



2026:DHC:3880



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

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Judgment reserved on: 28.04.2026

Judgment pronounced on: 07.05.2026

+ **CRL.A. 356/2016**

SUNIL @ SUNIL SHARMA

.....Appellant

Through: Mr. Adarsh Priyadarshi, Mr. Amit Dwivedi, Mr. Syed Miran, Mr. Suchit and Ms. Sandhya, Advocates

versus

DIRECTORATE OF REVENUE INTELLIGENCE.....Respondent

Through: Mr. Satish Aggarwala, Senior Standing Counsel with Ms. Mala Sharma and Mr. Gagan Vaswani, Advocates.

CORAM:

HON'BLE MS. JUSTICE CHANDRASEKHARAN SUDHA

JUDGMENT

CHANDRASEKHARAN SUDHA, J.

1. In this appeal filed under Section 374(2) of the Code of Criminal Procedure, 1973 (the Cr.P.C.), the sole accused in Sessions Case No.38A/2012 on the file of the ASJ, Special Judge-NDPS, South District, Saket Courts, New Delhi, challenges the



judgement dated 27.02.2016 and order on sentence dated 10.03.2016, 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).

2. The prosecution case is that on 18.05.2012 at about 01.30 PM, the accused was found in possession of 1 kilogram of heroin while he was coming into Delhi crossing the Singhu Border in car bearing registration no. DL-4C AH 1455.

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 21.12.2012, Charge under Section 21(c) 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 15 and marked Exts. PQ1/A-F, PW2/A- I, PW4/A-F,



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PW4/D1-D4, PW5/A, PW6/A, PW7/A, PW8/A, PW9/A-H, PW10/A, PW12/A-E, PW14/A-K, Mark A, Mark B, P2, P4-2, P9, P12 and P11.

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 submitted that he had been falsely implicated. No contraband had been recovered from him or at his instance. The vehicle bearing registration no. DL 4CAH 1455 does not belong to him and the car was never in his possession. On 18.05.2012, he was taken away by some persons in plain clothes from near his house to an office. After reaching the office, he came to know that they were officials of the Directorate of Revenue Intelligence (DRI). He was illegally detained in their office, and was questioned about the vehicle in question. The officials told him that some contraband had been recovered from



the said vehicle. He denied any connection with the said vehicle and stated that the vehicle was never in his possession and that he had never purchased it. He was beaten and threatened, and during prolonged custody, his family history was obtained. Thereafter, he was made to write a statement, which was dictated to him. No sealing or seizure proceedings were carried out in his presence. His signatures were obtained on various blank papers, small blank slips, semi-written papers, and written papers. He was also forced to write certain endorsements on some documents without reading their contents. All the documents, reports, and records had been fabricated and manipulated by the officials of the DRI. The *panch* witness is a stock witness of the DRI. He had retracted his earlier statement to the DRI. He had handed over his application for retraction in the Legal Cell of the Central Jail to be forwarded to the Court about two to three days after his arrest.



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6. The accused offered himself as a witness and hence was examined as DW1. Ext.DW1/A and Mark X were marked.

7. The trial court, after hearing both sides and on a consideration of the oral and documentary evidence, *vide* judgment dated 27.02.2016 convicted the accused for the offence punishable under Section 21(c) of the NDPC Act and *vide* order on sentence dated 10.03.2016 sentenced him to undergo rigorous imprisonment for 10 years and to pay a fine of ₹1,00,000/-, and in default of payment of fine, to undergo simple imprisonment for one year. Aggrieved, the accused has preferred this appeal.

8. After the arguments of both sides were heard on 21.04.2026, the appeal was reserved for judgment. On going through the materials on record, it was found that proceedings were initiated by the trial court on the basis of a complaint filed by PW2, Intelligence Officer (IO), DRI, Headquarters (HQ), New Delhi. Therefore, doubts arose in the mind of this Court as to the



procedure that was to be followed for the trial of the case. Hence, the matter was reopened and detailed arguments were heard on 27.04.2026 and 28.04.2026. The learned counsel for the appellant/accused relied on the dictums in **State of Tamil Nadu vs. V. Krishnaswami Naidu (1979) 4 SCC 5** and **Pashupati Prasad Shukla vs. The Union of India, Criminal Petition No. 922/2025 dated 05.08.2025 (Gauhati High Court)** and canvassed for the point that as it was a complaint filed, the procedure contemplated in Part B of Chapter XIX should have been followed.

9. On the other hand, the learned Senior Standing Counsel (SSC) for the respondent/DRI submitted that the procedure contemplated under Chapter XVIII Cr.P.C. dealing with trial before Sessions Court is applicable and relied on the dictum in **Nafe Singh v. NCB 2022 SCC OnLine Del 3290**.



10. The Apex Court in **Tofan Singh vs The State Of Tamil Nadu** , 6 KHC 111 : AIR 2020 SC 5592 : (2021) 4 SCC 1

held thus –

“What is clear, therefore, is that the designated officer under S.53, invested with the powers of an officer in charge of a police station, is to forward a police report stating the particulars that are mentioned in S.173(2) CrPC. Because of the special provision contained in S.36A(1) of the NDPS Act, this police report is not forwarded to a Magistrate, but only to a Special Court under S.36A(1)(d). Raj Kumar Karwal (supra), when it states that the designated officer cannot submit a police report under S.36A(1)(d), but would have to submit a "complaint" under S.190 of the CrPC misses the importance of the non obstante clause contained in S.36A(1), which makes it clear that the drill of S.36A is to be followed notwithstanding anything contained in S.2(d) of the CrPC. It is obvious that S.36A(1)(d) is inconsistent with S.2(d) and S.190 of the CrPC and therefore, any complaint that has to be made can only be made under S.36A(1)(d) to a Special Court, and not to a Magistrate under S.190. Shri Lekhi's argument, that the procedure under S.190 has been replaced only in part, the police report and complaint procedure under S.190 not being displaced by S.36A(1)(d), cannot be



accepted. S.36A(1)(d) specifies a scheme which is completely different from that contained in the CrPC. Whereas under S.190 of the CrPC it is the Magistrate who takes cognizance of an offence, under S.36A(1)(d) it is only a Special Court that takes cognizance of an offence under the NDPS Act. Secondly, the "complaint" referred to in S.36A(1)(d) is not a private complaint that is referred to in S.190(1)(a) of the CrPC, but can only be by an authorised officer. Thirdly, S.190(1)(c) of the CrPC is conspicuous by its absence in S.36A(1)(d) of the NDPS Act - the Special Court cannot, upon information received from any person other than a police officer, or upon its own knowledge, take cognizance of an offence under the NDPS Act. Further, a Special Court under S.36A is deemed to be a Court of Session, for the applicability of the CrPC, under S.36C of the NDPS Act. A Court of Session under S.193 of the CrPC cannot take cognizance as a Court of original jurisdiction unless the case has been committed to it by a Magistrate. However, under S.36A(1)(d) of the NDPS Act, a Special Court may take cognizance of an offence under the NDPS Act without the accused being committed to it for trial. It is obvious, therefore, that in view of S.36A(1)(d), nothing contained in S.190 of the CrPC can be said to apply to a Special Court taking cognizance of an offence under the NDPS Act."



