

**IN THE COURT OF SH. SATVIR SINGH LAMBA,**  
**ASJ/SPECIAL JUDGE (NDPS), WEST DISTRICT,**  
**TIS HAZARI COURTS, DELHI**

**IN THE MATTER OF:-**

**SC 172/2021**  
**STATE Vs. SAHIL KADYAN ETC.**  
**FIR no. 317/2018**  
**PS Crime Branch-West Delhi**  
**U/S 20/23/25/29 NDPS Act & 468/471 IPC**

**Date of institution of case** : **26.02.2021**  
**Date on which case reserved for judgment** : **14.03.2026**  
**Date of judgment** : **14.03.2026**

**JUDGMENT :**

a) Date of offence : 31.12.2018

b) Offence complained of : u/s 20/23/25/29 NDPS Act & 468/471 IPC

c) Name of complainant : ASI Murlidhar

d) Name of accused, his parentage, : 1. Sahil Kadyan S/o Sandeep Kadyan R/o C-39, Inderpuri, Delhi  
2. Ridham Gulati, S/o Late Ranjan Gulati, R/o 64, Bhera Enclave, Paschim Vihar, Delhi

e) Plea of accused : Pleaded not guilty

f) Final order : Acquittal

**BRIEF FACTS OF CASE OF PROSECUTION ARE AS FOLLOWS:**

1. The accused persons have been sent up to face trial for the offence u/s u/s 20/23/25/29 NDPS Act & 468/471 IPC with the allegations that on or before 31.12.2018 both accused the persons criminally conspired with other suspect persons namely Ando and Kandarpan Bansal (both remained untraceable in present case) to illegally import the Ganja, Charas and THC/Dronabinol in India through courier company. It is further alleged that the contraband i.e. 7.050 Kg of Ganja was recovered from accused Ridham Gulati & 50 grams of Charas was recovered from the accused Sahil Kadyan on 26.12.2018 at around 3 PM on road, in front of 53/20 Rama Road, New Delhi. It is further alleged that on 28.12.2018 at the instance of both the accused persons, further contraband i.e. 480 grams of Ganja and 13 grams of THC/Dronabinol was recovered from the office of Fedex Company, Rama Road, Moti Nagar and same is allegedly imported from outside India in connivance with abovesaid suspects Ando and Kandarpan Bansal. Further allegations against both the accused persons are that on 31.12.2018 at the instance of both the accused persons, ten packets of ganja weighing 4.140 Kg and 50 cartridges of smart card, white colour, having potency of 81% active ingredients pure cannabis oil natural terpenes were recovered from the Fedex Office at Courier Terminal, Indira Gandhi Airport, Delhi. Out of which on 25 cards it was written as

Mango OG and upon the remaining 25 it was written as Kittlez, which all after testing in FSL found containing Dronabinol/contraband drug. Further allegations against both the accused persons are that in the commission of abovesaid offence, they also manipulated and forged the documents so as to be genuine, for the purpose of cheating.

2. The present FIR was lodged against the accused persons, whereupon SHO, Crime Branch/Investigation Officer (*I.O.*) conducted the investigation & after the completion of the investigative process, final charge sheet was filed against both the accused persons before the court regarding the alleged commission of the offence u/s 20/23/25/29 NDPS Act & 468/471 IPC.

3. Thereafter, the cognizance of the offences of NDPS Act was taken against the accused persons, whereupon the provisions of Section 207 Cr. P.C. were also complied.

4. After hearing the prosecution as well as the defence, charge u/s 20 (b)(ii)(B)/29/23(b) NDPS Act & 468/471 IPC was framed against both the accused persons on 26.07.2022, to which the accused persons pleaded "*Not Guilty*" and thus claimed trial.

5. During the course of the trial, the prosecution examined 21

witnesses.

6. HC Devender is examined as PW1 and has deposed that on 28.12.2018, he was directed by the Inspector, Crime Branch to deposit the exhibits at FSL. PW1 further deposed that accordingly, he went to PS Pushp Vihar, Crime Branch and collected 15 plastic containers (exhibits) from the MHC(M) in sealed condition and thereafter, went to FSL Rohini and deposited the same vide RC No. 748/21/2018 i.e. Ex.PW1/P1. PW1 further deposed that after depositing the exhibits at FSL, he received an acknowledgment i.e. Ex.PW1/P2 and handed over the said acknowledgment to MHC(M) HC Jag Narayan. PW1 explained that till the time the exhibits remained in his possession, same were not tampered by him nor by anyone else.

7. SI Rajbir Singh is examined as PW2 and has deposed that on 27.12.2018 he was posted as Duty Officer at PS Crime Branch. PW2 further deposed that on that day at about 12.37 in the night, HC Sanjeev handed over him a original rukka sent by ASI Murlidhar for the registration of the FIR, for which he made the arrival entry as DD no.2. PW2 further deposed that on the basis of the abovesaid rukka, he registered the present FIR as Ex.PW2/A and made endorsement on the rukka as Ex.PW2/B. The certificate u/s 65 B of Indian Evidence Act issued by PW2 is Ex.PW2/C. PW2 explained that after registration of the FIR, he

handed over the copy of FIR and original rukka to HC Sanjeev for its transmission to SI Vikrant.

8. HC Rakesh Rathi is examined as PW3 and has deposed that on 04.01.2019, MHC(M) gave him 15 sealed parcels, FSL form, sample seal, other documents and he deposited the same at FSL Rohini vide RC No. 7/21/19. PW3 further deposed that he collected the acknowledgment/receipt from FSL office and handed over the same to MHC(M). PW3 explained that the case property was not tampered with till it remained in his possession.

9. Ajeet Singh, Alternate Nodal Officer, Vodafone-Idea Ltd. is examined as PW4 and has deposed that on receipt of notice u/s 91 of Cr.P.C, he provided CAF of mobile no. 9910980765 in the name of Mr. Mukund Kapoor, r/o 18-A, Block -22, Tilak Nagar Delhi alongwith its CDR for the period from 25.12.2018 to 27.12.2018 and Cell ID Chart vide letter as Ex.PW4/A. The certificate u/s 65-B of Indian Evidence Act issued by PW4 is Ex.PW4/B.

10. Prakash Saxena, Nodal Officer, Reliance Jio Info Com. Ltd. is examined as PW5 and was deputed to depose on behalf of Mr. Kamal Kumar, Nodal Officer in present case, who had given certificate u/s 65-B of Indian Evidence Act as Ex. PW5/A, CAF of mobile no. 8076415538 in the name of Mr. Satish Kumar

Giri, r/o H.No. 200, Navada Village, DK, Mohan Garden, Delhi and Ex. PW5/B. PW5 explained that he identified the signature of Mr. Kamal Kumar on Ex. PW5/A, as he had worked with Mr. Kamal Kumar and had seen him signing and writing.

