



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Criminal Misc(Pet.) No. 997/2020

Sanjiv R. Bhatt S/o Sh. Rajendra Bhatt, Aged About 57 Years, R/o Bungalow No. 2, Sushil Nagar Society, Part-Ii, Drive-In Road, Opposite Gandhi Loabour Institute, Ahmedabad (Gujarat). (Presently Lodged At District Jail, Palanpur , Gujarat).

----Petitioner

Versus

1. State, Through Pp.

The State Of Gujarat, Through Its Secretary,
Department Of Home, Sachivalaya, Government Of
Gujarat, Gandhi Nagar (Gujarat).

----Respondents



For Petitioner(s)

: Mr. V.R. Bajwa through VC
Mr. Vineet Jain Assisted by Mr. Pravin
Vyas

For Respondent(s)

: Mr. Sudhir Tak, P.P.
Mr. Kuldeep Mathur for respondent no.2
Mr. Mukesh Rajpurohit]
Mr. Dharendra Singh] for newly added
respondent Sumer Singh Rajpurohit

HON'BLE MR. JUSTICE MANOJ KUMAR GARG

Order

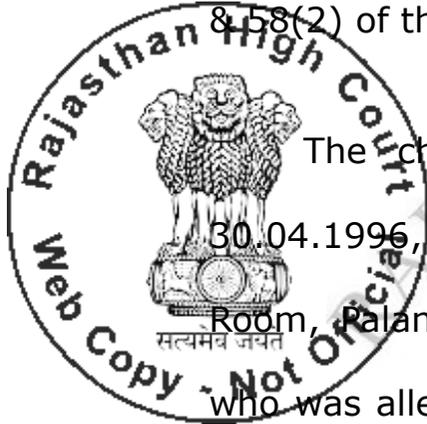
Order Reserved on : 21/08/2020

Date of pronouncement: 26/08/2020

The present Misc. Petition has been filed under Section 482 Cr.P.C. R/w Section 186 Cr.P.C. by the petitioner seeking discontinuation of the proceedings pending before the learned Special Court (NDPS) & Fourth Additional Sessions Judge, Palanpur, District Banaskantha Gujarat, in Special NDPS Case No.3/2018, State of Gujarat Vs. Indravadan Balkrishan Vyas &



Ors. arising out of F.I.R. No.216/1996, PS Palanpur City, District Banaskantha, Gujarat, for offences punishable under Sections 116 R/w 120B of IPC, in the alternative Section 115 R/w 34 IPC, Sections 167, 204, 343, 465, 471 of IPC, in the alternative Section R/w 120B/34/109 IPC, Section 17 of the NDPS Act, in alternative Section 18 of the NDPS Act as well as Sections 21, 27A, 29, 58(1) & 58(2) of the NDPS Act.



The chequered history of the present case is that on 30.04.1996, an anonymous call was received at Police Control Room, Palanpur to the effect that one Sumer Singh Rajpurohit, who was allegedly indulged in the business of opium, was staying at Hotel Lajwanti, Palanpur with 5 kgs. of opium in his possession. The said opium was to be delivered at Palanpur. The information was forwarded to Shri Indravadan Balkrishan Vyas, Police Inspector. In pursuance of the said information, the police personnel of Palanpur conducted a raid at Hotel Lajwanti and recovered opium weighing 1.15 kgs. from Room No.305 of the said hotel. In the inquiries, it was revealed that the said Room No.305 was booked in the name of Sumer Singh Rajpurohit, resident of Pali, Rajasthan. When the raid was conducted, no one was found in the room. After doing the needful, an F.I.R. No.216/1996 dated 30.04.1996 was registered at PS Palanpur City and thereafter the investigation commenced.

During the investigation, in the intervening night of 02.05.1996 and 03.05.1996, the Police arrested Sumer Singh Rajpurohit from Pali, Rajasthan. Subsequently, he was taken to Palanpur by the Police and was produced in the concerned Court



on 04.05.1996. The concerned Court sent Sumer Singh Rajpurohit on remand for six days i.e. till 10.05.1996. On 06.05.1996 a test identification parade was organized before the Executive Magistrate at the hands of Shantilal, owner of Hotel Lajwanti and Manu Bhai, employee of Hotel Lajwanti. Both these witnesses never identified Sumer Singh Rajpurohit. After conducting the test identification parade, the Police reached to the conclusion that no offence was committed by the accused Sumer Singh Rajpurohit and on the same day i.e. 06.05.1996, the Police filed a report under Section 169 of Cr.P.C. before the Special Judge, NDPS Cases, Palanpur for the release of the accused Sumer Singh Rajpurohit. On the other hand, accused Sumer Singh Rajpurohit also filed a bail application before the concerned Court and on 08.05.1996 the concerned Court released the accused Sumer Singh Rajpurohit on bail. On 09.05.1996, an application was filed by I.B. Vyas, Police Inspector before the concerned Court for addition of offence under Section 58(2) of NDPS Act against unknown persons. The concerned Court accepted the report submitted by the Police under Section 169 Cr.P.C. and discharged Sumer Singh Rajpurohit of all the offences on 14.05.1996.

After a long investigation in the F.I.R., the Police submitted summary report "A" on 27.02.2000, in which it was mentioned that the person who planted the contraband in room No.305 of Hotel Lajwanti could not be traced.

Aggrieved of his false implication, Shri Sumer Singh Rajpurohit filed a criminal complaint before the Chief Judicial Magistrate, Pali, Rajasthan on 17.10.1996 against nine accused persons including 7-8 unknown police personnel of Gujarat for



offences punishable under Sections 120B, 195, 196, 342, 347, 357, 368, 388, 458, 482 IPC and Sections 17, 58(1), 58(2) of the NDPS Act. In the said complaint, it was alleged by Shri Sumer Singh Rajpurohit that one Phootar Mal, resident of Bijapur, Pali happened to be the uncle of one Shri R.R. Jain, who was the then Judge of Gujarat High Court. Shri R.R. Jain's sister Mooli Devi was engaged to one Jawant Raj, but before the marriage could be solemnized, she expired. In the aforesaid situation, Phootar Mal's daughter Amri Bai got married to Jawant Raj and as per the local custom, she came to be treated as sister by Shri R.R. Jain. It was also alleged in the complaint that one Shop No.6, at Vardhman Market, Pali was owned by Amri Bai, daughter of Phootar Mal and sister of Justice R.R. Jain, however, Phootar Mal had the Power Of Attorney. It was further alleged that one Narsingh (brother of Sumer Singh) and Mohan Lal were partners and carried out their joint business in the said shop which was taken on rent under the tenancy of Mohan Lal, from Phootar Mal, Power of Attorney of Amri Bai. Shri Sumer Singh Rajpurohit also had an office in the said Shop. A dispute with regard to the eviction of the tenant from the shop was going on and a civil suit in this regard had also been filed by Phootar Mal. It was also alleged in the complaint, that a conspiracy was hatched to register a false case against Shri Sumer Singh Rajpurohit, so as to get the shop vacated under duress. In pursuance of the aforesaid conspiracy to falsely implicate Shri Sumer Singh Rajpurohit, an F.I.R. No.216/1996 was registered at PS Palanpur, District Banaskantha, Gujarat in which Shri Sumer Singh Rajpurohit was arrested from his house at Pali. A false case of the NDPS Act was also cooked up in relation to the dispute in





respect of the shop which was to be resolved by putting undue pressure upon Shri Sumer Singh Rajpurohit. Subsequently, after negotiating, a consensus was reached at, leading to the execution of an agreement on 05.05.1996 between Phootar Mal and Mohan Lal (Original Tenant) to vacate the shop. It was further alleged in the complaint that the keys of the shop were to be handed over to Phootar Mal, after Shri Sumer Singh Rajpurohit was discharged from NDPS case at Palanpur. In such circumstances, a report under Section 169 Cr.P.C. was filed by the Police, PS Palanpur before the concerned Court on 06.05.1996 and eventually Shri Sumer Singh Rajpurohit was discharged by the NDPS Court at Palanpur on 14.05.1996. In the complaint, it has been also alleged that the keys of the shop were handed over to Phootar Mal on 15.05.1996.

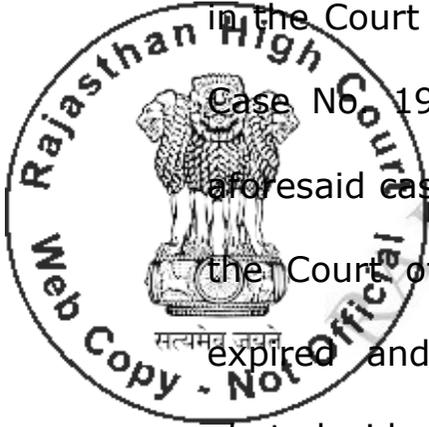
The said complaint under Section 156(3) of Cr.P.C. was sent for investigation by learned CJM, Pali, upon which the Police registered an F.I.R. No.403/1996 dated 18.11.1996 at PS Kotwali, Pali. After due investigation of the F.I.R., the Police filed chargesheet against Phootar Mal on 06.12.1996 before the Court of Special Judge, NDPS Act Cases, Jodhpur, however, further investigation was pending in respect of other accused persons under Section 173(8) of Cr.P.C. The Special Court, NDPS Act Cases, Jodhpur on the same day i.e. 01.03.1997 took cognizance against Phootar Mal. In pursuance of further investigation, the Police, PS Kotwali, Pali concluded the investigation and filed a charge-sheet against as many as 20 accused persons including the present petitioner Shri Sanjiv R. Bhatt for the offences under Sections 114, 120B, 218, 323, 342, 348, 357, 365, 368, 388, 452,



482, 201 of IPC and Sections 9, 17, 18, 29, 58(1), 58(2) R/w Section 37 of the NDPS Act but the said charge-sheet was submitted on 13.03.2000.

In the meanwhile, Phootar Mal approached the Hon'ble Supreme Court for transfer of the said case arising out of F.I.R. No.403/1996 registered at PS Kotwali, Pali and the case pending in the Court of Special Judge, NDPS Act Case, Jodhpur in Session Case No. 19/1997. The Hon'ble Supreme Court transferred the aforesaid case on 03.11.1998 in respect of accused Phootar Mal to the Court of Patiala House, New Delhi. Later on, Phootar Mal expired and criminal proceedings pending against him were abated vide order dated 02.09.2006. It is relevant to note that only in respect of Phootar Mal, the case was transferred to Special Court, NDPS Act Cases, Patiala House, New Delhi and upon his death, the criminal proceedings pending only against him abated, whereas, in respect of other accused-persons, the case was still pending before the Court of Special Judge, NDPS Act Cases, Jodhpur.

The F.I.R. No.403/1996, PS Kotwali, Pali was challenged by way of Criminal Misc. Petition before this Court, one by the State of Gujarat, which was registered as SB Cr. Misc. Petition No.108/1999 and another by Shri R.R. Jain in SB Cr. Misc. Petition No.164/1999. Both these Misc. Petitions were dismissed by this Court vide order dated 05.04.2000. Against the said order of dismissal dated 05.04.2000, a Special Leave Petition was presented by co-accused Shri R.R. Jain, bearing SLP (Crl) No.1327/2000. In that SLP, the Hon'ble Supreme Court stayed further proceedings in F.I.R. No.403/1996, PS Kotwali, Pali vide





order dated 01.05.2000. Similar SLP was also filed by the State of Gujarat against the order dated 05.04.2000, bearing SLP (CrI) No.1931/2000, in which the proceedings too were ordered to be stayed. The SLP, which was preferred by the State of Gujarat, was with regard to its police officials only. The State of Gujarat withdrew the SLP preferred by it on 5.12.2018. The other SLP was also withdrawn by Shri R.R. Jain. After the withdrawal of both the SLPs from the Hon'ble Supreme Court, the case pending before learned Special Judge, NDPS Act Cases, Jodhpur continued.

A Special Criminal Application bearing No.1302/1997 was filed before Gujarat High Court by I.B. Vyas seeking transfer of criminal proceedings relating to F.I.R. No.403/1996, PS Kotwali, Pali to Gujarat and praying for them to be conducted with those proceedings relating to F.I.R. No.216/1996, PS Palanpur City. Similarly, another Special Criminal Application case bearing No.1309/1997 was also preferred for the same relief before the Gujarat High Court. Both these criminal applications were decided by a common order dated 04.12.1997 by the Gujarat High Court and the Pali Police was directed to complete the investigation as expeditiously as possible by 15.01.1998. It was also observed that no cognizance of any offence was taken by the Court at Palanpur. In such circumstances, the application under Section 186 of Cr.P.C. was misconceived. It was also mentioned that Shri I.B. Vyas and Shri R.R. Jain filed a Special Criminal Application before the Gujarat High Court way back in the year 1998 and 1999 bearing case No.680/1999 and 1079/1998 respectively, in which they prayed for the transfer of investigation in relation to F.I.R. No.216/1996, PS Palanpur and investigation of F.I.R.



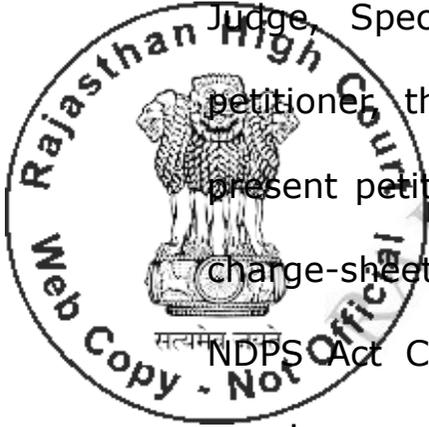


No.403/1998, PS Kotwali, Pali to CBI. Both these matters were ultimately decided by the Gujarat High Court on 03.04.2018 with the observation that the investigation of F.I.R. No.216/1996, registered at PS Palanpur be conducted by a Special Investigation Team, constituted out of CID (Crime), State of Gujarat and that the investigation would be carried out within a period of three months. After due and thorough investigation, the Police filed a challan against the present petitioner Sanjiv R. Bhatt and Shri I.B. Vyas on 02.11.2018. In the charge-sheet, it was mentioned that one of the accused Mala Bhai Rebari was also involved in the crime but died on 20.02.2018, therefore, the criminal proceedings against him stood abated. Thereafter, the cognizance was taken against the petitioner as well as Shri I.B. Vyas on 02.11.2018. Charges of the said case were also framed against both the accused on 18.09.2019. The present Misc. Petition has been filed by the petitioner with the averment that, for the same offence, the petitioner cannot be prosecuted and be punished at Palanpur and also at Jodhpur. Therefore, the criminal proceedings pending against the petitioner before the Court of Special Judge, NDPS Act Cases, Palanpur, District Banaskantha, Gujarat may be stayed.

