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

+ **CRL.L.P. 133/2018**

STATE

.....Petitioner

Through: Mr. Ritesh Kumar Bahri,
APP for the State along
with Ms. Divya Yadav,
Adv.

versus

GURCHARAN SINGH @ BABBU & ORS.

.....Respondents

Through:

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

11.11.2025

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1. The present petition is filed under Section 378 of the Code of Criminal Procedure, 1973 (*hereinafter* '**CrPC**') seeking leave to challenge the judgment dated 30.10.2017 (*hereinafter* '**the impugned judgment**'), passed by the learned Special Judge (NDPS), in SC No. 57995/2016 arising out of FIR No. 82/2011, registered at Police Station Crime Branch, New Delhi, whereby the learned Trial Court had acquitted the respondents/accused of the offences under Sections 20/25/29/61/85 Narcotic Drugs and Psychotropic Substances Act, 1985 (*hereinafter* '**NDPS**').

2. Succinctly stated, it is the case of the prosecution that on 29.03.2011, a secret information was received by SI Sharat Kohli, SIT Crime Branch, regarding two persons, Gurmeet Singh and Raj Kumar, who were allegedly smuggling *Ganja* into Delhi. It was informed that their associates would be transporting *Ganja*

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from Odisha in a Hyundai Accent car DL-3CY-3821 and were expected to pass through Mukarba Chowk between 2:00 PM to 4:00 PM *en-route* to deliver the contraband at Nilothi, Chander Vihar. The information was recorded *vide* DD No.13 dated 29.03.2011, and a raiding party was constituted comprising three teams.

3. At about 3:25 PM, two Hyundai Accent cars were intercepted at the instance of the informer. Accused Gurcharan Singh and Lakhvinder Singh were apprehended from car DL-3CY-3251, while accused Pradeep Singh and Kuldeep Singh were apprehended from car DL-2CW-3821.

4. All the four accused were served with notices U/s 50 NDPS and upon search of DL-3CY-3251, 110 bundles of contraband were recovered, which were put into 11 plastic sacks, marked A-1 to A-11 (weighing about 111.88 Kgs) and samples of contraband was taken from all 11 plastic sacks, added to one plastic sack which was marked "A" (weighing 1kg 880 gms). Similarly, from the other car No. DL 2CW 3821, 110 bundles of contraband/Ganja were recovered, which were put into 11 plastic sacks, marked B-1 to B-11 (weighing about 109.64 kgs) and samples of contraband was taken from all 11 plastic sacks, added to one plastic sack which was marked "B" (weighing 1 Kg and 646 gms).

5. Consequently, the four accused persons namely, Gurcharan, Lakhvinder, Pradeep and Kuldeep were arrested. After completion of investigation, a chargesheet was filed against four accused on 01.09.2011, and a supplementary chargesheet against Gurmeet Singh, owner of both cars, was later filed upon



his arrest on 17.04.2014. Further, the FSL Report confirmed that the contraband was *Ganja*.

6. Separate charges under Sections 20(b)(ii)(C)/61/29 NDPS Act for Respondents No.1 to 4 and under Sections 25/27A/29 NDPS Act for Respondent No. 5 were framed. Subsequently, on 08.06.2016, the charges were amended separately and the accused again pleaded not guilty and claimed trial.

7. The prosecution examined total 29 witnesses to establish their case. The material witnesses in this case are PW3/HC Bahadur Sharma, PW4/SI Sharat Kohli, PW12/HC Shyam Lal, PW15/HC Rajender, PW16/Insp. Aarti Sharma and PW29/SI Rishi Ram. Respondent No. 5 examined his sister Sushma as DW1.

8. After trial, the Learned Special Judge (NDPS) *vide* judgment dated 30.10.2017 acquitted all the accused, essentially on the ground that there are material contradictions and improbabilities in the testimonies of the witnesses and the prosecution failed to prove that the appropriate method of sampling was adopted, thereby extending benefit of doubt to the accused persons.

9. Aggrieved by the impugned judgment of acquittal, the present petition, seeking leave to challenge the impugned judgement, has been filed.

10. It is submitted by the learned Additional Public Prosecutor that the learned Trial Court fell in error in acquitting the respondents of the charged offences. It is contended that the contradictions and discrepancies noted in the impugned judgment are minor and inconsequential, and could not have been treated



as fatal to the prosecution case. It is further urged that the testimonies of the material witnesses have remained consistent and corroborative on all material particulars, thereby fully supporting the prosecution version.

11. It is further submitted that the quantity of contraband recovered was of a substantial commercial quantity, making the possibility of its being planted upon the accused wholly implausible and untenable.

