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 The dt. on which copy was prepared 29/12/12  
 Name of the applicant..... S. J. S. S. P. S. H.  
 N.D.P.S. / State

(1)

**IN THE COURT OF MS. ANU GROVER BALIGA: SPECIAL JUDGE  
- NDPS PATIALA HOUSE COURTS : NEW DELHI**

Date of Institution : 21.12.2006

Judgment reserved on : 03.01.2012

Date of pronouncement : 21.01.2012

SC No. 141/08

ID No. 02403R677342006

FIR No. 48/06

PS Special Cell, Lodhi Colony, Delhi

u/s 21/29/61/85 NDPS Act and 419/468/471 IPC

State

Vs.

(1) Jaswinder Singh @ Binder

S/o Baldev Singh

R/o H.No. 158/7, Preet Nagar

Lado Wali Road, Jalandhar, Punjab.

(2) Gurnam Singh @ Panama

@ Kuldeep Singh

S/o Jagtar Singh

R/o Village Kakka Kandiyala,

Distt. Tarn Taran, Punjab.

(3) Rajesh Chauhan

S/o Lilla Ram

R/o H. No. 558, Dabua Colony,

NIT Faridabad, Haryana.

(4) Tejbir Singh @ Tejpal Singh

S/o Rajbir Singh

R/o Village Jahangir Pur,

Distt. Buland Sahar, UP.

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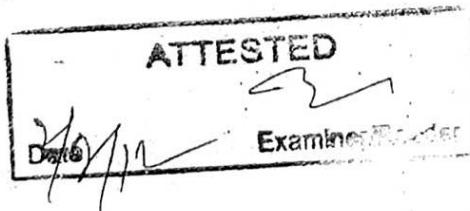


JUDGMENT

1. The charge-sheet in the present case has been filed against the aforementioned accused persons u/s 21 r/w 29 of the Narcotic Drugs and Psychotropic Substances Act (hereinafter referred to as "NDPS Act") and u/s 419/468/471 of the Indian Penal Code (hereinafter referred to as "IPC").
2. Briefly stated the allegations against the accused persons as contained in the charge-sheet are as follows:
  - (a) That prior to 04.07.2006 Sh. Ravi Shankar, ACP, Special Cell/NR was having information that Gurnam Singh was running a drug Mafia and was transporting drugs into Delhi and delivering the same to some persons of African origin. On 04.07.2006, at about 08.00 AM information was received by Inspector Pankaj Sood, Special Cell/NR that one of the associates of Gurnam Singh, on his instructions, would come at 09.00 AM at the bridge of Railway track, Outer Ring Road, 1/2 km away from Mukarba Chowk towards Madhuban Chowk, to supply a consignment of drugs to some persons and that if efforts are made, he can be apprehended.
  - (b) The said information was telephonically relayed by Inspector Pankaj Sood to ACP Ravi Shankar at his residence and the said information was also reduced into writing vide DD No. 3 at 08.15 AM and a copy of the said entry was also sent to DCP, Special Cell.

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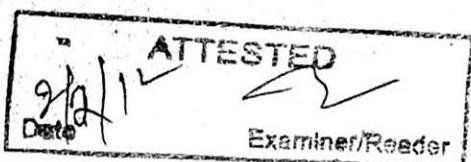


(c) On directions of ACP Ravi Shankar, Inspector Pankaj Sood constituted a raiding party comprising of himself, Inspector Attar Singh, ASI Ranvir Singh, ASI Parmod Kumar, ASI Heera Lal, HC Bijender Singh and HC Raj Singh. The said raiding team alongwith the secret informer then proceeded from the office to the spot. Efforts were made to join public persons but none agreed to. On reaching the spot i.e. flyover/bridge at about 09.00 AM, the raiding team members found one person standing opposite side on the pump house side carrying a blue colour bag in his right hand. The informer identified him as the associate of Gurnam Singh and thereafter Inspector Pankaj Sood immediately directed ASI Ranvir and HC Bijender to get down from the official vehicle and apprehend the said associate after crossing the road. Inspector Pankaj Sood alongwith the remaining members of the raiding team went towards Mukarba Chowk, allowed the informer to get down from the vehicle, and took U turn and reached to the spot. The suspect had already been apprehended in the meanwhile by ASI Ranvir Singh and HC Bijender and he revealed his name as Jaswinder Singh. Efforts were again made to join public witnesses in the proceedings but none agreed.

(d) Inspector Pankaj Sood then informed the accused Jaswinder Singh of the information and his legal rights to be searched before a Gazetted Officer or a Magistrate and the accused was also then served with a notice u/s 50 of the NDPS Act. On the refusal of the accused

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Jaswinder to be searched before a Magistrate or a Gazetted Officer, he was searched by Inspector Pankaj Sood and on checking the blue colour tecseen bag carried by Jaswinder Singh in his right hand was found to contain a packet in red colour gift paper. After the gift paper was removed from the packet, a cardboard carton wrapped with the help of plastic tape was found and opening the same four transparent polythene bags were recovered. The said polythene bags were found containing mud colour substance and the colour of substance in two bags was different from other two. The accused is stated to have then revealed that the recovered substance is heroin.

(e) The four bags were given Sr. No. A, B, C and D, and were weighed separately and the weight of each bag containing heroin came out to be 1.025 Kg. Two samples of 5 gms each were drawn out of the said

*Jud bag* and were given Sr. No. A1, A2, B1, B2, C1, C2 and D1, D2. The samples, the remaining substance were sealed in pullandas, the FSL Form was filled, seal after use was handed over to ASI Ranvir Singh, the rukka was prepared and was sent to PS for registration of the case.

(f) Further investigation of the case was then handed over to Inspector Attar Singh, who was present at the spot and during further investigation Inspector Attar Singh prepared the site plan and formally arrested accused Jaswinder Singh.

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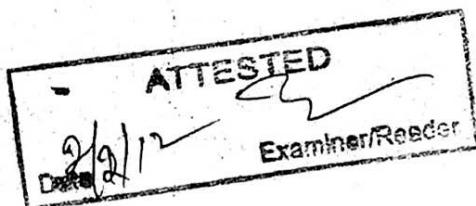
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- (g) Accused Jaswinder Singh is then stated to have given a disclosure that the heroin recovered from him was given to him by Gurnam Singh and that he had come to the spot to deliver the same to some third person. He is also stated to have disclosed that he had given 80-90 kg of heroine to associates of Gurnam Singh viz. Rajesh Chauhan and Tejvir Singh (the other two accused persons in the present case) during the last week. After recording the aforementioned statement of accused Jaswinder Singh, he was produced before Sh. Sahdev Singh, the then SHO, PS Special Cell, and reports u/s 57 were also prepared and sent to the senior officers.
- (h) On 05.07.2006 ASI Ranvir, HC Bijender Singh, HC Raj Singh and Ct. Devender Singh alongwith the accused Jaswinder Singh were sent to Faridabad to trace Gurnam Singh and his Santro car no. DL-3CY-0462, number of which had been revealed by Jaswinder Singh. The said car had been spotted by an informer at about 03.15 AM on 06.07.2006 in Faridabad, Near Patel Chowk and informer passed this information to ASI Ranvir Singh, who then alongwith the other police officials and Jaswinder Singh chased the said Santro car and also passed this message to Inspector Attar Singh on his mobile. DD No. 14 in this regard was lodged at 03.30 AM on 06.06.2007. Thereafter, four teams of police officials stated to have chased the Santro car and the said car was finally intercepted at about 04.00 AM near Opel Orchade, Kapashera, and accused Gurnam Singh was

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found driving the same.

(i) Gurnam Singh was then informed about the information and the disclosure statement of Jaswinder Singh. He was also told about his legal rights to be searched before a Gazetted Officer or a Magistrate, but he refused to be so searched. Inspector Attar Singh then took search of the Santro car and of Gurnam Singh. Two bags i.e. one of black colour and another of green colour were recovered from the diggy of the car and 21 transparent polythene packets containing matala colour substance were found inside one bag and 16 transparent polythene packets containing matala colour substance were found from the second bag. Gurnam Singh is stated to have then disclosed that all the said packets were containing heroine. Thereafter, 21 packets of heroin recovered from one packet, were given numbers from E to Z and the other 16 packets of heroine recovered from the remaining second bag were given numbers from AA, BB, CC.... to PP. Upon weighing each packet was found to contain one kg of heroin. 2 gms from each were taken out from all the packets and were given separate numbers. 21 sample parcels were marked from E1 to Z1 (except S1) and 16 sample parcels were marked AA1 to PP1. The samples, the remaining substance were sealed in pullandas and the FSL Form was filled. After the search and seizure proceedings, Gurnam Singh was arrested and from his personal search one driving license in the name of Kuldeep Singh, three mobile phones and some cash were recovered.

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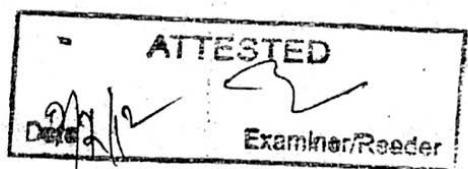
The DL in the name of Kuldeep Singh having photograph of Gurnam was found to be forged and taken into possession separately. The Santro car was also separately seized. The accused was thereafter produced before the SHO and the case property was deposited in the Malkhana. Reports u/s 57 of the NDPS Act were prepared and sent to the senior officers.

