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

+ CRL.A. 462/2016 & CRL.M.A.17384/2017

SANDEEP KUMAR Appellant
Through: Mr. Akshay Bhandari, Adv.

versus

CENTRAL BUREAU OF NARCOTICS Respondent
Through: Mr. Ripu Daman Bhardwaj, Adv.

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR

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J U D G M E N T
08.07.2019

1. This appeal assails judgment, dated 3rd August, 2015, as well as order, dated 4th August, 2015, whereby the learned Additional Sessions Judge (hereinafter referred to as “the learned ASJ”) has convicted the appellant for having committed the offences punishable under Section 21(c), and Section 23(c) read with Section 28 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as “the NDPS Act”). The appellant stands sentenced to 10 years’ rigorous imprisonment (RI) and a fine of ₹ 1 lakh, with default sentence of 6 months’ simple imprisonment (SI), for the offence under Section 21(c), and to 10 years’ RI and a fine of ₹ 1 lakh, with 6 months’ SI as default sentence, for the offence under Section 23(c) read with Section 28, of the NDPS Act, both the sentences having been directed to run concurrently.

2. The charge against the appellant, which stands confirmed by the impugned judgment of the learned ASJ, is of attempting to export, out of India, 460 grams diacetylmorphine (heroin), by courier, by presenting the said consignment at M/s Alliance Overseas Logistics (hereinafter referred to as “AOL”), Ludhiana, on 29th March, 2010. The consignment, it is alleged, was intended for delivery to Louis Galo, Barcelona, Spain. According to the prosecution, the consignment was to be exported, out of India, by M/s Aramex India Pvt. Ltd, Mahipalpur, New Delhi (hereinafter referred to as “Aramex”), to whom the consignment was sent by M/s Overseas Logistics Pvt. Ltd., Bhikaji Cama Place (hereinafter referred to as “Overseas Logistics”) who, in turn, received the consignment from AOL, Ludhiana.

3. The respondent-Central Bureau of Narcotics (hereinafter referred to as “CBN”) alleged, before the learned ASJ, that, pursuant to receipt of intelligence, a team of its officers visited the office of Aramex, where the package was produced, at their instructions, by Harihar Thakur (PW-7) and Devender Negi (PW-8), employees of Aramex, and that the package, on being opened, was found to contain, *inter alia*, eight pairs of ladies slippers, with one small polythene packet of heroin concealed in the sole and two small polythene packets of heroin concealed in the heel, of each slipper. As a result, sixteen packets of heroin were recovered, in total, from the soles and thirty-two packets of heroin were recovered from the heels of the said slippers, working out to a total of forty-eight packets. The gross weight of the packets was found to be 500 grams, with the weight of

the powder (found, on analysis at the spot, to be heroin) to be 460 grams. The powder was mixed into one homogeneous lot, out of which two samples of powder, of 5 grams each, were retrieved and placed in two packets, marked 'A' and 'B', which were sealed with seals bearing the insignias 'RV, CBN'. The samples were, subsequently, tested in the Central Revenues Control Laboratory (CRCL), and were found to be heroin, of 1.4% w/w purity.

4. Finding the case of the CBN, against the petitioner, to contain substance, the impugned judgment, the learned ASJ, convicts and sentences the appellant, in the terms already set out in para 1 *supra*.

Impugned judgment of the learned ASJ

5. In convicting the appellant, and sentencing him, the learned ASJ has proceeded on the following reasoning:

(i) The CRCL report, as proved by PW-2 A.K. Maurya, the Chemical Examiner of the CRCL, confirmed the recovery of heroin. The manner in which the raid had been conducted, and the heroin had been recovered, also stood proved by the statements of the various witnesses of the raiding team as well as the employees of Aramex, which corroborated each other. Production of the case property before the empowered officer, in compliance with Sections 52 and 55 of the NDPS Act also stood proved by PW-1 M.K. Gupta, who also made an entry, in this effect, in the Malkhana register (Ex. PW-1/F).

(ii) PW-4 Inspector S.K. Sachdev had proved the submission of the report, under Section 57, NDPS Act (Ex. PW-1/D), regarding the seizure of the heroin, to his immediate superior, i.e. PW-1 M. K. Gupta.

(iii) The testimony of PW-5 SI Rakesh Verma made it clear that the samples drawn from the recovered substance was, in proper custody, conveyed to the CRCL for examination, and the statement of PW-2 A.K. Maurya, Assistant Chemical Examiner, CRCL, proved that the sample had tested positive for heroin, i.e. diacetylmorphine. These testimonies remained undisturbed in cross-examination.

(iv) That the parcel had, in fact, been booked by the appellant at AOL, Ludhiana, was also established by the following facts/evidence:

(a) The seizure of the parcel at the premises of Aramex took place in the presence of two *panchas*, namely Harihar Thakur (PW-7) and Devender Negi (PW-8), both officials of Aramex.

(b) The original airway Bill, affixed to the parcel, had been proved as Ex. PW-7/A. The copy, thereof, taken from the computer system of Aramex, had been proved as Ex. PW-7/B. The copy of the PAN card of the consignor, furnished as proof of identity for booking the consignment, was proved as Ex. PW-7/C. The manifest

and the invoice, relating to the parcel, also stood proved as exhibits PW-7/D and PW-7/E, respectively. All these documents were in the name of the appellant, and bore his signatures. Moreover, the Ex. PW-7/C also carried the appellant's photograph and his Permanent Account Number (PAN).

(c) Aramex had received the parcel from Overseas Logistics, which was also vouchsafed by PW-12 Manoj Gupta, the Director of Overseas Logistics, who further deposed that the parcel had been received, by his Company from AOL. The statement of Manoj Gupta, recorded under Section 67 of the NDPS Act, also stood proved as Ex. PW-1/I.

(d) Ravinder Maurya @ Ravi (PW-23) had correctly identified the appellant, in court, as the person who had booked the parcel on 29th March, 2010. He also deposed that the appellant had furnished the copy of his PAN card as identity document with the parcel, and that he had prepared the Airway Bill (Ex. PW-7/A) on the basis thereof. He further confirmed that the parcel had been sent, onward, to Overseas Logistics, New Delhi, and proved his statement, recorded under Section 67 of the NDPS Act, as Ex. PW-4/B. His statement was corroborated by the statement of Ramandeep Singh (PW-6), also of AOL. The cross-examination of these

witnesses did not elicit anything which could impeach the creditworthiness of the original testimonies. The original application form, submitted by the appellant for issuing the PAN card, alongwith a copy of his matriculation certificate, electricity bills and rent receipt furnished with the application, had been produced, during trial, by PW-11 Vinda Mahadik, Manager, UTI Technology Services, and had been proved as Ex. PW-11/A to Ex. PW-11/B3. In his statement under Section 313, Code of Criminal Procedure, 1973 (hereinafter “Cr.P.C.”), the appellant had admitted his signature on the application form for issuance of PAN card (Ex. PW-11/A), as well as the fact that the matriculation certificate (Ex. PW-11/B-1) belonged to him. Though he had sought to contend that he had not applied for any PAN card and that he had intended to migrate to England in January-February, 2009, these defences remained unproved, without any evidence in support thereof. They were, therefore, only in the nature of bald assertions.

(e) Jyoti Rana, in her statement under Section 67 of the NDPS Act (Ex. PW-1/U) – which had been proved by PW-1 M. K. Gupta as well as PW-9 Inspector Alpna Gupta, testified that she was instrumental in issuance of the PAN card to the appellant, with whom she had come in contact through her acquaintance Rajender Resham, and that she had furnished the copy of the electricity bill

of her previous address, to support the application form of the appellant. In his statement under Section 67 of the NDPS Act, the appellant admitted to knowing Jyoti Rana, and contended that she was the one who used to smuggle contraband abroad in parcels, through him. He also admitted using his PAN card for booking the parcel in question.

(f) In view of the above evidence, the contention that the appellant was not a resident of the address figuring in the PAN Card did not make any real difference. Neither, in these circumstances, could the failure, on the part of the investigating officers, to have the signature, on the PAN card, verified by handwriting expert, help the defence.

(g) It was correct that the exercise of having the appellant identified by Ravi (PW-23), in the Police Station at Ludhiana, was not proper. However, in view of the positive identification, by PW-23, of the appellant in court, the earlier identification in the Police Station merely acted as corroboration thereof. Reliance was placed, in this regard, on *Ashok Debbarma Alias Achak Debbarma v. State of Tripura*, (2014) 4 SCC 747 and *Satwantin Bai v. Sunil Kumar*, MANU/SC/0416/2015.

Holding, on the basis of the above material, that the appellant stood irrevocably linked to the offence, alleged to have been committed by him, the learned ASJ proceeded, *vide* the impugned judgment and order, to convict and sentence the appellant, as already noted hereinabove.

Evidentiary value of statements recorded under Section 67, NDPS Act

6. Before proceeding to reconnoiter the evidence, it would be advantageous to examine the evidentiary value, and relevance, of statements recorded under Section 67 of the NDPS Act. Section 67 reads thus:

“67. Power to call for information, etc. – Any officer referred to in section 42 who is authorised in this behalf by the Central Government or the State Government may, during the course of an enquiry in connection with the contravention of any provisions of this Act, –

- (a) call for information from any person for the purpose of satisfying himself whether there has been any contravention of the provisions of this Act or any rule or order made thereunder;
- (b) require any person to produce or deliver any document or thing useful or relevant to the enquiry;
- (c) examine any person acquainted with the facts and circumstances of the case.”

