

GJJM010029362022  11202045220425 NDPS/10/2022	 सत्यमेव जयते	<b>Filed on</b>	: 17/08/2022		
		<b>Registered on</b>	: 17/08/2022		
		<b>Decided on</b>	: 01/05/2026		
		<b>Duration</b>	<b>Years</b>	<b>Months</b>	<b>Days</b>
	03	08	15		

**BEFORE THE HON'BLE SPECIAL JUDGE (NDPS)**  
**( 3<sup>rd</sup> ADDITIONAL SESSIONS JUDGE )**

Dist. : Jamnagar

**SPECIAL NDPS CASE No. : 10/2022**



*Exh. :- 160*

<b>Complainant</b>	<b>THE STATE OF GUJARAT</b>		
<b>Versus</b>			
<b>Accused No.1 &amp; 2</b>	1	<b>SHABBIRBHAI IQBALBHAI BASAR</b> AGE : 25 YEARS, OCCUPATION : BUSINESS R/o:- Vagher Vado, Machhi Market, Jamnagar.	
	2	<b>SAMIRBHAI IQBALBHAI BASAR</b> AGE : 26 YEARS, OCCUPATION : BUSINESS R/o Vagher Vado, Machhi Market, Jamnagar.	

**APPEARANCE :-**

Ld. A.P.P. for the State	<b>Mr. D. A. Jivrajani</b>
Ld. Advocate for Accused No. 1 & 2	<b>Mr. M. I. Kureshi</b>

**With**

GJJM010000072023  11202045220425 NDPS/1/2023	 सत्यमेव जयते	<b>Filed on</b>	: 02/01/2023		
		<b>Registered on</b>	: 02/01/2023		
		<b>Decided on</b>	: 01/05/2026		
		<b>Duration</b>	<b>Years</b>	<b>Months</b>	<b>Days</b>
	03	04	00		

**BEFORE THE HON'BLE SPECIAL JUDGE (NDPS)**  
**( 3<sup>rd</sup> ADDITIONAL SESSIONS JUDGE )**

Dist. : Jamnagar

**SPECIAL NDPS CASE No. : 1/2023**

**Exh. :- 7**

<b>Complainant</b>	<b>STATE OF GUJARAT</b>
<b>Versus</b>	
<b>Accused No. 3</b>	<b>MAHMAD ADIL MAHMAD SALIMBHAI @ BADSHAH MAKRANI</b> AGE : 22 YEARS, OCCUPATION : PRIVATE JOB R/o 8991, ZAKARIYA MASJID STREET, MAHMAD ALI ROAD, DONGRI, MUMBAI, MAHARASHTRA.

**APPEARANCE :-**

Ld. A.P.P. for the State	<b>Mr. D. A. Jivrajani</b>
Ld. Advocate for Accused	<b>Mr. A. H. Sama</b>

**OFFENCE PUNISHABLE UNDER SECTION 8(c),  
22(c) AND 29 OF THE NARCOTICS DRUGS AND  
PSYCHOTROPIC SUBSTANCES ACT, 1985.**

**-:: J U D G M E N T ::-**

[1]. Both the NDPS cases are of the same offence and Special NDPS Case No. 10/2022 is main case and the Supplementary charge-sheet was filed for a absconding Accused – Adil and it was registered as Special NDPS Case No. 1/2023 and therefore, both the cases were Ordered to be consolidated vide Order passed below Exh.-1 on dtd.01/03/2023. It is the case of the complainant that the Accused No. 1 - Shabbirbhai Iqbalbhai Basar was illegally and without pass or permit

found & caught with possession of 54 Gms. of Mephedrone Powder worth Rs. 5,40,000/-, at 15:45 on dtd. 18/06/2022, near khijadiya by-pass on Jamnagar-Rajkot Highway, Tal. & Dist. : Jamnagar and the said mephedrone was ordered by the Accused No. 2 - Samirbhai Iqbalbhai Basar and it was sold & delivered by Accused No. 3 – Adil Badsaha Makrani and thereby, the Accused have committed an offence in abetment and in collusion with each other.

[2]. The Original Complainant / Informant had given the complaint with the Panchkoshi 'A-Division' Police Station, Jamnagar and F.I.R. No. A-PART-11202045220425/2022 on dated 18/06/2022, was registered for the offence punishable under Section 8(c), 22(c) and 29 of NDPS Act, 1985. Thereafter, the Investigating Officer had recorded the statement of witnesses under Section 161 of Criminal Procedure Code, 1973 and drawn relevant Panchnama and after investigating the offence, found sufficient evidence against the Accused and therefore, he had filed Charge-Sheet No. B-PART-211/2022 on dated 10/08/2022 & Charge-Sheet No. B-PART-211-A/2022 on dtd.01/01/2023, under Section 173 of Code Criminal Procedure, 1973, before the Court and the same were registered as Special NDPS Case No. 10/2022 & Special NDPS Case No. 1/2023. The Accused No. 1 is in judicial custody and the Accused No. 2 & 3 are on bail and therefore, the Accused was brought / appeared before the

Court. Thereafter, the Court had complied the provision of Section 207 of Criminal Procedure Code, 1973 and supplied the copy of charge-sheet, F.I.R., Statement recorded under Section 161(3) of Criminal Procedure Code, 1973 and all other relevant papers relied on by the Prosecution to the Accused and recorded their statement, wherein they had informed to have private advocate. After hearing for the charge, the charge was framed at Exh.-15 under Section 228 of Code of Criminal Procedure, 1973 and pleas were recorded at Exh.-16 to Exh.-18, wherein, the Accused had pleaded not guilty and therefore, the case was proceeded further for conducting trial in accordance with law.

[3]. For adjudication of this case, following charges framed :-

<b>:: CHARGE ::</b>	
1	Whether the prosecution proves beyond reasonable doubt that the Accused No. 1 - Shabbirbhai Iqbalbhai Basar was illegally and without pass or permit found & caught with possession of 54 Gms. of Mephedrone Powder worth Rs. 5,40,000/-, at 15:45 on dtd. 18/06/2022, near khijadiya by-pass on Jamnagar-Rajkot Highway, Tal. & Dist. : Jamnagar and the said mephedrone was ordered by the Accused No. 2 - Samirbhai Iqbalbhai Basar and it was sold & delivered by Accused No. 3 – Adil Badsaha Makrani and thereby, the Accused have committed an offence in abetment and in collusion with each other and thereby committed the offence punishable under Section 22(c) read with Section 29 for violation of Section 8(c) of Narcotic Drugs and Psychotropic Substances Act, 1985 (Shortly referred as NDPS Act) ?
2	What's Order ?

[4]. My findings to the above stated points are as under :

**-: FINDINGS :-**

1	<b>PARTIALLY-In-AFFIRMATIVE</b> (Accused No. 1 is convicted / Accused No. 2 & 3 are acquitted)
2	As per <b>FINAL ORDER</b>

[5A]. In order to prove the alleged offences, the prosecution has leaded following oral and documentary evidences :

<b>: ORAL EVIDENCE :</b>				
Sr. No.	P.W. No.	Witness	Witness Name	Exhibit
1.	1	<b>Panch</b>	Vimalbhai Nareshkumar Mandali	Exh.-51
2.	2	Panch (Hostile)	Kuldip Prafulbhai Misan	Exh.-54
3.	3	Panch (Hostile)	Vasantbhai Nathubhai Rathod	Exh.-56
4.	4	Panch (Hostile)	Imranbhai Mamadbhai Khira	Exh.-57
5.	5	Panch (Hostile)	Dilipbhai Nanalal Ramavat	Exh.-59
6.	6	<b>Complainant</b>	Harshadkumar Hiralal Doriya	Exh.-62
7.	7	<b>Witness (SOG)</b>	Dineshbhai Ramjibhai Sagathiya	Exh.-65
8.	8	Witness (Soni) (Hostile)	Maheshbhai Mansukhbhai	Exh.-68
9.	9	<b>Witness (SOG)</b>	Arjanbhai Dhanabhai Kodyatar	Exh.-70
10.	10	Panch (Hostile)	Mohanbhai Ramjibhai Parmar	Exh.-72
11.	11	<b>FSL(Place)</b>	Dr. Astitva Janojkumar Anand	Exh.-75
12.	12	<b>PSO (Mud.)</b>	Badalbhai Nileshbhai Chotaliya	Exh.-80
13.	13	<b>Nodal Officer Reliance Jio</b>	Bharatbhai Ramabhai Patel	Exh.-83
14.	14	<b>FSL-G'nagar (Narcotics Division)</b>	Rituben Manojkumar Sharma	Exh.-89
15.	15	<b>Witness</b>	Kumarpalsinh Karansinh Gohil	Exh.-91

		<b>P.I.-L.C.B.</b>		
16.	16	<b>I.O.-P.S.I.</b>	Mansurbhai Rambhai Savseta	Exh.-103
17.	17	<b>I.O.-P.S.I.</b>	Jaypalsinh Pradipsinh Shodha	Exh.-120
18.	18	<b>Nodal Officer Voda-Idea</b>	Mrudulbhai Upendrabhai Bhatt	Exh.-125

<b>: DOCUMENTARY EVIDENCE :</b>		
<b>S/N.</b>	<b>PARTICULARS</b>	<b>EXHIBIT</b>
1.	Panchnama	Exh.-52 & Exh.-55
2.	Panchnama for C.C.T.V. footage	Exh.-58
3.	Copy of F.I.R. & Complaint.	Exh.-63
4.	Copy of Yadi of information	Exh.-66
5.	Original Seizure Panchnama	Exh.-69
6.	Yadi for entry in Station Diary	Exh.-71
7.	Order under Section 42 of NDPS, Act	Exh.-73
8.	Yadi to conduct FSL of place of offence	Exh.-76
9.	FSL Report	Exh.-77
10.	Receipt for Muddmamal handing over	Exh.-81
11.	Copy of Station Diary	Exh.-82
12.	Certificate U/s. 65 B (4) (c) of the Evidence Act 1872 from Jio Company	Exh.-84
13.	Prepaid Customer Application form (CAF) of Mobile No.9023542325 from Jio company	Exh.-85
14.	Prepaid Customer Application form (CAF) of Mobile No.9137443049 from Jio Company	Exh.-86
15.	Copy of CDR from Reliance Jio of Mobile No.9023542325	Exh.-87
16.	Copy of CDR from Reliance Jio of Mobile No.9137443049	Exh.-88
17.	Letter from FSL Case No.DFS/EE/2022/NC/263 dt.26/09/2022 with FSL Report	Exh.-90
18.	Letter No.SOG/NDPS/581/2022, Police Inspector Office, Special Operation Group, Jamnagar, dt.18/06/2022	Exh.-92
19.	Letter No.SOG/Confi./583/2022, Police Inspector Office, Special Operation Group, Jamnagar, dt.18/06/2022	Exh.-93

20.	Letter No.SOG/Conf./584/2022, Police Inspector Office, Special Operation Group, Jamnagar, dt.18/06/2022	Exh.-94
21.	Order under Section 50 of Narcotics Drugs and Psychotropic Substance, Act	Exh.-95
22.	Frisking Consent Letter	Exh.-96
23.	Letter No.SOG/NDPS/RuBaRu/2022, Police Inspector Office, Special Operation Group, Jamnagar, dt.18/06/2022 to Mamalatdar calling for frisking at the place of incident .	Exh.-97
24.	Letter No.SOG/NDPS/RuBaRu/2022, Police Inspector Office, Special Operation Group, Jamnagar, dt.18/06/2022 for weighing machine	Exh.-98
25.	Seizure Memo	Exh.-99
26.	Letter to Register a Crime	Exh.-100
27.	Arrest Panchnama (Panchas 1 – Rajanbhai Nagdanbhai Siyaar & 2- Rafihambhai Rafiqbhai Saiyad)	Exh.-101
28.	Letter for custody of absconding accused	Exh.-102
29.	Log books of Bolero Jeep (Form B)	Exhs.-104 & 105
30.	Copy of Forwarding Letter (Ravangi Patrak)	Exh.-106
31.	Copy of Authority Letter	Exh.-107
32.	Copy of Muddamal Hand-over receipt dtd.20/06/2022.	Exh.-108
33.	Copy of Form 'F'	Exh.-109
34.	Copy of Railway Tickets of Saurashtra Mail, PNR No.8832600138	Exh.-110
35.	Letter No.VIL/Nodal/337/2022, dtd.08/08/2022 from Vodaidea	Exh.-111
36.	Certificate U/s. 65B(4)(c) of the Evidence Act, 1872 from Vodaidea, dtd.08/08/2022	Exh.-112
37.	Copy of Call Details of Mobile No.9033527172.	Exh.-113
38.	Copy of Call Details of Mobile from Vodafone Idea.	Exh.-114
39.	Yadi for Entry in Station Diary of Accused's Arrest.	Exh.-115 & Exh.-116
40.	Copy of Arrest Panchanma of Accused – Mahmadaadil M. Makrani.	Exh.-117
41.	Yadi for Entry in Station Diary of Accused's Arrest.	Exh.-118

42.	C.C.T.V. footage – D.V.D., Muddamaal Article No.7.	Exh.-119
43.	Inventory Report	Exh.-121
44.	Receipt dtd.02/09/2023 related to Inventory	Exh.-122
45.	Certificate from Ld. 12 <sup>th</sup> Addl. Chief Judicial Magistrate regarding conducting Inventory.	Exh.-123
46.	Photographs taken during inventory (41 Photos)	Exh.-124
47.	Copy of Arrest Panchnama of Accused – Samir Iqbal Basar.	Exh.127

Thereafter, the prosecution has declared by pursis at Exh.-128 that they don't want to lead any further evidence.