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(Emphasis Supplied)

11. In the light of the aforesaid dictum, the complaint filed by PW2 is not a complaint under Section 2(d) Cr.P.C. and so there cannot be any doubt regarding the procedure to be followed and it can only be under Chapter XVIII Cr.P.C.

12. Now coming to the merits of the case. The learned counsel for the appellant/accused submitted that the prosecution case suffers from serious procedural lapses and violation of mandatory provisions of law, which go to the root of the matter. On 18.05.2012, two samples of 05 grams each were drawn by the officer at the office of the DRI. The prosecution has failed to explain why the samples were not drawn before the Magistrate, as mandated under Section 52A(2) of the NDPS Act.

12.1. It was submitted that the samples were not deposited in the *malkhana* immediately after the seizure, but only deposited on 21.05.2012, after a delay of about three days. There is complete



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absence of explanation regarding where the samples remained for the period of three days before being sent to the FSL. The application under Section 52A of the NDPS Act was also made after an inordinate delay of about six months. Such delay is in violation of Clause 3.3 of Standing Order No. 1/89 dated 13.06.1989 of the Department of Revenue, Ministry of Finance, Government of India (S.O. 1/89). It was further submitted that the sample seal was not deposited in the *malkhana*. The seizure memo was also not deposited, the facsimile of the seal is not reflected in the *malkhana* register, and the test memo reference is not mentioned. The seal remained throughout with the raiding team, an interested party. These omissions amount to violation of Clauses 3.4 and 3.5 of the S.O. 1/89.

12.2. It was submitted that there is a clear discrepancy in the quantity of the contraband, which has not been explained. From the alleged recovery of 1kg of heroin, three samples totalling 15



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grams was admittedly drawn. However, the *malkhana* register reflects the quantity as 1 kg, and even at the time of disposal, the quantity is recorded as 1 kg. Further, the entire search and seizure proceedings were not conducted at the place from where the accused was apprehended but in the office of the DRI. This violates Section 50 of the NDPS Act, which requires that such proceedings be conducted either at the place of seizure or before a Magistrate or Gazetted Officer, and not at a third place.

12.3. The learned counsel submitted that neither the source nor the destination of the alleged contraband has been established. No efforts were made by the DRI to trace the person, namely, Raju, whose name appears in the disclosure statement, despite the availability of his mobile number. In view of the above serious lapses and violations, the prosecution has failed to establish its case beyond reasonable doubt, and so the accused is entitled to the benefit of doubt. In support of the arguments, reference has been



made to the dictums in **Mohammed Khalid &Anr. vs State of Telangana (2024) 5 SCC 39**, **Ratan Lal vs State of Rajasthan (2018 SCC Online Raj 1490, para 33)** **Raj Roop Singh vs State of Haryana (2011 SCC Online P&H 16725)**, **Simranjeet Singh Vs State of Punjab 2024) 14 SCC 222**, **Yusuf Vs State (2024) 14 SCC 217**, **Bothilal Vs NCB 2023 SCC Online SC 498**, **Nicholas Nzube Vs NCB (BA no 2708/2022)**, **Sunil Vs State of NCT of Delhi (BA 1688/2022)** and **Noor Aga vs State Of Punjab & Anr 2008 AIR SCW 5964**.

13. The learned SSC for the DRI submitted that the samples were taken on 18.05.2012, that is, on the day of the incident itself, which was a Friday. Saturday and Sunday are holidays for the DRI and hence the material objects/case property was deposited in the *malkhana* on the next working day, that is, on 21.05.2012, which was a Monday. There was no delay in depositing the samples, as they were deposited immediately on the



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next working day. The seized packet was duly sealed with the seal of the DRI over paper slips bearing the signatures of the accused and the *panch* witnesses. It was submitted that, so long as the seals were found intact, any delay in depositing the case property was immaterial, as there was no possibility of fabrication or tampering with the case property. The learned SSC further took the Court through the records to demonstrate that at no stage was there any possibility of tampering with the case property, and that the seals remained intact throughout. While placing reliance on the dictum in **Bharat Aambale v. State of Chhattisgarh, (2025) 8 SCC 452**, it was submitted that mere non-compliance with the procedural requirements of Section 52A of the NDPS Act does not automatically vitiate the entire trial or lead to an acquittal. There is no infirmity in the impugned judgment calling for an interference by this Court, argued the learned SSC for the DRI.

14. Heard both sides and perused the record.



15. The law was set in motion by PW1 on the receipt of secret information by PW3. PW1, Assistant Director, DRI HQ, New Delhi deposed that on 18.05.2012, PW3 placed before him secret information from a reliable source that a person of Punjabi origin, aged about 25–26 years, 5 feet 8 inches, of stout build and wheatish complexion, driving a white Honda Civic bearing registration number DL-4C AH 1455, would be entering Delhi through the Singhu Border between 01:00 PM and 02:00 PM and that he would be carrying heroin concealed in the car. On receipt of the intelligence report, he directed J.P. Raju (PW9) to take necessary action. PW1 identified the secret information marked as Ext. PW1/A in which he identified his signature as well as the signature of PW3 and PW9.

16. PW3, Appraiser, DRI Headquarters (HQ), deposed that upon receiving the aforesaid secret information, he immediately reduced the same into writing, that is, Ext. PW1/A and put up the



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same before J.S. Kandhari (PW1), to whom he was administratively subordinate. PW1 instructed J.P. Raju, Intelligence Officer (PW9), DRI, HQ, New Delhi to take necessary action. At the request of PW9, he joined the raiding team, which also consisted of two independent witnesses. The team proceeded to the Singhu Border and took positions on the Delhi side. The vehicle was intercepted at around 01:30 PM when it was entering Delhi from the Haryana side. Sunil Sharma (the accused) was found driving the car. The members of the raiding team introduced themselves as officers of the DRI. The accused was told about the information received and was asked if he was carrying narcotic drug, that is, heroin, on his person or in his car, to which he replied in negative. PW9 also showed the search authorisation to the accused as well as the witnesses. A notice under Section 50 of the NDPS Act was served upon the accused, apprising him of his right to be searched in the presence of a Magistrate or Gazetted Officer.