11. Rajeev Vashistha, Nodal Officer, Bharti Airtel Ltd. is examined as PW6 and has brought the record i.e. CDR and CAF of mobile no. 8448078541 in the name of Ms. Ashu, d/o Sh. Satish Kumar, r/o H.No. 1/251, Subhash Nagar, Tagore Garden, Delhi for the period from 24.12.2018 to 27.12.2018 and same are Ex.PW6/A and Ex.PW6/B respectively. PW6 has also brought the record of CDR and CAF of mobile no. 8448078555 in the name of Neetu, w/o Sh. Krishan Kumar, r/o H.No. RZ-83-A, Block I, West Sagarpur, New Delhi for the period from 24.12.2018 to 27.12.2018, same are Ex.PW6/C and Ex.PW6/D respectively. PW6 has also brought the record of CDR and CAF of mobile no. 8448590890 in the name of National Collateral Management Services Ltd. at 5<sup>th</sup> floor, Ifcko Tower, Sector -29, Gurugram, Haryana for the period from 24.12.2018 to 27.12.2018, same are Ex.PW6/E and Ex.PW6/F respectively. PW6 has also brought the record of CDR and CAF of mobile no. 9560279154 in the name of Md. Mukhtar, s/o Md. Alam, r/o 10322, Tokriwala, Azad Market, Delhi for the period from 24.12.2018 to 27.12.2018, same are Ex.PW6/G and Ex.PW6/H respectively. PW6 has also brought the record of CDR and CAF

of mobile no. 9971913191 in the name of Sahil Kadyan, s/o Sandeep Singh Kadyan, r/o C-31, Indrapuri, Delhi for the period from 25.12.2018 to 27.12.2018, same are Ex.PW6/J and Ex.PW6/K respectively. PW6 has also brought the record of CDR and CAF of mobile no.9999719671 in the name of Ridham Gulati, s/o Ranjan Gulati, r/o A-601, Sabka Ghar Apartment, Sector -06, Dwarka, Delhi for the period from 25.12.2018 to 27.12.2018, same are Ex.PW6/L and Ex.PW6/M respectively. PW6 has also brought the record of CDR and CAF of mobile no. 9958083240 in the name of Sunita, w/o Sandeep, r/o C-39, Inderpuri, Delhi for the period from 25.12.2018 to 27.12.2018, same are Ex.PW6/N and Ex.PW6/O respectively. PW6 has brought the certificate u/s 65-B of Indian Evidence Act i.e. PW6/P regarding CDR of the aforesaid mobile numbers. PW6 has also brought the certificate u/s 65-B of Indian Evidence Act i.e. Ex.PW6/Q, regarding CAF (e-KYC /d-KYC of the aforesaid mobile numbers i.e. 8448078541, 8448078555, 9560279154, 9999719671 and 9958083240). PW6 has also brought the certificate u/s 65-B of Indian Evidence Act i.e. Ex.PW6/R regarding CAF (e-KYC /d-KYC of the aforesaid mobile numbers i.e. 8448590890 and 9971913191). The cell ID chart running into two pages brought by PW6 is Ex.PW6/S.

12. Sh. Raj Kumar, Record Keeper, Transport Authority, Vasant Vihar, Delhi is examined as PW7 and is deputed to

produce the record of car no. DL-12CG-6142. PW7 further deposed that as per record, the abovesaid vehicle is registered in the name of Sahil Kadyan, r/o C-39, Inderpuri, New Delhi. The authorization letter and the vehicle particulars brought by PW7 are Ex.PW7/A and Ex.PW7/B respectively.

13. Mukund Kapoor distant relative of accused Ridham Gulati is examined as PW8 and has deposed that 6-7 years ago he had taken a Vodaphone SIM and his mobile was lost after 1 year. PW8 explained in his cross examination by Ld. Addl. PP for the state that he purchased the said SIM in June 2018, but was not sure whether the mobile no. was 9910980765. After seeing the customer application form on which his complete particulars including the name, parentage, address, Adhaar Card, PAN card, e-mail ID and the mobile no. 9910980765 are mentioned, PW6 has admitted that same was filled by him at the time when he had purchased the aforesaid SIM. The said post paid CAF i.e. Ex. PW8/PX1. PW8 explained that he made a report for missing of his mobile containing the aforesaid SIM, but has not brought any copy of the said missing report.

14. ASI Lakhmi Chand is examined as PW9 and has deposed that on 12.02.2019, he was posted at Photo Section, Crime Branch Delhi. PW9 further deposed that on that day, he attended the court of Sh. Abhishek Kumar, Ld. MM, Tis Hazari Court and

had taken 168 photographs of the case property at the time of proceedings u/s 52-A of NDPS Act. PW9 further deposed that later on, he prepared the CD of the photographs i.e. Ex. PW9/A and handed over the same to the IO. The certificate u/s 65-B of Indian Evidence Act issued by PW9 is Ex.PW9/B.

15. SI Vikrant Singh is examined as PW10 and has deposed that the investigation of the present case was assigned to him on 26.12.2018. PW10 further deposed that he was told by his seniors that accused persons have been apprehended with contraband and was directed to reach at the spot i.e. near Fedex Office, Rama Road, Moti Nagar, Delhi. PW10 further deposed that he reached the said spot at about 11:00 PM, and met there with ASI Murlidhar and other police staff and accused persons namely Sahil Kadyan and Ridham Gulati were also present there. PW10 further deposed that he prepared site plan, at the instance of ASI Murlidhar as Ex.PW10/A. PW10 further deposed that ASI Murlidhar produced both the accused persons before him upon which he inquired & interrogated them and later on also arrested them vide memos Ex.PW10/B and Ex.PW10/C respectively and personally searched them vide memos Ex.PW10/D and Ex.PW10/E respectively. PW10 further deposed that from the personal search of both the accused persons, a copy of notice u/s 50 of NDPS Act, one mobile phone and some other documents were recovered separately. PW10 further deposed that

thereafter, they alongwith accused persons went to their office and both the accused were produced before Inspector Shiv Darshan to whom he apprised the facts of the case, who also interrogated them one by one and recorded their disclosure statements as Ex.PW10/F and Ex.PW10/G. PW10 further deposed that he also recorded supplementary disclosure statement of accused Sahil as Ex.PW10/H and seized his Honda Jazz car vide memo Ex.PW10/J. PW10 further deposed that in their disclosure statements, accused persons stated that they used to bring contraband through parcel from foreign and explained that some parcels are still lying at the FedEx office at Rama Road, Moti Nagar, New Delhi. Thereupon, on 28.12.2018, he alongwith other police officials and both the accused persons visited at said office and met there with Manager Mr. Hitesh Sharma and apprised him about the case. PW10 further deposed that three suspected parcels were lying in the said office and same were produced before him. Upon their checking, it is revealed that the first parcel (Mark F) was in the name of Sahil. PW10 explained that Mark F was a Gatta Karton on which tape was affixed and was having a Air bill copy. PW10 further deposed that Mark F was containing four packets i.e. F1, F2, F3 and F4 and upon their opening F1, F2 and F3 were found containing leaves and from its physical appearance and smell, same was found containing Ganja and upon weighing, their weight was found 160 gm Ganja each. PW10 further deposed

that he had taken out two samples of 25 gm each from F1, F2 and F3 and same were kept in separate transparent plastic containers i.e. F1/1, F1/2, F2/1, F2/2 and F3/1 and F3/2 respectively. PW10 further deposed that the fourth packet (F4) was found containing slab type substance and from its smell and physical appearance, it appears Charas and upon weighing, same was found 50 gm. PW10 further deposed that he had taken out two samples of 25 gm each from F4 and same were kept in separate transparent plastic container i.e. F4/1, F4/2. PW10 further deposed that he affixed his seal i.e. VS on all the aforesaid samples and also prepared FSL form at the said spot. PW10 further deposed that the remaining packets etc. were kept in a transparent plastic container (Mark F) and he affixed doctor tape on the same and the empty gift pack were kept in the same kerton, which were kept in a white colour plastic bag (Mark Q). PW10 further deposed that he also affixed his seal VS on pullanda mark F and Q. PW10 further deposed that he handed over the seal to HC Sanjeev Kumar.