7. Section 53A(1) of the NDPS Act, which deals with relevancy of statements, in prosecutions, reads as under:

“53A. Relevancy of statements under certain circumstances. – (1) A statement made and signed by a person before any officer empowered under section 53 for the investigation of offences, during the course of any inquiry or proceedings by such officer, shall be relevant for the purpose of proving, in any prosecution for an offence under this Act, the truth of the facts which it contains, –

(a) when the person who made the statement is dead or cannot be found or is incapable of giving evidence, or is kept out of the way by the adverse party, or whose presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the court considers unreasonable; or

(b) when the person who made the statement is examined as a witness in the case before the court in the court is of the opinion that having regard to the circumstances of the case, the statement should be admitted in evidence in the interest of justice.”

8. In view of Section 53A of the NDPS Act *supra*, it is clear that statements, recorded under Section 67 of the said Act, would, *ipso facto* and *proprio vigore*, be relevant for proving the truth of the contents of such statements. The protection, which is afforded, to statements recorded under Section 161 Cr.P.C., by Section 162 thereof, and the protection afforded by Section 27 of the Indian Evidence Act, 1872 (hereinafter referred to as “the Evidence Act”), stand, therefore, statutorily foreclosed, in the case of statements recorded under Section 67 of the NDPS Act. The Supreme Court, in ***Kanhaiyalal v. Union of India, (2008) 4 SCC 668***, enunciated this principle, in the following words (in para 47 of the report):

“It may also be recalled that though an application was made for retracting the confession made by the appellant, neither was any order passed on the said application nor was the same proved during the trial so as to water down the evidentiary value of the said statement. On the other hand, *in the absence of such evidence on record, the High Court had no option but to proceed on the basis of the confession as made by the appellant under Section 67 of the NDPS Act.* Since it has been held by this Court that *an officer for the purposes of Section 67 of the NDPS Act read with Section 42 thereof, is not a police officer, the bar under Sections 24 and 27 of the Evidence Act cannot be attracted and the statement made by a person directed to appear before the officer concerned may be relied upon as a confessional statement against such person. Since a conviction can be maintained solely on the basis of a confession made under Section 67 of the NDPS Act, we see no reason to interfere with the conclusion of the High Court convicting the appellant.*”

(Emphasis supplied)

9. One may also refer, profitably, to the following passages, from ***Ram Singh v. Central Bureau of Narcotics, (2011) 11 SCC 347***, which relied upon ***Kanhaiyalal (supra)***:

“14. From what has been observed above, *the officers vested with the powers of investigation under the Act are not police officers and, therefore, the confessions recorded by such officers are admissible in evidence.* Therefore, the question posed at the outset is answered in the affirmative and *it is held that officers of the Central Bureau of Narcotics are not police officers within the meaning of Sections 25 and 26 of the Evidence Act and, hence, confessions made before them are admissible in evidence.* In view of the aforesaid there is no escape from the conclusion that the confessions made by the appellant before PW 6 Jagdish Mawal and PW 8 Mahaveer Singh are admissible in evidence and cannot be thrown out of consideration.

15. Now we proceed to consider the second question set out at the outset and in order to answer that we deem it appropriate to reproduce Section 24 of the Evidence Act which reads as follows:

“24. Confession caused by inducement, threat or promise, when irrelevant in criminal proceeding.

—A confession made by an accused person is irrelevant in a criminal proceeding, if the making of the confession appears to the court to have been caused by any inducement, threat or promise, having reference to the charge against the accused person, proceeding from a person in authority and sufficient, in the opinion of the court, to give the accused person grounds, which would appear to him reasonable, for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him.”

From a plain reading of the aforesaid provision it is evident that a confession made by an accused is rendered irrelevant in criminal proceeding if the making of the confession appears to the court to have been caused by any inducement, threat or promise with reference to the charge against the accused.

16. A confession, if it is voluntary, truthful, reliable and beyond reproach is an efficacious piece of evidence to establish the guilt of the accused. However, before solely acting on confession, as a rule of prudence, the court requires some corroboration but as an abstract proposition of law it cannot be said that a conviction cannot be maintained solely on the basis of the confession made under Section 67 of the Act.

18. In our opinion, when an accused is made aware of the confession made by him and he does not make

complaint within a reasonable time, the same shall be a relevant factor to adjudge as to whether the confession was voluntary or not. Here in the present case the appellant was produced before the court on several dates and at no stage he made any complaint before the Special Judge of any torture or harassment in recording the confession. It is only when his statement was recorded under Section 313 of the Code of Criminal Procedure that he retracted and denied making such a confession and went to the extent of saying that his signatures were obtained on blank pages. In the facts and circumstances of the case we are of the opinion that *the confessional statements made by the appellant were voluntary in nature and could form the basis for conviction.*”

(Emphasis supplied)

10. These decisions hold, therefore, that an officer, conferred with the power of the Police Officer under Section 53 of the NDPS Act did not become, merely by virtue of that fact, *ipso facto*, a police officer, for the purposes of Section 25 of the Evidence Act and that, therefore, the statement recorded by such officer was admissible in evidence, so long as it was not found to have been extracted by coercion or by adopting unlawful methods.

11. Another Bench of two Hon'ble judges of the Supreme Court, however, departed from this view in *Noor Aga v. State of Punjab*, (2008) 16 SCC 417, holding that the statement, recorded under Section 67 of the Act, would attract Section 25 of the Evidence Act, and would not be admissible in evidence.

12. In *Nirmal Singh Pehlwan Alias Nimma v. Inspector, Customs, Customs House, Punjab* (2011) 12 SCC 298, *Noor Aga (supra)* was

followed, and *Kanhaiyalal (supra)* specifically doubted, in para 15 of the report, which reads thus:

“We also see that the Division Bench in *Kanhaiyalal case [(2008) 4 SCC 668 : (2008) 2 SCC (Cri) 474]* had not examined the principles and the concepts underlying Section 25 of the Evidence Act, 1872 vis-à-vis Section 108 of the Customs Act and the powers of a Customs Officer who could investigate and bring for trial an accused in a narcotic matter. The said case relied exclusively on the judgment in *Raj Kumar case [(1990) 2 SCC 409 : 1990 SCC (Cri) 330]*. The latest judgment in point of time is *Noor Aga case [(2008) 16 SCC 417 : (2010) 3 SCC (Cri) 748]* which has dealt very elaborately with this matter. We thus feel it would be proper for us to follow the ratio of the judgment in *Noor Aga case [(2008) 16 SCC 417 : (2010) 3 SCC (Cri) 748]* particularly as the provisions of Section 50 of the Act which are mandatory have also not been complied with.”

13. In view of this difference in view, a later bench of the Supreme Court, speaking through A.K. Sikri, J. held, in *Tofan Singh v. State of Tamil Nadu, (2013) 16 SCC 31*, that the matter deserved to be referred to a Larger Bench - which still remains to be constituted.

14. *Tofan Singh (supra)* was also noted in a very recent decision of the Supreme Court, speaking through Uday Umesh Lalit, J., in *Surinder Kumar Khanna v. Intelligence Officer, Directorate of Revenue Intelligence, (2018) 8 SCC 271*.

15. Clearly, therefore, the position, in law, regarding the admissibility of a statement, recorded by an officer of the CBN, under Section 67 of the NDPS Act, the relevancy of such statement, the issue of whether such an officer would be treated as a “police officer”,

and the sustainability of a conviction, based solely on such a statement, which is not appropriately retracted, is in a state of flux.

16. In this context, it is also relevant to note the judgment of the Supreme Court in *U.O.I. v. Bal Mukund*, (2009) 12 SCC 161, which holds that there was a presumption, in the case of recording of the statement under Section 67 of the Act in the office of the Narcotics Control Bureau (hereafter referred to as “NCB”), that the statement was not voluntary. This principle, it may easily be surmised, would apply with even greater force where the statement is recorded by officers of the CNB, or the Narcotics Control Bureau, within the confines of a Police Station.

The Evidence

17. To the extent it is relevant, the evidence that emerged, during the proceedings before the learned ASJ, may be reconnoitered, thus.

18. The manner in which search, and seizure of the heroin, before it could be exported out of India, took place, stands set out, in detail, in the testimonies of PW-1 M. K. Gupta, Superintendent, Preventive PW-4 Inspector S. K. Sachdev and PW-5 SI Rakesh Verma, of the CBN, and there statements corroborate each other. According to the depositions of the said three witnesses, pursuant to receipt of secret information regarding the possible export of heroin by courier via Aramex, they reached the office of Aramex at 11:50 PM on 30th March, 2010, where they met PW-7 Harihar Thakur and PW-8

Devender Negi, employees of Aramex. At their request, the said employees produced a parcel, regarding which the CBN had received secret information. The packet reflected the name of the appellant as the sender, and that of Louis Galo, Barcelona, Spain, as the consignee. The packet was described as containing shoes and “*haar*” (necklaces). On opening the package, it was found to contain eight pairs of ladies slippers and five necklaces. The sole and the heel of each slipper was found to contain polythene packets, with one polythene packet concealed in the sole, and two polythene packets concealed in the heel of each slipper. As a result, sixteen packets were recovered from the soles and thirty-two packets were recovered from the heels of the said eight pairs of ladies slippers, working out to a total of forty-eight packets. The gross weight of the packets was found to be 500 grams. Each packet was found to contain a brown powder, with the total weight of powder working out to 460 grams. The powder was retrieved and homogeneously mixed. Two samples, of 5 grams each, were retrieved from the said homogeneous mixture, and sealed, with a sealed marked ‘RV, CBN’, and marked ‘A’ and ‘B’. They were seized in the presence of two *panchas* and the members of the raiding team. The remaining powder was kept in a white cloth, and the forty-eight empty polythene packets were transferred to a larger white polythene packet. Similarly, the slippers and the necklaces were also be placed in the carton and kept in a larger polythene packet. All the packets were seized, at 5:15 AM on 31st March, 2010, *vide* Seizure Memo Ex. PW-1/B. The facsimile of the seal used to seal the packages was exhibited as Ex. PW-1/C. A report, under section 57 of the NDPS Act was prepared by PW-4 Inspector S. K. Sachdev and submitted to PW-1 M.