[5B]. Thereafter, with a view to give full opportunity to the Accused, their further statement was recorded under Section 313 of the Criminal Procedure Code, 1973, wherein they have taken the defense that false case is being registered against them and they are innocent, but they had neither examined themselves nor led any document in support of their defense.

[6]. I have heard the Ld. A.P.P. - Mr. D. A. Jivrajani for the State and the Ld. Advocate Mr. M. I. Kureshi for the Accused Nos. 1 & 2 and Ld. Advocate Mr. A. H. Sama for the Accused No. 3, at great length. I have also considered the oral and documentary evidences on record as well as record of the case. Further, while observing Order passed on dated 15/10/2024 by the Hon'ble Supreme Court in Petition(s) for Special Leave to Appeal (Crl.) No.11444/2024, it is observed while dismissing the

Sp.L.P. No.11444/2024 filed by the Accused – Shabbir Iqbal Basar that “Trial Court shall expedite the Trial proceeding”.

[7]. The reasons, for the findings arrived at, for the adjudication of the above charge, are as under :

## **: REASONS :**

### **ISSUE No. 1 & 2 :**

(7.1). It is the case of the prosecution that Accused No. 1 – Sabbirbhai Iqbalbhai Basar was caught with 54 Grams of Mephedrone on dtd. 18/06/2022 at about 15:45 hours near Khijadia by-pass on Jamnagar – Rajkot Highway and the Accused No. 2 - Samirbhai Iqbalbhai Basar was intended purchaser who asked the Accused No. 1 to bring the same and the Accused No. 3 – Mahmad Adil was the supplier of the same. With these allegations, the case was proceeded further and evidence was to be laid.

(7.2). The Ld. APP for the State has vehemently argued that the Prosecution has proved their case beyond reasonable doubt against all the

three Accused and requested to convict the Accused No. 1 for the offence punishable under Section 22(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 and to convict the Accused No. 2 and 3 under Section 22(c) read with Section 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 for the breach and violation of Section 8(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985.

(7.3). The Ld. Advocate for the Accused has vehemently argued that the Prosecution has not proved their case beyond reasonable doubt and have even not proved the abetment / conspiracy by the Accused No. 2 and 3 as required under Section 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 and therefore, requested to acquit all the Accused by giving benefit of doubt. Let us appreciate the evidence on the record in that regards.

(7.4). Thus, to prove the case, the prosecution has examined P.W. No. 7 - Dineshbhai Ramjibhai

Sagathiya at Exh.-65 who has deposed that on dtd. 18/06/2022 when he was on his duty at about 12:00 hours in the noon, he got secret information for which he has made Yadi to Police Inspector, wherein the information was that the Accused No. 1 - Shabbirbhai Iqbalbhai Basar is coming with contraband muddamal from Rajkot towards Jamnagar through Khijadia bypass and the same was noted as information register Entry No. 4/22 and written report was made to D.S.P. in that regard. It is deposed by P.W. No. 7 - Dineshbhai Ramjibhai Sagathiya at Exh.-65, P.W. No. 9 - Arjanbhai Dhanabhai Kodiyatar at Exh.-70, P.W. No. 6 - Complainant - Harshadkumar Hiralal Doriya at Exh.-62 and P.W. No. 15 - Kumarpalsinh Karansinh Gohil at Exh.-91 along with P.W. No. 1 - Panch - Vimalbhai Nareshkumar Mandali at Exh.-51 and other Panch - Kripalsinh Rathod, had went in the Government Vehicle at the place of information at Khijadia by-pass with necessary laptop, kit bags etc., by completing the primary panchanama. The said witnesses have further deposed that when they were

standing at the place of information at about 15:45 hours near Khijadia by-pass, one Gray colour Eco car No. GJ-10-BR-8790 had arrived from Rajkot side and Dineshbhai had shown the said vehicle and therefore, they had cordoned the said car and stopped the car and given their information. As a search of the vehicle is required to be done, Resolution of Section 42 of NDPS Act was done and one person sitting in the last seat, had informed his name as Sabbir Iqbal Basar and therefore, P.I. - Mr. Kumarpalsinh Karanshin Gohil had passed a Resolution under Section 50 of the Narcotic Drugs and Psychotropic Substances Act, 1985 and made a phone call to the Executive Magistrate, Rural, to arrive at the place for personal search of the said person. Those witnesses further deposed that about 16:30 hours, the Executive Magistrate had arrived at the place of information and P.I. - Mr. Kumarpalsinh Karanshin Gohil had given the Report to the Executive Magistrate and on asking the said person – Sabbir about his search before the Executive Magistrate, he has agreed for the same and accordingly, the

search of the Accused No. 1 – Sabbir Iqbal Basar was carried out in presence of the Executive Magistrate and Samsung company Mobile was found from the pocket of shirt and having two I.M.E.I number and in the first slot was having Jio company Sim card and on further search, from the back pocket of the pant of Accused No.1, cash of Rs.300/- and an Aadhar Card was found and further making search, the Black Colour Plastic Bag was found from right pocket of the Pant of the Accused No. 1, in which there was a white plastic bag and there was White Yellow Colour like powder substance.

- (7.5). Those witnesses : P.W. No. 7 - Dineshbhai Ramjibhai Sagathiya at Exh.-65, P.W. No. 9 - Arjanbhai Dhanabhai Kodyatar at Exh.-70, P.W. No. 6 - Complainant - Harshadkumar Hiralal Doriya at Exh.-62 and P.W. No. 15 - Kumarpalsinh Karansinh Gohil at Exh.-91 as well as P.W. No. 1 - Panch - Vimalbhai Nareshkumar Mandali at Exh.-51 have further deposed that they have called the F.S.L. Officer at the place of search and about 17:15

hours F.S.L. Officer - Dr. Astitva Janojkumar Anand had come and he has taken out the instruments from his kit and examined the said powder found from the Accused No.1 and have given report that the said White Powder is Mephedrone. Those witnesses further deposed that to measure the weight of the said substance, they have called a person – Mahesh Mansukhbhai to weight the same, who had after making weight, had stated that it was 54 Grams. and therefore, they have taken two samples of 5 – 5 grams and marked as Mark-A1 and Mark-A2 being sample one for sending to F.S.L. and another being the reserved sample and thereafter remaining 44 Grams Mephedrone Marked as Mark-A and thereafter, they have packed and sealed the same in the presence of the Executive Magistrate. The Certificate of Weight was given by Maheshbhai Mansukhbhai. The F.S.L. Officer has given its preliminary report at the place of offence. Thereafter, they have made the seizure memo and its copy was given to the Accused No.1 and the said Muddamal was directed to sent to the

Panchkoshi 'A' Division Police Station.

(7.6). The prosecution has examined P.W. No. 12 – PSO – Badalbhai Nileshbhai Chotaliya at Exh.-80, who has deposed that he was on duty as a PSO in Panchkoshi 'A' Division Police Station on dtd.18/06/2022 and SOG Police Head Constable - Harsadbhai Hiralal Doriya along with Accused – Sabbir Iqbal Basar had arrived and given the complaint, panchnama and other papers along with seizure memo and muddamal seized at the place of offence and handed over the custody of Accused – Sabbir. It is further deposed that Muddamal - Mephedrone powder Mark-A having weight of 44 Grams, Mark-A1 having weight of 5 Grams and Mark-A2 having 5 Grams, as well as Samsung mobile and cash of Rs.300/- and thereafter, the Accused and Muddamal were handed over to the Writer Head – Rajubhai.

(7.7). Thus, from the deposition of above witnesses : P.W. No. 7 - Dineshbhai Ramjibhai Sagathiya at Exh.-65, P.W. No. 9 - Arjanbhai Dhanabhai Kodyatar at Exh.-70, P.W. No. 6 -

Complainant - Harshadkumar Hiralal Doriya at Exh.-62 and P.W. No. 15 - Kumarpalsinh Karansinh Gohil at Exh.-91 have clearly proved that the Accused was found with 54 Grams of Mephedrone in presence of the P.W. No. 1 – Vimalbhai Nareshbhai Mandali at Exh.-51, on getting search before the Executive Magistrate and getting it examined by F.S.L. Officer, finding by preliminary test as Mephedrone and after packing and sealing of the said Mephedrone, the Accused and seized Muddamal were given to P.S.O. and P.W. No. 6 – Complainant – Harshadkumar Hiralal Doriya at Exh.-62 has given the complaint against the Accused. From the Accused No. 1, they came to know that the Accused No. 2 had asked him to bring it for him and the Accused No. 3 had supplied the same and therefore, the complaint was registered qua the said 3 Accused.

(7.8). The prosecution has examined P.W. No. 1 – Panch – Vimalbhai Nareshkumar Mandali at Exh.-51, who has fully supported the deposition of above referred witnesses and the

case of the prosecution. The P.W. No. 1 – Panch – Vimalbhai Nareshkumar Mandali at Exh.-51 is an independent panch and there is no reason to disbelieve him. Thus, the case of the prosecution is corroborated even by the deposition of independent Panch - P.W. No. 1 – Panch – Vimalbhai Nareshkumar Mandali at Exh.-51.

- (7.9). The Prosecution has examined the P.W. No. 11 – Dr. Astitva Janojkumar Anand at Exh.-75, who has deposed that he got the telephonic message on dtd.18/04/2022 at 16:45 hours and therefore, he went at the said place on Khijadia bypass having location 22.49459 and 70.159800 and carried on his examination process during 17:15 to 18:45 hours and further deposed that in one transparent plastic zip lock bag, White Powder substance was there and by their Narcotic Examination Test Kit (General Screening Identification) he had examined the said substance and has examined by Narcotic Examination Test Kit (Mephedrone) and the result was found positive and the substance was Mephedrone.

He had instructed to make two samples of 5 grams each and remaining to be marked as Mark-A, which was having total 54 grams. Thus, from the preliminary test conducted at the place of seizing, the said substance was found contraband substance being Mephedrone primarily. The P.W. No. 11 – Dr. Astitva Janojkumar Anand at Exh.-75 had given its report at Exh.-77 in detail. Thus, by the preliminary test at the place of seizure, the said substance was found Mephedrone.

- (7.10). The Prosecution had sent the sample to F.S.L. Gandhinagar, for its scientific examination and to give its opinion. The prosecution had examined the P.W. No. 14 – Rituben Manojkumar Sharma at Exh.-89 who has deposed that she is serving as a Scientific Officer in Narcotic Department of Gandhinagar from 2018 and further deposed that they have received the Muddamal Parcel, sealed and packed, of the offence Reg. CR No.425/22 with Panch 'A' Division Police Station, Jamangar and it was Marked as A1 having properly sealed and having seal over it

and on opening the said seal, they had found Transparent Plastic Zip Lock bag in which Off White colour powder was found having weight of 5 grams. The P.W. No. 14 – Rituben Manojkumar Sharma at Exh.-89 has further deposed that on doing examination of the said sample powder by The Simon Test, Chen-Kou Test, it was found positive and further deposed that by doing Thin Layer Chromatography and U.V. Spectrophotometry test, it was found positive with control and further deposed that presence of Mephedrone was found G.S.M.S. test and found positive in F.T.I.R. test with control and further deposed that by the above tests, it was found that it was Mephedrone Hydrochloride, which is salt of Mephedrone and is included in Narcotic Drugs and Psychotropic Substances Act and further deposed that she has prepared the Test Report and send it to the Investigating Officer. The Test Report along with Yadi is produced at Exh.-90. Thus, from the above F.S.L. examination by Narcotic Division, Gandhinagar, it is clearly revealed that sample powder was containing ‘Mephedrone’. Thus, it

is clearly proved by the Prosecution that 54 grams of powder which was seized from the Accused No. 1 was 'Mephedrone' and the same is proved beyond reasonable doubt.

