IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No.259 of 2023
Reserved on: 26.10.2026
Date of Decision: 20.11.2026

Sher Singh **....Appellant**

Versus

State of H.P. **....Respondents**

Coram
Hon'ble Mr Justice Rakesh Kainthla, Judge.
Whether approved for reporting? No.

For the Appellant	**:**	**Mr Prikshit Rathour, Advocate.**
For the Respondents	**:**	**Mr Ajit Sharma, Deputy Advocate General.**

Rakesh Kainthla, Judge.

The present appeal is directed against the judgment of conviction and order of sentence dated 23.05.2023, passed by learned Special Judge, Sundernagar, District Mandi, H.P. (learned trial Court) vide which the appellant (accused before learned trial Court) was convicted of the commission of an offence punishable under Section 20 of Narcotic Drugs and Psychotropic Substances Act (NDPS Act) and was sentenced to undergo rigorous imprisonment for 8 years, pay a fine of ₹50,000/-, and in default of payment of fine to undergo

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rigorous imprisonment for 6 months for the commission of the aforesaid offence. (*The parties shall hereinafter be referred to in the same manner as they were arrayed before the learned trial Court for convenience*).

2. Briefly stated, the facts giving rise to the present appeal are that the police presented a challan before the learned trial Court against the accused for the commission of an offence punishable under Section 20 of the NDPS Act. It was asserted that ASI Trilok Chand (PW9), ASI Sandeep Kumar (PW4), Constable Dina Nath (PW7), Constable Chet Ram, Constable Yog Raj, and LC Hemlata had gone for patrolling in the official vehicle bearing registration No. HP-31B-0190, being driven by Hans Raj, on 14.01.2014. They had set up a Nakka at Naresh Chowk. A Maruti car bearing registration No. CH-01B-1236 came to the spot at about 5:45 PM. The police signalled the driver to stop the car. The driver identified himself as Sher Singh (the accused). The driver appeared to be frightened. ASI Trilok Chand asked him to get the car checked, but he prevaricated. Bhagi Rath (PW11) came to the spot in the meantime, and the police joined him as a witness. The police searched the car in the presence of the witnesses and the accused. A sky-blue carry bag (Ext. P2)

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was found on the foot space on the front seat. The bag was opened and was found to contain a paper packet having charas in it. The police weighed the charas and found its weight to be 850 grams. The charas was put in the paper packet, and the paper packet was put in the carry bag in the same manner in which they were recovered. The carry bag was put in a cloth parcel (Ext. P1), and the parcel was sealed with six seals of seal impression 'V'. NCB-1 form (Ext. PW8/C) was filled in triplicate, and seal impression 'V' was put on the form. Specimen seal impression (Ext. PW4/C) was taken on a separate piece of cloth, and the seal was handed over to ASI Sandeep Kumar after use. The case property, vehicle, and the documents were seized vide memo (Ext. PW4/A). ASI Trilok Chand prepared a rukka (Ext. PW9/A) and sent it to the Police Station where FIR (Ext. PW10/A) was registered. ASI Trilok Chand investigated the matter. He prepared the site plan (Ext. PW9/B) and recorded the statements of witnesses as per their version. He arrested the accused vide memo (Ext. PW4/D). He produced the case property, the case file, and the accused before Binny Minhas (PW10), who resealed the parcel with three seals of seal impression 'H', filled column Nos. 9 to 11 of NCB-1 form, put the seal impression 'H' on the

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NCB-1 form, obtained specimen seal impression 'H' on a separate piece of cloth (Ext. PW10/C) and issued a resealing certificate (Ext. PW10/D). He handed over the case property, sample seals 'V' and 'H', NCB-1 form, and other documents to MHC Satya Prakash (PW8), who made an entry at Serial No. 273 of the Malkhana register (Ext. PW8/A) and deposited the case property in the Malkhana. Special report (Ext. PW2/A) was prepared and was handed over to Kulbhushan Verma (PW5), who made an endorsement and handed it over to his Reader, Constable Ram Lal (PW2), who made an entry in the register (Ext. PW2/B) and retained the special report on record. Satya Prakash (PW8) handed over the case property, documents, and sample seal to HHC Ashok Kumar (PW6) with a direction to carry them to FSL Junga vide RC No. 4/2014 (Ext. PW8/B). HHC Ashok Kumar deposited all the articles in safe condition at SFSL, Junga and handed over the receipt to Satya Prakash on his return. The result of analysis (Ext. PX) was issued, stating that the weight of the exhibit was found to be 840 grams, and the quantity of purified resin in it was 29.96% w/w. The exhibit was an extract of cannabis and a sample of charas. The statements of witnesses were recorded as per their version, and after the completion of

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the investigation, the challan was prepared and presented before the learned trial Court.

3. The learned trial Court charged the accused with the commission of an offence punishable under Section 20 of the NDPS Act, to which he pleaded not guilty and claimed to be tried.

4. The prosecution examined 11 witnesses to prove its case. HHC Nand Lal (PW1) and Constable Sudeep Kumar (PW3) proved the entry in the daily diary. HC Ram Lal (PW2) was posted as a Reader to SDPO Sundernagar, to whom the special report was handed over. ASI Sandeep Kumar (PW4) and HC Dina Nath (PW7) are the official witnesses to the recovery. Kulbhushan Verma (PW5) was working as SDPO, to whom the special report was handed over. HHC Ashok Kumar (PW6) carried the case property to the FSL Junga. Satya Prakash (PW8) was working as MHC, with whom the case property was deposited. Trilok Chand (PW9) effected the recovery and investigated the matter. Binny Minhas (PW10) was working as SHO, who had resealed the case property. Bhagi Rath (PW11) is an independent witness who has not supported the prosecution case.

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5. The accused, in his statement recorded under Section 313 of the Code of Criminal Procedure (CrPC), admitted that the police had set up a naka at Naresh Chowk on 14.01.2014. He stated that he was coming from BSL Colony towards Naresh Chowk in the vehicle bearing registration No. CH-01B-1236, and he was stopped by the police. He denied the rest of the prosecution case. He stated that he had put his signature on the documents under the pressure of the police. He claimed that he was innocent. He did not produce any evidence in his defence.

6. Learned trial Court held that the statements of official witnesses corroborated each other in material particulars. There was nothing in their cross-examination to show that they were deposing falsely or that they had any motive to falsely implicate the accused. The mere fact that independent witnesses had not supported the prosecution case was not sufficient to discard it. The minor contradictions in the statements of official witnesses could occur with the passage of time and were not significant. The integrity of the case property was duly proved. The prosecution had proved its case beyond reasonable doubt; hence, the learned trial Court convicted and sentenced the accused as aforesaid.

7. Being aggrieved by the judgment and order passed by the learned trial Court, the accused has filed the present appeal asserting that the learned trial Court erred in convicting and sentencing the accused. Bhagi Rath (PW11) had not supported the prosecution case, and it was sufficient to make the prosecution case doubtful. The statements of official witnesses contradicted each other, and the learned trial Court erred in holding that the contradictions were minor and insignificant. As per the prosecution, a sky-blue carry bag was recovered on the spot, whereas a green carry bag was found in the FSL. The police had not complied with Section 42 of the NDPS Act. The conscious and exclusive possession of the accused was not proved. Therefore, it was prayed that the present appeal be allowed and the judgment and order passed by the learned trial Court be set aside.

8. I have heard Mr Prikshit Rathore, learned counsel for the appellant/accused, and Mr Ajit Sharma, learned Deputy Advocate General, for the respondent/State.

9. Mr Prikshit Rathore, learned counsel for the appellant/accused, submitted that the learned trial Court erred

in convicting and sentencing the accused. The statements of prosecution witnesses contradicted each other on material aspects, and the learned trial Court erred in holding that the contradictions were not significant. The police had joined only one independent witness, Bhagi Rath (PW11), who has not supported the prosecution case. The incident had taken place at a public place, but no other witness was joined. The police failed to comply with Section 42 of the NDPS Act, which is mandatory. The integrity of the case property was not established because, as per the prosecution, a sky-blue carry bag was found on the spot, whereas a green carry bag was sent to the SFSL. The learned trial Court had imposed an excessive sentence. Therefore, he prayed that the present appeal be allowed and the judgment and order passed by the learned trial Court be set aside.

10. Mr Ajit Sharma, learned Deputy Advocate General, for the respondent/State, submitted that the statements of the official witnesses corroborated each other on material particulars. Minor contradictions in the statements were not sufficient to discard them, as the contradictions can occur over time because of failure of memory. The mere fact that the

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independent witness had not supported the prosecution case or that no independent witness was associated is no reason to discard the prosecution version. The integrity of the case property was duly proved, and a slight discrepancy in the colour is not sufficient to discard the prosecution version. There is no infirmity in the judgment and order passed by the learned trial Court; hence, he prayed that the present appeal be dismissed.

11. I have given considerable thought to the submissions made at the bar and have gone through the records carefully.

12. Bhagi Rath (PW11) stated that the police had told him about the recovery of charas, and asked him to put his signatures on some documents. He was permitted to be cross-examined by the learned Public Prosecutor. He denied that the police searched the vehicle bearing registration No. CH-01B-1236 in his presence and recovered a blue carry bag containing 850 grams of charas from the car. He denied that the police put the charas in a cloth parcel and seized it. He denied the previous statement (Ext. PW9/C). He denied that he was making a false statement to save the accused.

13. It was submitted that the testimony of this witness has made the prosecution case highly suspect. This submission cannot be accepted. It was laid down by this Court in ***Budh Ram Versus State of H.P. 2020 Cri. L.J. 4254;*** the prosecution's version cannot be discarded because the independent witnesses had not supported it. It was observed:

> Though the independent witnesses, PW-1 Rajiv Kumar and PW-2 Hira Lal, were declared hostile and were cross-examined, the law in respect of appreciating the testimonies of such witnesses is well settled. Hon'ble Apex Court, in ***Sudru versus State of Chhattisgarh, (2019) 8 SCC 333***, relying upon ***Bhajju versus State of M.P., 2010 4 SCC 327***, has again reiterated the well-settled principle that evidence of a hostile witness can be relied upon by the prosecution version. Merely because a witness has turned hostile, the same does not render his evidence or testimony inadmissible in a trial, and such a conviction can be based upon such testimony if it is corroborated by other reliable evidence.
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> In a case titled ***Raja and Others versus State of Karnataka (2016) 10 SCC 506***, the Apex Court observed that the evidence of a hostile witness cannot be altogether discarded, and as such, it is open for the Court to rely on the dependable part of such evidence which stands duly corroborated by other reliable evidence on record.
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> In a case titled ***Selvaraj @ Chinnapaiyan versus State represented by Inspector of Police, (2015) 2 SCC 662***, the Apex Court has observed that in a situation/case wherein the witness deposes falsely in his/her cross-examination, that itself is not sufficient to outrightly discard his/her testimony in examination-in-chief. The Court held that a conviction can be recorded believing the testimony of

such a witness given in examination-in-chief; however, such evidence is required to be examined with great caution.

