



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

% *Judgment Reserved on: 11.02.2026*
Judgment pronounced on: 17.02.2026

+ **CRL.A. 398/2016**

MD. RIZAUDDIN @ PINTU

.....Appellant

Through: Mr. S.K. Santoshi and Mr. C.D. Rai,
Advocates.

versus

THE STATE (GOVT. OF NCT OF DELHI)Respondent

Through: Mr. Utkarsh, APP for the State.

JUDGMENT

CHANDRASEKHARAN SUDHA, J.

1. In this appeal filed under Section 374(2) Cr.P.C., the sole accused in Sessions Case No.95/2012 on the file of the Special Judge (NDPS-02), Central District, Tis Hazari Courts, Delhi, challenges the judgement dated 06.02.2016 and order on sentence dated 12.02.2016, as per which he has been convicted and sentenced for the offence punishable under Section 21(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (the NDPS Act).

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2. The prosecution case is that on 24.07.2012 at 12:45 P.M., the accused was found in possession of 275 grams of heroin in front of Bishnoi Dharamshala, Bela Road, Delhi. Hence, as per the chargesheet/final report dated 02.09.2012, the accused is alleged to have committed the offence punishable under Section 21 of the NDPS Act.

3. On appearance of the accused before the trial court, copies of all the prosecution documents were supplied to him in compliance with Section 207 Cr.P.C. On 12.12.2012, Charge under Section 21 of the NDPS Act was framed against the accused, which was read over and explained to the accused, to which he pleaded not guilty.

4. In order to prove its case, the prosecution examined PWs. 1 to 9 and marked Exhibits PW1/A-C, PW1/H, PW2/A-E, PW3/A-C, PW4/A, PW6/A-F, PW8/A-C, PW9/Z and PA. Nodal officers from Cellular companies, namely, CWs. 1 to 4 were examined as Court Witnesses.



5. After the close of the prosecution evidence, the accused was questioned under Section 313(1)(b) Cr.P.C. with regard to the incriminating circumstances appearing against him in the prosecution evidence. The accused denied all those circumstances and maintained his innocence. He stated that he had been falsely implicated. According to him, nothing was recovered from his possession and that all the proceedings were conducted at the police station where his signatures were forcibly taken on blank or semi-printed papers. On 24.07.2012, PW2 Om Prakash, Head Constable, called him to Shastri Park at about 12:00 to 12:30 P.M. When he reached there, PW7 Kheta Ram, Constable and PW6 Mukesh, Head Constable came. After about 2 to 3 minutes, PW8 Sunil Jain, Sub-Inspector, arrived in his car and told him that "*tu mere aadmi namely Rehmat ko fasana chahta he , vo mera khas aadmi he, ab me tujhe maja chakhata hu*". Thereafter, he was taken to the police station. The police switched off his mobile



(9711801221) and implicated him in this false case. The police also called his wife and demanded money.

6. After questioning the accused persons under Section 313(1)(b) Cr.P.C, compliance of Section 232 Cr.P.C was mandatory. In the case on hand, no hearing as contemplated under Section 232 Cr.P.C is seen made by the trial court. However, non-compliance of the said provision does not, *ipso facto* vitiate the proceedings, unless omission to comply with the same is shown to have resulted in serious and substantial prejudice to the accused (See **Moidu K. vs. State of Kerala, 2009 (3)KHC 89 : 2009 SCC OnLine Ker 2888**). Here, the accused persons have no case that non-compliance of Section 232 Cr.P.C has caused any prejudice to him.

7. In support of the defence case, DWs. 1 to 7 were examined on behalf of the accused and marked Exhibits DW4/A-D, DW6/A-B, DW7/A-C and Mark A were marked.



8. The trial court, after hearing both sides and on a consideration of the oral and documentary evidence, *vide* judgment dated 06.02.2016 convicted the accused for the offence punishable under Section 21(c) of the NDPC Act and *vide* order on sentence dated 12.02.2016 sentenced him to undergo rigorous imprisonment for 15 years and to pay a fine of ₹1,50,000/-, and in default of payment of fine, to undergo simple imprisonment for one year. Aggrieved, the accused has preferred this appeal.

9. The learned counsel for the appellant/accused submitted that although the prosecution alleged that the raiding party remained at the spot for nearly ten hours and that independent witnesses were available and many public offices were situated nearby, no such witness has been examined in the case. It was submitted that no written notice was served upon any person(s) who is/are alleged to have refused to join, nor were their particulars recorded, thereby casting serious doubt on the genuineness of the alleged recovery.



9.1. It was further submitted by the learned counsel that the prosecution had failed to place on record the log book of the government vehicle allegedly used by the raiding party. The driver of the said vehicle, was not examined, and such non-examination deprived the case of material corroboration regarding the movement of the raiding party and transportation of the accused and case property.

9.2. It was also submitted that no photography or videography of the alleged recovery was conducted despite sufficient time and opportunity. The learned counsel argued that, particularly in a case involving commercial quantity, the absence of any electronic record of the search and seizure proceedings assumes significance and renders the prosecution version doubtful.

9.3. The learned counsel further submitted that none of the members of the raiding party was carrying a mobile phone, as admitted in evidence. The learned counsel contended that such a claim was inherently improbable in present-day circumstances and



cast doubt on the prosecution version regarding communication with superior officers and compliance with statutory requirements.