16. PW10 further deposed that he opened the second parcel (Mark G ) and same was found containing 26 cylindrical plastic containers containing THC (Cannabis Oil), out of which, 13 cylindrical plastic containers were of Mango Kush and remaining 13 were of Golden Goat, of 500 mg each. PW10 further deposed that he had taken out two cylindrical plastic container containing

THC as samples from abovesaid 13 Mango Kush and he also taken out two cylindrical plastic container containing THC as samples from abovesaid 13 Golden Goat. PW10 explained that Mark G1 and G2 were given to the said samples and the remaining cartridges and the other packing material were kept in transparent plastic container (Mark G). PW10 further deposed that he also prepared FSL form. PW10 further deposed that he took his seal back from HC Sanjeev and affixed it on aforesaid pullandas and again after its use, handed over the same to HC Sanjeev. PW10 further deposed that he prepared seizure memo of the case property as Ex.PW10/K and L. PW10 further deposed that he also checked the third parcel, however, therein no contraband was found and accordingly, nil recovery memo was prepared as Ex.PW10/M. PW10 further deposed that he alongwith Ct. Rakesh Rathi went to PS Crime Branch and the case property was deposited with the MHC(M) of PS Crime Branch by the said Constable.

17. PW10 further deposed that on 27.12.2018, Mr. Hitesh, Manager of FedEx and one more person Dharmender Giri, delivery boy had joined the investigation and provided the details of some suspected parcel and it was revealed that three such suspected parcels are lying at FedEx office IGI Airport and accordingly, needful correspondence was conducted between senior officers and the custom authority at IGI Airport. PW10

further deposed that on 27.12.2018, he seized the mobile phone of delivery boy Dharmender Giri vide memo Ex.PW10/N. PW10 further deposed that on 31.12.2018, he alongwith Inspector Shiv Darshan, HC Sanjeev, Ct. Devender alongwith both the accused persons reached at Custom office, IGI Airport, where he collected the authority letter from Custom Office IGI Airport to collect the suspected parcel from FedEx office IGI Airport. PW10 further deposed that thereafter, they reached at FedEx office IGI Airport, where he met with Ashutosh Kumar, Team Incharge and Mr. Shailender, Custom Inspector was also with them at that time. PW10 further deposed that three suspected parcels ( Mark H, J and K ) were produced by abovesaid Ashutosh Kumar and same were opened. PW10 further deposed that the first parcel was in the name of a person besides the name of accused persons. PW10 further deposed that it was a Gatta Karton on which tape was affixed, having a Air bill copy and same was checked the said parcel in the presence of accused persons and the staff of FedEx and Custom Inspector Shailender. PW10 further deposed that there were four packets ( H1, H2, H3 and H4 ) in the said parcel and he opened H1, H2 and H3 and same were found containing leaves, which from its physical appearance and smell, the packets were found containing Ganja, whose weight was found 480 gm Ganja each. PW10 further deposed that he had taken out two samples of 25 gm each from H1, H2 and H3 and same were kept in separate transparent

plastic container ( H1/1, H1/2, H2/1, H2/2 and H3/1 and H3/2). PW10 further deposed that thereafter, he opened the fourth parcel (Mark H4) and same was found containing 50 cylindrical plastic containers containing THC (Cannabis Oil), out of which, 25 cylindrical plastic containers were of a flavour (name not disclosed) and remaining 25 were of other flavour and two separate samples (Mark H4/1 and H4/2 ) were drawn from both of them. The remaining cartridges and the other packing material were kept in transparent plastic container (Mark H4). PW10 further deposed that thereafter, he checked the second parcel (Mark J ) and same was in the name of a person besides the name of accused persons. (name not disclosed). PW10 further deposed that it was Gatta Karton on which tape was affixed, having a Air bill copy and same was checked in the presence of accused persons and the staff of FedEx and Custom Inspector Shailender. PW10 further deposed that there were three packets (J1, J2 and J3) in that parcel and upon opening, they found containing leaves which from its physical appearance and smell found containing Ganja, whose weight was found 480 gm each. PW10 further deposed that he had taken out two samples of 25 gm each from J1, J2 and J3 and same were kept in separate transparent plastic container, (J1/1, J1/2, J2/1, J2/2 and J3/1 and J3/2) and thereafter, he affixed his seal on all the said samples. PW10 further deposed that thereafter, he checked the third parcel (Mark K) and it was in the name of a person besides the name of

accused persons (name not disclosed). PW10 further deposed that it was a Gatta Karton on which tape was affixed, having a Air bill copy and upon checking of the same in the presence of accused persons and the staff of FedEx and Custom Inspector Shailender, same found containing three packets in that parcel (K1, K2 and K3 ). PW10 further deposed that he opened K1, K2 and K3 and all these packets were found containing leaves which from its physical appearance and smell, the packets were found containing Ganja and its weight was found 480 gm each. PW10 further deposed that he had taken out two samples of 25 gm each from K1, K2 and K3 and same were kept in separate transparent plastic container (K1/1, K1/2, K2/1, K2/2 and K3/1 and K3/2) and thereafter he affixed his seal on the said samples. PW10 further deposed that the remaining substance, Karton etc. were kept in a separate plastic bag (Mark T) and he also affixed his seal on mark T. PW10 further deposed that he also prepared FSL form and seizure memo Ex.PW10/O. Thereafter, PW10 handed over his seal to HC Sanjeev. PW10 further deposed that the said case property was deposited with the MHC(M) by Ct. Devender and he prepared three special report u/s 57 NDPS Act dt. 27.12.2018, 29.12.2018 and 31.12.2018, as Ex.PW10/P, Q and R respectively which were forwarded to Inspector/STARS II Crime Branch. PW10 further deposed that the case property was deposited at FSL office. The DD No. 15 dt. 26.12.2018, DD no.2, dt. 27.12.2018, DD No. 10, dt. 28.12.2018, DD No. 2 dt.

29.12.2018 , DD no. 2, dt. 31.12.2018, DD No. 12 dt. 31.12.2018 are Mark A, B, C, D, E and F respectively. PW10 further deposed that he moved an application u/s 52A NDPS Act before concerned Ld. Magistrate and accordingly the sample proceedings were conducted in the present case. PW10 further deposed that during the course of investigation, he recorded the statement of witnesses and later on the case file the case file was handed over to Reader to ACP for further necessary action. During his testimony, PW10 has correctly identified both the accused persons as well as the case property Jio Phone as Ex.PW10/P1 and other case property as Ex.PW10/P2 to PW10/P15. PW10 further deposed that the remaining case property was destroyed vide certificate Ex.PW10/P16.

18. HC Anurag is examined as PW11 and has brought on the Original Diary Register containing entry S. No. 2406, regarding DD no.3 i.e. Ex.PW11/B. PW11 has also brought the original DD no.3 bearing the signature of the then ACP i.e. Ex. PW11/A. PW11 further deposed that as per record, entry S. No. 2408, 2409, 2417 and 2424 were also made & same were regarding receipt of special report u/s 57 NDPS Act regarding arrest of two accused; seizure of 7.50 Kg of imported Ganja and 50 Gram Charas & same are Ex. PW11/C, D, E and F. The Special report u/s 57 NDPS Act regarding second & third seizure of Ganja and Cartridges of THC & same are Ex. PW11/G, H, I, J.

19. Ms. Kavita Goyal, Assistant Director, Chemistry, FSL, Rohini is examined as PW12 and has deposed that on 04.01.2019, ten sealed cloth parcels and four sealed plastic jar and one sealed plastic box were received in their office and same were assigned to her for examination. PW12 deposed that seals were found intact and tallied as per the forwarding authority specimen seal. PW12 further deposed that she opened all the aforesaid parcels one by one and after examining the same she gave detailed report as report no. SFSL/DLH/140/CHEM/29/19 dt.26.09.2019 i.e. Ex.PW12/A. PW12 further deposed that after the examination, the remnant of the exhibits were sealed with the seal of KG FSL DELHI and were later on handed over to the police. PW12 further deposed that on 28.12.2018, one sealed cloth parcel and 15 sealed plastic containers were also received in their office and same were assigned to her for examination. PW12 further deposed that seals were found intact and tallied as per the forwarding authority specimen seal. PW12 further deposed that she opened all the aforesaid parcels one by one and examined the exhibits therein and gave detailed report vide report no. FSL/2018/C-12017 dt. 26.09.2019, i.e. Ex.PW12/B. PW12 further deposed that after the examination the remnant of the exhibits were sealed with the seal of KG FSL DELHI and were later on handed over to the police.