In ***Ashok alias Dangra Jaiswal versus State of Madhya Pradesh, (2011) 5 SCC 123***, it has been held as under: -

> "The seizure witness turning hostile may not be very significant by itself, as it is not an uncommon phenomenon in criminal trials, particularly in cases relating to the NDPS Act."

14. ASI Trilok Chand (PW9) specifically stated that he had recorded the statement of witness Bhagi Rath (Ext. PW9/C) as per his deposition. It was mentioned in the statement (Ext. PW9/C) that the police had searched the Maruti car bearing registration No. CH-01B-1236 in the presence of this witness and recovered a sky-blue carry bag containing 850 grams of charas. Therefore, he is shown to have made two inconsistent statements: one before the police that recovery of charas was effected in his presence from the car, and the other before the Court that no such recovery was effected in his presence. Both these statements cannot stand together, and his credit has been impeached under Section 155(3) of the Indian Evidence Act. It was laid down by the Hon'ble Supreme Court in ***Sat Paul v. Delhi Admn., (1976) 1 SCC 727*** that where a witness has been thoroughly discredited by confronting him with the previous

statement, his statement cannot be relied upon. However, when he is confronted with some portions of the previous statement, his credibility is shaken to that extent, and the rest of the statement can be relied upon. It was observed:

> "52. From the above conspectus, it emerges clearly that even in a criminal prosecution, when a witness is cross-examined and contradicted with the leave of the court by the party calling him, his evidence cannot, as a matter of law, be treated as washed off the record altogether. It is for the Judge of fact to consider in each case whether, as a result of such cross-examination and contradiction, the witness stands thoroughly discredited or can still be believed regarding a part of his testimony. If the Judge finds that in the process, the credit of the witness has not been completely shaken, he may, after reading and considering the evidence of the witness, as a whole, with due caution and care, accept, in the light of the other evidence on the record, that part of his testimony which he finds to be creditworthy and act upon it. If in a given case, the whole of the testimony of the witness is impugned, and in the process, the witness stands squarely and totally discredited, the Judge should, as a matter of prudence, discard his evidence in toto."

15. This Court also took a similar view in ***Ian Stilman versus State 2002(2) ShimLC 16,*** wherein it was observed:

> "12. It is now well settled that when a witness who has been called by the prosecution is permitted to be cross-examined on behalf of the prosecution, such a witness loses credibility and cannot be relied upon by the defence. We find support for the view we have taken from the various authorities of the Apex Court. In ***Jagir Singh v. The***

State (Delhi Administration), AIR 1975 Supreme Court 1400, the Apex Court observed:

> "It is now well settled that when a witness, who has been called by the prosecution, is permitted to be cross-examined on behalf of the prosecution, the result of that course being adopted is to discredit this witness altogether and not merely to get rid of a part of his testimony.

16. It was laid down by the Hon'ble Supreme Court in ***Mahesh v. State of Maharashtra*, *(2008) 13 SCC 271; (2009) 3 SCC (Cri) 543; 2008 SCC OnLine SC 656*** that where the witness had made an inconsistent statement before the police, his testimony before the Court cannot be relied upon. It was observed at page 289:

> "**49.** It is the evidence of PW PSI Dhimole that portion marked "A" appearing in the statement of PW 1 was recorded by him correctly. The defence has not brought on record any evidence to show why the investigating officer had recorded the portion marked " A " of the statement of PW 1 incorrectly. If PW 1, the maker of the complaint, has chosen not to corroborate his earlier statement made in the complaint and recorded during investigation, the conduct of such a witness, for no plausible and tenable reasons pointed out on record, will give rise to doubt as to the testimony of the investigating officer, who had sincerely and honestly conducted the entire investigation of the case. In these circumstances, we are of the view that PW 1 has tried to conceal the material truth from the Court with the sole purpose of shielding and protecting the appellant for reasons best known to the witness and therefore, no benefit could be

> given to the appellant for unfavourable conduct of this witness to the prosecution."

17. It was held in ***Paramjeet Singh v. State of Uttarakhand*, *(2010) 10 SCC 439: 2010 SCC OnLine SC 1087*** that where a witness makes different statements at different times, he does not have any regard for truth, and his testimony should be seen with due care and caution. It was observed at page 448:

> **"16.** The fact that the witness was declared hostile at the instance of the Public Prosecutor and he was allowed to cross-examine the witness furnishes no justification for rejecting en bloc the evidence of the witness. However, the court has to be very careful, as prima facie, a witness who makes different statements at different times has no regard for the truth. His evidence has to be read and considered as a whole with a view to finding out whether any weight should be attached to it. The court should be slow to act on the testimony of such a witness; normally, it should look for corroboration to his testimony. (Vide ***State of Rajasthan v.Bhawani[(2003) 7 SCC 291: 2003 SCC (Cri) 1628]***.)

18. Therefore, the learned Trial Court had rightly held that the prosecution's version cannot be discarded because Bhagi Rath has not supported it.

19. Trilok Chand (PW9) supported the prosecution version in his examination-in-chief. He stated that he, ASI Sandeep Kumar, Constable Manoj Kumar, Constable Chet Ram, LHC Dina Nath, Constable Yog Raj, and LC Hemlata had set up a

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Naka at Naresh Chowk, Sundernagar. A Maruti car bearing registration No. CH-01B-1236 came from Mandi at about 5:45 PM. He signalled the car to stop. The driver identified himself as Sher Singh, present in the Court as an accused. Sher Singh appeared to be scared. Witness Bhagi Rath was joined as a witness, and the search of the car was conducted. A sky-blue carry bag was found on the foot space of the front seat. He opened the bag and found a paper bag containing black sticks in it. He checked the sticks and found them to be charas. The charas was weighed, and its weight was found to be 850 grams. The charas was put in the packet, the packet was put in the carry bag, and the carry bag was put in a cloth parcel in the same manner in which it was recovered. The parcel was sealed with six seals of seal impression 'V'. He filled NCB-1 form (Ext. PW8/C) and put the seal impression 'V' on the NCB-1 form. He obtained the seal impression on a separate piece of cloth (Ext. PW4/C) and handed over the seal to ASI Sandeep Kumar after use. He seized the charas, car, and the documents vide memo (Ext. PW4/C). He prepared a rukka and sent it to the police station and conducted the investigation on the spot.

20. He stated in his cross-examination that the police party had gone to the spot through the road passing in front of BBMB Hospital. It took them 10 minutes to reach Naresh Chowk. They had not set up any barricades on the road. He was standing on the left side of the road, coming from Mandi to Sundernagar, and some of the police officials were standing on the other side of the road. They went to the spot in an official vehicle. He was sitting on the front seat, and other police officials were sitting in the rear. He admitted that Naresh Chowk is a densely populated area where vehicles ply day and night. Bhagirath had come to the spot on his own. No other person from the locality had visited the spot. He had signalled the accused to stop the vehicle. The accused did not try to escape from the spot and stopped the vehicle on the side of the road. The accused was alone in the vehicle. Rukka was sent to the police station at about 6:45 PM. LHC Dina Nath returned to the spot after about 45 minutes. He had not completed the investigation at the time of Dina Nath's return. He left the spot after 9:00 PM. He denied that no Nakka was set up and no recovery was effected from the accused.

21. ASI Sandeep Kumar (PW4) also supported the prosecution version in his examination-in-chief, which is not

being reproduced to avoid prolixity and repetition. He stated in his cross-examination that he had gone to the spot with Trilok Chand, Constable Manoj Kumar, Constable Dina Nath, and Constable Hans Raj in an official vehicle. They reached the spot at about 4:10 PM. ASI Trilok Chand had signalled the driver to stop the vehicle. ASI Trilok Chand had also searched the vehicle. The accused was standing outside the vehicle with other police officials at the time of the search. Seizure memo (Ext. PW4/A) was prepared first. NCB-1 form was filled at about 6:15 PM after preparing the seizure memo. He denied that the parcels and seizure memo were prepared at the police station or that he was making a false statement.

22. HC Dina Nath (PW7) also supported the prosecution version in his examination-in-chief, which is not being reproduced to avoid repetition. He stated in his cross-examination that Constable Hans Raj was driving the official vehicle. ASI Trilok Chand and Sandeep Kumar were sitting in the front seat, whereas the other police officials were sitting on the rear seat of the vehicle. He volunteered to say that the vehicle had a long seat in the cabin. The police party went directly to the spot. He did not remember whether the police had put up

barricades or the rope to stop the vehicle. The driver did not try to run away from the spot. He admitted that Naresh Chowk is densely populated. He did not remember whether the Investigating Officer had sent anyone to bring an independent witness from the nearby houses and shops. Investigating Officer had prepared the documents himself. He did not remember what was the first document prepared by the Investigating officer. The case property was sealed in his presence. Rukka was handed over to him at about 6:45 PM, and he returned to the spot with the case file after about 45 minutes. He denied that he had not carried any rukka or brought any case file to the spot. He denied that he was making a false statement.

23. It was submitted that the place of the incident was heavily populated. No efforts were made to join any independent person, which makes the prosecution case doubtful. This submission cannot be accepted. It was laid down by the Hon'ble Supreme Court of India in ***Raveen Kumar v. State of H.P., (2021) 12 SCC 557: (2023) 2 SCC (Cri) 230: 2020 SCC OnLine SC 869*** that non-association of the independent witnesses will not be fatal to the prosecution case. However, the Court will have to scrutinise the

statements of prosecution witnesses carefully. It was observed on page 566:

> "(C) ***Need for independent witnesses***
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> **19.** It would be gainsaid that the lack of independent witnesses is not fatal to the prosecution's case. [***Kalpnath Rai v. State, (1997) 8 SCC 732: 1998 SCC (Cri) 134: AIR 1998 SC 201***, para 9] However, such omissions cast an added duty on courts to adopt a greater degree of care while scrutinising the testimonies of the police officers, which, if found reliable, can form the basis of a successful conviction."