(j) On 07.07.2006, the other two accused persons viz. Rajesh Chauhan and Tejvir Singh were arrested in the court (these two persons were already arrested in another case filed by DRI). Their disclosure statements were recorded in which they are alleged to have admitted that they used to work for Gurnam Singh and used to receive and supply the contraband on instructions of Gurnam Singh. They further disclosed that 35 kg heroine was recovered by DRI from their possession was given to them by Jaswinder Singh on the instructions of Gurnam Singh. Rajesh Chauhan is also stated to have disclosed that the documents of properties acquired by Gurnam Singh from the sale money of drugs were kept in his

(k) Subsequently, disclosure statement of Gurnam Singh was recorded with regard to the properties acquired by him through sale proceeds of the drugs and another detailed disclosure statement of Gurnam Singh regarding his links with Pakistani drug suppliers was also recorded on 11.07.2006.

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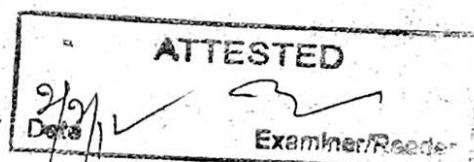
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- (l) On 08.07.2006, one ration card in the name of Kuldeep Singh and one DL in the name of Ravinder Singh, both having photographs of Gurnam Singh were recovered from house search of H. No. FCA-301, SGM Nagar, Faridabad. Original papers of registry of plot in the name of one Rekha Sharma, wife of accused Gurnam Singh were also recovered and taken into possession.
- (m) On 09.07.2006, US \$ 31050, papers of various properties and vehicles were also recovered from the almirah kept in the house of Gurnam at Ambala, Haryana.
- (n) On 13.07.2006, samples taken out from the substance were sent to FSL and during course of further investigation, verification of the DL in the name of Ravinder Singh, having the photograph of Gurnam Singh was got done from the DTO, Faridabad, and was found to be forged. According to the investigation carried out it was revealed that the accused Gurnam Singh to evade arrest in many cases of NDPS Act had assumed the name of Kuldeep Singh and had resided in Faridabad from where he continued his activities of drug supplying. The investigation made by the police also revealed that the Gurnam Singh had amassed movable and immovable properties worth Rs. 1.8 crores approximately from the sale of drugs during the last one year and during investigation the said properties were freezed by the IO and the said freezing order was confirmed by the competent authority.

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(o) It is also mentioned in the chargesheet that four mobiles had been recovered during the personal search of accused Gurnam Singh and that accused Gurnam Singh has disclosed that he used to use the said numbers to connect with the drug suppliers based in Pakistan and that the matter in this regard is being investigated and a supplementary chargesheet will be filed.

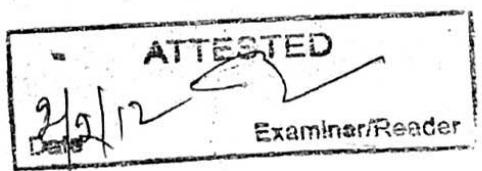
3. On the basis of the aforementioned allegations and the material placed on record by the investigating agency, charges were framed against all the accused persons vide order dated 09.02.2007 and the accused Rajesh Chauhan and Tejbir were chargesheeted for the offence punishable u/s 29 NDPS Act, accused Gurnam Singh and Jaswinder Singh were chargesheeted for the offence punishable u/s 21 NDPS Act and accused Gurnam Singh was also charge sheeted for the offence punishable u/s 474 IPC.

*On Act 1963  
Falsification of  
Evidence*  
The Prosecution in order to prove its case against the accused persons has examined 19 witnesses in all.

5. PW8 Inspector Pankaj Sood, PW4 Inspector Attar Singh, PW19 SI Ranvir Singh and PW2 HC Bijender Singh, being all members of the raiding team have deposed on similar lines. All of them have described in detail the search and seizure proceedings conducted with respect to accused Jaswinder on 04.07.2006. The secret information reduced into writing i.e. DD no. 3 has been exhibited as Ex.PW14/A.

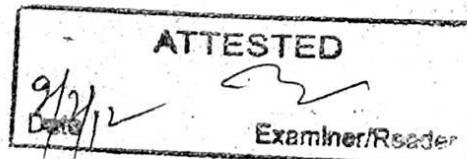
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Notice u/s 50 NDPS Act given to accused Jaswinder has been exhibited as Ex.PW2/A. The seizure memo has been proved as Ex.PW2/B. Rukka prepared by PW8 Inspector Pankaj Sood has been proved as Ex.PW5/B. The arrest memo prepared by PW4 Inspector Attar Singh after arresting the accused Jaswinder Singh has been proved as Ex.PW4/B. Personal search memo vide which the articles were seized during the search of accused Jaswinder after his arrest has been proved as Ex.PW4/C. The disclosure asserted to have been made by accused Jaswinder Singh has been exhibited as Ex.PW4/D. The report prepared by PW8 Inspector Pankaj Sood u/s 57 NDPS Act regarding seizure of 4.1 KG of Heroin has been exhibited as Ex.PW8/B.

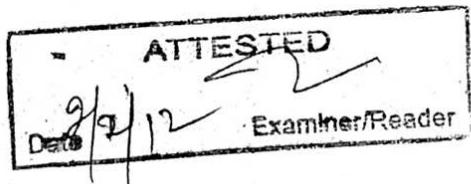
6. With respect to the proceedings conducted by police officials on 05.07.2006, PW4 Attar Singh, PW19 SI Ranbir Singh and PW2 HC Bijender have deposed on similar lines and have reiterated the assertions made in the chargesheet. In particular, PW19 SI Ranbir Singh has deposed that on 06.07.2006, he had received a secret information from a secret informer that at about 03.20 AM accused Gurnam Singh would be coming in Santro car being no. DL 3CY 0462 near Patel Chowk, Faridabad and that he would be carrying 37 KG of heroin in his car. He has then deposed as to how the said car was then spotted at 03.30 AM while it passed from Patel Chowk and how it was then chased. According to his deposition, he informed Inspector Attar Singh telephonically that



Gurnam Singh is going in his car towards Pali Gurgaon road and that Inspector Attar Singh directed him to keep chasing the said car. This witness has also deposed that at about 04.45 AM, accused Gurnam turned his car from National Highway towards Delhi Airport and that in the meanwhile Inspector Attar Singh alongwith other police staff also reached the spot in two Government vehicles and two private motorcycles. As per this witness, when the car of accused Gurnam reached at a distance of 800/900 meters from National Highway opposite Uppal's Orchid, it was intercepted by police officials who blocked the car with the help of their motorcycles. As per this witness, Ct. Sanjeev broke down the right side glass of the window of the said car with his helmet and Gurnam was taken out from the car. This witness has then described the search and seizure proceedings that took place at the spot. Notice u/s 50 NDPS Act given to accused Gurnam Singh has been proved as Ex.PW2/C. The seizure memo vide which the entire case property including the sample pullandas were seized has been proved as Ex. PW2/E. The seizure memo with respect to the seizure of the Santro car has been proved as Ex.PW2/H. The arrest memo and the personal search memo prepared with respect to the arrest and search of accused Gurnam Singh have been proved as Ex.PW2/F and G respectively. Disclosure statement asserted to have been given by this accused has been proved as Ex.PW2/I.

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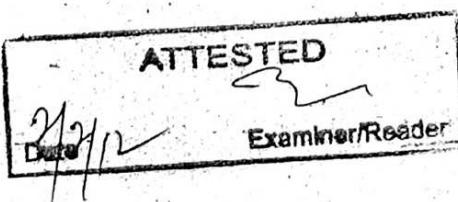
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7. PW1 Surjit Singh, is the public witness , in whose presence the police party is asserted to have searched the house of accused Gurnam Singh. This witness has inter alia deposed that in his presence, the accused had got recovered one ration card and driving licence, on which his photograph was affixed, from a almirah, in his house. He has further deposed that the IO had seized the said ration card and driving licence vide seizure memo Ex.PW1/A, which bears his signatures at point A. This witness has also identified the said ration card as Ex.P1 and driving licence as Ex.P2.
8. PW3 Constable Udayveer has deposed that on 07.07.2006 he was posted at the lock up of Tis Hazari Courts and that on the same day he had produced accused Tejvir Singh in the Court of Smt. Seema Maini, ~~Judge CMM~~ Tis Hazari Courts. He has further deposed that IO Inspector Attar Singh had recorded the disclosure statement of accused Tejvir Singh vide Ex.PW2/N and that the same bears his signature at point B.
- PW5 ASI Raj Singh, who is the duty officer has deposed that on 04.07.2006 he was posted at PS Special Cell from 8.00 AM to 4.00 PM and that on this day at about 12.45 PM he received one rukka sent by Inspector Pankaj Sood through HC Bijender on the basis of which he recorded FIR no. 48/06. The copy of the same has been exhibited as Ex.PW5/B. He has further deposed that after registration of FIR vide DD No. 7A, Ex.PW5/E further investigation was ordered to be conducted by

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Inspector Attar Singh. He has also proved on record DD no. 5A, DD no. 6A, DD no. 9 and DD No. 10, the entries with respect to registration of FIR, deposit of case property and personal search articles etc. in the malkhana and the same have been exhibited as Ex.PW5/B, Ex.PW5/D, PW5/E and PW5/G respectively.