20. Inspector Gagan Bhashkar is examined as PW13 and has deposed that on 28.12.2018, he was posted at PS Crime Branch, Pushp Vihar as SHO. PW13 further deposed that on that day, at about 10:15 PM, Ct. Rakesh Rathi produced 12 sealed plastic containers and one plastic katta having the seal of VS along with FSL forms & two copies of seizure memos, upon which he checked the same & affixed his seal i.e. GB. PW13 further deposed that he confirmed the FIR No. and mentioned the same on all the documents and signed them. PW13 further deposed that he called the MHC(M) HC Jag Narayan in his office alongwith register no.19 & produced all the sealed parcels etc. before the MHC(M), who made an entry of same in register no. 19, upon which he affixed his signature on the said entry. PW13 further deposed that he also made DD No. 17A in this regard as Ex.PW13/A and copy of the entry in register no. 19 is Ex.PW13/B. PW13 further deposed that on 31.12.2018, at about 08:30 PM, Ct. Devender produced 20 sealed plastic containers and one plastic katta having the seal of VS along with FSL forms & two copies of seizure memos, upon which he checked the same and affixed his seal i.e. GB. PW13 confirmed the FIR No. and mentioned the same on all the said documents & affixed his signature on them. Thereafter PW13 called MHC(M) HC Jag Narayan in his office alongwith register no. 19 & produced all the sealed parcels etc. before the MHC(M), who made an entry in register no. 19. PW13 further deposed that he affixed his

signature on the said entry & also made DD No. 16A in this regard as Ex.PW13/C. The copy of the entry in register no. 19 is Ex.PW13/D.

21. ASI Jag Narayan (Retired) is examined as PW14 and has deposed that on 27.12.2018, he was posted at PS Crime Branch, Pushp Vihar as MHC(M). PW14 further deposed that on that day, Inspector Satender Sangwan (PW22) called him in his office alongwith Register no. 19 and produced 37 sealed parcels, FSL form and two copies of seizure memos. PW14 further deposed that he made an entry 4503 i.e. Ex. PW14/A in Register no. 19. PW14 further deposed that on 27.12.2018, SI Vikrant produced one mobile phone, personal search articles including one original notice u/s 50 NDPS Act and one vehicle no. DL-12GG-6142 for which he made an entry 4504 i.e. Ex. PW14/B in Register no. 19. PW14 further deposed that on 28.12.2018, Inspector Gagan Bhaskar called him in his office alongwith Register no. 19 and produced 12 sealed parcels, FSL form and two copies of seizure memos for which made an entry 4505 i.e. Ex. PW13/B in Register no. 19. PW14 further deposed that on 31.12.2018, Inspector Gagan Bhaskar called him in his office alongwith Register no. 19 and produced 20 sealed parcels, FSL form and two copies of seizure memos for which he made an entry 4508 i.e. Ex. PW13/D in register no. 19. PW14 further deposed that on 28.12.2018, he sent 15 sealed plastic container, FSL form etc. to

FSL Rohini through Ct. Devender vide RC No. 748/21/18 Ex.PW14/C, who gave him acknowledgment i.e. Ex.PW14/D. PW14 further deposed that on 04.01.2019, he sent 13 sealed plastic container, FSL form etc. to FSL Rohini through Ct. Rakesh vide RC No. 9/21/19 i.e. Ex.PW14/E, who gave him acknowledgment i.e. Ex.PW14/F. PW14 explained that the case property was not tampered with till it remained in his possession.

22. Inspector Robin Tyagi is examined as PW15 and has deposed that on 18.08.2020, the investigation of the present case was assigned to him and during the course of investigation, he recorded statement of Mukund Kapoor. PW15 further deposed that he collected CAF/CDR of the mobile of the accused persons as well as record of vehicle bearing No. DL-12CG-6142. PW15 further deposed that after completion of investigation, he prepared the present chargesheet.

23. Inspector Shiv Darshan is examined as PW16 and has deposed that on 26.12.2018, at about 07:15 AM, ASI Murlidhar, alongwith one secret informer came in his office and informed that accused persons will come in a Honda Jazz Car bearing NO. DL-12CG-6142 at FedEx office, Ramaroad, Moti Nagar to collect the parcel containing contraband and they could be apprehended, if a raid is conducted. PW16 further deposed that he inquired from the secret informer and after satisfaction

informed ACP Arvind Kumar STAR II, telephonically regarding the same & received directions to conduct the raid. PW16 further deposed that he directed ASI Murlidhar to constitute a raiding party and to take further necessary action. PW16 further deposed that at about 07:30 AM, ASI Murlidhar recorded DD No. 3 i.e. Ex. PW11/A, regarding secret information and produced the same before him and he forwarded the same to the ACP. PW16 further deposed that thereafter, ASI Murlidhar constituted a raiding party consisting of himself, HC Sanjeev, HC Lal Bahadur, Ct. Rakesh and Ct. Devender and collected IO kit bag, field testing kit, electronic weighing machine etc. ASI Murlidhar made a departure entry vide DD No. 4 as Ex. PW16/A at about 08:00 AM and they all departed from office in a Govt. vehicle no. DL-1CM-4229 and same was being driven by Ct. Devender. PW16 further deposed that he reached at the spot at about 09:15 AM and later on, both the accused persons were apprehended. PW16 further deposed that ACP also came at the spot, where all proceedings were conducted and both the accused persons were arrested and were produced before him. The report u/s 57 NDPS Act regarding arrest and recovery are Ex.PW11/G and H. The two other special reports signed by SI Vikrant are Ex.PW11/I and J. During his testimony PW16 has correctly identified the accused persons.

24. SI Murlidhar (Retired) is examined as PW17 and has

deposed that on 26.12.2018, he was posted at STAR II/Crime Branch Sakarpur as ASI & on that day, at about 07:00 AM, one secret informer came in his office and informed that two persons namely Sahil Kadyan and Ridham, used to import Ganja & supply it in Delhi and NCR Delhi, will come in FedEx office, situated at Rama Road, Moti Nagar to take the delivery and can be arrested, if a raid is conducted. PW17 further deposed that he produced the secret informer before Inspector Shiv Darshan at about 07:15 AM, who also inquired from the secret informer and upon satisfaction had telephonically informed ACP, Sh. Arvind Kumar, who directed to conduct a raid. PW17 further deposed that at about 07:30 AM, he got recorded the secret information as DD No.3 i.e. Ex. PW11/A and produced the computerized copy of the same before Inspector Shiv Darshan. PW17 further deposed that thereafter upon the direction of Inspector Shiv Darshan, raiding party consisting of himself, HC Sanjeev Kumar/PW20, HC Lal Bahadur, Ct. Rakesh Rathi, Ct. Devender and the secret informer was constituted. PW17 further deposed that he collected the IO kit bat, field testing kit, electronic weighing machine etc. and deputed from their office at about 08:00 AM in a Govt. vehicle no. DL-1CM-4229 for which DD No. 4 was recorded as Ex.PW16/A. PW17 further deposed that they have taken the route via Shakarpur, ITO, Mandi House, RML Hospital, Patel Nagar and then reached FedEx Office, Rama Road, Moti Nagar, Delhi at 09:00 AM. PW17 further