24. This position was reiterated in ***Rizwan Khan v. State of Chhattisgarh, (2020) 9 SCC 627: 2020 SCC OnLine SC 730,*** wherein it was observed at page 633:

> "**12.** It is settled law that the testimony of the official witnesses cannot be rejected on the grounds of non-corroboration by independent witnesses. As observed and held by this Court in a catena of decisions, examination of independent witnesses is not an indispensable requirement and such non-examination is not necessarily fatal to the prosecution's case [see ***Pardeep Kumar [State of H.P. v. Pardeep Kumar, (2018) 13 SCC 808: (2019) 1 SCC (Cri) 420]***].
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> **13.** In the recent decision in ***Surinder Kumar v. State of Punjab [Surinder Kumar v. State of Punjab, (2020) 2 SCC 563: (2020) 1 SCC (Cri) 767]***, while considering a similar submission regarding the non-examination of independent witnesses, while dealing with the offence under the NDPS Act, in paras 15 and 16, this Court observed and held as under: (SCC p. 568)
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> > "*15.* The judgment in ***Jarnail Singh v. State of Punjab [Jarnail Singh v. State of Punjab, (2011) 3 SCC 521: (2011)***

> ***1 SCC (Cri) 1191]***, relied on by the counsel for the respondent State, also supports the case of the prosecution. In the aforesaid judgment, this Court has held that merely because the prosecution did not examine any independent witness would not necessarily lead to a conclusion that the accused was falsely implicated. The evidence of official witnesses cannot be distrusted and disbelieved merely on account of their official status.
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> *16*. In ***State (NCT of Delhi) v. Sunil [State (NCT of Delhi) v. Sunil, (2001) 1 SCC 652: 2001 SCC (Cri) 248]***, it was held as under: (SCC p. 655)
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> > 'It is an archaic notion that actions of the police officer should be approached with initial distrust. It is time now to start placing at least initial trust in the actions and the documents made by the police. At any rate, the court cannot start with the presumption that the police records are untrustworthy. As a proposition of law, the presumption should be the other way around. That official acts of the police have been regularly performed is a wise principle of presumption and recognised even by the legislature.'

25. Similar is the judgment of this Court in ***Balwinder Singh & Anr. Vs State of H.P., 2020 Criminal L.J. 1684***, wherein it was held: -

> "3. (iii) Learned defence counsel contended that in the instant case, no independent witness was associated by the Investigating Officer; therefore, the prosecution case cannot be said to have been proved by it in accordance with the provisions of the Act. Learned defence counsel, in support of his contention, relied upon the titled ***Krishan Chand versus State of H.P.,2017 4 CriCC 531***
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> 3(iii)(d). It is now well settled that a prosecution case

> cannot be disbelieved only because the independent witnesses were not associated."

26. This position was reiterated in ***Kallu Khan v. State of Rajasthan, (2021) 19 SCC 197: 2021 SCC OnLine SC 1223***, wherein it was held at page 204: -

> "17. The issue raised regarding conviction solely relying upon the testimony of police witnesses, without procuring any independent witness, recorded by the two courts, has also been dealt with by this Court in ***Surinder Kumar [Surinder Kumar v. State of Punjab, (2020) 2 SCC 563 : (2020) 1 SCC (Cri) 767]*** holding that merely because independent witnesses were not examined, the conclusion could not be drawn that the accused was falsely implicated. Therefore, the said issue is also well settled and, in particular, looking at the facts of the present case, when the conduct of the accused was found suspicious, and a chance recovery from the vehicle used by him is made from a public place and proved beyond a reasonable doubt, the appellant cannot avail any benefit on this issue. In our view, the concurrent findings of the courts do not call for interference."

27. A similar view was taken in ***Kehar Singh v. State of H.P., 2024 SCC OnLine HP 2825,*** wherein it was observed:

> **16.** As regards non-association of the independent witnesses, it is now well settled that non-association of the independent witnesses or non-support of the prosecution version by independent witnesses itself is not a ground for acquittal of the Appellants/accused. It is also well-settled that the testimonies of the official witnesses, including police officials, carry the same evidentiary value as the testimony of any other person. The only difference is that the Court has to be most circumspect while appreciating the evidence of the official witnesses

to rule out the possibility of false implication of the accused, especially when such a plea is specifically raised by the defence. Therefore, while scrutinising the evidence of the official witnesses, in cases where independent witnesses are not associated, contradictions and inconsistencies in the testimonies of such witnesses are required to be taken into account and given due weight unless satisfactorily explained. However, the contradiction must be a material and not trivial one, which alone would assume significance.

17. Evidently, this is a case of chance recovery; therefore, the police party was under no obligation to join independent witnesses while going on patrolling duty, and the association of any person after effecting the recovery would be meaningless.

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19. A similar reiteration of law can be found in the judgment rendered by the learned Single Judge of this Court in ***Avtar @ Tarri v. State of H.P., (2022) Supreme HP 345***, wherein it was observed as under: —

> "24. As regards the second leg of the argument raised by learned counsel for the appellant, it cannot be said to be of much relevance in the given facts of the case. The fact situation was that the police party had laid the 'nakka' and immediately thereafter had spotted the appellant at some distance, who got perplexed and started walking back. The conduct of the appellant was sufficient to raise suspicion in the minds of police officials. At that stage, had the appellant not been apprehended immediately, the police could have lost the opportunity to recover the contraband. Looking from another angle, the relevance of independent witnesses could be there when such witnesses were immediately available or had already been associated at the place of 'nakka'. These, however, are not mandatory conditions and will always depend on the facts of each and every case. The reason is that once

> the person is apprehended and is with the police, a subsequent association of independent witnesses may not be of much help. In such events, the manipulation, if any, cannot be ruled out."
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> **22.** A similar reiteration of law can be found in a very recent judgment of the Coordinate Bench of this Court in ***Cr. A. No. 202 of 2020, titled Dillo Begum v. State of H.P., decided on 27.03.2024***."

28. Thus, the prosecution version cannot be doubted because the second independent witness was not associated during the investigation.

29. SI Trilok Chand (PW9) stated that he was sitting on the front seat by the side of the driver and other police officials were in the rear. HC Dina Nath (PW7), on the other hand, stated that ASI Trilok Chand and Sandeep Kumar were sitting on the front seat, whereas the other police officials were sitting on the rear seat of the vehicle. It was submitted that this contradiction made the prosecution's case doubtful. This submission cannot be accepted. Hon'ble Supreme Court held in ***Rajan v. State of Haryana, 2025 SCC OnLine SC 1952,*** that the discrepancies in the statements of the witnesses are not sufficient to discard the prosecution case unless they shake the core of the testimonies. It was observed: -

"**32.** The appreciation of ocular evidence is a hard task. There is no fixed or straitjacket formula for the appreciation of the ocular evidence. The judicially evolved principles for the appreciation of ocular evidence in a criminal case can be enumerated as follows:

> *"I. While appreciating the evidence of a witness, the approach must be whether the evidence of the witness, read as a whole, appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the Court to scrutinise the evidence more particularly, keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief.*
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> *II. If the Court before whom the witness gives evidence had the opportunity to form the opinion about the general tenor of evidence given by the witness, the appellate court, which had not this benefit, will have to attach due weight to the appreciation of evidence by the trial court and unless there are reasons weighty and formidable it would not be proper to reject the evidence on the ground of minor variations or infirmities in the matter of trivial details.*
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> *III. When an eyewitness is examined at length, it is quite possible for him to make some discrepancies. But courts should bear in mind that it is only when discrepancies in the evidence of a witness are so incompatible with the credibility of his version that the court is justified in jettisoning his evidence.*
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> *IV. Minor discrepancies on trivial matters not touching the core of the case, a hyper-technical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer, not going*

to the root of the matter, would not ordinarily permit rejection of the evidence as a whole.

V. Too serious a view to be adopted on mere variations falling in the narration of an incident (either as between the evidence of two witnesses or as between two statements of the same witness) is an unrealistic approach for judicial scrutiny.

VI. By and large, a witness cannot be expected to possess a photographic memory and to recall the details of an incident. It is not as if a videotape is replayed on the mental screen.

VII. Ordinarily, it so happens that a witness is overtaken by events. The witness could not have anticipated the occurrence, which so often has an element of surprise. The mental faculties, therefore, cannot be expected to be attuned to absorb the details.

VIII. The powers of observation differ from person to person. What one may notice, another may not. An object or movement might emboss its image on one person's mind, whereas it might go unnoticed on the part of another.

IX. By and large, people cannot accurately recall a conversation and reproduce the very words used by them or heard by them. They can only recall the main purport of the conversation. It is unrealistic to expect a witness to be a human tape recorder.

X. In regard to the exact time of an incident, or the time duration of an occurrence, usually, people make their estimates by guesswork on the spur of the moment at the time of interrogation. And one cannot expect people to make very precise or reliable estimates in such matters. Again, it depends on the time sense of individuals, which varies from person to person.

XI. Ordinarily, a witness cannot be expected to recall accurately the sequence of events that take place in rapid succession or in a short time span. A witness is

> *liable to get confused or mixed up when interrogated later on.*
>
> *XII. A witness, though wholly truthful, is liable to be overawed by the court atmosphere and the piercing cross-examination by counsel and, out of nervousness, mix up facts, get confused regarding the sequence of events, or fill in details from imagination on the spur of the moment. The subconscious mind of the witness sometimes operates on account of the fear of looking foolish or being disbelieved, though the witness is giving a truthful and honest account of the occurrence witnessed by him.*
>
> *XIII. A former statement, though seemingly inconsistent with the evidence, need not necessarily be sufficient to amount to a contradiction. Unless the former statement has the potency to discredit the latter statement, even if the latter statement is at variance with the former to some extent, it would not be helpful to contradict that witness." [See* ***Bharwada Bhoginbhai Hirjibhai v. State of Gujarat (1983) 3 SCC 217: 1983 Cri LJ 1096: (AIR 1983 SC 753) Leela Ram v. State of Haryana (1999) 9 SCC 525: AIR 1999 SC 3717*** and ***Tahsildar Singh v. State of UP (AIR 1959 SC 1012)"***

30. It was laid down by the Hon'ble Supreme Court in ***Karan Singh v. State of U.P., (2022) 6 SCC 52: (2022) 2 SCC (Cri) 479: 2022 SCC OnLine SC 253*** that the Court has to examine the evidence of the witnesses to find out whether it has a ring of truth or not. The Court should not give undue importance to omissions, contradictions and discrepancies which do not go to the heart of the matter. It was observed at page 60: -

"**38.** From the evidence of Mahender Singh, PW 4, it appears that no specific question was put to him as to whether the appellant was present at the place of occurrence or not. This Court in ***Rohtash Kumar v. State of Haryana [Rohtash Kumar v. State of Haryana, (2013) 14 SCC 434: (2014) 4 SCC (Cri) 238]*** held: (SCC p. 446, para 24)

> "*24.* ... The court has to examine whether the evidence read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the court to scrutinise the evidence more, particularly keeping in view the deficiencies, drawbacks, and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witnesses and whether the earlier evaluation of the evidence is shaken, as to render it unworthy of belief. Thus, the court is not supposed to give undue importance to omissions, contradictions and discrepancies which do not go to the heart of the matter and shake the basic version of the prosecution witness."