10. PW6 SI Karan Singh has deposed that he was posted as SO ACP, Special Cell on 04.07.2006 and that on this date ASI Hawa Singh had forwarded the copy of DD no. 3 to him and that the entry in this regard was mentioned in the concerned diary and the relevant page of the diary has been exhibited as Ex.PW6/A. He has also deposed that on the same day, Inspector Pankaj Sood and Inspector Attar Singh had handed over reports u/s 57 NDPS Act to him regarding the recovery from the accused Jaswinder and his arrest and that he had put the same before ACP Ravi Shanker and had also sent a copy thereof to DCP. He has further deposed that on 06.07.2006 ASI Hawa Singh had handed over copy of DD no.14 to him and he had produced the said DD before ACP and had also made the relevant entry in his register. According to this witness, on the same date, Inspector Attar Singh gave another report u/s 57 NDPS Act regarding seizure and arrest of accused Gurnam Singh which was also put before ACP. As per the record produced by this witness, on 07.07.2006 and 10.07.2006, Inspector Attar Singh further submitted two reports u/s 57 NDPS Act regarding the arrest of accused Rajesh and Tejbir and recovery

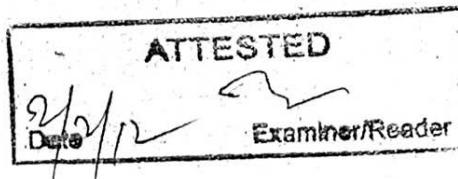
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of dollars etc. The records produced by this witness have been duly exhibited during his testimony.

11. PW7 Sh. Tejveer Bali is a public witness who has deposed that accused Gurnam Singh is his neighbour and that on 09.07.2006 this accused was brought to his house in police custody and the house of accused Gurnam Singh was searched in his presence. According to him, some dollars, registration documents of some cars were recovered from the said search.
12. PW9 ACP Sehdev Singh has deposed that on 04.07.2006, he was posted as SHO, Operation Cell, Lodhi Colony and according to his deposition, on this day at about 12.45 PM, HC Bijender Singh had handed over to him three sealed pullandas alongwith copy of seizure memo and FSL form. According to his deposition, all the pullandas were sealed with the seal of PS and that he also then put his own seal of SSS on the said pullandas and FSL form alongwith FIR number. He has further deposed that he had then handed over all the pullandas to MHC(M) HC Mahaveer Singh for depositing the same in the Malkhana. He has also deposed that at about 04.00 PM, accused Jaswinder Singh was produced in his office by IO Inspector Attar Singh and that on 06.07.2006 at about 11.05 PM, accused Gurnam Singh was produced before him alongwith four sealed pullandas alongwith FSL form. He has further deposed that the said pullandas and the FSL form were having the seal of ASY and that



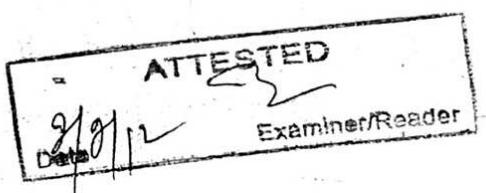
thereafter, he also affixed his seal on the pullandas and the FSL form. The DD entries made by this witness with respect to the deposit of the case property before him have been duly exhibited.

13. PW10 ASI Paramjeet has deposed that on 06.07.2006 Inspector Sehdev Singh, SHO, PS Special Cell handed over to him four sealed parcels, copy of seizure memo, FSL form bearing seal of ASY and SS. According to his deposition, the sample parcels had mark S3 and S4 and the remaining had mark Sr. No. 1 and Sr. No.2 and that he made entry in this respect in register no.19. He has also deposed that on the said date Inspector Attar Singh had also handed over to him one Santro car bearing no. DL 3CY 0462 and personal search of Gurnam. He has further deposed that on 10.07.2006, Inspector Attar Singh handed over to him one sealed parcel sealed with the seal of RK and a copy of seizure memo. The said witness has also given details of the entries made by him with respect to the deposit of case property and also the sample pullandas that were sent to CFSL, Rohini. The copy of the relevant entries in the Makhana register have been exhibited by this witness as Ex.PW10/A.

14. PW11 HC Mahavir has deposed that he was posted as MHC(M) at PS Special Cell, Lodhi Colony on 04.07.2006 and that on this date, SHO of the said branch had deposited with him three pullandas sealed with the seal of SS and PS with carbon copy of FSL form. The said witness has also given details of the entries made by him with respect to the deposit of

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case property as Ex.PW11/A. He has also deposed that Inspector Attar Singh had also deposited the articles of personal search of accused Jaswinder Singh. He has proved the said entry as Ex.PW11/B. According to his deposition, he had also made the entry Ex.PW11/D regarding sending the sample to FSL Rohini through SI Upender Singh.

15. PW14 ASI Jaipal Singh, SO DCP has produced on record, the DD No.3, DD no.14, reports submitted u/s 57 NDPS Act by Inspector Attar Singh and Inspector Pankaj Sood with respect to seizure of contraband and arrest of accused persons. The same have been duly exhibited.
16. PW15 Om Prakash, Record Clerk, MLO Sheikh Sarai has produced the records of vehicle no. DL 3CY 0462 as per which, the said vehicle was initially in the name of J.M. Gupta and was later on transferred in the name of Rekha (wife of accused Gurnam Singh). The said records have been exhibited as Ex.PW15/A.
17. PW16 Sh. Gauri Shankar has deposed that on 16.11.2006, he was officiating Assistant Food and Supply Inspector, Faridabad and that he had verified that as per the records the ration card bearing no. 550833, Ex.PW4/N was issued to Kuldeep s/o Jagtar.
18. PW17 Dr. Madhulika Sharma, Assistant Director, CFSR, Rohini has deposed that on 13.07.2006, two parcels marked S1 and S3 alongwith FSL form and specimen seal impression were received in the CFSR office and same were handed over to her for chemical examination. Parcel S1 was

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found to contain Ex.A1, B1, C1 and D1 and parcel S3 was found to contain E1, F1, G1..... to Z1 and Ex-AA1, BB1..... to PP1. According to her, on the basis of chemical examination, Ex.A1 to R1, T1 to Z1 and AA1 to PP1 were found to contain Dyacetilemorphene. The report prepared by this witness has been exhibited as Ex.PW4/M. She has further deposed that on 23.09.2009 another sealed parcel i.e. envelope sealed with the court seal was handed over to her for chemical examination and was found to contain four sample Ex. A to D. The report prepared by her with respect to these samples have been exhibited as Ex.PW17/A.

19. PW18 Jyothimon, Intelligence Officer, DRI Headquarters has deposed about the apprehension of accused Rajesh Chauhan and Tejbir Singh by DRI officers on 02.07.2006. According to his deposition, both accused persons in their statements tendered u/s 67 NDPS Act, had disclosed that they had been supplied Heroin at the instance of Gurnam Singh and they also identified the photograph of Gurnam Singh shown to them by the DRI Officials. The said statements of accused Rajesh Chauhan and Tejbir Singh have been exhibited as Ex.PW18/A and 18/B.

20. The entire aforementioned evidence was put to the accused persons and their statements u/s 313 Cr.P.C were recorded. In the said statements, the accused persons have denied their complicity in the present case and have stated that they have been falsely implicated. Accused Gurnam

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Singh and Jaswinder Singh have also inter alia stated in the said statements that they were forcibly lifted by the police officials from their residents and were falsely implicated in this case. Accused Tejbir and Rajesh Chauhan have stated that they were already arrested by DRI officials in another false case and they were falsely shown to be the conspirators even in the present case.

21. In support of their defence the accused persons have summoned five witnesses. DW1 Subodh Kumar, an employee of the News Paper Amar Ujala, Jalandar News has placed on record a news paper dated 8/7/2006 in which it has been reported that accused Jaswinder was forcibly lifted by Delhi Police Officials on 3/7/2006.
22. DW2 Sh. Tejender Hans is an employee of Metro Encounter News Paper published at Jalandar and he has placed on record a report dated 8/7/2006 of the said news paper and the same has been exhibited as Ex. DW 2/A. As per the said news article also accused Jaswinder is reported to have been forcibly lifted by the Delhi Police Officials from Jalandar on 3/7/2006.
23. DW3 Sh. Paramjeet Singh, Assistant Superintendent Post Office, Head Officer has stated before the court that he could not produce the records summoned by the accused as the same have been weeded out.
24. DW4 Jagir Kaur, mother of accused Gurnam has deposed that on

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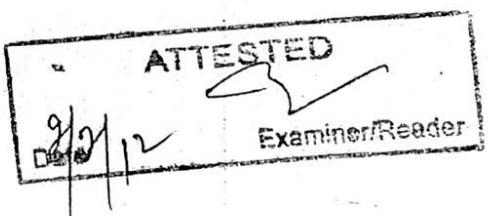
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2/7/2006 at about 3.00-4.00 AM four persons in civil uniform came at her residence and asked for her son Gurnam and then took him away on the pretext that they wanted to make some inquiries from him. According to her on the morning of 03.07.2006 she sent telegrams Ex. DW4/DA, DB and DC to Chief Minister- Punjab, Home Minister- Delhi and DGP-Punjab complaining to them that her son had been lifted illegally from her house.

25. DW5 an employee of CTO Telegram Officer, Post Officer Amritsar, Punjab has confirmed that telegrams DW4/DA, DB and DC were issued from the Post Office, Amritsar on 3/7/2006 and sent to Chief Minister-Punjab, Home Minister- Delhi and DGP-Punjab.

26. After the evidence was concluded on behalf of the defence, Ld. APP for State, Ms. Sushma, Ld. Defence counsels Sh. S.S. Dass, Sh. Jitender Sethi, Sh. T.K. Mahapatra and Sh. Y.K. Saxena advanced final arguments.