(7.11). As per the Notification No. S.O. 375(E) dated 05/02/2015 Sr. No. 238F more than 50 grams of Mephedrone is a commercial quantity. Thus, the commercial quantity is more than 50 Grams and in the present case the seized Mephedrone is 54 grams and therefore, it is commercial quantity.

(7.12). The relevant provisions of Section 8(c), 22(c) and 29 of Narcotic Drugs and Psychotropic Substances Act, 1985, are reproduced herewith for ready reference.

**Section 8(c) :**

**Prohibition of certain operations :**

No person shall -

(a) \*\*\*

(b) \*\*\*

(c) produce, manufacture, **possess, sell, purchase, transport,** warehouse, use,

consume, import inter-State, export inter-State, import into India, export from India or tranship any narcotic drug or psychotropic substance,

**Section 22(c) :**

Punishment for contravention in relation to psychotropic substances :

Whoever, in contravention of any provision of this Act or any rule or order made or condition of licence granted thereunder, manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses any psychotropic substance shall be punishable -

(a) \*\*\*\*\*

(b) \*\*\*\*\*

(c) where the contravention involves **commercial quantity**, with **rigorous imprisonment** for a term which **shall not be less than ten years** but which may **extend to twenty years**, and shall also be liable to fine which **shall not be less than one lakh rupees** but which may **extend to two lakh rupees**:

Provided that the court may, for reasons to

be recorded in the judgment, impose a fine exceeding two lakh rupees.

**Section 29 :**

Punishment for abetment and criminal conspiracy :

(1) Whoever **abets**, or is a **party to a criminal conspiracy to commit**, an offence punishable under this Chapter, shall, whether such offence be or be not committed in consequence of such abetment or in pursuance of such criminal conspiracy, and notwithstanding anything contained in section 116 of the Indian Penal Code (45 of 1860), be **punishable with the punishment provided for the offence**.

(2) A person abets, or is a party to a criminal conspiracy to commit, an offence, within the meaning of this section, who, in India, abets or is a party to the criminal conspiracy to the commission of any act in a place without and beyond India which -

(a) would constitute an offence if

committed within India; or

- (b) under the laws of such place, is an offence relating to narcotic drugs or psychotropic substances having all the legal conditions required to constitute it such an offence the same as or analogous to the legal conditions required to constitute it an offence punishable under this Chapter, if committed within India

(7.13). Thus, from the appreciation of evidence on record and the law of the Narcotic Drugs and Psychotropic Substances Act, 1985, it is crystal clear that 54 grams of Mephedrone seized from the Accused No. 1, which is commercial quantity of contraband substance and it was seized from Accused No. 1 and is therefore, in breach and in violation of Section 8(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 and therefore, the Act of the Accused No.1 is punishable under Section 22(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985. Section 29 of Narcotic Drugs and Psychotropic Substances Act, 1985,

is with regard to abetment and conspiracy, which will be concerned with the other co-accused No. 2 and 3. Thus, the Accused No. 1 has committed the offence punishable under Section 22(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985. This is proved beyond the reasonable doubt by the prosecution.

(7.14). The Ld. Advocate for the Accused No. 1 has vehemently argued that in Information Report at Exh.-66, neither the time is written nor endorsement of receipt is being made. The P.W. No. 7 – Dineshbhai Ramjibhai Sagathiya at Exh.-65 has clearly deposed that he got the information at about 12:00 noon and made yadi of the same to the P.I. Thus, merely non mentioning of time in Yadi at Exh.-60 and having no endorsement of P.I., would not be fatal to the case of the prosecution, Moreso when the said P.I. - P.W. No. 15 – Kumarpalsinh Karansinh Gohil at Exh.-91 had also went in the raid along with other police staff and without receiving the Yadi, he would not have come to know about the said

information. Hence, the said defense of the Accused is not acceptable.

(7.15). The Ld. Advocate for the Accused No. 1 has vehemently argued that sample packets were ready by in-charged P.I. Mr. Kumarpalsinh Karansinh Gohil. If we read the evidence as a whole, then P.W. No. 11 – Dr. Astitva Janojkumar Anand at Exh.-75 had directed to prepare the sample and as per his the instruction, P.W. No. 15 – Kumarpalsinh Karansinh Gohil at Exh.-91 had prepared the sample. Thus, on the contrary it is supporting the case of the prosecution and not to the defense.

(7.16). The Ld. Advocate for the Accused No. 1 has vehemently argued that the Check-post and Hotel are situated nearby the place of offence, but none of them were kept present during the search and seizure. There may be several people in the said locality, but prosecution is not bound to keep everyone present. The case of the prosecution is to be tested on the basis of witnesses kept present by them and are

examined before the Court. As we have already discussed earlier, the Prosecution has examined P.W. No. 7 - Dineshbhai Ramjibhai Sagathiya at Exh.-65, P.W. No. 9 - Arjanbhai Dhanabhai Kodyatar at Exh.-70, P.W. No. 6 - Complainant - Harshadkumar Hiralal Doriya at Exh.-62 and P.W. No. 15 - Kumarpalsinh Karansinh Gohil at Exh.-91, who were in the search and seizure over there. The said process was carried on in the presence of independent witness being Panch and examined as a P.W. No. 1 – Panch – Vimalbhai Nareshkumar Mandali at Exh.-51, who has fully supported the case of the prosecution and therefore, there is no reason to disbelieve the case of the prosecution or to create any doubt on the same. Even the preliminary test was done by the F.S.L. at place of seizure itself and preliminary it was found as Mephedrone. Under such circumstances, none examining or not keeping present in the search and seizure any person of hotel nearby, will not be fatal to the case of the prosecution, when the same is proved beyond reasonable doubt by the witnesses

present in the search and seizure and also corroborated by independent Panch witness. Hence, the said defense of the Accused is not acceptable.

(7.17). The Ld. Advocate for the Accused No. 1 has vehemently argued that signature of some of the police witnesses present during the search and seizure are not taken on muddamal packet or papers. It is not required to take signature of each and every member who are present on search and seizure, but the signature of Seizure Officer and Panch witnesses are sufficient and prosecution has proved it by the deposition of P.W. No. 15 – Kumarpalsinh Karansinh Gohil at Exh.-91 and P.W. No. 1 – Panch – Vimalbhai Nareshkumar Mandali at Exh.-51. Hence, the said defense of the Accused is not acceptable.

(7.18). The Ld. Advocate for the Accused No. 1 has vehemently argued that there is no signature of Executive Magistrate on any paper or on muddamal packets. The seizure packing and sealing is to be done by the Seizure Officer.

The deposition of P.W. No. 7 - Dineshbhai Ramjibhai Sagathiya at Exh.-65, P.W. No. 9 - Arjanbhai Dhanabhai Kodyatar at Exh.-70, P.W. No. 6 - Complainant - Harshadkumar Hiralal Doriya at Exh.-62 and P.W. No. 15 - Kumarpalsinh Karansinh Gohil at Exh.-91, have clearly proved that the Executive Magistrate was present and in his presence search and seizure was carried out. Even the same is supported by the independent witness - P.W. No. 1 - Panch - Vimalbhai Nareshkumar Mandali at Exh.-51. Under such circumstances, there is no reason to believe that the said procedure was not carried out in the presence of Executive Magistrate, only because the signature of Executive Magistrate is not there in any paper or muddamal packets. Hence, the said defense of the Accused is not acceptable.

(7.19). The Ld. Advocate for the Accused has relied on the decision delivered by the Hon'ble High Court of Gujarat (Coram : Hon'ble Justice K.J. Thaker, J) in case of **<sup>1</sup>STATE OF**

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<sup>1</sup> **STATE OF GUJARAT Vs. NAYANBHAI JEEBHAI BAROT & ANR.**  
: 1016(2) GLR 1394 = CA 2013/04, D/-30/6/15

**GUJARAT Vs. NAYANBHAI JEEBHAI BAROT & ANR.**, wherein it is held that accused has a right to be searched in presence of a Gazetted Officer or a Magistrate and such officer who is a witness of search require to be examined by prosecution, if not examined, the Court would believe that no contraband article found from accused. In the said case, the panch of search and seizure had not supported the case of the prosecution and therefore, non-examination of gazetted officer, doubt was created. Whereas in present case, search and seizure panch being P.W. No. 1 – Vimal Naresh Mandali at Exh.-51 has fully supported to the case of the prosecution and has clearly deposed that Accused no. 1 was searched in presence of Executive Magistrate and his deposition is believable and therefore non-examination of Executive Magistrate in present case is not fatal to the case of the prosecution. Hence the said authority will not assist the Accused, considering different facts and circumstances and other reliable evidences on record.

(7.20). The Ld. Advocate for the Accused has relied on the decision delivered by the Hon'ble High Court of Gujarat (Coram : Hon'ble Justice Abhilasha Kumari, J) in case of <sup>2</sup>**STATE OF GUJARAT Vs. GOVINDBHAI BHAGWANBHAI VASAVA**, wherein it is held that the entire procedure of recording the Panchnama is nothing more than a farce and the Executive Magistrate has not signed on it. It is further observed in Para-25 that Only panch witness – PW4 in his testimony, does not state that the Executive Magistrate was present when the Panchnama was drawn. Whereas in present case, search and seizure panch being P.W. No. 1 – Vimal Naresh Mandali at Exh.-51 has fully supported to the case of the prosecution and has clearly deposed that Accused no. 1 was searched in presence of Executive Magistrate and panchnama was drawn in his presence and his deposition is believable and therefore non-examination of Executive Magistrate in present case is not fatal to the case of the prosecution. Hence the said authority will not

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<sup>2</sup> **STATE OF GUJARAT Vs. GOVINDBHAI BHAGWANBHAI VASAVA**  
: ABC 2014 (I) GUJ = CA 950/99, D/-26-29/07/13

assist the Accused, considering different facts and circumstances and other reliable evidences on record.

(7.21). The Ld. Advocate for the Accused has vehemently argued that the Muddamal Sample was taken out by F.S.L. Officer or police. If the evidences on record are appreciated, then it clearly prove that on the instruction of F.S.L. officer, the seizure police officer had taken out the sample from the Muddamal. Thus, no reasonable doubt is created with that regard. Hence, the said defense of the Accused is not acceptable.

(7.22). The Ld. Advocate for the Accused No.1 has vehemently argued that it has not happened that sample was taken in the presence of Hon'ble Judge. The evidence clearly shows that the Executive Magistrate was present and on the instruction of FSL officer, the concerned seizure Officer being P.W. No. 15 – Kumarpalsinh Karansinh Gohil at Exh.-91 had taken out the sample and made packing and sealing at the place of offence itself on

dtd.18/06/2022 and immediately it was sent to F.S.L. by Letter dtd.19/06/2022, which was received on dtd. 20/06/2022 by F.S.L. Office as revealing from the F.S.L. Yadi along with report at Exh.-90. The Ld. APP has submitted that the seizure was made on dtd.18/06/2022 and at that time the provision of Section 52A of NDPS Act, regarding inventory before the Ld. Magistrate was not there, but as and when it has come they had carried on the inventory before the Ld. Magistrate on dtd. 02/09/2023 and the inventory Report is at Exh.-121. The Photographs taken during the inventory before the Ld. Magistrate are at Exh.-124 and it reveals in one of the photograph that Ld. Advocate for the Accused No. 1 was also present during the said procedure carried on before the Ld. 12<sup>th</sup> Additional Judicial Magistrate First Class, Jamnagar. Thus, the same is not fatal to the case of the prosecution and the Accused does not get benefit of the same and hence, the said defense of the Accused is not acceptable.