39. Referring to ***Narayan Chetanram Chaudhary v. State of Maharashtra [Narayan Chetanram Chaudhary v. State of Maharashtra, (2000) 8 SCC 457: 2000 SCC (Cri) 1546]***, Mr Tyagi argued that minor discrepancies caused by lapses in memory were acceptable; contradictions were not. In this case, there was no contradiction, only minor discrepancies.

40. In ***Kuriya v. State of Rajasthan [Kuriya v. State of Rajasthan, (2012) 10 SCC 433: (2013) 1 SCC (Cri) 202]***, this Court held: (SCC pp. 447-48, paras 30-32)

> "*30.* This Court has repeatedly taken the view that the discrepancies or improvements which do not materially affect the case of the prosecution and are insignificant cannot be made the basis for doubting the case of the prosecution. The courts may not concentrate too much on such discrepancies or

improvements. The purpose is to primarily and clearly sift the chaff from the grain and find out the truth from the testimony of the witnesses. Where it does not affect the core of the prosecution case, such a discrepancy should not be attached undue significance. The normal course of human conduct would be that while narrating a particular incident, there may occur minor discrepancies. Such discrepancies may even, in law, render the depositions inadmissible. The improvements or variations must essentially relate to the material particulars of the prosecution case. The alleged improvements and variations must be shown with respect to the material particulars of the case and the occurrence. Every such improvement, not directly related to the occurrence, is not a ground to doubt the testimony of a witness. The credibility of a definite circumstance of the prosecution case cannot be weakened with reference to such minor or insignificant improvements. Reference in this regard can be made to the judgments of this Court in ***Kathi Bharat Vajsur v. State of Gujarat [Kathi Bharat Vajsur v. State of Gujarat, (2012) 5 SCC 724 : (2012) 2 SCC (Cri) 740], Narayan Chetanram Chaudhary v. State of Maharashtra [Narayan Chetanram Chaudhary v. State of Maharashtra, (2000) 8 SCC 457: 2000 SCC (Cri) 1546], Gura Singh v. State of Rajasthan [Gura Singh v. State of Rajasthan, (2001) 2 SCC 205: 2001 SCC (Cri) 323]*** and ***Sukhchain Singh v. State of Haryana [Sukhchain Singh v. State of Haryana, (2002) 5 SCC 100: 2002 SCC (Cri) 961]***.

31. What is to be seen next is whether the version presented in the Court was substantially similar to what was said during the investigation. It is only when exaggeration fundamentally changes the nature of the case that the Court has to consider whether the witness was stating the truth or not. [Ref. ***Sunil Kumar v. State (NCT of Delhi) [Sunil Kumar v. State (NCT of Delhi), (2003) 11 SCC 367: 2004 SCC (Cri) 1055]***].

> 32. These are variations which would not amount to any serious consequences. The Court has to accept the normal conduct of a person. The witness who is watching the murder of a person being brutally beaten by 15 people can hardly be expected to state a minute-by-minute description of the event. Everybody, and more particularly a person who is known to or is related to the deceased, would give all his attention to take steps to prevent the assault on the victim and then to make every effort to provide him with medical aid and inform the police. The statements which are recorded immediately upon the incident would have to be given a little leeway with regard to the statements being made and recorded with utmost exactitude. It is a settled principle of law that every improvement or variation cannot be treated as an attempt to falsely implicate the accused by the witness. The approach of the court has to be reasonable and practicable. Reference in this regard can be made to ***Ashok Kumar v. State of Haryana [Ashok Kumar v. State of Haryana, (2010) 12 SCC 350: (2011) 1 SCC (Cri) 266]*** and ***Shivlal v. State of Chhattisgarh [Shivlal v. State of Chhattisgarh, (2011) 9 SCC 561: (2011) 3 SCC (Cri) 777]***.

41. In ***Shyamal Ghosh v. State of W.B. [Shyamal Ghosh v. State of W.B., (2012) 7 SCC 646: (2012) 3 SCC (Cri) 685]***, this Court held: (SCC pp. 666-67, paras 46 & 49)

> "46. Then, it was argued that there are certain discrepancies and contradictions in the statements of the prosecution witnesses inasmuch as these witnesses have given different timings as to when they had seen the scuffling and strangulation of the deceased by the accused. ... Undoubtedly, some minor discrepancies or variations are traceable in the statements of these witnesses. But what the Court has to see is whether these variations are material and affect the case of the prosecution substantially. Every variation may not be enough to adversely affect the case of the prosecution.

***

49. It is a settled principle of law that the court should examine the statement of a witness in its entirety and read the said statement along with the statements of other witnesses in order to arrive at a rational conclusion. No statement of a witness can be read in part and/or in isolation. We are unable to see any material or serious contradiction in the statement of these witnesses which may give any advantage to the accused."

42. In ***Rohtash Kumar v. State of Haryana [Rohtash Kumar v. State of Haryana, (2013) 14 SCC 434: (2014) 4 SCC (Cri) 238]***, this Court held: (SCC p. 446, para 24)

"24. ... The court has to examine whether the evidence read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the court to scrutinise the evidence more, particularly keeping in view the deficiencies, drawbacks, and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witnesses and whether the earlier evaluation of the evidence is shaken, as to render it unworthy of belief. Thus, the court is not supposed to give undue importance to omissions, contradictions and discrepancies which do not go to the heart of the matter and shake the basic version of the prosecution witness."

31. Similar is the judgment in ***Anuj Singh v. State of Bihar, 2022 SCC OnLine SC 497: AIR 2022 SC 2817***, wherein it was observed:

"17. It is not disputed that there are minor contradictions with respect to the time of the occurrence or injuries attributed to the hand or foot, but the constant narrative

of the witnesses is that the appellants were present at the place of occurrence, armed with guns, and they caused the injury to informant PW-6. However, the testimony of a witness in a criminal trial cannot be discarded merely because of minor contradictions or omissions, as observed by this Court in ***Narayan Chetanram Chaudhary &Anr. Vs. State of Maharashtra, 2000 8 SCC 457***. This Court, while considering the issue of contradictions in the testimony while appreciating the evidence in a criminal trial, held that only contradictions in material particulars and not minor contradictions can be grounds to discredit the testimony of the witnesses. The relevant portion of para 42 of the judgment reads as under:

> "42. Only such omissions which amount to a contradiction in material particulars can be used to discredit the testimony of the witness. The omission in the police statement by itself would not necessarily render the testimony of the witness unreliable. When the version given by the witness in the court is different in material particulars from that disclosed in his earlier statements, the case of the prosecution becomes doubtful and not otherwise. Minor contradictions are bound to appear in the statements of truthful witnesses as memory sometimes plays false, and the sense of observation differs from person to person. The omissions in the earlier statement, if found to be of trivial details, as in the present case, would not cause any dent in the testimony of PW 2. Even if there is a contradiction in the statement of a witness on any material point, that is no ground to reject the whole of the testimony of such witness."

32. Therefore, in view of the binding precedents of the Hon'ble Supreme Court, the statements of the witnesses cannot be discarded due to omissions, contradictions, or discrepancies.

The Court must consider whether the discrepancies negatively affect the prosecution's case and whether they pertain to the core of the case rather than the details.

33. In the present case, the incident had taken place in the year 2014, whereas the statements of the eyewitnesses were recorded in the years 2018 and 2022. Thus, a considerable time had elapsed between the incident and the recording of the statements. Memories fail with time, and the contradictions were bound to come with time. The contradiction regarding the person occupying the front seat can occur due to failure of memory and will not make the prosecution’s case doubtful.

34. In any case, the accused admitted in his statement recorded under Section 313 of the CrPC that the police officials were present on the spot. Thus, the presence of police officials was not disputed by the accused, and any contradiction regarding the persons sitting on the front seat will be meaningless. Thus, not much advantage can be derived from this contradiction by the accused.

35. Trilok Chand (PW9) stated in his examination-in-chief that a Maruti car bearing registration No. CH-01V-1236

came on the spot. It was submitted that this is incorrect because, as per the prosecution, the accused was driving the car bearing registration No. CH-01B-1236, and the discrepancy in the registration number of the vehicle will make the prosecution's case suspect. This submission cannot be accepted. 'B' and 'V' are phonetically similar, and any person reducing the statement to writing can get confused by phonetic similarity. Further, the accused did not dispute his presence on the spot or that he was driving the car bearing registration No.CH-01B-1236 in his statement recorded under Section 313 of the CrPC. Thus, any discrepancy in the registration number of the vehicle will not make the prosecution case doubtful.

36. The statements of police officials are consistent. There is nothing in the cross-examination of the police officials that they were making false statements. The accused also admitted in his statement recorded under Section 313 of the CrPC that he had visited the spot in the car. Thus, the part of the statements of police officials regarding the presence of the police on the spot and arrival of the accused in a car on the spot is undisputed. Therefore, the learned Trial Court had rightly relied upon the testimonies of the police officials. It was laid

down by the Hon'ble Supreme Court in ***Kripal Singh v. State of Rajasthan*, *(2019) 5 SCC 646: (2019) 2 SCC (Cri) 680: 2019 SCC OnLine SC 207,*** that the testimonies of the police officials cannot be ignored because they are police officials. It was observed at page 656:

> **"21.** The submission of the learned Senior Counsel for the appellant that recovery has not been proved by any independent witness is of no substance for the reason that, in the absence of an independent witness to support the recovery, in substance cannot be ignored unless proved to the contrary. There is no such legal proposition that the evidence of police officials, unless supported by an independent witness, is unworthy of acceptance or that the evidence of police officials can be outrightly disregarded."