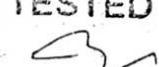
*27.* On behalf of accused Jaswinder and Gurnam Singh written submissions have been filed and Ld. Counsel Sh Jitender Sethi has also argued at length. It has been contended on behalf of these accused persons that there has been no compliance by the investigating officials of section 42 of the NDPS Act after allegedly receiving secret information with respect to accused Gurnam and Jaswinder and this lapse on behalf of the investigating agency itself renders the prosecution's case a nullity and cannot result in the conviction of the accused persons. Various



contradictions in the evidence put forward on behalf of the prosecution (the same have been discussed in detail hereinafter) have been pointed out by the Ld. Counsel Sh. Sethi to show that the case against the accused Gurnam and Jaswinder is false and concocted. In particular it has been contended that no public witnesses have been joined in the investigation and that there is marked difference between the colour of the substance, mentioned in the seizure memo, shown to have been recovered from accused Jaswinder and Gurnam and the colour of the sample that finds mention in the FSL report. It has also been pointed out that there is enough evidence on record to show that the sample parcels have been tampered with and even the notice u/s 50 of the NDPS Act and its reply have been manipulated by the investigating officials. It has also been pointed out that the link evidence to show that what was seized was infact deposited in the malkhana and then sent to the FSL is missing and that therefore tampering of the sample in the present case cannot be ruled out. It has also been contended on behalf of the accused persons that the testimony of DW1 and DW2 amply proves on record that accused Jaswinder was lifted from his house at Ludhiana on 03.07.2006 forcibly by the Delhi Police Officials. According to Ld. Counsel Sh. Sethi the charge framed against accused Gurnam for the offence punishable u/s 471 IPC for being in possession of a fake DL and Ration card also cannot be held to be proved in view of the testimony of PW16.

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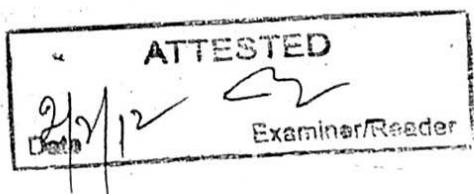
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28. On behalf of accused Tejpal and Rajesh Chauhan it has been submitted by Ld. Counsels Sh. Y.K.Saxena and Sh. Mahapatra that there is no evidence whatsoever so on record to prove their complicity in the present case. It has been submitted by Ld. counsel Sh. Saxena that there is no provision of law as per which the statements made by these accused persons in separate DRI proceedings can be used against them in the present case. Ld. counsel Sh. Mahapatra has also contended that when the prosecution has failed to prove its case against the main accused Jaswinder and Gurnam, there is no question of them having proved their case against Tejbir and Rajesh for when the main conspirators of the offence cannot be convicted, the co-conspirators cannot be held guilty. In support of their contentions Ld. Defence Counsels have relied upon the following judgments:-

- i. Shiv Rawat Vs State 1997 JCC 14.
- ii. Peeraswami Vs. State NCT of Delhi 2007 (2) JCC (Narcotics)
- iii. Rattan Lal Vs. State 32 (1987) Delhi Law times 1.
- iv. Ritesh chakarvarti Vs. State of Madhya Pradesh 2006 (3) JCC (Narcotics) 150.
- v. Eze Val Okeke @ Val Eze Vs. Narcotic Control Bureau 2005 (1) CC Cases (HC) 72.

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- vi. Rajagopal Vs. State by Inspector of Police on 27/6/2003.
- vii. Ashok Kumar Vs. State 2000 91) JCC (Delhi) 21.12.2006.
- viii. Pardeep Kumar Vs. State 1990 C.C.Cases 69 (HC).
- ix. Sher Singh Walia Vs. State NCT Delhi 2000 (2) JCC (Delhi) 538.
- x. Sehdev Vs. State 2009 (3) JCC (Narcotics) 128.
- xi. DRI Vs. Raj Kumar Mehta & Others Crl.A. 275/1998, Crl.A. 276/1998.
- xii. Puran Singh Vs. NCT of Delhi & Anr 2001 (1) JCC (Delhi) 70.
- xiii. Jagdish Vs. State of Madhya Pradesh 1 (2002) SLT 31.
- xiv. Karan Singh Vs. State of Haryana Crl. Appeal No. 923-SB of 1999.
- xxv. Ankush Gupta Vs. State Crl.A. 462/2007.
- xvi. Noor Aga Vs. State of Punjab & Anr 2008 (3) JCC (Narcotics) 135.
29. In rebuttal Ld. counsel for the State has contended that non joining of independent witnesses is not fatal to the case of the prosecution as generally public persons are hesitant to join police proceedings. She has pointed out that the Hon'ble Supreme Court in its judgment pronounced in the case titled as State of Punjab Vs.

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Baldev Singh AIR 1999 SC 2378 has categorically held that non joining of public witnesses is only an irregularity and that the same does not vitiate the entire trial. She has also submitted that the contradictions pointed out by the Ld. Defence Counsels are not so material that they can be made the basis for the rejection of the case of the prosecution. She has further contended that the witnesses are not expected to have photogenic memory to remember and narrate all the facts of an incident and therefore the contradictions pointed out by the defence should be viewed in this perspective. As regards the non compliance of Sec. 42 of the NDPS Act with respect to the recovery made from accused Gurnam, she has submitted that due to the time constraints it was not possible for the investigating officer to strictly follow the provisions of Sec.42 of the NDPS Act, before apprehending this accused and that no benefit can be given to the accused persons for such a situation. She has also submitted that the information received with respect to accused Gurnam prior to 03.20 AM on 06.07.2006 was not very specific and was being developed and hence was not reduced in writing. She has therefore contended that the provisions of Section 42 were not to be complied with with respect to this information. In support of this contention, she has relied upon the judgment pronounced by Hon'ble Delhi High Court in Crl. A. No. 501/1999 in the case titled as Mohd. Anwar Vs. State.

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Ld. APP has also submitted that in the facts of the present case where the accused Gurnam was apprehended after a long chase of his vehicle by the police officials and the contraband was recovered from the said vehicle while it was in transit on a public road, it is infact the provisions of Section 43 NDPS Act which are applicable and that the Hon'ble Supreme court in its judgment pronounced in the case titled as Karnail Singh Vs. State of Haryana (2009) 8SCC 539 has made it clear that where an officer acts u/s 43 of the NDPS Act, he has the power to conduct the search and seizure proceedings without reducing the secret information into writing. Further, according to her, there has been due compliance of the conditions stipulated by section 42 NDPS Act with respect to the search and seizure proceedings conducted against accused Jaswinder. She has pointed out that the secret information received with respect to accused Jaswinder was reduced into writing vide DD no.3, Ex.PW14/A and that PW6 and PW14 have clearly deposed that the said DD was received in the office of the ACP and DCP respectively.

30. I have considered the submissions made by all the Ld. Counsels and have perused the entire material on record and the judicial dicta referred to by the Ld. Counsels.

31. I will first deal with the contentions made with respect to the

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applicability of section 42 of the NDPS Act to the alleged recovery of contraband recovered from accused persons. As regards accused Jaswinder, the Ld. Defence counsel has contended that the secret information reduced into writing vide DD no.3, Ex.PW14/A is not sufficient compliance of section 42 of the NDPS Act and the secret information should have been reduced into writing on a separate paper. In support of this contention, Ld. Counsel has relied upon the judgment pronounced by Hon'ble Delhi High Court in the case reported as Peeraswami Vs. State NCT of Delhi 2007 (2) JCC (Narcotics) 80. On the other hand, Ld. APP has submitted that there is no requirement as per the said section that the secret information has to be recorded on a separate piece of paper and all that this section requires is that a secret information of the nature mentioned therein and received by an investigating officer should be reduced into writing and forwarded to a superior officer. She has further submitted that the Hon'ble Supreme Court in Karnail Singh's case (supra) has made it clear that it is not strict but substantial compliance of Section 42 NDPS Act that is required and it is her contention that the reduction of secret information into writing can be in the form of a DD or on a separate paper. She has pointed out that in the present case, PW8 Inspector Pankaj Sood has clearly deposed that he had reduced the secret information received with respect to accused

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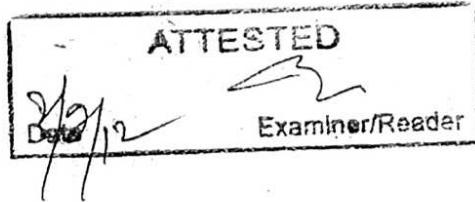
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Jaswinder into writing vide DD no.3 at 08.15 AM on 04.07.2006 and the deposition of PW14 ASI Jaipal Singh, SO to DCP makes it clear that the said DD was also received in the office of DCP. In such view of the matter, according to her, it cannot be stated that the investigating officer failed to substantially comply with the conditions laid down by section 42 of the NDPS Act.

