the bus. There is material contradiction in the statements of these material witnesses, on which entire prosecution case hinges.

52 PW15 has admitted that there was nothing in the recovered bag that connects the appellant with the same. He stated that documentation proceedings were conducted inside the bus and the photography was done both inside and outside the bus. To the contrary, PW5 stated that no photographs were taken inside the bus.

53 Perusal of testimonies of these material witnesses has created doubt about the prosecution story because PW1 has nowhere stated that the appellant was carrying contraband bag nor he stated that bag in question was in his lap. As a matter of fact, he stated that the bag was lying beside male passenger.

54 Testimony of PW1 further reveals that neither the appellant was carrying the bag nor bag was in his lap and he for the first time saw the bag when it was in the hands of the

police officials, meaning thereby, PW1 has stated that he only saw the bag when it was in the hands of the police, which completely shatters the version of the prosecution story and puts a question whether the story as put forth by the prosecution is proabable.

55 One of the material aspects is the bus ticket, Ext. P-12/PW1 alleged to have been purchased by the appellant and given by PW1 to him, however, scrutiny whereof would show that the same was bearing no seat number. Even PW1 in his testimony feigned ignorance from which passenger this ticket was taken by the police meaning thereby the prosecution has failed to link that the appellant was occupying seat No.5 or he was travelling in the said HRTC bus. The prosecution has failed to prove the ticket and seat number of the appellant, which creates suspicion in the prosecution story.

56 The Hon'ble Supreme Court in ***State of Himachal Pradesh vs. Trilok Chand, (2018) 2 SCC 342*** has held as follows:

“12. Going by the number of discrepancies in the prosecution case coupled with the contradictory statements by prosecution witnesses, the entire prosecution story vitiates and leads for discrediting its version. Contradictions in the statement of the witnesses are fatal for the case, though minor discrepancies or variance in

their evidence will not disfavour [See: State of H.P. Vs. Lekh Raj (2000) 1 SCC 247]. Considering the circumstances of the case on hand, it can be said that the discrepancies are comparatively of a major character and go to the root of the prosecution story. We cannot therefore ignore them to give undue importance to the prosecution case. It is well settled that the Court can sift the chaff from the grain and find out the truth from the testimony of the witnesses. The evidence is to be considered from the point of view of trustworthiness and once the same stands satisfied, it ought to inspire confidence in the mind of the Court to accept the stated evidence [See: Sukhdev Yadav v. State of Bihar, (2001) 8 SCC 86].

13. In the light of the above discussion, in our considered opinion, the prosecution has failed to establish the commission of alleged offence by the accused—respondents beyond reasonable doubt. The evidence is scanty and lacking support to establish that the contraband was really recovered from the possession of the respondents in the manner alleged by the prosecution on the said date and time. It is imperative that the law the Court should follow for awarding conviction under the provisions of N.D.P.S. Act is “stringent the punishment stricter the proof.” In such cases, the prosecution evidence has to be examined very zealously so as to exclude every chance of false implication. But, in the case on hand, under the above explained circumstances, the prosecution story cannot be believed to award conviction to the accused—respondents. They deserve benefit of doubt. We are, therefore, in complete agreement with the view taken by the High Court and see no reason to interfere with the order impugned herein.”

57 Similarly, in ***Hanif Khan alias Annu Khan vs. Central Bureau of Narcotics, (2020) 16 SCC 709*** the Hon'ble Supreme Court has held as under:-

“9. Because there is a reverse burden of proof, the prosecution shall be put to a stricter test for compliance with statutory provisions. If at any stage, the accused is able to create a reasonable doubt, as a part of his defence, to rebut the presumption of his guilt, the benefit will naturally have to go to him.”

58 In ***Union of India vs. Leen Martin, (2018) 4 SCC 490***, the Hon'ble Supreme Court has held as under:-

“12. It is to be noted that the entire case of the prosecution hinges on the alleged recovery of the narcotic substance from respondent no. 1 but, this very fact is not proved beyond reasonable doubt as independent witnesses PW-8 and PW-9 have portrayed a different story as to the recovery and seizure. In the facts and circumstances of this case exclusive reliance on the statement made by respondent no. 1 would neither be prudent nor safe; especially considering the fact that, the statement of respondent no. 1 procured under Section 67 of the NDPS Act was retracted on 29.06.2004.

13. After analysis of the above circumstances and evidences; prudence dictates that the statement of the official witness PW-1 cannot be the sole basis for convicting the respondent no. 1. It may be noted that when the statement of official witness is impaired due to infirmities, it is not safe to place reliance upon the same and pass

conviction order against the accused. In the present case, as already stated above, the statements of the independent panch witnesses depict a different picture than the one portrayed by the official witness PW-1.”