37. It was laid down by this Court in ***Budh Ram Versus State of H.P. 2020 Cri.L.J.4254*** that the testimonies of the police officials cannot be discarded on the ground that they belong to the police force. It was observed:

> "11. It is a settled proposition of law that the sole testimony of the police official, which, if otherwise, is reliable, trustworthy, cogent and duly corroborated by other admissible evidence, cannot be discarded only on the ground that he is a police official and may be interested in the success of the case. There is also no rule of law that lays down that no conviction can be recorded on the testimony of a police officer, even if such evidence is otherwise trustworthy. The rule of prudence may require more scrutiny of their evidence. Wherever the evidence of a police officer, after scrutiny, inspires

> confidence and is found to be trustworthy and reliable, it can form the basis of conviction, and the absence of some independent witness of the locality does not in any way affect the creditworthiness of the prosecution's case. No infirmity attaches to the testimony of the police officers merely because they belong to the police force."

38. Similar is the judgment in ***Karamjit Singh versus State,*** ***AIR 2003 S.C. 3011,*** wherein it was held:

> "The testimony of police personnel should be treated in the same manner as the testimony of any other witness, and there is no principle of law that, without corroboration by independent witnesses, their testimony cannot be relied upon. The presumption that a person acts honestly applies as much in favour of police personnel as of other persons, and it is not a proper judicial approach to distrust and suspect them without good grounds. It will all depend upon the facts and circumstances of each case, and no principle of general application can be laid down." (Emphasis supplied)

39. This position was reiterated in ***Sathyan v. State of Kerala, 2023 SCC OnLine SC 986,*** wherein it was observed:

> **22.** Conviction being based solely on the evidence of police officials is no longer an issue on which the jury is out. In other words, the law is well settled that if the evidence of such a police officer is found to be reliable and trustworthy, then basing the conviction thereupon cannot be questioned, and the same shall stand on firm ground. This Court in ***Pramod Kumar* v. *State (Govt. of NCT of Delhi) 2013 (6) SCC 588***after referring to ***State of U.P. v. Anil Singh [1988 Supp SCC 686: 1989 SCC (Cri) 48], State (Govt. of NCT of Delhi) v. Sunil [(2001) 1 SCC 652: 2001 SCC (Cri) 248]*** and ***Ramjee Rai v. State of Bihar [(2006) 13 SCC 229 : (2007) 2 SCC (Cri) 626]*** has laid down recently in ***Kashmiri Lal v. State of Haryana [(2013) 6 SCC 595: AIR 2013***

SCW 3102] that there is no absolute command of law that the police officers cannot be cited as witnesses and their testimony should always be treated with suspicion. Ordinarily, the public at large shows its disinclination to come forward to become witnesses. If the testimony of the police officer is found to be reliable and trustworthy, the court can definitely act upon the same. If, in the course of scrutinising the evidence, the court finds the evidence of the police officer to be unreliable and untrustworthy, the court may disbelieve him, but it should not do so solely on the presumption that a witness from the police department should be viewed with distrust. This is also based on the principle that the quality of the evidence outweighs the quantity of evidence.

23. Referring to ***State (Govt. of NCT of Delhi)* v. *Sunil, 2001 (1) SCC 652***, in ***Kulwinder Singh v. State of Punjab (2015) 6 SCC 674***, this court held that: —

> **"23.** ... That apart, the case of the prosecution cannot be rejected solely on the ground that independent witnesses have not been examined when, on the perusal of the evidence on record, the Court finds that the case put forth by the prosecution is trustworthy. When the evidence of the official witnesses is trustworthy and credible, there is no reason not to rest the conviction on the basis of their evidence."

24. We must note that in the former it was observed: —

> "21... At any rate, the court cannot start with the presumption that the police records are untrustworthy. As a proposition of law, the presumption should be the other way around. That official acts of the police have been regularly performed is a wise principle of presumption and recognised even by the legislature... If the court has any good reason to suspect the truthfulness of such records of the

> police, the court could certainly take into account the fact that no other independent person was present at the time of recovery. But it is not a legally approvable procedure to presume the police action as unreliable to start with, nor to jettison such action merely for the reason that police did not collect signatures of independent persons in the documents made contemporaneous with such actions."
>
> **25.** Recently, this Court in ***Mohd. Naushad* v. *State (NCT of Delhi) 2023 SCC OnLine 784*** had observed that the testimonies of police witnesses, as well as pointing out memos, do not stand vitiated due to the absence of independent witnesses.
>
> **26.** It is clear from the above propositions of law, as reproduced and referred to, that the testimonies of official witnesses cannot be discarded simply because independent witnesses were not examined. The correctness or authenticity is only to be doubted on "any good reason", which, quite apparently, is missing from the present case. No reason is forthcoming on behalf of the Appellant to challenge the veracity of the testimonies of PW-1 and PW-2, which the courts below have found absolutely to be inspiring confidence. Therefore, basing the conviction on the testimony of the police witnesses as undertaken by the trial court and confirmed by the High Court vide the impugned judgment, cannot be faulted."

40. It was submitted that the police had not complied with the requirements of Section 42 of the NDPS Act, which is fatal to the prosecution case. This submission will also not help the accused. The statements of the prosecution witnesses show that the police signalled the driver of the car to stop. He appeared to be frightened, and the police became suspicious.

There is nothing in the cross-examination of the witnesses to show that the police were aware of the fact that charas was being transported in the car. Thus, the present case is a case of a chance recovery. The term chance recovery was explained by the Hon'ble Supreme Court in the ***State of H.P. v. Sunil Kumar, (2014) 4 SCC 780: (2014) 2 SCC (Cri) 449: 2014 SCC OnLine SC 205,*** at page 784:

> "**13.** The expression "chance recovery" has not been defined anywhere, and its plain and simple meaning seems to be a recovery made by chance or by accident or unexpectedly. In ***Mohinder Kumar v. State [(1998) 8 SCC 655: 1999 SCC (Cri) 79],*** this Court considered a chance recovery as one when a police officer "stumbles on" narcotic drugs when he makes a search. In ***Sorabkhan Gandhkhan Pathan v. State of Gujarat [(2004) 13 SCC 608: (2006) 1 SCC (Cri) 508],*** the police officer, while searching for illicit liquor, accidentally found some charas. This was treated as a "chance recovery".
>
> **14.** Applying this to the facts of the present appeal, it is clear that the police officers were looking for passengers who were travelling ticketless and nothing more. They accidentally or unexpectedly came across drugs carried by a passenger. This can only be described as a recovery by chance since they were neither looking for drugs nor expecting to find drugs carried by anybody.
>
> **15.** It is not possible to accept the view of the High Court that since the police officers conducted a random search and had a "positive suspicion" that Sunil Kumar was carrying contraband, the recovery of charas from his person was not a chance recovery. The recovery of contraband may not have been unexpected, but the recovery of charas certainly was unexpected,

> notwithstanding the submission that drugs are easily available in the Chamba area. The police officers had no reason to believe that Sunil Kumar was carrying any drugs, and indeed, that is also not the case set up in this appeal. It was plainly a chance or accidental, or unexpected recovery of charas—Sunil Kumar could well have been carrying any other contraband, such as smuggled gold, stolen property or an illegal firearm or even some other drug.

41. It was laid down by this Court in ***State vs Vidya Devi 1993(2) Shimla Law Cases 6*** that it is not necessary to comply with the provisions of Section 42 in a case of chance recovery. It was observed:

> "17. After giving our careful consideration to the problem posed before us, we are of the considered opinion that in a chance recovery, compliance with Sections 41, 42 and 50 of the Act may not be possible; however, in order to succeed on this plea, the prosecution will have to satisfy the conscience of the Court that in the facts and circumstances of the case, it could not comply with the requirements of these provisions and that by the non-compliance thereof, no prejudice or miscarriage of justice was caused to the accused. Then, the burden would shift to the accused to prove prejudice caused to him. Thereafter, the investigation should be immediately handed over to the authorised officer, and if circumstances justify, the accused could be detained till the arrival of the competent officers. Thereafter, the investigation has to be carried out in accordance with the provisions of the Act, and the accused punished in accordance with the provisions of the Act, if found guilty. The provisions of the Act, like Sections 52, 52-A, 55, 57, 58, 61, 62, etc., are still applicable and have to be followed while conducting the investigation."

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42. Similar is the judgment in ***Babubhai Odhavji Patel and others Versus State of Gujarat 2005(8) SCC 425***, wherein it was observed:

> "As regards violation of Section 42 of the NDPS Act, it was contended that PSI, L.U. Pandey had received previous information before going for the search, but he had not recorded this information anywhere, and he had also not informed his superior officers about the proposed seizure. In the present case, the officer who conducted the search was examined as PW-2. What he stated in the evidence was that the D.I.G. had instructed him that intoxicant materials were being transported illegally from the States of Rajasthan and Uttar Pradesh, and the vehicles had been passing through Banaskantha district. This was only general information given by the D.I.G. to PW-2, and such information is not bound to be recorded as a source of information as contemplated under Section 42 of the NDPS Act. *Section 42 of the NDPS Act provides that specific information alone needs to be recorded by the officer empowered to conduct a search. Here, PW-2 and the members of the patrol team were doing the usual patrol duty, and they incidentally came across the tanker lorry in question and, on search, recovered the contraband substance from the vehicle. We do not think that there is any violation of Section 42 of the NDPS Act.*
>
> 5. The counsel for the appellant further contended that the search was conducted at 5.30 A.M., that is, before sunrise, and the PSI should have obtained a warrant or authorisation for conducting the search of the vehicle. This plea is also without any merit. *The contraband substance, namely opium, was recovered from the tanker when the usual search of suspected vehicles carrying such contraband was being conducted by the police officials. The police party had no previous information that any contraband substance was being concealed in any building,*

> *conveyance or enclosed space, and they had to conduct a search pursuant to such information. Then, only they would require a warrant or authorisation as contemplated under Section 42 of the NDPS Act. If it is a chance recovery, the procedure contemplated under Section 42 cannot be complied with, and the evidence of PW-2 would clearly show that it was a chance recovery.*" (Emphasis supplied)

43. Similarly, it was held in ***Subhas Chandra Jana Versus Ajibar Mirdha 2011 Cri. L.J. 257*** that section 42 is applicable only when the police have specific information. When the police had received secret information, which was not specific but vague or non-provable information, it was not required to be reduced to writing. It was observed:

> "The compliance of Section 42(1) of the NDPS Act, 1985 is mandatory. From the facts of the present case, it is very clear that the NCB Officers raided the house of the accused, receiving prior information. But, as per the above-mentioned section, Officers receiving prior information should reduce the same in writing and also record the reasons for the belief. According to the Prosecution, they did not go on the basis of any information but only to work out an intelligence, whereas PW 2, during cross-examination, said that they raided on the basis of secret information. So, according to the defence, non-compliance with the mandatory provision of Section 42(1) vitiated the trial. In the case of ***Babulal v. State, 1995 Cri LJ 4105, the*** Bombay High Court observed that no vague information is required to be reduced to writing. Thus, where the information received by the Police Officer was that some persons had arrived at a particular place with a large quantity of brown sugar and they were in search of customers, the information so received was not specific, which required the police to

reduce it to writing. This was not information as contemplated under Sections 41 and 42 of the NDPS Act, 1985.