Shri Vivek Raj Singh Bajwa, counsel for the petitioner vehemently argued that after the perusal of Section 186 of Cr.P.C., it is brought out that it is in respect of the same offence arising out of the same occurrence and the same transaction against the same accused. So, the case pending at Special Court (NDPS) cum Fourth Additional Sessions Judge, Palanpur, District Banaskantha Gujarat is an abuse of the process of Court and therefore, the case at Palanpur should not be continued. He also submitted that



the cognizance has been taken of the same offences by two different courts. This is a clear case of harassment of the accused to appear and face trial in more than one court. He further submitted that, first the cognizance was taken against the accused Phootar Mal on 01.03.1997 at Special Court, NDPS Act Cases, Jodhpur and subsequently, a charge-sheet was filed before the Judge, Special Court, NDPS Act Cases, Jodhpur against the petitioner, thereafter, a cognizance was also taken against the present petitioner on 13.03.2000. Later on when the subsequent charge-sheet was filed against the petitioner before Special Court, NDPS Act Cases, First Class, Palanpur on 02.11.2018 and the cognizance was taken against the petitioner at Palanpur, it was brought out that the subsequent cognizance at Palanpur Court may be stayed. He further submitted that the basic foundation of the case at hand is to the effect that Sumer Singh Rajpurohit was allegedly and falsely implicated in a NDPS case for the purpose of eviction from a shop which was occupied by him and his brother Mohan Lal which belongs to Phootar Mal's daughter Amari Bai and sister of R.R. Jain. It is alleged that the accused persons including police persons and the petitioner conspired and falsely implicated Sumer Singh Rajpurohit and planted opium at Hotel Lajwanti in Room No.305 at Palanpur, Gujarat. So, the basic foundation of these two criminal cases is one and the same, therefore, Section 186 of Cr.P.C. is very much attracted in the present case. In support of his contentions, the counsel for the petitioner relied upon the Judgments of the Hon'ble Supreme Court in the case of **State of Rajasthan Vs. Bhagwan Das Agrawal & Ors. [(2013) 16 SCC 574]**, the judgment of the Madhya Pradesh High





Court in the case of **State of Madhya Pradesh Vs. Bahadursingh Uttamsingh & Ors. [1984 MPLJ 229,** Judgment of Allahbad High Court in the case of **Miss. Meera Gupta & Anr. Vs. Kanchan Gupta & Anr. [1990 All LJ 662],** and the Judgment of Calcutta High Court in the case of **Supriyo Sarkar Vs. Sunil Ranjan Sarkar [AIR 1970 CALCUTTA 81].**



Per contra, learned Public Prosecutor and Mr. Kuldeep Mathur, counsel for respondent No.2 vehemently argued that first complaint arose at Palanpur, Gujarat and the case was first initiated at Palanpur, Gujarat where Shri Sumer Singh Rajpurohit was falsely implicated by the Police persons including the present petitioner. He submitted that a similar application was filed by the petitioner being a Revision Application No.1650/2019 before the Gujarat High Court in which the Gujarat High Court on 21.05.2020 decided and clearly mentioned that offence registered as CR No.216/1996 at Palanpur City Police Station (present offence) is the real offence and only that offence can be investigated. The revision petition challenging the order framing charge was dismissed. He further submitted that in the judgement passed by Gujarat High Court in Criminal Application No.680/1999 and Criminal Application No.1079/1998, decision was delivered on 03.04.2018 in which the Gujarat High Court observed that an application under Section 186 of Cr.P.C. was considered by a detailed judgment and order dated 04.12.1997. Thus, the petitioner wants to just delay the matter and linger on the proceedings for one or the other reason. Counsel further submitted that a Recalling Application was filed by the petitioner bearing Recalling Application No.1/2020 in Criminal Application



No.680/1999 which was dismissed on 17.01.2020 in which it was observed that the case first commenced at Palanpur, Gujarat, therefore, the argument of the counsel for the petitioner that the proceedings at Palanpur, Gujarat should be stayed is baseless and has no grounds and the Criminal Misc. Petition filed by the petitioner deserves to be dismissed. Counsel relied upon the

Judgment of Hon'ble Supreme Court in the case of **Kamlapati Trivedi Vs. State of West Bengal [(1980) 2 SCC 91]**, **Abdul Rehman & Ors. Vs. K.M. Anees-Ul-Haq [(2011) 10 SCC**

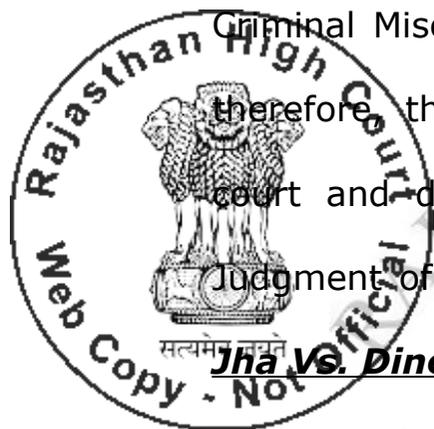


Shri Dharendra Singh and Shri Mukesh Rajpurohit, counsels for newly added respondent Sumer Singh Rajpurohit submitted that the proceedings were first initiated at Palanpur, Gujarat and thereafter, Shri Sumer Singh Rajpurohit filed a complaint mentioning facts about his false implication as he never visited Palanpur, Gujarat and never stayed at Hotel Lajwanti. It was specifically stated by Sumer Singh Rajpurohit that he was falsely implicated by the present petitioner and other police persons to get the shop vacated which is situated at Pali. So, the two distinct offences clearly arise out of both the complaints. One complaint which was lodged at Palanpur was with regards to the conspiracy and the offence relating to the NDPS Act, whereas the complaint filed by Sumer Singh Rajpurohit at Pali is clearly with regard to his false implication in a NDPS case arising out of a property dispute, therefore, the Police added the offence under the Sections of the NDPS Act, so these offences relate to two different and distinct complaints in this case, therefore, the proceedings in relation to



the complaint filed at Palanpur and proceedings pending before the Special Judge, NDPS Cases, Jodhpur should be continued. It was further argued that the petitioner had already approached the Hon'ble Gujarat High Court 2-3 times seeking similar relief and all such applications were dismissed by Gujarat High Court, which is why the present petitioner has now resorted to file the present

Criminal Misc. Petition seeking the same relief before this Court, therefore, the same is nothing but an abuse of the process of court and deserves to be dismissed. Counsel relied upon the Judgment of Hon'ble Supreme Court in the case of **Abhinandan Jha Vs. Dinesh [AIR 1968 SC 117]**.



Heard the learned counsel for the parties and perused the material available on record as also the case laws cited before me.

At the outset, it would be worthwhile to refer to Section 186 of Cr.P.C. which is reproduced hereunder :

"186. High Court to decide, in case of doubt, district where inquiry or trial shall take place. Where two or more Courts have taken cognizance of the same offence and a question arises as to which of them ought to inquire into or try that offence, the question shall be decided-

(a) if the Courts are subordinate to the same High Court, by that High Court;

(b) if the Courts are not subordinate to the same High Court, by the High Court within the local limits of whose appellate criminal jurisdiction the proceedings were first commenced and thereupon all other proceedings in respect of that offence shall be discontinued."

From the above provisions it would follow that it enables the High Court to decide the question in case of doubt as to which of the two different Courts having taken cognizance of the same offence should inquire or try. The provision is to avoid possible confusion and embarrassment of the two or more Courts. The first



requirement to attract the provision is that two different Courts have taken cognizance of the same offence. In case, where one Court has taken cognizance and for the same offence the investigation is pending within the local jurisdiction of different Courts, the provisions of Section 186 cannot be invoked. The second sub-clause (b) provides as to which Court will take a decision with respect to such a doubt. In case both the Courts are subordinate to the same High Court, under Clause (a), the decision shall be taken by the same Court. But, in a case where the two different Courts are the Courts subordinate to different High Courts, under Clause (b), the decision shall be taken by the High Court within the local limits of whose appellate criminal jurisdiction the proceedings first commenced. This provision incorporates a principle of earlier commencement of proceedings to avoid possible confusion and embarrassment.

Now I shall mention the cases filed by the petitioner or the co-accused from time to time at different Courts.

Co-accused I.B. Vyas had filed a Criminal Misc. Application bearing No.1302/1997 before the Hon'ble Gujarat High Court with the relief to transfer the criminal proceedings of F.I.R. Case No.403/1996 from Pali, Kotwali Police Station for investigation and trial with C.R. No.216/1996 at Palanpur in the interest of justice. Hon'ble Gujarat High Court decided on 04.12.97 while deciding the said application dealt with **Section 186 of Cr.P.C.** and observed as under :

"16. The provision of Section 186 does not confer any right on any party. As I have said, this provision enables the High Court to decide the question out of which two different Courts, the enquiry or trial should proceed. It is significant to notice that the provision



provides the consequence of the decision that "thereupon all other proceedings in respect of that offence shall be discontinued". Thus, under Section 186, a decision is to be taken on the question which Court will proceed with the enquiry or trial and not the reverse that which Court will not proceed with the enquiry or trial. The consequence of the decision is discontinuance of the proceedings in the different Court or Courts by implication. This is based on the inherent concept of Courts having jurisdiction over a specific territory is essential for the very maintenance of comity of Courts. Section 186 does not empower a High Court to withdraw or issue any direction with respect to an investigation pending in the local criminal jurisdiction of other High Court, may be for the same offence. It also does not empower one High Court to decide the competence of any other Court subordinate to other High Courts with respect to the same offence. Section 186 only enables the High Court to remove the doubt in the contingency provided therein by the High Court as provided under Sub-section (a) or (b) and as a consequence, proceedings are to be followed as provided under Section 186 without any direction to different Court or Courts more particularly in a case of such Courts which are not Subordinate to that High Court.



17. Thus in the instant case, this Court lacks jurisdiction to give any direction with respect to withdrawal of investigation in F.I.R. Case No. 403 of 1996 with the Rajasthan Police or to withdraw the case from the Court of Special Judge, Jodhpur with respect to the same offence. What is required to be done by this Court is to see as to whether any Court in the State of Gujarat has taken cognizance of the same offence, i.e., offence in F.I.R. Case 403 of 1996 and C.R. No. 216 of 1996 and further if any enquiry or trial is pending in that Court and further that the proceedings of that case has commenced prior to the proceedings in any Court in the State of Rajasthan. There is not a word in either of the two petitions with respect to taking of cognizance by any Court and pendency of enquiry or trial in any Court with respect to the same offence in the State of Gujarat. On the contrary, the specific case of the petitioner in both the petitions is that the investigation with respect to offence under Section 58(2) of the N.D.P.S. Act is in progress. It is not the case that a police report has been filed and an enquiry or trial is pending in any Court and it is only the further investigation under Section 173(8) of the Code is with the police. Thus, the provisions of Section 186 cannot be attracted in the present case."



Thus, the Hon'ble Gujarat High Court reached the conclusion that the provisions of Section 186 of Cr.P.C. were not applicable as sought by co-accused I.B. Vyas.

Similarly, two Criminal Applications No.1079/1998 and No.680/1999 came to be filed by co-accused R.R. Jain and I.B. Vyas respectively with the following reliefs :



"(A) The Hon'ble Court be pleased to direct the State of Gujarat to handover the investigation of prohibition C.R.No.216/96 pending before the Palanpur Police to C.B.I.

(B) The Hon'ble Court be pleased to issue a writ of mandamus or writ in nature of mandamus or writ of prohibition or writ in nature of prohibition or writ of certiorari or writ in nature of certiorari or any other appropriate writ or direction or order directing to quash and set aside the distinction of civil and criminal matters under Article 226 of Constitution of India made in the Gujarat High Court Rules 1993 in part I Chapter I and be pleased to further declare that it being an extraordinary Constitutional remedy, there is no distinction of civil or criminal matter under Article 226 of Constitution of India and that it be further declared that further appeal is available to parties irrespective of such distinction under clause 15 of the Letters Patent.

(C) The Hon'ble Court be pleased to issue appropriate writ or direction directing reinvestigation of the F.I.R. registered at Kotwali Police Station, Pali bearing C.R. No.403/96 by Central Bureau of Investigation (C.B.I.) or by an officer not below the rank of Director General of Police of the State of Rajasthan.

(D) Pending disposal and final hearing of this petition all further proceedings in connection with C.R. No.216/96 of Palanpur and C.R. No.403/96 of Pali Kotwali Police Station at Pali Rajasthan be stayed.

(E) Such other order which is just and proper in the facts and circumstances of the case."

Special Criminal Application No.680/1999 was filed by co-accused I.B. Vyas with the following prayer:

(A) The Honorable Court be pleased to direct the State of Gujarat to handover the investigation of prohibition



C.R. No.216/96 pending before the Palanpur City Police to Central Bureau of Investigation (C.B.I.) not below the rank of Director General of Police C.B.I.

(B) The Honorable Court be pleased to issue an appropriate writ or direction directing reinvestigation of the F.I.R. registered at Kotwali Police Station, Pali bearing C.R. No.403/96 by Central Bureau of Investigation (C.B.I.) not below the rank of Director General of Police of the C.B.I.

(C) Pending disposal and final hearing of this petition all further proceedings in connection with Prohibition C.R. No.216/96 of Palanpur City Police Station and C.R. No.403/96 of Pali Kotwali Police Station at Pali Rajasthan be stayed.

(D) Such other order which is just and proper in the facts and circumstances of the case."



The Hon'ble Gujarat High Court had decided the criminal applications with the following observations :

"23. The following facts are not in dispute:-

1. The investigation into the F.I.R. No.403/96 registered at the Kotwali Police Station, Pali, State of Rajasthan is already over and the competent court has taken cognizance of the report filed under section 173 of CrPC long back at least before more than 10 years.
2. There has been no investigation with regard to the C.R. No.216/96 registered at the Palanpur District Banaskantha at all.
3. The prayer made by the petitioner Shri I.B. Vyas to transfer the criminal proceeding of the F.I.R. Case No.403 of 1996 from Pali to be taken with C.R. No.216/96 at Palanpur purported to have been filed under section 186 of Cr.PC stood rejected by a detailed judgment and order dated 4.12.1997 passed by this Court in the Special Criminal Application No.1302 and 1309 of 1997 titled as I.B. Vyas vs State of Gujarat.
4. In light of the above, the only question which requires to be examined is with regard to the investigation of the offence registered as C.R. No.216 of 1996 at the Palanpur City P.S. which, unfortunately,



has remained uninvestigated in spite of the seriousness of the offences involved therein.

5. Briefly stated the offence/s pertains to the planting/recovery of 1½ kg of narcotics drug at the Hotel Lajwanti City Palanpur, State of Gujarat. The intimation of narcotics drug being available in the said Hotel is stated to have been received by the control room of the Palanpur district Police through an anonymous caller.

6. Based upon the said recovery/planting of 1½ kg narcotic drugs at the Hotel Lajwanti, City Palanpur, one Advocate [Shri Sumer Singh Rajpurohit who has not been joined as party in the present petition] is stated to have been abducted in the midnight from his residence at Pali, Rajasthan. As recorded by this Court in the aforesaid judgment and order dated 4.12.1997, after the arrest of the said victim - Advocate, a property occupied by him was vacated under the pressure of his alleged implication with the narcotic drug found in Hotel Lajwanti.



Surprisingly, as emerged during the investigation of the C.R. No.403/96 conducted by the Rajasthan Police, a written document was executed for vacating the said property while Shri Sumer Singh Rajpurohit was still in the police custody of the Palanpur police. In the said written agreement, it was shockingly mentioned that if the said Advocate vacates the property, the Palanpur Police would release him from Jail in the said narcotic case. In fact, within only three days of Shri Sumer Singh Rajpurohit remaining in police custody, the property was vacated by his brother and on such vacating of the property, the Palanpur Police filed a report under Section 169 Cr.PC before the Court saying that the person occupying the room in Hotel Lajwanti where 1½ kg narcotic was found was not Shri Sumer Singh Rajpurohit and that he may be released.

The sequence of events are really shocking. More shocking is the fact that though the offence registered as C.R. No.216/96 at Palanpur is crucial for investigation, no investigation, whatsoever, has taken place.

