

Loni, U.P. He also informed that the said Mohd. Irshad would come on that day in between 9:45 PM to 10:15 PM near Khajuri Bus Stand, Delhi (road going towards Wazirabad from Khajuri Chowk) for supplying the huge quantity of heroin to someone and if raid is conducted on time, he can be apprehended alongwith the illegal heroin. Thereafter, SI Vinod Kumar, after satisfying himself with the said secret information, produced the secret informer before Insp. Rajni Kant sharma, who after satisfying himself, conveyed the secret information to Sh. Sanjeev Kumar Tyagi, ACP/N&CP at his office, who directed them for conducting the raid as per law.

2. SI Vinod Kumar reduced the said information into writing, vide DD No. 31 and produced the same before Insp. Rajni Kant Sharma for the purpose of compliance of notice u/s. 42 of NDPS Act. Thereafter, HC Vikas and Ct. Shani were called in the office of Narcotics and both were apprised about the secret information and a raiding team was prepared.

3. At 9:00 PM, after lodging DD No. 32, SI Vinod Kumar alongwith the raiding team and secret informer, took IO bag, field testing kit and the electronic weighing machine and left for the spot in a private Swift car. On the way, SI Vinod Kumar asked 4-5 public persons to join the proceedings, as per the secret information, but, none agreed and left without disclosing their names and addresses. At about 9:50 PM, raiding team reached near the spot and they took their positions within the perimeter of 10 meter. At about 10:00 PM, one person was seen coming on foot from the side of Bhajanpura, who was identified by the secret informer as Mohd. Irshad. Thereafter, the

secret informer left from the spot.

4. The said person stopped near 30 meter ahead from the Khajuri Bus Stand and started waiting for someone. After about 10 minutes, when the said person started going towards Khajuri Chowk, he was apprehended by SI Vinod Kumar with the help of HC Vikas and Ct. Shani at 10:10 PM and his name was revealed as Mohd. Irshad S/o Mohd. Yasin. SI Vinod Kumar introduced himself and other team members before the said person. SI Vinod Kumar also asked 4-5 public persons, who were already gathered there, to join the proceedings, but, none agreed and left the spot without disclosing their names and addresses.

5. SI Vinod Kumar told the said person about the secret information. He was also told about his legal rights regarding the search proceedings and informed that if he wanted, his search could be conducted in the presence of any Magistrate or Gazetted Officer, but, he refused to be searched in presence of Magistrate or Gazetted Officer. Thereafter, SI Vinod Kumar gave notice u/s 50 of Narcotics Drugs and Psychotropic Substances Act, 1985 (“NDPS Act”) to accused Mohd. Irshad and took his search.

6. During the search of accused Mohd. Irshad, one white-red colour carry-bag, containing another transparent polythene tied with rubber band, which was containing brown (MUTMAILA) colour substance, was found and on checking the said brown colour powder with the field testing kit by SI Vinod Kumar, it was confirmed as Heroin. The total weight of the recovered smack (heroin) was found to be 800 grams. Two

samples of 5-5 grams each were taken out of the material. Pullandas were prepared and given Mark A-1, A-2 & A. Pullandas were sealed and taken into possession. Samples were sent to the FSL. Thereafter, SI Vinod Kumar prepared rukka and got the FIR registered u/s.21 of NDPS Act. Thereafter, investigation of the present case was carried out by ASI Sanjay.

7. ASI Sanjay prepared site plan at the instance of SI Vinod Kumar. After interrogation, accused Mohd. Irshad was arrested and personally searched by ASI Sanjay. Disclosure statement of accused Mohd. Irshad was also recorded and case property was deposited in malkhana. Special reports u/s. 57 NDPS Act regarding arrest of the accused and recovery of the Heroin were prepared.

8. In his disclosure statement, accused Mohd. Irshad disclosed that he used to supply Heroin after procuring the same from one lady, namely, Ruby, resident of Bawana and another lady, namely, Nasima resident of Loni. During further investigation, on 07.09.2017, accused Rabia @ Ruby was arrested in the present case. After following the mandatory provisions u/s. 50 of NDPS Act, search of accused Rabia @ Ruby was conducted, however, no contraband was recovered from her. During investigation, efforts were made for apprehending another accused Nasima, but, she could not be traced out.

9. During investigation, FSL result was received and after completing the investigation, chargesheet was filed against accused Mohd. Irshad u/s. 21 of NDPS Act. Chargesheet was

filed against accused Ruby u/s. 29 of NDPS Act alongwith the FSL result.

10. Cognizance of the offences u/s. 21(c)/29 of NDPS Act was taken. Vide order dated 21.04.2018, accused Rabia @ Rubi was discharged in the present case. Charge u/s. 21(c) was framed against accused Mohd. Irshad to which, he pleaded not guilty and claimed trial.

11. During trial, accused Naseema @ Narsimha was declared as Proclaimed Offender on 16.07.2018. Thereafter, accused Naseema @ Narsimha was arrested in the present case and supplementary chargesheet U/s. 21/29 of NDPS Act & Sec. 174-A of IPC was filed against her.

12. Vide detailed order dated 24.08.2023, accused Naseema @ Narsimha was discharged u/s. 29 r/w. Sec. 21(c) of NDPS Act and she was charged for committing the offence punishable u/s. 174-A IPC and on 26.08.2023, charge u/s. 174-A IPC was framed against her.

13. Prosecution examined as many as 17 witnesses to prove the charges against both the accused persons.

14. **HC Pankaj** has been examined as **PW-1**. He has deposed that in the intervening night of 29/30.08.2017 at about 2:30 am, on receipt of rukka from Ct. Shani, he got registered FIR No.145/17 u/s 21 of NDPS Act on computer through computer operator. He had proved the copy of FIR as Ex.PW1/A, kayami DD No. 3 as Ex.PW1/B and endorsement regarding same made by him on the rukka as Ex.PW1/C. He had also proved the

copy of DD No. 6 as Ex.PW1/D regarding registration of the present FIR on computer as well as the certificate u/s. 65-B Indian Evidence Act, as Ex.PW1/E.

15. **ASI Dinesh Kumar** has been examined as **PW-2**. He has deposed that on 30.08.2017, he had received the copy of DD No. 31 dt. 29.08.2017 duly forwarded by Insp. Rajnikant Sharma in compliance of Sec. 42 NDPS Act and produced the same before the ACP which was seen by the ACP and the ACP had signed the same. He has also deposed that on 30.08.2017, he had made entry regarding the same in Diary Register at serial no. 1668 dt. 30.08.2017 and proved copy of DD No. 31 as Ex.PW2/A. On the same day, he had also received report u/s. 57 NDPS Act regarding seizure of contraband i.e. 800 grams Heroin from possession of accused Mohd. Irshad and produced the same before the ACP. He also made entry regarding the same in Diary Register at serial no. 1669 dt. 30.08.2017 and proved the said report as Ex.PW2/B. He has further deposed that on the same day, he also received report u/s. 57 NDPS Act regarding arrest of accused Mohd. Irshad duly forwarded by Insp. Rajnikant Sharma and produced the same before the ACP. He made entry regarding the same in Diary Register at serial no. 1670 dt. 30.08.2017 and proved the same as Ex.PW2/C. He also proved the photocopies of abovesaid entries, as Ex.PW2/E (colly.).