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The accused opted for a search to be conducted in the presence of a Gazetted Officer of the DRI. This was endorsed by the accused on the body of the notice issued under Section 50. After initial hesitation, the accused admitted that he was carrying narcotic drug concealed in the vehicle and requested that the search be conducted at the office of the DRI. The accused and the vehicle were taken to the DRI office, IP Bhawan. In the parking area of the building where the office of the DRI is located, in the presence of Gazetted Officer B.K. Bannerjee (PW12), the search of the vehicle was conducted. A non-woven fabric bag containing polythene packets with off-white powder was found under the bonnet of the car, over the engine. PW9 also seized some documents from the car, namely, photocopy of the RC; one delivery receipt of the car dealer association and motor vehicle insurance proposal. PW9 took the documents, the aforesaid bag taken from under the bonnet, along with the accused, to the seventh floor of the building where



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the office of the DRI is situated. The bag on examination was found to contain heroin. PW3 further deposed that thereafter he left the office for some other official work.

16.1. PW3 in his cross-examination deposed that he received the secret information at about 10:00–10:15 AM on 18.05.2012, which he immediately reduced into writing. The information so recorded, that is, Ext. PW1/A was submitted to PW1, his immediate superior at about 10:20-10:25 AM. PW1 did not direct him to take any action on the information received. According to PW3, PW9, who was junior to him, requested him to join the raiding team by about 11:00 AM. The notice under Section 50 of the NDPS Act was prepared at the spot. PW3 admitted that he had not signed the notice or *panchnama* or any documents and his presence is not reflected in any of the documents prepared. The search authorisation was not shown to him, but it was shown to the accused. He had orally told the accused that he was a Gazetted



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Officer and if the latter desired the search could be done in his presence. PW3 admitted that in his presence neither the accused nor the vehicle had been searched at the spot. The bonnet of the car was not opened at the spot.

17. PW4, the *panch* witness, deposed that on 18.05.2012, while he was standing at the bus stop near ITO waiting for his friend, some officials approached him and told him that they had received some information relating to transportation of illicit article (*nasheela padarth*) and so he was asked to accompany them as a witness, to which he agreed. He accompanied the officials to their office situated at ITO, but he was unable recall the name of the building. From the office, he was taken by the officials to the Singhu Border. Apart from the officials, there was another person also with them whose name he was unable to recall. At the Singhu Border, they were informed that a vehicle was entering Delhi from the Haryana side and the said person carrying *nasheela*



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padarth was in the vehicle. The officials intercepted a white-coloured vehicle coming from the Haryana side when it entered Delhi. PW4 was unable to recall the registration number of the vehicle. At the time of interception, there was only the driver inside the vehicle. The officials disclosed their identity to the occupant of the intercepted vehicle and informed him that they wanted to conduct a search. The officials also prepared certain documents at the spot and handed them over to the occupant of the vehicle. PW3 could not recall the nature of the documents, though he had signed them. The officials further conducted inquiries with the occupant of the vehicle, who disclosed his name as Sunil (the accused). The officials informed Sunil (the accused) that they had received information that illicit articles (*nasheela padarth*) was being concealed and transported in the vehicle to Delhi. Sunil (the accused) responded by saying that if a search was to be conducted, the same could be carried out at the office of the DRI. PW4



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identified the accused before the trial court. The officials escorted the accused from the spot to their office situated at ITO along with the vehicle, at which time he also accompanied them. Upon reaching the parking area of the building where the office of the officials was situated, a search of the vehicle was conducted. During the search, a cloth packet was recovered from the engine of the car. Certain documents were also recovered from the vehicle. The officials then took the cloth packet, the documents, and the accused to their office on the seventh floor of the building. He also accompanied them. The officials examined the cloth packet and found a light-coloured white powder concealed therein, from which a pungent smell (*tikhi gandh*) was emanating. The officials conducted some testing of the powder and informed him that it was *nasheela padarth*. The officials took samples from the contraband, but he was unable to recall how many samples had been taken. The officials sealed the remaining contraband



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substance as well as the samples. They also affixed a seal (*mohar*) on the sealed contraband. The officials prepared certain documents recording the proceedings in which he signed. Apart from him, there was another witness during the proceedings who had also signed the documents prepared. PW3 identified his signature in Ext. PW4/A search authorisation; Ext. PW4/B notice under Section 50 of the NDPS Act; Ext. PW4/C *panchnama* dated 18.05.2012; Ext. PW4/D1 to PW4/D4 annexures of the *panchnama* and Ex. PW4/E and PW4/F test memos. The contents of the *panchnama* were read over to him, after which he affixed his signature on them. On a request made on behalf of the DRI to put some leading questions, the trial court allowed the same. On further examination by the prosecutor, PW3 admitted that on 18.05.2012, two samples had been drawn by the officials from the seized contraband, which were sealed separately. He also admitted that the registration number of the vehicle intercepted is DL-4C



AH 1455. PW4 more or less stood by his version in the cross examination.

18. PW9, IO, DRI Headquarters, New Delhi, deposed that on 18.05.2012, J.S. Kandhari (PW1) informed him about the secret information received. PW1 gave him written directions to take necessary action. Pursuant to the same, he discussed the matter with B.K. Bannerjee, the then Senior Intelligence Officer (SIO) (PW12), constituted a raiding team comprising PW3; Rajpal Singh, IO and Ashok Kumar, Tax Assistant. Two independent witnesses, namely, Deepak (PW4) and Manoj, were also included in the team. After the team was constituted, he collected the seal with the impression “Directorate of Revenue Intelligence 10” (DRI-10) from B.K. Bannerjee (PW12) after making entry in the seal movement register. He also collected the search authorisation for the search of the vehicle from PW12, that is, Ext. PW4/A. At about 11:30 AM, the raiding team, including the independent



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witnesses, left the office and reached the Singhu Border at around 12:30 PM. At about 1:30 PM, the vehicle was spotted and intercepted. The driver who matched the description in the information received, disclosed his name as Sunil Sharma (the accused). They also disclosed their identity to the driver. In the presence of the independent witnesses, he asked the accused whether he was carrying any narcotic drugs on his person or in his vehicle, to which the latter answered in the negative. He informed the accused about the secret information and showed the latter Ext. PW4/A search authorisation. He then prepared and served notice under Section 50 on the accused, informing the latter of his legal right to get his personal search or the search of his vehicle conducted before a Magistrate or a Gazetted Officer. The accused replied that the search of his person or the search of his vehicle should be conducted in the presence of a Gazetted Officer of DRI. The said reply was given by the accused in writing, and an



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endorsement to the said effect was made in Ext. PW4/B notice in the presence of the witnesses. After some hesitation, the accused admitted that a packet of heroin had been concealed inside the bonnet of the car and requested that the search be conducted at the DRI office. Therefore, he escorted the accused and the vehicle to the office.