9.4. It was also submitted that the second investigating officer (IO), Sub-Inspector (SI) Devender Singh, who is alleged to have prepared the site plan, recorded statements of witnesses, sent the samples to the FSL, conducted further investigation and submitted the charge sheet, was never examined. The learned counsel contended that non-examination of this material witness caused serious prejudice to the appellant and left gaps in the chain of investigation.

9.5. It was lastly submitted by the learned counsel that there had been non-compliance with Sections 52 and 53 of the NDPS Act. The learned counsel contended that the seized contraband and the accused were required to be produced before the Station House Officer without unnecessary delay; however, there is no cogent evidence to show that the same were produced before PW4, the SHO, in strict adherence to the statutory mandate. The learned



counsel further submitted that the appellant had lodged a complaint against PW7 and PW8 before the Anti-Corruption Branch in February 2013, which, according to him, probalised the defence plea of false implication.

10. *Per contra*, the learned Additional Public Prosecutor submitted that the defence plea of false implication is wholly unsubstantiated. Referring to the cross-examination of PW8, it was contended that the very suggestion put by the defence presupposed the presence and apprehension of the accused at the spot along with contraband, thereby undermining the stand of total fabrication.

10.1. It was further submitted that the non-joining of independent witnesses was not fatal to the prosecution case. Placing reliance upon the judgment of the Apex Court in **Surinder Kumar v. State of Punjab, (2020) 2 SCC 563**, the learned prosecutor contended that it is common knowledge that members of the public are reluctant to associate themselves with police



proceedings and that the mere absence of independent witnesses does not render the testimony of official witnesses unreliable. It was argued that in the present case the police officials consistently deposed that efforts were made to bring in independent witnesses, but they declined.

10.2. The learned prosecutor also contended that there was due compliance with Section 52(3) of the NDPS Act. It was submitted that the seized articles as well as the accused were produced before PW4, the SHO. Reference was made to the testimony of PW9, who deposed that ASI Devender Singh produced the accused before him at about 12:30 midnight and that he made enquiries. It was thus argued that the statutory requirement stood duly satisfied. With regard to Section 53 of the NDPS Act, the learned prosecutor submitted that the said provision applies to officers of departments such as Customs, DRI or NCB, who are specially empowered with the powers of an officer-in-charge of a police station. It was contended that in the present case



the investigation was conducted by regular police officials of a police station where the SHO was available, and therefore the argument of violation of Section 53 was misconceived.

10.3. It was further submitted that the chain of custody of the seized contraband remained intact and was duly established. The learned prosecutor pointed out that no serious challenge was raised in cross-examination regarding the handling or transmission of the sample. Reliance was placed upon Exhibit PZ FSL report , which confirmed that the seized substance was in fact heroin, thereby corroborating the prosecution case. The learned prosecutor also referred to Exhibit PW6/E personal search memo to submit that notice under Section 50 of the NDPS Act had been duly served upon the accused prior to search. On search, two articles, were seized, one is a currency note of the denomination of ₹500/- and Exhibit PW6/A notice issued under Section 50 of the NDPS Act. Further, the accused declined the offer to be searched before a



Gazetted Officer or Magistrate, after which the search was lawfully conducted.

10.4. In response to the argument concerning mobile phones, the summoning of the accused over phone, the demand for the money from the wife of the accused, etc., the learned prosecutor submitted that once the defence sets up a specific plea that the accused was called to the spot by the police and that a demand of money was made, it was incumbent upon the defence to substantiate the same by producing call detail records or examining the service providers concerned. It was argued that no such evidence was led and that the Court can adjudicate only on the basis of evidence brought on record, not on unproved allegations.

11. Heard both sides and perused the records.

12. The only point that arises for consideration in this appeal is whether there is any infirmity in the impugned judgement, calling for an interference by this Court



13. Before proceeding further, I shall briefly refer to the evidence led in this case. PW8, Sub-Inspector, Narcotics Cell, Shakarpur deposed that on 24.07.2012, at about 11:00 A.M., he received information that a person named Pintu, resident of Narela, along with his associate, namely, Ibrahim, was engaged in large-scale supply of heroin in Delhi, procuring the contraband from U.P and that on the said day between 12:30 P.M. and 1:00 P.M., the accused would come in front of Bishnoi Dharamshala, Bela Road, Delhi, to deliver heroin to a lady, namely, Anita. After making preliminary inquiries and satisfying himself about the credibility of the information, he produced the informer before PW9, Inspector-in-Charge, Narcotics Cell, who in turn informed the ACP Bir Singh over phone, whereupon directions were received from the ACP to conduct a raid. He then reduced the secret information into writing *vide* DD No. 16 at about 11:30 A.M., i.e., Exhibit PW2/A, and the same was produced before PW9 in compliance with Section 42 of the NDPS Act. Thereafter, he constituted a raiding party consisting



of himself, PW6, PW7 and Rani Reddy, Woman Head Constable. The team along with the secret informer left his office at about 11:45 A.M. *vide* Exhibit PW8/A DD No. 17 Departure Entry in Government Vehicle No. DL-1CM-4228, driven by a constable. According to PW8, he requested several persons, both enroute and at the spot, to join the raiding team. However, none agreed and they left without disclosing their particulars. The vehicle was parked approximately 50 meters away, and the team took positions near the gate of the Dharamshala.