59 The above exposition of law clearly holds that the discrepancies and contradictions in the prosecution case coupled with the contradictory statements vitiate the entire prosecution story and lead for discrediting its version.

60 It is imperative in law that the Court should follow greater degree of caution for awarding conviction under the provisions of the Act. Stringent the punishment stricter the proof. In such cases, the prosecution evidence has to be examined very zealously so as to exclude every chance of false implication.

61 The Hon’ble Supreme Court on various occasions has held that in the fact situation, the prosecution version cannot be believed to award conviction and the accused deserves benefit of doubt in case the prosecution story is full of inconsistencies and contradictions.

62 In the present case also, PW1, statement of spot/independent witness and that of official witnesses are full of contradiction and do not inspire confidence. The discrepancies and contradictions, as have been pointed out above, draw an

adverse inference and benefit of doubt is certainly required to be given to the appellant.

63 It has come on record especially in the statement of PW1 conductor of the bus that there were about 17-18 passengers sitting in the bus, whereas PW5 stated that there were about 13-14 passengers in the bus. PW15 has stated that there were about 17-18 passengers in the bus. The bus was intercepted at place namely Bazirbowli where the police officials were present in connection with the patrolling and traffic checking duty. In the evidence, nowhere it is case of the prosecution that in order to corroborate and substantiate its case, the police officials tried to associate any of the passengers travelling in the bus. When more than 17-18 persons were sitting in the bus, it is unbelievable that the prosecution did not make any effort to associate anyone of them to prove the case in hand. Even otherwise, the road on which said bus was intercepted is a busy road and it cannot be presumed that the prosecution could not get any independent witness. On account of non association of the passengers in the bus, adverse inference is required to be drawn and similar is the legal position, which has been laid down by the Hon'ble supreme

Court in ***Khekh Ram vs. State of H.P. (2018) 1 SCC 202***, wherein it was held as under:-

21. *The principal plea of the appellant before this Court was that the High Court had failed to appreciate that in absence of any independent witness, the evidence of the police witnesses ought to have been scrutinized with greater care and as the police witnesses had contradicted themselves about the authorship of the seizure memo, the arrest memo, consent memo and the NCB, no interference with the acquittal ought to have been made. The evidence of PW-4 and PW-6 was referred to for reinforcing the above assertion.*

23. *While appraising the testimony of PW-6 this Court noticed in particular that this witness did not remember the duration of the stay of the police party at the spot before the accused was apprehended. This witness however was clear in deposing that it was not night time and that the accused could be seen from a distance of 10 meters. He contradicted PW-4 by stating that the consent memo, memo of search, seizure memo, noting on the sample seal, memo of personal search was not in his hands but was got written by him from one of the members of the police party under his dictation.*

33. *It is a common place proposition that in a criminal trial suspicion however grave cannot take the place of proof and the prosecution to succeed has to prove its case and establish the charge by adducing convincing evidence to ward off any reasonable doubt about the complicity of the accused. For this, the prosecution case has to be in the category of “must be true” and not “may be true”. This*

Court while dwelling on this postulation, in Rajiv Singh vs. State of Bihar and another dilated thereon as hereunder:

“66. It is well entrenched principle of criminal jurisprudence that a charge can be said to be proved only when there is certain and explicit evidence to warrant legal conviction and that no person can be held guilty on pure moral conviction. Howsoever grave the alleged offence may be, otherwise stirring the conscience of any court, suspicion alone cannot take the place of legal proof. The well established cannon of criminal justice is "fouler the 5 (2015) 16 SCC 369 crime higher the proof". In unmistakable terms, it is the mandate of law that the prosecution in order to succeed in a criminal trial, has to prove the charge(s) beyond all reasonable doubt.

67. The above enunciations resonated umpteen times to be reiterated in Raj Kumar Singh v. State of Rajasthan as succinctly summarized in paragraph 21 as hereunder:

21. Suspicion, however grave it may be, cannot take the place of proof, and there is a large difference between something that "may be" proved and "will be proved". In a criminal trial, suspicion no matter how strong, cannot and must not be permitted to take place of proof. This is for the reason that the mental distance between "may be" and "must be" is quite large and divides vague conjectures from sure conclusions. In a criminal case, the court has a duty to ensure that mere conjectures or suspicion do not take the place of legal proof. The large distance between "may be" true and "must be" true, must be covered by way of clear, cogent and unimpeachable evidence produced by the prosecution, before an

accused is condemned as a convict, and the basic and golden rule must be applied. In such cases, while keeping in mind the distance between "may be" true and "must be" true, the court must maintain the vital distance between conjectures and sure conclusions to be arrived at, on the touchstone of dispassionate judicial scrutiny based upon a complete and comprehensive appreciation of all features of the case, as well as the quality and credibility of the evidence brought on record. The court must ensure that miscarriage of justice is avoided and if the facts and circumstances of a case so demand, then the benefit of doubt must be given to the accused, keeping in mind that a reasonable doubt is not an imaginary, trivial or a merely probable doubt, but a fair doubt that is based upon reason and common sense.

