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

RESERVED ON : MAY 04, 2017

DECIDED ON : AUGUST 16, 2017

+ **CRL.A. 1120/2014 & CrI.M.B.10321/2014**

YASHPAL

..... Appellant

Through : Mr.S.S.Das, Advocate.

VERSUS

STATE

..... Respondent

Through : Mr.Amit Gupta, APP.

+ **CRL.A. 1298/2014 & CrI.M.B.10539/2014**

SUBHASH

..... Appellant

Through : Mr.Sanjay Suri with Mr.Rishabh
Relen, Advocates.

VERSUS

STATE

..... Respondent

Through : Mr.Amit Gupta, APP.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P GARG, J.

1. Challenge in this appeal is a judgment dated 15.07.2014 of learned Special Judge, NDPS in Sessions Case No.59/08 arising out of FIR No.14/06 at Police Station Kotwali by which the appellants Yashpal (A-1) and Subhash (A-2) were held guilty for committing

offences punishable under Section 20 read with Section 29 of Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'NDPS Act'). By an order dated 22.07.2014, they were sentenced to undergo Rigorous Imprisonment for ten years with fine ₹1,00,000/- each under Sections 20/29 NDPS Act . Both the sentences were to operate concurrently.

2. Briefly stated, the prosecution case as reflected in the charge-sheet was that on 07.01.06 Satbir Singh (since acquitted) was found in possession of 1.7 kg of charas near car parking Upper Subhash Marg outside Old Lajpat Rai Market, Delhi. Allegations against the appellants were that they conspired to plant the contraband in Satbir's car to implicate him under the provisions of NDPS Act.

3. On 07.01.06 Inspector Khushal Singh, Incharge, Police Post Red Fort received an information at 4.45 p.m. from Police Post Kotwali that a Maruti car bearing registration No.HR-10F-0846 was coming to Lajpat Rai Market and there was contraband in the said car. Constable Nawal Kishore recorded this information vide Daily Dairy (DD) No.30 (Ex.PW-1/A). Investigation was assigned to HC Satbir Singh who along with Const. Jai Prakash left the police post for Lajpat Rai Market. They met PW-12 Khushal Singh at around 5.00 p.m. near Pagal Baba Temple, Old Lajpat Rai Market. The car was searched at about 5.20 p.m. parked near Main Subhash Road, Opposite Old Lajpat Rai Market. Satbir Singh, owner of the said car, was standing near it. On interrogation, he disclosed that an 'individual' had hired the vehicle for ₹650/- from Sonipat. It was further informed that the said 'passenger' along with his wife and daughter had left the car to make some purchases. After about 10-15 minutes, the said 'individual' came; kept a

box in the car; and, left on the pretext to come back after purchase of a TV. Thereafter, he took the car to the side of GPO to avoid traffic challan. At around 4.30 p.m., he received a phone call on his mobile from the said 'individual' to bring the vehicle to old Lajpat Rai Market and he was waiting for him.

4. Further case of the prosecution is that Inspector Khushal Singh (PW-12) recovered the box lying on the rear seat of the vehicle, it contained charas. Information was conveyed to the concerned Police Station and DD No.25-A (Ex.PW-22/A) came into existence. Notice under Section 50 NDPS Act (Ex.PW12/A) was served upon Satbir Singh. However, nothing more could be recovered in the car. Necessary proceedings were conducted and sample of 50 gms each were taken from the three parcels. Rukka (Ex.PW-12/E) was prepared to lodge the FIR. Subsequent investigation was taken over by SI Jai Bhagwan (PW-40) who arrived at the spot at 9.30 p.m. He examined Satbir and got the mobile number of the 'passenger' which was 9813417563 and that of Satbir mobile i.e. 9812143067. SI Jai Bhagwan discussed the matter with seniors and was directed to carry out the investigation qua the owner/subscriber of phone No. 9813417563. He submitted report (Ex.PW2/B) under Section 57 NDPS Act.

5. During further investigation Call Details Record of the phones were collected. It transpired that the appellants had hatched a conspiracy to implicate Satbir in the case. A-1 was working as Lab Technician at Satya Om Eye and Maternity Home, Sonipat, where insurance papers pertaining to Anju Devi and Roshni Devi along with their voter I-cards were sent. It is alleged that by using both the voter I-

cards i.e. front and back portion of each, SIM 9813417563 was obtained which was used by A-1 in his Nokia Mobile 3315 and 2100 recovered by him. During further investigation, both the appellants were arrested and certain recoveries were effected from their possession. Statements of witnesses conversant with the facts were recorded. Upon completion of investigation, a charge-sheet was filed against the appellants only for commission of offences under NDPS Act.