**(7.23).** The Ld. Advocate for the Accused has relied

on the decision delivered by the Hon'ble Supreme Court (Coram : Hon'ble Justice Pankaj Mithal & Justice Abhay S. Oka, JJ) in case of <sup>3</sup>YUSUF @ ASIF Vs. STATE, wherein it is held that 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. The Ld. Advocate for the Accused has relied on the decision delivered by the Hon'ble Supreme Court (Coram : Hon'ble Justice B.R. Gavai & Hon'ble Justice Sandeep Mehta, JJ) in case of <sup>4</sup>MOHAMMED KHALID Vs. STATE OF TELANGANA, wherein it is held that admittedly, no proceedings under Section 52A of the NDPS Act were undertaken by the Investigating Officer (PW-5) for preparing an inventory and

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<sup>3</sup> *YUSUF @ ASIF Vs. STATE : 2023 INSC 912 = CA 3191/23, D/-13/10/23*

<sup>4</sup> *MOHAMMED KHALID Vs. STATE OF TELANGANA : 2024(0) AIJEL-SC 73336 = 2024(3) SCR 23 = 2024 JX(SC) 164 = CA 1610/23, D/-1/3/24*

obtaining samples in presence of the jurisdictional Magistrate. In this view of the matter, the FSL report (Exhibit P-11) is nothing, but a waste paper and cannot be read in evidence. **In present case**, contraband muddamal is **seized on dated 18/06/2022**, whereas the Drugs and Psychotropic Substances Act, 1985 (61 of 1985), the Central Government made the Narcotic Drugs and Psychotropic Substances (Seizure, Storage, Sampling and Disposal) Rules, 2022, in exercise of the powers conferred by section 76 read with section 52A of the NDPS Act and it has come into force by **Notification dated 23/12/2022**. Thus, the rules for making inventory before Ld. Judicial Magistrate was not in force when contraband muddamal is **seized on dated 18/06/2022**. Hence the said authority will not assist the Accused, considering different facts and circumstances and other reliable evidences on record.

(7.24). The Ld. Advocate for the Accused has vehemently argued that time in Notice under Section 50 of the Narcotic Drugs and

Psychotropic Substances Act, 1985 or in referred Yadi is not mentioned. None mentioning of time does not cause any fatal to the case of prosecution, More-so-when the date of the same is proved by the oral evidence of the witnesses examined by the prosecution. Hence, the said defense of the Accused is not acceptable.

(7.25). The Ld. Advocate for the Accused has vehemently argued that no other Accused except the Accused No. 1 was present during the raid and no contraband muddamal is being found from the co-accused No. 2 and 3. It is true and it is not case of the prosecution that any other Accused was present when they have searched and seized the contraband muddamal from the Accused No. 1, but as per the case of the prosecution, the Accused No. 2 had asked to bring the same as purchaser and the Accused No. 3 was the supplier and therefore, the Accused No. 2 and 3 certainly were not present when the search and seizure of Accused No. 1 was carried out.

(7.26). The Ld. Advocate for the Accused No. 1 has vehemently argued that the signature of the Accused is not taken in the Panchnama or on Muddamal Packets. The witnesses have clearly deposed that the signature of the Accused was taken on seizure memo. When the signature is taken on the seizure memo, it is due compliance of provisions of law. Moreover, the signature in the Panchnama and signature on Muddamal Packet is usually taken of the Panch witnesses and the Seizure Officer, which is there. Hence, the same is not fatal to the case of the prosecution.

(7.27). The Ld. Advocate for the Accused No. 1 has vehemently argued that when the Accused No. 1 was produced before the P.S.O., no notice given to the Accused was found. The P.W. No. 12 - Badalbhai Nileshbhai Chotaliya at Exh.-80 has clearly deposed that Complaint, panchnama and other papers along with seizure memo, Muddamal and Accused were handed over to him. Thus, the said defense of the Accused is not acceptable.

(7.28). The Ld. A.P.P has vehemently argued that there is no reason to falsely implicate the Accused in the offence by the Police Officer. The Ld. Advocate for the Accused has vehemently argued that the Accused No. 1 had a dispute / quarrel with them, when they were on patrolling in Vagherwada and therefore, the police has falsely implicated the Accused No. 1. The Accused have neither examined himself nor examined any witnesses nor produced any document to show that the Accused No. 1 had any dispute with the police, while they were on patrolling. Merely, putting the defense in the cross-examination is not sufficient, but the Accused is required to prove the same. Moreover, the police witnesses who were in raid have clearly deposed that they have found 54 grams of Mephedrone from the Possession of the Accused No. 1. Not only that but independent witness being P.W. No. 1 – Panch – Vimalbhai Nareshkumar Mandali at Exh.-51 has fully corroborated and has clearly deposed that 54 grams of Mephedrone was found from the possession of the Accused No. 1. Under such circumstances, there is no reason to

disbelieve the deposition of those witnesses and there is nothing on record to show that the Accused No. 1 had a quarrel with the police while they were on patrolling and therefore, he is being falsely implicated. Hence, the said defense of the Accused is not acceptable.

(7.29). The Ld. Advocate for the Accused has vehemently argued that no report under Section 102(3) of Cr.P.C. is made to the Hon'ble Judicial Magistrate with regards to finding Accused with muddamal. If muddamal is being found without possession of any person, then the said report is required to be made. Moreover, when the Accused No. 1 is found with the said contraband muddamal and immediately complaint is being given by P.W. No. 6 – Complainant – Harshadkumar Hiralal Doriya at Exh.-62 and the copy of the complaint is used to be send to the concerned Ld. Judicial Magistrate. Under such circumstances, it cannot be accepted there is violation of provision made under Section 102(3) of Cr.P.C. Hence, the said defense of the Accused is not acceptable.

(7.30). The Ld. Advocate for the Accused has relied on the decision delivered by the Hon'ble High Court of Gujarat (Coram : Hon'ble Justice A.N. Divecha & H.R. Shelat, JJ) in case of <sup>5</sup>**SHIVABHAI GAJMALBHAI Vs. STATE OF GUJARAT**, wherein it is held Section 51 thereof provides for applicability of the provisions of the Cr.P.C. *inter alia* to arrests and seizures under the N.D.P.S. Act to the extent they are not inconsistent with those contained in the latter enactment. Section 102(3) of the Cr.P.C. *inter alia* requires a report of the seizure to be made forthwith by the concerned police officer to the Magistrate having jurisdiction. Looking to the aforesaid provisions of law, there is no escape from the conclusion that a police officer acting under Sec. 42 of the N.D.P.S. Act by effecting arrest of a person and seizure of an article from such person for the purposes of the Act has to report forthwith to the Magistrate having jurisdiction. We are not shown any provision under the N.D.P.S. Act inconsistent with Sec.

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<sup>5</sup> **SHIVABHAI GAJMALBHAI Vs. STATE OF GUJARAT**  
: 1996(2) GLR Pg. 64 = CA 16/89, D/-14/12/95

102(3) of the Cr.P.C. It is further held that the officer-in-charge of the said Police Station was required to report the matter to the Magistrate as provided in Sec. 102(3) of the Cr.P.C. It is further held that assuming in favour of the prosecution that the said provisions are directory, a substantial compliance thereto would certainly be necessary. Non-compliance thereto cannot be equated with any substantial compliance thereof. In that view of the matter, non-compliance of the aforesaid statutory provision contained in Sec. 102(3) of the Cr. P. C. would vitiate the trial. **In Present case**, if we go through the F.I.R., then it is immediately dispatched at 20:45 hours on dated 18/06/2022 to the Court having jurisdiction for seizure made & panchnama carried on upto 19:15 hours on dated 18/06/2022 and it is clearly stated in F.I.R. that contraband muddamal – 54 grams of Mephedrone is seized and thus, seizure of contraband muddamal is forthwith brought to the knowledge of Ld. Magistrate having jurisdiction and it amounts to fully compliance

of provision made under Section 102(3) of Cr.P.C. Hence the said authority will not assist the Accused, considering different facts and circumstances and other reliable evidences on record.

(7.31). The Ld. Advocate for the Accused has vehemently argued that no noting and writing is being made whether the Accused wanted to get searched in the presence of any Gazetted Officer. In the present case, the Accused is being search in the presence of the Executive Magistrate / Gazetted Officer. If the Accused is not searched in the presence of the Gazetted Officer, then such issue arises, but when the Accused No. 1 is already being searched in presence of Executive Magistrate, then due compliance of provision of law is being made. Hence, the said defense of the Accused is not acceptable, more particularly when the signature of the Accused No. 1 is already taken in that regard. The Ld. Advocate for the Accused No. 1 has vehemently argued that the said signature is with regards to receipt of Notice under Section 50 of the Narcotic Drugs

and Psychotropic Substances Act, 1985. The signature of the Accused on the said notice will impliedly lead to presume that the Accused was asked to examine himself before the Gazetted Officer and had received the Notice under Section 50 of the Narcotic Drugs and Psychotropic Substances Act, 1985. Hence, the said defense of the Accused is not acceptable.

(7.32). The Ld. Advocate for the Accused has vehemently argued that the Report made to D.S.P. does not show signature of its receipt. The P.W. No. 15 – Kumarpalsinh Karansinh Gohil at Exh.-91 has clearly deposed on Page 11 that as it is a confidential letter. It is made noting in the Confidential / Inward Register of the D.S.P and not in the letter. Hence, the said defense of the Accused is not acceptable.

(7.33). The Ld. Advocate for the Accused has vehemently argued that Complaint was given by printing on simple paper and writing it thereafter. There is nothing wrong if the complaint is even given either written in

printed form or by writing it by handwriting. Hence, the said defense of the Accused is not acceptable.

(7.34). The Ld. Advocate for the Accused has vehemently argued that the starting time and ending time of writing the complaint is not stated there. There is no need of stating the time when started to write and when ended to write the complaint. The requirement as to when the complaint is being given or declared and the same is already there on the record and hence, the said defense of the Accused is not acceptable.

(7.35). The Ld. Advocate for the Accused No. 1 has vehemently argued that signature of Driver of Eco car – Mohan Ramji Parmar is not taken on any paper of raid. The Accused No. 1 was sitting in the Eeco car and had get down and driver had gone away with his eeco car. The search and seizure of the Accused No. 1 was made in the presence of the Executive Magistrate and independent Panch, which does not create any reasonable doubt and

therefore, absence of Mohan Ramji Parmar, when all the proceedings were carried on, is not fatal to the case of the prosecution.

(7.36). The Ld. Advocate for the Accused No. 1 has vehemently argued that P.W. No. 12 – PSO – Badalbhai Nileshbhai Chotaliya at Exh.-80 does not know what procedure is carried on at the place of offence, it is but natural that he was P.S.O and had not gone in the raid and therefore, he will not be aware with the procedure carried on at the place of offence and the same is not fatal to the case of the prosecution.

(7.37). The Ld. Advocate for the Accused No. 1 has vehemently argued that in the police statement of P.W. No. 12 – PSO – Badalbhai Nileshbhai Chotaliya at Exh.-80, F.I.R. number is written as a 11202045220425/2021, but the correct number is 11202045220425/2022. It clearly reveals from appreciation of all the evidence that the offence is of the year 2022 and not of 2021 and therefore, some typographical error / slip of pen is being had in the writing

statement of P.W. No. 12 – PSO – Badalbhai Nileshbhai Chotaliya at Exh.-80 and it was wrongly written as /2021 instead of /2022, but the evidence on record clearly shows that it was 2022 and such typographical error / slip of pen does not give any benefit to the Accused and is not fatal to the case of prosecution. Hence, the said defense of the Accused is not acceptable.

(7.38). The Ld. Advocate for the Accused No. 1 has vehemently argued that P.W. No. 1 – Panch – Vimalbhai Nareshkumar Mandali at Exh.-51 does not remember which day it was on the day of raid. The said P.W. No. 1 – Panch – Vimalbhai Nareshkumar Mandali at Exh.-51 has clearly deposed that he had gone with the police officer for raid at Khijadia by-pass on dtd.18/06/2022. The date is clearly mentioned. Only because as to which day it was, is not remembered by the said witness, it does not washout or create any doubt of its deposition on oath that he had gone with the police at the place of offence and all procedures was carried out by the police in his presence.

Hence, the said defense of the Accused is not acceptable.

(7.39). The Ld. Advocate for the Accused has vehemently argued that the copy of panchnama was not given to the Accused, when he was arrested with contraband muddamal. There is no need to give copy of panchnama to the Accused and when charge-sheet is being filed, then all the papers are required to be given to the Accused, which is already been given to the Accused in the present case. Hence, the said defense of the Accused is not acceptable.

(7.40). The Ld. Advocate for the Accused has vehemently argued that neither photography nor videography or sketch of place is being done in the present case. Doing the photography and videography is to corroborate the evidence of prosecution, but when the evidence of witnesses do inspire the confidence of the Court about truthfulness and arresting the Accused No. 1 and seizing 54 grams of Mephedrone from his possession,

then it does not require any corroboration from the photography and videography and therefore, it is not fatal to the case of the prosecution.