K. Gupta, Superintendent. The property was deposited in the *Malkhana*, and entry Ex. PW-1/F was made, in the *Malkhana* register, in respect thereof. The entry bore the signatures of PW-1 and PW-4. The statement of Harihar Thakur (PW-7) was recorded, and exhibited as Ex. PW-1/H.

19. The above witnesses further deposed that, on inquiry with the office of the Director of Income Tax (Systems), the CBN officials were informed, orally, that, by way of proof of address, for obtaining the aforesaid PAN Card, stated to have been presented by the appellant at the courier counter of AOL at Ludhiana, proof of the applicant residing at House No 243-A, Old Pole No. 46, Village Navada, Uttam Nagar, was produced. Acting on the basis thereof, the raiding team proceeded, on 2nd April, 2010, to House No 243-A, where they met the owner of the said premises, Jai Kishan (PW-10). Jai Kishan disclaimed all knowledge of the appellant, and stated, *vide* his statement Ex. PW-1/K that the appellant had never been his tenant.

20. The raiding team proceeded, thereafter, to the office of AOL at Ludhiana. There, they met the owner of the said premises, Ramandeep Singh (PW-6), who identified the PAN card of the appellant, and verified the fact that the appellant had presented the said PAN Card as proof of identity, at the time of booking the aforesaid parcel. He, however, acknowledged that, on the date of booking of the parcel, i.e. 29th March, 2010, he was out of Ludhiana, and the parcel had, therefore, being accepted by his employee Ravinder Maurya @ Ravi (PW-23). Ravi (PW-23), on being asked, acknowledged having

booked the subject parcel on 29th March, 2010, and also identified the copy of the PAN Card, of the appellant, as the document submitted by way of proof of identity, at the time of booking the parcel. He further stated that he had received a letter, from the Director of Income Tax (Systems) (Ex. PW-1/L), stating that the documents, on the basis of which PAN card had been issued to the appellant, would be supplied by M/s UTI Technology Services Ltd. who, in turn, supplied the said documents under cover of letter Ex. PW-1/M. He further deposed that the said documents indicated that the appellant had used the electricity bill of, and the rent receipt issued by, Balkishan (PW-25), resident of House No 243-A, Uttam Nagar, in order to obtain the PAN card. PW-25 Balkishan, however, on being questioned, disclaimed knowing the appellant, and deposed that the appellant had never been his tenant. He also denied his signature on the electricity bill and the rent receipt, stated to have been presented at the time of obtaining the PAN card. He further produced, for the perusal of the raiding officials, the identity card issued to him by the Delhi Transport Corporation (DTC), a perusal of which indicated that the signature of Bal Kishan (PW-25), found therein, was not similar to the signature of Bal Kishan as contained on the allegedly forged documents.

21. To the same effect were the depositions of PW-4 Inspector S.K. Sachdev, PW-5 SI Rakesh Verma, PW-7 Harihar Thakur of Aramex, PW-8 Devender Negi of Aramex, PW-12 Manoj Gupta of Overseas Logistics and of Ravinder Maurya @ Ravi of AOL, Ludhiana, deposing as PW-23.

22. PW-1 M.K. Gupta deposed, further, that the appellant was arrested on 12th April, 2010, and was, subsequently, identified by PW-4 Inspector S.K. Sachdev. He testified, further, that the statement of the appellant was recorded by PW-4, wherein he admitted booking of the aforesaid parcel, on 29th March, 2010, at AOL, Ludhiana, consigned to Spain, and of concealing, therein, heroin in the heels and soles of the slippers fact in the parcel. He further identified the documents submitted by him at the time of booking of the parcel at AOL, and also admitted having concealed heroin into earlier parcels by him for Slovakia and one earlier parcel booked by him for Spain. PW-1 correctly identified the appellant in Court. He also deposed that the appellant had been identified, in the Police Station at Ludhiana, by PW-23 Ravi.

23. A perusal of the statement of the appellant, under Section 67 of the Act, and exhibited as Ex. PW-4/C, discloses that the appellant had, in fact, admitted the allegations against him, in the manner stated by PW-1. It has to be borne in mind, however, that the statement was recorded within the confines of the Police Station. Applying the law laid down in ***Bal Mukund (supra)***, therefore, it may not be possible to found a conviction solely on the basis of the said statement.

24. Ramandeep Singh and Ravi, of AOL, Ludhiana, deposing as PW-6 and PW-23, respectively, testified that the appellant had, indeed, booked the offending parcel, on 29th March, 2010. Ramandeep Singh deposed that, though he was not present in Ludhiana on the date of booking of the parcel, no parcel was accepted, by AOL, unless it

was accompanied by proof of identity of the person booking the parcel (rather than of the consignor). He deposed that the proof of identity of the appellant had also been obtained, before the parcel was accepted, from him, on 29th March, 2010. Ravi (PW-23) clearly deposed that the appellant had shown his PAN card as a proof of his identity, at the time of booking the parcel. He also proved his statement, recorded under Section 67 of the NDPS Act, as Ex. PW-4/B, and deposed that he had, indeed, identified the appellant in the Police Station on 13th April, 2010. He also proved his subsequent statements, given in the Police Station as Ex. PW-4/D and given later, in November 2010 as Ex. PW-1/V. He submitted that he had accepted the PAN card of the appellant as the photograph, on the said card, was that of the appellant. He also correctly identified the appellant in court. In cross-examination, PW-23 clearly stated that AOL never accepted any parcel, if the person who came to book it was not the consignor, and that the proof of identity, which was required to be furnished, had to be of the person who came to book the parcel. He submitted, further, that his statement Ex. PW-4/B had been recorded in his office, whereas the statement Ex. PW-4/D, wherein he identified the appellant, had been recorded in the Police Station at Ludhiana.

25. Vinda Mahadik, Divisional Manager, M/s UTI Technology Services Ltd., deposing as PW-11, testified that she had submitted the documents, given to her by the appellant, for having the PAN card issued in his name, *vide* her letter Ex. PW-1/M, which included the electricity bills and rent receipt of House No. 243, Nawada, as well as the matriculation certificate of the appellant, issued by the Punjab

School Education Board, which were individually exhibited. She acknowledged, however, that it was not necessary for an applicant, applying for a PAN card, to visit the office personally, and that she could not, therefore, testify, positively, that the appellant had personally visited her office for forwarding of his documents for obtaining PAN card.

26. It is in the backdrop of the above evidence that the justifiability, of the impugned judgment and order, passed by the learned ASJ, convicting and sentencing the appellant, has to be examined and analysed.

Submissions advanced before the Court

27. Appearing on behalf of the appellant, Mr. Akshay Bhandari advanced the following submissions:

(i) There was no compliance with Section 42(2) of the NDPS Act, as there was no evidence that PW-1 had forwarded the information received by him to his immediate superior.

(ii) The raiding team had come after sunset and before sunrise, without any search warrant, and there was no reason, forthcoming, therefor. This, too, violated Section 42 (1) of the NDPS Act.

(iii) PW-8 Devender Negi had, in his testimony during trial, deposed that the powder, on weighment, was found to be 4 kg 6 grams, and not 460 grams.

(iv) The learned ASJ had erroneously permitted the learned Special Public prosecutor (SPP) to examine his own witness, which was not permissible, as per the law laid down in *State v. Surender MANU/DE/2281/2014*.

(v) The manner in which the alleged heroin had been sampled was not proper.

(vi) PW-5 SI Rakesh Verma had, in his the deposition during trial, not testified to the case property having remained untampered, before it was forwarded to the CRCL.

(vii) The statement of the appellant, recorded under Section 67 of the NDPS Act, could not be relied upon, as it had been recorded while he was in custody. It was also hit by Section 35 of the NDPS Act.

(viii) The case, therefore, was dependent solely on the statement of PW-23 Ravi. The said statement could not be the sole basis to convict the appellant, as there had been no Test Identification Parade (TIP). There was no CCTV recording, in the premises of AOL, to confirm, positively, that it was the appellant who had booked the parcel on 29th March, 2010. Call Detail Records had not been relied upon. Reliance was solely placed on forged documents, on the basis of which the PAN card had been obtained, purportedly that of the appellant.

(ix) No reliance could be placed on the alleged statement of Jyoti Rana as she had not been brought in the witness box.

In view of the above infirmities, Mr. Bhandari contended that his client was entitled to acquittal of the charge against him.