13.1. At about 12:40 P.M., a person wearing black jeans and a white striped shirt, carrying a black polythene bag in his left hand, came on foot, The person was identified as Pintu (the accused) by the secret informer, who thereafter left the spot. The accused then waited there for some time. After about 3 to 4 minutes by about 12:45 P.M., when the accused was about to go back, he apprehended the accused. He identified himself and team and on questioning, the accused revealed his name and address. He



then appraised the accused of his right to be searched in the presence of a Gazetted Officer or a Magistrate. He also informed the accused that he could take the search of the police officials and the government vehicle before his own search was conducted. The meaning of “Gazetted Officer” and “Magistrate” was also explained to him. He then prepared Exhibit PW6/A notice under Section 50 of the NDPS Act and served its carbon copy on the accused. As the accused was illiterate, the contents were read over to him. The accused declined to avail his legal rights. There reply of the accused, recorded at his dictation on the said notice, is Exhibit PW6/B, bearing the signatures of PW8 and the accused. PW8 further deposed that he again requested 7 to 8 persons who had gathered at the spot to join the proceedings. But none agreed. Thereafter, he conducted a search of the accused and recovered a black polythene bag from the left hand of the latter, which contained a transparent polythene, tied with a rubber band and filled with soil coloured powder. The substance was tested with a



field testing kit. The same tested positive for heroin. The total weight of the recovered substance was found to be 275 grams, which included the weight of the transparent polythene.

13.2. Two samples of 5 grams each were drawn from the substance. Each sample was placed in separate transparent polyethene, tied with rubber bands, converted into cloth parcels and marked A and B. The remaining 265 grams was kept in the same transparent polythene, then placed inside the black polythene, converted into a cloth parcel and marked C. He then filled up the FSL Form and affixed his seal “3C PS NB DELHI” on parcels A, B and C, as well as on the FSL Form as sample seal. The contraband along with the FSL Form was seized *vide* Exhibit PW6/C Seizure Memo. He then prepared Exhibit PW8/B *Tehrir* and handed over the same to PW7, along with the sealed parcels, FSL Form and carbon copy of the seizure memo, for registration of the crime and deposit with the SHO.



13.3. At about 8:00 P.M., the second Investigating Officer (IO), namely, ASI Devinder Singh reached the spot. He appraised the ASI regarding the facts and handed over the documents and the accused. The site plan was prepared by the ASI at his instance, i.e., Exhibit PW8/C site plan. ASI then interrogated the accused and arrested him *vide* Exhibit PW6/D arrest memo. ASI conducted the personal search of the accused *vide* Exhibit PW6/E Personal Search Memo, On a personal search, a carbon copy of the notice under Section 50 NDPS Act and ₹500/- were recovered. They left the spot along with the accused by about 10:15P.M. and reached the Crime Branch police station at about 11:15P.M., where the personal search articles of the accused were deposited. Thereafter, they left the said police station and went to the Narcotics Cell, Shakarpur, where they reached by about 12:30A.M. The accused was produced before PW9 Inspector by ASI Devender Singh. He then prepared a special report under Section 57 of the NDPS Act regarding recovery and seizure *vide* Exhibit PW2/B Special Report



and submitted it to PW9 for forwarding it to the Senior Officer. The special report regarding arrest, prepared by the ASI Devender Singh, is Exhibit PW2/C. The FSL report was marked as Exhibit PW9/Z. PW8 identified the material objects in Court and there was marked as Exhibits P1 to P3.

13.4. PW8, in his cross-examination, denied the suggestion that in the year 2014, when the accused was released on interim bail, he along with, PW7 and PW2 had threatened the accused. According to PW8, Crime no. 49/2014 registered under Section 7 of the Prevention of Corruption Act, 1988 is a false case. He further deposed that the accused is a convict in Crime No. 80/2009 under Section 21 of the NDPS Act and due to the conviction in the said case, the accused had lodged a false case against him. PW8 admitted that there was a government office near the Narcotics Cell, Shakarpur, but he did not take any efforts to call anyone from the office to join the raiding party due to shortage of time. He also did not inform the local police station regarding the raid. PW8



admitted that a trauma hospital, namely, Sushruta Trauma Centre and an office of the Anti-Corruption Branch are situated near the scene of occurrence. But, he did not send any of team members to call any officer from the Anti-Corruption Branch as accused did not wish to be searched in presence of a Gazetted Officer. PW8 admitted that the date of incident was a working day. PW8 further admitted that the proceedings were not video graphed or photographed as there was no provision of still camera or video camera at the Narcotics Cell.

13.5. PW8 denied the suggestion that after the arrest of the accused, he had gone to the house of the latter and taken ₹17,500/- and keys of EECO Vehicle, Maruti car, from the latter's house. PW8 further denied the suggestion that he had called DW2, the wife of the accused on the same day from the crime scene or that he had asked for any money. He deposed that personal search of the accused was taken in front of Dharamshala outside the official vehicle and during the proceedings, there was no traffic jam and no



notice had been given to any passerby who refused to join the investigation. PW8 further denied the suggestion that on the day of occurrence, he had called the accused to Shastri Park near Metro Station or that there is a CDR showing his location at Shastri Park. He further denied the suggestion that he had pressurised the accused to become an informer. PW8 denied having any knowledge regarding telephonic calls made by PW2 to the accused from June till the date of occurrence.

