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

+ **CRL.L.P. 444/2018**

STATE

.....Petitioner

Through: Mr. Sunil Kumar Gautam,
APP for the State.
SI Deepak Kumar, PS
Jahangir Puri.

versus

AHMAD KHAN

.....Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

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11.11.2025

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 26.03.2018 (*hereinafter* '**the impugned judgment**'), passed by the learned Special Judge (NDPS), in SC No. 58119/2016 arising out of FIR No. 471/2014, registered at Police Station Jahangir Puri, whereby the learned Trial Court had acquitted the respondent of the offences under Sections 20 (b) (ii) (c) of Narcotic Drugs and Psychotropic Substances Act, 1985 (*hereinafter* '**NDPS**').

2. Succinctly stated, the case of the prosecution is that on 20.06.2014, secret information was received that the respondent/accused-Ahmad Khan has been engaging in the sale of contraband (*ganja*). The information was recorded vide DD Entry No. 26A, pursuant to which a raiding party was constituted. The respondent was allegedly apprehended at the



turn from Kushal Cinema towards 500 Wali Gali, C-Block, and upon his search, one *Katta* containing 9.400 grams of contraband/*ganja* was recovered from his possession.

3. It is further the case of the prosecution that during interrogation, the accused led the police to his residence, from where four *Kattas* of *ganja* were allegedly recovered, containing 9.3 kg, 13.2 kg, 6 and 1.6 kg of *ganja*, respectively. A case *vide* FIR No. 471/14 under Sections 20/61/85 of the NDPS Act was registered, the accused was arrested, and samples were sent to the FSL, which confirmed the recovered substance to be *ganja*.

4. After completion of the investigation the chargesheet was filed by the Investigating Officer and charges under section 20(b)(ii)(c) of the NDPS Act were framed against the accused on 08.09.2014, to which the respondent pleaded not guilty and claimed trial.

5. The prosecution examined total 13 witnesses to establish their case. Statement of the accused under section 313 of the Cr.P.C. 1973 was recorded and no witnesses were examined by the respondent/accused.

6. After trial, the Learned Special Judge (NDPS) *vide* judgment dated 26.03.2018 acquitted the accused, 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 thus, the benefit of doubt must enure to the accused.

7. Aggrieved by the impugned judgment of acquittal, the present petition has been filed.

8. 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.

9. 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.

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

11. 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.

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

13. **Submissions heard and record perused.**

Analysis

14. It is trite law that the Appellate Court must exercise caution and should only interfere in an appeal against acquittal where there are substantial and compelling reasons to do so. At the stage of grant of leave to appeal, the High Court has to see whether a *prima facie* case is made out in favour of the appellant or if such arguable points have been raised which would merit



interference. The Hon'ble Apex Court in the case of ***State of Maharashtra v. Sujay Mangesh Poyarekar: (2008) 9 SCC 475*** held as under:

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

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

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

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24. We may hasten to clarify that we may not be understood to have laid down an inviolable rule that no leave should be refused by the appellate



court against an order of acquittal recorded by the trial court. We only state that in such cases, the appellate court must consider the relevant material, sworn testimonies of prosecution witnesses and record reasons why leave sought by the State should not be granted and the order of acquittal recorded by the trial court should not be disturbed. Where there is application of mind by the appellate court and reasons (may be in brief) in support of such view are recorded, the order of the court may not be said to be illegal or objectionable. At the same time, however, if arguable points have been raised, if the material on record discloses deeper scrutiny and reappraisal, review or reconsideration of evidence, the appellate court must grant leave as sought and decide the appeal on merits. In the case on hand, the High Court, with respect, did neither. In the opinion of the High Court, the case did not require grant of leave. But it also failed to record reasons for refusal of such leave.”

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

16. 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.

17. 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.

18. The case of the prosecution hinges on the testimonies of PW-1/Ct. Raman, PW-4/Constable Amrender, PW-5/SI Ved Prakash, PW-7/SI Naveen Kumar and PW-8/Suraj.

19. A critical component of the prosecution case concerns the manner in which the alleged contraband was weighed at the spot. The testimonies of PW-1, PW-5, PW-7 and PW-8 reveal



material, irreconcilable contradictions which render the entire process doubtful and unreliable.

20. PW-1/Ct. Raman was the member of the raiding party in whose presence contraband was recovered. He deposed that HC Suresh was instructed by SI Naveen Kamar to procure a weighing scale from a nearby market and that he returned with an electronic weighing scale along with weights of 50 gm to 5 kg denominations. PW-1 further deposed that the weighing scale remained with the police party for 2–3 hours, but he was unable to recall whether an electricity connection was taken from any nearby shop to operate the electronic scale. The omission to establish the source of electricity becomes significant because an electronic scale cannot function in its absence, and the prosecution has not suggested any battery-operated system.