18.1. In the parking area of the office of the DRI, he called PW12, a Gazetted Officer, and informed the latter about the interception of the accused and the reply/willingness given by the accused on the notice under Section 50 of the NDPS Act. He conducted the search of the vehicle of the accused in the presence of PW12 and both the witnesses. On search of the said vehicle, a bag/packet of 'matiala colour', which contained a polythene packet, was recovered from under the bonnet. He also recovered some documents from inside the car relating to the vehicle, the details of which were recorded by him in the *panchnama* prepared



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by him. After the recovery of the documents and the packet, they proceeded to their office along with the accused. He conducted a personal search of the accused in the office of the DRI, but nothing incriminating was recovered. He then conducted a detailed examination of the seized packet. Upon examination of the bag, he found a heat-sealed transparent polythene packet containing a cloth bag bearing certain rubber stamp markings. On opening the cloth bag, he found another heat-sealed transparent polythene packet. Upon further examination, it was found to contain an off-white granular/powdery substance emitting a pungent smell. A pinch of the powdered substance was taken and tested with the help of a Narcotic Drug Detection Kit, which gave a positive result for heroin. The contraband on weighing was found to have a net weight of 1 kg. He seized the contraband along with the non-woven bag and the vehicle used for transportation. He drew two samples of 5 grams each from the seized substance, which were



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kept separately in zip-lock polythene packets and then placed in separate yellow paper envelopes bearing corresponding markings and the seal of DRI-10, along with paper slips bearing signatures of the accused, witnesses, and himself. After drawing the samples, the remaining contraband was repacked in its original packaging and placed in an off-white cloth bag, which was stitched and sealed with the DRI-10 seal over paper slips bearing signatures of all concerned. The sealed packet and bag were then kept in an airtight plastic container, wrapped in cloth, stitched, and sealed in a similar manner. During the proceedings, he prepared test memos affixed with facsimile impressions of the seal, which was signed by him, the accused, and both the witnesses. He also prepared a *panchnama* recording the search and seizure proceedings, appended with the facsimile of the seal. The contents were read over in vernacular to the accused and witnesses, after which it was signed by all concerned. After completion of the *panchnama*



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proceedings, he handed over the sealed case property, samples and test memos to K.K. Sood (PW10) for safe custody. On the same day, he served summons under Section 67 of the NDPS Act to the accused. In response to the summons, the accused tendered his voluntary statement under Section 67 of the NDPS Act in his own handwriting. After recording the statement, he arrested the accused and intimation of his arrest was given to the wife of the latter. On 19.05.2012, he submitted his report under Section 57 of the NDPS Act to PW12.

18.2. PW9 in his cross-examination, deposed that the initial investigation into the case was conducted by him and upon his transfer, the investigation was taken over by PW2, IO, DRI, HQ, New Delhi. According to PW9, the accused himself had requested that, since the place of interception was a busy public area and not safe for him, he be taken to the office of the DRI for the search. As far as he can recollect, the accused made an endorsement to the



said effect on the Section 50 notice. PW9 further deposed that after the accused was arrested at about 11:30 PM on 18.05.2012, the latter was examined at the RML hospital and thereafter kept in '*rahadari*' at the Daryaganj police station. The custody of the accused was again taken on 19.05.2012, and again he was examined at the RML hospital. Thereafter, the accused was produced before the Court, pursuant to which he was remanded to judicial custody.

19. PW12, the then Senior Intelligence Officer (SIO), DRI, HQ, New Delhi, deposed that on 18.05.2012 PW9 had shown him Ext. PW1/A secret information and that he had a discussion with the latter. He also saw the directions given by PW1 to PW9. On the request of PW9, he issued Ext. PW4/A search authorisation for the search of the vehicle bearing no. DL-4C AH 1455. As requested by PW9, he had also handed over the seal of the DRI, having the impression of DRI-10 to the former. While issuing the



seal, he made an entry at serial no. 38 in the seal movement register and had signed in the register along with PW9. PW12 supported the version of PW9 regarding the search and seizure. PW12 further deposed that PW9 had returned the seal of the DRI on the very same date, which has been recorded at serial no. 38 of Ext. PW12/A seal movement register. On 21.05.2012, he issued the seal of the DRI to Ajay Bhasin (PW2) for the purpose of appending the facsimile of the same on the deposit memo for depositing the case property in the godown. The seal of the DRI was returned by PW2 on the same day. Entries to this aspect were made in the seal movement register, which was signed by him as well as PW2.

20. PW10, then Deputy Director, DRI, HQ, New Delhi deposed that on 18.05.2012 at about 06:00-06:15 PM, J. P. Raju (PW9) handed over one sealed packet containing the remaining case property seized by the latter as well as one sealed sample in



duplicate (total two in number) to him for keeping in safe custody along with test memo in duplicate. On 21.05.2012, he had handed over one sealed sample along with test memo to S. K. Bhalla (PW8) for producing it before the CRCL for chemical analysis. He had also given PW8 Ext. PW8/A authorization letter dated 21.05.2012 addressed to the Chemical Examiner, CRCL, after attesting the latter's signature. He was informed that the sample was deposited by PW8 in the CRCL on the same day, and on his directions, the receipt of the same was kept on the investigation file. On 21.05.2012, on his directions, PW2 prepared Ext. PW2/A inventory memo/deposit memo for depositing the sealed case property which was in his possession at the Valuable Godown, New Custom House, near IGI Airport, New Delhi. Ext. PW10/A letter dated 21.05.2012 addressed to Deputy Commissioner (Disposal), New Custom House was also issued by him in this regard. PW2 deposited the same at the godown and the receipt of



the godown-in-charge is Ext. PW2/A. This receipt bears his signature as well as the signature of PW2. The case property and the samples were intact when it remained in his custody. After depositing one sample packet in CRCL, he handed over the duplicate sample to PW9 in sealed condition.

20.1. PW10 in his cross-examination, admitted that he had not maintained any register regarding the deposit of case property, sample and test memo and their further submission with the CRCL and with New Custom House Godown. He denied the suggestion that the samples and case property had not deposited with him or that he was not empowered to receive the case property. He denied the suggestion that the sample had not been sent on 21.05.2012 to the CRCL or that the seal on the same was not intact or that his signature in all the documents had been obtained in a routine manner or that they had been manipulated or fabricated at later stage.



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21. PW2 IO, DRI, HQ, New Delhi deposed that on 21.05.2012, he was directed by K.K.Sood, Deputy Director, DRI (PW10) to deposit the sealed case property in the Valuable Godown, New Custom House, IGI Airport, New Delhi. On the directions of PW10, he prepared Ext. PW2/A deposit memo. Accordingly, he had taken the sealed case property to the godown and the same was deposited with the in-charge of the godown and the acknowledgement of the latter received in Ext. PW2/A deposit memo. After completion of investigation in the case, he had filed the complaint before the Court.

22. I shall also make a brief reference to the testimony of the accused who offered himself as a witness and hence was examined as DW1. DW1 deposed that on 18.05.2012, he was returning home situated at Sant Nagar and when he reached near his residence on the main road, a Qualis car stopped near him, and about 5 to 6 persons alighted from it. They enquired his name and



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other family details. He was made to sit in their vehicle and taken to an office at ITO on the seventh floor, where he was informed that they were officials of the DRI. They asked him whether he owned a vehicle bearing registration No. DL-4CAH-1455, which he denied. However, they told him that drugs had been recovered from the said vehicle. He denied having any connection with the said vehicle. He was made to sign several papers. He was tortured and forced to sign the documents. He wrote a statement which was dictated to him by the officers. DW1 asserted that no seizure or sealing proceedings had been conducted in his presence. On 19.05.2012, he was produced before the Court, from where he was sent to jail. The officials of the DRI did not allow him to speak in Court. On 21.05.2012, while lodged in jail no. 4, he retracted the statement he was made to write by the officials and submitted the original to the Legal Cell, retaining a photocopy. The said retraction has been marked as Ext. DW1/A, which, according to



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DW1, is in his handwriting, and he identified his signature in the same.

