



\$~17

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

+ **CRL.L.P. 123/2018**

STATE (GNCT OF DELHI)Petitioner

Through: Mr. Naresh Kumar
Chahar, APP for the State

Versus

NOOR ALAMRespondent

Through: Mr. Sachin Dev Sharma,
Adv. (through VC)

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

% **12.11.2025**

1. The present petition is filed under Section 378 of the Code of Criminal Procedure, 1973 (*hereinafter* 'CrPC') seeking leave to challenge the judgment dated 25.10.2017 (*hereinafter* '**the impugned judgment**'), passed by the learned Special Judge (NDPS), in SC No. 574632016 arising out of FIR No. 251/2011, registered at Police Station Crime Branch, whereby the learned Trial Court had acquitted the respondent of the offences under Sections 21 and 29 of Narcotic Drugs and Psychotropic Substances Act, 1985 (*hereinafter* '**NDPS**').

2. Succinctly stated, the case of the prosecution is that on 28.09.2011, secret information was received that the respondent/accused no. 1-Noor Alam Khan would be supplying a huge quantity of contraband to accused no. 2- Kusum. The information was recorded *vide* DD Entry No. 17, pursuant to



which a raiding party was constituted. The respondent was allegedly apprehended at the corner of C-6/96, Sector 5, Rohini, New Delhi (**'flat no. C-6/96'**) and upon the search of the black coloured bag, carried by the respondent on his shoulder, three packets containing the contraband weighing 850 grams, 1100 grams and 1150 grams, were recovered. The contraband was tested with the help of a field-testing kit and the same gave a positive result for *Heroin*. Consequently, the FIR No. 251/11 under Sections 21/29/61/85 of the NDPS Act was registered and the respondent was arrested.

3. It is further the case of the prosecution that during interrogation, the respondent led the police to the residence of accused no. 2-Kusum, at flat no. 148, Pocket 3, Sector 2, Rohini, Delhi (**'flat no. 148'**) from where 89 polythene packets of 35 grams each containing the contraband-*smack* along with cash amount of Rs. 2,97,900/- and certain property documents were recovered.

4. After completion of the investigation the chargesheet dated 30.01.2012, was filed by the Investigating Officer. Separate charges under section 21 and 29 of the NDPS Act were framed against the respondent/accused no. 1-Noor Alam Khan and accused no. 2-Kusum, to which they pleaded not guilty and claimed trial.

5. The prosecution examined total 22 witnesses to establish their case. The material witnesses are PW-2/Inspector P. C. Khanduri, PW-4/ASI Suresh Chand, PW-7/HC Susheel Kumar, PW-10/SI Mohan Lal, PW-16/SI R. Shreeniwasan, PW-18/W Ct.



Krishna and PW-20/Sushil Kumar.

6. Statement of the accused under section 313 of the Cr.P.C. 1973 was recorded. Accused no. 2 led the defence evidence and examined 7 witnesses in support of her case.

7. After trial, the Learned Special Judge (NDPS) *vide* judgment dated 25.10.2017 acquitted both the accused persons, essentially on the ground that there are material contradictions in the testimonies of the witnesses, no public witness had corroborated the testimony of the police officials and the prosecution has failed to prove the commission of offence by the accused persons beyond reasonable doubt and thus, the benefit of doubt must enure to them.

8. Aggrieved by the impugned judgment, the present petition has been filed, seeking leave to challenge the acquittal of respondent/accused no. 1 – Noor Alam Khan.

9. It is submitted by the learned Additional Public Prosecutor for the State that the learned Trial Court fell in error in acquitting the respondent of the charged offences. It is contended that the contradictions and discrepancies noted in the impugned judgment are minor and inconsequential, and could not have been treated as fatal to the prosecution case.

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

11. It is further submitted that huge commercial quantity of contraband/*Heroin*, i.e. 3.1 Kg, was recovered, making the



possibility of its being planted upon the accused wholly implausible and untenable.

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

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

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

Analysis

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

“19. Now, Section 378 of the Code provides for filing of appeal by the State in case of acquittal. Sub-section (3) declares that no appeal “shall be entertained except with the leave of the High Court”. It is, therefore, necessary for the State where it is aggrieved by an order of acquittal recorded by a Court of Session to file an application for leave to appeal as required by sub-section (3) of Section 378 of the Code. It is also true that an appeal can be registered and



heard on merits by the High Court only after the High Court grants leave by allowing the application filed under sub-section (3) of Section 378 of the Code.