32. Ld. APP for State, has however, fairly conceded that as per her information, the judgment of the Hon'ble Delhi High Court in Peeraswami's case (Supra), has not been challenged by the State. In view thereof, keeping in view the dicta laid down in the said judgment, this court cannot accept the contentions of the Ld. APP for the State and is bound to accept the contention of the Ld. Defence Counsel. In the said case also, there was a DD prepared recording the secret information but the Hon'ble Delhi High Court has held that the said DD is not the information received by the investigating officer but is a detailed information of the deliberations that took place after the receipt of the secret information. It would be relevant herein to reproduce the observations made by the Hon'ble Delhi High Court in this regard. In para 5 of its judgment, the Hon'ble Delhi High Court has reproduced the DD entry and in para 6 has given its observation with regard to the said DD. The said paragraphs are as follows:-

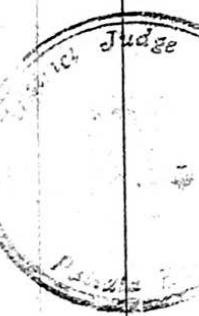
5. The initial information which was recorded by



SI Raj Kumar is Ex.PW5/A and reads as under:

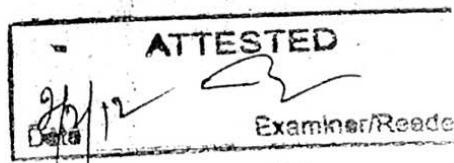
'Time 11.30 AM in the morning. It is recorded that at this time, one secret informer has come to me (SI) to my office and told that in JJ Colony, H.No. X-309, Camp No.1, Nangloi Delhi, one Peeraswami and his wife Champai were dealing in smack and charas. This information has been recorded in DD and incharge Special Cell Mr. Ashok Tyagi brought it to the notice of senior officials and sent the same and one raiding party under the leadership of Inspector Ashok Tyagi is made ready. Recorded in the hands of SI Raj Kumar.

6. Thus the initial DD which was recorded by SI Raj Kumar talks of three things. One that he received information through an informer but before recording the same, he conveyed it to Inspector Ashok Tyagi and before the information was recorded, Inspector Ashok Tayagi conveyed it to senior officers and also sent it to them in writing. When Inspector Ashok Tyagi appeared as PW14 in the court, he deposed that when he was present in his office alongwith the other staff on 05.01.2001 at around 11.30 AM, ASI Raj Kumar received a secret information on telephone and he conveyed the telephonic message to him. The information was that Peeraswami and his wife, Chambai, appellants, used to deal in smack and charas at their



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residence. He conveyed this information to his senior officials. In cross-examination, he admitted that he had not sent the information to his senior officers in writing and he only conveyed this information orally. He had not recorded the secret information on a paper. DD Ex.PW5/A recorded at 11.30 AM, is not the information received by SI Raj Kumar but is a detailed information recorded after deliberations giving who did what. Had SI Raj Kumar received the information and recorded it directly in DD, he could not have mentioned that he had informed about the information to his senior officials and his senior officials had in turn informed it to further senior officials and even sent a copy.

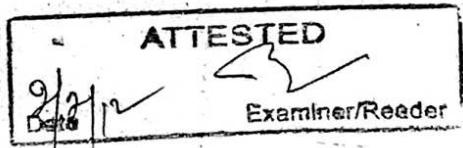
In the present case also DD no.3 Ex. PW14/A is to the effect that Inspector Pankaj Sood was informed by a secret informer that one Gurnam Singh who is a resident of Punjab is involved in the business of drug supply and is also wanted by the Punjab police and DRI. The information was further that one associate of Gurnam Singh would on 04.06.2006 come on the flyover above the railway tracks near Mukraba Chowk to supply heroin to some person. The DD further records that Inspector Pankaj Sood informed ACP Ravi Shankar of the said information on telephone and that then the ACP directed him to carry out the necessary proceedings and that then

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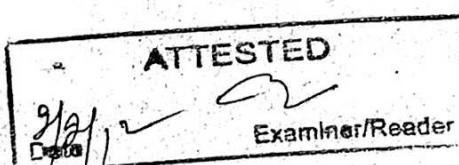
Pankaj Sood directed the DO ASI Hawa Singh that a copy of this DD entry be sent to the ACP. Keeping in view the observations made by the Hon'ble Delhi High Court( in particular the underlined portion) this court is also bound to hold that the DD no.3 is not the secret information reduced into writing by Pankaj Sood and that therefore there has been no substantial compliance of Section 42 NDPS Act with respect to the proceedings conducted against accused Jaswinder.

33. As regards the secret information received with respect to accused Gurnam, as narrated hereinabove, the version of the prosecution in the chargesheet filed, is that on 5/7/2006 PW19 ASI Ranbir, PW2 HC Bijender Singh alongwith some other police officials were deployed in Faridabad to trace Gurnam Singh and his Santro car no. DL 3CY 0462, number of which had been disclosed by accused Jaswinder Singh and that about 03.15 AM a secret informer passed information to ASI Ranveer Singh that he had spotted the car in Faridabad near Patel Chowk. PW19 ASI Ranveer Singh in this regard has deposed in his examination in chief that at about 03.20 AM, he received information that accused Gurnam Singh would be coming in his Santro car and passing from Patel Chowk and that he is carrying 37 Kg Heroin in his car and that immediately thereafter at about 03.25 AM, one Santro car bearing no. DL 3CY 0462 passed from Patel Chowk and accused Jaswinder pointed out that accused Gurnam was



driving the said car. Based on the said averments in the chargesheet and the deposition of PW19, Ld. APP has submitted that prior to the deployment of the police officials at Faridabad, there was no specific information that accused Gurnam Singh would be passing from Patel Chowk and would be carrying 37 Kg of Heroin in his vehicle. According to her, it is only at 03.20 AM that for the first time the police party was informed about the accused carrying the contraband in his vehicle and since within five minutes thereof i.e. at 03.25 AM, Gurnam Singh actually passed by Patel Chowk, there was hardly any time or occasion for ASI Ranvir Singh to reduce the said information into writing. She has further pointed out that PW4 Attar Singh to whom ASI Ranvir Singh had immediately passed this information, did reduce this information into writing vide DD no.14 and the said DD has been proved in the deposition of PW14 as Ex. PW14/B.

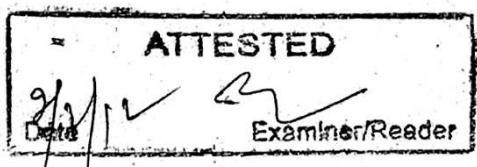
34. In Karnail Singh Vs. State of Haryana (2009) 8SCC 539, the Hon'ble Supreme Court has held that though the compliance with the requirements of section 42(1) and 42(2) in regard to writing down the information received and sending a copy thereof to the superior officer, should normally precede the entry, search and seizure by the officer, in special circumstances involving emergent situations, the recording of the information in writing and sending a copy thereof to the official superior may get postponed by a reasonable period, that is



after the search, entry and seizure. The Hon'ble Supreme Court has further held that the question is one of urgency and expediency. No doubt, if in the present case, the version of the prosecution is believed then as per the judgment of the Hon'ble Supreme court pronounced in **Karnail Singh's** case (Supra), the case of the prosecution cannot be thrown out for non compliance of section 42 of the NDPS Act. However, I am unable to accept the version put forward by the prosecution for two reasons. Firstly, because its witnesses have miserably failed to explain as to why the police party was deployed near the area of Patel Chowk, Faridabad to trace out accused Gurnam. The statement of PW4 Attar Singh in his cross-examination that the police party reached Patel Chowk in Faridabad because accused Jaswinder Singh had taken them near the area of Patel Chowk to point out that he supplied heroin to co-accused Rajesh in that area appears to be a completely incorrect statement. This witness has categorically admitted in his cross-examination that such a fact was not mentioned in the disclosure of accused Jaswinder nor was any pointing out memo regarding Patel Chowk being shown by accused Jaswinder prepared nor was any such information given to senior officers regarding accused Jaswinder pointing out the area of Patel Chowk. Further though this witness tries to cover up the said lacuna by deposing that no such act was done because the police party had taken

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a prior permission to go to Faridabad, he admits that no such written permission has been filed on judicial record. PW2 Bijender Singh is also unable to throw any light at to why the police party went to Patel Chowk, Faridabad. At one point, in his cross-examination, he deposes that he does not know why the police party went there but at a subsequent stage, he deposes that Inspector Attar Singh had told him that accused Jaswinder Singh had made a disclosure that accused Gurnam would come with heroin there, though Inspector Attar Singh is categorical that accused Jaswinder had not given any such information. In such view of the matter, it is difficult to believe the version of the prosecution that the police party, before its deployment at Patel Chowk, Faridabad, had no specific information about accused Gurnam and it was suddenly at 03.20 AM that they were informed that accused Gurnam would be passing by Patel Chowk in his vehicle.

*Judge*  
35. The second reason for disbelieving the version of the prosecution is the admission made by PW19 ASI Ranvir Singh in his cross-examination. This witness in his cross-examination, conducted on behalf of accused Gurnam has deposed that the secret informer had given him the aforementioned information at about 08/08.30 PM. Though Lt. APP has tried to contend that the secret informer had twice relayed information to ASI Ranvir Singh- firstly at 08/08.30 PM on 05.07.2006 and then at 03.20 AM on 06.07.2006 and that the first

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information was not specific and therefore was not reduced into writing and the second was specific but there was no time to record it into writing, none of the witnesses have deposed about the relay of information in such a manner. Neither PW4 Attar Singh nor PW19 ASI Ranvir Singh have stated in their examination in chief, a word about the relay of any secret information at about 08/08.30 PM. On the contrary, PW4 Attar Singh has specifically stated in his cross-examination that they did not have any information whatsoever that accused Gurnam Singh was likely to come to Patel Chowk on 05.07.2006 and that though he had initially accompanied the team of police officials to Faridabad on 05.07.2006 and had reached Faridabad at about 08.00 PM, he returned back from Patel Chowk, Faridabad at about 09.45 PM because he did not think it necessary to remain at Patel Chowk as there was no specific information. This deposition of PW4 Attar Singh clearly suggests that according to him till the time he was there at Patel Chowk, Faridabad, there was no information whatsoever that accused Gurnam Singh would be passing by Patel Chowk. He does not mention a word that the secret informer had given information about Gurnam Singh at about 08/08.30 PM. Similarly, in his examination in chief, PW19 does not say at all that there was a secret information received at about 08/08.30 PM about the accused Gurnam Singh passing by Patel Chowk. It is only when

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this witness is asked during his cross-examination, various questions about the secret informer does he come out with the statement that he had contacted the secret informer who gave him information at about 08/08.30 PM. Now this statement cannot be lightly brushed aside by this court for it clearly suggests that at about this time, as per the own witnesses of the prosecution they had received the secret information about accused Gurnam Singh carrying contraband in his vehicle and therefore the same should have been reduced into writing and relayed to the superior officer. As regards Ex.PW14/B, DD no.14, the same does not at all mention anything about the secret information received, it merely records that Attar Singh was informed by ASI Ranvir Singh that they are chasing the car of Gurnam Singh. In view of my discussion hereinabove, I am of the considered opinion that in the facts of the present case, the investigating agency i.e. the police officials cannot be allowed to take the ground of emergent conditions or the aid of section 43 of the NDPS Act to wriggle out of the conditions stipulated in section 42 of the NDPS Act and it is to be held that even with respect to accused Gurnam there has been no compliance of Section 42 NDPS Act.