(7.41). The Ld. Advocate for the Accused has vehemently argued that in the opinion at Exh.-77 of F.S.L. Report, opinion is given of probability. The F.S.L. carried out at the place of offence is of preliminary test and therefore, preliminary opinion is being given of its being probability of Mephedrone. The final conformity test is to be carried out in the laboratory, which was carried out in the present case at F.S.L. Gandhinagar (Narcotic Department) and is duly supported by the deposition of the P.W. No. 14 – Rituben Manojkumar Sharma at Exh.-89, wherein she has finally given opinion that the sample sent to them from seized muddamal is Mephedrone. Thus, it is well settled that test carried out at the place of offence by F.S.L. is preliminary test and conformity test is given in Report at Exh.-90 by the F.S.L. Officer, Gandhinagar. Hence, it does not create any

sought of doubt that the seized muddamal was the Mephedrone or not, or was any other substance. The evidence clearly proves that the seized muddamal was Mephedrone which is contraband substance. Hence, the said defense of the Accused is not acceptable.

(7.42). The Ld. Advocate for the Accused No. 1 has vehemently argued that the P.W. No. 11 – Dr. Astitva Janojkumar Anand at Exh.-75 had not asked name and address of the arrested person. It is not duty of the F.S.L. Officer as to from whom the said muddamal is being seized. The duty of F.S.L. officer is to go at the place of offence and carry on the preliminary test at the place of offence of contraband substance and to give preliminary opinion, whether it is contraband substance or not? Hence, the said defense of the Accused is not acceptable.

(7.43). The Ld. Advocate for the Accused has vehemently argued that examination of sample by the F.S.L. Gadhinar is carried on dtd. 23/09/2022. It reveals from the Yadi at Exh.-

90 that sample of Muddamal seized on dtd.18/06/2022, was sent by letter dtd. 19/06/2022, which was received on dtd. 20/06/2022 by the F.S.L. Office and due to work load, the same is being examined on dtd.23/09/2022 and during the test, it has reveals that it is a Mephedrone. Delay in testing may derogate the quality of the substance and result may come in Negative due to delay, but in the present case even examination after delay, the quality of the sample is being not derogated and the test has clearly revealed it as Mephedrone, which has supported the case of the prosecution. Hence, the said defense of the Accused is not acceptable.

(7.44). The Ld. Advocate for the Accused has relied on the decision delivered by the Hon'ble Supreme Court (Coram : Hon'ble Justice Mr. Dipankar Datta & Hon'ble Justice Mr. Manmohan, JJ) in case of **6SUREPALLY SRINIVAS Vs. THE STATE OF ANDHRA PRADESH (NOW STATE OF**

<sup>6</sup> **SUREPALLY SRINIVAS Vs. THE STATE OF A.P. (NOW STATE OF TELANGANA)**  
**: 2025 SAR (CRI) 586 = CA 1474/25, D/-25/3/25**

TELANGANA), wherein held that from the evidence on record, it can be seen and it is clear that the seized contraband was not properly sealed and seized contraband produced before the trial court after 15 days of its seizure and therefore the Possibility of tampering during this 15 days period cannot be totally ruled out. Not only has there been no substantial compliance of the standing order, the departure has also not been justified. **In the Present case**, contraband muddamal was seized on dated 18/06/2022 and sample is sent immediately to FSL on dated 19/06/2022 and received on dated 20/06/2022 and therefore there is no scope for tampering with sample. Moreover, Central Government made the Narcotic Drugs and Psychotropic Substances (Seizure, Storage, Sampling and Disposal) Rules, 2022, was not in force on date of seizure of contraband muddamal on dated 18/06/2022. Hence the said authority will not assist the Accused, considering different facts and circumstances and other reliable evidences on record.

(7.45). The Ld. Advocate for the Accused has vehemently argued that P.W. No. 2 – Panch – Kuldeep Prafulbhai Misan at Exh.-54 and P.W. No. 3 – Panch - Vasantbhai Nathubhai Rathod at Exh.-56 have not supported the case of the Prosecution. The said two Panchs are with regards to producing of the seized and sealed muddamal before the P.S.O. The evidence clearly shows that the muddamal was packed and sealed properly at the place of offence when the sample muddamal was sent to the F.S.L. It was found properly packed and sealed. Under such circumstances, even if both the Panchas turn hostile with regards to depositing of packed and sealed muddamal to the P.S.O., then also when other evidence clearly prove the same, then it does not create any doubt on the case of the prosecution and the Accused does not get any benefit for the same.

(7.46). The Ld. Advocate for the Accused has vehemently argued that P.W. No. 8 – Maheshbhai Mansukhbhai at Exh.-68 has not supported the case of the prosecution. If we go

through his deposition then weight as per him may be 175 or 80 gram. The evidence clearly shows that it is 54 grams. Even if the contraband muddamal was 80 or 175 grams, then also it was commercial quantity as more than 50 grams is commercial quantity of Mephedrone. Moreover the sample A1 received by the F.S.L. was containing 5 grams of substance as per deposition of the F.S.L. officer. Moreover, later on inventory was carried on before the Ld. Magistrate, wherein the remaining substance were also found. Thus, the substance seized was more than 50 grams and therefore, it is commercial quantity.

(7.47). The Ld. Advocate for the Accused has vehemently argued that P.W. No. 10 – Mohanbhai Ramjibhai Parmar at Exh.-72 who was Driver / Owner of Eco Car G.J.-10-BR-8790 does not support the case of the prosecution. If we go through his deposition, then he has clearly deposed that he was stopped by the police at Khijadia by-pass and had verified the papers of vehicle and after getting passenger down, he was permitted to

go. Thus, it clearly support the case of prosecution that his Eco car was prevented by the police and the passengers sitting therein (including the Accused No. 1) were asked to get down and then the driver of the said Eco car was permitted to go. It clearly shows that the police had undoubtedly intervened the said vehicle and get down the Accused No. 1 from it and the other evidence on record clearly shows that 54 grams of Mephedrone was seized from the possession of the Accused No. 1.

(7.48). The Ld. Advocate for the Accused has relied on the decision delivered by the Hon'ble High Court of Gujarat (Coram : Hon'ble Justice S.L. Talati & Hon'ble Justice I.C. Bhatt, JJ) in case of <sup>7</sup>VAJIR NAGJI KESHRAJI Vs. STATE OF GUJARAT, wherein held that **when panch witnesses examined and did not support the prosecution**, then the circumstance tried to be proved held to be of a **doubtful nature**. The Ld. Advocate for the Accused has relied on the decision delivered by the

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<sup>7</sup> VAJIR NAGJI KESHRAJI Vs. STATE OF GUJARAT  
: 1983 G.L.H. 1076 = CrA 274/80, D/-11/4/83

Hon'ble Supreme Court (Coram : Hon'ble Justice K.G. Balakrishnan & Dr. A.R. Lakshmanan, JJ) in case of <sup>8</sup>**STATE OF RAJASTHAN Vs. TEG BAHADUR**, wherein it is held that the evidence of a hostile witness would not be totally rejected if spoken in favour of the prosecution or the accused, but it can be subjected to close scrutiny and that portion of the evidence which is consistent with the case of the prosecution or defense may be accepted.

(7.49). The Ld. Advocate for the Accused has relied on the decision delivered by the Hon'ble High Court of Gujarat (Coram : Hon'ble Justice A.M. Kapadia & Justice K.A. Puj, JJ) in case of <sup>9</sup>**GAFAR GANIBHAI MANSURI Vs. STATE OF GUJARAT**, wherein it is held that Section 55 of the Act deals with Police to take charge of articles seized and delivered. It provides that Officer in charge of police station shall allow any officer depositing the seized articles to affix his seal to such articles or to take samples of and from them and all

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8 *STATE OF RAJASTHAN Vs. TEG BAHADUR AND ORS.*  
: IV (2004) CCR 96 (SC) = CA 639/98, D/-14/3/97

9 *GAFAR GANIBHAI MANSURI Vs. STATE OF GUJARAT : CA 380/2000, D/-30/11/06*

samples so taken shall also be sealed with a seal of the officer-in-charge of the police station. It is further held that the Central Government issued Standing Instruction / Orders u/S. 55 of the Act Standing Order No. 1/88 dated 15/03/1988, Standing Order No. 2/88 dated 11/04/1988 and Standing Order No. 1/89 dated 13/06/1989 are required to be looked into. Standing Instruction 1/88 speaks about procedure regarding drawl, storage, testing and disposal of samples from seized narcotic drugs and psychotropic substances. Standing Order No. 2/88 deals with receipt, custody, storage and disposal of seized/confiscated narcotic drugs and psychotropic substances. Standing Order No. 1/89 relates to general procedure for sampling, storage etc. In the present case, those standing orders are duly complied with as revealing from the evidence on record.

(7.50). The Ld. Advocate for the Accused has relied on the decision delivered by the Hon'ble High Court of Bombay (Coram : Hon'ble Justice Ahmed S.S. Parkar, J) in case of <sup>10</sup>**AHMED**

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10 **AHMED ADENWALA KOLA Vs. V.M. DOSI : 2001 ALL MR (CRI) 857**

**ADENWALA KOLA Vs. V.M. DOSI**, wherein it is held that Section 57 of the Act and under Sub-section 6 and 8 of Section 100 of the Cr.P.C. strengthens the doubt in the prosecution case and vitiates the investigation. In the present case, report of all the particulars of such arrest and seizure is already made to his immediate superior officer within 48 hours and provision of Section 57 of NDPS Act, is duly complied with. Hence the said authority will not assist the Accused, considering different facts and circumstances and other reliable evidences on record.

(7.51). The Ld. Advocate for the Accused has relied on the decision delivered by the Hon'ble High Court of Gujarat (Coram : Hon'ble Justice Mr. M.G. Nandi & Hon'ble Justice Mr. Ravi R. Tripathi, JJ) in case of <sup>11</sup>**BAUBHAI DALAJI MALI Vs. STATE OF GUJARAT**, wherein it is held that in our opinion the requirement Section 42(2) of the Act would be required to be complied with when the appointed/empowered officer acts on prior information

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<sup>11</sup> = CA 211/97, D/-30/11/2000  
**BAUBHAI DALAJI MALI Vs. STATE OF GUJARAT : CA 387/99, D/-31/7/03**

irrespective of whether search and seizure is carried out in a public place, or these not. For these reasons we are of the view that the provisions of Section 42(2) of the Act are attracted in the present case. It is further held that even the person who received original exhibit-38 in the office of DSP control room has not been examined as witness which would suggest delivery of original exhibit-38 to DBP's control room office. It is further held that it is pertinent to note that the statement of control room is admittedly not recorded. **In the present case**, it is clearly proved from the evidence of witnesses that written report was made to D.S.P., Jamnagar. Under such set of evidence, it can't be accepted that there is breach of Section 42(2) of NDPS Act. Hence the said authority will not assist the Accused, considering different facts and circumstances and other reliable evidences on record.

(7.52). The Ld. Advocate for the Accused has relied on the decision delivered by the Hon'ble Supreme Court (Coram : Hon'ble Justice Mr. Rohinton Fali Nariman & Hon'ble Justice Mr.

Navin Sinha, JJ) in case of <sup>12</sup>**GANGADHAR @ GANGARAM Vs. STATE OF MADHYA PRADESH**, wherein held that **panchayat records are public documents** and would have been the **best evidence to establish the ownership and possession of the house** and **Police investigation was very extremely casual, perfunctory and shoddy in nature**. In view of the nature of evidence available, it is **not possible to hold that the prosecution had established conscious possession of the house with the appellant so as to attribute the presumption under the NDPS Act against him with regard to recovery of the contraband and conviction could not be based on a foundation of conjectures and surmises to conclude on a preponderance of probabilities**, the guilt of the appellant without establishing the same beyond reasonable doubt and **conviction** of the appellant is held to be **unsustainable** and is set-aside and the appellant is acquitted. In the **present case**, contraband muddamal is not seized from house of Accused, but from the conscious possession of the Accused No. 1.

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<sup>12</sup> **GANGADHAR @ GANGARAM Vs. STATE OF MADHYA PRADESH**  
: 2020 SAR (Cr.) 916 = CrA 504/20, D/- 5/8/20

Moreover the case is proved from the evidence of the witnesses and no doubt is created about committing of offence by Accused No. 1. Hence the said authority will not assist the Accused, considering different facts and circumstances and other reliable evidences on record.

(7.53). Thus, the prosecution has proved beyond reasonable doubt that the Accused No. 1 as committed offence and is liable to be punished under Section 22(c) of NDPS Act.