16. **Sh. Shailendra Yadav** has been examined as **PW-3**. He has deposed that on 31.08.2017, he was working as Sr. Scientific Officer (Chemistry), FSL, Rohini, Delhi. On that day, one sealed parcel marked A-1 containing Ex. A-1 i.e. light brownish coloured powdery material, kept in a plastic pouch tied

with rubber band was received in his office for examination. After chemical, TLC, GC & GC-MS examinations, Exhibit A-1 was found to contain Diacetylmorphine, 6-monoacetylmorphine, acetaminophen and acetylcodeine. The percentage of Diacetylmorphine was 3.5%. He had prepared his detailed report, vide Ex.PW3/A and identified the said light brownish coloured material, as Ex. P-1.

17. **Insp. Kailash Chander Sharma** has been examined as **PW-4**. He has deposed that on 30.08.2017, at about 2:35 am, Ct. Shani had handed over three sealed pullandas Mark A-1, A-2 and A alongwith FSL form and carbon copy of seizure memo for compliance of Sec. 55 NDPS Act. He had put his seals of 'KCS' on these three pullandas as well as on the FSL form and mentioned details of case FIR No. 145/17 on all the pullandas, FSL form and carbon copy of seizure memo. He has further deposed that he got deposited the abovesaid pullandas in the malkhana through MHC(M) ASI Jag Narayan and made DD No. 4 regarding compliance of Sec. 55 NDPS Act. He had also proved the relevant entry of malkhana register made by ASI Jag Narayan, copy of which is Ex.PW4/A.

18. **ASI Mahesh Chand** has been examined as **PW-5**. He has deposed that on 29.08.2017, one electronic weighing machine was issued to SI Vinod Kumar and he had made entries regarding the same at serial no. 29 at page 3 of electronic weighing machining issuing register. He has further deposed that on 30.08.2017, SI Vinod Kumar had returned the said electronic weighing machine to him at 9:00 pm. He had proved the page no. 3 containing relevant entry at serial no. 29, copy of which is Ex.PW5/A. He has further deposed that on 20.01.2017, he had

handed over one official seal bearing seal impression '2A PS/NB DELHI' to SI Vinod Kumar and made entries regarding the same at serial no. 4 at page 1 of official seal issuing register. He had proved the page no. 1 containing relevant entry at serial no. 4, copy of which is Ex.PW5/B.

19. **Ct. Rohit** has been examined as **PW-6**. He has deposed that on 31.08.2017, as per directions of IO ASI Sanjay, he had collected one sealed pullanda Mark A-1, FSL form, copy of FIR and copy of seizure memo from MHC(M) PS Crime Branch namely ASI Jag Narayan and got deposited the same at the office of FSL, Rohini vide acknowledgment No. 2017/CHE-6489. He had also obtained acknowledgment receipt and handed over to the MHC(M) alongwith copy of RC.

20. **ASI Jag Narayan** has been examined as **PW-7**. He has deposed that on 30.08.2017, he was posted as MHC(M) at PS Crime Branch, Pushp Vihar, Delhi. On that day, Insp. Kailash Chand Sharma, SHO Crime Branch had handed over to him three cloth pullandas Mark A, A-1 and A-2 alongwith FSL form and carbon copy of seizure memo. He had deposited the pullandas in the malkhana and made entries in malkhana register no. 19 at serial no. 2728 regarding depositing the aforesaid pullandas in the malkhana in the presence of the SHO. He has further deposed that on the same day, he had deposited one original notice u/s. 50 NDPS Act alongwith one black purse containing some visiting cards, one PAN Card and Rs. 270/- in cash in the malkhana vide entry no. 2729, which were handed over to him by IO/ASI Sanjay.

21. He has further deposed that during PC remand on 31.08.2017, co-accused Md. Irshad had taken the police team to

the house of source Narsimha @ Naseema at Chand Masjid Road, East Mustafabad, Loni, UP, but the said house was found locked. He had prepared pointing out memo in this regard, vide Ex.PW8/I. On the same day, he had handed over one sealed pullanda alongwith FSL form and copy of FIR and seizure memo to Ct. Rohit to be deposited at FSL, Rohini vide RC No. 2076/21, who after depositing the same at FSL Rohini, handed over the acknowledgment receipt to him. He has also deposed that on 17.11.2017, he had deposited one sealed parcel sealed with the seal of FSL DELHI in the malkhana and handed over the FSL result to the IO and made entries in the malkhana register in this regard. He had proved the photocopies of relevant entries in malkhana register no. 19 as Ex.PW7/A (colly.); photocopy of RC as Ex.PW7/B and photocopy of acknowledgment receipt as Ex.PW7/C.

22. **SI Vinod Kumar** has been examined as **PW-8**. He has deposed that on 29.08.2017 at about 7:45 pm, he had received an information from one secret informer regarding supplying of heroin in Delhi, after procuring the same from Bawana, Delhi and Loni, UP. After satisfying himself about the secret information, he produced the secret informer before Insp. Rajni Kant Sharma in his office, who after verifying the same, telephonically informed to Sh. Sanjeev Kumar Tyagi, ACP, Narcotics Cell, who directed him to organize a raiding party and to take appropriate legal action. He also made a DD entry in the roznamcha vide DD No. 31 in compliance of Sec. 42 NDPS Act and organized a raiding party consisting of HC Vikas and Ct. Shani including himself.

23. He has further deposed that at about 10:10 pm,

accused Mohd. Irshad was apprehended and notice u/s. 50 NDPS Act was served upon him regarding his search proceedings. The contents of said notice were also duly read over and explained to the accused in his vernacular language. However, accused had refused to avail his legal rights. Thereafter, he recorded refusal /reply of the accused on carbon copy of the notice and search of the bag of the accused was got conducted. He has also deposed that on opening the said bag, same was found containing one transparent white polythene tied with rubber band and same was found containing brownish/muddy colour dried powdery substance. On checking the same with field testing kit, it was found to be heroin. The weight of the said powdery substance was found to be 800 grams. Out of the said substance, two samples of 5 grams each were taken out and converted the same into two cloth pullandas mark A-1 and A-2. The remaining 790 grams substance was converted into cloth pullanda mark A.