- Judge*
36. Coming now to the remaining contentions raised, in my considered opinion, the following discrepancies in the evidence put forward by the prosecution makes its case extremely doubtful:-

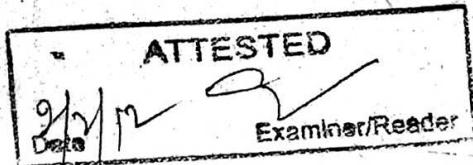
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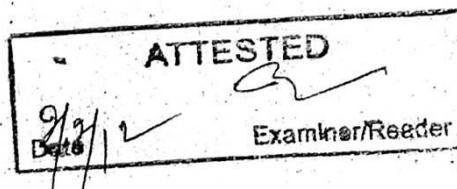
(a) There is no explanation forthcoming from the prosecution with respect to the difference in colour of the substance, shown to have been recovered from the accused persons in the respective seizure memos, that deposed by the prosecution witnesses and that mentioned in the FSL report. In the seizure memos Ex.PW2/B and Ex.PW2/F, prepared with respect to the substance allegedly recovered from the accused Jaswinder and accused Gurnam Singh respectively, the colour of the recovered substance has been mentioned as matmaila. According to depositions of PW2 HC Bijender Singh, PW4 Attar Singh and PW8 Pankaj Sood, the substance recovered from accused Jaswinder was brown in colour and according to PW2 and PW4 the substance recovered from accused Gurnam was also brown in colour. However, according to PW19, SI Ranvir Singh, the substance recovered from accused Gurnam was matmaila. On the other hand, the first FSL report Ex.PW4/M mentions the samples A1, B1, C1 and D1 (those drawn out from the substance asserted to have been recovered from accused Jaswinder and sent to FSL) were found to contain creamish yellow coloured substance and that the samples Ex E1, F1 to ..... Ex.Z1, BB1, DD1, LL1 and MM1 (those drawn out from the substance asserted to have been recovered from accused Gurnam) and sent to FSL were found to contain yellow creamish powder and Ex.HH1 was found to contain grey colour substance.

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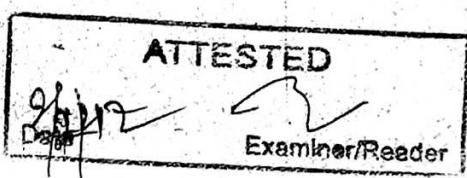


Though Ld.APP has rightly submitted that the perception of a shade of a colour may be different for different individuals and that a shade of a colour may be referred to as matmaila by a police official and by another as brown and the chemical examiner may refer the same as creamish yellow, the said contention of the Ld.APP would have had some force if the prosecution witnesses would have also stated to the same effect. On the contrary both PW2 HC Bijender Singh as well as PW19 SI Rambir Singh when questioned about the colour of the recovered substance have categorically deposed in their cross examination that no powder of creamish yellow colour was recovered from accused Jaswinder or from accused Gurnam and that they know the difference between yellowish cream and brown colour. It is also a matter of record that on behalf of both the accused persons, applications for retesting of the case property had been filed and in this regard fresh samples drawn out from the case property were sent to the FSL for re-examination. In this regard reports dated 20/1/2010, Ex.PW17/A and 30.09.2010 have been submitted on record. A perusal of the said reports show that the samples sent for the second time were all found light brown or brown in colour. Thus the same chemical examiner who referred the colour of the samples sent to her at the first instance as yellow creamish, referred the colour of the samples sent to her on the second occasion as brown. The

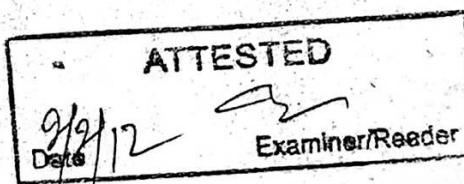


difference in the two FSL reports with respect to the colour of the sample substances therefore clearly indicates that they were not drawn out from the same substance and this clearly creates a doubt on the case of the prosecution. Further, the second FSL report also shows that though in most of the samples sent for reexamination, the percentage of diacetylmorphine is shown to have decreased, in some of the samples namely those drawn from packets Q,R,X,AA, the percentage of diacetylmorphine is shown to have increased. As per the Chemical Examiner, PW17 Dr. Madhulika Sharma, over a passage of time diacetylmorphine converts into monoecetymorphine and then to morphine and the said deposition has been relied upon by the prosecution to explain the decrease in the percentage of diacetylmorphine in most of the samples sent for re-examination.

Now, if one accepts this opinion of a scientific expert then it is not understandable as to how the percentage of diacetylmorphine has increased in the samples drawn from the packets Q, R, X, AA except to make an inference that either the samples drawn were not representative or that the samples originally drawn had been tampered with the investigating agency. In either of the cases it cannot be said that the prosecution has been able to prove it beyond doubt that the substance recovered from the accused was the same from which the sample was drawn and sent to FSL.



(b) The prosecution has also failed to prove that the case property was properly sealed at the spot. With respect to sealing of substance allegedly recovered from accused Jaswinder, PW2 HC Bijender Singh has deposed in his cross examination that all the samples drawn out from the substance were put together in a bag and that the bag was then sealed. However, this deposition of PW2 who asserts himself a member of raiding team is totally contrary to the contents of the seizure memo and the deposition of the other witnesses which is to the effect that the sample parcels were put in a plastic jar which were then sealed with the doctor's tape. Further, though as per the version put forward by the prosecution the seal after use was handed over to PW19 ASI Rambir Singh, admittedly no memo of handing over or the return of the seal to the IO has been placed on record. It is also to be taken note of that even if it is assumed that the seal had been handed over to ASI Rambir Singh, he himself was a member of raiding party and was not an independent person and in context of the present case where there is marked variation between the colour of the substance recovered and that sent to the FSL, the handing over of the seal to the member of the raiding team, cannot be accepted as routine and the tampering of the case property cannot be ruled out at all. Similarly in the case of accused Gurnam, the preparation of the seizure memo, Ex. PW4/E at the spot

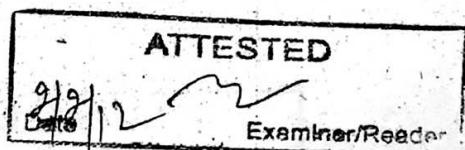


is doubtful. First of all, ASI Rakesh Kumar, the alleged author of this document has not been produced in the witness box. Secondly the deposition of PW4 with respect to this document is contrary to the case put forward by the prosecution. It is admitted by PW4 in his cross examination that the ink of FIR number and word FARD MAKBUZGI in Ex.PW2/E are in different ink from the ink of the remaining bod and though this witness has tried to explain the said discrepancy by stating that the ink of the pen went dry after writing word FARD MAKBUZGI, this statement of PW4 itself falsifies the case of the prosecution for it clearly suggests that the FIR number was mentioned on the seizure memo at the time of its preparation only and not after the registration of the FIR, as sought to be portrayed by the the prosecution witnesses. In the case reported as **Ashok Kumar vs State** 2000 (1) JCC(Delhi) 21, the Hon'ble Delhi High Court, after noting that the seizure memo and the personal search memo contain the number of the FIR in the same ink and in the same handwriting as the other contents of the said documents, held that the FIR and the seizure memo etc were prepared at the same time and that therefore the case of prosecution becomes doubtful, the benefit of which is to be given to the accused.

(c) There is also a clear admission on the part of the PW10 ASI Paramjit Singh, malkhana incharge, in his cross examination ,that FSL

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forms were given to him by the SHO when the sample parcels were taken by HC Bijender Singh on 13.7.06 and this impliedly shows that the FSL forms were not deposited alongwith the sample parcels and the sealed parcels i.e. case property on 4.7.06 and on 6.7.06. In two of its judgments pronounced in the cases reported as Pradeep Kumar vs State 1990 C.C. Cases 69(Delhi) and Sher Singh Walia vs State 2000(2) JCC Delhi 538, the Hon'ble Delhi High Court has held that where the CFSL form is not deposited in the malkhana simultaneously with the case property, it cannot be said with reasonable certainty that the seals on the case property/seized parcels have not been tampered with. In the present case PW10 has also admitted in his cross examination that the acknowledgment receipt brought by PW2 HC Bijender Singh does not find mention about the deposit of 2 FSL forms alongwith sample parcels with the science laboratory. Thus the prosecution has not sufficiently proved that what was seized was in fact deposited in the malkhana and the same was sent to the FSL. Therefore the tampering in the present case of the case property as such cannot be ruled out. Moreover, there is no explanation as to why the sample parcels were sent to FSL on 13.7.06 i.e after about 9 days of its recovery while as per the procedure prescribed the sample parcels should be sent to the Laboratory within 48 hours.