28. Mr. Ripu Daman Bhardwaj, learned APP submitted, *per contra*, that the identity of the appellant had been established from the PAN card submitted at the time of booking of the parcel at AOL which was admitted, by the appellant, to be his, in his statement under Section 313, Cr.P.C. Moreover, the PAN card bore his photograph as well as his signatures. The appellant had also been identified, by PW-23, during trial. Apropos the admissibility of the statement, of the appellant, under Section 67 of the NDPS Act, it was submitted that, in the absence of any evidence of pressure/coercion, in the recording of the said statement, despite cross-examination of the prosecution witnesses, the statements were admissible and relevant in evidence. In any event, even *de hors* the statement, of the appellant, under Section 67 of the NDPS Act, learned APP would submit that the evidence was more than sufficient to justify the conviction and sentence of the appellant.

Issues

29. In the above circumstances, this Court is, in the present case, called upon to determine, essentially, (i) whether the seizure of heroin,

from the slippers in the parcel at the office of Aramex, stood proved, (ii) whether the parcel, seized at Aramex, New Delhi, was the parcel originally consigned at the office of AOL, Ludhiana and (iii) whether it was established that the appellant had tendered the said parcel at AOL, Ludhiana.

Re. presence of heroin in the seized parcel

30. The fact that the parcel, seized by the CBN team at the premises of Aramex on 30th March, 2010, contained slippers, in the soles and heels of which heroin was concealed, cannot be doubted, in view of the report of the CRCL (Ex. PW-2/C), which confirmed that the powder was found to be heroin of purity 1.4% W/W. The said report was proved by the Chemical Examiner of the CRCL A.K. Maurya (PW-2), who testified, during trial, stating that testing of the sample had been done using colour test and TLC. The credibility of the said position remained undisturbed in cross-examination. PW-2 A.K. Maurya also identified the remnant sample, when shown to him in Court.

31. Equally, the fact that the parcel containing the slippers, in which the heroin was concealed, had been booked at AOL, from where it had been forwarded to the office of Overseas Logistics in Delhi and, further, to Aramex, for onward export to Spain, can also not be denied, as the relevant documents were all exhibited, supported by the statements of Ramandeep Singh, the owner of AOL (PW-6), Manoj Gupta of Overseas Logistics (PW-12) and Harihar Thakur and

Devender Negi of Aramex, who deposed as PW-7 and PW-8 respectively. These witnesses also proved their respective statements, recorded under Section 67 of the NDPS Act, which stand exhibited as Ex. PW-4/A (of PW-6 Ramandeep Singh), PW-1/I (of PW-12 Manoj Gupta) and Ex. PW-7/C (of PW-7 Harihar Thakur). The statements remained undisturbed in cross-examination and, not having been recorded either in the premises of the CBN or in any Police Station, are admissible and relevant in evidence, in view of Section 53-A of the NDPS Act.

32. It was sought to be contended, by Mr. Bhandari, that there had been fatal infraction, on the part of the CBN, of Section 42(2) of the NDPS Act, as there was no evidence to indicate that the information, received by PW-1 M. K. Gupta had been forwarded to his immediate superintendent within 72 hours. In this context, I may reproduce Sections 41 and 42 of the NDPS Act, thus:

“41. Power to issue warrant and authorisation. – (1)
A Metropolitan Magistrate or a Magistrate of the first class or any Magistrate of the second class specially empowered by the State Government in this behalf, may issue a warrant for the arrest of any person whom he has reason to believe to have committed any offence punishable under this Act, or for the search, whether by day or by night, of any building, conveyance or place in which he has reason to believe any narcotic drug or psychotropic substance or control substance in respect of which an offence punishable under this Act has been committed or any document or other article which may furnish evidence of the commission of such offence or any illegally acquired property or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or

freezing or forfeiture under Chapter VA of this Act is kept or concealed.

(2) *Any such officer of gazetted rank of the Departments of Central Excise, Narcotics, Customs, Revenue Intelligence or any other Department of the Central Government including the para-military forces or the armed forces as is empowered in this behalf by general or special order by the Central Government, or any such officer of the Revenue, Drugs Control, Excise, Police or any other Department of a State Government as is empowered in this behalf by general or special order of the State Government, if he has reason to believe from personal knowledge or information given by any person and taken in writing that any person has committed an offence punishable under this Act or that any narcotic drug or psychotropic substance or control substance in respect of which any offence punishable under this Act has been committed or any document or other article which may furnish evidence of the commission of such offence or any illegally acquired property or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act is kept or concealed in any building, conveyance or place, may authorise any officer subordinate to him but superior in rank to a peon, sepoy, or a constable to arrest such a person or search a building, conveyance or place whether by day or by night or himself arrest such a person or search a building, conveyance or place.*

(3) The officer to whom a warrant under sub-section (1) is addressed and the officer who authorised the arrest or search or the officer who is so authorised under sub-section (2) shall have all the powers of an officer acting under Section 42.

42. Power of entry, search, seizure and arrest without warrant or authorisation. – (1) Any such officer (being an officer superior in rank to a peon, sepoy or constable) of the Departments of Central Excise, Narcotics,

Customs, Revenue Intelligence or any other Department of the Central Government including paramilitary forces or armed forces as is empowered in this behalf by general or special order by the Central Government, or any such officer (being an officer superior in rank to a peon, sepoy or constable) of the Revenue, Drugs Control, Excise, Police or any other Department of a State Government as is empowered in this behalf by general or special order of the State Government, if he has reason to believe from person's knowledge or information given by any person and taken down in writing that any narcotic drug, or psychotropic substance, or control substance in respect of which an offence punishable under this Act has been committed or any document or other article which may furnish evidence of the commission of such offence or any illegally acquired property or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act is kept or concealed in any building, conveyance or enclosed place, may, between sunrise and sunset, –

- (a) enter into and search any such building, conveyance or place;
- (b) in case of resistance, break open any door and remove any obstacle to such entry;
- (c) seize such drug or substance and all materials used in the manufacture thereof and any other article and any animal or conveyance which he has reason to believe to be liable to confiscation under this Act and any document or other article which he has reason to believe may furnish evidence of the commission of any offence punishable under this Act or furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act and;

(d) detain and search, and, if he thinks proper, arrest any person whom he has reason to believe to have committed any offence punishable under this Act:

Provided that in respect of holder of a license or manufacture of manufactured drugs or psycotropic substances or control substances, granted under this Act or any rule or order made thereunder, such power shall be exercised by an officer not below the rank of sub-inspector:

Provided further that if such officer has reason to believe that a search warrant or authorisation cannot be obtained without affording opportunity for the concealment of evidence or facility for the escape of an offender, he may enter and search such building, conveyance or enclosed place at any time between sunset and sunrise after recording the grounds of his belief.

(2) Where an officer takes down any information in writing under sub-section (1) or records grounds for his belief under the proviso thereto, he shall, within seventy-two hours send a copy thereof to his immediate official superior.”

(Emphasis supplied)

The impugned order and judgment discloses that no such ground was ever taken, by the appellant, before the learned ASJ. No such ground is to be found, even in the grounds of appeal filed in the present case. Examination of this ground would, require the Court to going into disputed facts and, as this ground does not figure, either in the judgment of the learned ASJ, or in the grounds of the appeal before this Court, ordinarily, there is no reason why this Court should permit the appellant to urge such a ground, for the first time.

33. That apart, apropos Sections 41 and 42 of the NDPS Act, the Supreme Court has, in *M. Prabhulal v. Assistant Director, Directorate of Revenue Intelligence, (2003) 8 SCC 449*, held thus (in para 41 of the report):

“Section 41(1) which empowers a Magistrate to issue warrant for arrest of any person whom he has reason to believe to have committed any offence punishable under the NDPS Act or for search, has not much relevance for the purpose of considering the contention. Under Section 41(2) only a Gazetted Officer can be empowered by the Central Government or the State Government. Such empowered officer can either himself make an arrest or conduct a search or authorize an officer subordinate to him to do so but that subordinate officer has to be superior in rank to a peon, a sepoy or a constable. Sub-section (3) of Section 41 vests all the powers of an officer acting under Section 42 on three types of officers (i) to whom a warrant under sub-section (1) is addressed, (ii) the officer who authorized the arrest or search under sub-section (2) of Section 41, and (iii) the officer who is so authorized under sub-section (2) of Section 41. Therefore, an empowered Gazetted Officer has also all the powers of Section 42 including the power of seizure. Section 42 provides for procedure and power of entry, search, seizure and arrest without warrant or authorization. An empowered officer has the power of entry into and search of any building, conveyance or place, break open any door, remove obstruction, seize contraband, detain, search and arrest any person between sunrise and sunset in terms provided in sub-section (1) of Section 42. In case of an emergent situation, these powers can also be exercised even between sunset and sunrise without obtaining a search warrant or authorization, in terms provided in the proviso to sub-section (1) of Section 42. Sub-section (2) of Section 42 is a mandatory provision. In terms of this provision a copy of information taken down in writing under sub-section (1) or ground recorded for the belief under the proviso thereto, is required to be sent by the officer to his

immediate superior official. It is clear from Section 41(2) that the Central Government or State Government, as the case may be, can only empower an officer of a gazetted rank who can either himself act or authorize his subordinate on the terms stated in the section. Under sub-section (1) of Section 42, however, there is no restriction on the Central Government or the State Government to empower only a Gazetted Officer. But on an officer empowered under sub-section (1) of Section 42, there are additional checks and balances as provided in the proviso and also provided in sub-section (2) of Section 42. *It is clear from the language of sub-section (2) of Section 42 that it applies to an officer contemplated by sub-section (1) thereof and not to a Gazetted Officer contemplated by sub-section (2) of Section 41, when such a Gazetted Officer himself makes an arrest or conducts search and seizure.* It would be useful to also notice Section 43 which relates to power of seizure and arrest in a public place. Any officer of any of the departments mentioned in Section 42 is empowered to seize contraband etc. and detain and search a person in any public place or in transit on existence of ingredient stated in Section 43. *It can, thus, be seen that Sections 42 and 43 do not require an officer to be a Gazetted Officer whereas Section 41(2) requires an officer to be so. A Gazetted Officer has been differently dealt with and more trust has been reposed in him can also be seen from Section 50 of the NDPS Act which gives a right to a person about to be searched to ask for being searched in the presence of a Gazetted Officer. The High Court is, thus, right in coming to the conclusion that since the Gazetted Officer himself conducted the search, arrested the accused and seized the contraband, he was acting under Section 41 and, therefore, it was not necessary to comply with Section 42.*"

