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

+ **CRL.L.P. 504/2018**

STATE (GNCT OF DELHI)

.....Petitioner

Through: Ms. Richa Dhawan, APP
for the State with SI
Sandeep Narwal, PS
Narela, Delhi.

versus

ANJAR AHMED

.....Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

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05.08.2025

1. The present petition is filed under Section 378 of the Code of Criminal Procedure, 1973 ('CrPC') for setting aside the judgement dated 15.05.2018 (hereafter "**impugned judgement**") passed by the learned Special Judge (hereafter "**Trial Court**") (NDPS) North District, Rohini Courts, Delhi.

2. By the impugned judgement, the learned Trial Court acquitted the respondent in Sessions Case No. 59204/2016, arising out of FIR No. 396/2016 dated 22.05.2016 registered under Sections 21/61/85 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('**NDPS Act**').

3. Brief facts of the case are that on 22.05.2016, when SI Anand along with Ct. Vinay and Ct. Deepak were on patrolling duty at Kabristaan Road, JJ Colony, Bawana, at around 7:15 pm they received a secret information that the respondent, who used



to supply 'smack' in JJ Colony, had gone to purchase the same and was to arrive at A-Block stand JJ Colony.

4. It is alleged that at about 7:55 pm, the respondent was seen coming from the JJ Colony side. The respondent was apprehended and searched, which led to the recovery of a polythene containing 53gms of smack.

5. The chargesheet was filed in the present case and charges were framed against the respondent for the offence punishable under Section 21 of the NDPS Act.

6. The prosecution examined 10 witnesses, namely—Ct. Vikas as PW1, Ct. Vinay as PW 2, Ct. Deepak as PW 3, ASI Jasmer as PW4, ASI Jagdish as PW5, Inspector Jai Prakash as PW6, ASI Ram Kishan as PW7, SI Anand Singh as PW8, HC Rajpal as PW9 and ASI Ramesh Chand as PW10.

7. By the impugned judgement, the learned Trial Court, while acquitting the respondent, noted that the case of the prosecution suffered from multiple inconsistencies and contradictions in the testimonies of the official witnesses. It was further observed that apart from the complete absence of public witnesses, a perusal of the testimonies of the witnesses reveals that no sincere efforts were made to secure the presence of independent witnesses during the course of the raid.

8. Aggrieved by the impugned judgement, the State has preferred the present petition, seeking to set aside the acquittal of the respondent.

9. The learned Additional Public Prosecutor ('**APP**') submits that the learned Trial Court failed to appreciate the testimony of PW2 and PW3, which are clear and categorical with regard to the recovery of contraband, and that nothing has come on record to



indicate false implication of the respondent in the present case.

10. She submits that the contradictions are minor in nature and that the evidence proving recovery from the accused cannot be ignored. She contends that hyper technicalities ought not to defeat the course of justice in cases of serious offences under the NDPS Act.

11. She submits that all legal formalities were complied with by the officials and sincere efforts were also made to make an independent witness join the investigation but no one agreed to do so. [Ref: **Ajmer Singh v. State of Haryana : (2010) 3 SCC 746**]

12. 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 **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."

(emphasis supplied)

13. Suffice it to say that leave to appeal can be granted only if there is any perversity in the order of the learned Trial Court or a substantial error in the view taken by the Trial Court. Hence, an order of acquittal can only be set aside if the approach of the lower court is vitiated with the manifest illegality or the decision is perverse and the trial court has committed a manifest error of law and ignored material evidence on record.

14. After a detailed examination of the case, the evidence presented, and the legal principles governing the NDPS Act, it is evident that the impugned judgment acquitting the respondent is well-founded and does not warrant interference. The prosecution's case is fraught with procedural lapses, contradictions in witness testimonies, and failure to adhere to the mandatory safeguards enshrined in the NDPS Act, which are essential to ensure a fair trial and prevent abuse of power.

15. The learned Trial Court while appreciating the evidence of the prosecution, observed that PW2, PW3 and PW8, despite claiming to be present during the weighing of the contraband, their testimonies had material contradictions regarding the



weighing scale. The learned Trial Court was of the view that the testimonies of the prosecution witnesses casts a shadow upon whether they were actually present during the search and seizure, as deposed in their examination.