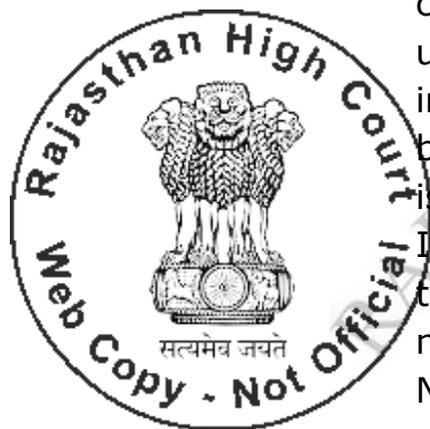
7. So far as the offence registered as C.R. No.216/96 at the Palanpur police station regarding planting/recovery of 1½ kg. of narcotic drug based



upon which an Advocate was falsely arrested and was coerced to vacate the property in three days while in custody is concerned, this Court in the aforesaid judgment dated 4.12.1997 recorded as under :

"10. I have perused the police diary of C.R. No. 216/96. Nothing substantial has been done in this case. Mr. D.N. Patel, learned APP submitted that the police is in search of the person who gave false information to the police from Pali. For this two computer photographs have been prepared. I cannot understand when even according to the police the said information was received on telephone how and what basis a computer photograph could be prepared. There is no progress beyond this, in this case."

It is very sad and unfortunate to note, as informed by the learned Public Prosecutor, that till date there has not been any investigation or progress in the C.R. No.216/96.



So far as the investigation into the offence registered at the Pali Kotwali Police Station is concerned, the facts brought are very shocking. This Court, in the judgment of I.B. Vyas vs State of Gujarat [supra], after elaborately examining the investigation conducted by the CID, CB, Rajasthan into the offence registered at Pali, State of Rajasthan, being F.I.R. Case No.403/96 recorded the following facts which have emerged on investigation:

i. Shop No. 6 in Vardhaman Market, Pali, belongs to Amribai. She lives in Bombay. Phootarmal holds the Power of Attorney. He is real uncle of Shri R.R. Jain. They were interested in eviction of the premises from Sumersingh and his brother.

ii. Though Amribai is not the real sister of Mr. R.R. Jain, as she married to Javant Raj in place of his sister, she was treated as real sister. She is an elderly lady aged 55 years. Her husband Jawantraj is carrying own business in Bombay. Mr. Jain has studied in Bombay staying with his sister Amribai. In one of the reception in the village, Mr. R.R. Jain said that whatever he is today, is because of Javant Raj.

iii. Smt. Amribai, Javant Raj ji. Phootarmal and R.R. Jain all had assembled in village Mohrai to attend the marriage of the son of Amribai, during the period



25.4.1996 to 29.4.1996. The investigation has recorded statement of number of witnesses about the participation of these persons in the marriage. As per the information given by the Gujarat High Court, Hon'ble Justice R.R. Jain was not on duty during the period 25.4.1996 to 29.4.1996. As per the report of the driver, Mr. Jain left Ahmedabad on 25.4.1996. Police has also collected copies of the petrol consumption bills which indicate that petrol was filled in his official car GJ-1G 1904 at Sirohi Road, Sumerpur, Abu Road. Statement of Addl. Superintendent of Police Officers at Bali have been recorded, which shows Shri Jain's presence in Bijapur and near villages during the said period, as on his telephonic request, Police arrangements were made.



iv. There are statements of witnesses to the effect that during marriage, there were talks in the family about the shop in Vardhaman Market. Shri Javant Raj had agreed to sell the shop for Rs. 6 lakhs, but the deal could not be settled as Phootarmal was demanding Rs. 8 lakhs. Vacant possession of the shop was felt necessary. They disbursed on 29th April 96. Palanpur is on the way from Bijapur to Ahmedabad.

v. The Investigating Agency has also collected telephone bills of Phootermal from Pali, telephone bills of Sanjiv Bhatt, DSP, Palanpur (57104) and that also the telephone bills of Shri R.R. Jain (7865568) at Ahmedabad. Police has collected all relevant record from S.T.D. Telephone Booths at Palanpur and Pali. Relevant evidence in: that regard has been recorded. There are outgoing calls from the telephone of Sanjiv Bhatt to Shri R.R. Jain at Ahmedabad on various dates, i.e. 5.3.1996, 6.3.96, 22.6.96, 24.3.96, 2.4.96, 8.4.96, 9.4.96, 10.4.96, 14.4.96, 4.5.96 and 7.5.96. Similarly there are outgoing calls from the telephone of Shri R.R. Jain to Sanjiv. Bhatt at Palanpur on 5.3.96, 31.3.96 and 10.4.96, 30.4.96, 4.5.96, 6.5.96 and 8.5.96.

vi. On 30.4.96, before the arrest of Sumer Singh and the day on which opium alleged to have been planted in the Hotel at Palanpur, there are telephone calls between the alleged conspirators. There are noticeable outgoing calls from the official telephone No. 7865568 of Shri R.R. Jain.



Hrs.	Seconds	
20.23	206	Phootarmal, Pali
21.08	89	-do-
21.17	145	Sanjiv Bhatt, Palanpur
21.13	105	Phootarmal, Pali



vii. On 3.5.96, the day on which Sumersingh was brought to Palanpur, there is one call to Phootarmal at 21.12 hrs., on 4.5.96 again there are outgoing calls from the telephone of R.R. Jain to Phootarmal at 09.11 hours then at 9.20 hours. This talk to Phootarmal is a long one. Thereafter there is a talk to Sanjiv Bhatt at 9.43 hours. Again call to Phootarmal at 9.45 hours, 14.05 hours to Phootarmal, 21.09 hours to Phootarmal and immediately thereafter at 21.11 hours, to Sanjiv Bhatt. On 5.5.1996, the day on which agreement to vacate the premises is executed and Sumersingh was assured that he will be released, there are outgoing calls from the telephone of Shri Jain to Sanjiv Bhatt at 10.08 hrs., 0.53 hrs., 18.16 hrs. and 23.09 hrs. Suffice it to say that the computer record collected by the Police from Telephone Department shows that there had been 16 rounds of telephonic calls from Pali to Ahmedabad made by Phootarmal to Shri Jain and Ahmedabad to Palanpur made from the telephone of Shri Jain to the telephone of Shri Bhatt. Police has collected tape recorded talk of Phootarmal to the telephone of Shri Jain.

viii. Investigating Agency has collected various documents pertaining to tenancy of the shop, Civil Suit and the agreement dated 5.5.96 signed by Mohanlal to deliver the vacant possession and another agreement written by Phootarmal through his son Rohit, in which it is mentioned to get Sumersingh released and if it is not done, he will have right to get possession back of the shop and the agreement shall stand cancelled. Key of the shop was given to Narayansingh, mediator.

ix. Official record showing the visit of I.B. Vyas and Police party to Pali in civil dress, without informing the local police in jeep of fake number plate has been



collected. Relevant record from RTO, Udaipur has been collected about the use of jeep with fake number plate by Mr. I.B. Vyas. Statements of number of witnesses have been recorded.

x. Police has also collected copies of the judicial proceedings of the Court of Chief Judicial Magistrate, Additional Sessions Judge and Special Judge at Palanpur during the period 4.5.96 to 14.5.96, which reflects pressure on police and may be to some extent on judiciary.



xi. Police has collected documentary and oral evidence to show that Sumersingh was in Pali on 29th and 30th April 1996. Material has also been collected as to how Shanti Lal made a false entry in the Register of Lajwanti Guest House and forged the signature of Sumersingh.

xii. On 26.11.96, Mr. M.D. Vaishnav, produced an application of Shri R.R. Jain addressed to the Bar Association for compromise. On 27.11.96, Mr. Vaishnav, Pathanjali Joshi, Bhagirath, Advocates talked to Shri Jain the talk was taped by Sidheswar Puri from another room the audio cassette has been produced and the same is with the Investigating Agency. According to the complainant, it contains extra-judicial confession of Shri R.R. Jain."

24. The petitioner/s have informed this Court that the proceedings with regard to the charge-sheet filed by the Rajasthan Police in C.R. No.403/1996 are pending before the Hon'ble Supreme Court in Criminal Appeal No.1030 and 1031 of 2002.

However, it is an admitted position that neither any proceedings are pending with regard to the prohibition C.R. No.216 of 1996 pending at the Palanpur City Police Station, Banaskantha, Gujarat, nor, the investigation has progressed at all.

25. From the shocking facts emerging from the record and the reported Judgment placed before this Court in which Shri I.B. Vyas himself was the petitioner. The subject matter being the same, it is clear that it would be a travesty of justice if an independent, detailed and thorough investigation in offence registered being the C.R. No.216/96 at the Palanpur City Police Station is



not conducted so as to find out who brought/planted 1½ kg of narcotic drugs based upon which the complainant Advocate Shri Sumer Singh Rajpurohit was allegedly and falsely implicated which is apparent from the investigation conducted by the Rajasthan Police referred to in the above portion.

.....

53. In the result, both the writ-applications are disposed of with a direction that the investigation of the C.R. No.216/96 registered with the Palanpur City Police Station be conducted by a Special Investigation Team constituted out of the CID (Crime), State of Gujarat, which is a central agency of crime detection in the State of Gujarat.

54. The Special Investigation Team shall consist of the officers of not below the rank of the Superintendent of Police and shall have an officer of the level of the Deputy Inspector General of Police as its head.

55. The investigation shall be carried out under the direct supervision of an officer not below the rank of the Inspector General of Police."

That after disposal of the aforesaid criminal applications, the petitioner Sanjiv R. Bhatt filed a recalling application being Cr. Misc. Application (Recall) No.1/2020 with the following prayer :

"13(A) That the Hon'ble Court be pleased to reconsider the order dated 03-04-2018 passed in Special Criminal Application No.680 of 1999 with Special Criminal Application No.1079 of 1998 and if the Hon'ble Court is pleased to reconsider the said order, then the Hon'ble Court further be pleased to issue an appropriate writ, order or direction to recall the order dated 03-04-2018 passed in Special Criminal Application No.680/1999 with Special Criminal Application No.1079/1998 with a further direction indicating all proceeding initiated so far based on the said order stands ab-initio void."

While dealing with the aforesaid application, Hon'ble Gujarat High Court observed as under :

"27. I have no hesitation in observing that the filing of the applications of the present type is nothing but last ditched efforts on the part of the applicant to see that the trial does not proceed further. Such attempts



needs to be condemned in strong words. Having regard to the developments that have taken place after this Court passed the order, it is too much on the part of the applicant to come to this Court and pray that the order be recalled, and that too, on flimsy grounds as urged. This litigation is now almost more than two decades old. After due consideration of all the relevant aspects of the matter and materials on record, this Court thought fit to pass appropriate directions for the constitution of a Special Investigation Team, so that such team can carry out effective investigation of the F.I.R. In the order passed by this Court, a fine distinction has been drawn between the prosecution instituted within the State of Gujarat and the proceedings, which are pending in the State of Rajasthan. The filing of the 'A' summary report or any other report can hardly be a ground to preclude this Court from exercising its extraordinary jurisdiction under Article 226 of the Constitution of India, if the occasion demands in the interest of justice. It is too much on the part of the applicant to say that as the investigation was completed and an 'A' summary report was filed, this Court ought not to have entertained the two writ-applications and pass an order for the constitution of a Special Investigation Team. The facts of this case need not be repeated. The more they are recalled, it is more painful. Unfortunately, the police officers are involved in this crime along with a former Judge of this High Court.



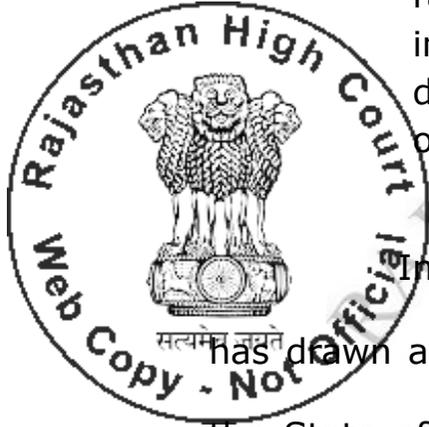
28. As on date, there is a charge-sheet on record. I would not like to go into the evidence forming part of the charge-sheet. It is now for the trial Court to proceed with the recording of the evidence. The guilt or the innocence of the accused persons will be now determined by the trial Court on conclusion of the trial.

29. The two decisions of the Supreme Court upon which the strong reliance has been placed is also thoroughly misconceived.

30. In Ram Lal Narang (supra), the Supreme Court was dealing with the facts and circumstances of a case where two F.I.R.s were lodged and two charge-sheets were filed. The Supreme Court took note of the fact that the conspiracy which the subject-matter of the



second case could not be said to be identical with the conspiracy which was the subject-matter of the first one, and further, the conspirators were different; although, the conspiracy which was the subject-matter of the first case may perhaps be said to have turned out to be a part of the conspiracy which was the subject matter of the second case. After advertng to the various facets, the Supreme Court opined that occasions may arise when a second investigation started independently of the first may disclose wide range of offences including those covered by the first investigation. Being of such view, the Supreme Court did not find any flow in the investigation on the basis of the subsequent F.I.R..”



In the aforesaid order the Hon'ble Gujarat High Court has drawn a distinction between the prosecution instituted within the State of Gujarat and the proceedings, which are pending in the State of Rajasthan, meaning thereby both the cases pertain to different offences.

It is also relevant to mention here that the petitioner by way of filing Cr. Revision Application No.1650/2019 before the Hon'ble Gujarat High Court, challenged the order dated 23.08.2019 passed in Special NDPS Case No.3/2018 pending before the Court of Learned Special Judge, NDPS Act Cases, Banaskantha at Palanpur whereby charges were framed against the petitioner. The Hon'ble Gujarat High Court after discussing in detail the history of abuse of law by the present petitioner so also the previous application filed by the petitioner to invoke the provisions of Section 186 Cr.P.C., rejected the said Cr. Application vide order dated 21.05.2020 with the following observations :

“37. That, present applicant in the present case able to frustrate the courts of justice by delaying the trial since



1996. The present applicant made first attempt by filing Special Criminal Application No. 1038 of 1997 name of Shri I.B. Vyas, the co-accused and Criminal Misc. Application No. 1309 of 1997 on the name of State of Government. Both the referred application were filed invoking Section 186 of the Act, which is quoted herein under:

"186. Where two or more Courts have taken cognizance of the same offence and a question arises as to which of them ought to inquire into or try that offence, the question shall be decided-

(a) if the Courts are subordinate to the same High Court, by that High Court;

(b) if the Courts are not subordinate to the same High Court, by the High Court within the local limits of whose appellate criminal jurisdiction the proceedings were first commenced and thereupon all other proceedings in respect of that offence shall be discontinued.

38. While dealing with the said two petitions, this Court was conscious of

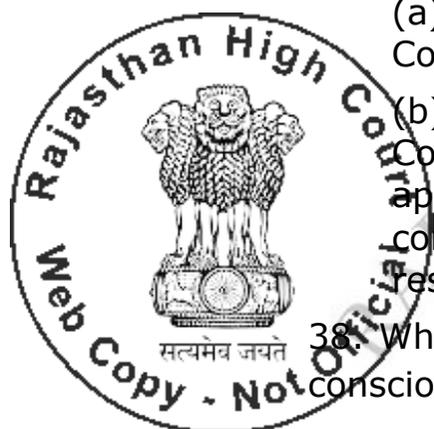
(A) pending of criminal case in connection with CR NO.216 of 1996 in Palanpur Court and CR No. 403 of 1996 pending at Pali Rajasthan.

(B) Charge sheet is already filed by Rajasthan Police in CR No. 403 of 1996.

39. This court made it clear that it was the case of the Palanpur Police that as a part of the said conspiracy someone has entered the name of Shri Sumersingh in the hotel register about plaintiff of narcotic substance in the room of the said hotel and gave false information to the Palanpur Police. The Palanpur Police also inquired that such person was not Sumersingh and therefore, a report under Section 169 of CrPC was submitted by Police and accepted by the competent court on 14th September 1996 in para 7, this Court has categorically observed as under:

40. After examining the investigation conducted by CID-CB Rajasthan (in the complaint by by the deponent) this Court keeping the question to be decided mainly prayers prayed by both the advocates requires to be granted or not.