22.1. DW1, in his cross-examination, admitted that his family was residing on rent in House No. 6, Gali No. 7, near Sant Hospital, Sant Nagar, New Delhi. Earlier, he had resided at 231/9, Chandan Vihar, Nehru Gali, Sant Nagar, which was also a rented premise. He denied that the said property stands in the name of his mother. DW1 was unable to say whether his sister Pooja and her husband Vijay were residing at the said address on 18.05.2012 or whether any search had been conducted in the said residence by the officials of the DRI. He also was unable to say whether any incriminating material had been seized from the said premises. DW1 when shown document Ex. PW4/D-2 (insurance of Honda Civic car No. DL 4 CAH 1455), acknowledged that it bore the name Sunil Sharma and the address 231, Gali No. 9, Chandan Vihar, Sant Nagar, Burari, New Delhi, and that it was dated



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15.05.2012. However, he stated that he was not aware as to who had filled the form and that it did not belong to him. He admitted his name and details on the carbon copy of the delivery receipt marked as Ext. PW4/D-1 and that it bore his signature, but maintained that the same was obtained under pressure. He denied having purchased the vehicle or that it was registered in his name. He also denied the suggestion that he had been intercepted at the Singhu Border while driving the said vehicle or that he had been found in possession of contraband. He further denied having been served with any notice under Section 50 of the NDPS Act. However, upon being shown Ext. PW4/B Section 50 notice, he admitted that the reply portion was in his handwriting and bore his signature. He also admitted his signature on Ext. PW4/A search authorisation. He denied the suggestion that any contraband had been recovered from the engine of the vehicle, or that any search had been conducted in his presence, or that any panchnama



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proceedings were carried out before him. However, when shown Ext. PW4/C panchnama and annexures, he admitted his signature in the same but maintained that the proceedings were not conducted in his presence. He denied the entire prosecution case of interception, search and recovery. DW1 admitted that when he was produced before the Court for the purpose of remand, he had not made any complaint of torture or false implication.

23. The primary question for determination is whether the prosecution has proved that the contraband was recovered from the conscious possession of the appellant and whether the mandatory procedural safeguards were complied with. The appellant stands convicted for the offence punishable under Section 21(c) of the NDPS Act. To bring home 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 case on hand, the recovery alleged is of one kilogram of heroin, which is apparently commercial quantity.

24. According to the learned counsel for the appellant/accused, there has been gross violation of the provisions of Section 52A of the NDPS Act and the various clauses of S.O. 1/89 causing great prejudice to the accused. On the other hand, it was submitted by the learned SSC for the respondent/DRI that there has been substantial compliance of the provisions and that the materials on record would show that no tampering of the material objects/case property had taken place at any point of time. The case property was always in the custody of officers empowered under the Act and that there has been substantial compliance of all the provisions of the Act, Rules and the Standing



Orders.

25. Section 52A of the NDPS Act lays down a comprehensive procedure for the disposal of seized narcotic drugs and psychotropic substances. Sub-section (1) empowers the Central Government to prescribe the manner in which such substances are to be disposed of. Sub-section (2) provides that the officer in charge of the police station or the officer authorised under Section 53, who has seized the substances, shall prepare an inventory of the seized material. The inventory must include details such as the description, quantity, mode of packing (including the mode of conveyance being used such as any vehicle), identifiable marks or numbers, country of origin and other particulars as necessary of the substances so seized. This inventory is to be forwarded to the Magistrate having jurisdiction over the case by way of an application. Under sub-section (3), the Magistrate, upon receiving the application, is required to certify



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the correctness of the inventory so prepared. The certification process involves taking photographs of the original seized substances (including the mode of conveyance being used such as any vehicle), verifying the correctness of the inventory prepared against the same, and thereafter drawing representative samples in the presence of the Magistrate, which are then sealed and its details are entered into a list which is certified by the Magistrate. These certified samples, along with the inventory and photographs, are admissible as evidence during trial under sub-section (4) and are to be treated as primary evidence.

26. In **Bharat Aambale** (*supra*), the Apex court after referring to the several precedents on the point including **Union of India v. Mohanlal, 2016 ICO 558**, held that mere non-compliance of the procedure under Section 52A of the NDPS Act or the standing order(s)/rules thereunder will not be fatal to the prosecution case 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 must take a holistic and cumulative view of the discrepancies that exist in the evidence adduced by the prosecution and appreciate the same more carefully keeping mind the procedural lapses. If the remaining materials on record adduced by the prosecution, oral or documentary inspire confidence and satisfy 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. Non-compliance or delayed compliance of the said provision or rules there under 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



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circumstances of each case. Where there has been lapse on the part of the police in either following the procedure laid down in Section 52A of the 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 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.

27. In **Surepally Srinivas vs The State Of Andhra Pradesh** arising out of SLP (Crl.) No. 14265 OF 2024 dated 25.03.2025, it has been held that what is to be seen is whether there has been substantial compliance with the mandate of Section 52-A and if not, the prosecution must satisfy the court that such non-compliance does not affect its case against the accused.

28. In the case on hand, an application under Section 52A of the NDPS Act is seen moved before the trial court on



16.10.2012. The order of the trial court dated 17.12.2012 in the application reads thus:—

“ The present proceeding are being held pursuant to an application moved under section 52 (A) of NDPS Act, which was assigned to the undersigned vide order of Ld. ACMM dated 16.10.2012.

Today the IO is present with the case property and the accused has been produced from JC. The IO has produced before me a round shape box sealed in a white cloth which is wrapped on the said box. The seal with which this round shape box is sealed are of Directorate of Revenue Intelligence 10. The seals have been affixed on the stitching portion of the cloth with which this box was wrapped with. There are 7 seals in total affixed on the pullanda. All seals of Directorate of Revenue Intelligence 10 are intact and there is one paper slip affixed under the three lakh seals of Directorate of Revenue Intelligence 10. The contents of the same cannot be taken out without breaking open the seals and the stitching of the cloth. The white cloth with which this box is wrapped contain particulars i.e. DRI. F. No.338/XVIII/40/2012, seizure of 1 Kg of heroin on



*18.05.2012 in Delhi by DRI (Hqrs.), SO Sh. J.P. Raju, V.G.E.
No./04(01)12-13.*

The pullanda has been photographed today. Four photographs have been taken by Sh. Ajay Bhasin, IO in my presence. The photographs have been taken from 3 angles, one from the front, one each from two sides. One more photograph has been taken of paper slip containing some signatures. IO is directed to place the copy of photographs today itself during the course of day.