(Emphasis supplied)

34. In para 42 of the report in ***Ritesh Chakravarti v. State of M.P.***,***MANU/DE/2281/2014*** the Supreme Court holds that the officer

who had conducted the search in that case, “*being a Superintendent of Bureau was a gazetted Officer*”. In the judgment of the High Court of Madhya Pradesh, in *Hardeo Singh v. Central Bureau of Narcotics, (2004) 2 MPLJ 541*, too, it is observed that the Superintendent of the CBN, who had conducted the raid, was a gazetted Officer. The website of the CBN, i.e. www.cbn.nic.in, too, indicates that the Superintendent in the Preventive and Intelligence Cell is a Group ‘B’ Gazetted Officer. PW-1 M. K. Gupta was also, admittedly, a Superintendent in the CBN, at the time when the search, in the present case, was conducted by the raiding team. The ground of infraction of sub- section (2) of Section 42, besides having been taken for the first time during arguments in the present case, also merits rejection in view of the above, as, in his capacity as Superintendent in the Preventive wing of the CBN, PW-1 must also have been a gazetted Officer. The judgment of the Supreme Court in *U.O.I. v. Satrohan, (2008) 8 SCC 313*, is also relevant in this context, inasmuch as the said judgment holds that, where the search is itself conducted by a gazetted Officer, no further compliance with Section 42 of the NDPS Act, is necessitated. In view thereof, this contention, advanced by Mr. Bhandari is rejected.

35. In the context of Section 42(2) of the NDPS Act, the following passages, from *Karnail Singh v. State of Haryana, (2009) 8 SCC 539*, too, merit reproduction:

“**32.** Under Section 42(2) as it stood prior to the amendment, such empowered officer who takes down any information in writing or records the grounds under the proviso to Section 42(1) should forthwith send a copy thereof to his immediate official superior. If there is total

non-compliance with this provision the same would adversely affect the prosecution case and to that extent it is mandatory. But if there is delay, whether it was undue or whether the same has been explained or not, will be a question of fact in each case, *it is to be concluded that the mandatory enforcement of the provisions of Section 42 of the Act non-compliance with which may vitiate a trial has been restricted only to the provision of sending a copy of the information written down by the empowered officer to the immediate official superior and not to any other condition of the section.*

33. *Abdul Rashid [(2000) 2 SCC 513 : 2000 SCC (Cri) 496]* had been decided on 1-2-2000 but thereafter Section 42 has been amended with effect from 2-10-2001 and the time of sending such report of the required information has been specified to be within 72 hours of writing down the same. The relaxation by the legislature is evidently only to uphold the object of the Act. *The question of mandatory application of the provision can be answered in the light of the said amendment. The non-compliance with the said provision may not vitiate the trial if it does not cause any prejudice to the accused.*”

(Emphasis supplied)

36. Except for contending that there had been non-compliance with the provisions of Section 42(2) of the NDPS Act, Mr. Bhandari has been unable to demonstrate any prejudice that has resulted to the appellant, as a consequence thereof. Even on this score, therefore, this ground of challenge has necessarily to fail.

37. Mr. Bhandari further voiced a complaint that the raiding team had visited the premises of Aramex after sunset and before sunrise, without a search warrant, and without recording any reason for doing

so. In this context, the evidence on record indicates that, though the raiding team reached the premises of Aramex at 11:50 PM on 30th March, 2010, the raiding exercise was concluded, and the contraband and documents taken into possession at 5:15 AM on 31st March, 2010. It is not possible for this Court to arrive at a factual finding that this exercise was concluded before sunrise. That apart, no such ground appears to have been urged either before the learned ASJ, or in the grounds in the present appeal. This contention of Mr. Bhandari, too, therefore, does not merit further consideration.

38. Mr. Bhandari also expressed misgivings regarding the manner in which sampling of the alleged contraband heroin had taken place in the present case. However, a perusal of the depositions of PW-1, PW-4 and PW-5, over the members of the raiding party, do not disclose any stark inconsistency in the manner in which sampling took place. These depositions corroborate each other in testifying that the heroin contained in all sixteen slippers was consolidated into one lot, out of which two samples were withdrawn and sealed. Though Mr. Bhandari also drew my attention to the deposition of PW-8 Devender Negi, where he referred to the total quantity of powder found as 4 kg 6 grams, this one inconsistency, in my view, does not detract from the sum total of the evidence, which makes it clear that the total quantity of powder found in the parcel was 460 grams, with the gross weight of the parcel being 500 grams.

Was the applicant complicit?

39. All that remains to be considered is, therefore, whether the appellant had, in fact, booked the aforesaid consignment, containing the slippers, in which heroin was concealed, at AOL, Ludhiana.

40. The findings of the learned ASJ on this aspect of the matter, as set out in para 5 (*supra*), in my view, eminently merit acceptance. As has been rightly found by the learned ASJ in the impugned judgment, the photograph of the appellant was reflected on the PAN card, which was tendered at the time of booking of the parcel at the AOL office at Ludhiana. The appellant, when questioned on this aspect, during the recording of his statement under Section 313 of the Cr.P.C., deposed thus:

“I have nothing to say with respect to the aforementioned facts as I had never applied at any office for the issuance of the pan card. *I however state that the copy of application form Ex. PW11/A shown to me today has my photograph affixed on it and also bears my signature. The photocopy of the matriculation certificate, Ex. PW11/B is the copy of my matriculation certificate only. ... I further wish to state that the Ex. PW 11/A was got signed by me from one person called Resham who was an agent who used to help people to go abroad.*”

(Emphasis supplied)

That the application for issuance of the PAN Card – admitted by the appellant to be his – was accompanied by Ex. PW-11/A to Ex. PW-11/B3, stands proved by the evidence of PW-11 Vinda Mahadik, Divisional Manager, M/s UTI Technology Services Ltd. Seen in the

light thereof, and in view of the admission, by the appellant, of his having signed the application, on the basis whereof the PAN Card, which was submitted at the time of booking of the consignment at the AOL office at Ludhiana, was issued, and his admission that the matriculation certificate, submitted at the time of applying for the PAN Card, also related to him, the link, between the appellant, and the PAN Card, which was tendered at the time of booking of the consignment, stands firmly established. Insofar as the evidence of Ravi (PW-23) is concerned, though the learned ASJ has, rightly, discountenanced his identification, of the appellant, as it had taken place within the confines of the Police Station at Ludhiana, Ravi had, separately, tendered his statement, under Section 67 of the NDPS Act (Ex. PW-4/B), and again identified the appellant in Court. In view thereof, there can be little doubt about the fact that the appellant had, in fact, booked the parcel, for ultimate delivery, at the AOL office at Ludhiana. The absence of any Test Identification Parade, or any CCTV recording cannot, in such circumstances, imperil the case of the respondent, or bolster the case of the appellant.

41. The contention, of Mr. Bhandari, that the case was founded solely on the statement of Ravi (PW-23) cannot, therefore, be said to be correct. There is ample evidence, including and excluding the said statement, to link the appellant to the parcel, which was seized at the Aramex office at Delhi, and found to contain heroin concealed in slippers.

The sequitur

42. The sequitur, of the above discussion has, necessarily and inevitably, to be the confirmation of the decision, of the learned ASJ, to convict the appellant of having committed the offences under Section 21 and 23, read with Section 28 of the NDPS Act.

43. However, in the opinion of this Court, the learned ASJ has erred in invoking sub- section (c) of the said Sections 21 and 23; rather, as the discussion hereinafter would disclose, the opinion of this Court is that the appellant would require, instead, to be indicted under clause (b) of either Section. This, necessarily, would also entail interference with the sentence awarded, to the appellant, by the learned ASJ.

44. Section 32B of the NDPS Act reads thus:

“32B. Factors to be taken into account for imposing higher than the minimum punishment. – Where a minimum term of imprisonment or amount of fine is prescribed for any offence committed under this Act, the court may, in addition to such factors as it may deem fit, take into account the following factors for imposing a punishment higher than the minimum term of imprisonment or amount of fine, namely:-

- (a) the use or threat of use of violence or arms by the offender;
- (b) the fact that the offender holds a public office and that he has taken advantage of that office in committing the offence;

(c) the fact that the minors are affected by the offence or the minors are used for the commission of an offence;

(d) the fact that the offence is committed in an educational institution or social service facility or in the immediate vicinity of such institution or faculty or in other place to which school children and students resort for educational, sports and social activities.;

(e) the fact that the offender belongs to organised international or any other criminal group which is involved in the commission of the offences; and

(f) the fact that the offender is involved in other illegal activities facilitated by commission of the offence.”