(8). As per the case of the prosecution, the Accused No. 2 is made accused on the ground that he had asked the Accused No. 1 to bring the said Mephedrone for him. There is no cogent evidence to prove the same except the statement of Co-accused No. 1. It is well settled law that based on statement of only co-accused, no person can be convicted. Apart from the statement of co-accused No. 1, the prosecution has tried to link the Accused No. 2 on the basis of call details between the Accused No. 2 and 1. The Accused No. 2 is

brother of the Accused No. 1 and therefore, it is but natural that both the brothers will be talking on the phone time and again, but it is not sufficient to convict the Accused No. 2, but there should be some other cogent evidence. It is admitted by P.W. No. 18 – Mrudalbhai Upendrabhai Bhatt in his cross-examination at Exh.-125 that they have not given audio recording of mobile talk to the police and no audio recording remains with the mobile company of any calls and further admitted that he cannot say which person is talking from which mobile to which person on which mobile number and further admitted that he cannot say what talk was had in the mobile between co-accused. Thus, only because the Accused No. 1 and 2 are brothers and were talking on mobile, could not conclude that the Accused No. 2 is liable for the alleged offence. Except the same, there is nothing on record, which could convince the Court to convict the Accused No. 2 and hence, the Accused No. 2 is entitled to get acquittal from the alleged offence punishable for the offence under Section 22(c) read with Section

29 of the Narcotic Drugs and Psychotropic Substances Act, 1985. In para 158 of the decision of this Court in <sup>13</sup>**TOFAN SINGH Vs. STATE OF T.N.**, the Hon'ble Supreme Court held that a **statement recorded under Section 67 of the NDPS Act cannot be used as a confessional statement** in the trial of an offence under the NDPS Act.

- (9.1). With regards to Accused No. 3 – Adil, it is case of the prosecution that he had delivered the 54 grams of Mephedrone to the Accused No. 1 and the Accused No. 1 and 3 were seen together in Mumbai Railway Station and for the same, he has relied on C.C. TV footage. The Panch of the panchnama pertaining to the said C.C. TV footage are examined as P.W. No. 4 – Imranbhai Mamadbhai Khira at Exh.-57 and P.W. No. 5 – Dilipbhai Nanalal Ramavat at Exh.-59, who have clearly denied that police have taken C.C. TV footage in their presence and converted into DVD. Thus, both the Panch witnesses does not support the facts of taking C.C. TV footage as per Panchnama at Exh.-58 and therefore, whether

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13 **TOFAN SINGH Vs. STATE OF T.N. : 2021(4) SCC 1 = 2021(2) SCC (CrA) 246**

the said C.C. TV footage was in fact taken and converted into DVD in presence of Panch witnesses or not? is seriously doubted.

(9.2). The Ld. Advocate for the Accused has relied on the decision delivered by the Hon'ble Supreme Court (Coram : Hon'ble Justice B.R. Gavai, Hon'ble Justice Prashant Kumar Mishra & Hon'ble Justice K.V. Viswanathan, JJ) in case of <sup>14</sup>CHANDRABHAN SUDAM SANAP Vs. THE STATE OF MAHARASHTRA, wherein it is held that we must eschew, for the present purposes, the electronic evidence in the form of CDRs which was without any appropriate certificate under Section 65-B(4) of the Evidence Act. It is further held that we are not able to place any reliance on the CCTV footage, insofar as an attempt is made by the prosecution to attribute that the appellant and the deceased EA were last seen together based on the CCTV footage.

(9.3). The Ld. Advocate for the Accused has relied

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<sup>14</sup> CHANDRABHAN SUDAM SANAP Vs. THE STATE OF MAHARASHTRA  
: 2025 INSC 116 = CA 879/19, D/-28/1/25

on the decision delivered by the Hon'ble Supreme Court (Coram : Hon'ble Justice Abhay S. Okha, Hon'ble Justice Ahsanuddin Amanullah & Hon'ble Justice Augustine George Masih, JJ) in case of <sup>15</sup>**RANDEEP SINGH @ RANA Vs. THE STATE OF HARYANA**, wherein it is held that most importantly, the prosecution failed to produce the certificate under Section 65B of the Evidence Act concerning the CD. Therefore, the evidence in the form of the CD will have to be kept out of consideration as it is not admissible in evidence.

- (9.4). The prosecution has tried to link the Accused No. 3 on the basis of call details. It is admitted by P.W. No. 13 – Bharatbhai Ramabhai Patel in his cross-examination at Exh.-83 that no audio recording remains with company and they have not given any audio recording of the mobile to the police and further admitted that the said mobile is not in the name of the Accused No. 3 – Mohamad Adil and further admitted that another person can use the

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<sup>15</sup> **RANDEEP SINGH @ RANA Vs. THE STATE OF HARYANA : 2025 SAR (CRI) 66 = 2024 SAR ONLINE (SC) 912 = 2024 INSC 887 = CA 297/24, D/-22/11/24**

mobile of another person and they cannot say which person from which mobile had talked to which person on which mobile. Thus, the said mobile is not of the Accused No. 3.

- (9.5). It is admitted by P.W. No. 17 – Jaypalsinh Pradipsinh Shodha – I.O. in his cross-examination at Exh.-120 that no offensive thing is got from the Accused No. 3 and further admitted that no muddamal or mobile is seized from Accused No. 3 and no call details of the Accused No. 3 is being received and it is admitted by P.W. 16 – I.O. – Mansurbhai Rambhai Savseta in his cross-examination at Exh.-103 that they have not produced certificate of DVD having C.C. TV footage and further admitted that the C.C. TV footage is not received by doing Panchnama and they have not done Panchnama with regards to any pen drive given by RPF, Head Constable and not recorded the statement of said RPF – Head constable. He has further admitted that he had not sealed the pen drive received from Bombay Railway Station, but was in open condition and further admitted

that he had not recorded the statement of any Railway Officer and further deposed that the Pen drive from which the DVD was prepared is lying in the police station and there is no panch slip with the DVD cover and further admitted that no Muddamal and any substance contraband under the Narcotic Drugs and Psychotropic Substances Act, 1985, is being seized from the Accused No. 2 and 3 and further admitted that no voice sample of the Accused No.2 – Samir and Accused No. 3 – Adil is sent to F.S.L. and further admitted that no bill of DVD has been produced and further admitted that the mobile number reveals of the Accused No. 3 is not of the ownership of the Accused No. 3 and further admitted that it is not seen in C.C. TV footage that the Accused No. 3 had given anything to the Accused No. 1.

(9.6). Thus, the mobile number shown of the Accused No. 3 is not of the ownership of the Accused No. 3. Even in C.C. TV footage it is not seen that the Accused No. 3 is giving anything to the Accused No. 1. Moreover,

both the Panch witnesses with regards to C.C. TV footage are not supporting the case of the prosecution. No statement of RPF or any Railway Officer is being recorded. No F.S.L. report with regards to non-editing of C.C. TV footage is on record. Under such circumstances, these evidences are not sufficient to convict the Accused No. 3 for the alleged offence and therefore, the Accused No. 3 is entitled to get acquittal for alleged offence punishable under Section 22(c) read with Section 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985.

- (10). Thus, on appreciation of evidence and for the reason stated here-in-above, the prosecution has proved that the Accused No. 1 has committed the offence punishable under Section 22(c) for contravention of Section 8(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985, whereas the prosecution has failed to prove that the Accused No. 2 and 3 have committed the offence punishable under Section 22(c) read with Section 29 of the Narcotic Drugs and

Psychotropic Substances Act, 1985 and therefore, the Accused No. 1 is required to be convicted, whereas the Accused No. 2 and 3 are entitled to get benefit of doubt, due to insufficient evidence on record and to get an acquittal from the alleged offence.

(11.1). It is held in <sup>16</sup>LIYAKAT Vs. STATE OF UTTARANCHAL that for a crime to be proved it is not necessary that the crime must be seen to have been committed and must, in all circumstances be proved by direct ocular evidence by examining before the Court those persons who had seen its commission. The offence can be proved by circumstantial evidence also. The principal fact or factum probandum may be proved indirectly by means of certain inferences drawn from factum probans, that is, the evidential facts. To put it differently, circumstantial evidence is not direct to the point in issue but consists of evidence of various other facts which are so closely associated with the fact in issue that taken together they form a chain of circumstances from which the existence of the

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16 *LIYAKAT Vs. STATE OF UTTARANCHAL : AIR 2008 SC 1537*

principal fact can be legally inferred or presumed.

(11.2). It is observed in the decision delivered by the Hon'ble Supreme Court (Coram : Hon'ble Justice M. M. Dutt and Hon'ble Justice K. Jagannatha Shetty, JJ) in case of <sup>17</sup>**APPABHAI Vs. STATE OF GUJARAT** that **contradiction of a minor nature in the evidence of a victim, should not carry undue importance and the condition of the mind of the victim at the time of assault should be duly considered.** It is further held that the Court while appreciating the evidence must not attached undue importance to minor discrepancies. The **discrepancies which do not shake the basic version of the prosecution case may be discarded.**

(11.3). It is held in the decision delivered by the Hon'ble Supreme Court (Coram : Hon'ble Justice Swatanter Kumar and Hon'ble Justice Fakkir Mohamed Ibrahim Kalifulla, JJ) in case of <sup>18</sup>**RAVI KAPUR Vs. STATE OF**

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17 **APPABHAI Vs. STATE OF GUJARAT**  
: 1988(2) G.L.R. 823 = Cr.A. 318-489/82, D/- 5/2/88

18 **RAVI KAPUR Vs. STATE OF RAJASTHAN**  
: 2012 Cr.L.J. 4403 = Cr.A. 1838/09, D/- 16/8/12

RAJASTHAN that we find their statements worthy of credence and there is no occasion for the Court to disbelieve these witnesses. It is settled principle that the variations in the statements of witnesses which are neither material nor serious enough to affect the case of the prosecution adversely are to be ignored by the Court.

(11.4). It is held in the decision delivered by the Hon'ble Supreme Court (Coram : Hon'ble Justice Swatanter Kumar and Hon'ble Justice Fakkir Mohamed Ibrahim Kalifulla, JJ) in case of <sup>19</sup>KURIA Vs. STATE OF RAJASTHAN, that discrepancies or improvements, which do not materially affect the case of the prosecution and are insignificant and cannot be made the basis for doubting the case of the prosecution on such discrepancies or improvements. It is further held that where it does not affect the core of the prosecution case, such discrepancy should not be attached undue significance. The normal course of human conduct would be that while narrating a particular incident, there may occur minor

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19 KURIA Vs. STATE OF RAJASTHAN : 2012 Cr.L.J. 4707 = Cr.A. 2488/09, D/- 13/9/12

**discrepancies**. Such discrepancies may even in law render credential to the depositions. The improvements or variations must essentially relate to the material particulars of the prosecution case. The alleged improvements and **variations must be shown with respect to material particulars** of the case and the occurrence. Every such **improvement, not directly relate to the occurrence is not a ground to doubt the testimony of witness.**

(11.5). It is being held by the Hon'ble Supreme Court of India in it's decision delivered in case of <sup>20</sup>**PANDAPPA HANUMAPPA HANAMAR Vs. STATE OF KARNATAKA** that eye-witness found natural and probable witness and only minor contradictions in evidence of eye-witness between his statement under Sec. 161 of Cr.P.C. and deposition in Court and evidence of other eye-witness who turned hostile not liable to be totally rejected and insignificant contradictions found in their evidence being not material liable to be disregarded.