Now the intact seals are broken in the court to take out the box and the paper slip containing some signatures is taken out and the same has been exhibited as Ex. P1. It has been counter signed by me today at this stage. On opening the pullanda a plastic round shape box with green cover and transparent lower box is revealed. The box is containing one non-woven empty bag which has alphabet "A" written on it. Same is now photographed by the IO. The box is further found containing one sealed pullanda bearing numerical "1". the pullanda has been photographed by the IO. Two photographs have been taken, one where numerical "1" is appeared and other at the place where the mouth of the pullanda is sealed. The pullanda is sealed with three seals of Directorate of Revenue Intelligence 10. Underneath the seal



there is a paper slip. The said pullanda is now open by breaking the seals. The paper slip containing some signatures which is now revealed on opening the seal is hereby Ex. P2. Same has now been countersigned by me. The pullanda so opened contain a transparent plastic envelope/polythene bearing the numerical "1", same has now been photographed by the IO. Inside the plastic envelope/polythene is a white cloth bag containing numerical "1" and rubber stamp markings. Same has now been photographed by the IO. Three photographs have been taken. Inside the cloth bag there is a plastic envelope/polythene containing off white powder/granules substance and the said polythene/envelope is already cut open from one side. The said envelope/polythene also contain numerical "1". Same has now been photographed by the IO.

At this stage IO has drawn 5 gram of the off white powder/granules from the said polythene/ envelope by measuring the same in a electronic weighing scale and kept it in a zip lock, transparent polythene pouch which has now been kept in yellow paper envelope. The paper envelope has been now sealed with the court seal having initial "GR" and the case particulars have been mentioned on the same by the undersigned along with date.



At this stage the material has been put back/repacked in the same manner by the IO. The box has been kept in the same pullanda and has been sealed with the seal of "GR".

The proceedings stand concluded.

Photocopy of the panchnama proceedings conducted today is compared with the description mentioned in the photocopy of the panchnama annexed with the application u/s 52A NDPS Act. The said description of the case property is mentioned at page no. 3 and 4 of panchnama, which it is certified by the undersigned.

Ahlmad is directed to send the proceedings in sealed cover through ld. ACMM to the concerned court immediately."

(Emphasis supplied)

29. No inventory as contemplated under Section 52A(2) of the NDPS Act is seen submitted by the authorized officer, that is, PW10, when the case property/material object was produced before the magistrate concerned. In the order of the magistrate, a *panchnama* annexed to the application under Section 52A as well as a *panchnama* prepared on 17.12.2012 have been referred to. But



neither the application under Section 52A nor the *panchnama* are before this Court. What was the quantity that was produced before the Magistrate is unclear. The order also does not refer to quantity produced or the quantity that remained after the sample was drawn. The materials also do not show as to what happened to the third sample that was drawn in the presence of the Magistrate concerned. Going by the provisions of Section 52A, an application under the Section has to be moved at the earliest possible opportunity. The seizure in this case took place on 18.05.2012. However, the application under Section 52A was moved before the Magistrate concerned on 16.10.2012, after delay of about five months, for which no explanation has been given. Therefore, it is clear that the provisions of Section 52A have not been strictly complied with. However, as held by the Apex Court in **Bharat Aambale** (*supra*), mere non-compliance of the provisions of Section 52A does not automatically lead to the acquittal of the



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accused. Therefore, I will consider whether the remaining materials on record are satisfactory to find the guilt of the accused beyond reasonable doubt.

30. The seizure is stated to have been effected on 18.05.2012 between 01:00 – 02:00 PM, which was a Friday. The learned SSC for the respondent/DRI submitted that as 19.05.2012 and 20.05.2012 were holidays for the DRI being Saturday and Sunday, the deposit of the material objects/case property was made on the next working day, that is, on 21.05.2012, Monday. But on 18.05.2012 itself, PW9 had handed over the seized articles, samples and test memos to PW10. This is disputed by the learned counsel for the appellant/accused, who contended that there was a delay of 03 days in depositing the seized materials in the *malkhana*, which delay has not been explained. There are no materials on record to show in whose custody the samples drawn remained for 03 days till it was sent to the FSL. The samples, the



seal, the seizure memo, the facsimile seal etc. were never deposited in the *malkhana*. The seal at all times continued to remain with the raiding team. These aspects are in gross violation of S.O. 1/89. In support of the arguments, reference was made to the dictums in **Noor Aga** (*supra*) and **Raj Roop Singh** (*supra*).

31. Section 52(3) of the NDPS Act mandates that every article seized shall be forwarded without unnecessary delay either to (a) the officer-in-charge of the nearest police station, or (b) to an officer empowered under Section 53. Admittedly, the first option was never exercised. The question that arises for consideration is whether PW10 to whom PW9 is stated to have handed over the material objects/case property was an officer duly empowered under Section 53 of the NDPS Act. As per Section 53 of the NDPS Act, the Central Government, in consultation with the State Government, may issue a notification in the Official Gazette authorising officers from departments such as central excise,



narcotics, customs, revenue intelligence, or other Central Government agencies, including paramilitary or armed forces, to exercise the powers of an officer-in-charge of a police station for the purpose of investigating offences under the NDPS Act. The State Government can issue a notification in the Official Gazette investing any officer of the department of drugs control, revenue or excise or any other department or any class of such officers with the powers of an officer-in-charge of a police station for the investigation of offences.

32. PW10 admittedly is an officer of the DRI. Notification S.O. 822(E) dated 14.11.1985 issued by the Ministry of Finance (Department of Revenue) reads thus:

“S.O. 822(E).-

In exercise of the powers conferred by sub-section (1) of section 42 and section 67 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985), the Central Government hereby empowers the officers of and above the rank of Sub-Inspector in the department of



Narcotics and of and above the rank of Inspector in the departments of Central Excise, Customs and Revenue Intelligence and in Central Economic Intelligence Bureau and Narcotics Control Bureau to exercise of the powers and perform the duties specified in section 42 within the area of their respective jurisdiction and also authorises the said officers to exercise the powers conferred upon them under section 67.”

(Emphasis Supplied)

32.1. Notification S.O.823(E), also dated 14.11.1985, issued by the Ministry of Finance (Department of Revenue) reads thus:

“S.O. 823(E).-

In exercise of the powers conferred by sub-section (1) of section 53 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985), the Central Government, after consultation with all the State Governments hereby invests the officers of and above the rank of Inspector in the Departments of Central Excise, Narcotics, Customs and Revenue Intelligence and in Central Economic Intelligence Bureau and Narcotics Control Bureau with the powers specified in sub-section (1) of that section.”