24. He has further deposed that thereafter, he had filled up FSL form and sealed all the three pullandas with seal of 2A PS/NB DELHI and he took the same three sealed pullandas and FSL form into possession vide seizure memo Ex.PW8/A. Thereafter, he had prepared rukka (Ex.PW8/B) and got the present case registered u/s. 21 NDPS Act against the accused and got deposited the case property in the malkhana. He has also deposed that at about 5:20 am on the same day, ASI Sanjay reached at the spot, to whom, he had briefed about the facts of the case and handed over original seizure memo, carbon copy of notice u/s. 50 NDPS Act. Custody of the accused was also handed over to ASI Sanjay. He proved the rough site plan of the spot prepared by ASI Sanjay as Ex.PW8/C. After interrogation,

accused was arrested in the present case, vide arrest memo Ex.PW8/D. His personal search was conducted, vide personal search memo Ex.PW8/E. He also proved the carbon copy of notice served upon accused Mohd. Irshad, vide Ex.PW8/F as well as the refusal made by the accused on the carbon copy, vide Ex.PW8/G. He also proved the disclosure statement of accused Mohd. Irshad, vide Ex.PW8/H; report u/s. 57 NDPS Act regarding seizure of contraband i.e. heroin and pointing out memo Ex.PW8/I.

25. He has further deposed that on 01.09.2017, he took the police team to the house of another source namely Ruby @ Rubina at E-2979, JJ Colony, Bawana, Delhi, but, said Ruby was not found there. He had prepared pointing out memo in this regard, vide Ex.PW8/J. He had correctly identified accused Mohd. Irshad in the court alongwith the case property i.e. Ex. P-1, P-2 & P-3 and original notice u/s. 50 NDPS Act as Ex.PW8/K.

26. **HC Vikas Kumar** has been examined, as **PW-9**. He has deposed on the similar lines as that of deposition of PW-8 SI Vinod Kumar. He had proved arrest proceedings of accused Md. Irshad and correctly identified accused Mohd. Irshad in the court alongwith the case properties i.e. PW9/Article-1 & PW9/Article-2.

27. **Insp. Rajni Kant** has been examined as **PW-10**. He has deposed that on 29.08.2017 at about 7:45 pm, one secret informer was produced before him in his office by SI Vinod Kumar and after verifying the secret information, he telephonically informed to Sh. Sanjeev Kumar Tyagi, ACP, Narcotics Cell and directed SI Vinod to organize a raiding party

and to take appropriate legal action. He has also deposed that SI Vinod Kumar also produced report u/s. 42 NDPS Act, which he had forwarded to the concerned ACP. He had proved the report prepared vide DD No. 31 dt. 29.08.2017, vide Ex.PW2/A and correctly identified accused Md. Irshad in the court; report u/s. 57 NDPS Act regarding seizure of Heroin, vide Ex.PW2/B and arrest of accused Md. Irshad., vide Ex.PW2/C.

28. **Ct. Shani Rathi** has been examined as **PW-11**. He has deposed on the similar lines as that of deposition of PW-8 SI Vinod Kumar and PW-9 HC Vikas Kumar. He had correctly identified accused Md. Irshad in the court alongwith the case properties.

29. **Sh. Sanjeev Tyagi**, ACP has been examined as **PW-12**. He has deposed that on 29.08.17 at about 8:10 pm, Insp. Rajnikant telephonically informed him regarding the secret information. He directed Insp. Rajnikant to conduct raid and take necessary action. He has also deposed that on 30.08.17, his Reader namely ASI Dinesh Kumar produced copy of DD No. 31 alongwith report u/s 57 NDPS Act regarding seizure of 800 gms heroin from the possession of accused Mohd. Irshad, another report u/s 57 NDPS Act regarding arrest of accused Mohd. Irshad before him. He proved DD No. 31 dt. 29.08.17 as Ex.PW2/A and reports u/s 57 NDPS Act both dt. 30.08.17 as Ex.PW2/B and Ex.PW2/C respectively.

30. **SI Vishan Kumar** has been examined as **PW-13**. He has deposed that accused Naseema @ Narshima was declared as Proclaimed Offender in the present case. On 14.10.2020, at the instance of secret informer, accused Naseema @ Narshima was apprehended and after interrogation, she was arrested, vide arrest

memo Ex.PW13/A. Her personal search was also got conducted, vide personal search memo Ex.PW13/B. He has also deposed that he recorded the disclosure statement of accused Naseema @ Narshima, vide Ex.PW13/C. After arrest, accused Naseema @ Narshima was produced before Insp. Ram Manohar and a kalandara u/s. 41.1(c) CrPC (Ex.PW13/D) was lodged, vide GD No. 24-A dated 14.10.2020 (Ex.PW13/E). He had also correctly identified accused Naseema @ Narshima in the court.

31. **HC Janita** has been examined as **PW-14**. She has deposed that on 14.10.2020, she had joined investigation alongwith SI Vishan, proved arrest proceedings of accused Naseema @ Narshima, vide arrest memo Ex.PW13/A, personal search memo Ex.PW13/B and disclosure statement Ex.PW13/C. She had also correctly identified accused Naseema @ Narshima in court.

32. **SI Abdul Hakim** has been examined as **PW-15**. He has deposed that on 16.10.2020, he received information, vide DD No. 24A dt. 14.10.2020, regarding arrest of accused Naseema @ Narshima as PO. Thereafter, on 17.10.2020, he had visited Mandoli Jail and moved an application for formal arrest of accused Nasima @ Narsima. After interrogation, accused Nasima @ Narsima was arrested in the present case, vide arrest memo Ex.PW14/A. Her disclosure statement was also recorded, vide Ex.PW14/B. He had also correctly identified accused Naseema @ Narshima in the court. He had lodged DD No. 00029A and proved the same, vide Ex.PW15/A and prepared a special report u/s. 57 NDPS Act, regarding arrest of accused Naseema @ Narshima in the present case, vide Ex.PW15/B.

33. **SI Mohd. Ismail** has been examined as **PW-16**. He

has deposed that on 22.12.2017, he went to the house of accused Nasima @ Narsima for execution of NBW issued against her, where, her house was found locked. He recorded statement of Mohd. Saleem, vide Ex.PW16/A and statement of Mohd. Rasheed, vide Ex.PW16/B. He had proved his report regarding execution of NBW issued against accused Nasima @ Narsima, vide Ex.PW16/C. He has also deposed that on 09.02.2018, he went to the house of accused Nasima @ Narsima for execution of process u/s. 82 CrPC issued against her, where, her house was found locked. He had recorded statement of Shimu @ Shimla, vide Ex.PW16/D and statement of Mohd. Rasheed, vide Ex.PW16/E. He had proved his report regarding execution of process u/s. 82 CrPC issued against accused Nasima @ Narsima, vide Ex.PW16/F, copy of newspapers Ex.PW16/F1 & F2, wherein proclamation u/s. 82 CrPC were published.

34. He has further deposed that on 23.04.2018, he went to the house of accused Nasima @ Narsima for execution of process u/s. 83 CrPC issued against her, where, he had made enquiries from the neighbourers and recorded statement of Nisar Saifi, vide Ex.PW16/G and statement of Mohd. Rasheed, vide Ex.PW16/H. He also proved his report regarding execution of process u/s. 83 CrPC issued against accused Nasima @ Narsima, vide Ex.PW16/I.