68. In supplementation, it was held in affirmation of the view taken in Kali Ram v. State of H.P. that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted."

69. In terms of this judgment, suspicion, howsoever grave cannot take the place of proof and the prosecution case to succeed has to be in the category of "must be" and not "may be" a distance to be covered by way of clear, cogent and unimpeachable evidence to rule out any possibility of wrongful conviction of the accused and resultant miscarriage of justice. For this, the Court has to essentially undertake an exhaustive and analytical appraisal of the evidence on record and register findings

as warranted by the same. The above proposition is so well-established that it does not call for multiple citations to further consolidate the same.”

64 In **Ritesh Chakravarthi vs. State of M.P. (2006)**

12 SCC 321, the Hon’ble Supreme Court has held as under:

“18. Apart from spotting the accused, he searched him, recovered the contraband, interrogated him. He also carried out the sealing operations. 9 Although a large number of people gathered, he did not enquire their names or asked them to be witnesses to the occurrence.

20. A doubt arises as to whether all the documents were signed at the spot without the same being kept on a table as it is accepted that all the exhibits including the signatures of the accused were in "thick ink". Signatures of the accused on the material exhibits were also obtained in "thick ink" which does not appear to be probable.

25. If it was a busy place, the officers would expectedly ask those to be witnesses to the seizure who were present at the time at the place of occurrence. But, not only no such attempt was made, even nobody else who had witnessed the occurrence was made a witness. Even their names and addresses had not been taken.

27. An adverse inference, therefore, could be drawn for non-examination material witnesses.

39. The court should also take care of the fact that a person may not be convicted on a misguided suspicion. (See Gopal v. State of M.P. (2002) 9 SCC 595

42. There is another aspect of the matter which cannot be lost sight of. While dealing with a case of grave nature like the present one, there is always a danger that conjectures and suspicion may take the place of legal truth.

43. In *Mousam Singha Roy v. State of W.B.* (2003) 12 SCC 377, this Court held:

"28. It is also a settled principle of criminal jurisprudence that the more serious the offence, the stricter the degree of proof, since a higher degree of assurance is required to convict the accused."

44. In *Sharad Birdhichand Sarda v. State of Maharashtra*, (1984) 4 SCC 116, it was held:

*"179. We can fully understand that though the case superficially viewed bears an ugly look so as to prima facie shock the conscience of any court yet suspicion, however great it may be, cannot take the place of legal proof. A moral conviction however strong or genuine cannot amount to a legal conviction supportable in law.
180. It must be recalled that the well-established rule of criminal justice is that 'fouler the crime higher the proof'. In the instant case, the life and liberty of a subject was at stake. As the accused was given a capital sentence, a very careful, cautious and meticulous approach was necessary to be made."*

65 In ***Om Parkash alias Baba vs. State of Rajasthan, (2009) 10 SCC 632*** the Hon'ble Supreme Court has held as under:

"11. A bare perusal of the evidence aforementioned would reveal that the ownership and possession of the house and the place of recovery is uncertain. As a matter of fact PW 3 has categorically stated that the house from where the recovery had been made belonged to one Durga Bhanji and not to the appellant. Even assuming for a moment that the

house did belong to the appellant and was in his possession, the prosecution was further required to show that the appellant had exclusive possession of the contraband as a very large number of persons including the appellant and five of his brothers, their children and their parents were living therein.

12. Admittedly, there is no evidence as to the appellant's exclusive possession. In this situation we find that the judgment cited by the learned counsel, that is, Mohd. A. Khan case¹ fully supports the plea on behalf of the appellant. We observe that in addition to the ocular evidence, the prosecution had also put on record a document pertaining to the ownership of the house, but this Court nevertheless held as under: (Mohd. Aslam Khan case, SCC p. 465, para 9)

"9. The prosecution did not bother to produce any independent evidence to establish that the appellant was the owner of the flat in question by producing documents from the Registrar's office concerned or by examining the neighbours. No statement has been made by the prosecution that in spite of the efforts taken by them, they could not produce the document or examine the neighbours to prove the ownership of the appellant relating to the flat in question. It is relevant to note here that two independent witnesses attested the panchnama. Only one of them was examined as PW 5 who did not support the prosecution version and therefore was treated as hostile. In this case except the retracted statements of the appellant to connect the appellant with the house in question, no other independent

evidence is available to sustain the finding of the learned Special Judge extracted in the beginning and confirmed by the High Court."