This view was approved by the Apex Court in the case of ***State of Punjab v. Balbir Singh, 1994 Cal CLR (SC) 121 : (AIR 1994 SC 1872: 1994 Cri LJ 3702)***. Paragraph 22 of the said decision is quoted below:—

> "We have also already noted that the searches under the NDPS Act by virtue of Section 51 have to be carried out under the provisions of Cr. P. C., particularly Sections 100 and 165. The irregularities, if any, committed, like independent witnesses not being associated or the witnesses not from the locality while carrying out the searches, etc., under Sections 100 and 165, Cr. P. C. would not, as discussed above, vitiate the trial. But a question may still arise: when an empowered officer acting under Sections 41 and 42 of the Act carries out a search under Section 165, Cr. P. C., without recording the grounds of his belief as provided under Section 165, whether such failure also would vitiate the trial, particularly in view of the fact that such a search is connected with offences under the NDPS Act. Neither Section 41(2) nor Section 42(1) mandates such empowered officers to record the grounds of their beliefs. It is the only proviso to Section 42 (1), read with Section 42(2), which makes it obligatory to record the grounds for his belief. To that extent, we have already held the provisions to be mandatory. A fortiori, the empowered officer, though, is expected to record reasons for belief as required under Section 165; failure to do so cannot vitiate the trial, particularly when Sections 41 or 42 do not mandate recording reasons while searching. Section 165, in the context, has to be read along with Sections 41(2) and 42(1), whereunder he is not required to record his reasons."

In the present case, the NCB officials raided the house of the accused not on any specific information but on vague, uncertain and probable information. The term "Secret" nowhere indicates that the information was reliable. So, on the basis of the above-mentioned judgment, there was no requirement to reduce it to writing as there was no formal or definite complaint as such.

Assuming that the NCB Officials had definite information about the Accused, then also the trial cannot be vitiated on this ground. The Apex Court in ***H. N. Rishbud v. State of Del. AIR 1955 SC 196: (1955 Cri LJ 526)*** held that a defect or illegality in the investigation, however serious, has no bearing on the competence of the procedure relating to cognisance or trial.

Drug trafficking is equally, if not more, dangerous, as it allures and has allured a generation of young Indians from Manipur to Gujarat, from Kashmir to Kanyakumari, who are crippled by these drugs and psychotropic substances, whose senses are atrophied, to whom illusion has become a reality, who are beating their marches slowly and painfully, ***Farid Ali v. State, 1994 Cal Cr LR 189***. In the present case, the accused himself voluntarily made a confessional statement stating that he dealt with Heroin for the livelihood of his family. So, after the voluntary admission by the Accused, there remains no scope to acquit the accused on the grounds of mere irregularity of procedural compliance by the prosecution in the interest of justice. It was held in the case In ***Re: Md. Farid Ali v. State (1994 Cal Cri LR 189)*** that the Recovery of Narcotics from an accused cannot impede the course of justice merely on the ground of procedural lapses when the contraband goods, on ultimate analysis, are found to be narcotics by the expert. It, therefore, excludes the plea of technicality, which cannot triumph over social legislation."

44. The present case is one of chance recovery, and the prosecution case cannot be doubted for non-compliance with Section 42 of the NDPS Act.

45. It was submitted that there is no evidence of the conscious possession of the accused. This submission is only stated to be rejected. The accused was alone in the vehicle from which the recovery was effected. The carry bag was lying on the front seat adjacent to the driver's seat. Thus, the accused would be aware of the fact that the car had a carry bag. He was in a position to exercise control over the charas and would be in possession. It was laid down by the Hon'ble Supreme Court in ***Union of India v. Mohd. Nawaz Khan*, *(2021) 10 SCC 100: (2021) 3 SCC (Cri) 721: 2021 SCC OnLine SC 1237,*** that a person is in possession if he is in a position to exercise control over the article. It was observed at page 111:

> **25.** We shall deal with each of these circumstances in turn. The respondent has been accused of an offence under Section 8 of the NDPS Act, which is punishable under Sections 21, 27-A, 29, 60(3) of the said Act. Section 8 of the Act prohibits a person from possessing any narcotic drug or psychotropic substance. The concept of possession recurs in Sections 20 to 22, which provide for punishment for offences under the Act. In ***Madan Lal v. State of H.P. [Madan Lal v. State of H.P., (2003) 7 SCC***

465: 2003 SCC (Cri) 1664] this Court held that : (SCC p. 472, paras 19-23 & 26)

> "*19*. Whether there was conscious possession has to be determined with reference to the factual backdrop. The facts which can be culled out from the evidence on record are that all the accused persons were travelling in a vehicle, and as noted by the trial court, they were known to each other, and it has not been explained or shown as to how they travelled together from the same destination in a vehicle which was not a public vehicle.
>
> *20*. Section 20(*b*) makes possession of contraband articles an offence. Section 20 appears in Chapter IV of the Act, which relates to offences for possession of such articles. It is submitted that in order to make the possession illicit, there must be a conscious possession.
>
> *21*. It is highlighted that unless the possession was coupled with the requisite mental element, i.e. conscious possession and not mere custody without awareness of the nature of such possession, Section 20 is not attracted.
>
> *22*. The expression "possession" is a polymorphous term which assumes different colours in different contexts. It may carry different meanings in contextually different backgrounds. It is impossible, as was observed in ***Supt. & Remembrancer of Legal Affairs, W.B. v. Anil Kumar Bhunja [Supt. & Remembrancer of Legal Affairs, W.B. v. Anil Kumar Bhunja, (1979) 4 SCC 274: 1979 SCC (Cri) 1038***] to work out a completely logical and precise definition of "possession" uniform[ly] applicable to all situations in the context of all statutes.
>
> *23*. The word "conscious" means awareness about a particular fact. It is a state of mind which is deliberate or intended.

> ***
>
> *26*. Once possession is established, the person who claims that it was not a conscious possession has to establish it because how he came to be in possession is within his special knowledge. Section 35 of the Act gives a statutory recognition of this position because of the presumption available in law. Similar is the position in terms of Section 54, where also a presumption is available to be drawn from possession of illicit articles."
>
> **26.** What amounts to "conscious possession" was also considered in ***Dharampal Singh v. State of Punjab [Dharampal Singh v. State of Punjab, (2010) 9 SCC 608 : (2010) 3 SCC (Cri) 1431***], where it was held that the knowledge of possession of contraband has to be gleaned from the facts and circumstances of a case. The standard of conscious possession would be different in the case of a public transport vehicle with several persons as opposed to a private vehicle with a few persons known to one another. In ***Mohan Lal v. State of Rajasthan [Mohan Lal v. State of Rajasthan, (2015) 6 SCC 222: (2015) 3 SCC (Cri) 881]***, this Court also observed that the term "possession" could mean physical possession with animus; custody over the prohibited substances with animus; exercise of dominion and control as a result of concealment; or personal knowledge as to the existence of the contraband and the intention based on this knowledge.

46. Trilok Chand (PW9) stated that he had sealed the parcel on the spot with seal 'V'. He produced the parcel and the case property before the SHO in the police station. Binny Minhas (PW10) stated that he was posted as SHO. Trilok Chand produced the parcel sealed with six impressions of seal 'V', along with

sample seal 'V', NCB-1 form in triplicate, and seizure memo. He resealed the parcel with three seals bearing the seal impression 'H'. He obtained the seal impression on a piece of cloth and the NCB-1 form. He handed over the documents and the parcel to MHC. Satya Prakash (PW8) stated that he was discharging the duties of MHC on 14.01.2014. Binny Minhas handed over the parcel sealed with six seals of seal 'V' and three seals of seal impression 'H', NCB-1 form in triplicate, sample seals 'V' and 'H', documents, and the car to him. He made the entry in the register of Malkhana and deposited all the articles in the Malkhana. His statement is duly corroborated by the entry (Ext. PW8/A), wherein the deposit of the parcel sealed with seals 'V' and 'H' has been mentioned. ASI Satya Prakash further stated that he had sent the parcel to FSL through HHC Ashok Kumar vide RC No. 4 of 2014 (Ext. PW8/B). Ashok Kumar (PW6) stated that he had carried the cloth parcel sealed with six seals of seal impression 'V' and three impressions of seal 'H', NCB-1 form, copy of FIR, seizure memo, and sample seals to FSL Junga and deposited them in safe condition. These statements are duly corroborated by the report of the analysis (Ext. PX), in which it was specifically mentioned that a parcel bearing six seals of seal

'V' and three seals of seal 'H' was brought by HHC Ashok Kumar. The seals were found intact and tallied with the specimen seals sent by the forwarding authority and the seal impression impressed on the form NCB-1. This report shows that the seals were intact and there was no tampering with the case property. It was held in ***Baljit Sharma vs. State of H.P. 2007 HLJ 707,*** where the report of analysis shows that the seals were intact; the prosecution's case that the case property remained intact is to be accepted as correct. It was observed:

> "A perusal of the report of the expert Ex.PW8/A shows that the samples were received by the expert in a safe manner, and the sample seal sent separately tallied with the specimen impression of a seal taken separately. Thus, there was no tampering with the seal, and the seal impressions were separately taken and sent to the expert also."

47. Similar is the judgment in ***Hardeep Singh vs State of Punjab 2008(8) SCC 557,*** wherein it was held:

> "It has also come on evidence that till the date the parcels of the sample were received by the Chemical Examiner, the seal put on the said parcels was intact. That itself proves and establishes that there was no tampering with the previously mentioned seal in the sample at any stage, and the sample received by the analyst for chemical examination contained the same opium, which was recovered from the possession of the appellant. In that view of the matter, a delay of about 40 days in sending the samples did not and could not have

caused any prejudice to the appellant."