41. Mr. I.B. Vyas in his Special Petition No. 103 of 1997 prayed to transfer the criminal proceedings of CR No. 403 of 1996 from Pali Kotwali for an investigation and try with proceedings of CR No. 216 of 1996 at Palanpur in the interest of justice and made other prayers. In Special





Criminal Application No. 1309 of 1997, it was prayed to issue direction of transferring proceedings of CR No. 403 of 1996 from Pali Kotwali for investigation and try with the proceedings of CR No. 216 of 1996 registered at Palanpur City Police Station along with consequential reliefs.

42. It becomes clear that the applicant has categorically contended before the respective High Courts that offence registered being CR No. 216 of 1996 at Palanpur City Police Station (present offence) is the real offence and only that offence can be investigated. Now, he has taken a different view and Sumer Singh and said different offence is directed by the High Court to be investigated and it has emerged that applicant himself is an accused in the said offence also.



43. In the case on hand, learned Special Judge has assigned detailed reasons for examining the discharge application filed under Section 227 Cr.PC. It is clear from his order that after consideration of relevant materials, charge had been framed. After evaluating the material produced by the prosecution and after considering the probability of the case, learned Special judge satisfied by the existence of several grounds against the applicant and framed the charge. Whether the materials on hand of the prosecution are sufficient or not are important for trial. At this stage, it cannot be claimed that there is no sufficient ground for proceedings against the applicant and discharge is the only remedy. Further whether the trial will in end conviction or acquittal is also immaterial, all these relevant aspects have carefully been considered by the learned Special Judge dismissing the discharge application filed by the applicant herein. This court is fully agreed with the said conclusion.

With above reasons, this revision application is hereby dismissed. Notice stands discharged."

Thus, it seems that the present petitioner after taking recourse to all the judicial proceedings by way of filing various applications at various stages before the Hon'ble Gujarat High Court as well as before the Hon'ble Supreme Court including the last resort of filing Cr. Revision Petition challenging the order of framing charges by Special Judge, NDPS Act Cases, Banaskantha



at Palanpur has filed the present Misc. Petition for staying the proceedings pending before the said Court.

It will be worthwhile to refer to the original complaints being C.R. No. 216/1996 and C.R. No. 403/1996 which are reproduced hereunder :-

"Palanpur City Police Station Prhoi. C.R. No.216/1996.



The first information report regarding the cognizable offence filed at the Police Station, as per Sec. 154 of the Criminal Procedure Code.

Sub-District : Palanpur.
Banaskantha.

District :

The time and date of the offence:
30.04.1996

Dt.

At: 10:40 Hours.

1.	Date and hour of the information given	Dt. 30.04.1996 At 12-00 hrs.
2.	Place of the offence, the distance from the Police Station and the direction	Room No.305, in Hotel Lajwanti, at Palanpur. At a distance of 3 KM. from the Police Station. Dhundhiyawadi Police Station
3.	Date sent from the Police Station	30.04.1996
4.	Name and residential address of the person given the information and of the complainant.	Shri I.B. Vyas, Police Inspector, L.C.B. Palanpur, on behalf of the Government
5.	Name and residential address of the accused person.	Sumersingh Rajpurohit, aged 38 years, R/o Pali, Vardhaman Market, Pali.
6.	Description of the offence in short and the description of the muddamal, if taken, in short and the penal reaction.	Under Section 17 of the NDPS Act, in that the accused mentioned in col. No.5, boarded



		<p>Room No.305.</p> <p>:In the guest house of the Hotel Lajwanti, on 29.04.1996 from 21-40 hr., and kept with prohibited opium weighing 1 kgs. And 15 Gms., valued at Rs.8,120/- below the bed on the cot in room No.305, in his possession, without my pass or permit, and committed the offence and as soon as he came to know about the raid, he immediately ran away.</p>
7.	Efforts made regarding the investigation, and if the explanation if any delay has been caused in recording the information.	Immediately,
8.	Disposal of the case	
	Sd/- Illegible.	Designation: Police Station Officer, Palanpur City.

Note : The first information be recorded under and in token of be being correct, the signature of the Informant of his thumb-impression be taken and the officer recording the same should attest the same.

30.04.1996

I, I.B. Vyas, Police Inspector, L.C.B., Palanpur, Banas Kantha.

I file my complaint on behalf of the Government to the effect that today I was present at the Vishramgriha. At that time, I received a message from the Police Control Room through a runner in writing and in the telephonic message, it was mentioned that one unknown person from Pali (Rajasthan) had informed on



phone that Sumer Singh Rajpurohit deals in opium and that by carrying 5 kgma. Of opium, he had boarded in the Hotel Lajwanti at Palanpur. The delivery of the opium is to be given at Palanpur. As the information was to that effect, for carrying out the raid on 30.04.1996, I had alleged P.S.I., L.C.B. Shri P.J. Chaudhari, P.S.I. Shri R.P. Patel. Unarmed H.C. Mohmad Hanif Vali Mohmed, B. No.1295 of L.C.B., Palanpur, J.H.C. Hajaribhai Motibhai, U.P.C. Becharbhai Naghbhai-B, No.870, U.P.C. Govind Bhai Shivabhai B.No.1250, U.P.C. Previnchandra Hiralal B. No.1392, at the Vishram-Griha, Palanpur and they all were acquainted with the telephonic message received from the Police control Room, Palanpur, and as the raid was to be arranged, a confidential report was sent to the Dist. Superintendent of Police, Banashkantha District, at Palanpur, and we the Police Officers and the Police personnel all had started at Hrs. 7-10 from the Vishram-Griha, Palanpur, in the police vehicle for carrying out the raid at the place shown in the telephonic message and when we reached at the circle on Palanpur-Dessa Highway, we called two persons who were passing by namely : (1) Gulma Reaul Abdul Rahman Pathan, reading behind D.B. Parakh High School, Subhash Road, Dhanera and (2) Mohmad Juber Sadulbhai Manknojiya, R/o Chadotor, Taluka Palanpur, and they were asked to remain as Pancha and they were explained about the aforesaid information and then we came with the panhas, at Hotel Lajwanti, the place mentioned in the message, and one person was sitting on the counter of the Lajwanti Hotel and on asking his name, he replied that his name was Ashok Kumar Shanti Lal Gupta of Palanpur, reading behind the Cold Storage, Highway, Palanpur and he further replied that he was the owner of the Hotel Lajwanti, and that on the first floor of the hotel, there is the guest house and that the persons coming from outside board in the said guest house. He was informed about the message received in the telephonic message. He was asked as to whether any person named Sumer Singh Rajpurohit R/o Pali had boarded in the guest house or not. In reply, he verified the register of the persons boarding in the guest house and replied that the person named Sumer Singh Rajpurohit, aged 38 years, residing at Vardhman Market, Pali, had boarded at 21-40 hrs. on 29.04.1996 in room No.305. An entry at Sr. No.640 was made in the register to that effect. As he replied in that manner, we took him with us and went upstairs at third floor and case near





room No.305 and asked him to open room No.305 and as he did that, we had kept the police persons down-stairs in the Hotel Lajwanti and also in the nearby place and the hotel owner Ashok Kumar Gupta pushed the handle of the door of room No.305 and the door along with the panhas and started to carry out raid. No person was found out in the room as well as in the bathroom. The ceiling fan of the room was on. On carrying out the raid with the panchas and the hotel owner, two wooden cota were found and on them. Cotton beda were lying on them. From below the first bed on the cot, one cotton bag red in colour with designs of blue and yellow. Colour and also in weighty condition was found out. On seeing in the same, the bundle wrapped with cotton 'lungi' of cross design and of slight green colour was found and on opening the same, one plastic 'theli' of slight Jamboo colour and having knote on the same, was found and on opening the same, from inside one slight Jamboo coloured plastic 'theli' was found out and in the same black coloured substance was seen. On opening the said 'theli', it was found that there was black coloured substance, hard and somewhat soft and on seeing the same by me, the panchas and the Police Officers accompanying me and the hotel owner Ashok Kumar Gupta, it a melt of odour of prohibited opium. In the said 'Lungi' there were three empty plastic 'thelia', one was of slight Jamboo colour, one was of white colour and one was of the 'Popati' colour. On searching minutely in the furniture's of room No.305, on the second cot and also in the bathroom, no other incriminating article like opium was found out and also no other illegal article was found out. Therefore, for weighing the quantity of this prohibited substance opium, U.P.C. Becharbhai Meghabhai was sent to call for one merchant from Palanpur City with the scale and the 'Bats' and he called one person named Dipak Kumar Amrit Lal Gemi R/o Ganeshpur, Palanpur, with the scale and the 'Bats' of his shop and the said merchant was acquainted of myself and the other Police Officers and policemen and also of the Panchas, and he was also explained of the fact regarding the recovery of the illegal substance opium and he was asked to weigh the quantity of the opium by his scale and the 'Bats' varying from 5 Gms. to 1 K.gm brought by him, and on weighing the same by his scale and the 'Bats, the quantity was found out to be of 1 kgm. Of opium at Rs.8,000/-, the price of the opium of 1 kg. And 15 gms was determined at Rs.8,120/-. From the substance of the opium, the





said merchant was asked to take out about 20 Gms. of opium from all the sides of the quantity, and accordingly he did so and took out 20 Gms. of opium and we put this quantity of 20 Gms. of opium in a plastic bag and also we put one slip of paper signed by us and the panchas therein and tied the said bag with thread and then put in the said bag in a cotton bag and sewed the mouth of the said bag and put a slip signed by us as well as the panchas and tied the same with a thread and sealed it with the seal of P.I., LC.A., G.K., PALANPUR in English and attached the same as a sample for investigation purposes and the remaining quantity of 995 Gms. of opium was kept in another plastics bag and thereon, a slip signed by us as well as the panchas was put and then it was tied with a thread and then the said bag was put in a cotton bag and its mouth was sewed and thereon a slip signed by us as well as of the panchas was put and a thread was tied and thereon it was sealed with the seal of P.I., LC.A, G.K., PALANPUR in English and then it was seized for the purpose of investigation. Thus in this room No.305, the traveller named Sumer Singh Rajpurohit R/o Vardhman Market, Pali (Rajasthan), had kept in his possession incriminating opium without any pass or permit, in room No.305 of Lajwanti Hotel kept by him on rent, below the bed of the cot and on coming to know about the said, he has run away. Thus in this way, panchas has been carried out from Hrs. 7-25 to 10-4- hrs. in details.

Thus, the said Sumer Singh Rajpurohit, aged 38 years, R/o Vardhman Market, Pali (Rajasthan), he kept room No.305 of the guest house of Hotel Lajwanti from 22-40 hrs. on 29.04.1996 on rent and he has kept illegal opium weighing 1 kg. And 15 gms. valued at Rs.8,120/- without any pass or permit, below the bed of the cot in room No.305 and has thus committed an offence, and on coming to know about the raid, he has run away keeping the bag containing the opium in the room and therefore, I file my complaint from the offence U/s 17 of NDPS Act against him and for doing further needful in the matter.

To the above effect, my complaint is true and correct and as per my dictation.

Sd/- I.B. Vyas

Before

Sd/- Illegible

Police Inspector





L.C.B., Palanpur.

Remarks: The complaint as above in writing of Shri I.B. Vyas, Police Inspector, L.C.B., Palanpur, and received for registering the offence and therefore, the crime has been registered.

Submitted to the Chief Judicial Magistrate, Palanpur,
Dt. 30.05.1996



Sd/-

Illegible Police Inspector
L.C.B., Palanpur

Received on : 01.05.1996 at 11-30

Sd/- D.R. Bave

E

Sd/-

Chief Judicial Magistrate
Palanpur"

"FIRST INFORMATION REPORT

बुक नं. प्रथम सूचना रिपोर्ट क्रम सं.

(Under Section 154 Cr.P.C.)

(दण्ड प्रक्रिया संहिता धारा 154 के अन्तर्गत)

1. **District** (जिला): पाली **P.S.** (थाना): कोतवाली **Year**(वर्ष)1996
FIR No. (प्र.सूरि.सं.) 403 **Date** (दिनांक) 18.11.96
2. (i) Act (अधिनियम) भांदस Section (धाराएं): 120B, 195, 196,
342, 347, 367, 368, 388, 468,
482 IPC
(ii) Act (अधिनियम) एनडीपीएस Section(धाराएं):17,58(1)(2)
NDPS Act
(iii) Act (अधिनियम) Section (धाराएं)
(iv) Other Acts & Section (अन्य एक्ट व धाराएं):
3. (a) क Occurance of offence (घटना का) Day (दिन)
Date From (दिनांक से) 3.5.96 Date to (दिनांक तक) 17.10.96
Time Period (पहर) दोपहर Time from (बजे से) 1 बजे
Time to(बजे तक)



(b)(ख) Information received at P.S. (थाने पर प्राप्त सूचना) सरदारपुरा

Date (दिनांक): 17.10.96 Time (समय) 6.45

(c) (ग) General Diary Referance (रोजनामचा संदर्भ)

Entry No. (प्रविष्टि सं.) Time (समय):

4. Type of information (सूचना कैसे प्राप्त हुई) Written/Oral (लिखित/मौखिक):
लिखित

5. Place of Occurance: घटनास्थल का ब्यौरा (a) (क) Direction and distance
from P.S. (थाने से दिशा एवं दूरी): पूर्व फासला 1.5 कि.मी.

Beat No. (बीट सं.):

(b)(ख) Address: 468 बापूनगर विस्तार कस्बा पाली

(c)(ग) In case outside the limit of this police station then (यदि इस
थाने की सीमा के बाहर हो, तब उसे):

Name of P.S. (थाने का नाम): District (जिला)

6. Complaint/Informant (शिकायतकर्ता/इत्तिला देने वाला):

(a)(क) (Name) नाम : श्री सुमेरसिंह पिता चिमनसिंह राजपुरोहित

(b)(ख) Fathet's/Husbands Name (पिता/पति का नाम):

(c)(ग) Day/Year of Birth (जन्मतिथि/वर्ष):

(d)(घ) Nationality (राष्ट्रीयता):

(e)(ङ) Passport No. (पासपोर्ट सं.):

(f)(च) Occupation (व्यवसाय): वकालत

(g)(छ) Adress: 468 बापूनगर विस्तार कस्बा पाली

7. Details of known/suspected/unknown accused with full particulars
(ज्ञात/संदिग्ध/अज्ञात अभियुक्तों का पूर्ण विवरण) Attach separate if
necessary (यदि आवश्यक हो तो अलग से नथी करें)

1. श्री फूटरमल पुत्र हीराचन्द जाति पारवाल जैन निवासी बीजापुर आरक्षी केन्द्र
बाली जिला पाली हाल तिलकनगर पाली।
2. श्री रमन आर जैन पुत्र श्री राजमल जी पोरवाल जैन निवासी बीजापुर आरक्षी
केन्द्र बाली जिला पाली ष्हाल अतिरिक्त जज गुजरात उच्च न्यायालय,
अहमदाबाद।
3. श्री संजीव भट्ट वर्तमान जिला पुलिस अधीक्षक राजकोट (गुजरात)।
4. श्री आई0बी0 व्यास, पुलिस निरिक्षक, एस.सी.बी. पालनपुर (गुजरात)।
5. श्री याग्निक यातायात पुलिस निरिक्षक पालनपुर (गुजरात)।



6. श्री शान्तीलाल पुत्र रामचन्द्र जाति गुप्ता निवासी पालनपुर मालिक लाजवन्ती होटल, पालनपुर।
7. श्री प्रवीण भाई पुत्र हीरालाल बेल्ट नं 1392 निवासी हाल एस0सी0बी0 (बनासकांठा)।
8. श्री हजारी भाई पुत्र मोतीभाई बेल्ट नं 1239 हैड कांस्टेबल निवासी हाल एस सी बी पालनपुर बनासकांठा।
9. श्री कान्तीभाई कार टेवल डाईवर हाल एस.सी.बी. पालनपुर।
10. अन्य 7-8 गुराजत (पालनपुर) पुलिस कर्मचारी।