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

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

xxx

24. We may hasten to clarify that we may not be understood to have laid down an inviolable rule that no leave should be refused by the appellate court against an order of acquittal recorded by the trial court. We only state that in such cases, the appellate court must consider the relevant material, sworn testimonies of prosecution witnesses and record reasons why leave sought by the State should not be granted and the order of acquittal recorded by the trial court should not be disturbed. Where there is application of mind by the appellate court and reasons (may be in brief) in support of such view are recorded, the order of the court may not be said to be illegal or objectionable. At the same time, however, if arguable points have been raised, if the material on record discloses deeper scrutiny and reappraisal, review or reconsideration of evidence, the appellate court must grant leave



as sought and decide the appeal on merits. In the case on hand, the High Court, with respect, did neither. In the opinion of the High Court, the case did not require grant of leave. But it also failed to record reasons for refusal of such leave.”

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

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

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

19. PW-2/Inspector P. C. Khanduri has deposed that on 29.09.2011, around 1 p.m., SI R. Shreeniwasan informed him of a secret tip-off about drug trafficking, which was recorded *vide* DD No.17 and forwarded to the ACP. A raiding party was constituted, and they left their office around 1:45 p.m. in two private vehicles, reaching Sector-5, Rohini at about 2:45 p.m. Around 4–5 passersby were requested to join the raid but they refused. According to him, at about 6:50 p.m., the respondent, who arrived on a cycle rickshaw, was intercepted and was served with a notice under Section 50 NDPS Act. It is further deposed that the respondent was carrying a rexine bag containing clothes and three polythene packets containing contraband, which tested positive for *Heroin*.

20. PW-2 further states that he along with SI Shreeniwasan, Ct. Krishna and HC Bharat proceeded to flat No. C-6/96, the



alleged delivery point. The flat was locked, which was opened by one Santosh, and after entering the flat the three packets containing heroin were recovered and were weighed to be 850 g, 1100 g and 1150 g. Samples were drawn, sealed, and the seizure memo prepared. He also deposed that ASI Mohan Lal reached the spot around 10:45 p.m., arrested the respondent, recorded the disclosure statement, and prepared the site plan. In pursuance of the disclosure statement of the respondent, they reached the house of accused no. 2/Kusum, house no. E-4/13, Sultan Puri, Delhi (**'house no. E-4/13'**) but the said flat was found locked.

21. PW-2 has also deposed that, on the next day i.e. 30.09.2011, based on the disclosure of the respondent, another raid was conducted at flat no. 148, the other flat of accused no. 2-Kusum, which the raiding team got opened with the help of a key maker. He has stated that 89 packets of 35 g smack each, ₹2,97,300/- cash, and some documents were recovered.

22. In the cross-examination of PW-2, on behalf of the respondent, he has stated that the entire raiding party had gone to Sultan Puri to search the house no. E-4/13 but they made no attempt to break open the lock. He has also admitted that no independent witness was joined at any stage and the local police was not informed either before opening flat no.148 or after the alleged recovery from it. PW-2 also admitted that despite several government offices being located around the R.K. Puram office, no official from any such office was asked to join the investigation. He also admitted that no Magistrate or Gazetted Officer was requested to join before the search.



23. In cross-examination on behalf of accused no. 2, PW-2 admitted that there was no DD entry regarding the raid conducted on 30.09.2011. He further admitted that they did not carry the field-testing kit during the second raid as he was “*unable to find*” it in the office.

24. PW-7/HC Susheel Kumar, who was posted at PS South Rohini, stated that he encountered PW-2 and his team, including ASI Mohan Lal, outside flat No.148. He was asked to join the investigation and agreed to do so. He further stated that another public witness named PW-20/Sushil Kumar also joined.

25. However, in his cross examination, PW-7 has admitted that he did not make any written report to the police station regarding his joining of the investigation.

26. PW-10/SI Mohan Lal, the second Investigating Officer, has admitted in his cross examination that he did not record the statements of any residents of the *gali* regarding the proceedings conducted by him. He admitted that the site plan does not mark the exact spots where the first IO or he himself conducted any proceedings. He admitted that he did not ask SI Shreeniwasan where the public persons, who supposedly witnessed the proceedings, were present. He also admitted that no resident, shopkeeper, or occupier from the locality was joined at the time of the alleged raid at flat no. 148.