48. In ***State of Punjab vs Lakhwinder Singh 2010 (4) SCC 402,*** the High Court had concluded that there could have been tampering with the case property since there was a delay of seven days in sending the report to FSL. It was laid down by the Hon'ble Supreme Court that the case property was produced in the Court, and there was no evidence of tampering. Seals were found to be intact, which would rule out the possibility of tampering. It was observed:

> "The prosecution has been able to establish and prove that the aforesaid bags, which were 35 in number, contained poppy husk, and accordingly, the same were seized after taking samples therefrom, which were properly sealed. The defence has not been able to prove that the aforesaid seizure and seal put on the samples were in any manner tampered with before it was examined by the Chemical Examiner. There was merely a delay of about seven days in sending the samples to the Forensic Examiner, and it is not proved as to how the aforesaid delay of seven days has affected the said examination, when it could not be proved that the seal of the sample was in any manner tampered with. The seal having been found intact at the time of the examination by the Chemical Examiner and the said fact having been recorded in his report, a mere observation by the High Court that the case property might have been tampered with, in our opinion, is based on surmises and conjectures and cannot take the place of proof.
>
> 17. We may at this stage refer to a decision of this Court in ***Hardip Singh v. State of Punjab reported in (2008) 8 SCC 557*** in which there was a delay of about 40 days in sending the

> sample to the laboratory after the same was seized. In the said decision, it was held that in view of cogent and reliable evidence that the opium was seized and sealed and that the samples were intact till they were handed over to the Chemical Examiner, the delay itself was held to be not fatal to the prosecution case. In our considered opinion, the ratio of the aforesaid decision squarely applies to the facts of the present case in this regard.
>
> 18. The case property was produced in the Court, and there is no evidence to show that the same was ever tampered with."

49. Similar is the judgment of the Hon'ble Supreme Court in ***Surinder Kumar vs State of Punjab (2020) 2 SCC 563***, wherein it was held: -

> "10. According to learned senior counsel for the appellant, Joginder Singh, ASI, to whom Yogi Raj, SHO (PW-3), handed over the case property for producing the same before the Illaqa Magistrate and who returned the same to him after such production was not examined, as such, the link evidence was incomplete. In this regard, it is to be noticed that Yogi Raj, SHO, handed over the case property to Joginder Singh, ASI, for production before the Court. After producing the case property before the Court, he returned the case property to Yogi Raj, SHO (PW-3), with the seals intact. It is also to be noticed that Joginder Singh, ASI, was not in possession of the seals of either the investigating officer or Yogi Raj, SHO. He produced the case property before the Court on 13.09.1996 vide application Ex.P-13. The concerned Judicial Magistrate of First Class, after verifying the seals on the case property, passed the order Ex.P-14 to the effect that since there was no judicial malkhana at Abohar, the case property was ordered to be kept in safe custody in Police Station Khuian Sarwar, till further orders. Since Joginder Singh, ASI, was not in possession of the seals of either the SHO or the

> Investigating Officer, the question of tampering with the case property by him did not arise at all.
>
> 11. Further, he has returned the case property, after production of the same, before the Illaqa Magistrate, with the seals intact, to Yogi Raj, SHO. In that view of the matter, the Trial Court and the High Court have rightly held that the non-examination of Joginder Singh did not, in any way, affect the case of the prosecution. *Further, it is evident from the report of the Chemical Examiner, Ex.P-10, that the sample was received with seals intact and that the seals on the sample tallied with the sample seals. In that view of the matter, the chain of evidence was complete.*" (Emphasis supplied)

50. Therefore, the prosecution version is to be accepted as correct that the case property remained intact till its analysis at SFSL, Junga.

51. It was submitted that the carry bag was stated to be sky blue in the seizure memo and the statements of the witnesses. The result of examination (Ext. PX) mentions a green carry bag. Therefore, the integrity of the case property is doubtful. This submission will not help the accused. Learned Trial Court had rightly pointed out that sky blue and green appear similar and can be mistaken for each other. When the seals are intact, and the weight of the substance was also found to be the same, the integrity of the case property was established and cannot be doubted because the carry bag was mentioned as

sky blue in the documents and the statements of the witnesses, but green in the report of the analysis.

52. It was submitted that there is a violation of Section 52-A of the ND&PS Act because no sample was taken on the spot, and the whole of the case property was sent to FSL. This submission will not help the accused. It was laid down in ***Sandeep Kumar Vs State of H.P., 2022 Law Suits (HP) 149***, that the provision of Section 52-A is not mandatory and non-compliance with Section 52-A is not fatal to the prosecution case. It was observed: -

> "24. It has also been strenuously argued on behalf of the appellants that the investigating agency had failed to comply with the provisions of Section 52-A of the NDPS Act and thus cast a shadow of doubt on its story. The contention raised on behalf of the appellants is that the rules framed for investigations under the NDPS Act are mandatory and have to be strictly followed. Neither the required sample was taken on the spot, nor the samples were preserved by complying with Section 52-A of the Act. It has been argued that compliance with Section 52-A of the Act is mandatory.....
>
> xxxxxx
>
> 27. The precedent relied upon on behalf of the appellants, however, did not lay down the law that non-compliance with Section 52-A of the Act is fatal to the prosecution case under the NDPS Act. On the other hand, in ***State of Punjab vs. Makhan Chand, 2004 (3) SCC 453***, the Hon'ble Supreme Court, while dealing with the question of the

effect of non-compliance with Section 52-A, has held as under: -

> 10. This contention, too, has no substance for two reasons. Firstly, Section 52A, as the marginal note indicates, deals with the "disposal of seized narcotic drugs and psychotropic substances". Under Sub-section (1), the Central Government, by notification in the Official Gazette, is empowered to specify certain narcotic drugs or psychotropic substances having regard to the hazardous nature, vulnerability to theft, substitution, constraints of proper storage space and such other relevant considerations, so that even if they are material objects seized in a criminal case, they could be disposed of after following the procedure prescribed in Sub-sections (2) & (3). If the procedure prescribed in Sub-sections (2) & (3) of Section 52A is complied with and upon an application, the Magistrate issues the certificate contemplated by Subsection (2), then Sub-section (4) provides that, notwithstanding anything to the contrary contained in the Indian Evidence Act, 1872 or the Code of Criminal Procedure, 1973, such inventory, photographs of narcotic drugs or substances and any list of samples drawn under Sub-section (2) of Section 52A as certified by the Magistrate, would be treated as primary evidence in respect of the offence. Therefore, Section 52A(1) does not empower the Central Government to lay down the procedure for the search of an accused, but only deals with the disposal of seized narcotic drugs and psychotropic substances.
>
> 11. Secondly, when the very same standing orders came up for consideration in ***Khet Singh v. Union of India, 2002 (4) SCC 380***, this Court took the view that they were merely intended to guide the officers to see that a fair procedure is adopted by the Officer-in-Charge of the investigation. It was also

> held that they were not inexorable rules, as there could be circumstances in which it may not be possible for the seizing officer to prepare the mahazar at the spot if it is a chance recovery, where the officer may not have the facility to prepare the seizure mahazar at the spot itself. Hence, we do not find any substance in this contention."

53. It was laid down by the Hon'ble Supreme Court in ***Narcotics Control Bureau v. Kashif, 2024 SCC OnLine SC 3848,*** that the violation of Section 52-A does not make the prosecution's evidence inadmissible. It was observed:

> "**39.** The upshot of the above discussion may be summarised as under:
>
> (i) The provisions of the NDPS Act are required to be interpreted keeping in mind the scheme, object and purpose of the Act, as well as the impact on society as a whole. It has to be interpreted literally and not liberally, which may ultimately frustrate the object, purpose and Preamble of the Act.
>
> (ii) While considering the application for bail, the Court must bear in mind the provisions of Section 37 of the NDPS Act, which are mandatory in nature. Recording of findings as mandated in Section 37 is a *sine qua non* for granting bail to the accused involved in the offences under the NDPS Act.
>
> (iii) The purpose of the insertion of Section 52A, laying down the procedure for disposal of seized Narcotic Drugs and Psychotropic Substances, was to ensure the early disposal of the seized contraband drugs and substances. It was inserted in 1989 as one of the measures to implement and give effect to the International Conventions on Narcotic Drugs and Psychotropic Substances.

(iv) Sub-section (2) of Section 52A lays down the procedure as contemplated in sub-section (1) thereof, and any lapse or delayed compliance thereof would be merely a procedural irregularity which would neither entitle the accused to be released on bail nor would it vitiate the trial on that ground alone.

(v) Any procedural irregularity or illegality found to have been committed in conducting the search and seizure during the course of investigation or thereafter would, by itself, not make the entire evidence collected during the course of investigation inadmissible. The Court would have to consider all the circumstances and find out whether any serious prejudice has been caused to the accused.

(vi) Any lapse or delay in compliance with Section 52A by itself would neither vitiate the trial nor would it entitle the accused to be released on bail. The Court will have to consider other circumstances and the other primary evidence collected during the course of the investigation, as also the statutory presumption permissible under Section 54 of the NDPS Act."

54. This judgment was followed in ***Bharat Aambale v. State of Chhattisgarh, 2025 SCC OnLine SC 110,*** and it was held that non-compliance with Section 52-A of the ND&PS Act does not vitiate the trial. It was observed:

"**50.** We summarise our conclusion as under:—

(I) Although Section 52A is primarily for the disposal and destruction of seized contraband in a safe manner, it extends beyond the immediate context of drug disposal, as it serves a broader purpose of also introducing procedural safeguards

in the treatment of narcotic substances after seizure inasmuch as it provides for the preparation of inventories, taking of photographs of the seized substances and drawing samples therefrom in the presence and with the certification of a magistrate. Mere drawing of samples in the presence of a gazetted officer would not constitute sufficient compliance with the mandate under Section 52A sub-section (2) of the NDPS Act.

(II) Although there is no mandate that the drawing of samples from the seized substance must take place at the time of seizure as held in *Mohanlal* (supra), we are of the opinion that the process of inventorying, photographing and drawing samples of the seized substance shall, as far as possible, take place in the presence of the accused, though the same may not be done at the very spot of seizure.