deposed that he directed the members of the raiding party to take their position nearby FedEx office and he alongwith secret informer started walking on the road for the accused to come. PW17 further deposed that at about 09:15 AM, Inspector Shiv Darshan also reached at the spot and remained there till 12:00 noon, but the secret informer did not identify any person as Sahil and Ridham. PW17 further deposed that thereafter, he alongwith Inspector Shiv and HC Sanjeev went inside FedEx office and met with Branch Manager Hitesh Sharma and informed him about the secret information, who assured for all cooperation. PW17 further deposed that in the meantime, one delivery boy namely Dharmender Giri informed Hitesh that he had received a mobile call from Sahil and was inquiring about 05 parcels & gave him one white paper on which 5 Air Bill numbers were mentioned. PW17 further deposed that he had seen the said documents i.e. Mark A. PW17 further deposed that Mr. Dharmender further stated that Sahil was known to him as he used to deliver the parcel. PW17 further deposed that he directed Dharmender to call Sahil in FedEx office & to trace/locate the said parcels & same was complied. PW17 further deposed that Dharmender Giri also told him that Sahil also sent the photos of the address and the IDs and thereafter, he came out from the FedEx office and they all had taken out positions. PW17 further deposed that at about 02:50 PM, one car having registration no. DL-12CG-6142 came in front of FedEx office and the secret informer identified

the driver of the car as Sahil and the other person as Ridham. PW17 further deposed that at about 03:00 PM, Dharmender came out with five parcels and kept on the road just near the co-driver Ridham and obtained the receipt, who signed as Amit. PW17 further deposed that thereafter both the accused persons got down from the car and started keeping/putting the parcels inside the diggy of the car, then he gave signal to the members of the raiding party and apprehended both the persons alongwith parcel. PW17 further deposed that he gave signal to Ct. Devender to bring the Govt. vehicle at the spot and by that time, both the accused persons had already kept three parcels inside the diggy and they both were having one parcel each in their hands. PW17 further deposed that he introduced himself and the members of the raiding party to the accused persons & on inquiry, their names were revealed as Sahil Kadyan and Ridham Gulati & correctly identified them. PW17 further deposed that he informed both the accused persons regarding the secret information and that their search was required to be conducted. PW17 further deposed that he had also informed accused persons that their personal search can be conducted in the presence of Gazetted officer or the Magistrate and explained them the meaning of Gazetted officer and Magistrate. PW17 further deposed that he had also informed them of their right to conduct the personal search of the police party and vehicle prior to their search. PW17 further deposed that he had prepared the notice u/s 50 of NDPS Act as Ex. PW17/A

and handed over the carbon copy of the same to accused Sahil Kadyan, who wrote his reply on Ex.PW17/A as Ex.PW17/B. PW17 further deposed that he handed over the carbon copy of the notice u/s 50 of NDPS Act to accused Ridham Gulati as Ex.PW17/C, who wrote his reply on the original in English as Ex.PW17/D. PW17 further deposed that in the meantime, at around 04:00 PM, ACP Arvind Kumar also reached at the spot & he also called Branch Manager Hitesh and delivery boy Dharmender from FedEx Office at the spot. PW17 further deposed that he had taken out three parcels from the diggy and produced all the five parcels before the ACP. PW17 further deposed that on each parcel, 2 copies of Air Bill were affixed and the detail including the name and addresses were mentioned which he had mentioned in detail on the Tehrir. PW17 further deposed that he had given Mark A, B, C, D and E to all the parcels. PW17 further deposed that the first parcel was in the name of Raja, second parcel was in the name Nadeem, third parcel was in the name Shamshad, fourth parcel was in the name Nadeem and the fifth parcel was in the name Shadab & explained that all the these parcels were made of cartoon and tape was affixed. PW17 further deposed that he opened all the five parcels one by one. PW17 further deposed that in the parcel A, B and D there were gift pack of Fisher Prize and the two parcels C and E were having gift pack of Sunny day. PW17 further deposed that there were pinni (plastic) wrapped around the gift and he moved

the pinni and each was having three weighed packet. PW17 further deposed that in the parcel Mark A, there were three packets & were given Mark A1, A2 and A3. PW17 explained that on 1<sup>st</sup> packet, bay II was written and on the other two packets cherry pie was written. PW17 further deposed that in the parcel Mark B, there were three packets and were given Mark B1, B2 and B3. PW17 further explained that on each packet blue cookie was written. PW17 further deposed that in the parcel Mark C, there were three packets and were given Mark C1, C2 and C3. PW17 explained that on each packet bay II was written. PW17 further deposed that in the parcel Mark D, there were three packets and were given Mark D1, D2 and D3. PW17 explained that on each packet Cherry Pie was written. PW17 further deposed that in the parcel Mark E, there were three packets and were given Mark E1, E2 and E3. PW17 explained that the word blue cookie, white cookie and Bay II was written respectively. PW17 further deposed that there were total 15 packet and all were having 5 layer of pinnis. PW17 further deposed that he removed all their pinnis and all packets were found container Grass type, flowering, having distinct smell and from its appearance and smell, it was to Ganja. PW17 further deposed that he weighed Ganja separately and same was of 470 gm Ganja each. PW17 further deposed that the total weight of the Ganja of 15 packets was 7 kg 50 gm Ganja. PW17 further deposed that he had taken out two samples of 25 gm each from all the 15 packet,

kept the same in 30 transparent plastic containers. PW17 further deposed that these containers were closed with the help of Doctor tape and were marked as Mark A1/1, A1/2, A2/1, A2/2, A3/1, A3/2, B1/1, B1/2, B2/1, B2/2, B3/1, B3/2, C1/1, C1/2, C2/1, C2/2, C3/1, C3/2, D1/1, D1/2, D2/1, D2/2, D3/1, D3/2, E1/1, E1/2, E2/1, E2/2, E3/1, E3/2. PW17 further deposed that the remaining packets alongwith pinnis were kept in transparent plastic container and they were given Sr. No. A, B, C , D and E. PW17 further deposed that empty gift pack, the empty carton alongwith pinni were kept in a white colour plastic bag, tied with the cloth sting and it was given mark P. PW17 further deposed that he affixed his seal of MD on all the 36 pullandas and the case property was taken into possession through separate seizure memo vide Ex.PW17/E. PW17 further deposed that he had also prepared the FSL form and also affixed his seal on the same. PW17 further deposed that after use the seal was handed over to Dharmender Giri vide handing over memo i.e. Ex.PW17/F. PW17 further deposed that thereafter, he conducted the search of accused Sahil and from left pocket of his jeans pant, one black polythene was recovered & upon checking the same, it was found containing one yellow colour polythene having black colour stinking substance. PW17 further deposed that he checked the substance on field testing kit and it was found Charas and was of 50 gm. PW17 further deposed that the yellow colour polythene containing Charas was kept in the same black colour polythene

and then kept in a cloth parcel and given Mark X. PW17 further deposed that he prepared form FSL & took his seal from Dharmender and affixed the same on cloth parcel. The case property was taken into possession through seizure memo i.e. Ex.PW17/G and again handed over the seal to Dharmender. PW17 further deposed that thereafter he had prepared the rukka as Ex.PW17/H and was handed over to HC Sanjeev and directed him to produced the same before the DO for registration of the FIR. PW17 further deposed that he had also handed over the entire case property alongwith copies of seizure memo and two FSL form to HC Sanjeev & directed to hand over the same to SHO. PW17 further deposed that HC Sanjeev left the spot in the aforesaid Govt. vehicle driven by Ct. Devender. PW17 further deposed that 2<sup>nd</sup> IO/SI Vikrant also came at the spot and was apprised about the facts of the case and he produced both the accused persons and the document before him. PW17 further deposed that 2<sup>nd</sup> IO prepared site plan at his instance as Ex.PW10/A. PW17 further deposed that both the accused persons were interrogated by the 2<sup>nd</sup> IO and were arrested, personally searched and seized the abovesaid vehicle. PW17 further deposed that on 27.12.2018, he prepared report u/s 57 NDPS Act regarding seizure of 7 kg 50 gm Ganja and 50 gm Charas vide Ex.PW11/H and handed over the same before Inspector Shiv Darshan. PW17 further deposed that on 27.12.2018 itself, Dharmender came at his office and returned his

seal vide Ex.PW17/I.