Reasons for delay in reporting by the complainant/ Informant

शिकायत/सूचना देने वाले द्वारा, सूचना देने में देरी में देरी का कारण): 1. परिवादी द्वारा 2. निगरानी याचिका के कारण

9. Particular of properties stolen (चोरी हुई सम्पत्ति का विवरण) Attach separate sheet, if necessary (यदि आवश्यक हो, तो अलग पृष्ठ नत्थी करें)

10. Total value of property stolen(चोरी हुई सम्पत्ति का कुल मुल्य):

11. Inquest Report (मृत्यु समीक्षा रिपोर्ट) U.D. case No.(अप्राकृतिक मृत्यु मामला सं.) If any (यदि कोई हो तो):

12. F.I.R. Contents (प्र.सूरि. की विषय वस्तु) Attach separate sheet, if required (यदि आवश्यक हो, तो अलग पृष्ठ नत्थी करें):

सेवा में,

श्रीमान मुख्य न्यायिक मजिस्ट्रेट

महोदय, पाली

परिवादी : सुमेर सिंह पुत्र स्व. चिमनसिंह जाति राजपुरोहित निवासी 468

बापुनगर विस्तार पाली

बनाम

सत्यमेव जयते

अभियुक्तगण :

10. श्री फूटरमल पुत्र हीराचन्द्र जाति पारवाल जैन निवासी बीजापुर आरक्षी केन्द्र बाली जिला पाली हाल तिलकनगर पाली।
11. श्री रमन आर जैन पुत्र श्री राजमल जी पोरवाल जैन निवासी बीजापुर आरक्षी केन्द्र बाली जिला पाली फ़ाल अतिरिक्त जज गुजरात उच्च न्यायालय, अहमदाबाद।
12. श्री संजीव भट्ट वर्तमान जिला पुलिस अधीक्षक राजकोट (गुजरात)।
13. श्री आई0बी0 व्यास, पुलिस निरिक्षक, एस.सी.बी. पालनपुर (गुजरात)।
14. श्री याग्निक यातायात पुलिस निरिक्षक पालनपुर (गुजरात)।
15. श्री शान्तीलाल पुत्र रामचन्द्र जाति गुप्ता निवासी पालनपुर मालिक लाजवन्ती होटल, पालनपुर।



16. श्री प्रवीण भाई पुत्र हीरालाल बेल्ट नं 1392 निवासी हाल एस0सी0बी0 (बनासकांठा)।
17. श्री हजारी भाई पुत्र मोतीभाई बेल्ट नं 1239 हैड कांस्टेबल निवासी हाल एस सी बी पालनपुर बनासकांठा।
18. श्री कान्तीभाई कार टेवल डाईवर हाल एस.सी.बी. पालनपुर।
19. अन्य 7-8 गुराजत (पालनपुर) पुलिस कर्मचारी।

परिवाद अन्तर्गत धारा 190 दण्ड प्रक्रिया संहिता अपराध अन्तर्गत धारा 120बी, 195, 196, 342, 347, 357, 368, 388, 458, 482 भादसं एवं धारा 17, 58 (1), 58(2) स्वापक दव्य एवं मनःप्रभावी पदार्थ अधिनियम 1985



परिवादी आदरपूर्वक एवं नम्रतापूर्वक अपना यह परिवाद निम्न प्रष्कार प्रस्तुत करता है

कि पाली नगर के वर्धमान मार्केट के भूतल पर स्थित दुकानसंख्या 6 का स्वामित्व श्रीमति अमरी बाई पत्नि जावंतराज जैन निवासी बीजापुर तहसील बाली जिला पाली में निहित है एवं श्रीमति अमरी बाई का आम मुख्तयार अभियुक्त संख्या एक फुटरमल है। परिवादी की पूर्व जानकारी के अनुसार श्रीमति अमरी बाई अभियुक्त संख्या एक फुटरमल की भई राजमल की पुत्री है। परन्तु विशेष जानकारी करने पर यह मालुम हुआ कि फुटरमल की सगी भतीजी (राजमल की पुत्री) मुलीबाई जिसका विवाह अमीर बाई के पति जावंतराज के साथ होना तय हुआ था परन्तु शादी के कुछ समय पूर्व ही मुली बाई का देहांत हो गया और उसके सीन पर राजमल आदि के सहयोग से जावंतराज का विवाह अमरी बाई से हुआ था। श्री जावंतराज के साथ विवाह होने के कारण अभियुक्त संख्या एक फुटरमल उसका भाई राजमल एवं उसके परिवार में उसे (अमरीबाई) को मुलबाई के स्थान पर अपनी पुत्री के रूप में ही माना और यह सम्बन्ध राजमल व फुटरमल व उनके परिवार श्रीमति अमरी बाई के साथ शादी से आज तक रहते हैं। उस सम्बन्ध के आधार पर दो वर्ष पूर्व श्रीमति अमरी बाई की पुत्री के विवाह के अवसर पर श्री राजमल के परिवारवालों ने ननिहाल पक्ष की ओरसे किया जाने वाला मायरा किया था एवं दिनांक 27.4.96 को श्रीमति अमरी बाई के पुत्र के विवाह में भी उनके परिवार वालों ने भाग लिया था तथा उस विवाह में अभियुक्त संख्या दो रमन आर जैन अभियुक्त संख्या एक के भाई राजमल का पुत्र है अर्थात अभियुक्त संख्या एक फुटरमल अभियुक्त संख्या दो रमन आर जैन का सगा चाचा है इसकी पुष्टि ग्राम बिजापुर की वोटरलिस्ट सन् 1981 से होती है जिसकी फोटो प्रति परिवाद के साथ प्रस्तुत है। उसी सम्बन्ध के कारण श्री फुटरमल उपरोक्त वर्णित दुकान के सबंध में श्रीमति अमरी बाई का आम मुख्तयार है। आम मुख्तयार के रूप में फुटरमल ने दावा पेश किया था और इकरारनामा आदि भी लिखे है।



2. कि अभियुक्त संख्या दो श्री रमन आर जैन वर्तमान में गुजरात उच्च न्यायालय अहमदाबाद में अति. सिविल न्यायाधीश के पद पर कार्यरत है और सवैधानिक पद पर रहने के कारण काफी प्रभाव सम्मान उसे प्राप्त है तथा उसका प्रभाव राजकीय अधिकारियों पर भी काफी है। अभियुक्त संख्या तीन संजीव भट्ट तत्कालीन समय जिलापुलिस अधीक्षक बनासकांठा के रूप में कार्यरत था। परिवादी को जो जानकारी हुई है उसके अनुसार इन दोनों के बीच अच्छे घरेलू सम्बन्ध हैं श्री संजीव भट्ट के विरुद्ध कई मामले गुजरात उच्च न्यायालय में विचाराधीन है उसमें उसे उच्चपदक व्यक्ति से सहयोग की आवश्यकता से इन्कार नहीं किया जा सकता।



3. कि पाली शहर के वर्धमान मार्केट के भूतल पर स्थित दुकान संख्या 6 में दीपक टेक्सटाईल के नाम से व्यापार चल रहा था। जिसमें परिवादी का भाई श्री नरसिंह राजपुरोहित भी भागीदार थे चूंकि उक्त दुकान में फर्म की आवश्यकता से अधिक स्थान होने के कारण नरसिंह व मोहनलाल भगीदार मैसर्स दीपक टेक्सटाईल की अपठित परिवादी भी साथ बैठता था और परिवादी का कार्यलय भी इस दुकान में था।

4. कि श्री सुमेरसिंह परिवादी अधिवक्ता है। पाली में वकालात करता है जिससे उसका अच्छा प्रभाव है। श्री सुमेर सिंह के द्वारा दुकान का उपयोग प्रारम्भ करने पर अभियुक्त संख्या एक फुटरमल को यह शक हो गया कि दुकान का आधिपत्य प्राप्त सकरने में काफी कठिनाई होगी चूंकि मोहनलाल एवं नरसिंह को तंग व परेशान करने पर फुटरमल को दुकान का सआधिपत्य प्राप्त होना सम्भव नहीं था और इन्हें सुमेरसिंह का समर्थन प्राप्त होने की पुरी संभावना थी इस कारण फुटरमल ने समस्त कार्यवाही के लिए परिवादी सुमेरसिंह को ही चुना।

5. कि उपरोक्त वर्णित स्थिति एवं उसके पश्चात हुई घटनाओं से यह स्पष्ट होता है कि अभियुक्त संख्या एक फुटरमल ने दुकान खाली कराने के उद्देश्य से ही रमन आर जैन से मिलकर षडयन्त्र किया। उसी षडयन्त्र के अनुसार उक्त दोनों व्यक्तियों ने षडयन्त्रपूर्वक निश्चय किया कि परिवादी सुमेरसिंह को एनडीपीएस एक्ट के झूठे मुकदमें का डर बताकर दुकान खाली करवा दी जायेगी। इस षडयन्त्र को मुर्तरूप देने के लिए इन दोनों व्यक्तियों ने अभियुक्त संख्या तीन संजीव भट्ट को भी षडयन्त्र में शामिल किया एवं योजनाबद्ध तरीके से इन व्यक्तियों ने अन्य अभियुक्तगण एवं होटल लाजवन्ती के मालिक शान्तीलाल को भी षडयन्त्र में शामिल किया। षडयन्त्र मके अनुसार श्री शान्तीलाल ने होटल लाजवन्ती के कमरा नंबर 305 में सुमेरसिंह का ठहरना बताकर उसके नाम का इन्द्रज किया फर्जी व्यक्ति खडा कर हस्ताक्षर करवाये। इस फर्जी इन्द्रज से यह बताया गया कि सुमेरसिंह राजपुरोहित वर्धमान मार्केट पाली को दिनांक 29.4.96 को रात्रि में 9.40 बजे ठहरना बतलाया व सुबह 6.00 बजे पाली से झूठा फोन आना बताया और उसके अनुरूप ही प्रकरण दर्ज किया गया कमरे की तलाशी ली गई एवं धारा 17 एनडीपीएस एक्ट में दिनांक 30.4.96 को प्रकरण दर्ज किया गया। ये



समस्त परिस्थितियां यह बताती है कि समस्त कार्य अभियुक्त क्रमशः एक से छः ने षडयंत्रपूर्वक किया। इस तरह भारतीय दण्ड संहिता की धारा 120बी के तहत अपराध है एवं मुल अपराध के लिए उक्त अभियुक्तगण दोषी है।

6. कि उपरोक्त षडयंत्रपूर्वक धारा 17 एनडीपीएस एक्ट के तहत प्रकरण दर्ज किया गया। उक्त अपराध के लिए न्यूनतम सजा दस वर्ष व अधिकतम 20 वर्ष सश्रम कारावास सहित एवं 100000/- जुर्माना है। इतना ही नहीं धारा 37 एनडीपीएस एक्ट के तहत ऐसे मामले में अभियुक्त की जमानत भी नहीं हो सकती है इस अपराध के लिए अभियुक्तगण एक से छः ने षडयंत्रपूर्वक झूठी साक्ष्य की रचना की झुठा दस्तावेज बनाये।



झुठा दस्तावेज को सत्य बताते हुए जानबुझकर प्रथम सूचना संख्या 216/96 की एवं उक्त प्रकरण में जानबुझकर परिवादी को गिरफतार किया गया। इस तरह अभियुक्तगण साक्ष्य एक से छः ने धारा 195, 196 सपठित धारा 120बी भादस के तहत दण्डनीय अपराध किया है।

कि दिनांक 2 व 3 मई 1996 की मध्य रात्रि को परिवादी बापुनगर विस्तार पाली स्थित अपने मकान में सो रहा था। करीब 1 बजे बाहर से किसी ने वकील साहब, वकील साहब की आवाज दी एवं कालबेल बजाई जिसे सुनकर परिवादी ने उठकर दरवाजा खोला, वहां षर दो व्यक्ति खडे मिले जिन्होंने कहा कि वकील साहब आप ही है। तब परिवादी ने कहा हां तो उन्होंने कहा कि थाने चलना है हमारे पिताजी को पुलिस ने गिरफतार कर लिया है तब परिवादी ने थाने जाने इस पर दोनो वाहन थाने पहुंचे। दोनों वाहन में बैठे सभी व्यक्ति सादी ड्रेस में थे। वाहन जिप्सी पर नं आर जे 27/398 की प्लेट लगी हुई थी तथा वाहन पिजोडे जीप पर नम्बर जीजे 8 जी 1119 लिखे हुए थे। उक्त तरम की पुष्टि पाली पुलिस द्वारा थाने के रोजनामचे की रपट से होती है।

8. यह कि यहां यह उल्लेख करना उचित है कि अभियुक्तगण श्री आई0बी0 व्यास एवं योगनिक एवं अन्य व्यक्तियों ने परिवादी को उसके घर पर न तो अपना परिचय दिया, न ही परिवादी का गिरफतार करने का कहा न ही कोई फर्द बनाई गई न ही अपराध का कहा बल्कि परिवादी की इच्छा के विरुद्ध बल प्रयोग कर जबरदस्ती वाहन में डाल दिया।

9. कि परिवादी को घर से ले जाते वक्त परिवादी द्वारा चिलाने पर पडौसी सुरेश जी शर्मा, कानसिंह जी राजपुरोहित जग गये थे जिन्होंने परिवादी के भाई नरसिंह को जगाया तो नरसिंह ने थाने टेलीफोन किया एवं वकील साहब सोहनराजी जी मेहता, गांगासिंह जी व अन्य रिश्तेदानों को फोन किया जिस पर कुछ समय पश्चात ही थाने में वकील सोहनराज जी मेहता, नोलाभाई सिन्धी, गांगासिंह राजपुरोहित एवं अन्य सुरेशजी शर्मा, कानकिसंह, परिवादी का भाई नरसिंह, मांगीलाल राजपुरोहित आदि लोग भी थाने पहुंचे। जहां उक्त व्यक्तियों ने परिवादी को फअे बनियान एवं पायजामें में चेहरे व पीठ पर खून खरोचों के साथ नगें पाव हथकडी में देखा। इस पर श्रीमान सोहनराज मेहता एवं नोता