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<sup>20</sup> **PANDAPPA HANUMAPPA HANAMAR Vs. STATE OF KARNATAKA**  
: A.I.R. 1997 S.C. 3663 = Cr.A. 90/94, D/- 28-2-97

(11.6). The **human mind** is an imperfect instrument which in attempting to grasp facts, unconsciously twists and turns them often. A witness cannot be expected to possess a **photographic memory** and to recall the details of an incident. It is not as if a **video tape** is replayed on a mental screen. It so happens that a witness is overtaken by events. The witness could not have anticipated the occurrence which often has an element of surprise. The mental faculties therefore, cannot be expected to be attuned to absorb the details. Different witnesses **react differently** under different situations, whereas some become speechless, some start wailing, while some others run away from the scene and yet, there are some who may come forward with courage, conviction and belief that the wrong should be remedied. There cannot be any set pattern or uniform rule of **human reaction** and to discard a piece of evidence on the ground of his reaction not falling within a set pattern, is unproductive and a pedantic exercise. As it is laid down in <sup>21</sup>**KOLI BHOPA PREMJI Vs.**

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21 ***KOLI BHOPA PREMJI Vs. STATE OF GUJARAT – 2004(1) GLR 592***

**STATE OF GUJARAT.**

(11.7). The evidence cannot be read **in piece meal** and defense cannot take advantage of reading some one or two portions here and there from evidence of witness. The evidence is required to be read as **a whole** and thereafter, it is required to be weighed and appraised, as it is laid down in <sup>22</sup>**BHUPENDER SHARMA Vs. STATE OF H.P. .**

(11.8). Minor **contradictions** cannot affect the prosecution case. Only those contradictions that lead to inference of **impossibility or improbability** of prosecution version can have adverse impact, as held in <sup>23</sup>**KRISHNA GOWDA Vs. STATE OF KARNATAKA.**

(11.9). **Normal discrepancies** in evidence are those which are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of occurrence and those are always there, however, honest and truthful a

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<sup>22</sup> ***BHUPENDER SHARMA Vs. STATE OF H.P. : 2004(1) GLR (SC)761***  
<sup>23</sup> ***KRISHNA GOWDA Vs. STATE OF KARNATAKA : AIR 2017 SC 1657***

witness may be. **Material discrepancies** are those which are not normal, and not expected of a normal person. Courts have to label the category to which a discrepancy may be categorized. While normal discrepancies do not corrode the credibility of a party's case, material discrepancies do so. The ratio is laid down in <sup>24</sup>**SHAMIM Vs. STATE (DELHI)** and <sup>25</sup>**KULESH MONDAL Vs. STATE OF WEST BENGAL.**

(11.10). It is held in the decision delivered by the Hon'ble Supreme Court of India in case of <sup>26</sup>**BHARWADA BHOGIN HIRJI Vs. STATE OF GUJARAT** that discrepancies which do not go to the root of the matter and shake the basic version of the witnesses, therefore cannot be annexed with undue importance moreso when the all important "probabilities-factor" echoes in favour of the version narrated by the witnesses. In the present case, the eye-witnesses echoes in favour of the version narrated by the Original Complainant and deposition of Original Complainant build

<sup>24</sup> *SHAMIM Vs. STATE (DELHI) : AIR 2018 SC 4529*

<sup>25</sup> *KULESH MONDAL Vs. STATE OF WEST BENGAL : AIR 2007 SC 3228*

<sup>26</sup> *BHARWADA BHOGIN HIRJI Vs. STATE OF GUJARAT : AIR 1983 SC 753= 1993 Cr.L.J. 1096 = Cr.A. 68/77, D/- 24/5/83*

up the confidence of the Court that it would be prudent to record the conviction based on the evidences which are sufficient to convict.

(11.11). It is held in the decision delivered by the Hon'ble Supreme Court of India in case of <sup>27</sup>**STATE OF U.P. Vs. ANIL SINGH** that the Court should make an effort to disengage the truth from falsehood and to sift the grain from the chaff. It is necessary to remember that a Judge does not preside over a criminal trial merely to see that no innocent man is punished. A Judge also presides to see that a guilty man does not escape. One is as important as the other and both are public duties which the Judge has to perform. It is held in the decision delivered by the Hon'ble Supreme Court of India in case of <sup>28</sup>**SHIVAJI SAHEBRAO BOBADE Vs. STATE OF MAHARASHTRA** that a miscarriage of justice may arise from the acquittal of the guilty no less than from the conviction of the innocent, if excessive solicitude reflected in the attitude that a thousand guilty men may go

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27 **STATE OF U.P. Vs. ANIL SINGH**  
: AIR 1988 SC 1998 = 1980 All Cri R 232 = Cr.A. 671-672/80, Dt.26/8/88

28 **SHIVAJI SAHEBRAO BOBADE Vs. STATE OF MAHARASHTRA** : AIR 1973 SC 2622

but one innocent martyr shall not suffer is a false dilemma. It is held in the decision delivered by the Hon'ble Supreme Court of India in case of <sup>29</sup>COLLECTOR OF CUSTOMS, MADRAS Vs. D. BHOORMULL that one of the fundamental rule relating to proof in all criminal or quasi-criminal proceedings, is that the prosecution is not required to prove its case with mathematical precision to a demonstrable degree; for, in all human affairs absolutes certainty is a myth, and as Prof. Brett felicitously puts it - "all exactness is a fake". The law does not require the prosecution to prove the impossible. All that it requires is the establishment of such a degree of probability that a prudent man may, on its basis, believe in the existence of the fact in issue. Thus legal proof is not necessarily perfect proof, often it is nothing more than a prudent man's estimate as to the probabilities of the case. It is further held that for weighing evidence and drawing inferences from it, there can be no canon. Each case presents its own peculiarities and in each common sense and shrewdness must be brought to bear upon the

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29 COLLECTOR OF CUSTOMS, MADRAS Vs. D. BHOORMULL : AIR 1974 SC 859

facts elicited. The decision delivered in case <sup>30</sup>**GURBACHAN SINGH Vs. SATPAL SINGH**, is referred, wherein held that the conscience of the court can never be bound by any rule but that is coming itself dictates the consciousness and prudent exercise of the judgment. Reasonable doubt is simply that degree of doubt which would permit a reasonable and just man to come to a conclusion. Reasonableness of the doubt must be commensurate with the nature of the offence to be investigated. Exaggerated devotion to the rule of benefit of doubt must not nurture fanciful doubts or lingering suspicions and thereby destroy social defense. Justice cannot be made sterile on the plea that it is better to let hundred guilty escape than punish an innocent. Letting guilty escape is not doing justice, according to law. In the present case, on appreciation of the evidences on record, it do not raise any doubts which are reasonable and therefore it would be proper to record conviction of Accused, when a prudent will believe that the doubts are not reasonable based on the evidences on record.

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30 *GURBACHAN SINGH Vs. SATPAL SINGH : AIR 1990 SC 209*

(11.12). It is held in the decision delivered by the Hon'ble Gujarat High Court in case of <sup>31</sup>**STATE OF GUJARAT Vs. RAVJI JETHA PADHIYAR** that there is no jacket-type formula or any provision of law which lays down that as a matter of course in every criminal proceeding independent witnesses have to be examined. Independent witnesses are to be examined for corroboration. The examination of independent witnesses is just like a safety valve because normally persons other than independent witnesses would be interested and, therefore, would always be interested to give biased and one-sided version so as to see that the other side is convicted. It is in this background that corroboration by independent witnesses is needed. But non-examination of independent witness by itself may not be a ground to discard rest of the evidence if otherwise is found reliable and trustworthy. The Ld. A.P.P. has submitted that corroboration means support. It is too well known that need for corroboration for accepting the evidence of any witness arises

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31 **STATE OF GUJARAT Vs. RAVJI JETHA PADHIYAR : 1996(3) G.L.R. 483**

only and only when the Court is not wholly satisfied regarding the credibility of that particular witness. Accordingly, once the judicial mind and conscience is clear and satisfied enough as regard the truthfulness and genuineness of any particular witness, it is indeed not necessary to look for any corroboration. Corroboration is simply "rule of prudence" and not one of "rule of law". It is entirely a matter of judicial discretion depending upon the facts and circumstances of that particular case wherein may or may not call in aid and dispense with the need for the corroboration.

(11.13). Even when major portion of evidence of a witness is found unreliable, **the remaining part** of evidence, if inspired confidence and sufficient to prove the guilt of accused, the conviction can be based thereon as held in <sup>32</sup>ASHOK SOMALAL THAKKAR VS. STATE OF GUJARAT.

(11.14). It is a misconceived notion that merely because a witness is declared **hostile**, his

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<sup>32</sup> *ASHOK SOMALAL THAKKAR VS. STATE OF GUJARAT: 2007(3) GLR 2114*

entire evidence should be excluded or rendered unworthy of consideration. In appropriate cases, the Court can rely upon the **part of testimony** of such witness, if that part of the deposition is found to be credit-worthy, as held in <sup>33</sup>**GUDU RAM Vs. STATE OF HIMACHAL PRADESH** and <sup>34</sup>**RAMESHBHAI M. KOLI Vs. STATE OF GUJARAT.**

(11.15). It is held in the decision delivered by the Hon'ble Gujarat High Court in case of <sup>35</sup>**JYANTILAL KUBERDAS SHARMA Vs. STATE OF GUJARAT** that while appreciating the evidence, truth lying in it is to find and proof beyond reasonable doubt is only guidelines. The Court has to take care that whether any innocent person is not punished on consideration of evidence on record ? If on appreciation of evidence on record, it inspires the confidence of the Court that Accused has committed offence, then the Accused cannot be acquitted on the ground of proof beyond reasonable doubt because it amount to

33 *GUDU RAM Vs. STATE OF HIMACHAL PRADESH : 2013 SCC (11) 546*

34 *RAMESHBHAI M. KOLI Vs. STATE OF GUJARAT : 2011 (1) GLR (SC) 860*

35 *JYANTILAL KUBERDAS SHARMA Vs. STATE OF GUJARAT : 2007(1) G.L.R. 99*

mockery of justice.

(11.16). It is held in the decision delivered by the Hon'ble Supreme Court in case of <sup>36</sup>BINAYKUMAR SINGH Vs. STATE OF BIHAR that evidence of single witness is sufficient to convict the Accused.

(11.17). It is the **quality** of the evidence and not the **quantity** of the evidence which is required to be judged by the Court to place credence on the statement as held in <sup>37</sup>HARBEER SINGH Vs. SHEESH PAL. Law does not require any particular **number of witnesses** to prove a fact and the Public prosecutor need not require examine all witnesses cited by police in the Charge-Sheet, as held in <sup>38</sup>MOHMAD SALIM I. QURESHI Vs. STATE OF GUJARAT.

(11.18). As regards appreciation of evidence, the settled principle is that a Judge does not preside over a criminal trial, merely to see that no **innocent** man is punished. A judge also presides to see that **guilty** man does not

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36 *BINAYKUMAR SINGH Vs. STATE OF BIHAR : A.I.R. 1997 SC 322*

37 *HARBEER SINGH Vs. SHEESH PAL : AIR 2016 SC 4958*

38 *MOHMAD SALIM I. QURESHI Vs. STATE OF GUJARAT : 2006(3) GLR 2385*

escape. Both are public duties. Justice cannot be made sterile on the plea that it is better to let **a hundred guilty** escape than punish **an innocent**. Letting the guilty escape is not doing justice according to law. The **proof beyond reasonable doubt** is mere guide-line and not fetish. Reasonable doubt is not an imaginary, trivial or merely possible doubt, but **a fair doubt** based upon reason and common sense. There cannot be a prosecution case with **a cast-iron perfection** in all respects and reason being that the perfection to that degree in ordinary course of human life is an utopian thought. The said law is lay down in <sup>39</sup>**SURESH CHANDRA JANA Vs. STATE OF W. B.** and <sup>40</sup>**JAYANTILAL KUBERDAS SHARMA Vs. STATE OF GUJARAT.** A **miscarriage of justice** which may arise from the acquittal of guilty is not less than from the conviction of an innocent as held in <sup>41</sup>**ALLARAKHA K. MANSURI Vs. STATE OF GUJARAT.**

(11.19). In the criminal cases, the Court cannot

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39 *SURESH CHANDRA JANA Vs. STATE OF W. B. : 2017 SCC (16) 466*  
40 *JAYANTILAL KUBERDAS SHARMA Vs. STATE OF GUJARAT : 2007(1) GLR 99*  
41 *ALLARAKHA K. MANSURI Vs. STATE OF GUJARAT : AIR 2002 SC 1051*

proceed to consider the evidence of the prosecution witnesses in a **mechanical way**. The broad features of the prosecution case, the probabilities and normal course of human conduct of a prudent person are some of the factors which are always kept in mind while evaluating the merit of the case, as it is laid down in <sup>42</sup>HARDEEP Vs. STATE OF HARYANA.

(11.20). Obviously, proof is an integral part of any justice system. Therefore, there is a need for rules as to who must prove what. Especially, these rules are necessary for two important purposes, like that, (i) the rules will determine who has the right to call evidence first at the Court proceedings and (ii) the nature of proof would enable the Court of law to reach a conclusion as to the existence or non-existence of a fact. In criminal case, it is a matter of common knowledge that the onus of proof of complicity or offence charged with, beyond reasonable doubt lies on the prosecution from first to last. Section 101 of the Evidence Act, 1872, speaks in favour of

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<sup>42</sup> *HARDEEP Vs. STATE OF HARYANA : AIR 2002 SC 3018*

this principle.