25. Hitesh Sharma is examined as PW18 and has deposed that on 26.12.2018, he was working in Fedex Office at Rama Nagar, Moti Nagar, Delhi as Manager Operations. PW18 further deposed that on that day ASI Murlidhar, Inspector Shiv Darshan along with their team came to their office and they informed that two persons namely Sahil Kadyan and Ridham will come to collect some parcels containing suspected contraband. PW18 further deposed that he directed the delivery boy Dharmender to trace such parcels/packets, who told him that there were five packets in the name of Sahil Kadyan. PW18 further deposed that the said delivery boy also told him that Sahil Kadyan is known to him as he had already delivered packets to Sahil Kadyan on previous occasions. PW18 further deposed that after sometime Dharmender told that he had received a call from Sahil Kadyan to deliver such parcels/packets. PW18 further deposed that then the police officials had directed the Dharmender to call the Sahil Kadyan to Fedex Office to collect parcels and accordingly Dharmender made a call to Sahil. PW18 further deposed that after sometime Sahil Kadyan and Ridham both came there to collect the parcels and the packets were handed over to the accused persons. PW18 further deposed the police official had apprehended the accused persons and thereafter opened the said parcels in their presence and found containing Ganja type

substance, which was seized by the police vide seizure memo Ex. PW17/E. PW18 further deposed that on 27.12.2018, he along with Dharmender went to the office of police in Shakarpur and gave a letter to the police regarding three another suspected parcels. PW18 further deposed that on 28.12.2018, police officials along with both the accused persons came to their office, upon which, he produced three parcels before the police. PW18 further deposed that said parcels were checked by the police and two of the parcels were found containing Ganja, Charas, etc., but the third parcel was not having any contraband and same were seized by the police. The Ex. PW10/K, Ex.PW10/L & Ex. PW17/E bears his signature at point Y. The Ex. PW18/A, Ex. PW18/B bears his signature at point A and letter Ex. PW18/C is also signed by him. During his testimony PW18 wrongly identified the accused Sahil Kadyan as Ridham Gulati and Ridham Gulati as Sahil.

26. Dharmender Kumar Giri is examined as PW19 and has deposed that he worked with FedEx company situated at Rama Road, Moti Nagar, Delhi for about 07 years. PW19 further deposed that in December 2018, he received a call from Sahil, who inquired about his 05 parcels. PW19 explained that the said Sahil was known to him as he had given parcels to Sahil at their office situated in Madipur and Inderpuri. PW19 further deposed that he traced all the 05 parcels supposed to be deliver to Sahil.

PW19 further deposed that on that day, police officials met with his branch manager namely Hitesh Sharma and upon inquiry of police he had given the details of the said 05 parcels vide Ex.PW19/A. PW19 further deposed that at about 02:30 -03:00 PM, he received call from Sahil, who asked for collection of the aforesaid parcels from their office, but PW19 explained that he was not in a position to deliver the same, due to injury in his leg. PW19 further explained that after sometime, two persons came in a car (whose number is not disclosed). PW19 further explained that at the request of Sahil, he took 05 parcels to deliver the same to Sahil, who was outside the office in his car. PW19 further explained that in the said car one another person was also there, but not recollected the name of said person. PW19 further explained that he delivered the abovesaid 05 parcels to another person and obtained his signature. PW19 further explained that he cannot identified those persons. PW19 further deposed that thereafter police officials had taken both the said persons inside their office alongwith the said parcels and same were checked and found containing Ganja. PW19 further deposed that on the next day, he was called in Shakarpur Office and was asked to sign some papers, which he complied.

27. ASI Sanjeev Kumar is examined as PW20 and has mainly deposed on the lines of PW17. In addition, PW20 has deposed that SI Murlidhar handed over him rukka, entire case property

along with seizure memo and two FSL form for registration of FIR. PW20 further deposed that he reached at the PS Crime Branch at about 12 AM and handed over the original tehrir to ASI Rajbir for registration of FIR and also produced the case property etc. before SHO/Inspector Satender Sangwan. PW20 further deposed that after registration of FIR, Inspector Satender Sangwan mentioned the FIR number on the sealed parcel, affixed his signature on the parcel, made his endorsement on the copies of seizure memo and sealed the case property with his seal SS. PW20 further deposed that thereafter Inspector Satender Sangwan called the MHC(M) ASI Jag Narayan and produced the case property before him. PW20 further deposed that MHC(M) made the entry in Register no. 19 and Inspector Satender Sangwan put his signature on the same & also lodged DD no. 3 in this regard. PW20 further deposed that Duty Officer gave him computerised copy of the FIR along with original tehrir and he produced the same before IO SI Vikrant. PW20 further deposed that on 28.12.2018, he alongwith Shiv Darshan, SI Vikrant, Ct. Rakesh along with the accused persons went to FedEx office and met there with Hitesh Sharma, who produced three parcels, out of which, two parcels were having Ganja, Charas and THC, however, there was no contraband in the third parcel. PW20 further deposed that IO prepared nil recovery memo of the third parcel as Ex. PW10/M, seizure memo of two parcels of Ganja, Charas & THC as Ex. PW10/K & L. PW20 further deposed that

on 31.12.2018, he again joined the investigation of the present case with Inspector Shiv Darshan, Ct. Devender, Ct. Rakesh Rathi along with both accused persons and met with Inspector Customs. PW20 further deposed that the Inspector Customs produced three parcel, out of which one parcel was found containing 4 packets and other two parcels were found containing 3 packets each. PW20 further deposed that in the first parcel, three packets were found containing Ganja of 460 grams each and one packets was found containing 50 THC Cartridge. PW20 further deposed that other two cartons having three packets each were also found containing 460 grams ganja & abovesaid case property was seized vide separate seizure memo as Ex. PW10/O.

28. Shailendra Kumar Sharma, Inspector (Custom) is examined as PW21 and has deposed that on 31.12.2018, SI Vikrant alongwith one Constable, official of FedEx and accused persons came in his office and SI Vikrant Singh had shown him one letter. PW21 further deposed that in his presence, three parcels were checked by SI Vikrant, out of which first parcel was found containing four packets and other two parcels were containing three packets. PW21 explained that the first parcel was found containing Ganja and 50 THC cartridges and other two parcels were also found containing Ganja. PW21 further explained that each packet was found containing 460 gm of Ganja and IO had taken the same into possession vide seizure

memo Ex. PW10/O.

29. ACP Satender Sangwan is examined as PW22 and has deposed that on 27.12.2018, he was posted as SHO in PS Crime Branch and on that day at about 12:30 AM, HC Sanjeev of STARS II, Crime Branch, Shakarpur, Delhi had produced before him 37 sealed parcels sealed with the seal of MD, FSL form and copy of seizure memo. PW22 has further deposed that he affixed his seal of SS on the said sealed parcels and FSL form. PW22 explained that upon confirming the detail of the FIR from the DO, he mentioned the same on sealed parcels, FSL form & copy of seizure memo. PW22 has further deposed that he called MHC(M) ASI Jag Narayan alongwith Register no. 19 and produced all the sealed parcel, FSL form and the copy of seizure memo before him, who made an entry for the same in Register no. 19 as Ex.PW14/A. PW22 has further deposed that he affixed his signature on the said entry and also made DD No. 3A i.e. Ex. PW22/A in this regard.

30. It is pertinent to mention here that during the trial of case Ld. Chief PP has dropped the witness ACP Arvind Kumar being witness of repetitive nature. Thereafter, PE was closed.