भाई सिंधी धावेश में आ गये उन्होंने फोटोग्राफर के बुलाने को बोला एवं परिवादी अपठित जिसके लिए भी परिवादी ने मना कर दिया, इतने में ही इन दोनों व्यक्तियों ने जबरन पुरा दरवाजा खोलकर अन्दर घुस कर परिवादी को पकड लिया तभी परिवादी के मकान के उत्तर दिशा में स्थित छोटी फाटक खोलकर 5-6 व्यक्ति अन्दर आये जो बाउण्डरी बारी के अन्दर से परिवादी को उठा लिया जिसका परिवादी ने जोरदार विरोध किया तो परिवादी के साथ मारपीट की परिवादी की बनियान फट गई बाद में हुई जानकारी अनुसार घर के अन्दर घुसने वाले श्री आई बी व्यास, यागनिक एवं अन्य 5-6 व्यक्ति थे। जिन्हें परिवादी शकल से जानता है। परिवादी को उठाकर बाहर खडी जिप्सी जिस पर पंजियन क्रमांक आर जे 27/398 अंकित थे में डाल दिया तब परिवादी डिल्लिया तब परिवादी के मुंह में कपडा डाल दिया उस समय परिवादी नंगे केवल बनियान व पायजामा में ही था जिप्सी लेकर ज्यों ही बापुनगर विस्तार में स्थित स्कूल के पास गये कि वहां से एक अन्य पिजाडे जीप जीजे 8 जी 1119 भी जिप्सी के साथ हो गई तभी सामने रोड पर पाली पुलिस की गश्ती जीप निकलती हुई दिखाई दी। जिसमें पाली कोतवाली थाना के एसआई श्री गोमाराम बैठे थे जिन्हें परिवादी पहचानता है जिन्हें देखकर परिवादी ने मुंह से कपडा निकाल कर बचाओ बचाओ की आवाज की जिस पर पाली पुलिस की गश्ती जीप मुडकर जिप्सी का पिछा करने लगी एवं मरुधर होटल के पास ओवरटेक कर जिप्सी एवं दुसरी जीप को रूकवाया गया तब तक परिवादी के हथकड़ी लगा दी थी। पाली पुलिस ने दोनों वाहन को रूकवाया एवं पुछताछ की तो उन व्यक्तियों ने अपने आपको को गुजरात पुलिस का होना बताया। तब श्री गोमाराम जी ए एस आई पुलिस थाना कोतवाली पाली ने सबको थाने चलने का निर्देश दिया। कि तहत मामलों का इस कारण अभिभाषकों के पास इस आश्वासन पर विश्वास करने के अलावा कोई चारा नहीं था। जिसको उन्होंने प्रतिरोध नहीं किया लेकिन वकील श्री गंगासिंह को साथ ले जाने का कहा इस अभियुक्त आई बी व्यास ने वाहनों में जगह की कमी बताकर इन्कार कर दिया इस पर अन्य वाहन की व्यवस्था कर श्री गंगासिंह अभिभाषक श्री नरसिंह, महेन्द्र कांकरिया, हरिसिंह जागरवल, अमृतसिंह, पुरमसिंह की जीप से पुकलिस वाहन के साथ रवाना हुए।

10. कि सीनीय थानाधिकारी श्री राकेश पुरी ने अभियुक्त आई बी व्यास से कहा कि आप परिवादी को यहां से बिना गिरफतार किये ले जा रहेक हो तो लिखित में दो जिस पर अभियुक्त आई बी व्यास द्वारा एक पत्र लिखकर थानाधिकारी को सुपुर्द किया गया। थानाधिकारी द्वारा इस मामले की राजनामचे में रपट डाली गई।
11. कि गांधी ओटोमोबाईल्स पाली पर दोनों गाडियों में डिजल भरवाया गया जहां से बिल कटवाते वक्त जिप्सी का बिल अभियुक्त संख्या 4 ने डीएसपी बी के जीजो 1024 के नम्बर से लिया जबकि जिप्सी पर नंबर प्लेट आर जे 27/398 की लगी हुई थी जिसकी



पुष्टी पुलिस थाना की लगी रपट से होता है डीएसपी बी के का अर्थ डिस्ट्रिक्ट सुप्रिडेन्टेन्ट आफ पुलिस बनास कांटा है।

12. कि परिवारी को अभियुक्त आई बी व्यास व अन्य सहयोगी अभियुक्तगण द्वारा पालनपुर ले जाया गया । जहां परिवारी को तत्कालिन जिला पुलिस अधीक्षक पालनपुर अभियुक्त श्री संजीव भट्ट के समक्ष प्रस्तुत किया गया। जिन्होंने कहा कि तुम्हारे पाली में वर्धमान मार्केट की दुकान का क्या लफडा है दुकान खाली कर दो अन्यथा शेष अफीम की रिकवरी परिवारी से बता दी जावेगी एवं होटल वाले से पहचान करवा दी जायेगी जिससे परिवारी की जमानत भी नहीं होगी एवं इस मामले में अभियुक्त संख्या दो आर और के प्रयास से परिवारी को हाईकोर्ट में भी जमानत नहीं होगी क्योंकि अभियुक्त संख्या दो का इस मामलों से पुरा इन्ट्रेस्ट है। उक्त बात परिवारी ने मौका मिलते ही परिवारी के साथ आये भाई नरसिंह को बताई जिन्होंने पाली परिवारी के बडे भाई श्री रघुनाथसिंह को फोन पर बताई।

13. कि परिवारी पक्ष एवं अभिभाषकों को इस संबंध में संयम से कार्य लेना पडा क्योंकि इस सभाषना से इन्कार नहीं किया जा सकता कि अभियुक्त श्री संजी भट्ट परिवारी से झुठी बरामदगी बताते हुए झुठी साक्ष्य इकट्ठी कर लेवे इन परिस्थितियों में दुकान खाली करने का प्रस्ताव स्वीकार करने के अलावा कोई विकल्प परिवारी के पास नहीं था।

14. यह कि इसी बीच श्री नारायणसिंह निवासी खाराबेरा ने परिवारी के भाई श्री रघुनाथसिंह का सम्पर्क हुआ और उने माध्यम से ही रघुनाथ सिंह ने अभियुक्त संख्या एक फुटरमल से उसके घर पर दिनांक 4.5.96 को बात की तब फुटरमल ने कहा कि दुकान खाली कर सुपुर्द कर एवं मुल किरायेदार मोकहनलाल से स्आम्प पर एग्रीमेंट लिखाकर देवे तो परिवारी को छुडा दिया जायेगा। अन्यथा सुमेरकसिंह नहीं छुट सकता है। इस संबंध में शंका जाहिर करने पर अभियुक्त फुटरमल ने उसी समय उसके टेलीफोन नंबर 220860 से कॉन्फ्रेस सिस्टम से परिवारी के भाई व नारायणसिंह जी के सामने पालनपुर कर फोटो खीचवाने का कहा इस पर अभियुक्त आई बी व्यास ने हथकडी खोल दी। इस बीच परिवारी के भाई ने घर से कपडे लाये। परिवारी ने थाने में पहना थाने में समस्त लोगों को अभियुक्त आई बी व्यास ने बताया कि श्री सुमेर सिं के विरुद्ध पालनापुर में एनडीपीएस एक्ट का मुकदमा है इस कारण जांच के लिए ले जा रहेक है। अभियुक्त आई बी व्यास ने बताया कि दिनांक 30.4.96 को पालनपुर में अफीम बरामद किया उस होटल में श्री सुमेरसिंह परिवारी ने दिनांक 29.4.96 को 9.40 पीएम पर कमरा लिया था जिस पर श्री सोहनराज मेहता व गंगासिंह ने कहा कि परिवारी पाली ही था दिनांक 30.4.96 को सुबह : 30 बजे हमें कचहरी में मिला था। श्री गंगासिंह ने कहा कि दिनांक 29.4.96 को भी शाम को परिवारी उसे मिला था। इनका स्पष्ट कहना था कि सुमेरसिंह 29 व 30 अप्रैल को पाली में ही था। पालनपुर में होने का प्रश्न ही पैदा नहीं होता है यह भी कहा गया कि पालनपुर पाली से करीब 250 किलोमीटर दूर है। जहां से आने जाने



में कम से कम 10 घण्टे लगते हैं क्योंकि रास्ता खराब है व चढाई आदि भी है। जिससे सुमेरसिंह के पालनपुर जाने का एवं आने का प्रश्न है। पैदा ही नहीं होता है केश डायरी के संबंध में पुछने पर अभियुक्त आई बी व्यास ने कहा कि वह तो न्यायालय में भेजी गई है। अभियुक्त आई बी व्यास ने वहां उपस्थित लोगों को विश्वास दिलाया कि सुमेरसिंह को पुलिस अधीक्षक संजीव भट्टा पालनपुर से मिलवाकर जांच कर लेंगे एवं वह निर्दोष साबित हो जायेगा। चूंकि एनडीपीएस एक्ट अभियुक्त सं तीन संजीव भट्ट एवं अहमदाबाद अभियुक्त सं दो श्री रमन जैन से टेलीफोन पर वार्ता की। अभियुक्त फुटरमल ने उक्त टेलीफोन नम्बर 20860 से सम्भवतया 22460 टावा 20349 पर टेलीफोन लगाकर पालनपुर व अहमदाबाद बात कराने को कहा था तथा पालनपुर अहमदाबाद के नम्बर फोन पर नोट करवाये थे। उपर लिखे दोनों टेलीफोन नम्बर को एसटीडी पीसीओ के कानफ्रंस सिस्टम से बात कराने के है। इनके एसटीडी पीसीओ के नम्बर क्रमशः 24008 एवं 24056 है। उक्त दोनों स्थान पर अभियुक्त फुटरमल ने बताकर परिवारी के भाई को बताया कि अभियुक्त श्री रमन जैन ने कहा कि 5.00 रुपये के स्टाम्प पर मोहनलाल दुकान खाली करने का एग्रीमेंट लिखकर देवे एवं देकान खाली करने पर ही परिवारी को छुडाने की कार्यवाही की जायेगी एवं अभियुक्त संजीव भट्ट नें कहा कि आज अगर 1.30 पीएम तक राजीनामा नहीं होता है तो परिवारी को न्यायालय में पेश कर पुलिस रिमाण्ड लिया जायेगा। अन्यथा उसे रिहा कर दिया जायेगा।

15. कि इस पर रघुनाथसिंह ने इस संबंध में गारन्टी के संबंध में कहा। अन्ततः यह तय हुकआ कि दुकान खाली करवाकर चाबियां एवं मोहनलाल द्वारा निष्पादित एग्रीमेंट मध्यस्थ नारायणसिंह जी खाराबेरा एवं सोहनराज नाहर के पास रहेंगे। परिवारी के छुटने पर एवं मुकदमा समाप्त होने पर यह मध्यसी चाबीयां एवं एग्रीमेंट फुटरमल को सुपुर्द करेंगे। अन्यथा चांबिया एवं एग्रीमेंट पूनः मोहनलाल को सुपुर्द कर ये जावेंगे।
16. कि उसी समय श्री रघुनाथ सिंह ने 5 रूपये का स्टाम्प मंगवाकर फुटरमल को दिया जिस पर अभियुक्त फुटरमल ने एग्रीमेंट टाईप करवाया एवं श्री रघुकनाथ सिंह को मोहनलाल के हस्ताक्षर हेतु दिया।
17. कि जिस पर दिनांक 4.5.96 को फुटरमल अभियुक्त के पास मोहनलाल का फोन आया जिसने फुटरमल से कहा कि वह तो अपने अभिभाषक सुमेरमल जी से मिलने के पूर्व एवं उसकी सलाह के बिना कोई कार्यवाही नहीं करेगा। यह सूचना श्री मोहनलाल ने सुमेरमल जी को दी। यहां अच्छा मौका जानकार श्री सुमेरमल जी ने वार्ता टेप करने की व्यवस्था कर दी। श्री फुटरमल अभियुक्त से वार्ता करने के लिए फोन लगाकर बात की। श्री फुटरमल अभियुक्त से वार्ता करने के लिए फोन लगाकर बात की। श्री सुमेरमल जी ने फुटरमल का हितेशी बनकर वार्ता की उक्त वार्ता से यह स्पष्ट हो गया कि दुकान खाली कर एवं मोहनलाल का एग्रीमेंट कर मध्यस्थों को सुपुर्द करने की स्थिति में श्री



रमन आर जैन अभियुक्त संख्या दो परिवारी को छुडा लेगा। फुटरमल अपना इनवोलमेन्ट बचाते हुए बात करने की कोशिश कर रहा था।

18. कि फुटरमल अभियुक्त से एग्रीमेंट विलेख प्राप्त करने के पश्चात ही रधुनाथ सिंह ने मोहनलाल जी को ढूकंढा लेकन मोहनलालजी नहीं मिले। इसी बीच श्री रधुनाथसिंह को सूचना मिली कि सुमेरसिंह न्यायालय में प्रस्तुत कर दिया है। एवं पुलिस रिमाण्ड की मांग की है जिस पर पूनः रधुनाथसिंह द्वारा फुटरमल से सम्पर्क किया गया इस पर फुटरमल ने पूनः अभियुक्त संजीव भट्ट से टेलीफोन पर कान्फ्रेस सिस्टम से एसटीडी से पालनपुर बात की एवं बात करके परिवारी के भाई रधुनाथसिंह को कहा कि परिवारी को न्यायालय में पेश तो कर दिया है परन्तु राजीनामा होने की सूरत में दिनांक 6.5.96 को परिवारी को धारा 169 के तहत रिहा करवा दिया जायेगा। यहां यह भी लिखकर उचित रहेगा कि परिवारी का दिनांक 3.5.96 को 1.30 बजे पीएम पर गिरफ्तारी बतई गई थी, लेकिन दिनांक 4.5.96 तक भी पहचान परेड नहीं करवाई गई थी ही परिवारी को बापर्दा रखा गया था।



19. कि दिनांक 5.5.96 को श्री मोहनलाल ने इकरारनामा पर हस्ताक्षर करने से पूर्व एग्रीमेंट के संबंध में फुटरमल द्वारा भी लिखित में देने को कहा गया। अन्यथा इकरारनामा पर हस्ताक्षर करने से मना कर दिया इस पर अभियुक्त फुटरमल ने अपने पुत्र से लिखत लिखवाकर हस्ताक्षर अगुंष्टा निशान किये। मौका देखकर श्री रधुनाथसिंह द्वारा इन विलेखों की फोटो प्रतियां करवा दी जो परिवारी के पास उपलब्ध है।

20. कि तत्पश्चात दिनांक 5.5.96 को ही परिवारी के बडे भाई श्री रधुनाथसिंह, अभियुक्त फुटरमल, सोहनराज नाहर, नारायण सिंह कार द्वारा पालनपुर गये जो शाम को 8.00 बजे पालनपुर पहुंचे एवं वहां पर अभियुक्त श्री आई बी व्यास से मिले तब अभियुक्त फुटरमल ने कहा कि राजीनामा हो गया है। अब आप सुमेरसिंह को छुडाने की व्यवस्था करो। फुटरमल ने यह भी कहा कि अभियुक्त रमन जैन एवं संजीव भट्ट से उसने बातकर ली है। इसपर अभियुक्त आई बी व्यास ने कहा कि पहले ही राजीनामा कर लेते तो गिरफ्तारी ही नहीं बताते, उसके पश्चात अभियुक्त आई बी व्यास ने अभियुक्त प्रवीण को निर्देश दिया कि फुटरमल, सोहनराज के बयान ले जिस पर इनके बयान लिये गये उसके पश्चात समस्त व्यक्ति होटल विजय गेस्ट हाउस पालनपुर में ठहरे जिसमें कमरा नंबर 11 में फुटरमल, मोहनराम, नारायणसिंह ठहरे थे।

21. कि दिनांक 5.5.96 को ही अभियुक्त संख्या एक फुटरमल, सोहन जी नाहर, गंगासिंह जी व परिवारी के भाई श्री रधुनाथसिंह ने एसटीडी बुथ से अभियुक्त श्री रमन आर जैन से अहमदाबाद टेलीफोन पर बात की उस समय पालनपुर से अभियुक्त संख्या दो श्री रमन जैन को बता करने वाले फुटरमल, सोहनराज नाहर, गंगासिंह एवं श्री रधुनाथ की बातचीत को श्री रधुनाथसिंह द्वारा रिकार्डिंग कर दी गई। इस वार्ता से स्पष्ट है कि अभियुक्त श्री रमन आर जैन ने दिनांक 6.5.96 को जमानत पर या धारा 169 दण्ड



प्रक्रिया संहिता पर परिवादी को रिहा करवाने का आश्वासन दिया है और यह आश्वासन दुकान खाली करने के एग्रीमेंट के कारण दिया है। एग्रीमेंट की प्रति पुलिस को भी देने से मना करने का स्पष्ट कथन है।