27. PW-16/SI R. Shreeniwasan has admitted that none of the members of the raiding party had ever seen the respondent prior to the alleged raid. He further conceded that he did not request any government official from the vicinity of R.K. Puram to join



the investigation, nor did he make any attempt to contact a Gazetted Officer or a Magistrate whose presence may have been necessary given the nature of the proceedings.

28. Pertinently, PW-20/Sushil Kumar, the only independent witness, did not support the prosecution version and did not corroborate the alleged recovery or the presence of the accused at the spot.

29. It is evident from the record that no independent public witness was associated at any stage of the investigation relating to the respondent, despite the raiding team having left its office at 1.45 p.m. and the apprehension having been made only at 6.50 p.m.

30. The explanation offered by the prosecution that public witnesses were asked to join only for a few minutes upon reaching the spot is wholly unconvincing, particularly when no names, addresses or circumstances of refusal of such persons were recorded, nor was any action taken for their alleged non-cooperation.

31. It has been admitted that no attempts were made to contact any government official posted in R.K. Puram, or any Gazetted Officer or Magistrate, though their services might have been required. Even the staff or parking attendants of the nearby Rithala Metro Station have not been made a witness.

32. Equally significant is the fact that the rickshaw puller, who transported the respondent immediately before his apprehension was not made a witness, nor were the shopkeeper or the residents of the gali. These omissions cannot be brushed aside as minor



procedural lapses; they go to the root of the credibility of the prosecution version and the fairness of the investigation.

33. It is well settled that non-joining of public witnesses is not invariably fatal to the prosecution however, associating independent public witnesses is not a mere formality. The prosecution in the present case has failed to demonstrate that genuine and sincere efforts were made to secure their presence.

34. It also emerges that there are also the unrebutted contradictions emerging from the call detail records (CDRs) of the investigating officers, which further undermine the credibility of the prosecution case. It has been admitted by PW-10 and PW-16 that they were carrying their mobile phones during the raid. However, a careful scrutiny of these records reveals that on 28.09.2011, PW-16 was not present at R.K. Puram at around 1:00 p.m., contrary to the prosecution's narrative that the entire raiding team assembled and proceeded from that very location. The prosecution has offered no explanation as to how, despite the claimed route and timing mentioned in the charge sheet, the cell tower locations of PW-16 do not support his alleged movements.

35. Even more significantly, the CDR of 30.09.2011 demonstrates that PW-16 was not present at Sector-2, Rohini at any time on the date when the alleged search of the flat no. 148 was carried out. These discrepancies strike at the foundation of the prosecution's version regarding the presence and participation of material witnesses during critical stages of the operation.

36. It also stands admitted that the prosecution has not



examined of several key members of the raiding party. The record reflects that HC Amit Kumar, HC Dharamveer Singh, HC Bharat Singh, HC Satender and HC Shiv Veer were all material participants in the alleged apprehension of the respondent and the subsequent raid at flat no. 148. Yet none of them were produced in the witness box.

37. The next important aspect is the manner in which the respondent was allegedly identified and apprehended, which gravely undermines the prosecution case. It is an admitted position that the raiding party had no description of the respondent whatsoever and the only material available to them was DD No.17, which mentioned merely his name, an approximate age, and a vague reference to his being from Bareilly. Neither his physical features nor any distinguishing marks were recorded, nor did any member of the raiding party claim to have ever seen him prior to the incident. In these circumstances, it was wholly unclear how the police could have confidently identified the respondent immediately upon his alighting from a cycle-rickshaw in a crowded locality.

38. It is also not disputed that the site plan (*Ex. PW10/A*), which ought to have been a reliable depiction of the spot and the positioning of the raiding team, is admittedly incomplete and fails to show the locations of individual police officers.

39. Additionally, the uncontroverted testimony of DW-1/Deepa, the daughter of accused no. 2/Kusum, that police officers visited her home months later and took original property documents relating to flat no. 148, casts further suspicion on the



manner in which the investigation was conducted and the provenance of the documents relied upon by the prosecution.

40. Even the failure to record the statement of the key maker under Section 161 Cr.P.C., despite his central role in opening the allegedly locked premises, and the non-examination of Santosh, who admittedly opened the door of the relevant flat, constitute serious lapses. Santosh was neither cited as a witness nor proceeded against in any manner, though her involvement was established through prosecution witnesses themselves.

41. Equally unexplained is the fact that the second Investigating Officer was appointed not through any official order, but merely by the endorsement of the first IO in the *rukka*, which further reflects procedural irregularity and lack of transparency in the investigation.

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

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

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

AMIT MAHAJAN, J

NOVEMBER 12, 2025

"SS"