12. It is further submitted that the learned Trial Court erred in drawing an adverse inference against the prosecution for non-joining of independent witnesses during the recovery and seizure proceedings. It is urged that sincere efforts were made by the police officials to associate public witnesses, however, none consented to join the proceedings.

13. Hence, it is prayed that the impugned judgment of acquittal is liable to be set-aside.

14. **Submissions heard and record perused.**

Analysis

15. It is trite law that the Appellate Court must exercise caution and should only interfere in an appeal against acquittal where there are substantial and compelling reasons to do so. At the stage of grant of leave to appeal, the High Court has to see whether a *prima facie* case is made out in favour of the appellant or if such arguable points have been raised which would merit interference. The Hon'ble Apex Court in the case of ***State of Maharashtra v. Sujay Mangesh Poyarekar: (2008) 9 SCC 475*** held as under:

“19. Now, Section 378 of the Code provides for filing of appeal by the State in case of acquittal. Sub-section (3)



declares that no appeal “shall be entertained except with the leave of the High Court”. It is, therefore, necessary for the State where it is aggrieved by an order of acquittal recorded by a Court of Session to file an application for leave to appeal as required by sub-section (3) of Section 378 of the Code. It is also true that an appeal can be registered and heard on merits by the High Court only after the High Court grants leave by allowing the application filed under sub-section (3) of Section 378 of the Code.

20. In our opinion, however, in deciding the question whether requisite leave should or should not be granted, the High Court must apply its mind, consider whether a *prima facie* case has been made out or arguable points have been raised and not whether the order of acquittal would or would not be set aside.

21. It cannot be laid down as an abstract proposition of law of universal application that each and every petition seeking leave to prefer an appeal against an order of acquittal recorded by a trial court must be allowed by the appellate court and every appeal must be admitted and decided on merits. But it also cannot be overlooked that at that stage, the court would not enter into minute details of the prosecution evidence and refuse leave observing that the judgment of acquittal recorded by the trial court could not be said to be “perverse” and, hence, no leave should be granted.

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24. We may hasten to clarify that we may not be understood to have laid down an inviolable rule that no leave should be refused by the appellate court against an order of acquittal recorded by the trial court. We only state that in such cases, the appellate court must consider the relevant material, sworn testimonies of prosecution witnesses and record reasons why leave sought by the State should not be granted and the order of acquittal recorded by the trial court should not be disturbed. Where there is application of mind by the appellate court and reasons (may be in brief) in support of such view are recorded, the order of the court may not be said to be illegal or objectionable. At the same time, however, if arguable points have been raised, if the material on record discloses deeper scrutiny and reappraisal, review or reconsideration of evidence, the appellate court must grant leave as sought and decide the appeal on merits. In the case on hand, the High Court, with respect, did neither. In the opinion of the High Court, the case did not require grant of leave. But it also failed to record reasons for refusal of such leave.”



16. Keeping the above settled principles in mind, we would now examine the case at hand.

17. The State has emphasised that the learned Trial Court had been overtly weighed by minute inconsistencies in the evidence of the witnesses even though the same was not material in nature.

18. However, upon appreciation of the material on record, it becomes evident that the prosecution's case is fraught with inconsistencies and marked by significant gaps.

19. PW-3/HC Bahadur Sharma has deposed that Hyundai Accent car No. DL3C3251 was searched and a total 110 plastic bundles containing ganja were recovered from it. All the 110 plastic bundles were put into 11 plastic sacks and were marked to A-1 to A-11, The sample ganja was taken from all the 11 sacks and were put into one plastic sack which was marked A. Similarly, the other car no. DL2CW3821 was searched and a total of 110 plastic bundles containing Ganja were recovered. All 110 plastic bundles were put into 11 plastic sacks and were marked to B-1 to B-11. The sample ganja was taken from all the 11 sacks and were put into plastic sack which was marked B. All the empty polythene material bundles were kept in a separate sack and was marked as mark C. All the 25 plastic sacks were sealed, form FSL was filled up and the seal was affixed on the same.

20. During his cross-examination on this aspect, he has further deposed that first of all they opened all 110 packets recovered from one vehicle and then contents of those packets were put into 11 sacks and, thereafter, samples were taken from 11 plastic sacks. He admitted that samples were not taken when the



contraband was in 110 packets. He has further deposed that ASI Suresh Kumar and IO put the contraband of 110 packets in 11 plastic sacks. The contraband was weighed by ASI Suresh and IO.