31. After conclusion of prosecution evidence (PE), statement of accused persons u/s 313 Cr.P.C., was recorded on 09.02.2026, in

which they denied the allegations against them as false and incorrect. Accused persons explained that nothing was recovered from their possession and they have been falsely implicated in the present case.

32. Final arguments have been heard from both sides.

33. Ld. Chief PP for the State had argued that the testimonies of the prosecution's witnesses proves the charges against the accused beyond reasonable doubt. The main submissions of Ld. Chief PP for State were to the effect that on the basis of entire material on record, recovery of contraband and therefore, accused may be convicted under section 20 (b)(ii)(B)/29/23(b) NDPS Act & 468/471 IPC.

34. Ld. counsel for accused argued that prosecution has miserably failed to prove its case. It is further argued that samples were not drawn in the presence of Ld. Magistrate nor correctness of contraband seized was certified by the Ld. Magistrate u/s 52 A NDPS Act and samples drawn by IO were sent to FSL which are not primary evidence. Ld. Counsel further argued that there are many contradictions in the version of the testimonies of the PWs who deposed regarding the aspect of the alleged recovery from the accused as well as regarding the

relevant investigation proceedings conducted in the present case. Ld. Counsel further argued that no evidence has been brought on record against the accused persons regarding the alleged manipulating and forging the alleged documents or its use for the alleged cheating in any manner.

35. In the present matter as per deposition of police officials, contraband of ganja, Charas & THC/Dronabinol was recovered from the possession of the accused persons. Thereafter, out of the abovesaid contraband, admittedly samples were prepared and kept in pulandas and the remaining contraband was kept in separate pulanda and the samples were sent to FSL. Admittedly, the samples sent to FSL were not drawn in presence of Ld. Magistrate as per Section 52A NDPS Act.

36. In **Mangilal v. The State of Madhya Pradesh, 2023 INSC 634**, decided by Hon'ble Supreme Court of India on 12.07.2023, it has been held as under:-

*“ 5. Sub-section (2) of Section 52A of the NDPS Act mandates a competent officer to prepare an inventory of such narcotic drugs with adequate particulars. This has to be followed through an appropriate application to the Magistrate concerned for the purpose of certifying the correctness of inventory, taking relevant photographs in his presence and certifying them as true or taking drawal of samples in his presence*

*with due certification. Such an application can be filed for anyone of the aforesaid three purposes. The objective behind this provision is to have an element of supervision by the magistrate over the disposal of seized contraband. Such inventories, photographs and list of samples drawn with certification by Magistrates would constitute as a primary evidence. Therefore, when there is non-compliance of Section 52A of the NDPS Act, where a certification of a magistrate is lacking any inventory, photograph or list of samples would not constitute primary evidence.*

**37. In Union Of India vs Mohanlal & Anr on 28 January, 2016,** Hon'ble Supreme Court of India while emphasis upon section 52A of NDPS Act held as under:

*“20. To sum up we direct as under:*

*No sooner the seizure of any Narcotic Drugs and Psychotropic and controlled Substances and Conveyances is effected, the same shall be forwarded to the officer in-charge of the nearest police station or to the officer empowered under Section 53 of the Act. The officer concerned shall then approach the Magistrate with an application under Section 52A(ii) of the Act, which shall be allowed by the Magistrate as soon as may be required under Sub- Section 3 of Section 52A, as discussed by us in the body of this judgment under the heading ‘seizure and sampling’. The sampling shall be done under the supervision of the magistrate as discussed in paras 13 and 14 of this order.”*

38. In **Bothilal v. The intelligence Officer Narcotics Control Bureau, Criminal Appeal no.451 of 2011**, decided by Hon'ble Supreme Court of India on 26.04.2023, it has been observed/held as under:-

*“15. Admittedly, PW-2 drew two samples from each of the packets of the contraband found in the hotel room and kept them in two separate plastic covers. These covers were sealed and the remaining contraband was also sealed. Thus, the prosecution claims that the samples were prepared even before the packets were sent to the Station House Officer. The submission of the learned senior counsel appearing for the appellant in Criminal Appeal 451 of 2011 was that a grave suspicion is created about the prosecution’s case as this action by the PW-2, was contrary to Section 52-A of NDPS Act.*

*16. In paragraphs 15 to 17 of the Mohanlal's case, it was held thus:*

*“15. It is manifest from Section 52-A(2) include (supra) that upon seizure of the contraband the same has to be forwarded either to the officer-in-charge of the nearest police station or to the officer empowered under Section 53 who shall prepare an inventory as stipulated in the said provision and make an application to the Magistrate for purposes of (a) certifying the correctness of the inventory, (b) certifying photographs of such drugs or substances taken before the Magistrate as true, and (c) to draw representative samples in the presence of the Magistrate and certifying the correctness of the list of samples so drawn.*

*16. Sub-section (3) of Section 52-A requires that*

*the Magistrate shall as soon as may be allow the application. This implies that no sooner the seizure is effected and the contraband forwarded to the officer-in-charge of the police station or the officer empowered, the officer concerned is in law duty-bound to approach the Magistrate for the purposes mentioned above including grant of permission to draw representative samples in his presence, which samples will then be enlisted and the correctness of the list of samples so drawn certified by the Magistrate. In other words, the process of drawing of samples has to be in the presence and under the supervision of the Magistrate and the entire exercise has to be certified by him to be correct.*

*17. The question of drawing of samples at the time of seizure which, more often than not, takes place in the absence of the Magistrate does not in the above scheme of things arise. This is so especially when according to Section 52-A(4) of the Act, samples drawn and certified by the Magistrate in compliance with sub-sections (2) and (3) of Section 52-A above constitute primary evidence for the purpose of the trial. Suffice it to say that there is no provision in the Act that mandates taking of samples at the time of seizure. That is perhaps why none of the States claim to be taking samples at the time of seizure.*

*(emphasis added)*

*Thus, the act of PW-2 of drawing samples from all the packets at the time of seizure is not in conformity with what is held by this Court in the case of Mohanlal. This creates a serious doubt about the prosecution's case that the substance recovered was contraband."*

39. In **Simranjeet Singh v. State of Punjab, Criminal appeal No. 1443 of 2023**, decided on 09.05.2023 Hon'ble Supreme Court has taken the similar view in respect of non-compliance of Section 52A of NDPS Act on 09.05.2023 and it is held as under in para no. 7, 9 and 10:-

*7. We have perused the evidence of PW-7 Hardeep Singh in which he has stated that from the eight bags of poppy husk, two samples of 250 gms each were drawn and converted into 16 parcels. This has been done immediately after the seizure.*

*8.....*

*9. Hence, the act of PW-7 of drawing samples from all the packets at the time seizure is not in conformity with the law laid down by this Court in the case of Mohanlal. This creates a serious doubt about the prosecution's case that substance recovered was a contraband.*

*10. Hence, the case of the prosecution is not free from suspicion and the same has not been established beyond a reasonable doubt. Accordingly, we set aside the impugned judgments insofar as the present appellant is concerned and quash his conviction and sentence.”*

40. In **“Yusuf @ Asif v. State” 2023 SCC Online SC 1328 dated 13.10.2023** Hon'ble Supreme Court, while acquitting the accused has held as under:

*12. A simple reading of the aforesaid provisions, as also stated earlier, reveals that when any*

*contraband/narcotic substance is seized and forwarded to the police or to the officer so mentioned under section 53, the officer so referred to in subsection (1) shall prepare its inventory with details and the description of the seized substance like quality, quantity, mode of packing, numbering and identifying marks and then make an application to any Magistrate for the purposes of certifying its correctness and for allowing to draw representative samples of such substances in the presence of the Magistrate and to certify the correctness of the list of samples so drawn.*