14. PW1, the then Duty Officer, Crime Branch Police Station, deposed that on 24.07.2012, he received Exhibit PW8/B *Tehrir* from PW7, on the basis of which he got registered the crime. PW1, in cross-examination, deposed after registering the crime, further investigation was marked to ASI Devender on oral instructions of PW8 via telephone. He denied the suggestion that the entire documents pertaining to the FIR were false, fabricated and manipulated. PW1 denied the suggestion that FIR was ante-



timed or ante-dated or prepared at the instance of higher police officials.

15. PW2, the then Reader to ACP, Narcotics and Crime Prevention, Shakarpur, Delhi, deposed that on 24.07.2012 Exhibit PW2/A DD No. 16 in original was received in the ACP office. He made entry of the same at Exhibit PW2/D Correspondence Diary at Serial No. 1733. On 25.07.2012, a report under Section 57 of the NDPS Act regarding seizure of contraband was received in the ACP office. He made entry of the same in the records, i.e., Exhibit PW2/E Correspondence Diary at Serial No. 1781. On the same day, Exhibit PW2/B special report regarding arrest of the accused was received in the office of the ACP. He made entry of the same *vide* Exhibit PW2/E Correspondence Diary at Serial No. 1782. PW2, in cross-examination, denied the suggestion that the entries were fabricated or entered later on the instructions of higher officials. He denied the suggestion that he was deposing falsely at the instance of higher officials.



16. PW3, the then MHC(M), Crime Branch, Police Station, deposed that on 24.07.2012, PW4 had handed over three *pullandas* marked A, B and C, along with the FSL Form duly sealed with the seal of 3CPSNB Delhi and CRM, and that the carbon copy of seizure memo is Exhibit PW6/C. He made the corresponding entry in Register No. 19 *vide* Exhibit PW3/A at Serial No. 1599. On the same day, ASI Devender produced the personal search articles of the accused and the carbon copy of notice under Section 50 of the NDPS Act, whereupon he made an entry in Register No. 19 at the same serial number. On 30.07.2012, on the directions of PW4, one cloth parcel Mark A was sent to FSL Rohini through PW5 *vide* RC No. 474/21/12, the photocopy of which is Exhibit PW3/B. In cross-examination, PW3 denied the suggestion that he had given a false statement or manipulated the *malkhana* entries.

17. PW4, the then SHO, Crime Branch Police Station, deposed that on 24.07.2012 at about 5:05 p.m., PW7 of Narcotics Cell handed over to him three *pullandas* marked A, B and C, all



sealed with the seal of 3CPS NB Delhi, along with the FSL Form and carbon copy of seizure memo, the FSL Form also bearing the same seal. He affixed his seal “CRM” on all three *pullandas* and the FSL Form, inquired from the Duty Officer about FIR No. 200/12, mentioned the FIR number on the *pullandas* and FSL Form, and signed the *pullandas*, FSL Form and carbon copy of seizure memo. At about 5:20 p.m., he called PW3, the then MHC(M), with Register No. 19, deposited the case property and documents in the *malkhana*, whereupon PW3 made the entry and he signed the relevant column. He recorded DD No. 22 (Exhibit PW4/A) at about 5:40 p.m. regarding the deposit. At about 11:30 p.m., ASI Devender Singh and HC Charan Singh came to his office, and between 11:30 p.m. and 11:45 p.m., he recorded the statement in the handwriting of HC Charan Singh at the dictation of ASI Devender Singh. On 30.07.2012, he orally instructed PW3 to send the sample *pullanda* along with the FSL Form and documents to FSL Rohini through PW5.



17.1. PW4, in cross-examination, admitted that the *pullandas* did not bear the signatures of the accused, nor did he inquire from the IO regarding the absence of such signatures. He denied the suggestions that he was deposing falsely or that his statement was ante-timed or ante-dated.

18. PW5 deposed that on 30.07.2012, as per the directions of PW4, received over phone, he took sealed *pullanda* Mark A with FSL Form and documents to FSL Rohini, deposited it.

19. PW6 and PW7, Head Constables, also members of the raid party supported the version of PW8.

20. PW9, Inspector, Narcotics Cell, Shakarpur, Delhi, deposed that on 24.07.2012 at about 11:15 AM, PW8 along with the informer came to his office and conveyed the information received. On his directions, PW8 constituted a raiding team, and left for the place by about 11:45A.M. On 25.07.2012, by about 12:30A.M., ASI Devender Singh came to his office along with the accused. On the same day, PW8 and ASI Devender Singh



produced report under Section 57 of the NDPS Act, which he forwarded to ACP, N&CP.PW9, in his cross-examination, deposed that the case property had not been produced before him and therefore he did not sign them. He admitted that no government official was called from nearby offices as a witness and that no attendance register is maintained at the Narcotic Cell, Shakarpur.