To our mind, the aforequoted observations clearly support Mr Bhati's argument. We find that there is no evidence on record to prove the appellant's ownership and possession of the premises and the contraband in question."

66 In **Noor Aga vs. State of Punjab, (2008) 16 SCC**

417, the Hon'ble Supreme Court has held as under:-

"58. Sections 35 and 54 of the Act, no doubt, raise presumptions with regard to the culpable mental state on the part of the accused as also place burden of proof in this behalf on the accused; but a bare perusal the said provision would clearly show that presumption would operate in the trial of the accused only in the event the circumstances contained therein are fully satisfied. An initial burden exists upon the prosecution and only when it stands satisfied, the legal burden would shift. Even then, the standard of proof required for the accused to prove his innocence is not as high as that of the prosecution. Whereas the standard of proof required to prove the guilt of accused on the prosecution is "beyond all reasonable doubt" but it is 'preponderance of probability' on the accused. If the prosecution fails to prove the foundational facts so as to attract the rigours of Section 35 of the Act, the actus reus which is possession of contraband by the accused cannot be said to have been established."

67 The prosecution has failed to establish ingredients of Section 35 of the Act. As per provisions of the Act and the judgment of the Hon'ble Apex Court onus lies upon the prosecution to prove its story beyond reasonable doubt. In the present case, prosecution could not prove as to how owned the bag in question, therefore, it can safely be held that the prosecution has failed to prove its case beyond reasonable doubt.

68 It is settled law that the suspicion, however strong it may be, cannot take the place of proof beyond reasonable doubt. An accused cannot be convicted on the ground of suspicion, no matter howsoever strong it is. An accused is presumed to be innocent unless proved guilty beyond a reasonable doubt.

69 Now adverting to the facts and merits of the case, it would be clear that the prosecution has failed to bring home the guilt of the appellant and the oral as well as documentary evidence placed on record do not establish on record that the appellant was involved in the alleged commission of offence.

70 Moreover, from the conjoint reading of statements of witnesses, more particularly that of PW1, PW5 and PW15, it would be clear that there are lot of holes and material

contradictions, which do not inspire confidence in the prosecution story and rather affect the core or substratum of the prosecution case with regard to involvement of the appellant in the manner as alleged by the prosecution in the final report submitted to the Court.

71 The Hon'ble Supreme Court has repeatedly held that in order to prove a person guilty of the offence, he has to be associated and connected with the alleged offence. Merely on the assumption and presumption, a person cannot be convicted without any corroborative evidence. The prosecution has miserably failed to link and connect the appellant with the alleged search and seizure of contraband qua the alleged commission of offence.

72 The learned court below has failed to take into consideration the cardinal principle of criminal jurisprudence and has remained impassive. The prosecution has to prove its case beyond all reasonable doubts. Appearance of serious doubt in the prosecution case only helps the case of accused. More serious the offence, more arduous is the duty cast upon prosecution to discharge its burden strictly in accordance with law. The fundamental and basic presumption in the administration of criminal law and justice delivery system is the

innocence of the accused and till the charges are proved beyond reasonable doubt on the basis of clear, cogent, credible or unimpeachable evidence, the question of indicting or punishing an accused does not arise, merely being carried away by the heinous nature of the crime or the gruesome manner in which the same was found to have been committed. Mere suspicion, howsoever strong or probable it may be, is no effective substitute for the legal proof required to substantiate the charge of alleged commission of a crime and graver the charge is, greater should be the standard of proof required.

73 Unfortunately, the learned Special Judge has not at all appreciated what has been discussed by us and simply has been swayed away the prosecution story.

74 In view of the aforesaid discussions and in the given facts and circumstances, it can conveniently be held that the prosecution has not been able to prove its case against the appellant beyond reasonable doubt, thus the impugned judgment and order of conviction and sentence passed by the learned Special Judge court are set aside. The appellant, in the instant case, is ordered to be released immediately, if not required in any other case.

75 The Registry is directed to prepare release warrants of the appellant. In view of the provisions of Section 481 of BNSS (437A Cr.P.C.), the appellant is directed to furnish a personal bond in the sum of Rs.50,000/- with one surety of the like amount to the satisfaction of the learned Special Judge, which shall be effective for a period of six months with a stipulation that in an event of an SLP being filed against this judgment or on grant of the leave, the appellant on receipt of notice thereof shall appear before the Hon'ble Supreme Court.

76 The instant appeal is allowed in the aforesaid terms. Pending application(s), if any, also stands disposed of.

(Vivek Singh Thakur)
Judge

(Romesh Verma)
Judge

23.12.2025
(pankaj)

**KHEM
RAJ
THAKUR**

Digitally signed by KHEM RAJ THAKUR
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