22. कि दिनांक 6.5.96 को अभियुक्त आई बी व्यास ने परिवादी के भाई श्री रघुनाथसिंह को निर्देश दिये कि पाली से 4-5 गवाहान को बुलाओं ताकि उनके बयान लिये जाकर यह स्पष्ट किया जा सके कि परिवादी वास्तव में घटना की तिथि एवं आसपास पाली में ही था। इसी के साथ परिवादी की पहचान परेड करवाई जो न तो होनी थी व न ही हुई (यहां यह भी उल्लेखित है कि दिनांक 3.5.96 से पहचान परेड करवाने तक परिवादी को बयान नहीं रखा गया था), तत्पश्चात धारा 169 द.प्र.सं. के अन्तर्गत न्यायालय में प्रार्थना पत्र उसी दिन प्रस्तुत कर दिया लेकिन अपर सेशन न्यायाधीश महोदय ने यह कहते हुए आदेश नहीं दिया कि सम्बन्धित विशिष्ट न्यायाधीश ही आदेश देगें एवं परिवादी को न्यायिक हिरासत में भेज दिया तथा परिवादी की ओर से उसी दिन पेश जमानत प्रार्थना पत्र को दिनांक 8.5.96 को सुनवाई हेतु रख दिया गया। दिनांक 7.5.96 को वापस अभियुक्त फुटरमल ने अभियुक्त श्री रमन जैन से टेलीफोन पर बातचीत की तब अभियुक्त रमन जैन ने कहा कि दिनांक 8.5.96 को परिवादी अवश्य छुट जायेगा। इसकी सारी व्यवस्था अभियुक्त श्री रमन जैन ने कर दी है।

23. कि अभियुक्त आई बी व्यास के निर्देशानुसार परिवादी के भाई ने पाली से अभिभाषक पीएम जोशी, अभिभाषक रामेश्वर पारीक, महेन्द्र कांकरिया, मनोहर सिंह, सम्पतजी सिंघवी से सम्पर्क कर बयानों हेतु पालनपुर पहुंचने का निवेदन किया उक्त व्यक्ति श्री राधाकिशन बोहरा, एवं श्री बजरंगलाल बाडमेरा एवं श्री पारममलजी मेहता अभिभाषकगण के साथ दिनांक 8.5.96 को पालनपुर पहुंचे जहां प्रातः 10.30 एएम पर उनके बयान लेना प्रारम्भ किया, बयान लगभग 12.30 पीएम तक लेखबद्ध किये जाते रहे, इसी बीच अपर सेशन न्यायाधीश ने परिवादी को मात्र 10000 रुपये के व्यक्तिगत मुचलके पर रिहा करने का आदेश दिया। जिन्होंने दिनांक 6.5.96 को जमानत प्रार्थना पत्र पर एवं धारा 169 द0प्र.सं में प्रार्थना पत्र पर सुनवाई से मना कर दिया था। तत्पश्चात परिवादी को दिनांक 11.5.96 को विशिष्ट न्यायाधीश पालनपुर द्वारा डिस्चार्ज किया गया। दिनांक 8.5.96 को परिवादी रिहा होने के बाद विजय गेस्ट हाउस आया वहां पर फुटरमल ने चांबिया एवं एग्रीमेंट हेतु जज साहब से बात करने को कहा जिस पर दिनांक 8.5.96 को शाम को एसटीडी बुथ से टेलीफोन पर अभियुक्त संख्या एक फुटरमल वकील श्री गंग्जथ्स-ळ्ज् एव। स्ज़ौळ्न्श्रज़्ज् ज्, श्री संजीव भट्ट, श्री सआई बी व्यास एवं श्री यागनिक ने पाली स्थित उक्त दुकान को अवैधानिक रूप से खाली करवाने की नियत से परिवादी को एनडीपीएस एक्ट के तहत फकर्जी मुकदमें में गिरफ्तारी कर दबाव डालने के लिए आपराधिक षडयन्त्र रचा और उस षडयन्त्र को मुर्तरूप देने के लिए उक्त अभियुक्त व्यक्तियों या इनमें से किसी भी व्यक्ति ने अफीम की व्यवस्था की तथा होकटल



लाजवन्ती के मालिकों को षयन्त्र में शामिल करके रूम नंबर 305 के संबंध में रजिस्टर में फर्जी इन्द्राज किया। फर्जी हस्ताक्षर किये तथा इस कमरे में अफीम रखी। उसके पश्चात फर्जी सूचना के आधार पर या फुटरमल अभियुक्त द्वारा भेजी गई सूचना के आधार पर प्रकरण दर्ज किया गया। इस तरह यह धारा 17, 58 (1), (2) एनडीपीएस एक्ट सपठित धारा 120 बी, 388 भादंस के तहत अपराध है।

आ. कि दिनांक 2 व 3 मई 1996 को मध्य रात्रि में बल प्रयोग करने की तैयारी करके सिविल डेस में अभियुक्त आई बी व्यास एवं श्री यागनिक एवं अन्य व्यक्ति परिवादी के घर में धुसे एवं परिवादी के साथ मारपीट की, परिवादी को उसी इच्छा के विरुद्ध उसके साथ बल प्रयोग करके जबरदस्ती उठाकर फर्जी नंबर प्लेटे लगे वाहन में डालकर ले गए। यह सब सम्पत्ति प्राप्त करने के उद्देश्य की पूर्ति के लिए किया एवं वाहन जिप्सी धारा 27/398 पर फर्जी नंबर प्लेट लगाई एवं चुपचाप ले जाने की कोशिश की। अन्य अभियुक्तगण विधि विरुद्ध जमाव के सदस्य थे इस कारण इन समस्त अभियुक्तगण ने धारा 342, 347, 357, 365, 388, 458 सपठित धारा 149, 120 बी भादंस के तहत अपराध। ने अहमदाबाद अभियुक्त रमन आर जैन से बात की। तब अभियुक्त श्री रमनक आर जैन वकील गंगासिंह को तुरन्त एग्रीमेंट, चाबीयां मध्यसीं से फुटरमल को दिलाने हेतु कहा लेकिन श्री गंगासिंह जी ने कहा कि जब तक मुकदमें में एफ आर न्यायालय से मंजूर नहीं हो अथवा परिवादी को डिस्चार्ज नहीं किया जाता तब तक चाबीयां व एग्रीमेंट नहीं दिये जा सकते हैं। न्यायालय द्वारा आदेश होने पर चाबीयां व एग्रीमेंट देने की गारन्टी वकील श्री गंगासिंह जी ने दी।

24. कि दिनांक 15.5.96 को श्री नारायण सिंह जी वकील गंगासिंह के घर आये व कहा कि परिवादी को डिस्चार्ज कर दिया है। जज साहब आर आर जैन का फोन आया है। तब वकील श्री गंगासिंह ने कहा कि अभी तक हमारे पास कोई आदेश नहीं आया है तब तक हम कैसे मान ले तब नारायणसिंह ने वकील श्री गंगासिंह को कहा कि आप अभियुक्त रमन आर जैन से बात करले तब वकील को मध्यसी श्री नारायणसिंह, सोहनजी प्नाहर, के घर ले गये जाहं से सोहनजी ने कानफ्रेंस सिस्टम से टेलीफोन पर वकील श्री गंगासिंह जी व अभियुक्त रमन आर जैन ने डिस्चार्ज आदेश टेलीफोन पर वकील गंगासिंह को पढकर सुनाया एवं चाबीयां व एग्रीमेंट तुरन्त मध्यस्थों से फुटरमल को सुपुर्द करने को कहा जिस पर वकील श्री गंगासिंह ने नारायणसिंह व सोहनराज को चाबीयां व एग्रीमेंट फुटरमल को देने हेतु निर्देश दिया जिस पर चाबीयां उसी दिन फुटरमल को सुपुर्द कर दी गई तथा उसी दिन दुकान पर फुटरमल ने दुकान मालकिन अमरी बेन जेवतराज बीजापुर के नाम कलर से लिखवाया।

25.(अ) कि उपरोक्त वर्णित परिस्थितियों से स्पष्ट है कि अभियुक्त फुटरमल, श्री रमन आर जैन, वाहन जिप्सी प्पर आर जे 27/398 फर्जी नम्बर प्लेट लगाकर वाहन का उपयोग किया जो भादंस की धारा 482 के तहत दण्डनीय अपराध किया है।





(ई) चूंकि यह समस्त कार्यवाही अपराधिक षडयन्त्र की पालना में की गई है इसलिए धारा 120बी के प्रावधानों के अनुसार सभी अभियुक्तगण समस्त अपराधों के लिए उत्तरदायी है।

26. कि समस्त अपराध एक श्रृंखला के रूप है एवं पदक्रमाश 25 (आ) में वर्णित अपराध पाली में घटित हुआ है इस कारण धारा 178 दप्रसं के अनुसार इस मामले में जांच का अधिकार पाली स्थित न्यायालय को भी है।

27. कि किसी भी अभियुक्त द्वारा अपने विधिक कर्तव्य निर्वाहन में सदभावनापूर्वक कोई कार्य नहीं किया गया है। समस्त कार्य षडयन्त्रपूर्वक किया गया है। पाली में फर्जी नम्बर प्लेट लगाकर सिविल ड्रेस में स्थानीय पुलिस को सुचित किये बिना जबरदस्ती बल प्रयोग कर परिवारी को घर से ले जाया गया है। इन परिस्थितियों में इन कार्यों को किसी रूप में कर्तव्य निर्वाह के लिए किया जाना नहीं कहा जा सकता है।

28. कि यहां यह भी उल्लेख करना उचित रहेगा कि दिनांक 28.4.96 को परिवारी तहसील जैतारण जिला पाली में श्री किशनसिंह राजपुरोहित निवासी बारवा तहसील बाली जिला पाली के लडके की शादी में गया हुआ था। दिनांक 29.4.96 को सांयकाल 7 बजे से 9 बजे तक परिवारी पाली में स्थित दुकान नंबर 6 वर्धमान मार्केट पाली में बैठा था जहां पर महेन्द्रजी कांकरिया, एम जोशी एडवोकेट, रमेश चन्द जी पारीक एडवोकेट, मनोहर सिंह जी राजपुत निवासी मासिया तहसील पाली आये थे। एवं उसी दिन शाम को 5-6 बजे परिवारी से मांगीलाल जी राजपुरोहित निवासी बाखा हाल पाली एवं सम्पत सिंह जी, गंगासिंह जी वकील साक्ष्य आदि भी मिले थे। दिनांक 30.4.96 को परिवारी सुबह 7.30 बजे न्यायालय में पहुंच गया था जहां पर विभिन्न अभिभाषकों से मिला था तथा विशिष्ट न्यायाधीश पाली (अनु. जाति जन जाति अत्याचार निवारण न्यायालय) में सरकार बनाम रूपा घग्गैरा उपस्थिति दी थी जिसमें मुलजिमान के जमानत मुचलके एवं हाजरी माफी पेश किये थे। अप्रैल 1996 से जून 1996 तक राजस्थान में न्यायालयों का समय सुबह 7.30 बजे से 12.30 बजे तक रहता है।

29. कि परिवारी का निवास या कार्यस्थल कभी भी पालनपुर नहीं रहा न ही परिवारी दिनांक 3.5.96 से पूर्व कभी भी पालनपुरकर गया एवं न ही परिवारी को गुजराती भाषा आती है।

30. कि यद्यपि यह घटना दिनांक 29.5.96 की मध्यरात्रि थी है और परिवारी दिनांक 8.5.96 को रिहा हुआ है उसके पश्चात परिवारी काफकी समय तक अत्यधिक मानसिक तनाव में रहा उसी बची अभिभाषक मण्डल पाली द्वारा आन्दोलन प्रारम्भ किया जा चुका था। अभिभाषक मण्डल पाली एवं बार कौंसिल आफ राजस्थान द्वारा भी इस मामले को गंभीर रूप से आन्दोलन प्रारम्भ कर दिया गया था। इस संबंध में माननीय मुख्य न्यायाधीपति सर्वोच्च न्यायालय नई दिल्ली अध्यक्ष, मानवाधिकार आयोग नई दिल्ली, मुख्य न्यायाधीश उच्च न्यायालय राजस्थान एवं गुजरात महानिदेशक पुलिस राजस्थान एवं गुजरात, मुख्यमंत्री महोदय एवं गुजरात एवं विभिन्न अधिकारियों की घटना का प्रतिवेदन मय समस्त दस्तावेजात के भेजे गये थे। भेजे गये प्रतिवेदनों में जांच करवाने की मांग की





परन्तु अब तक कही से भी जांच नहीं सौंपी गई है। इन परिस्थितियों में इसे पूर्व यह परिवाद पेश नहीं किया गया।

31. कि पदसंख्या 30 में दर्ज अधिकारियों को भेजे गये प्रतिवेदनों के आधार पर विधि अनुसार प्रकरण दर्ज हो जाना चाहिए था लेकिन प्रकरण दर्ज नहीं हुआ, इसलिए यह परिवाद माननीय न्यायालय को समक्ष प्रस्तुत है।

अतः परिवादी यह परिवाद प्रस्तुत कर निवेदन करता है कि इस परिवाद पर प्रकरण पंजिकृत करने के निर्देश दिये जाकर महानिदेशक पुलिस राजस्थान स्तर के व्यक्ति या केन्द्र जांच ब्यूरो से जांच करवाने के निर्देश दिये जावे। एवं समयबद्ध सूचना न्यायालय में प्रस्तुत करने के निर्देश दिये जावे।

इति दिनांक

एसडी/-

परिवाद न्यायालय के क्षेत्राधिकार का है न्यायालय शुल्क पूर्ण है।

17.10.96 : प्रस्तुतकर्ता श्री सुमेरसिंह एडवोकेट परिवाद के साथ एक परिशिष्ट जिसमें दस्तावेजों एवं एक लिफाफा जिसमें दो आडियों कैसेटस पेश है। आदेश अलग से दिया गया। एसडी/-

17.10.96 : श्री सुमेरसिंह एडवोकेट ने एक परिवाद अन्तर्गत धारा 120 बी, 195, 196, 342, 347, 357, 368, 388, 458, 482 आईपीसी एवं सेक्शन 17, 58 (1)(2) एनडीपीएस एक्ट में पेश किया। परिवादी के साथ एक परिशिष्ट जिसमें कुल 94 पेज के दस्तावेज पेश किये दस्तावेज पी 94 एक भूरे रंग का लिफाफा है जिसमें दो Audio Cassettes T Series HF 90 The Phicocoplay of Excellence मार्क की पेश की है। परिवाद का अवलोकन किया परिवाद में वर्णित तथ्यों को देखते हुए परिवाद वास्ते जांच अन्तर्गत धारा 156(3) सीआरपीसी के आरक्षी केन्द्र कोतवाली पाली को प्रेषित किया जाता है जो विधि अनुसार प्रकरण दर्ज करे बाद जांच रिपोर्ट न्यायालय को प्रेषित करे परिवाद में वर्णित तथ्यों एवं परिस्थितियों को देखते हुए आदेश दिया जाता है कि प्रकरण दर्ज करने के बाद इसकी जांच महानिरीक्षक पुलिस के स्तर के नीचे के किसी अधिकारी के द्वारा नहीं की जावेगी। जांच रिपोर्ट दिनांक 16.11.96 को पेश की जावे। एसडी मुख्य न्यायिक मजिस्ट्रेट, पाली।