21. On behalf of the accused, DWs. 1 to 7 were examined. The accused offered himself as a witness and hence was examined as DW5. He deposed that on 23.07.2012 and 24.07.2012, PW2, called from his mobile 99990242969 to his mobile no. 9711801221, which was in the name of his sister-in-law Noor Jahan. PW2 called him on 23.07.2012 and asked him to meet the former. On 24.07.2012, PW2 again called him to meet the former at Shastri Park, Metro Station, trans Yamuna. So, on 24.07.2012, he left his house by about 11:00 A.M. on his motorcycle (No. DL-1S-V-1586), reached Shastri Park, where he parked the motorcycle



near his friend Kaushal's shop and handed over the keys to the former. On the said day, he received 4 to 5 calls from PW2. He reached Shastri Park Metro Station by about 12:30 P.M. There he met PW2, PW6 and PW7, all working in Narcotics Branch, Shakarpur. After sometime, PW8 arrived in his personal vehicle and directed the constables to make him sit inside the car. According to DW5, PW8 took his mobile phone and removed its battery. This exercise was done on the mobile phones of PW8, PW2, PW6 and PW7 also. PW8 then questioned him as to why he had implicated, one Rahmat, said to be an informer of the former in an NDPS case. Thereafter, he was taken to the Crime Branch office at Shakarpur, beaten and threatened with false implication in a NDPS case of commercial quantity. He further deposed that PW8 threatened to implicate his wife and demanded money. On 25.07.2012 his wife paid ₹1,30,000/- to PW8 and PW7. On the same day, he was produced before the Court and police custody was obtained. They again beat him up and called his wife and



demanded money. His wife arranged ₹70,000/- and paid them. Thereafter, during the period of police custody on 26.07.2012, they went to his home, took the keys of his car and ₹17,500/-. DW5 maintained that nothing had been recovered from his possession and that he was falsely implicated due to some difference of opinion between PW8 and SI Bhagwan Singh.

21.1. DW5, in his cross-examination, denied the suggestion that in Crime No. 80/09, Crime Branch, PS Malviya Nagar, 100 grams of heroin had been recovered from his possession. He further denied that he had pleaded guilty in the said case and that he had been sentenced to the period already undergone by him. However, he admitted that, apart from the present case, he had been involved in three other cases, namely, Crime No. 257/04 under Section 25 Arms Act, Turkman Gate, Police Station; Crime No. 50/2001 under Sections 356, 379, and 411 IPC Civil Lines Police Station, and Crime No. 80/2009 of Crime Branch, Police Station. He deposed that on 24.07.2012 he had gone on a



motorcycle bearing registration No. DL-1S-V-1586. The distance between the place where he parked his motorcycle and place where he had gone is one kilometre. He reached the place by foot within 30 minutes. DW5 could not assign any specific reason as to why, despite having the motorcycle, he travelled about one kilometre on foot to the place of occurrence. DW5 admitted that he did not make any complaint to any authority against the acts of PW8 and the other police constables. According to DW5, the police officials had threatened him not to lodge any complaint. DW5 expressed inability to state the registration number, make or colour of the vehicle in which PW8 came to the scene on 24.07.2012. DW5 deposed that he had made a complaint in Court in the year 2012 itself regarding the taking away of his Maruti EECO vehicle and ₹17,500/- by the police officials.

22. DW1 deposed that on 24.07.2012 between 12:00–12:30 P.M., the accused came to his shop at A-27, Shastri Park. The accused parked his motorcycle in front of the shop, handed



over the keys to him and stated that he was going to Shastri Park Metro Station to meet some police officials. Thereafter, the accused did not return. According to DW1, when he tried calling the accused, his mobile phone was switched off. On the next day, the brother of the accused came and informed him that the accused had been apprehended by the police. He then handed over the motorcycle keys to the brother of the accused.

22.1. DW1, in cross-examination, admitted that he did not lodge any complaint regarding the incident, DW1 further deposed that he could not tell the registration number of the motorcycle parked by the accused in front of his shop.

23. DW2, the wife of the accused, deposed that on 24.07.2012 her husband left the house by about 10:45 A.M. to 11:00 A.M., telling her that he was going to meet PW2 at Shastri Park. Thereafter, at about 2:30 P.M. she called him from her mobile, but found his phone switched off. At about 7:00 P.M. to 8:00 P.M. she received a call from an unknown number, the caller



claiming to be a police official, who demanded ₹6 lakhs and threatened that her husband would be falsely implicated in case of non-payment. She was allowed to speak to her husband, who asked her to arrange the amount. Thereafter, the police officials asked her to visit the Shakarpur, Police Station, but she expressed her inability to visit the police station during night hours. According to DW2, on 25.07.2012, she arranged ₹1,30,000/- from her family members and handed over the same to three police officials of Shakarpur Police Station, whose names she does not know. PW2 further deposed that on the same day, after her husband was taken into police custody, she received another call from some police official, during which she heard the voice of her husband being beaten by the police. The police officials demanded a further sum of ₹2 to 3 lakhs, pursuant to which she arranged ₹70,000/- on interest and handed over the amount to 3 to 4 police officials, whose names she is unaware of. She also alleged that on 26.07.2012, 10 to 11 police officials came to her residence and



took ₹17,500/- kept in almirah along with the keys and documents of their EECO vehicle.