21. Admittedly, the sampling in the present case was undertaken only after transferring the contents of 110 plastic bundles recovered from car No. DL-3CY-3251 into 11 sacks and thereafter drawing a small quantity from each of the 11 sacks, which was then mixed together and sealed as a single composite sample marked “A”. The same procedure was adopted in respect of the 110 bundles recovered from car No. DL-2CW-3821, which were consolidated into 11 sacks and a mixed sample was prepared and sealed as Mark “B”. It is thus evident from the prosecution’s own case that the contents of numerous packets were aggregated, mixed and homogenised before drawing representative samples.

22. PW-12/Shyam Lal and PW-15/HC Rajender Kumar have also deposed about the method of sampling of the contraband and it emerges that here are further discrepancies regarding the manner of sampling. PW-12/Shyam Lal stated that samples were collected from each of the 110 packets prior to their transfer into 11 sacks. In contrast, PW-3/HC Bahadur Sharma deposed that sampling was done only after transferring the contents of 110 packets into 11 sacks, without mixing them by hand. PW-15/ HC Rajender Kumar, however, stated that the contents of the 11 sacks were mixed by hand prior to sampling. These material inconsistencies in the core recovery and sampling process strike at the root of the prosecution case.



23. It is a settled proposition of law that mixing of contents from multiple packets or bundles before drawing a sample is an impermissible and defective procedure, as it renders impossible the determination of whether each of the individual packets actually contained a narcotic drug or psychotropic substance. When samples are not drawn from each separate packet and instead a composite mixture is prepared, the sanctity of the sampling process is compromised, thereby creating a serious doubt about the nature, identity and homogeneity of the contraband allegedly recovered.

24. *Secondly*, it stands admitted on record that no independent public witness was associated at any stage of the investigation, including at the time of apprehension of the accused and during the search and seizure proceedings.

25. PW-3/HC Bahadur Sharma has admitted in his-cross examination that there were many government offices near the office of SIT wherein Gazetted Officers were/are posted. The government offices were at a distance of 30 paces across the road from their office. No Gazetted officer from those offices was asked to join the raiding party.

26. PW-4/SI Sharat Kohli has also admitted in his cross-examination that none from local police or Rohini Court was called to join the investigation. He has admitted that no occupant of passing by vehicles was asked to join the investigation. He has admitted that no gazetted officer or Magistrate was requested to join the proceedings which were to commence on a definite information.

27. It is well settled that non-joining of public witnesses is not



invariably fatal to the prosecution however, associating independent public witnesses is not a mere formality. The prosecution is required to demonstrate that genuine and sincere efforts were made to secure their presence. In the present case, the prosecution witnesses themselves have conceded that no sincere attempts were made by the IO to associate any government officials, despite their availability in nearby government offices and in the vicinity of the SIT Office, as admitted by PW-3.

28. *Thirdly*, the prosecution failed to prove an unbroken chain of custody.

29. PW-11/HC Narender has deposed that on 29.3.2011, on the instructions of SI Sharat Kohli, he drove private vehicle containing case property from the spot to PS Crime Branch, Narcotics, Nehru Place, Delhi. The remaining case property was brought to PS Crime Branch in one gypsy and one private vehicle driven by HC Shyam Lal and Ct. Sunny respectively. All the 25 pullandas (case property) were handed over to HC Shyam Lal.

30. It is noteworthy that though, PW-5/Ct. Sunny, PW-11/HC Narender and PW-12/HC Shyam Lal, were responsible for transporting the case property, they did not depose that the contraband remained untampered with while in their custody. In the absence of such link evidence, the integrity of the seized material stands unsubstantiated, casting a serious doubt on the prosecution case.

31. *Lastly*, there are further material inconsistencies and contradictions in the testimonies on record. PW-12/HC Shyam



Lal had stated that Ct. Narender assisted the IO in sealing and sampling of the contraband recovered from car No. DL-3CY-3251. However, PW-11/HC Narender categorically denied any such participation. PW-12/ HC Shyam Lal also deposed that after depositing the case property he returned to the SIT office, whereas PW-5 has stated that PW-12/ HC Shyam Lal returned to the spot. According to PW-12/ HC Shyam Lal, the documents were written by PW-4/SI Sharat Kohli at the spot, but PW-4 himself stated that the documents were written in the handwriting of HC Bahadur Sharma.

32. Thus, in view of the deficiencies, inconsistencies, and material discrepancies in the prosecution evidence, this Court is in agreement with the view taken by the Learned Special Judge, that the evidence on record is insufficient to sustain a conviction under the stringent provisions of the NDPS Act.

33. The State has not been able to establish a *prima facie* case in its favour and no arguable ground has been raised to accede to the State's request to grant leave to appeal in the present case.

34. The present leave petition, along with the pending application(s), if any, are hereby dismissed.

AMIT MAHAJAN, J

NOVEMBER 11, 2025
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