45. In its recent decision in *Rafiq Qureshi v. Narcotic Control Bureau Eastern Zonal Unit*, 2019 SCC Online SC 666, the Supreme Court observes that Section 32B is a provision which was enacted in order to rationalize the sentencing structure under the NDPS Act. In view of the use of the words “as it deems fit”, found in Section 32B (*supra*), the Supreme Court has held that the court, sentencing the accused under the NDPS Act, is ordinarily required to limit the term of imprisonment to the minimum as prescribed under the relevant provision of the said Act, but possesses, nevertheless the latitude to incarcerate the accused for longer periods, for reasons to be recorded. These reasons may include one, or more, of the exigencies contemplated in clauses (a) to (f) of Section 32B but are not limited thereto. By way of an example, of a situation in which a court could award more than the minimum sentence prescribed under the NDPS

Act, the Supreme Court cited the quantity of the drug involved as a relevant consideration, though it does not figure any of the six clauses (a) to (f) in Section 32B.

46. In the absence, however, of any justification, to award, to an unsuccessful accused, under the NDPS Act, more than the minimum sentence prescribed for the offence committed by her/him, the court is bound to award only the minimum prescribed sentence.

47. No doubt, Section 32B of the NDPS Act may not, *stricto sensu*, applying the present case, as no minimum period of incarceration the stipulated, either in clause (b) of Section 21, or in clause (b) of Section 23 of the said Act. Even so, if the offence committed by the appellant is to be relatable to clause (b) of these Sections, applying the *raison d'être* guiding the judgment of the Supreme Court in **Rafiq Qureshi** (*supra*), the Court would, ordinarily, not impose, on the accused, the maximum punishment impossible under the said clauses, unless and until there are compelling circumstances justifying such imposition.

48. It still remains to be examined, however, whether the invocation, by the learned ASJ, of clause (c), of Section 21 and Section 23 of the NDPS Act read with Section 28 thereof, was, or was not, justified.

49. Before examining this issue, however, it would be appropriate to briefly allude to Sections 21, 23 and 28 of the NDPS Act.

50. Section 21 deals with manufacturing, possessing, selling, purchasing, transporting, importing inter-state, exporting inter-state and using of any manufactured drug or any preparation containing any manufactured drug. Heroin is, undoubtedly, a manufactured drug.

51. The expression “to export inter-state” and to “import inter-state” are defined, in clauses (xxvii) and (xxiv) of Section 2 of the NDPS Act, in the following terms:

“(xxvii) “to export inter-State” means to take out of a State or Union territory in India to another State or Union territory in India;

XXXXX

(xxiv) “to import inter-State” means to bring into a State or Union territory in India from another State or Union territory in India;”

52. Section 21 could, therefore, be invoked against the appellant, to the extent it deals with “possessing” and “exporting inter-state” of heroin, as the charge against the appellant included the allegation of his having booked the consignment at Ludhiana, for onward transportation to Delhi, which would involve “export inter-state” within the meaning of clause (xxvii) and (xxiv) of Section 2 of the NDPS Act.

53. Section 23 deals with “import into India”, “export from India” and “transshipment” of narcotic drugs or psychotropic substance. Obviously, the facts of the present case do not involve either import

into India or transshipment, of any narcotic drugs or psychotropic substance, by the appellant.

54. The expression “export from India”, however, stands defined, in clause (xxvii) of Section 2 of the NDPS Act, thus:

“(xxvii) “to export inter-State” means to take out of a State or Union territory in India to another State or Union territory in India;”

55. The allegation against the appellant – which has been found, by me, to be substantiated by the material on record – is not that the appellant exported heroin from India, but that he had attempted to export heroin, as the heroin was intercepted and seized before it could leave India.

56. The appellant could not, therefore, directly be convicted under Section 23 of the NDPS Act. The act of attempting to export a narcotic drug from India would, however, be punishable under Section 23 read with Section 28 of the NDPS Act, inasmuch as Section 28 covers punishment for attempts to commit offences, and reads as under:

“28. Punishment for attempts to commit offences.- Whoever attempts to commit any offence punishable under this Chapter or to cause such offence to be committed and in such attempt does any act towards the commission of the offence shall be punishable with the punishment provided for the offence.”

57. I have concurred, with the learned Single Judge insofar as the impugned judgment holds that the appellant had, in fact, booked the heroin, at AOL, Ludhiana, for export to Spain, from the office of

Aramex, New Delhi, and as the consignment was intercepted and seized before it could be exported, the appellant, undoubtedly, would be guilty of having committed the offences committed by Section 21, and Section 23 read with Section 28 of the NDPS Act.

58. That brings the discussion to the point of determining whether the learned ASJ has correctly invoked clause (c) of Section 21 and Section 23 of the NDPS Act.

59. Sentences, under the NDPS Act, have been made dependent on the quantity of narcotics drug/psychotropic substance, with which the accused has been found to be dealing. Separate sentences have been prescribed for dealing with “small quantity” as compared with “commercial quantity” of the narcotics drug/psychotropic substance in question, or with any quantity in between – generally referred to as “intermediate” quantity.

60. The learned ASJ has, in the present case, awarded the appellant the sentence of 10 years’ RI, which is the minimum sentence prescribed for dealing with contraband heroin, of commercial quantity, as per Section 21 (c) of the NDPS Act. He has proceeded on the premise that the appellant was found involved in illegal export of 450 grams heroin.

61. This, however, is an incorrect finding, as the heroin, on testing by the CRCL, was found to be of only 1.4 %, purity w/w. 1.4 % of 460 grams works out approximately to 6.44 gm., which is less than the

commercial quantity of heroin, as prescribed *vide* notification No. S.O.4527 (E) dated 16th September, 1996, which is 250 grams.

62. Assuming the charge against him to be sustainable, the appellant would have been guilty of attempting to export heroin which was, therefore, greater than “small” but less than “commercial” quantity. This would, therefore, expose him to punishment not under clause (c) but under clause (b) of Section 21 of the NDPS Act, for which, though a maximum period of 10 years’ incarceration is stipulated, there is no minimum period of incarceration. The present case would not, in the opinion of this Court, justify awarding, to the accused, the maximum punishment of 10 years’ RI, imposable for the offence committed by him.

Basis for the above findings – How the quantity of heroin is to be worked out

63. There is a litany of authorities to the effect that, while punishing a person under the NDPS Act for dealing in heroin, the actual quantity of heroin contained in the goods found with the person/ with which he is dealing.

E.Micheal Raj v. Intelligence Officer, NCB, (2008) 5 SCC 161.

64. One of the most oft-cited decisions, on this aspect, is *E. Micheal Raj v. Intelligence Officer, NCB, (2008) 5 SCC 161*.

65. In the said case, two persons – one of whom happened to be E. Micheal Raj – were arrested on the ground that they were carrying 4.07 kg of heroin. Two samples, of 5 grams each, were retrieved from the said quantity and subjected to test. The purities of heroin in the said two samples were found to be 1.4 and 1.6 %.

66. E. Micheal Raj was charged with, and convicted, for having committed the offence contemplated by Section 8(c) read with Sections 21 and 29 of the NDPS Act. Having failed in appeal before the High Court of Kerala, E. Micheal Raj moved the Supreme Court.

67. The only contention advanced, on behalf of E. Micheal Raj before the Supreme Court, was that the courts below had erred in treating the quantity of heroin, being carried by him, as 4.07 kg. Drawing a mention to the fact that the purity of the two samples of heroin drawn out of the drug found in his possession was only 1.4 % and 1.6 %, E. Micheal Raj contended that the total quantity worked out to only 60 grams, which was less than the stipulated commercial quantity of 250 grams.

68. The issue arising before it for consideration was delineated, in para 8 of its judgment, by the Supreme Court, thus:

“8. The provisions of the NDPS Act were amended by the Narcotic Drugs and Psychotropic Substances (Amendment) Act, 2001 (Act 9 of 2001) (w.e.f. 2-10-2001), which rationalised the punishment structure under the NDPS Act by providing graded sentences linked to the quantity of narcotic drugs or psychotropic substances carried. Thus, by the amending Act, the sentence structure changed drastically. “Small quantity” and “commercial

quantity” were defined under Section 2(xxiii-a) and Section 2(vii-a) respectively. New Section 21 also provides for proportionate sentence for possessing small, intermediate and commercial quantities of offending material. As per Entry 56 of the Notification dated 19-10-2001 issued by the Central Government which deals with heroin, small quantity has been mentioned as 5 gm and commercial quantity has been mentioned as 250 gm. So, *the basic question for decision is whether the contravention involved in this case is small, intermediate or commercial quantity under Section 21 of the NDPS Act, and whether the total weight of the substance is relevant or percentage of heroin content translated into weight is relevant for ascertaining the quantity recovered from the accused.*”

(Emphasis supplied)

69. Paras 15 and 20 of the judgment in *E. Micheal Raj (supra)* sets out the law enunciated therein, and read thus:

“**15.** It appears from the Statement of Objects and Reasons of the amending Act of 2001 that the intention of the legislature was to rationalise the sentence structure so as to ensure that while drug traffickers who traffic in significant quantities of drugs are punished with deterrent sentence, the addicts and those who commit less serious offences are sentenced to less severe punishment. Under the rationalised sentence structure, the punishment would vary depending upon the quantity of offending material. Thus, *we find it difficult to accept the argument advanced on behalf of the respondent that the rate of purity is irrelevant since any preparation which is more than the commercial quantity of 250 gm and contains 0.2% of heroin or more would be punishable under Section 21(c) of the NDPS Act, because the intention of the legislature as it appears to us is to levy punishment based on the content of the offending drug in the mixture and not on the weight of the mixture as such.* This may be tested on the following rationale. Supposing 4 gm of heroin is recovered from an accused, it would amount to a small

quantity, but when the same 4 gm is mixed with 50 kg of powdered sugar, it would be quantified as a commercial quantity. *In the mixture of a narcotic drug or a psychotropic substance with one or more neutral substance(s), the quantity of the neutral substance(s) is not to be taken into consideration while determining the small quantity or commercial quantity of a narcotic drug or psychotropic substance. It is only the actual content by weight of the narcotic drug which is relevant for the purposes of determining whether it would constitute small quantity or commercial quantity.* The intention of the legislature for introduction of the amendment as it appears to us is to punish the people who commit less serious offences with less severe punishment and those who commit grave crimes, such as trafficking in significant quantities, with more severe punishment.