23.1. DW2, in her cross-examination, deposed her mobile number to be 9899903819 and the mobile number of her husband to be 9711801221. She further deposed that at about 7:00 P.M. to 8:00 P.M., police officials called her number from some other mobile number and not from the mobile of her husband. She does not remember the number of the mobile but the last two digits were “15”. She admitted that she did not lodge any complaint with any authority regarding the alleged demand of ₹6 lakhs, the handing over of ₹1,30,000/- or ₹70,000/-, or the alleged taking of ₹17,500/- and vehicle documents. Her husband was produced before Court No. 221, Tis Hazari Courts after 11:00 A.M. She along with her brother and mother were present. But she did not inform the Court on 25.07.2012 about the illegal demands, as she had been threatened by the police with false implication. PW2



further deposed that at about 2:00 to 2:30 P.M., she again received a call from the same mobile number having last two digits “15”.

24. DW3, Nodal Officer, Idea Cellular Company, was summoned to produce the CDR and location chart of mobile number 8585979838 for the relevant period. DW3 deposed in his examination that the said mobile number does not pertain to Idea Cellular, and he deposed that, from the first four digits of the number, it appears that the said mobile number belongs to Airtel, Kolkata circle.

25. DW4, Alternate Nodal Officer, Vodafone, deposed that he had brought the original CAF of mobile no. 9711801221 registered in the name of Noor Jahan w/o Shoukat Ali, along with a photocopy of her election I-card, the copy of which is Exhibit DW4/A. He also produced the CDR of the said mobile for the period 01.07.2012 to 31.07.2012, exhibited as Exhibit DW4/B, along with a certificate under Section 65B of the Evidence Act, 1872. He further produced the Cell ID chart of Vodafone Delhi



Circle, running into 118 pages, exhibited as Exhibit PW4/D. As per the CDR, there was no call at 12:40 P.M. on 24.07.2012; the last call was at 12:32 P.M. for 26 seconds (outgoing), and at that time the location reflected was Khasra No. 88, D-40, Shastri Park, Delhi. DW4, in cross-examination, clarified that Khasra No. 88, D-40, Shastri Park was the location of the tower and not the exact location of the mobile number. He stated that a tower normally covers an area of approximately 400–500 meters and that the precise location of the mobile cannot be ascertained within that radius.

26. DW6 Sh. Pradeep Singh, Alternate Nodal Officer, Vodafone, deposed that he had brought the record pertaining to mobile no. 7838829568, which was registered in the name of Ratnesh Thakur. The attested copy of the CAF along with the photocopy of the driving licence was exhibited as Exhibit DW6/A (colly). As per the CAF and driving licence, the father's name of the subscriber was R.K. Thakur, resident of 39-G, Number 2, Sena



Sadan, Mandawali, Delhi. He further produced the CDR of the said mobile for the period 01.07.2012 to 31.07.2012, exhibited as Exhibit DW6/B, along with the certificate under Section 65B of the Evidence Act, exhibited as Exhibit PW6/C. The Cell ID chart was exhibited as Exhibit DW6/D. As per the CDR read with the Cell ID chart, the location of the said mobile on 24.07.2012 at 12:33 P.M. was shown as Main Road, Kailash Nagar. In cross-examination, he stated that the Cell ID chart had been provided by the networking team and that the data produced remained in the control of the Nodal Officers. He was unable to state when the data was last updated. He admitted that no separate certificate under Section 65B of the Evidence Act was issued specifically for the Cell ID chart. He further clarified that the location reflected in the CDR read with the Cell ID chart indicates the location of the mobile handset and not the person using it.

27. DW7, Nodal Officer, Idea Cellular Ltd., deposed that he had brought the record pertaining to mobile no. 9990242969,



which was registered in the name of Pankaj Jain. The copy of the CAF along with the photocopy of the driving licence of Pankaj Jain was exhibited as Exhibit DW7/A. As per the CAF and driving licence, the father's name of the subscriber was O.P. Jain, resident of Rajapur Village, Sector 9, Rohini, Delhi. He stated that he had not brought the CDR from the system as the same was not available being older than one year; however, he produced the Cell ID chart, exhibited as Exhibit DW7/B. Upon being shown the CDR already on record, he identified the same as pertaining to mobile no. 9990242969 and bearing his signatures; the same was exhibited as Exhibit DW7/C. As per the CDR, in respect of a call between mobile no. 9990242969 and mobile no. 9711801221 on 24.07.2012 at about 12:25 P.M., the location of mobile no. 9990242969 was reflected as Noida. In cross-examination, he stated that he does not personally maintain the CDR, though he denied that the certificate under Section 65B of the Evidence Act was not in accordance with law. He admitted that the particulars



mentioned in the original CAF had not been independently verified by him. He denied the suggestion that the documents produced by him were false or fabricated or that he was deposing falsely.