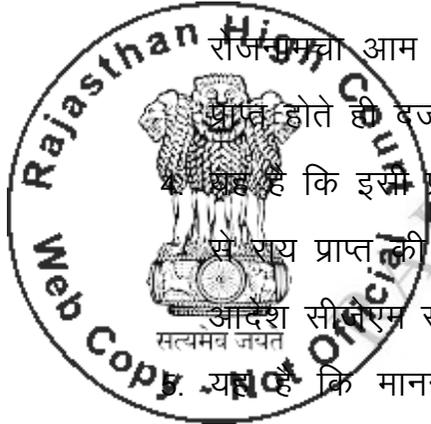
नोट : परिवाद के संलग्न केसेट दोनों न्यायालय की मुद्रा से शील ाकी गई है तथा केसेट पर न्यायालय हाजा की हस्ताक्षरित स्लीप चिपकार्ड है न्यायालय की मुद्राए नीचे अंकित है। एसडी/-

पीएस कोतवाली पाली दिनांक 18.11.96 समय 11 एएम

1. प्रार्थी श्री सुमेरसिंह पिता चिमनसिंह राजपुरोहित पेशा वकील निवासी 468 बापुनगर विस्तार पाली द्वारा यह इस्तगासा श्रीमान सीजेएम साहब पाली के न्यायालय में पेश किया हुआ अन्तर्गत धारा 156(3)सीआरपीसी के थाना हाजा पर दिनांक 17.10.96 वक्त 6.45 पीएम सपर जरिये डाक प्राप्त हुआ।



2. मन निरीक्षक पुलिस थानाधिकारी कोतवाली पाली ने इस्तगासा का अध्ययन व अवलोकन की सूची क.सं. 2 पर श्री रमन आर जैन पुत्र राजमल जी पोरवाल जैन निवासी बीजापुर पीएस बाली जिला पाली हाल अतिरिक्त जज गुजरात उच्च न्यायालय अहमदाबाद के नाम उल्लेखित पया गया।
3. यह कि चूंकि के वीरास्वामी बनाम युनियन आफ इण्डिया क्रिमीनल अपील संख्या 400/1979 जो दिनांक 25.7.91 को निर्णित हुई है जो सीआएलआर/एससी/1991 के पेज नं 67742 पैरा नंबर 43 के अनुसार माननीय उच्च न्यायालय के किसी भी न्यायाधीश महोदय के खिलाफ मुकदमा दर्ज करने से पूर्व निर्देश दिये गये हैं इस हेतु रपट राजमल जी आम में रपट संख्या 842 दिनांक 17.10.96 वक्त 6.45 पीएम पर इस्तगासा प्राप्त होते ही दर्ज की गई।
4. यह है कि इस प्रकरण के अनुक्रम में सहायक निदेशक अभियोजन पाली से त्वरित गति से राय प्राप्त की जाकर निर्देशानुसार सेशन न्यायालय पाली में निगरानी याचिका विरुद्ध आदेश सी.ए.एम. साहब पाली के दायर की गई।
यह कि माननीय अपर सेशन न्यायाधीश पाली ने दिनांक 15.11.96 को दाण्डिक निगरानी संख्या 24/96 इस प्रकरण के संदर्भ में निर्णित की है जिसके पैरा नंबर 14 में उल्लेख है कि मेरी राय में हस्तगत प्रकरण में श्री रमन आर जैन माननीय न्यायाधिपति उच्च न्यायालय गुजरात के विरुद्ध प्रस्तुत किया गया इस्तगासा और उस पर दर्ज होने वाली प्रथम सूचना रिपोर्ट के लिए माननीय उच्चतम न्यायालय के मुख्य न्यायाधिपति महोदय से पूर्व विचार करना आवश्यक नहीं है तथा पैरा नंबर 21 में उल्लेख है कि "पुनरीक्षणाधीन आदेश में योग्य अधीनस्थ न्यायालय द्वारा परिवादी श्री सुमेरसिंह द्वारा प्रस्तुत परिवाद की धारा 156(3) दप्रसंने अन्तर्गत अनुसंधान हेतु एसएचओ कोतवाली पाली को भेजकर विधि अनुसार मुकदमा दर्ज कर अनुसंधान का जो आदेश दिया गया है वह किसी प्रकार विधि विरुद्ध अनुचित व त्रुटिपूर्ण नहीं है एवं इस आदेश में हस्तक्षेप करने का कोई आधार नहीं है जहां तक सुयोग्य अधीनस्थ न्यायालय द्वारा पुलिस महानिरीक्षक द्वारा अनुसंधान करने का जो आदेश दिया गया है वह विधि विरुद्ध है जो पोषनीय नहीं है।
6. माननीय अपर सेशन न्यायाधीश पाली ने अपने आदेश दिनांक 15.11.96 के पैरा नंबर 22 में आदेश दिया कि "फलतः आदेश दिया जाता है कि यह पुनरीक्षण याचिका दर्ज की जाये। पूनः निरीक्षण याचिका आंशिक रूप से स्वीकार करतेक हुए आदेश दिया जाता है कि सुयोग्य मुख्य न्यायिक मजिस्ट्रेट, पाली के द्वारा प्रदत्त आदेश दिनांक 16.10.96 में प्रकरण की जांच महानिरीक्षक पुलिस के स्तर के नीचे के किसी अधिकारी द्वारा नहीं की जाने का जो आदेश दिया गया है वह अपास्त किया जाता है तथा बाकी आदेश विधि विरुद्ध, अनुचित, त्रुटिपूर्ण नहीं होने से उसमें हस्तक्षेप करने का कोई आधार नहीं है।





अतः बाकी आदेश के संबंध में पूनः निरीक्षण याचिका खारिज की जाती है। तथा अधिनस्थ न्यायालय के आदेश की पुष्टि की जाती है।

अतः मजमून रिपोर्ट से अपराध धारा 120बी, 195, 196, 342, 347, 367, 368, 388, 458, 482 आईपीसी एवं 17, 58 (1)(2) स्वापक द्रव्य एवं नशीले पदार्थ अधिनियम 1985 का होना पाया जाता है अतः मुकदमा नंबर 403 तारीख 18.11.96 धारा उपरोक्त में दर्ज कर तफतीश जाब्ता प्रारम्भ की गयी। एफआईआर प्रतियां नियमानुसार जारी की गई। नकल एफआईआर प्रार्थी को निशुल्क दी जायेगी।

13. Action taken (की गई कार्यवाही) Since the above information reveals commission of offence(s) u/s as mentioned at item No.

2 (चूंकि उक्त सूचना द्वारा, मद सं. 2 पर उल्लिखित धाराओं के अन्तर्गत अपराध होने का प्रतीत चलता है।):

(1) Registered the case and took up the investigation or (सामला पजीकृत किया और जांच आरम्भ की गई या)

(2) Direct Shri/Smt./Kum/ (Name of I.O.)/श्री/श्रीमती/कु (जांच अधिकारी का नाम) Rank(पद) No.(सं.) to take up the investigation or (को जांच आरम्भ करने के निर्देश सदिये गये या)

(3) Refused investigation due to (जिन कारणों से जांच करने से इनकार किया गया).....or(या)

(4) Transferred to P.S.(सामला सीनान्तरित किया गया, थाने का नाम)..... District (जिला)..... on.....

F.I.R. read over to the complainant/informant, admitted to be correctly recorded and a copy given to the complainant/informant, free of cost. (फ़.सू.रि. शिकायतकर्ता/इतिला इतिला देने वाले को पढ़कर सुनाई गई, जिसने सही लेखन की पृष्टि की ओर शिकायतकर्ता/इतिला देने वाले को एक प्रति निःशुल्क प्रदान की गई)

R.O.A.C. (पढ़कर सुनाया और सही पाया गया।):

sd-

Signature of Office in charge Police Station

(थाना प्रभारी के हस्ताक्षर)

14. Signature/Thumb impression Name(नाम)पवनकुमार



the complianant/information

Rank: sub Inspector

15. Date and time of dispatch

In the opinion of this Court, the proceedings initiated at Pali and the proceedings going on at Palanpur, Gujarat relate to two distinct offences whereas, the provision under Section 186 of Cr.P.C. is to avoid possible confusion and embarrassment of two or more Courts. The first requirement to attract the provision is that the two different Courts must have taken cognizance of the same offence. The first complaint being CR No.216/1996 lodged at Palanpur City Police Station was with regard to conspiracy and finding out who brought/planted narcotic drugs in the hotel room based upon which the complainant Sumer Singh Rajpurohit was implicated whereas, the complaint filed by Sumer Singh Rajpurohit at Pali is with regard to his false implication in a NDPS case owing to a property dispute as they wanted Sumer Singh Rajpurohit to be evicted from the shop. Therefore, these offences are related to two different and distinct complaints in this case and therefore, the contention of the counsel for the petitioner that both the proceedings relate to the same offence lacks merit and the same is hereby rejected.

Hon'ble Apex Court in the case of State of Rajasthan Vs. Bhagwan Das Agrawal & Ors reported in (2013) 16 SCC 574 has held as under :-

"16. This Court elaborately dealt with the provisions contained in Section 300 Code of Criminal Procedure in the



case of State of Bihar v. Murad Ali Khan : (1988) 4 SCC 655. Some of the paragraphs are worth to be quoted hereinafter.

“26. Broadly speaking, a protection against a second or multiple punishment for the same offence, technical complexities aside, includes a protection against re-prosecution after acquittal, a protection against re-prosecution after conviction and a protection against double or multiple punishment for the same offence. These protections have since received constitutional guarantee under Article 20(2). But difficulties arise in the application of the principle in the context of what is meant by "same offence". The principle in American law is stated thus:



'The proliferation of technically different offences encompassed in a single instance of crime behaviour has increased the importance of defining the scope of the offence that controls for purposes of the double jeopardy guarantee.

Distinct statutory provisions will be treated as involving separate offences for double jeopardy purposes only if 'each provision requires proof of an additional fact which the other does not' (Blockburger v. United States). Where the same evidence suffices to prove both crimes, they are the same for double jeopardy purposes, and the clause forbids successive trials and cumulative punishments for the two crimes. The offences must be joined in one indictment and tried together unless the Defendant requests that they be tried separately.'

27. The expression "the same offence", "substantially the same offence" "in effect the same offence" or "practically the same", have not done much to lessen the difficulty in applying the tests to identify the legal common denominators of "same offence".



Friedland in *Double Jeopardy* (Oxford 1969) says at p.108:

'The trouble with this approach is that it is vague and hazy and conceals the thought processes of the court. Such an inexact test must depend upon the individual impressions of the judges and can give little guidance for future decisions. A more serious consequence is the fact that a decision in one case that two offences are 'substantially the same' may compel the same result in another case involving the same two offences where the circumstances may be such that a second prosecution should be permissible....'



28. In order that the prohibition is attracted the same act must constitute an offence under more than one Act. If there are two distinct and separate offences with different ingredients under two different enactments, a double punishment is not barred. In *Leo Roy Frey v. Superintendent, District Jail*, the question arose whether a crime and the offence of conspiracy to commit it

are different offences. This Court said: (SCR p.827)

'4. ... The offence of conspiracy to commit a crime is a different offence from the crime that is the object of the conspiracy because the conspiracy precedes the commission of the crime and is complete before the crime is attempted or completed, equally the crime attempted or completed does not require the element of conspiracy as one of its ingredients. They are, therefore, quite separate offences.' "

17. In the instant case, as noticed above, the nature and manner of offences committed by the accused persons are not identical but are different, for example, in respect of FIR Crime No. 130 of 2010 the accused persons in connivance



with Respondent No. 1 delivered 103 trucks of explosives to the Magazines of M/s. Ajay Explosives which belonged to Shiv Charan Heda and 60 trucks of explosives to M/s. B.M. Traders which belonged to Deepa Heda. It was alleged that the Magazines of M/s. Ganesh Explosives and M/s. Sangam Explosives were not operational since many years and with the forged documentation in the name of the said firms the explosives were purchased by M/s. Ajay Explosives and M/s. B.M. Traders and subsequently those explosives were sold to some unknown persons. In respect of those FIRs, one accused, a resident of Nepal, was arrested and from whose custody 498 non electronic detonators were recovered. In respect of another FIR, during investigation, it has come on the record that those explosives were sold for terrorist activities.



18. An Offence means any act or omission made punishable by law. The fountain head of all the three cases may be at Dholpur from where truck loaded with explosives moved to different destinations but from that it cannot be said that the acts and omissions which constitute the offence are the same. Same offence, in our opinion, would mean that acts and omissions which constitute the offence are one and the same. Except the allegation that the explosives were loaded at Dholpur, the mode and manner in which the offence was committed at different places are not the same. As such, in our opinion, the provision of Section 186 of the Code is not attracted in the facts of the present case. Hence, the High court erred in passing the impugned order.”

So far as the Judgments relied upon by the counsel for the petitioner in the case of Bhagwandas (Supra), in para-14 the Hon'ble Apex Court has clearly observed that the provision of Section 186 of Cr.P.C. is applicable only where the cases instituted in different courts are in respect of the same offence arising out of



the same occurrence and that the transaction and that the parties are the same, which is not the case in the case at hand as observed in the foregoing paras.

In the case of Bahadursingh (Surpa) also the Hon'ble Madhya Pradesh High Court has observed that Clause (a) or (b) of Section 186 concern solely to a situation, where, two or more Courts have taken cognizance of the same offence. However, as stated above, in the case at hand, the first complaint lodged at Palanpur and the subsequent complaint filed by Sumer Singh Rajpurohit at Pali are related to two different and distinct complaints.



Learned counsel for the petitioner has further relied upon the case of Miss. Meera Gupta (Supra) of Hon'ble Allahabad High Court wherein the Hon'ble High Court invoked the provision of Section 186 of Cr.P.C. because the informant in the said case chose to alter some of the ancillary allegations and reduce the number of the accused in the F.I.R. at the later place, which is not the case in the case at hand.

Learned counsel for the petitioner has also relied upon the case of Supriyo Sarkar (Supra) wherein, the Calcutta High Court decided the criminal revision petition considering the ground of convenience raised by the accused which was one of determining factors while allowing the revision petition. However, in the present case, the ground of inconvenience has not been raised by either of the parties.

In the light of aforesaid discussion, this Court is of the considered opinion that Section 186 of Cr.P.C is applicable only in those cases where two or more Courts have taken cognizance of



the same offence whereas, in the present case, two distinct offences are clearly made out of both the complaints. One complaint which was lodged at Palanpur pertains to conspiracy and the offence relating to the NDPS Act by planting contraband, whereas, the complaint filed by Sumer Singh Rajpurohit in Pali is in relation to his false implication in a NDPS case arising out of a property dispute. To further conclude, it would be unfit to put the present case under the microscopic view of Section 186 due to the aforesaid reasons. Further, Section 186 empowers the High Court to settle at rest anomaly over jurisdiction avenue. If all the cases have been instituted within the original jurisdiction of the same High Court, the same would be decided by the same High Court as per Sub-clause (a) of 186. In case, the cases happen to be instituted within the local jurisdiction of different High Courts, then a privilege has been given to that High Court within whose jurisdiction, the proceeding first commenced. Admittedly, in the present case, the first complaint was lodged at PS Palanpur City, Gujarat and subsequently, the complaint was lodged at Pali, Rajasthan by Shri Sumer Singh Rajpurohit. Thus, when the proceedings commenced at PS Palanpur City, Gujarat, the relief sought by the petitioner seeking stay of the proceedings before the court of Special Judge NDPS Cases, Palanpur is without any merit. Thus, considering the premises of Clause (b) of Section 186 of Cr.P.C. too, it can be deduced that non applicability of Section 186 Clause (b) of Cr.P.C. in the present set of facts holds yet another ground for dismissal. Moreover, the conduct of the present petitioner is writ large from the observations made by the Hon'ble





Gujarat High Court mentioning that the applicant has scant respect for the Courts.

In the result, the Misc. Petition fails and is hereby dismissed.

The stay application also stands disposed of.

(MANOJ KUMAR GARG),J



24-BJSN/-

RAJASTHAN HIGH COURT



सत्यमेव जयते