X X X X X

20. In the present case, the narcotic drug which was found in possession of the appellant as per the analyst's report is 60 gm which is more than 5 gm i.e. small quantity, but less than 250 gm i.e. commercial quantity. The quantity of 60 gm is lesser than the commercial quantity, but greater than the small quantity and, thus, the appellant would be punishable under Section 21(b) of the NDPS Act. Further, it is evident that the appellant is merely a carrier and is not a kingpin.”

Ansar Ahmed v. State, 2005 SCC OnLine Del 919

70. In this case, as in the present, 500 grams of heroin was recovered from the appellant, and test of two samples, of 5 grams each therefrom, confirmed the presence of powder. However, the percentage of diacetylmorphine (heroin) was reported as 0.2 percent.

71. Following earlier decisions, the single Bench of this Court, comprising Badar Durrez Ahmed, J. (as his lordship then was), observed thus:

“12. It is, therefore, Entry 56 which shall apply. The quantities of heroin (diacetylmorphine) specified therein are by weight. Keeping in mind that the object of introducing this classification was to rationalise the sentencing structure “so as to ensure that while drug traffickers who traffic in significant quantities of drugs are punished with deterrent sentences, the addicts and those who commit less serious offences are sentenced to less severe punishment”, it does appear to me that what has to be seen is the content of heroin by weight in the mixture and not the weight of the mixture as such. Otherwise, anomalous consequences would follow. While a recovery of 4 grams of heroin would amount to a small quantity, the same 4 grams mixed up with say 250 grams of powdered sugar would be quantified as a “commercial quantity”! And, where would this absurdity stop? Suppose one were to throw a pinch of heroin (say 0.5 gram) into a polythene bag containing small steel ball bearings having a total weight of 1kg: would the steel ball bearings be also weighed in and it be declared that a commercial quantity (1000.5 grams) of heroin was recovered! Surely, it is only the content of heroin (0.5 gram) in the “mixture” of heroin and steel ball bearings that is relevant? Clearly, then, it would qualify as a small quantity. *Therefore, in a mixture of a narcotic drug or a psychotropic substance with one or more neutral substances, the quantity of the neutral substance or substances is not to be taken in considering whether a small quantity or a commercial quantity of the narcotic drug or psychotropic substance is recovered. Only the actual content by weight of the narcotic drug or the psychotropic substance (as the case may be) is relevant for determining whether it would constitute a “small quantity” or a “commercial quantity”.*”

(Emphasis supplied)

72. Having observed, and after referring to various other decisions on the point, this Court held, in para 20 of the report, as under:

“....I reiterate that in a mixture of a narcotic drug or a psychotropic substance with one or more neutral substances, the quantity of the neutral substance or substances is not to be taken while considering whether a small quantity or a commercial quantity of the narcotic drug or psychotropic substance is recovered. *Only the actual content by weight of the narcotic drug or the psychotropic substance (as the case may be) is relevant for determining whether it would constitute a “small quantity” or a “commercial quantity”.*”

(Emphasis supplied)

Ravinder Kumar v. NCT of Delhi, 2010 SCC Online Del 2290

73. In *Ravinder Kumar (supra)*, the following question arose, for consideration and determination by this Court:

“Whether the percentage of morphine in a sample of opium can by itself be determinative of the purity of the sample and whether such test is relevant or necessary for the purpose of considering the grant of bail or of awarding of sentence in terms of Section 18 read with Section 37 of the NDPS?”

74. In this case, 5 kg of opium was recovered from the appellant, which was found to contain 0.24% morphine. The appellant contended that, determined on the basis of the morphine contained thereof, the weight of the opium recovered from him would be only 12 grams, which was a “small quantity”.

75. The matter reached the Division Bench of this Court consequent on a reference made by a learned Single Bench, wherein it was noticed that, on the question of relevance of the percentage of morphine, in opium recovered under the NDPS Act, divergent views had been expressed, by two single Benches of this Court, in *Mohd. Irfan v. State* (Crl.A. 460/2005) and *Rajender Kumar v. State* (Crl.A. 436/2007).

76. The learned Single Judge also noticed the judgment of the Supreme Court in *E. Micheal Raj (supra)* as well as of this Court in *Ansar Ahmed (supra)*, and observed that these decisions would not be applicable to the case before him, as he was dealing with opium, whereas the allegedly contraband narcotic, recovered in *E.Micheal Raj (supra)* and *Ansar Ahmed (supra)*, was heroin.

77. The Division Bench, adjudicating the said reference in *Ravinder Kumar (supra)*, observed that this distinction, as drawn by the learned Single Judge, between the situation which obtained in *E.Micheal Raj (supra)* and *Ansar Ahmed (supra)*, *vis-à-vis* that which obtained in *Ravinder Kumar (supra)* was apt. Having so noticed, the Division Bench proceeded to decide the matter, observing that the contraband seized, in the case before it, was not morphine, but opium. The “small” and “commercial” quantities which found place in the table annexed to the relevant notification, it was observed, were in the context of opium and not morphine. As such, the Division Bench held, in *Ravinder Kumar (supra)*, that the percentage of morphine

found in the sample seized from the appellant Ravinder Kumar, and subjected to testing, was irrelevant.

78. The ultimate decision in *Ravinder Kumar (supra)* is not of significance, so far as the present case is concerned; however, the distinction drawn, between the situation that obtained in *E.Micheal Raj (supra)* and *Ansar Ahmed (supra)*, *vis-à-vis* that which obtained in *Ravinder Kumar (supra)*, is undoubtedly significant, as well as relevant, for the present controversy.

Abdul Mateen v. UOI 201, SCC OnLine Del 5662 and Hira Singh v. UOI, (2017) 8 SCC 162

79. The judgment in *Abdul Mateen (supra)*, which was also rendered by a Division Bench of this Court, sought quashing of notification dated 18th November, 2009, issued by the Department of Revenue, specifically with respect to the amendment, effected by the said notification, to the earlier notification dated 19th October, 2001, by insertion of Note (IV) after the Table in the later notification. Prior to the said amendment, there were, below the Table in the notification dated 19th October, 2001, the following three Notes:

“Note. – 1. The small quantity and the commercial quantity given against the respective drugs listed above apply to isomers, within specific chemical designation, the esters, ethers and salts of these drugs, including salts of esters, ethers and isomers; whenever existence of such substance is possible.

2. The quantities shown against the respective drugs listed above also apply to the preparations of the drug and the preparations of substances of note 1 above.

3. “Small quantity” and “Commercial Quantity” with respect to cultivation of opium poppy is not specified separately as the offence in this regard is covered under clause (c) of section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985.”

80. The notification dated 18th November, 2009, which Abdul Mateen sought to challenge, added, below Note 3 (*supra*), the following note:

“In the Table at the end after Note 3, the following Note shall be inserted, namely:-

(4) The quantities shown in column 5 and column 6 of the Table relating to the respective drugs shown in column 2 shall apply to the entire mixture or any solution or any one or more narcotic drugs or psychotropic substances of that particular drug in dosage form or isomers, esters, ethers and salts of these drugs, including salts of esters, ethers and isomers, wherever existence of such substances is possible and not just its pure drug content.”

81. The Division Bench of this Court, speaking through Badar Durrez Ahmed, J. (as his lordship then was) noted, at the outset, that the judgment of the Supreme Court in *E. Micheal Raj (supra)* had settled the legal possession prior to the issuance of the notification dated 18th November, 2009 (*supra*), by holding that when any narcotic drug or psychotropic substance was found mixed with one or more neutral substance(s), then, for imposition of punishment, it was only

the content of the narcotic drug or psychotropic substance which had to be taken into consideration. The impugned note IV, below the table in notification dated 18th November, 2009 (*supra*), it was observed, sought to alter this position by treating the quantity of the entire mixture as the quantity of the drug, or of one drug, or psychotropic substance, covered by serial no. 239 of the notification dated 19th October, 2001(*supra*). Cases where the drug was mixed with a neutral substance were dealt with, for the first time, in the judgment of the Supreme Court in ***E. Micheal Raj*** (*supra*). It was further observed that such cases came within the purview of Note 4, as introduced below the table in the notification dated 19th October, 2001(*supra*).