16. It was observed there are several inconsistencies in the statement of the official witnesses with regard to the vehicle used by the police officials when they were patrolling near the area of the alleged recovery. The contradictions regarding preparation of Notice under the Section 50 of the NDPS Act were also brought to light by the learned Trial Court, while perusing the testimony of PW3 who stated that the notice was prepared while sitting in the car, while PW8 deposed that the notice was prepared by him when he was standing at the bus stand.

17. As per the case of the prosecution, they saw the respondent coming from the JJ Colony side at around 7:55 pm. PW3 has deposed that the notice under Section 50 of the NDPS Act was prepared at 7:25 pm, which reveals that the said notice was infact prepared before the accused was arrested and was not served in accordance with the provisions of Section 50 of the NDPS Act.

18. No independent witness was joined by the prosecution even though the respondent was apprehended on the basis of secret information. It is observed that no independent witnesses were associated by the prosecution and no photography or videography was done by the prosecution in the present case despite the applicant being apprehended in a public place.

19. In the present case, secret information was received at about 7:15 pm on 22.05.2016. It is the case of the prosecution that the raiding team reached at Kabristaan Road, JJ Colony, Bawana and asked 2-3 people along the route to join the



investigation, however, all of them left stating their compulsions, without giving their names. It is stated in the FIR that no notice could be served to the said individuals due to lack of time. Subsequently, at around 7:55 PM, at the instance of the secret informer, the respondent was apprehended.

20. The Investigating Agency had sufficient time to prepare before the raid was conducted, not finding the public witness and lack of photography and videography in today's time casts a doubt to the credibility of the evidence.

21. In the present case, no notice under Section 100 (8) of the CrPC was given to any person on the refusal to support the Investigating Agency during the search procedure. The secret information was received more than half an hour prior to the co-accused being apprehended. It is peculiar that the Investigating Agency was unable to associate even a single public witness in the same time, especially since the prosecution had prior secret information and the applicant was apprehended at a public place.

22. This Court, in the case of **Ram Prakash v. State : 2014 SCC OnLine Del 6936**, while acquitting the accused person therein, had taken into account the shoddy investigation conducted by the prosecution on account of lack of videography and found the prosecution case to be unbelievable. The Court had observed as under:

“22.The Court can only observe that with so many technological advances where satellite imagery to the smallest degree of precision of any location in the world is available, the Delhi police can no longer be excused for not improving its methods of gathering and presenting evidence. Considering that the raid was going to take place in a busy place like the Old Delhi Railway Station parking lot, and in broad daylight, it should have been possible for the police to arrange for a videograph of the place or perhaps of the raid itself, if not photographs.



23. Also clearly there are CCTV cameras all over the place outside the Old Delhi Railway Station including its parking lot. There was no effort made to collect the CCTV footage of the relevant time. Not only would it have showed how the Appellant reached the spot with the three bags but also it could have been placed on record to show the raid placed on record to shown the raid as it took place.”

(emphasis supplied)

23. The Hon'ble Apex Court, way back in the year 2018 in **Shafhi Mohammad v. State of H.P. : (2018) 2 SCC 801**, after taking note of the technological advancements, had passed certain directions. The Hon'ble Apex Court had emphasised the role of audio-visual technology in enhancing the efficacy and transparency in the Police investigations.

24. The learned Trial Court was justified in concluding that the case of the prosecution suffered from significant inconsistencies. The respondent was arrested solely on the basis of the recovery allegedly made from him, in the absence of any independent witnesses. In such circumstances, when the evidence of the official witnesses is not reliable with regard to the procedure of recovery, the prosecution case becomes frail. The learned Trial Court cannot be faulted for concluding that the prosecution failed to prove the allegations against the respondent beyond reasonable doubt.

25. For the foregoing reasons, it is evident that the learned Trial Court's decision to acquit the respondent is sound, reasoned, and based on correct appreciation of both the facts and the law. The procedural safeguards under the NDPS Act were not followed, creating significant doubt about the legality of the search and seizure. Additionally, the contradictions in the testimonies of the prosecution witnesses and the lack of



independent corroboration further weaken the case.

26. In the absence of any compelling reason, this Court finds no reasons to interfere with the impugned judgment and grant leave to appeal in the present case.

27. The leave petition is dismissed in the aforesaid terms.

AMIT MAHAJAN, J

AUGUST 5, 2025