(Emphasis Supplied)



32.2. The aforesaid notifications dated 14.11.1985 were superseded by the following notifications issued by the Ministry of Finance (Department of Revenue) on 30.10.2019:

“S.O. 3901(E).—

In exercise of the powers conferred by sub-section (1) of section 42 and section 67 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985), and in supersession of the notification of the Government of India in the Ministry of Finance, Department of Revenue number S.O. 822(E), dated the 14th November, 1985, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii), except as respects things done or omitted to be done before such supersession the Central Government hereby empowers the officers of and above the rank of sub-inspector in Central Bureau of Narcotics and Junior Intelligence Officer in Narcotics Control Bureau and of and above the rank of inspectors in the Central Board of Indirect Taxes and Customs, Directorate of Revenue Intelligence, Central Economic Intelligence Bureau to exercise the powers and perform the duties specified in section 42 within the area of their respective jurisdiction and also authorise the said officers



to exercise the powers conferred upon them under section 67.”

“S.O. 3899(E).—

In exercise of the powers conferred by sub-section (1) of section 53 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985) and in supersession of the notification of the Government of India in the Ministry of Finance, Department of Revenue number S.O. 823(E), dated the 14th November, 1985, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii), except as respects things done or omitted to be done before such supersession, the Central Government after consultation with all the State Governments hereby invests the officers of and above the rank of inspectors in the Central Board of Indirect Taxes and Customs, Central Bureau of Narcotics, Directorate of Revenue Intelligence, Central Economic Intelligence Bureau and of and above the rank of Junior Intelligence Officer in Narcotics Control Bureau with the powers specified in sub-section (1) of that section.”

(Emphasis Supplied)



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33. The aforementioned notifications indicate that the powers under Section 53 of the NDPS Act has been vested in officers of and above the rank of inspectors in the DRI. Nobody has a case that PW10 is not an officer above the rank of Inspector in the DRI. Thus, PW10 is an officer empowered under Section 53 of the NDPS Act and hence, he had the authority under Section 52(3) to receive the case property/material objects from PW9.

34. According to PW9, after the seizure of 1 kg of heroin, two samples of 5 grams each were taken and the packets containing the samples were sealed. The packet containing the remaining contraband was also packed and sealed and handed over to PW10 on 18.05.2012 itself. PW10 also asserted that the case property/material objects had been handed over to him by PW9 on 18.05.2012 at about 06:00-06:15 p.m.

35. The learned SSC for the respondent drew my attention to Ext. PW11/A letter dated 21.05.2012 given by PW10 to the



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Deputy Commissioner (Disposal), New Custom House, New Delhi and Ext. PW2/A inventory of goods seized and the endorsements made therein regarding the receipt of the case property by the custodian of custom house, to canvass the point that there has been timely deposit of the case property and therefore, there is nothing to disbelieve the prosecution case as there was never a scope for any tampering.

36. By virtue of the aforesaid notification, PW10 is apparently an officer empowered under Section 53 and hence, an officer to whom the contraband after its seizure could have been handed over by virtue of Section 52(3)(b). However, there are no materials on record to show that PW9 on 18.05.2012 itself had handed over the case property/material objects to PW10 apart from the oral assertions made by both of them in the box. When the learned SSC for respondent/DRI was asked about the same, it was submitted that as PW9 and PW10 are officers of the same



department, issuing a receipt or acknowledgment or making endorsements regarding receipt of the property by PW10 was quite unnecessary or uncalled for.

36.1. Section 52(3)(b) clearly says that the article seized shall be forwarded without unnecessary delay to the officer empowered under Section 53. Therefore, it was incumbent on PW9 to hand over the case property/material objects without any delay to PW10, the officer empowered under Section 53. However, there are no materials to show that it was in fact handed over by PW9 to PW10 on 18.05.2012 itself. I will assume for a moment that oral assertions of PW9 and PW10 is sufficient to prove deposit under Section 52(3)(b) and then consider the remaining materials also on record.

37. Ext. PW11/A the authorization letter given by PW10 to PW2 reads thus -

“DRI.F.No.338/XVIII/40/2012-GI

Dated: 21.05.2012



To

*The Deputy Commissioner (Disposal),
New Custom House,
New Delhi.*

Sir,

***Subject: Seizure of 1.000 kg. of Heroin on 18.05.2012 in
Delhi – deposit of Case Property– reg.***

This Directorate has effected a seizure of off white coloured powdery/granular substance weighing 1.000 Kgs (net weight) suspected to be Heroin on 18.05.2012. As the DRI is not having its valuable godown, you are requested to deposit the case property duly sealed in the Customs Valuable godown.

2. The Case Property along with the Deposit Memo are being forwarded through Shri Ajay Bhasin, Intelligence Officer, DRI (Hqrs.), New Delhi for the same.

Yours faithfully,

Encl.: As above.

*(K.K. Sood)
Deputy Director (G.I.)”*

37.1. PW2/A the inventory of goods seized/detained reads
thus -



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“Inventory of goods seized/detained

1 Name and address of the owner Sunil @ Sunil Sharma, R/o H.No. 6, Gali No. 7, Near Sant Hospital, Ist Floor, Sant Nagar, Delhi.

2. By whom seized (or detained) Directorate of Revenue Intelligence, ‘D’ Block, I.P. Bhavan, I.P. Estate, New Delhi-110002.

3. Place and date of seizure (or detention) Directorate of Revenue Intelligence, ‘D’ Block, I.P. Bhavan, I.P. Estate, New Delhi-110002 on 18.05.2012

4. DRI Case F. No. 338/XVIII/40/2012-GI

<i>S. No.</i>	<i><u>No. Of pkgs.</u></i>	<i>Details of goods</i>	<i><u>Detailed description of goods (package wise)</u></i>	<i><u>Qty.</u></i>	<i>Estimated ex-duty / value</i>
<i>1</i>	<i><u>One</u></i>	<i>Off White powdery / granular substance suspected to be Heroin.</i>	<i>Off white coloured powdery/ granular substance suspected to be Heroin weighing 1.000 kgs. approx. net weight).One air tight plastic container wrapped and stitched with off white coloured cloth and sealed with DRI seal No. 10 over and above</i>	<i><u>1.000</u> <u>Kgs</u></i>	<i>Rs.3.25 Lac. (approx.)</i>



			<p><i>a paper slip bearing dated signatures of Shri Sunil, the panchas, and DRI Officer, containing 1 packet of off white coloured powdery/ granular substance suspected to be Heroin and repacked in the original packing and further kept in off white coloured cloth bags which are duly stitched and sealed with DRI seal No. 10 over a paper slip bearing dated signatures of Shri Sunil, the panchas, and DRI Officer. This sealed cloths packet marked as 1 was kept in the said plastic container.</i></p>		
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(Ajay Bhasin)
Intelligence Officer
DRI (Hqrs.), NewDelhi

K.K. Sood

Signature of Deputy Director with date:



Received one packages with seals in intact condition as per description above.

V.G. Entry no. OA(01)12-13 Dated 21/05/2012.