35. **SI Sanjay** has been examined as **PW-17**. He has deposed that on 30.08.2017, after receiving the original rukka and computerized copy of FIR alongwith certification u/s. 65-B Indian Evidence Act, as per directions of the senior officers and after lodging DD No. 3, he had reached at the spot, where, SI Vinod had handed over certain documents. He had prepared site

plan at the instance of SI Vinod, vide Ex.PW8/C. He had proved the true copy of DD No.3, as Ex.PW17/A. He had also proved the arrest proceedings of accused Mohd. Irshad.

36. He has further deposed that he had lodged DD No. 10 regarding returning to his office; DD No. 3 regarding issuance of weighing machine; DD No.9 regarding his arrival at his office and proved the same, as Ex.PW17/B, Ex.PW17/C & Ex.PW17/D respectively. He also proved his application Ex.PW17/D1, for proceedings u/s. 52A NDPS Act and correctly identified accused Mohd. Irshad in the court as well as the case properties i.e. personal search articles of the accused Ex.PW17/Article 1 (colly.). Overall, during trial, the prosecution has relied upon the following documentary evidence:-

| Exhibit No. | Description of the exhibit | Proved by/Attested by |
|--------------------|--|------------------------------|
| Ex.PW1/A | Copy of FIR. | PW-1 |
| Ex.PW1/B | kayami DD No. 3. | HC Pankaj |
| Ex.PW1/C | Endorsement on the rukka. | |
| Ex.PW1/D | Copy of DD No. 6. | |
| Ex.PW1/E | Certificate u/s. 65-B Indian Evidence Act. | |
| Ex.PW2/A | Copy of DD No. 31. | PW-2 |
| Ex.PW2/B | Report u/s. 57 NDPS Act regarding seizure of contraband i.e. 800 grams Heroin from possession of accused Mohd. Irshad. | ASI Dinesh Kumar |
| Ex.PW2/C | Report u/s. 57 NDPS Act | |

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| Ex.PW2/E (colly.) | regarding arrest of accused Mohd. Irshad. Photocopies of relevant entries. | |
| Ex.PW3/A Ex. P-1 | FSL report of examination of the exhibits. Light brownish coloured material. | PW-3 Sh. Shailendra Yadav |
| Ex.PW4/A | Photocopy of relevant entry of malkhana register made by ASI Jag Narayan. | PW-4 Insp. Kailash Chander Sharma |
| Ex.PW5/A Ex.PW5/B | Photocopy of page no. 3 of electronic weighing machining issuing register containing relevant entry at serial no. 29. Photocopy of page no. 1 of official seal issuing register containing relevant entry at serial no. 4. | PW-5 ASI Mahesh Chand |
| Ex.PW7/A (colly.) Ex.PW7/B Ex.PW7/C | Photocopies of relevant entries in malkhana register no. 19. Photocopy of RC. Photocopy of acknowledgment receipt. | PW-7 ASI Jag Narayan |
| Ex.PW8/A Ex.PW8/B Ex.PW8/C | Seizure memo of the recovered contraband. Rukka. Rough site plan of the spot prepared by ASI Sanjay. | PW-8 SI Vinod Kumar |

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| Ex.PW8/D | Arrest memo of accused Mohd. Irshad. | |
| Ex.PW8/E | Personal search memo of accused Mohd. Irshad. | |
| Ex.PW8/F | Carbon copy of notice served upon accused Mohd. Irshad. | |
| Ex.PW8/G | Refusal made by the accused Mohd. Irshad. | |
| Ex.PW8/H | Disclosure statement of accused Mohd. Irshad. | |
| Ex.PW8/I | Report u/s. 57 NDPS Act regarding seizure of contraband and pointing out memo. | |
| Ex.PW8/J | Pointing out memo. | |
| Ex.PW8/K | Original notice u/s. 50 NDPS Act. | |
| Ex.PW13/A | Arrest memo of accused Naseema @ Narshima. | PW-13 |
| Ex.PW13/B | Personal search memo of accused Naseema @ Narshima. | SI Vishan Kumar |
| Ex.PW13/C | Disclosure statement of accused Naseema @ Narshima. | |
| Ex.PW13/D | Kalandara u/s. 41.1(c) CrPC. | |
| Ex.PW13/E | GD No. 24-A dated 14.10.2020. | |
| Ex.PW14/A | Arrest memo of accused Nasima @ Narsima (in the present case). | PW-14 |
| Ex.PW14/B | Disclosure statement of | W/HC Janita |

| | | |
|---|---|---------------------------------|
| | accused Nasima @ Narsima (in the present case). | |
| Ex.PW15/A Ex.PW15/B | DD No. 00029A. Special report u/s. 57 NDPS Act, regarding arrest of accused Naseema @ Narshima in the present case. | PW-15 SI Abdul Hakim |
| Ex.PW16/A Ex.PW16/B Ex.PW16/C Ex.PW16/D Ex.PW16/E Ex.PW16/F Ex.PW16/F1 & F2 Ex.PW16/G Ex.PW16/H Ex.PW16/I | Statement of Mohd. Saleem. Statement of Mohd. Rasheed. Report regarding execution of NBW issued against accused Nasima @ Narsima. Statement of Shimu @ Shimla. Statement of Mohd. Rasheed. Report regarding execution of process u/s. 82 CrPC issued against accused Nasima @ Narsima. Copy of newspapers, wherein proclamation u/s. 82 CrPC were published. Statement of Nisar Saifi. Statement of Mohd. Rasheed. Report regarding execution of process u/s. 83 CrPC issued against accused Nasima @ Narsima. | PW-16 SI Mohd. Ismail |
| Ex.PW17/A Ex.PW17/B | True copy of DD No.3. DD No. 10 regarding returning | PW-17 SI Sanjay |

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|-----------------------------------|--|--|
| Ex.PW17/C | of office. DD No. 3 regarding issuance of weighing machine. | |
| Ex.PW17/D | DD No.9 regarding his arrival at office. | |
| Ex.PW17/D1 | Application for proceeding of the case property u/s. 52A NDPS Act. | |
| Ex.PW17/ Article 1 (colly.) | Personal search articles of the accused. | |

37. Statement of accused Mohd. Irshad u/s 313 CrPC was recorded. He denied all the incriminating circumstances. He stated that he has been falsely implicated in the present case in connivance with Ruby @ Rubina and her brother-in-law Rashid, as Rashid was having illicit relations with his wife Shahnaz. He also submitted that nothing has been recovered from him and the alleged recovery is planted upon him by the police. Accused wished to lead evidence in his defence.

38. Statement of accused Naseema @ Narshima u/s 313 CrPC was also recorded. She denied all the incriminating circumstances. She stated that she has been falsely implicated in the present case. She did not wish to lead evidence in her defence.