6. By an order dated 11.09.2006, Satbir Singh was summoned as an accused to face trial. By an order dated 17.09.2007, the appellants and Satbir Singh were charged for commission of offence punishable under Section 20 read with Section 29 NDPS Act. They pleaded not guilty to the charges and claimed trial. In order to establish its case, the prosecution examined 40 witnesses. Statements of accused persons were recorded under Section 313 Cr.P.C.; they denied their involvement in the crime and pleaded false implication. The trial resulted in appellants' conviction, as aforesaid. It is pertinent to note that by the impugned judgment, Satbir Singh was acquitted of the charges and the State has not challenged the said acquittal.

7. I have heard the learned counsel for the parties and have examined the file. Both the appellants are related to each other. A-1 and Satbir Singh are step-brothers. Admitted position is that the vehicle bearing No.HR-10F-0846 belonged to Satbir Singh and he used to drive it as 'taxi'. On 07.01.2006, he was found in possession of 1.7 kg of charas recovered from the rear seat of his vehicle. Strange enough, despite recovery of huge quantity of contraband from Satbir's possession, no proceedings, whatsoever, were conducted against him;

he was not even arrested and was permitted to go from the police station. It is a mystery as to how the police officials accepted Satbir Singh's statement that the contraband was planted in his vehicle by the 'passenger' who had hired the taxi from Sonipat without any further investigation/verification. Satbir's apprehension and recovery of the contraband is dramatic in nature. PW-39 (Sunil) was running PCO on number 55522516 at Shop No.897, Old Lajpat Rai Market, Delhi. He informed that a call was made from his PCO at mobile No.9812143067 but he was unable to identify the individual who had made the call. Similarly PW-38 (Amit Taneja) running PCO/STD shop having telephone number 55211645 at Old Lajpat Rai Market informed that a call was made at mobile No.9812143067 but he was unable to identify the individual who had made the call. None of these two individuals were associated during investigation to identify the appellants to ascertain if any of them had made any telephone calls from their STD shops. They did not identify any of the appellants to be the individuals who had made telephone calls on 07.01.2006 during examination before the court.

8. PW-13 (Nawal Kishore) proved the DD No.30 (Ex.PW-1/A) recorded at 4.45 p.m. at Police Station Kotwali. This information records that vehicle bearing No.HR-10F-0846 'was to arrive' at Lajpat Rai Market and it contained the contraband. Const.Jai Prakash and HC Satbir Singh went to the spot where Inspector Khushal Singh met them. As per PW-28 (Const.Jai Prakash), Maruti van driven by Satbir came at 5.20 p.m. and it was searched. Satbir was apprised of the contents of the Daily Diary and told that the vehicle was to be searched. On search,

a gift pack with copper colour paper wrapped on it was recovered and it contained charas. Notice under Section 50 NDPS Act (Ex.PW-12/A) was given to Satbir which was responded by reply (Ex.PW12/B). No further recovery was effected from the car. Necessary proceedings were conducted. PW-28 (Const. Jai Prakash) did not state that Satbir Singh had disclosed if the contraband was planted in the car by the passenger who had hired the taxi from Sonipat. PW-11 (HC Satbir Singh) deposed that he and Const.Jai Parkash went near temple of Pagal Baba at around 5.00 p.m. where SI Khushal Singh met them. Thereafter, they all left in search of the offending vehicle and reached Subhash Marg, Parking Area and found it parked there. Satbir who was standing near the van was apprised of the secret information. He deposed that Satbir had told them that the 'passenger' had kept the contraband in the vehicle. He did not offer any explanation as to why the person from whom contraband was recovered was not implicated in the case. Satbir was not even produced before ACP. In the cross-examination, he admitted that Satbir was let-off from police station and no instructions were given to him to appear, if required. PW-12 (Insp.Khushal Singh) had recovered the contraband and had handed over the custody to subsequent Investigating Officer. SI Jai Bhagwan did not reveal if Satbir was not suspect in the crime. PW 40 (Insp.Jai Bhagwan) permitted Satbir Singh to go scot free without initiating any proceedings against him. Merely from the Satbir Singh's statement, he came to the conclusion that the contraband was planted in Satbir's van by 'others'. Satbir was put in Column No.12 of the charge-sheet. In the cross-examination, he was unable to disclose if Satbir was released by

him at the spot or he was brought to the police station and then released. He further admitted that except the mobile number of the 'passenger' i.e. 9813417563 as disclosed by Satbir, neither his name nor his parentage and address was informed to him.