Signature of the Custodian

Note. The packages should be sealed with seal of the seizing/detaining officer and seal of the owner or his authorized representative or that of the Gazetted Officer.”

(Emphasis Supplied)

38. Ext. PW2/A inventory shows that only one item, that is, one packet containing 1 kg of powdery substance suspected to be heroin that was handed over by PW10 to PW2 to be deposited at the New Custom house, New Delhi. There is no reference to the sample packets in the inventory prepared. If PW9 is to be believed on 18.05.2012 itself, two samples of 05 grams each had been drawn from the one kilogram of the substance seized from the appellant/accused. He also speaks about the detailed procedure followed by him for drawing the samples, its packing and sealing.



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Therefore, after the samples were drawn, there must have been total three packets, that is, one packet containing the remaining contraband, that is, 990 grams of heroin, and two packets, each containing 05 grams each of the sample drawn. These two sample packets do not find any mention in the inventory prepared. Therefore, the inventory prepared is not in accordance with Sub section (2) of Section 52A of the NDPS Act.

39. According to PW10, on 18.05.2012 at about 06:00-06:15 PM, PW9 handed over one sealed packet containing the remaining case property seized as well as one sealed sample in duplicate (total two in number) along with test memo in duplicate. On 21.05.2012, he handed over one of the sealed samples along with the test memo in duplicate to PW8 for depositing in the CRCL for chemical analysis. After PW8 had deposited one sample packet before the CRCL, the remaining sample packet in sealed condition, according to PW10 was handed over in sealed condition



to PW9. How could PW10 have returned one of the sample packets to PW9, when the former was the officer who was the officer authorized under Section 52(3)(b) to keep safe custody of the contraband including the sample packet. This is yet another anomaly seen.

40. Further, according to PW9, after he seized the contraband from the accused, he had drawn two samples of 05 grams each from the seized substance, which were packed and sealed. After drawing the samples, the remaining contraband was kept in its original packing and the said packet was put in an off-white coloured cloth bag which was stitched and sealed with the seal of DRI-10, over and above a paper slip which was signed by him, the accused and the two independent witnesses. The sealed packet of the remaining contraband and the bag from which it was recovered were kept in an air tight plastic container, was wrapped with a cloth and the same was then stitched and sealed with the



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seal of DRI-10, and the seal was also affixed over and above a paper slip signed by him, the witnesses and the accused. The version of PW9 regarding the seizure and sampling is corroborated by the testimony of PW3 and PW4. If that be so, the packet containing the remaining contraband after samples were drawn, could only have been 990 grams of the contraband seized. But as per Ext. PW2/A inventory prepared by PW2 on the directions of PW10, the packet containing the residue is stated to contain 1 kg of heroin. According to the learned SSC for the respondent, this is only an inadvertent mistake on the part of the officer concerned who prepared Ext. PW2/A. This aspect was never clarified when PW9 and PW10 were in the box. Therefore, this is yet another major anomaly seen.

41. The materials on record show that no proper inventory was prepared by PW10 either on 18.05.2012 or on 21.05.2012 giving the details of the quantity before and after sampling. The



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packet containing the residue could never have contained 1 kg heroin going by version of PW3, PW4 and PW9, as 10 grams had already been taken as samples. Even thereafter, when the remaining contraband was produced before the magistrate under Section 52A of the NDPS Act, no inventory is seen prepared. Therefore, it is not clear as to what was the quantity that was produced before the magistrate.

42. An application under Section 451 Cr.P.C. seeking permission to destroy the case property was filed by the DRI before the trial court. The trial court *vide* order on sentence dated 10.03.3016 directed the case property to be confiscated and disposed of after the expiry of the period of limitation for filing the appeal or subject to the outcome of such appeal or the orders of Appellate Court. After the appeal was filed, before this Court, the DRI filed CRL.M.A.2167/2017, application under Section 482 Cr.P.C. seeking permission to destroy the case property,



representative samples and dispose the vehicle in which it was transported. The application was allowed on 23.07.2017 with a direction to file a detailed compliance report thereof indicating the procedure followed for disposing off the narcotics. As the case property has already been destroyed, it is not possible for this Court at this stage to call for the same and verify it.

43. The trial court relied on the confession statement made of the accused recorded under Section 67 of the NDPS Act. However, in the light of the dictum in **Tofan Singh** (*supra*), the said statement is inadmissible in evidence and hence, cannot be relied on.

44. The provisions of the NDPS Act and the punishments prescribed therein are stringent, the extent of burden to prove the foundational facts cast on the prosecution, is more onerous. The courts would have to undertake a heightened scrutiny test and satisfy itself of "proof beyond all reasonable doubt". It is a well -



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settled principle of criminal jurisprudence that more serious the offence, the stricter would be the degree of proof and a higher degree of assurance would be necessary to convict an accused. (See **Balvinder Singh (Binda) v. The NCB, 2023 KHC 6866: AIR 2023SC4684; State of Punjab v. Baldev Singh, 1999 (6) SCC 172, Ritesh Chakarvarti v. State of M.P., 2006 (12) SCC 321 and Bhola Singh v. State of Punjab, 2011 (11) SCC 653**).

45. In the light of such unsatisfactory evidence, the benefit of doubt will have to be given to the accused and this Court is constrained to acquit the accused. As per the present schedule, 250 grams of heroin is commercial quantity. The seizure in the case on hand is stated to be one kilogram of heroin. Heroin is quite a dangerous drug and such large quantities of it can destroy entire generations. However, it appears that the officials of the DRI have not assigned the importance that this case so greatly deserved. It also appears that it was only because of such lackadaisical



approach and extreme carelessness on the part of the officers concerned that the benefit has gone to the appellant/accused. There certainly is a strong/grave suspicion against the accused. But suspicion, however, strong cannot take the place of proof. Strict compliance of the formalities is necessary because of the stringent punishment that is provided under the NDPS Act. Whether the mistake was intentional or unintentional, the result is disastrous. Despite the seizure being a commercial quantity, which is supposed to have a value of more than ₹3,00,000/- in the year 2012, (certainly not a small amount), the culprit goes scot free only because of the defects/anomalies committed by the officials concerned of the DRI.

46. It is absolutely necessary that such callous or laidback attitude should not be repeated in future. Therefore, a copy of this judgment shall be sent to the Chief Secretary, Government of N.C.T of Delhi to give necessary instructions to all the officers of



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the departments concerned to be more careful in the future and to strictly comply with the formalities contemplated under the NDPS Act to prevent such miscarriage of justice.

47. In the result, the appeal is allowed. The impugned judgment convicting the accused for the offence punishable under Section 21(c) of the NDPS Act is set aside. The appellant is acquitted under Section 238(1) Cr.P.C. of the offence charged against him. He shall be set at liberty and his bail bond shall stand cancelled.

48. Application(s), if any, pending, shall stand closed.

**CHANDRASEKHARAN SUDHA
(JUDGE)**

MAY 07, 2026
rs/p'ma/kd/mj