39. I have heard Sh. F. M. Ansari, learned Addl. PP for the State and Ld. Counsels for the accused persons.

40. Ld. Additional PP for the State has submitted that prosecution has proved the recovery of contraband from accused Mohd. Irshad. He submitted that all the provisions of NDPS Act including Sec. 50 were duly complied with. He contended that since the charge has been proved beyond reasonable doubt, therefore, accused Mohd. Irshad is liable to be convicted in the present case. Ld. Addl. PP for the State further argued that the process u/s. 82 CrPC was duly executed against accused Naseema and the same has been duly proved during trial, accused Naseema is liable to be convicted u/s. 174-A IPC.

41. Ld. Counsel for accused Naseema has submitted that the accused has already been discharged u/s. 29 r/w. Sec. 21(c) of NDPS Act vide order dated 24.08.2023 and she has been charged only for offence u/s. 174-A IPC. He has also submitted that this accused Naseema was not residing at the address, on which, the process U/s. 82 CrPC was executed. Infact, the said house did not belong to the accused, as it was the house of mother-in-law of accused Naseema, who had already expired. Ld. Counsel has further argued that since, this accused Naseema has already discharged for the main offence, she is not liable to be convicted U/s. 174-A IPC, as she was never wanted in the present case.

42. Ld. Legal Aid Counsel for accused Mohd. Irshad has submitted that in the present case, the samples of the recovered Heroin were drawn in the absence of any Gazetted Officer or Magistrate, which creates doubt in the story of prosecution. There is no certificate of correctness of the electronic weight machine on record. There is also non-compliance of Sec. 50 as well as 42 of NDPS Act. Moreover, no public witness was joined during the

entire proceedings, nor it was photographed or videographed. Ld. Counsel further argued that there is huge delay of more than 15 months from the alleged recovery and proceedings U/s. 52A NDPS Act, which has not been explained. Moreover, the case property was never produced in the court during entire trial and no order is on record to show that the case property was destroyed. Therefore, the accused is entitled to be acquitted in the present case.

43. I have considered the rival submissions, put forth by both the sides.

44. From the submissions of the learned Counsel, the following point for determination arise in the present case:

- a). Whether the recovery of 800 grams of Heroin was affected from the carry bag carried by accused Mohd. Irshad?
- b). Whether the prosecution has been able to prove the recovery of 800 grams of Heroin from accused Mohd. Irshad beyond all reasonable doubt?
- c). Whether accused Mohd. Irshad has been able to rebut the presumptions raised against him as per Sec. 35 & 54 of the NDPS Act?

45. Before a person can be held liable for commission of any offence, the prosecution has to establish his guilt beyond reasonable doubt.

46. I shall now delve into the appraisal of material

available on record.

47. Accused Mohd. Irshad has been alleged to have been found in possession of 800 grams Heroin. Admittedly, neither any public person was joined during recovery proceedings, nor any public person/independent witness has been examined during trial. All the witnesses examined by the prosecution, are either police officials or formal witnesses.

48. It is not in doubt that while the testimony of the police witnesses in absence of independent witnesses may be sufficient to secure conviction, if the same inspires confidence during the trial, however, lack of independent witness in certain cases can cast a doubt as to the credibility of the prosecution's case. It is not disputed that the investigating agency had sufficient time to prepare before the raid was conducted, as the secret information was received at 7:45 PM and the accused was apprehended at 10:10 PM.

49. As per the version of PWs, the public persons were asked to join the investigation, but, none of them agreed and went away without disclosing their names and addresses. Further, the IO has not produced any notice u/s. 160 of the CrPC which ought to have been served upon those available independent witnesses who allegedly refused to join the investigation. The failure on the part of the police personnel could only suggest that they were not interested in joining the public persons in the police proceedings. Failure on the part of the police officials to make sincere effort to join public witnesses for the proceedings when they may be available created reasonable doubt in the prosecution story.

Reference can be taken from the decision of **Anoop Joshi Vs. State 1992 (2) C.C. Cases 314 (HC)**, Hon'ble High Court of Delhi has observed as under:

“It is repeatedly laid down by the Court that in such cases it should be shown by the police that sincere efforts have been made to join independent witnesses. In the present case, it is evident that no such sincere efforts have been made, particularly when we find that shops were open and one or two shop keepers could have been persuaded to join the raiding party to witness the recovery being made from the appellant. In case any of the shopkeepers had declined to join the raiding party, the police could have later on taken legal action against such shopkeepers because they could not have escaped the rigours of law while declining to perform their legal duty to assist the police in investigation as a citizen, which is an offence under the IPC.”

50. While the testimony of the police officials cannot be discarded away merely because of the fact that no public witnesses were examined, however, their testimonies have to be scrutinized in more detail. If it is found that the police officials during the course of investigation did not even make endeavor to ask the public witnesses to join the investigation, did not even ask their names and details, etc. then it would cast a very serious doubt on the testimonies of the police officials. At this stage, reference can be taken from the decision of the Hon'ble Supreme Court in the case of **Tahir Vs. State (Delhi) [(1996) 3 SCC 338]**, dealing with a similar question, the Hon'ble Apex Court held:

“In our opinion no infirmity attaches to the testimony of the police officials, merely because they belong to the police force and there is no rule of law or

evidence which lays down that conviction cannot be recorded on the evidence of the police officials, if found reliable, unless corroborated by some independent evidence. The Rule of Prudence, however, only requires a more careful scrutiny of their evidence, since they can be said to be interested in the result of the case projected by them. Where the evidence of the police officials, after careful scrutiny, inspires confidence and is found to be trustworthy and reliable, it can form basis of conviction and the absence of some independent witness of the locality to lend corroboration to their evidence, does not in any way affect the creditworthiness of the prosecution case. The obvious result of the above discussion is that the statement of a police officer can be relied upon and even form the basis of conviction when it is reliable, trustworthy and preferably corroborated by other evidence on record.”

51. The requirement of the police officials to make endeavour to ask the public witnesses to join the proceedings was discussed by the Hon'ble Supreme Court of India in the case of **Sahib Singh vs. State of Punjab AIR 1997 SC 2417**, wherein it was held:

“In a given case it may so happen that no such person is available or, even if available, is not willing to be a party to such search. It may also be that after joining the search, such persons later on turn hostile. In any of these eventualities the evidence of the police officers who conducted the search cannot be disbelieved solely on the ground that no independent and respectable witness was examined to prove the search but if it is found as in the present case that no attempt was even made by the concerned police officer to join with him some persons of the locality who were admittedly available to witness the recovery, it would affect the weight of evidence of the Police Officer, though not its admissibility.”

52. Therefore, in view of the above mentioned law, it becomes clear that while the testimony of the police officials cannot be discarded away altogether in the absence of any public witnesses, however, it would be prudent to examine or scrutinize their testimonies more closely and should preferably be corroborated.