*13. Notwithstanding the defence set up from the side of the respondent in the instant case, no evidence has been brought on record to the effect that the procedure prescribed under subsections (2), (3) and (4) of Section 52A of the NDPS Act was followed while making the seizure and drawing sample such as preparing the inventory and getting it certified by the Magistrate. No evidence has also been brought on record that the samples were drawn in the presence of the Magistrate and the list of the samples so drawn were certified by the Magistrate. The mere fact that the samples were drawn in the presence of a gazetted officer is not sufficient compliance of the mandate of subsection (2) of Section 52A of the NDPS Act.*

*14. It is an admitted position on record that the samples from the seized substance were drawn by the police in the presence of the gazetted officer and not in the presence of the Magistrate. There is no material on record to prove that the Magistrate had certified the inventory of the substance seized or of the list of samples so drawn.*

*15. In Mohanlal's case, the apex court while dealing with Section 52A of the NDPS Act clearly laid down that it is manifest from the said provision that upon seizure of the contraband, it has to be forwarded either to the officer-in-charge of the nearest police station or to the officer empowered under Section 53 who is obliged to prepare an inventory of the seized contraband and then to make an application to the Magistrate for the purposes of getting its correctness certified. It has been further laid down that the samples drawn in the presence of the Magistrate and the list thereof on being certified alone would constitute primary evidence for the purposes of the trial.*

*16. In the absence of any material on record to establish that the samples of the seized contraband were drawn in the presence of the Magistrate and that the inventory of the seized contraband was duly certified by the Magistrate, it is apparent that the said seized contraband and the samples drawn therefrom would not be a valid piece of primary evidence in the trial. Once there is no primary evidence available, the trial as a whole stands vitiated.*

41. Therefore, in view of the abovesaid law laid down by Hon'ble Apex Court, the samples have to be drawn in presence of Ld Magistrate, the inventory of the seized contraband has to be duly certified by Magistrate. But in the present matter the IO has drawn the samples of the alleged contraband at the spot itself and same is in violation of dictum of above said judgments, the State has failed to lead the primary evidence w.r.t. the samples, it

is violation of section 52A NDPS Act. Hence, it has been held by Hon'ble Delhi High Court as well as by Hon'ble Apex Court that taking of representative samples without following the due process is not permissible and the admitted procedure adopted by the IO in the present case for drawing the representative sampling is not in terms of the abovesaid dictums of law. On this ground only, the accused is entitled to acquittal, but it is pertinent to discuss other aspect of the arguments addressed by the parties.

42. Moreover, there are other facts and circumstances came on record during the testimony of the PWs need to be discussed here from which it can be safely inferred that prosecution is not able to prove the present case beyond reasonable doubt. It is relevant to mention here that as per the version of prosecution, the members of the raiding party were the police officials. Admittedly, the alleged secret information was received in the present case by ASI Murlidhar, but same was not reduced into writing by him, instead same was written by a DD writer. It is relevant to mention here that as per the dictum of Directorate of Revenue and Another Vs. Mohammed Nisar Holia (2008) 2 SCC 370, it is held by Hon'ble Apex Court that the officer, who receives the information is mandatorily required to reduce the same into writing and this duty cannot be delegated. Therefore, this can be deemed as non-compliance with the statutory

mandate and the same is fatal to the case of prosecution.

43. Moreso, as per the case of prosecution, the alleged recovery in the present case was stated to be effected on three different occasions i.e. 26.12.2018 and 28.12.2018 and 31.12.2018. It is relevant to mention here that the PW Inspector Shiv Darshan was the witness of all the abovesaid recoveries, but during his examination nothing was said about him regarding the alleged second and third recovery. Further, it is pertinent to mention here that as per version of PW18, all the parcels, which were handed over by him to the police were in the name of the accused, however, as per the case of the prosecution not a single parcel was in the name of the accused persons. It is relevant to mention here that PW19 claimed that no document was prepared by the police on 26.12.2018 at their office and he along with PW18 were called at PS on the next day, where their signatures were obtained on various documents. This aspect also raises a cogent suspicion on the aspect of investigation as to why the alleged investigating proceedings were not concluded in all aspects at the spot itself. Further, no reasonable explanation came on record for calling of the PW18 & PW19 in PS on the next day and regarding obtaining of their signatures on the documents.

44. It is relevant to mention here that as per the version of PW1 and PW3, they deposited 15-15 samples on 28.12.2018 and 04.01.2019 respectively. However, as per the testimony of PW12, she received 16 parcels on 28.12.2018 and received 5 parcels on 04.01.2019. This inconsistent and contrary version in the testimony of PWs also raises cogent doubt on the story of prosecution. Moreover, it is relevant to mention here that the public witnesses i.e. PW18 and PW19 had not supported the version of prosecution on various material aspects. The PW19 is totally hostile on the material aspect of the version of the prosecution. As per the version of PW18, the alleged parcels were handed over to accused persons inside the office, however, the other police witnesses claimed that same were handed over to the accused persons on road/outside the office. This inconsistent and contrary version in the testimony of PWs also raises cogent doubt on the story of prosecution. Moreover, as per the testimony of PW18 the parcels recovered on 26.12.2018, were in the name of accused persons, however, as per the version of prosecution, no parcel was in the name of accused persons. Moreover, there is no investigation about the sender and receiver of the alleged parcels. This also raises a cogent doubt and suspicion in the story of prosecution.

45. Further, as per testimony of SHO/Inspector Satender Sangwan, he deposited 37 parcels with the concerned MHC(M),

who also made entry for same in Register no. 19, however, as per the Register no. 19, the total parcels deposited in the present case are 36 only. Moreover, the SHO/Inspector Satender Sangwan also kept his seal with him after its use. This also raises a cogent doubt and suspicion in the story of prosecution. Considering the abovesaid entire testimony of PWs makes evident that the prosecution version is unsustainable and a cogent doubt is raised in the version of prosecution which may infer the false implication of the accused in the present case.

**46. In Sarwan Singh Rattan Singh Vs. State of Punjab, AIR 1957 SC 637, it has been observed herein as under:-**

*“Considered as a whole the prosecution story may be true; but between 'may be true' and 'must be true' there is inevitably a long distance to travel and the whole of this distance must be covered by legal, reliable and unimpeachable evidence before an accused can be convicted.”*

**47.** In ordinary circumstances, the above said anomalies when viewed in isolation, would appear to be inconsequential or insignificant. However, when viewed as a whole, it raises a question upon the credibility of the prosecution witnesses. The doubt becomes even more graver when considered in light of the fact that despite availability, no other public witness has been

joined in the case at hand and if, any independent witness would have joined, the same would have corroborated the story of the prosecution that accused was apprehended as alleged in the present case and was found in possession of contraband at the date, time and place as claimed by investigating raiding police party. The deposition of abovesaid PWs is suffering from major contradictions qua the relevant aspects of investigation and proceedings took place at the spot. It is a settled proposition of law that a case resting solely and exclusively upon testimony of police witnesses needs a strict judicial scrutiny. Further, harsher the punishment stricter should be judicial scrutiny.

48. In my considered opinion, the lacuna occurred in drawing of samples in violation of section 52(A) NDPS Act as well as other contradiction and inconsistencies of the PWs, a reasonable shadow of doubt is cast upon the prosecution version. In light of the abovesaid findings, observations and reasoning, I am of the considered opinion that the prosecution has not been able to prove its case beyond reasonable doubt against the accused persons for the offence charged with. Both the accused persons are acquitted for the offences charged with.

File be consigned to record room.

**Announced in the Open Court  
today i.e. 14.03.2026**

**(SATVIR SINGH LAMBA)  
ASJ/ SPECIAL JUDGE (NDPS),  
WEST DISTRICT, DELHI**