28. The appellant stands convicted for the offence punishable under Section 21(c) of the NDPS Act. To sustain a conviction under the said provision, the prosecution is required to establish (i) recovery of a narcotic drug or psychotropic substance; (ii) that such recovery was from the conscious possession of the accused; and (iii) that the quantity involved constitutes commercial quantity. Upon proof of possession, the statutory presumption under Sections 35 and 54 of the NDPS Act operates, unless rebutted by the accused. In the present case, the recovery alleged is of 275 grams of heroin. Exhibit PW9/Z FSL report confirms that the substance examined was diacetylmorphine. The quantity of 275 grams is undisputedly commercial quantity. The first and third ingredients of the offence, therefore, stand established.



29. The crucial question that falls for determination is whether the prosecution has proved that the said contraband was recovered from the conscious possession of the appellant and whether the mandatory procedural safeguards were complied with.

30. The testimony of PW8, detecting officer finds, material corroboration from PW6 and PW7, who were also members of the raiding party. The evidence of these witnesses is consistent on material particulars, namely, the place and time of apprehension, the manner of recovery, the quantity seized and the sealing process. Nothing substantial has been brought out in cross-examination to discredit the core of the recovery. The notice under Section 50 (Exhibit PW6/A) and the reply of the appellant (Exhibit PW6/B) bear the signatures of the appellant. The appellant declined the offer to be searched before a Gazetted Officer or Magistrate. The evidence does not indicate that the notice was fabricated or that the refusal was involuntary. Compliance of Section 50 of the NDPS Act stands established.



31. As regards the custody of the case property, PW4 has deposed that the sealed parcels were produced before him, that he affixed his seal “CRM” on the parcels and the FSL form, mentioned the FIR number and caused the same to be deposited in the *malkhana*. PW3, the MHC(M), also produced Exhibit PW3/A Register No.19, bearing the relevant entry regarding the same. PW5 deposed with respect to the dispatch of the sample to FSL Rohini and produced Exhibit PW3/B Road certificate. Exhibit PZ FSL report records that the seals were intact and tallied with the specimen seal. The chain of custody thus stands proved and there is no material suggesting tampering.

32. The testimony of PW8, PW6 and PW7 indicate that attempts were made to associate independent witnesses both while proceeding to the spot and after reaching there, though none agreed to join the proceedings. The mere absence of independent witnesses does not, in all circumstances, render the prosecution case doubtful. As observed in **Surinder Kumar**(*supra*), the



testimony of a witness cannot be discarded merely on the ground that he is an official witness; what is required is careful scrutiny of such evidence to test its credibility. In the present case, the official witnesses have been subjected to cross-examination at length and nothing material has been elicited so as to discredit the core of the recovery. Their version remains consistent on material particulars and inspires confidence. In such circumstances, the absence of independent witnesses, by itself, does not dent the prosecution case.

33. The movement of the raiding party is reflected in contemporaneous DD entries and has been uniformly spoken to by the prosecution witnesses. The non-production of the vehicle log book or non-examination of the driver does not create any material inconsistency as to the place or timing of apprehension. No contradiction of such nature has been demonstrated so as to render the recovery doubtful.



34. It was further argued by the learned counsel for the appellant/ accused that the second investigating officer, namely, ASI Devender Singh, who prepared the site plan, recorded the statement of some witnesses and had completed the further investigation, had not been examined and hence, the same is fatal to the prosecution case. The trial court in paragraph 31 of the impugned judgment has referred to the reason why the said witness could not be examined before the Court. The said witness was reported to be laid up and hence, it was not possible for him to appear before the Court. Therefore, the documents that were prepared by him were proved through PW8, who was familiar with his handwriting and signatures. The accused got ample opportunity to cross-examine PW8 on these aspects also. The recovery, seizure, sealing and deposit of the material objects have been duly proved through the testimony of PW8, PW6, PW7, PW4 and PW3. The chain of custody remained intact and no material contradiction affecting the recovery has been demonstrated. No specific



prejudice has been shown to have caused to the appellant on account of such non-examination of the aforesaid witness. That being the position, the omission to examine the second investigating officer, in the absence of any demonstrative prejudice cannot be treated as fatal.

35. It was further argued that the version of PW8, the detecting officer, that neither he nor the other members of his team were in possession of mobile phones is quite unbelievable. It was submitted that this stand has been taken deliberately by the prosecution witnesses because had they revealed the same, the documents would have shown their location which would have disproved the prosecution case. To prevent such evidence coming on record, PW8 and other witnesses have falsely deposed before the Court that at the time of the alleged raid, they were not in possession of any mobile phones and that the mobile phone of the accused had also not been seized by them.



36. The burden is always on the prosecution to establish a case against the accused beyond reasonable doubt. The accused has the right to be silent and merely because he does not adduce any evidence or takes an inconsistent stand, is no ground to draw an adverse inference against him. The presumption contemplated under Sections 35 and 54 of the NDPS Act would come into place only when the prosecution establishes the foundational facts. (See **Gorakh Nath Prasad v. State of Bihar, (2018) 2 SCC 305** and **Naresh Kumar v. State of H.P., (2017) 15 SCC 684**). However, if the accused takes up a specific defence, then the burden would be on him to establish his defence version. But he need not establish his defence version beyond reasonable doubt. It would be sufficient for the accused to show a preponderance of probabilities. (See **Harbhajan Singh v. State of Punjab, AIR 1966 SC 97**, **V.D. Jhingan v. State of U.P., AIR 1966 SC 1762** and **Munshi Ram v. Delhi Administration, AIR 1968 SC 702**)