21. PW-5/SI Ved Prakash, however, gave a completely different account. He deposed that the *ganja* was weighed using a table-top iron weighing scale, which was manual, one and a half to two feet in length, and did not display numbers electronically. This description is wholly inconsistent with the “*electronic weighing scale*” claimed by PW-1. PW-5 asserted that iron weights were used, with denominations up to 10 kg, which again contradicts the denominations stated by PW-1.

22. PW-7/SI Naveen Kumar has added a third, entirely different version. He has stated that HC Suresh was instructed to bring a hand-held weighing scale with weights, and he returned with the same within 15–20 minutes. He further stated that the scale had strings of iron or ‘*rassi*’, indicating a balance-type device. This contradicts both the electronic scale version of PW-



1 and the table-top scale described by PW-5. PW-7 also admitted that he neither knew nor asked from where HC Suresh procured the scale.

23. The inconsistencies become more glaring in the testimony of PW-8/Suraj, an independent shopkeeper, who categorically denied the suggestion that HC Suresh ever collected a weighing scale or weights from his shop on the relevant date. PW-8 further stated that he only kept an electronic weighing scale of 20-kg capacity. He denied the suggestion that HC Suresh had informed that they had seized some *ganja* which had to be weighed and denied giving any statement to the police regarding providing weights or any weighing instrument to them.

24. It is also noteworthy, that PW-8, who is the sole public witness cited by the prosecution, has turned hostile and not supported the case of the prosecution.

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

26. However, admittedly, the spot of apprehension was a public road with the accused's residence only 50–60 feet away. Despite this, no other public witness was associated. The prosecution's explanation of "*few persons being present due to noon-time*" is unconvincing, particularly when no intimation was given to the family members of the accused, who admittedly lived just metres away.

27. Further, when the house search was conducted, PW-4



stated that no neighbours were requested to join the proceedings and that only family members were inside. PW-12/SI Rajan, the IO, however, claimed that he and Ct. Suresh approached neighbours in Houses No. 451 and 453 who refused, but he neither noted their names nor served any written notice. These inconsistencies strike at the credibility of the prosecution. If such attempts were genuinely made, the names and addresses would naturally have been recorded, particularly when the police had time to prepare seizure memos and notices.

28. The contradictions between PW-4 and PW-12, coupled with the complete absence of independent witnesses at both the spot and the house search, create a serious dent in the prosecution case and raise doubt about the fairness and transparency of the entire recovery process.

29. Another aspect which significantly weakens the prosecution case concerns the handling of the seal used for sealing the case property and sample *pullandas*. The testimonies of PW-1, PW-5, PW-7 and PW-12 reveal serious discrepancies regarding who possessed the seal, when it was handed over, to whom, and whether any documentation was prepared. These contradictions go to the root of the chain of custody.

30. PW-1 admitted that he could not even recall the number of seals used. PW-5 claimed that the seal was handed over to him, whereas PW-7 stated that no documentation was made and that he himself carried the seal while leaving the spot without explaining its subsequent custody. Both PW-5 and PW-7 were police officials, not independent witnesses, defeating the very purpose of ensuring tamper-proof custody. PW-7 further



admitted that the FIR had not reached the spot till he left, creating doubt about the seizure memos and *pullandas* allegedly prepared there. PW-12 further added yet another version by stating that the seal was handed over to PW-6/ Ct. Akash, who has not corroborated this aspect.

31. These multiple contradictions and lack of documentation break the chain of custody and render the prosecution version unreliable. The handling of the seal is one of the most crucial elements of an NDPS prosecution because it directly safeguards the sanctity of the case property and sample *pullandas*. If the seal remains uncontrolled, undocumented, or is retained by members of the raiding party, the possibility of tampering cannot be ruled out.

32. The next aspect for consideration becomes the inconsistencies that emerge regarding who was present in the accused's house during the house search. PW-4 stated that only one male and two females were inside, whereas PW-12 claimed that 3–4 persons, including children, were present and informed about the arrest. The omission by PW-4 of the presence of children, despite PW-12's detailed version, reflects material contradictions affecting the credibility of both accounts.

33. Additionally, all witnesses admitted that no photographs were taken during the house search. Considering that the incident occurred in 2014, when smartphones with cameras were commonly available, it is improbable that none of the raiding party members could capture photographs. The failure to produce even a single photograph, despite the ease of doing so, further deepens the suspicion surrounding the purported recovery from



the accused's house.

34. 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.

35. 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.

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

AMIT MAHAJAN, J

NOVEMBER 11, 2025

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