9. Rukka (Ex.PW-12/E) was prepared by him for lodging the FIR at 9.00 p.m. During this period, he did not record information under Section 42 of the NDPS Act. Senior officers, SHO and ACP did not arrive at the spot. Notice under Section 50 NDPS Act (Ex.PW-12/A) was served upon Satbir soon after the recovery of the contraband from the van. It did not disclose if the 'charas' was planted by any 'passenger'. It does not contain the information given by Satbir as to how the contraband was planted in this vehicle. After the recovery of the charas, issuance of notice under Section 50 NDPS Act was a mere formality. Recovery had already been affected. Report under Section 57 NDPS Act (Ex.PW2/B) was submitted on 7.1.2006. It is silent if Satbir was let off in the crime. It is pertinent to note that subsequently Satbir was summoned as accused to face trial. Even after completion of investigation, Satbir was put in Column No.12 and was not cited as a witness.

10. Prosecution plea to implicate the appellants is that they conspired to plant contraband upon Satbir Singh due to various civil/criminal litigations pending among them. The prosecution has attempted to project that on 7.1.2006, A-2 along with his wife and daughter hired the taxi from Sonipat to visit Delhi. When the taxi was parked at old Lajpat Rai Market, Subhash planted the contraband in the guise of a gift to be kept in the vehicle. It was thus imperative for the prosecution to

establish beyond reasonable doubt that it was A-2 who had hired the taxi and had arrived Delhi along with his wife and child. The prosecution, however, did not produce any cogent and reliable witness to establish this fact. As observed above, Satbir was not associated as a witness to the investigation and no Test Identification Proceedings were conducted for appellants' identification. In the cross-examination of various witnesses conducted by Satbir, nothing was suggested to any of them if A-2 was the passenger who had travelled along with his wife and child in the car that day. In 313 Cr.P.C. statement, Satbir did not claim if A-2 had hired the taxi or that he was the individual who had put the contraband in his vehicle. PW-14 (Vijay), driver of Maruti van No.DL-9CB-1336 did not support the prosecution. Contrary to that, he deposed that on 13.06.06 some passenger by the name of Praveen, aged around 30-35 years had hired his taxi for site-seeing in Sonipat. Praveen had hired the taxi of Satbir. But instead of Satbir, Praveen took him on site-seeing and he had charged ₹800/-. He was unable to identify as to who Praveen was. He was cross-examined by learned Additional Public Prosecutor after seeking court's permission as he was resiling from his previous statement. In the cross-examination, he stated that Praveen had met him on 3.12.2005 and not on 13.06.2006. Satbir had given advance amount of ₹200/- to him and asked him to take Praveen on his taxi. He took Praveen and his family to Chintpurni Mandir in Sector 14, Sonipat. He also brought all of them to Delhi and after a trip at Red Fort, Zoo and Lajpat Rai Market, he brought them back to Sector 14, Sonipat. He denied if A-2 had introduced himself as 'Praveen'. In the cross-examination conducted by Satbir, he denied if he had

deliberately refused to identify Praveen as he belonged to his village. Apparently, nothing is made out from PW-14's testimony. It is not the prosecution case that any of the appellants had travelled in Maruti van No.DL-9CB-1336 belonging to PW-14 (Vijay). No other witness has been examined by the prosecution if on 7.1.2006, any of the appellants had travelled in the Satbir's taxi to Delhi. No verification was conducted at G.B.Pant hospital where allegedly, the said 'passenger' had taken the taxi to meet a patient and had stayed there for about two hours. No other taxi driver from the vicinity was examined to find out if Satbir had taken any passenger in his taxi to Delhi that day. The Investigating Officer did not furnish any plausible explanation as to why he did not bother to wait for the arrival of the 'passenger' who had allegedly made a telephone call to Satbir to bring the vehicle to old Lajpat Rai Market at 4.30 p.m.. It is highly unbelievable that the 'passenger' would provide his exact and correct mobile number to Satbir or would make a call at 4.30 p.m. to bring the vehicle to Old Lajpat Rai Market particularly when allegedly he had already planted the contraband in the vehicle. None of the appellants or the other passengers who had travelled from Sonipat was found in the area after the recovery of the charas. A-1 could be arrested on 24.01.2006 from Jeevan Vihar, Gali No.5, Nazad Devru Road, Sonipat; A-2 was apprehended on 29.03.2006 when he had come to ISBT Kashmere Gate with his wife. It is unclear as to how and in what manner A-2 was apprehended with his wife and what was his purpose to visit Delhi on 29.03.2006. The Investigating Officer has not given any explanation as to why both the appellants could not be apprehended for so long. It is

unclear if the Investigating Agency visited their houses to apprehend them. In his initial disclosure statement at the time of recovery of contraband from the vehicle, Satbir did not suspect A-1's involvement in the crime.