37. In the case on hand, I have already referred to in detail the defence taken up by the appellant/ accused as well as the evidence adduced by him in support of his version. DW3, DW4, DW6 and DW7 had apparently been examined to prove the call detail records of the officials involved in the raid, namely, PW2, PW6, PW7 and PW8. However, the materials on record do not in any way connect them to the prosecution witnesses. In fact, the trial court in paragraph 44 of the impugned judgment referred to the testimony of the court witnesses, namely, CW1 to CW4 which witnesses were also examined to prove the CDR of the mobile phones of the officials concerned. Though no reference was made by the defence counsel to the testimony of the said witnesses, the trial court has examined the evidence adduced by the said witnesses also. The testimony of the said witnesses or the documents produced by them, also does not in any way connect them to the prosecution witnesses. Therefore, there is nothing to substantiate the defence version from the materials on record



relating to the calls alleged to have been made by PW8 or the other members of his team to the accused and his wife demanding money or such other aspects that has been spoken to by the accused and DW2 while they were examined before the Court.

38. Further, the accused in his statement under Section 313 (1)(b) Cr.P.C., as well as when he was examined before the Court as DW5 has a case that pursuant to the repeated calls made by PW2 on 24.07.2012 and 25.07.2012 asking him to be present at Shastri Park, he had gone to the place, on his motorcycle. After he reached Shastri Park, he parked his motorcycle near his friend Kaushal's shop. The keys of the motorcycle were handed over to Kaushal and then he had proceeded to the place where he had been asked to appear by the police officials. However, DW1, deposed that the accused had come to his shop on 24.07.2012, parked his vehicle in front of his shop, handed over the keys to him and had proceeded to Shastri Park. DW1 is one Hira Bahadur Thapa, S/o Lok Bahadur Thapa, R/o A-27, Shastri Park, Main Road, Delhi.



The accused neither in his Section 313 (Cr.P.C.) statement nor in his testimony before the Court as DW5 has a case that his friend Kaushal and DW1 are one and the same person.

39. Another argument that was advanced was that there is violation of the provisions of Section 52(3) of the NDPS Act. As per Section 52(3) of the NDPS Act, every person arrested and article seized under Sub-section (2) of Sections 41, 42, 43 and 44 shall be forwarded without unnecessary delay to the Officer-in-Charge of the nearest police station or to the officer empowered under Section 53 of the NDPS Act. Here I again refer to testimony of PW4, the then Station House Officer, Crime Branch Police Station. He deposed that on 24.07.2012, at about 05:05 PM, PW7, Narcotics Cell, handed over to him the material objects in the case along with the documents prepared contemporaneously. He summoned PW3, the then MHC(M), who made necessary entries in the relevant register and the material objects were deposited in the *malkhana*. Exhibit PW4/A is the entry made regarding the



deposit. PW4 also deposed that he had orally instructed PW3 to send the material objects to the FSL through PW5 for their examination. The testimony of PW4 has not been discredited in any way. Therefore, there has been compliance of Section 52(3) of the NDPS Act also.

40. As far as the allegation of illegal gratification is concerned, apart from the oral testimony of DW2 and DW5, there are no material(s) to substantiate it. It is not shown that any complaint was made at the time the accused was produced before the Magistrate Court for the remand proceedings, or immediately thereafter, before any authority. The subsequent lodging of a complaint before the Anti-Corruption authorities does not, by itself, render the recovery doubtful. When tested against the consistent prosecution evidence and intact chain of custody, the allegation remains unsubstantiated. The learned counsel for the appellant was unable to refer to any statutory provision that mandates photography or videography of the recovery



proceedings. The absence of such recording does not, in the circumstances of this case, undermine the otherwise cogent oral and documentary evidence.

41. The DD entries and the reports under Section 57 of the NDPS Act demonstrate communication to superior officers. The recovery of 275 grams of heroin from the possession of the appellant having been established, the presumption under Sections 35 and 54 of the NDPS Act comes into operation. The appellant has not rebutted the presumption even on a preponderance of probabilities. It is well settled that the safeguards embodied in Chapter V of the NDPS Act are required to be strictly adhered to before the statutory presumption can be invoked. The presumption under Section 54 of the NDPS Act arises only after the prosecution establishes, beyond reasonable doubt, that the contraband was recovered from the conscious possession of the accused and that the mandatory procedural requirements under the NDPS Act were duly complied with. The initial burden upon the prosecution is,



therefore, a rigorous one. It is only upon discharge of this burden that the onus shifts to the accused to rebut the presumption. (See **Madan Lal And Anr vs State Of Himachal Pradesh, AIR 2003 SC 3642**).

42. In the light of overall re-appreciation of the oral and documentary evidence, this Court finds that the prosecution has proved beyond reasonable doubt that the appellant was found in conscious possession of 275 grams of heroin, a commercial quantity, and thereby committed the offence punishable under Section 21(c) of the NDPS Act. Thus, I do not find any infirmity in the findings of the trial court, calling for an interference by this Court.

43. In the result, the appeal *sans* merit is thus dismissed. Application(s), if any, pending, shall stand closed.

CHANDRASEKHARAN SUDHA
(Judge)

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