(d) The prosecution has also been unable to explain the

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discrepancy with respect to the time of arrest of accused Jaswinder that has come to the fore, between the documentary evidence placed on record and the testimony of PW Attar Singh. As narrated herein above, it is the defence of the accused Jaswinder that he was forcibly picked up from his house at Jalandhar on 04.07.2006. The case of the prosecution on the other hand is that this accused was arrested at 02.00 PM on 04.07.2006 from the Outer Ring Road flyover upon railway track about 500meters from Mukraba Chowk, Delhi. The arrest memo Ex.PW4/B shows that this accused was arrested by inspector Attar Singh at 02.00 PM on 04.07.2006. PW4 Attar Singh also states in his deposition that he had arrested this accused at 02.00 PM on 04.07.2006. Contrary to this deposition is Ex.PW5/E, DD No. 7 dated 04.07.2006 which records that the further investigation of the present case, after the registration of the FIR against accused Jaswinder, was handed over to Attar Singh only at 02.15 PM. In view of this document, it is being rightly contended on behalf of the defence that if this document is to be believed, then Inspector Attar Singh could not have arrested the accused at 02.00 PM, for he was handed over the investigation only at 02.15 PM. Even otherwise, in view of the judicial dicta laid down by the Hon'ble Delhi High Court in the case reported as Sehdev Vs. State 2009 (3) JCC (Narcotics) 128, it is to be held that the arrest memo prepared by PW Attar Singh

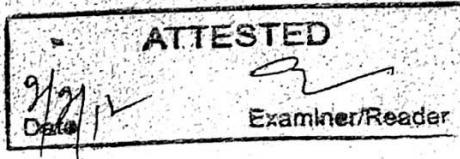
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is inconsistent with the version put forward by the prosecution. In the case before the Hon'ble High court, the prosecution was contending that though the accused was apprehended at 04.40 PM, he was formally arrested at 06.45 PM and that therefore, the arrest memo reflected the time of arrest at 06.45 PM. Negating the said contention of the prosecution, the Hon'ble Delhi High Court has held that the concept of an 'informal' arrest as contrasted with a 'formal' is not envisaged under the Cr.PC or the NDPS Act and that the arrest memo should mention the actual time of the apprehension of an accused. In the present case also, though as per the deposition of the witnesses, the accused Jaswinder was apprehended at 09.00 AM, his time of arrest in the arrest memo is shown as 02.00 PM and therefore, as per the judicial dicta referred to hereinabove, the arrest memo is to be held as wholly inconsistent with the version of the prosecution and it is to be held a doubt is created as to the time of the arrest of the accused Jaswinder.

(e) Further, though both PW2 and PW8 have deposed in their cross-examination that accused Jaswinder Singh was produced in the Special Court at Tis Hazari directly from the spot on 04.07.2006 and thereafter he was taken to Special Cell Lodhi Road and then was produced before the SHO, admittedly as per record the accused was produced before the Special Court on 05.07.2006. It is therefore



being rightly contended on behalf of the defence that this discrepancy corroborates the version of the defence that in fact the accused was not apprehended on 04.07.2006 from the place and the spot by the prosecution but in fact, has been lifted from his house on 03.07.2006.

As narrated hereinabove, this accused in support of his defence that he was picked up from his residence has summoned two witnesses, DW1 and DW2, employees of newspapers having circulation in Jallandhar, who have proved on record the newspapers reports published in the Amar Ujala and Metro Encounter, to the effect that this accused was forcibly lifted by Delhi Police officials from Jallandhar.

(f) The testimony of PW8 Inspector Pankaj Sood who was the main investigating officer with respect to the recovery allegedly made from accused Jaswinder does not inspire any confidence. This IO admits in his cross-examination that though there were bus stops near the Murkaba Chowk, from where the accused Jaswinder was allegedly apprehended, he did not ask any public persons standing at those bus stops to join the raiding party. Though he has deposed that he had requested some public persons near the Japanese park to join the raiding team, he admits that he did not note down the names of the said persons nor did he give any notice to them for non-cooperating with the police. Such conduct of the IO can no doubt be accepted

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taking into account that the priority of the police officials is to arrest the accused and not to start initiating proceedings against the public persons but at the same time an investigating officer who has conducted an important raid is at least expected to remember the material aspects with respect to the said raid. In the present case, this IO does not remember whether there was a Delhi Traffic police booth near the spot or not, nor does he remember whether HC Bijender and ASI Ranvir were armed or not nor does he remember whether accused Jaswinder tried to run away after seeing HC Bijender and ASI Ranvir crossing the road and coming towards him or whether any hue and cry was raised by the accused. He also admits that he did not offer to the accused that he can take the search of the official vehicle ~~nor~~ if he take the signatures of the accused or that of the other members of the raiding team on the pullandas prepared at the spot and the samples prepared by him. He also did not bother to test the recovered substance with the field testing kit and took the word of the accused only that it was heroin. He also admits that he did not prepare any memo for handing over of the seal to ASI Ranvir Singh. Further his statement in his cross-examination that Ex.PW2/A i.e. the notice u/s 50 NDPS Act given to accused Jaswinder and Ex.PW2/B, i.e. the reply given by accused to the said notice are in his handwriting (i.e. of PW8) is contrary to his examination in chief wherein he has stated

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that Ex.PW2/B is in the handwriting of the accused himself. The contention of the defence that this IO had dictated to accused Jaswinder as to what he must write in his reply to the notice u/s 50 NDPS Act also appears to have some merit, in view of the statement given by this IO in his cross-examination that 'I had told the accused Jaswinder to write about the raiding party in his reply'. PW19 ASI Ranvir Singh has also stated in his cross-examination that it was Inspector Pankaj Sood who had directed the accused to write in his reply that he did not want to take search of the raiding party. Another circumstance that is to be taken note is that though PW8 Inspector Pankaj Sood has deposed that he had instructed his raiding team that both the accused as well as the recipient i.e. the person who as per the secret information would also be at the spot to take delivery of the contraband, were to be apprehended, there is no mention in the entire evidence of any of the witnesses as to what steps were taken to nab the recipients if any.

Similarly in the case of Gurnam, the evidence produced by the prosecution to prove that the provisions of section 50 of the NDPS Act were complied with, is not sufficiently credible. With respect to the notice issued to accused Gurnam under section 50 of the NDPS Act, Ex.PW2/C, PW4 Attar Singh has deposed in his cross-

examination that accused Gurnam Singh had signed the notice u/s 50

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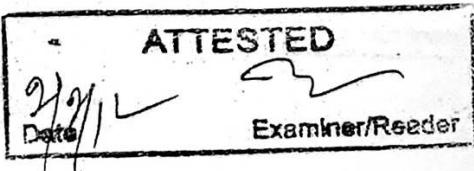
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NDPS Act in Gurmukhi and that the reply of this accused to the said notice is in the handwriting of PW2 HC Bijender Singh. Now, PW2 HC Bijender Singh in his cross-examination has also stated that since accused Gurnam Singh did not know Hindi, he had written the reply of accused Gurnam Singh. However, admittedly, Ex.PW2/C does not record at all, that any request in this regard was in fact made by Gurnam Singh or that after writing of the reply by HC Bijender, the contents of the same were read over and explained to accused Gurnam Singh. Further, PW4 and PW2 categorically admit who are Gazetted officers was not explained to accused Gurnam Singh. In such view of the matter it cannot be at all held that the provisions of section 50 of the NDPS Act have been sufficiently complied with. In a very recent judgment, the Constitutional Bench of the Hon'ble Supreme Court in the case titled as Vijaysinh Chandubha Jadeja Vs. State of Gujarat 2010(4) JCC Page 236 has held that it is imperative on the part of the empowered officer to apprise the person intended to be searched, of his right to be searched before a gazetted officer or a magistrate and this obligation of the authorized officer under sub-section (1) of section 50 of the Act is mandatory and requires a strict compliance. It has also been held by the Hon'ble Supreme Court that the failure to comply with the provisions of section 50 of the NDPS Act would render the recovery of the illicit article as suspect and vitiate the

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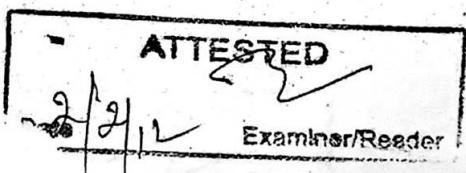


conviction if the same is recorded only on the basis of recovery of the illicit article from the person of the accused during his personal search.