82. The Division Bench held that the Central Government acted, within the power, conferred on it, by Section 21 of the NDPS Act, in inserting Note 4 below Note 3 in notification dated 19th October, 2001 (*supra*) was, therefore, upheld.

83. The judgment of the Supreme Court in ***Hira Singh*** (*supra*) was in an appeal against the judgment of this Court in ***Abdul Mateen*** (*supra*). The Supreme Court noticed the law, as enunciated in ***E. Micheal Raj*** (*supra*) in the following words:

“8. The principle stated in this decision is that the rate of purity of the drug is decisive for determining the quantum of sentence—for “small”, “intermediary” or “commercial” quantity. The punishment must be based on the volume or content of the offending drug in the mixture and not on the aggregate weight of the mixture as such. In other words, the quantity of the neutral substance is not to be taken into consideration while determining the small quantity or commercial quantity of a narcotic

drug or psychotropic substance. It is only the actual content by weight of the narcotic drug, which is relevant for the purpose of determining the quantity with reference to the quantum of punishment.

9. The judgment, however, after quoting the Notification dated 19-10-2001 took note of the purpose for which Amendment Act of 2001 was brought into force and then proceeded to hold that to achieve the said purpose of rationalisation of the sentence structure, the purity of the narcotic drug from the recovery or seizure made from the offender would be a decisive factor. In other words, the actual content or weight of the narcotic drug or psychotropic substance alone should be reckoned.”

84. Though the case was referred to a larger Bench, for authoritative determination, the two-Judge Bench, adjudicating *Hira Singh (supra)*, held that the judgment in *E. Micheal Raj (supra)* had interpreted Section 21 of the NDPS Act and that, therefore, the said interpretation would bind the Supreme Court. No decision of the Larger Bench, consequent to the reference made, thereto, in *Hira Singh (supra)*, it may be noted, has been rendered as yet. The reference continues to pend.

85. Once the Supreme Court, in *Hira Singh (supra)*, held that the interpretation, placed on Section 21 of the NDPS, by its earlier decision in *E. Micheal Raj (supra)* would bind it, it is obvious that the said decision would also bind this Court, adjudicating the present case.

86. The position that obtains, in view of *Hira Singh (supra)*, is therefore, that it is the actual quantity of heroin, in which the accused

under the NDPS Act is found to be involved, which would be relevant, for the purposes of determining the punishment which would be awarded to her, or him, under the said Act, and not the total quantity of powder seized from the accused.

Prahlad Meena v. State, 2016 VII AD (Del) 183

87. The appellant Prahlad Meena, in this appeal, was convicted under Section 21 (C) of the NDPS Act, on the ground of being found to be in unlawful possession of 1.7 kg of heroin, which was found to contain 3.2% of diacetylmorphine and 1.2% phenobarbital.

88. It was observed, by this Court, that the incident pertained to 16th June, 2009, prior to the promulgation of Notification, dated 18th November, 2009, whereby the entire weight of the substance, in question, recovered from the accused, was required to be taken into account in determining whether the quantity was small or commercial, and not merely the pure drug contained therein. This Notification, it was noticed, effectively neutralized the law enunciated in *E. Micheal Raj (supra)* and *Ansar Ahmed (supra)*. Observing that, being in the nature of a legislation, the notification dated 18th November, 2009, could not apply to the case of the appellant, which related to 16th June, 2009 this Court held, following *E. Micheal Raj (supra)*, that the learned trial court had erroneously treated the quantity recovered from the appellant Prahlad Meena as “commercial” whereas it was actually “intermediate”, i.e., between “small” and “commercial”.

89. The sentence of ten years incarceration awarded to the appellant in that case was, therefore, reduced to five years.

Rafiq Qureshi v. NCB, 2018 SCC Online Cal 1057 and Rafiq Qureshi v. NCB, 2019 SCC OnLine SC 666

90. Six packets, containing heroin, were, in this case, recovered from Rafiq Qureshi, the convicted petitioner before the High Court. The gross weight of the powder was found to be 8.175 kgs. Two samples, 5 grams each, from each of the said six bags, of which one sample from each bag was tested. The six samples thus tested disclosed presence of heroin, with percentage purities of 6.1%, 5.4%, 5.8%, 4.9%, 10.4 % and 26.8%. The learned trial court convicted the appellant Rafiq Qureshi under Section 21(c) of the NDPS Act and sentenced him to 18 years' RI apart from fine of ₹ 2 lakh with 12 months SI stipulated as the default sentence.

91. Before the High Court in appeal, one of the contentions advanced by Rafiq Qureshi was that the total quantity of heroin carried by/recovered from him, was 609.6 grams and not 8.175 kg, as wrongly held by the court below.

92. Holding that the quantity of heroin contained in the powder seized from the accused Rafiq Qureshi was far in excess of the maximum stipulated commercial quantity of 250 grams, the Division Bench of the High Court of Calcutta held that *E. Micheal Raj (supra)* could not come to the rescue of the petitioner, and that his case has rightly been brought under Section 21 (c) of the NDPS Act. Following

therefrom, the High Court opined that the penalty of 18 years' RI alongwith fine of ₹ 2 lakhs, awarded to the petitioner by the learned trial court was excessive and, reduced the said sentence, accordingly, to 16 years' RI with fine of ₹ 2 lakhs and default SI of six months.

93. The above judgment of the High Court of Calcutta was carried in appeal to the Supreme Court.

94. The Supreme Court, *vide* its judgment in *Rafiq Qureshi (supra)*, concurring with the view of the High Court, held, in the concluding para 24 of its judgment, thus:

“In the present case, the High Court held that although gross quantity of 8.175 Kg. of Heroin was alleged to have been recovered from the appellant but actual quantity of Heroin which was found to be in possession was only 609.6 gm. The High Court held that since the appellant was found in possession of Narcotic Drugs as per the analysis report to 609.6 gm. which is much higher than the commercial quantity, punishment higher than the minimum is justified. The High Court reduced the punishment from 18 years to 16 years. We, thus, uphold the judgment of the trial court and the High Court awarding the punishment higher than the minimum, however, looking to all the facts and circumstances of the present case including the fact that it was found by the High Court that the appellant was only a carrier, we find that the ends of justice will be sub-served in reducing the sentence from 16 years to 12 years. Thus, while maintaining the conviction of the appellant the appellant is sentenced to undergo 12 years rigorous imprisonment with fine of Rs. 2 lakh and in default of payment of such fine the appellant shall further undergo for a simple imprisonment for six months. The appeal is partly allowed to the extent as indicated above.”

95. Applying, to the facts of the present case, the ratio that emerges from the reading of the above decisions, the substance in question being heroin, the law as enunciated in *E. Micheal Raj (supra)*, as concretized in the recent decision of the Supreme Court in *Hira Singh (supra)*, would stand attracted. Applying the said law, the quantity of heroin recovered from the appellant, in the present case, would be 1.4 % of 460 grams i.e. 6.44 grams and not 460 grams as the learned ASJ has held. This is only marginally in excess of 5 grams, which has been notified as the quantity which would be liable to be treated as “small”, for the purpose of applicability of, *inter alia*, Sections 21 and 23 of the NDPS Act, *vide* Notification S. O. 1055 (E) dated 19th October, 2001, issued by the Department of Revenue, Ministry of Finance.

96. The finding of the learned ASJ, on this aspect, is, therefore, necessarily liable to be faulted both factually as well as legally. The corollary emerging from this factual position, applying the extant law in respect thereof, would be that the appellant would be liable only to the minimum sentence which could be awarded to a person dealing with heroin which was more than the “small” but less than “commercial” quantity, as stipulated in the Notification dated 19th October, 2001.

97. Dealing in heroin of small quantity attracts a maximum punishment of 1 year (at the relevant time) RI, whereas dealing with heroin of commercial quantity, or more, attracts a minimum of 10 years’ RI. Intermediate quantity, i.e., between the stipulated “small” and “commercial” quantities, would, therefore, attract punishment

between one year and ten years, but could not be pegged at ten years, unless there was wealth of adequate reasons supporting the said decision. The judgment in *Rafiq Qureshi (supra)* observes that the quantity of the offending drug, with which the accused was found to be dealing, is a valid factor, to be taken into consideration while determining the quantum of sentence to be awarded. Tested on this touchstone, the present case clearly does not warrant awarding, to the appellant, of the maximum punishment of 10 years' RI, which would be impossible, under clause (b), whether of Section 21, or of Section 23 read with Section 28, of the NDPS Act.

98. As per the Nominal Roll provided by the jail authorities, the appellant has already suffered incarceration of seven years and eight months.

99. In the opinion of this Court, the punishment suffered by the appellant is, therefore, more than adequate, for the offence with which he had been charged and of which he had been convicted.

100. In the above circumstances, the impugned judgment, dated 3rd August, 2015, and the order on sentence, dated 4th August, 2015, stand modified by upholding the conviction of the appellant, but under (i) clause (b) of Section 21 and (ii) clause (b) of Section 23 read with Section 28 of the NDPS Act, rather than clause (c) of the said Sections, whereunder the learned ASJ has convicted the appellant. The sentence awarded to the appellant shall stand reduced to the period of incarceration already undergone by him.

101. The appeal is allowed to the above extent. The appellant would be entitled to be released forthwith, unless his incarceration is required for any other reason.

102. Trial Court record be returned forthwith.

JULY 08, 2019

dsm

C. HARI SHANKAR, J

HIGH COURT OF DELHI



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