(III) Any inventory, photographs or samples of seized substance prepared in substantial compliance with the procedure prescribed under Section 52A of the NDPS Act and the Rules/Standing Order(s) thereunder would have to be mandatorily treated as primary evidence as per Section 52A subsection (4) of the NDPS Act, irrespective of whether the substance in the original is actually produced before the court or not.

(IV) The procedure prescribed by the Standing Order(s)/Rules in terms of Section 52A of the NDPS Act is only intended to guide the officers and to see that a fair procedure is adopted by the officer-in-charge of the investigation, and as such, what is required is substantial compliance with the procedure laid therein.

(V) Mere non-compliance of the procedure under Section 52A or the Standing Order(s)/Rules thereunder will not be fatal to the trial unless there are discrepancies in the physical evidence

rendering the prosecution's case doubtful, which may not have been there had such compliance been done. Courts should take a holistic and cumulative view of the discrepancies that may exist in the evidence adduced by the prosecution and appreciate the same more carefully, keeping in mind the procedural lapses.

(VI) If the other material on record adduced by the prosecution, oral or documentary, inspires confidence and satisfies the court as regards the recovery as well as conscious possession of the contraband from the accused persons, then even in such cases, the courts can without hesitation proceed to hold the accused guilty notwithstanding any procedural defect in terms of Section 52A of the NDPS Act.

(VII) Non-compliance or delayed compliance of the said provision or rules thereunder may lead the court to draw an adverse inference against the prosecution; however, no hard and fast rule can be laid down as to when such inference may be drawn, and it would all depend on the peculiar facts and circumstances of each case.

(VIII) Where there has been a lapse on the part of the police in either following the procedure laid down in Section 52A of the NDPS Act or the prosecution in proving the same, it will not be appropriate for the court to resort to the statutory presumption of commission of an offence from the possession of illicit material under Section 54 of the NDPS Act, unless the court is otherwise satisfied as regards the seizure or recovery of such material from the accused persons from the other material on record.

(IX) The initial burden will lie on the accused to first lay the foundational facts to show that there was non-compliance with Section 52A, either by

> leading evidence of its own or by relying upon the evidence of the prosecution, and the standard required would only be preponderance of probabilities.
>
> **(X)** Once the foundational facts laid indicate non-compliance with Section 52A of the NDPS Act, the onus would thereafter be on the prosecution to prove by cogent evidence that either **(i)** there was substantial compliance with the mandate of Section 52A of the NDPS Act **OR (ii)** satisfy the court that such non-compliance does not affect its case against the accused, and the standard of proof required would be beyond a reasonable doubt.

55. In the present case also, the whole bulk was sent to the FSL, which does not vitiate the prosecution's version.

56. It was submitted that the seal was not produced before the Court, and this is fatal to the prosecution's case. This submission cannot be accepted. It was laid down by the Hon'ble Supreme Court in ***Varinder Kumar Versus State of H.P. 2019 (3) SCALE 50*** that failure to produce the seal in the court is not fatal. It was observed: -

> "6. We have considered the respective submissions. PW10 is stated to have received secret information at 2.45 P.M. on 31.03.1995. He immediately reduced it to writing and sent the same to PW8, Shri Jaipal Singh, Dy.S.P., C.I.D., Shimla. At 3.05 P.M., PW7, Head Constable Surender Kumar, stopped PW5, Naresh Kumar and another independent witness, Jeevan Kumar, travelling together, whereafter the appellant was apprehended at 3.30 P.M. with two Gunny Bags on his scooter, which contained

> varying quantities of ‘charas’. PW8, Shri Jaipal Singh, Dy.S.P., C.I.D., Shimla, who had arrived by then, gave notice to the appellant and obtained his consent for carrying out the search. Two samples of 25 gms. each were taken from the two Gunny Bags and sealed with the seal ‘S’, and given to PW5. PW2, Jaswinder Singh, the Malkhana Head Constable, resealed it with the seal ‘P’. The conclusion of the Trial Court that the seal had not been produced in the Court is therefore perverse in view of the two specimen seal impressions having been marked as Exhibits PH and PK. It is not the case of the appellant that the seals were found tampered with in any manner.”

57. In the present case, the sample seals (Ext. PW10/C and Ext. PW4/C) were produced before the Court. The seal impressions were also put on the NCB-1 form (Ext. PW8/C). Therefore, the Court had the seal impression with it to compare it with the seal impression on the parcel. It was specifically recorded in the statement of ASI Sandeep Kumar (PW4) that the parcel was sealed with six impressions of seal 'V', three seal impressions of seal 'H', and four seal impressions of FSL. The seals were intact. Thus, the Court had found the seals to be intact at the time of the production of the case property before the Court, and the non-production of the seal is not fatal in the present case.

58. The result of analysis (Ext. PX) mentions that the exhibit was an extract of cannabis and a sample of charas.

Therefore, the prosecution version that the accused was found in possession of charas was duly proved on record, and there is no infirmity in the conviction recorded by the learned trial Court.

59. It was submitted that the sentence imposed by the learned trial Court is disproportionate. This submission cannot be accepted. The accused was found in possession of 840 grams of charas as per the report of analysis. The Central Government has notified 1 kg of charas as the commercial quantity, which means that a person possessing 1,000 grams of charas can be sentenced to 10 years' imprisonment. It was laid down by the Hon'ble Supreme Court in ***Uggarsain v. State of Haryana*, *(2023) 8 SCC 109: 2023 SCC OnLine SC 755,*** that the Courts have to apply the principle of proportionality while imposing a sentence. It was observed at page 113:

> **10.** This Court has, time and again, stated that the principle of proportionality should guide the sentencing process. In ***Ahmed Hussein Vali Mohammed Saiyed v. State of Gujarat [Ahmed Hussein Vali Mohammed Saiyed v. State of Gujarat, (2009) 7 SCC 254: (2009) 3 SCC (Cri) 368 : (2009) 8 SCR 719]*** it was held that the sentence should "*deter the criminal from achieving the avowed object to (sic break the) law,*" and the endeavour should be to impose an "*appropriate sentence.*" The Court also held that imposing "*meagre sentences*" *merely on account of lapse of time* would be counterproductive. Likewise, in ***Jameel v. State of U.P. [Jameel v. State of U.P., (2010) 12 SCC 532: (2011) 1 SCC***

(Cri) 582: (2009) 15 SCR 712] while advocating that sentencing should be fact dependent exercises, the Court also emphasised that: (***Jameel case [Jameel v. State of U.P., (2010) 12 SCC 532: (2011) 1 SCC (Cri) 582: (2009) 15 SCR 712***], SCC p. 535, para 15)

> "*15. ...* the *law should adopt the corrective machinery or deterrence based on a factual matrix. By deft modulation, the sentencing process be stern where it should be, and tempered with mercy where it warrants to be. The facts and given circumstances in each case, the nature of the crime, the manner in which it was planned and committed, the motive for commission of the crime, the conduct of the accused, the nature of weapons used and all other attending circumstances are relevant facts which would enter into the area of consideration*." (emphasis supplied)

11. Again, in ***Guru Basavaraj v. State of Karnataka [Guru Basavaraj v. State of Karnataka, (2012) 8 SCC 734 : (2012) 4 SCC (Civ) 594 : (2013) 1 SCC (Cri) 972 : (2012) 8 SCR 189]*** the Court stressed that : (SCC p. 744, para 33)

> "*33. ... It is the duty of the court to see that an appropriate sentence is imposed, regard being had to the commission of the crime and its impact on the social order*" (emphasis supplied)

and that sentencing includes "*adequate punishment*". In ***B.G. Goswami v. Delhi Admn. [B.G. Goswami v. Delhi Admn., (1974) 3 SCC 85: 1973 SCC (Cri) 796: (1974) 1 SCR 222]***, the Court considered the issue of punishment and observed that punishment is designed to protect society by deterring potential offenders as well as prevent the guilty party from repeating the offence; it is also designed to reform the offender and reclaim him as a law-abiding citizen for the good of the society as a whole. Reformatory, deterrent and punitive aspects of punishment thus play their due part in judicial thinking while determining the question of awarding appropriate sentences.

12. In ***Sham Sunder v. Puran [Sham Sunder v. Puran, (1990) 4 SCC 731: 1991 SCC (Cri) 38: 1990 Supp (1) SCR 662]***, the appellant-accused was convicted under Section 304 Part I IPC. The appellate court reduced the sentence to the term of imprisonment already undergone, i.e. six months. However, it enhanced the fine. This Court ruled that the sentence awarded was inadequate. Proceeding further, it opined that: (SCC p. 737, para 8)

> *8. ... The court, in fixing the punishment for any particular crime, should take into consideration the nature of the offence, the circumstances in which it was committed, and the degree of deliberation shown by the offender. The measure of punishment should be proportionate to the gravity of the offence. The sentence imposed by the High Court appears to be so grossly and entirely inadequate as to involve a failure of justice. We are of the opinion that to meet the ends of justice, the sentence has to be enhanced*." (emphasis supplied)

This Court enhanced the sentence to one of rigorous imprisonment for a period of five years. This Court has emphasised that sentencing depends on the facts, and the adequacy is determined by factors such as "*the nature of crime, the manner in which it is committed, the propensity shown and the brutality reflected*" [***Ravada Sasikala v. State of A.P. (2017) 4 SCC 546: (2017) 2 SCC (Cri) 436: (2017) 2 SCR 379***]. Other decisions, like: ***State of M.P. v. Bablu [State of M.P. v. Bablu, (2014) 9 SCC 281 : (2014) 6 SCC (Cri) 1 : (2014) 9 SCR 467]; Hazara Singh v. Raj Kumar [Hazara Singh v. Raj Kumar, (2013) 9 SCC 516 : (2014) 1 SCC (Cri) 159 : (2013) 5 SCR 979] and State of Punjab v. Saurabh Bakshi [State of Punjab v. Saurabh Bakshi, (2015) 5 SCC 182 : (2015) 2 SCC (Cri) 751 : (2015) 3 SCR 590]*** too, have stressed on the significance and importance of imposing appropriate, "adequate" or "proportionate" punishments.

60. If the principle of proportionality is applied to the present case, the sentence of 8 years cannot be said to be excessive, requiring any interference by this Court.

61. No other point was urged.

62. In view of the above, the present appeal fails, and it is dismissed. Pending applications, if any, also stand disposed of.

63. A copy of this judgment, along with the record of the learned trial Court, be sent back forthwith.

(Rakesh Kainthla)
Judge

20th November,2026.
(Ravinder)