(h) Another document that throws grave doubt on the case of the prosecution with respect to the recovery made from this accused is Ex.PW4/DA i.e. DD No.15 dated 05.07.2006 which records that on 05.07.2006 at about 03.40 AM, inspector Attar Singh alongwith SI Ramesh, SI Harbir Singh, ASI Rakesh Kumar, Ct.Sanjiv and Rakesh Kumar, Ct.Vinod Kumar, Ct.Roshan all left special cell, Rohini for Faridabad in gypsy no.DL1CJ-3566. PW4 Inspector Attar Singh was confronted with the said DD in his cross examination and he has deposed that it is correct that in the said DD, it is not mentioned that Ct. Sanjiv and Ct. Roshan were on a motorcycle. Now very interestingly on the judicial record, there is another DD no.15 dated 06.07.2006 which records the same facts as those recorded in DD no. 15 dated 05.07.2006 except that it is additionally mentioned in this DD that SI Ramesh and Ct. Sanjiv went on a private motorcycle and Ct. Vinod and Ct. Rakesh on a different motorcycle. No doubt the said DD has not been relied upon by the prosecution and proved in its evidence but the same is a part of the judicial record and was apparently filed by the prosecution itself alongwith the chargesheet

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and therefore, cannot be ignored by this court. The fact that the police officials prepared two identical DDs with different dates clearly supports the contention of accused persons that the case in the instant has been concocted by the police officials and the various documents have been manipulated to implicate the accused persons. This inference is also fortified by the fact that there is no explanation forthcoming from the investigating officials as to why though the recovery alleged to have been made from accused Gurnam Singh was independent of the recovery made from Jaswinder, no rukka was sent from the spot to the concerned police station for information, particularly when the investigating officers PW4 and PW19 have also admitted in their cross examination that Jaswinder Singh had not disclosed anything about Gurnam Singh or the fact that he would be coming at Patel Chowk, Faridabad.

(i) It is also unbelievable that though as per PW2 Bijender Singh, the speed of Santro car in which accused Gurnam Singh was allegedly carrying contraband at Patel Chowk was only 30-40 KMPH, he alongwith PW19 ASI Ranvir Singh, were unable to stop the vehicle and had to chase it all the way to Delhi. Even the said dramatic alleged chase of the vehicle of Gurnam Singh and finally his apprehension, is fraught with doubt. Though as per the testimony of PW2 Bijender Singh, PW4 Attar Singh and PW19 SI Ranvir Singh,

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Ct. Sanjeev who had been chasing the vehicle of Gurnam, on his motorcycle, broke down the right side glass of the window of the car of accused Gurnam with his helmet, as per record, no such broken pieces of glass were seized at the spot nor the photographs of the damaged car have been placed on record. Moreover, PW10 ASI Paramjit Singh, malkhana incharge, with whom the Santro car was deposited has categorically stated that he had not seen any broken pieces of glasses inside the car. Further, though PW2 Bijender Singh has deposed that Ct. Sanjeev took out the keys of the running Santro car, PW19 in his cross-examination has deposed that the key of the Santro car was in its ignition hole. Very interestingly, this Ct. Rakesh has not even been cited as a prosecution witness. Ct. Sanjeev Kumar, Ct. Vinod Kumar and Ct. Ramesh Kumar who were stated to be the riders of the motorcycles which were chasing the Santro car have also not been cited as witnesses by the prosecution nor examined in court and as such it is being rightly contended on behalf of the defence that an adverse inference u/s 114(g) of the Evidence Act has to be drawn against the prosecution that had the said witnesses been produced, the case of the prosecution would have stood falsified. It also cannot be ignored that both PW19 and PW4 have admitted that they had not offered the accused to take the search of the govt. gypsy or the private car which were allegedly involved in the apprehension

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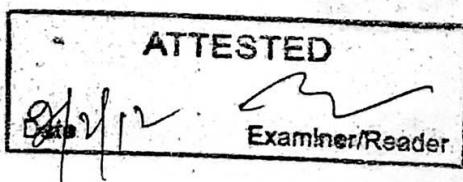
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of the Santro car, and this failure of the investigating officials also makes their conduct highly doubtful. In view of the contention of this accused that he was picked up from his house appears to be a more probable version. The mother of this accused, Jagir Kaur (DW4) has specifically deposed that on 02.07.2006 at about 03-04.00 AM, her son was picked up by four persons who had come to her residence in civil uniform and that on the morning of 03.07.2006, she had sent telegrams in this respect, Ex.DW4/DA, DBNDC to Chief Minister-Punjab, Home Minister-Delhi and DGP-Punjab. DW5, an employee of the Post Office, Amritsar, Punjab has confirmed that the said telegrams were sent to the aforementioned persons from the Post Office, Amritsar on 03.07.2006.

37. Apart from the aforesaid inconsistencies and contradictions, discussed hereinabove, in the written submissions filed, there are certain other contentions raised on behalf of the accused persons, in particular that provisions of section 57 NDPS Act have not been complied with, in the present case. In my considered opinion, in view of the reports prepared by the Investigating officers u/s 57 of the NDPS Act and duly proved on record by PW14 it cannot be stated that section 57 of the NDPS Act has not been complied with. I do not find any discrepancies in the said reports. It is also relevant to state herein that the other inconsistencies pointed out on behalf of the

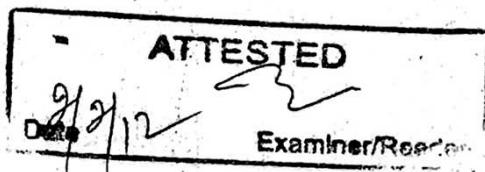
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defence in the written submissions do not lead to the inferences sought to be made by the Ld. Defence counsels and even otherwise do not go to the root of the matter. However, having said so, the discrepancies in the evidence put forward by the prosecution and discussed in the preceding paragraphs are sufficient, in my considered opinion to hold that the prosecution has not been able to prove its case against the accused persons Gurnam and Jaswinder beyond all reasonable doubt. I do not agree at all with the Ld APP that the said contradictions are not relevant and are not fatal to the case of the prosecution. In a criminal case an accused has no other way to show that a false case has been foisted on him except to show that the witnesses examined by the prosecution are not telling the truth when they are making discrepant statements on material aspects of the case. In the present case where no public witnesses have been joined in the investigation, in my considered opinion the accused persons have been able to show that they have been falsely implicated by pointing out the contradictions and the inconsistencies in the testimony of the police officials. No doubt in the present case the accused persons have been charged for serious offences under the NDPS Act but that does not at all mean that the grave suspicion raised against them can be held to be a substitute for legal evidence. As has been held by the Hon'ble Supreme Court in its various judgments that it must be borne

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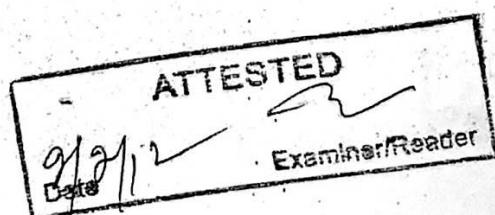
in mind that severer the punishment, greater has to be the care taken to be seen that the case of the prosecution is proved beyond all reasonable doubt.

38. In view of my discussion herein above I hereby hold that the prosecution has failed to prove beyond reasonable doubt that heroin was recovered from accused Jaswinder and Gurnam.

39. As regards the charge framed against accused Gurnam for the offence punishable u/s 474 IPC, it has been contended that accused Gurnam had in his possession a driving license and one ration card in the name of one Kuldeep Singh and one driving license in the name of Ravinder Singh and that the said documents were forged and that the accused Gurnam Singh had intended to use the said documents as genuine and that therefore he should be found guilty of the offence punishable u/s 474 IPC. With respect to this contention, it is noted that no evidence has been lead to show that the driving licenses found in possession of accused Gurnam were forged. As regards the ration card, one witness PW16 Sh. Gauri Shankar from the Department of Food and Supply, Government of Haryana, has been examined by the prosecution but the said witness has not at all stated that the ration card is a forged document. On the contrary, this witness has infact verified that a ration card was issued in the name of Kuldeep S/o Sh. Jagtar R/o C-538/A, Sanjay Gandhi Memorial Nagar, Faridabad. This

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deposition of PW16 makes it clear that this ration card is therefore not a forged document and therefore the charge against the accused that he intended to use the said forged ration card as genuine cannot hold. Though the Ld. APP has rightly contended that accused Gurnam was using the name Kuldeep Singh as an alias name (it has been submitted by the Ld. Defence Counsel that the accused Gurnam has never denied that he was also known by this name) and that this document in fact proves the said fact, the said fact cannot be sufficient to hold the accused guilty for the offence punishable u/s 474 IPC for the prosecution has not proved that accused Gurnam had also got a ration card issued in his own name i.e. Gurnam and the ration card in question was got fraudulently issued by impersonating as Kuldeep.

40. As regards, accused Tejbir and Rajesh Chauhan, apart from the purported statements of these accused persons recorded by DRI officials u/s 108 Customs Act in another case, there is no evidence whatsoever produced against them in this case. It has been rightly contended by Ld. Defence counsel that in Noor Aga's case (Supra at Smt. No. 28(xvi)), the Hon'ble Supreme Court has observed in para 97 of its judgment that the enquiry contemplated u/s 108 of the Customs Act is for the purpose of that Act only and not for the purpose of convicting the accused in any other statute including the provisions of NDPS Act. In view of the said judicial dicta, clearly the statement

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recorded of these accused persons u/s 108 of the Customs Act cannot be read against them in this case. Further, it is also rightly contended on behalf of these accused persons that these persons cannot be convicted till the main conspirators i.e. accused Gurnam and Jaswinder are held guilty by this court. Now that the accused Gurnam and Jaswinder cannot be held guilty of having acquired or being in possession of heroin, these accused persons also cannot be held guilty of having abetted the commission of offence of acquiring or being in possession of heroin by accused Jaswinder and Gurnam.

*(District Judge)*  
In view of my discussion hereinabove, I hereby hold that the prosecution has failed to prove its case against all the accused persons, beyond reasonable doubt and therefore all the accused persons stand acquitted of the charges framed against them.

Announced in open Court  
on this 21<sup>st</sup> day of January, 2012

*(Anu Grover Baliga)*

Special Judge NDPS : New Delhi  
Patiala House : New Delhi

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<i>9/1/12</i>	Examiner/Reader

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