11. The prosecution was unable to prove as to from where the contraband was procured. It is also unclear as to when the contraband was purchased and if by whom? The Investigating Officer Insp. Jai Bhagwan informed that pursuant to disclosure statement, A-1 took the police to village Kulasi and identified the place from where he had obtained the contraband from one Taqdeer. It is relevant to note that Taqdeer was found dead on 07.01.2006. The Investigating Officer did not conduct any further proceedings to find out if Taqdeer used to deal in contraband. His house was not searched to recover any such article. Needless to say that there is no evidence on record if any of the appellants had procured the contraband to plant in Satbir's car. It is unbelievable that huge quantity of 1.7 kg of charas having substantial value would be purchased by the appellants having no substantial source of income merely to implicate their relative Satbir. It is unclear as to why A-2 would travel to Delhi along with his family to accomplish the alleged task.

12. A-1 was admittedly employed with PW-23 (Dr.Satyawati Sharma) at her clinic at Satya Om Eye and Maternity home as lab technician. It is coincidence that like others Roshni and Anju Devi were medically examined at the said clinic for life insurance policy on 24.11.2005. It is highly unbelievable that A-1 working as lab technician would get photocopies of voter I-cards of Anju Devi and Roshni Devi

to use them to obtain Sim No. 9813417563. It was not in A-1's anticipation that Roshni Devi of Anju Devi would furnish their voter I-cards and these would be used to hatch conspiracy to implicate Satbir. PW-23 (Dr.Satyawati Sharma) did not suspect A-1's conduct and behavior during his employment and nothing is on record to show if these documents came into A-1's possession during the course of his duty.

13. The motive to implicate Satbir under NDPS Act is not strong. No documents have been produced on record to show if any civil litigation was pending between the parties and if so since when and what is the outcome of the said proceedings. Of course, it has come on record that Satbir's wife had lodged an FIR No.113/15 under Sections 325/35 IPC at Police Station Rai Sonipat. The said FIR is dated 2.6.2005 where A-1, his mother and brother are the accused. The stage of the criminal proceedings has not been described.

14. The entire case of the prosecution is based on the Call Detail Records. It has come on record that the 'Sim' 9813417563 could not be recovered. It is also not established beyond doubt that the appellants had used the SIM No. 9813417563 on the relevant date. Call Details Record shows that even prior to the incident, Satbir used to converse on mobile No. 9813417563. Evidence of Call Detail Records, *per se*, is not enough to establish appellants' guilt beyond reasonable doubt.

15. Call Detail Records reveals that Satbir had made telephone calls from his mobile No. 9812143067 to mobile No. 9813417563 on 3.12.05, 23.12.05, 25.12.05, 3.1.06 also besides making telephone calls at regular intervals on 7.1.06. Apparently, Satbir had not met the user

of the mobile No. 9813417563 for the first time on 7.1.2006, as alleged. Satbir has not explained regarding the conversation recorded between him and on mobile No. 9813417563 prior to 7.1.06. A-1 is Satbir's step brother. A-1 and A-2 are cousins. It is unbelievable that Satbir would not be aware of A-2's identity and would not be able to identify him or name him to be the individual who had hired the taxi on 7.1.06 from Sonipat.

16. The investigation carried out is highly suspect and not upto the mark. No independent public witness despite availability was associated at the time of recovery of contraband. From DD No. 30 (Ex.PW-1/A), police officials were aware that some contraband was kept in the vehicle bearing No. HR-10F-0846. Information required under Section 42 of the NDPS Act was not recorded in the properly maintained register and this information was not brought to the notice of the senior officers. Prior to the recovery of the contraband from the vehicle, notice under Section 50 of the NDPS was not served upon Satbir. Even when the police officials allegedly visited Sonipat to effect A-1's arrest, no independent public witness was joined; local police was not informed and their assistance was not taken. The recovery of the articles pursuant to the disclosure statement after a considerable delay is highly suspect. Movement of the vehicle bearing No. HR-10F-0846 on 07.01.06 was not ascertained. No credible evidence is on record as to when appellants hatched conspiracy to implicate Satbir.

17. In the light of the above discussion, I am of the opinion that the prosecution has failed to establish its case against the appellants beyond reasonable doubt. The appellants deserve the benefit of doubt. The

appeals are allowed. Conviction and sentence of the appellants are set aside. The appellants be released forthwith if not required in any other case.

18. Copy of this order be sent to the concerned Jail Superintendent for information and necessary action. Trial court record be sent back along with a copy of this order.

AUGUST 16, 2017/sa

**S.P.GARG
(JUDGE)**