53. Relying upon the judgment, Baldev Singh's case, the Hon'ble Supreme Court, in **Noor Aga vs. State of Punjab & Anr., 2008 Drug Cases (Narcotic) 352 [2008 (9) SCALE 681]** held in Para 77 & 78, as under:-

“77. It is also necessary to bear in mind that superficially a case may have an ugly look and thereby, prima facie, shaking the conscience of any court but it is well settled that suspicion, however high may be, can under no circumstances, be held to be a substitute for legal evidence.

78. Sections 35 and 54 of the Act, no doubt, raise presumptions with regard to the culpable mental state on the part of the accused as also place burden of proof in this behalf on the accused; but a bare perusal the said provision would clearly show that presumption would operate in the trial of the accused only in the event the circumstances contained therein are fully satisfied. An initial burden exists upon the prosecution and only when it stands satisfied, the legal burden would shift. Even then, the standard of proof required for the accused to prove his innocence-is-not-as high as that of the prosecution. Whereas the standard of proof required to prove the guilt of accused on the prosecution is "beyond all reasonable doubt" but it is preponderance of probability' on the accused. If the prosecution fails to prove the foundational facts so as to attract the rigours of Section 35 of the Act, the actus reus which is possession of contraband by the accused cannot be said to have

been established.”

54. **Delayed compliance of Sec. 52-A of NDPS Act:** To add to it, it is worth-noticing that even after seizure of the recovered contrabands, no steps u/s. 52-A of NDPS Act were taken by the IO immediately after seizure of the recovered contraband. The IO failed to comply with the provisions of Sec. 52-A of NDPS Act within reasonable time. Although, merely delayed-compliance of Sec. 52-A of NDPS Act in itself does result into acquittal of the accused, yet there are other factors also, which further weakens the case of the prosecution.

55. It has been held by the Hon’ble Supreme Court in number of cases that the scope of Section 52A although primarily for the disposal and destruction of seized contraband in a safe manner yet extends beyond the immediate context of drug disposal, as it serves a broader purpose of strengthening the evidentiary framework under the NDPS Act. By providing for the preparation of inventories and certification by magistrates. the provision enhances the credibility and reliability of evidence presented during trial, minimizing the scope for disputes or challenges related to the handling and disposal of seized substances.

56. In **Noor Aga v. State of Punjab & Anr., (2008) 16 SCC 417**, the case of the prosecution therein was that 1.4 kg heroin concealed in a cardboard container was allegedly recovered from the appellant therein. However, neither the bulk quantity of heroin nor the cardboard carton containing the same was ever produced before the court. The explanation that was put

forth by the prosecution for such omission was that the original cardboard carton had gone missing whereas the heroin which was seized had been destroyed. However, neither any order of disposal in terms of Section 52A for the destruction of the heroin nor any photographs or inventory details of the carton in terms of the Standing Order(s) was placed before the court. Moreover, the samples of the seized narcotic substance had also been drawn in complete violation of the procedure envisaged under the Standing Order(s) and had several discrepancies as regards the weight and colour and uncorroborated by any independent witnesses. The High Court however, convicted the appellant on the ground that as per the record, all seized material had been duly sealed. thus, the physical evidence could be said to have been intact and in safe custody. In appeal, the Hon'ble Supreme Court speaking through Justice S.B. Sinha after examining Section 52A and the aforesaid Standing Order(s) issued pursuant thereto held as follows:-

(i) First, it held that Section 52A provides for disposal of seized narcotic substances whereby the officer empowered under Section 53 is first required to prepare an inventory of the seized substances, record details relating to their description, quality, quantity and packaging along with any other marks relevant for the purpose of identification of the same. It further held that since the aspect of disposal is clearly provided only under Section 52A of the NDPS Act and no other provision, any destruction or disposal of such substances can only be done with a clear direction or order from the competent magistrate and as per the procedure

envisaged under the said provision and Clause 3.9 of the standing order thereunder. The relevant observations read as under:-

"28. Section 52-A provides for disposal of seized narcotic drugs and psychotropic substances [...]

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93. The only course of action the prosecution should have resorted to is to obtain an order from the competent court of the Magistrate as envisaged under Section 52-A of the Act in terms whereof the officer empowered under Section 53 upon preparation of an inventory of narcotic drugs containing such details relating to their description quality, quantity, mode of packing, marks, numbers or such other identifying particulars of the narcotic drugs or psychotropic substances or the packing in which they are packed, country of origin and other particulars as he may consider relevant to the identity of the narcotic drugs or psychotropic substances in any proceedings thereunder [...]

94. We must also notice a distinction between Section 110(1-B) of the 1962 Act and Section 52-A(2) of the Act as sub-section (4) thereof, namely, that the former does not contain any provision like sub-section (4) of Section 52-A. It is of some importance to notice that Para 3.9 of the Standing Order requires pre-trial disposal of drugs to be obtained in terms of Section 52-A of the Act. Exhibit PJ can be treated as nothing other than an order of authentication as it is a certificate under Section 110(1-B) of the 1962 Act as the aspect of disposal clearly provided for under Section 52-A of the Act is not alluded to. 11 authority for disposal would require a clear direction of the court in terms of Section 52 A of the Act. Fourthly, the High Court failed and for neglected to consider that physical evidence being the property of the court and being central to the trial must be treated and disposed of in strict compliance with the law."

(Emphasis supplied)

(ii) Secondly, it held that the guidelines issued by way of the Standing Order(s) for the purposes of Section 52A cannot be blatantly flouted and substantial compliance of the same is necessary to ensure that the sanctity of physical evidence remains intact. The relevant observations read as under:-

“89. Guidelines issued should not only be substantially complied with, but also in a case involving penal proceedings, vis-à-vis a departmental proceeding, rigours of such guidelines may be insisted upon. Another important factor which must be borne in mind is as to whether such directions have been issued in terms of the provisions of the statute or not. When directions are issued by an authority having the level sanction granted therefor, it becomes obligatory on the part of the subordinate authorities to comply therewith.

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91. The logical corollary of these discussions is that the guidelines such as those present in the Standing Order cannot be blatantly flouted and substantial compliance therewith must be insisted upon for so that sanctity of physical evidence in such cases remains intact [...]”

(Emphasis supplied)

iii) Lastly, it held that any failure on the part of the authorities in substantially complying with the procedure contemplated under the Standing Order(s) would lead to drawing of an adverse inference against the prosecution if there exists any discrepancies in the physical evidence. It further held that while such discrepancies in physical

evidence when examined individually may not be fatal but an overall view with respect to such discrepancies can create an overarching dent on the credibility of the prosecution's case. The relevant observations read as under:-

"92. Omission on the part of the prosecution to produce evidence in this behalf must be linked with a second important piece of physical evidence that the bulk quantity of heroin allegedly recovered indisputably has also not been produced in court. The respondents contended that the same had been destroyed. However, on what authority it was done is not clear. Law requires that such an authority must flow from an order passed by the Magistrate.