(11.21). As per the provision of the Indian Evidence Act, it is a bounded duty and the law casts the burden of proof to prove the case beyond reasonable doubt on the prosecution, which they have succeeded to prove qua Accused in the present case. It is the settled principles of criminal justice that let one hundred Accused be acquitted but one innocent should not be convicted, but equally true that real culprits / offender should not let go free. Taking into consideration the provision the criminal jurisprudence and the Indian Evidence Act, if the oral as well as documentary evidence of the present case is appreciated, then based on the said evidence, Accused No. 1 could safely be convicted, for the alleged offence under Section 22(c) for violation of Section 8(c) of Narcotic Drugs and Psychotropic Substances Act, 1985. Thus, when the alleged offence are proved beyond reasonable doubt and evidences are sufficient to convict the Accused No. 1, then the Accused is not entitled to get benefit of doubt and if Accused

No. 1 is convicted, then it will be just, proper, reasonable and legal.

(11.22). Proof beyond reasonable doubt need not reach certainty, but it must carry a high degree of probability. Proof beyond reasonable doubt means proof beyond the shadow of doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favour which can be dismissed with the sentence ‘of course, it is possible, but not in the least probable’. The case is proved beyond reasonable doubt, but nothing short of that will suffice.”

(11.23). In our existing criminal jurisprudence, it is a matter of common understanding that one has to proceed with the presumption of innocence, but at the same time that presumption is to be judged on the basis of perceptions and conceptions of a reasonable and prudent person. Smelling doubt for the sake of giving benefit of doubt is not the law of the land. It

must be strictly noted that it is a well-established fact that there is a difference between fantastic and flimsy plea which has to be rejected altogether. The doubt which the law contemplates is certainly not that of a weak or an unduly vacillating, capricious, indolent or confused mind. It must be a doubt of a prudent man who has assumed to possess the capacity to “separate the chaff from grain”. It is a doubt of a reasonable, astute and alert mind arrived at after due application of mind to every relevant circumstance of the case appearing from the evidence. It is not a doubt which occurs to a wavering mind. Needless to mention that doubt must be of a degree which would permit reaching to a particular conclusion.

(11.24). The following principles may be stated in view of the settled legal proposition :

- (i) The doubt must be reasonable and real, not fanciful.
- (ii) The doubt must be of reasonable man,

neither a weak, meek and timid man afraid of legal consequences.

- (iii) Reasonable doubt is simply that degree of doubt which would permit reasonable and just person to reach conclusion.
- (iv) Reasonableness of doubt must be commensurate with nature of evidence to be investigated upon. Ultimately, there is element and the degree of suspicion varies from accused to accused.
- (v) Exaggerated deviation to the rule of benefit of doubt must not nurture fanciful doubts and thereby destroying social defense.
- (vi) It be remembered that justice cannot be made sterile upon doubt which is not of prudent and reasonable man.
- (vii) Doubt would be called reasonable when it is uninfluenced by zest and

enthusiasm for abstract speculation.

- (viii) Doubt should not be mere vague appreciation.
- (ix) Reasonable doubt must generate and flow from evidence on record.
- (x) Reasonable doubt is not an imaginary, trivial, but a doubt based upon reasons and common sense.
- (xi) Forensic probabilities must rest on sound common sense and finally upon a trained infusions of the Judge.
- (xii) While the protection affordable to the accused of doctrine of benefit of doubt from the record of the case cannot be allowed to be eroded at the same time, uninformed legitimization of trivialities obviously would culminate into a mockery of dispensation of justice in criminal trial.

- (xiii) Reasonable doubt must have fair basis and logic and not speculation of luck.
- (xiv) It is the doubt of a reasonable astute and alert mind arrived at after due application of mind to all facts. It is not a doubt which occurs to a wavering mind.
- (xv) It is the doubt which occurs to a reasonable man and which has legal recognition in the realm of criminal cases.
- (xvi) The doubt which can take cognizance of not that of a weak or oscillating and vacillating, capricious, indolent or confused mind.

**(11.25).** The Hon'ble Supreme Court (Coram : Hon'ble Justice Rohinton Fali Nariman, Hon'ble Justice R. Subhash Reddy and Hon'ble Justice Surya Kant, JJ) has shown the fine distinction between the reasonable doubt and residual doubt and also about the residual doubt as a

mitigating factor while considering the sentence part, in its decision delivered in case of <sup>43</sup>RAVISHANKAR ALIAS BABA VISHWKRAM Vs. STATE OF MADHYA PRADESH.

(11.26). The Ld. Advocate for the Accused has relied on the decision of the Hon'ble Supreme Court (Coram : Hon'ble Justice Ashok Bhan and Hon'ble Justice P.P. Naolekar, JJ) in the case of <sup>44</sup>SITARAM PASWAN & Anr. Vs. STATE OF BHIAR and requested to give probation under Section 4 of Probation of Offenders Act, 1958. Looking facts of present case, it is not just and proper to give probation or else it may give wrong signal in the society at large. The facts of all case are different and considering the facts of the present case, it is not fit to invoke probation jurisdiction.

(11.27). It is being held by the Hon'ble Supreme Court of India in it's decision delivered in case of <sup>45</sup>PANDAPPA HANUMAPPA HANAMAR

43 RAVISHANKAR ALIAS BABA VISHWKRAM Vs. STATE OF MADHYA PRADESH  
: (2019) 9 SCC 689 = Cr.A. 1523/19, D/- 3/10/19  
44 SITARAM PASWAN & Anr. Vs. STATE OF BHIAR  
: 2005 CrLJ 4135= Cr.A. 1214/05, D/- 19/9/05  
45 PANDAPPA HANUMAPPA HANAMAR Vs. STATE OF KARNATAKA  
: A.I.R. 1997 S.C. 3663 = CrA 90/94; D/- 28/2/97

Vs. STATE OF KARNATAKA that eye-witness found natural and probable witness and only minor contradictions in evidence of witness between his statement under Sec. 161 of Cr.P.C. and deposition in Court and evidence of other witness who turned hostile not liable to be totally rejected and insignificant contradictions found in their evidence being not material liable to be disregarded.

(11.28). It is held by the Hon'ble Supreme Court of India (Coram : Hon'ble Justice Dr. A. PASAYAT and Hon'ble Justice ASOK KUMAR GANGULY, JJ) in its decision delivered in case of <sup>46</sup>STATE OF KARNATAKA Vs. MURALIDHAR that undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law and society could not long endure under such serious threats. It is, therefore, the duty of every Court to award proper sentence having regard to the nature of the offence and the manner in which it was

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<sup>46</sup> STATE OF KARNATAKA Vs. MURALIDHAR : AIR 2009 SC 1621 = Cr.A. 428/02, Dt. 16/3/09.

executed or committed etc. This position was illuminatingly stated by the Hon'ble Supreme Court of India in <sup>47</sup>**SEVAKA PERUMAL Vs. STATE OF TAMILNADU**. The object should be to protect the society and to deter the criminal in achieving the avowed object of law by imposing appropriate sentence. It is expected that the Courts would operate the sentencing system so as to impose such sentence which reflects the conscience of the society and the sentencing process has to be stern where it should be. Imposition of sentence without considering its effect on the social order in many cases may be in reality a futile exercise. The social impact of the crime, e.g. where it relates to offences against women, dacoity, kidnapping, misappropriation of public money, treason and other offences involving moral turpitude or moral delinquency which have great impact on social order, and public interest, cannot be lost sight of and per se require exemplary treatment. Any liberal attitude by imposing meagre sentences or taking too sympathetic view merely on account of lapse of time in respect

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47 **SEVAKA PERUMAL Vs. STATE OF TAMILNADU : AIR 1991 SC 1463**

of such offences will be result-wise counter productive in the long run and against societal interest which needs to be cared for and strengthened by string of deterrence inbuilt in the sentencing system. It is further observed that the Court will be failing in its duty if appropriate punishment is not awarded for a crime which has been committed not only against the individual victim but also against the society to which the criminal and victim belong. The punishment to be awarded for a crime must not be irrelevant but it should conform to and be consistent with the atrocity and brutality with which the crime has been perpetrated, the enormity of the crime warranting public abhorrence and it should "respond to the society's cry for justice against the criminal".

**(11.29).** In view of reasons stated here-in-above and settled principle of law, the prosecution has proved the facts by evidence beyond reasonable doubt that Accused No. 1 has committed offence punishable under Section 22(c) for violation of Section 8(c) of Narcotic

Drugs and Psychotropic Substances Act, 1985, whereas the Accused No. 2 & 3 cannot be convicted for the offence punishable under Section 22(c) read with Section 29 for violation of Section 8(c) of Narcotic Drugs and Psychotropic Substances Act, 1985.

(11.30). The contradiction shown and argued by the Ld. Advocate for the Accused is mere residual contradictions and doubts. It is well settled law that if there is reasonable doubt, then the Accused can get benefit of doubt, but the Accused cannot get the benefit of acquittal on the ground of residual doubt and therefore, the Accused No. 1 is liable to be convicted under Section 235(2) of Criminal Procedure Code, 1973, for the offence under Section 22(c) for violation of Section 8(c) of Narcotic Drugs and Psychotropic Substances Act, 1985, as discussed above, whereas the Accused No. 2 & 3 are entitled to get benefit of doubt due to insufficient evidence on record and for acquittal, for offence punishable Section 22(c) read with Section 29 for violation of Section 8(c) of Narcotic Drugs and Psychotropic

Substances Act, 1985. Therefore, I answer the **POINT No. 1 PARTIALLY-in-AFFIRMATIVE**. Accordingly, I answer the **POINT No. 2** by passing following FINAL ORDER :

**-: FINAL ORDER :-**

- **The Accused No. 1 – Shabbir Iqbal Basar, is convicted, for offence punishable under Section 22(c), for violation of Section 8(c) of The Narcotic Drugs and Psychotropic Substances Act, 1985, in view of Section 258(2) of Bharatiya Nagarik Suraksha Sanhita, 2023 (B.N.S.S.) [i.e. Section 235(2) of Criminal Procedure Code, 1973].**

➤ **The Accused No. 2 – Samir Iqbal Basar and Accused No. 3 – Mahmad Adil Mahmad Salim @ Badshah Makrani, are acquitted, for offence punishable under Section 22(c) read with Section 29, for violation of Section 8(c) of The Narcotic Drugs and Psychotropic Substances Act, 1985, in view of Section 258(1) of Bharatiya Nagarik Suraksha Sanhita, 2023 (B.N.S.S.) [i.e. Section 235(1) of Criminal Procedure Code, 1973], by giving benefit of doubt, due to insufficient evidences on record.**

- The contraband Muddamal – Mephedrone, shall be disposed off by concerned competent Drugs Disposal Committee, in accordance with law & by strict compliance of rules and strictly in compliance of directions issued by the Hon'ble Supreme Court in case of <sup>48</sup>UNION OF INDIA Vs. MOHANLAL.
  
- The muddamal – Samsung company's mobile and cash of Rs. 300/- alleged to have been seized from Accused No. 1 – Sabir [ See : Article No. 1(4) & 1(5) of Muddamal Pavti No. 62/22], shall be

confiscated in favour of Government, after expiry of Appeal period.

- The muddamal – Redmi company's mobile, alleged to have seized from Accused No. 2 - Samir [ See : Article No. 1 of Muddamal Pavti No. 63/22], shall be given back to Accused No. 2 - Samir, on expiry of appeal period.
- The Non-valuable muddamal – DVD [ See : Article No. 1 of Muddamal Pavti No. 70/22], on expiry of appeal period.
- The bail bond of Accused No. 2 & 3 shall stand cancelled.  
The Accused No. 2 & 3 shall

**furnish fresh surety of Rs. 50,000/- (Rupees fifty thousands only) and personal bond of the like amount, as per Section 481 of Bharatiya Nagarik Suraksha Sanhita, 2023 (B.N.S.S.) [i.e. Section 437A(1) of Criminal Procedure Code, 1973], within period of 15 days, for appearing before the Hon'ble High Court of Gujarat as and when such Court issues notice in respect of any appeal or petition filed against this Judgment & Order and such bond shall be remain in force for a period of six months.**

➤ **The Accused No. 1 shall be heard on part of sentence in compliance of Section 258(2) of Bharatiya Nagarik Suraksha Sanhita, 2023 (B.N.S.S.) [i.e. Section 235(2) of Criminal Procedure Code, 1973].**

*Signed, pronounced and declared in Open Court on this 1<sup>st</sup> day of May, 2026, at Jamnagar.*

Date : 01/05/2026  
Place : Jamnagar

**( Rasikkumar V. Mandani )**  
Special Judge (NDPS)  
3<sup>rd</sup> Additional Sessions Judge  
Jamnagar. (Code : GJ00715)

/// AMS + Sf ///