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95. The High Court proceeded on the basis that non-production of physical evidence is not fatal to the prosecution case but the fact remains that a cumulative view with respect to the discrepancies in physical evidence creates an overarching inference which dents the credibility of the prosecution. [...]

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119. [...]

4. Finding on the discrepancies, although if individually examined, may not be fatal to the case of the prosecution but if cumulative view of the scenario is taken, the prosecution's case must be held to be lacking in credibility."

(Emphasis supplied)

57. Accordingly, the Hon'ble Supreme Court while setting aside the order of conviction passed by the High Court

held that the destruction of the seized substance in violation of Section 52A coupled with the omission on the part of the prosecution in producing either the substance itself prior to its disposal, the sample taken therefrom or the original seals on the container without any explanation along with several other significant discrepancies in its recovery and storage created serious doubt over the prosecution's case. The relevant observations read as under:-

"96. Last but not the least, physical evidence relating to three samples taken from the bulk amount of heroin was also not produced. Even if it is accepted for the sake of argument that the bulk quantity was destroyed, the samples were essential to be produced and proved as primary evidence for the purpose of establishing the fact of recovery of heroin as envisaged under Section 52-A of the Act.

97. The fate of these samples is not disputed. Although two of them were kept in the malkhana along with the bulk, but were not produced. No explanation has been offered in this regard. So far as the third sample, which allegedly was sent to the Central Forensic Science Laboratory, New Delhi is concerned, it stands admitted that the discrepancies in the documentary evidence available have appeared before the court, namely:-

(i) While original weight of the sample was 5 gm, as evidenced by Exts. PB, PC and the letter accompanying Ext. PH, the weight of the sample in the laboratory was recorded as 8.7 gm.

(ii) Initially, the colour of the sample as recorded was brown, but as per the chemical-examination report, the colour of powder was recorded as white.

98. We are not oblivious of the fact that a slight difference in the weight of the sample may not be held to

be so crucial as to disregard the entire prosecution case as ordinarily an officer in a public place would not be carrying a good scale with him. Here, however, the scenario is different. The place of seizure was an airport. The officers carrying out the search and seizure were from the Customs Department. They must be having good scales with them as a marginal increase or decrease of quantity of imported articles whether contraband or otherwise may make a huge difference under the Customs Act.

99. We cannot but also take notice of other discrepancies in respect of the physical evidence which are:

(1) The bulk wax kept in cotton bags as per the panchnama. Ext. PC, while at the time of receiving them in the malkhana, they were packed in a tin as per the deposition of PW 5.

(ii) The seal, which ensures sanctity of the physical evidence, was not received along with the materials neither at the malkhana nor at CFSL, and was not produced in court.

100. Physical evidence of a case of this nature being the property of the court should have been treated to be sacrosanct, Non-production thereof would warrant drawing of a negative inference within the meaning of Section 114(g) of the Evidence Act. While there are such a large number of discrepancies, if a cumulative effect thereto is taken into consideration on the basis whereof the permissive inference would be that serious doubts are created with respect to the prosecution's endeavour to prove the fact of possession of contraband by the appellant."

(Emphasis supplied)

58. In **Union of India v. Jarooparam, (2018) 4 SCC 334**, it was alleged by the prosecution that 7.2 kg of opium had been

recovered from the accused persons therein. The Hon'ble Supreme Court in appeal, upheld the order of acquittal on the following two grounds:-

(i) First, although the sealed samples were drawn from the seized substance in presence of the executive magistrate in consonance with the procedure envisaged under Section 52A of the NDPS Act and the Standing Order(s) thereunder, yet instead of the seized substance thereafter being destroyed/disposed in terms of the procedure laid therein, the executive magistrate specifically returned the remaining seized substances to the investigating officer as the trial court therein had specifically directed to preserve the same as the other co-accused therein was still absconding. In such circumstances, the explanation offered by the prosecution for its failure to produce the remaining seized substances before the trial court that the same had been destroyed was disbelieved as doubtful by this Court, as no such destruction or disposal had taken place in terms of Section 52A of the NDPS Act. This Court held that any destruction or disposal of the seized substance could have taken place only in terms of the procedure envisaged under Section 52A of the NDPS Act and only after obtaining an order in this regard from the competent magistrate. The relevant observations read as under:-

"9. From the above proceedings, it is crystal clear that the remaining seized stuff was not disposed of by the Executive Magistrate. The contraband stuff as also the samples sealed as usual were handed over physically to the Investigating Officer Harvinder Singh (PW 6). Also

the trial court in its judgment specifically passed instructions to preserve the seized property and record of the case in safe custody, as the co-accused Bhanwarlal was absconding. The trial court more specifically instructed to put a note with red ink on the front page of the record for its safe custody. In such a situation, it assumes importance that there was nothing on record to show as to what happened to the remaining bulk quantity of contraband. The absence of proper explanation from the prosecution significantly undermines its case and reduces the evidentiary value of the statements made by the witnesses.

10. Omission on the part of the prosecution to produce the bulk quantity of seized opium would create a doubt in the mind of the Court on the genuineness of the samples drawn and marked as A, B, C, D, E, F from the allegedly seized contraband. However, the simple argument that the same had been destroyed, cannot be accepted as it is not clear that on what authority it was done. Law requires that such an authority must flow from an order passed by the Magistrate. On a bare perusal of the record, it is apparent that at no point of time any prayer had been made by the prosecution for destruction of the said opium or disposal thereof otherwise. The only course of action the prosecution should have resorted to is for its disposal is to obtain an order from the competent court of Magistrate as envisaged under Section 52-A of the Act. It is explicitly made under the Act that as and when such an application is made, the Magistrate shall, as soon as may be, allow the application. [...]

11. There is no denial of the fact that the prosecution has not filed any such application for disposal/destruction of the allegedly seized bulk quantity of contraband material nor was any such order passed by the Magistrate. Even no notice has been given to the accused before such alleged destruction/disposal. It is also pertinent here to mention that the trial court appears to have believed the prosecution story in a haste and awarded conviction to

the respondent without warranting the production of bulk quantity of contraband. But, the High Court committed no error in dealing with this aspect of the case and disbelieving the prosecution story by arriving at the conclusion that at the trial, the bulk quantities of contraband were not exhibited to the witnesses at the time of adducing evidence."

(Emphasis supplied)

59. In such circumstances, particularly where there has been lapse on the part of the police in either following the proper procedure laid down in Section 52A of the NDPS Act or the prosecution in adequately proving compliance of the same. It has been held that in such circumstances, it would not be appropriate for the courts to resort to the statutory presumption of commission of an offence from the possession of illicit material under Section 54 of the NDPS Act, unless the court is otherwise satisfied as regards the seizure or recovery of such material from the accused persons from the other material on record.

60. Although, the prosecution sans the compliance of the procedure under Section 52A of the NDPS Act will not render itself helpless but can still prove the seizure or recovery of contraband by leading cogent evidence in this regard such as by examining the seizing officer, producing independent witnesses to the recovery, or presenting the original quantity of seized substances before the court. The evidentiary value of these materials is ultimately to be assessed and looked into by the court. The court should consider whether the evidence inspires confidence. The court should look into the totality of circumstances. and the credibility of the witnesses, being mindful

to be more cautious in their scrutiny where such procedure has been flouted. The cumulative effect of all evidence must be considered to determine whether the prosecution has successfully established the case beyond reasonable doubt as held in **Noor Aga** (supra).

61. After going through the entire record, it came to notice that the actual case property i.e. the alleged Heroin actually recovered from the accused was never produced in the court during the testimony of any of the witnesses of the prosecution. The prosecution failed to show as to what happened to the case property and if it was destroyed, under whose authority and under whose order the said case property was destroyed. Admittedly, no notice was given to the accused before destroying the case property.

62. Perusal of the order dated 14.12.2018 U/s. 52-A of the NDPS Act clearly shows that the Ld. Magistrate had specifically directed to the IO not to destroy the case property before filing of the photographs/CD. Although, photographs/CD were filed, but there was no specific order for destruction of the case property, either from this Court, or from the Ld. MM. It is pertinent to mention here that at that time, one of the co-accused was still absconding, so it was incumbent upon the IO to keep the case property in safe custody till the absconding co-accused was apprehended, or at least to receive proper order for destruction of the case property from the concerned Court. When the members of the raiding team i.e. PW-8, PW-9 and PW-11 came to the Court as witness, it is only then, they came to know about the proceedings U/s. 52-A of the NDPS Act, as they were not aware

of the same, nor they ever participated in the said proceedings.

63. Although, it is not mandatory that members of the raiding team must participate during the proceedings U/s. 52-A of the NDPS Act, yet this court failed to understand that as to how they had identified the samples, which were drawn during those proceedings, as neither they were aware about those proceedings, nor they ever participated in those proceedings. The fact that the proceedings U/s. 52-A of the NDPS Act were conducted almost after 15 months of the alleged recovery and during those proceedings, samples were not drawn in the presence of the members of the raiding team i.e. PW-8, PW-9 and PW-11, thus, identification of the samples by them is highly doubtful and it does not inspire confidence. Thus, the said lacuna in the case of the prosecution has adversely affected the prosecution case and also prejudicially affected the defence of the accused. The accused is entitled for benefit of doubt, firstly, on the ground that the actual case property was never produced before the Court and secondly, on the ground that the proceedings U/s. 52-A of the NDPS Act were conducted after an unexplained delay of 15 months from the alleged recovery and if the case property has been destroyed, nothing has been produced on record, as to under whose authority, the said case property was destroyed, and if it was destroyed, no notice was issued to the accused. Moreover, it is not understandable as to for what purpose the samples were drawn at that time, as those samples were never sent to the FSL.

64. Further, it is worth noticing that during the testimony of PW-8, PW-9 and PW-11, they had identified the bag allegedly recovered from the accused and also the cloth

pullanda in which the remaining case property was sealed. But only the cloth pullanda was preserved by the IO and not the case property, for the reasons best known to the IO. Identification of the cloth pullanda sans the actual case property is of no use, as the cloth pullanda was brought by the police officials only and the alleged contraband was actually recovered in a polythene and not in that cloth pullanda.

65. In the considered opinion of this court, the facts of the present case are quite similar to the case of Noor Aga (Supra). In that case also neither the case property, was produced, nor the prosecution was able to prove destruction of the case property as per law, in the Court and the accused was acquitted by the Hon'ble Supreme, as no proof of destruction of the case property was ever filed on record.

66. To add to it, one more glaring lacuna which came on record during the testimony of PW-8, when he stated that after receiving the secret information, he had noted down it on a piece of paper, but, subsequently, same was destroyed by him, after producing the secret informer before the Inspector concerned and he recorded fresh DD entry at 8:20 PM, regarding the secret information, after getting permission from the senior officers. Now, it is not understandable that as to if the secret information was already recorded on a piece of paper, then why it was destroyed and DD entry was made only after getting permission from the senior officers. This procedure is not prescribed under any of the provisions of the NDPS Act and this court considers the same to be improper compliance of Sec. 42 of the NDPS Act also.

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

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

69. In view of the above discussion and various contradictions and discrepancies noticed above, this court has no hesitation in holding that in the present case, it is not safe to rely solely on the uncorroborated testimonies of the police officials, who were all part of the same raiding team. Non-joining of any independent witness and delayed-compliance of Sec. 52-A of NDPS Act, which has not been explained and non-production of the allegedly recovered contraband is fatal to the prosecution case. It can be said that the prosecution has failed to prove its case, beyond all reasonable doubts that accused Mohd. Irshad was found in possession of alleged 800 grams of Heroin and the accused is entitled for benefit of doubt and thus, accused Mohd. Irshad stands acquitted in the present case. Accused is required to

furnish bail bonds as per Sec. 437-A CrPC.

70. So far as case against accused Naseema is concerned, she has been charged u/s. 174-A IPC only, however, after going through the testimonies of all the witnesses to that effect, this court is satisfied that the process u/s. 82 of CrPC was not duly executed at the proper address of the accused and it is quite possible that she was not aware about the pendency of the present case against her and therefore, it cannot be said that she was willfully absconding and did not appear ever after issuance of warrants and process u/s. 82 of CrPC against her.

71. PW-16 SI Mohd. Ismile had filed report regarding execution of warrants against accused Naseema and also deposed regarding execution of process u/s. 82 CrPC against accused Naseema. He had very categorically stated that he had gone to the address of the accused, it was found locked and when he enquired from the neighbours, he came to know that the said house was locked since long and husband of the accused was in jail. Therefore, when he already came to know that accused Naseema was not residing at the address for long time and her husband was in jail in some other case, the execution of the process at that address cannot be said in due compliance of law and it appears that the concerned police officials were only interested in getting her declared Proclaimed Offender instead of actually arresting her. Therefore, since the process u/s. 82 CrPC has not been properly executed on the correct address of the accused Naseema and the prosecution has also failed to show that the accused Naseema was aware about the proceedings in the present case and she was deliberately absconding and thus, she is entitled to

be acquitted.

72. In view of the above, both the accused persons, namely, Mohd. Irshad and Naseema @ Narsimha are entitled for benefit of doubt and thus, they stand acquitted in the present case.

73. Both the accused are required to furnish bail bonds as per Sec. 437-A CrPC.

74. Case property, if any be confiscated and same be destroyed as per rules.

75. File be consigned to Record Room, after due compliance.

**Announced in the open court
on 27th day of April, 2026.**

**(PUNEET PAHWA)
Special Judge (NDPS)/Addl. Sessions Judge/
North East District/Karkardooma Courts/Delhi**