

DLSSH010023362025 SC No. 139/2025 STATE Vs. SUBHASH CHAND JAISWAL FIR No. 670/2024 (Seemapuri) U/s 21(c) NDPS Act		Page 1 of 48
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**IN THE COURT OF SPECIAL JUDGE (NDPS), SHAHDARA,
KARKARDOOMA COURTS, DELHI**

SC No. 139/2025
STATE Vs. SUBHASH CHAND JAISWAL
FIR No. 670/2024
(Seemapuri)
U/s 21(c) NDPS Act

In the matter of :-

State

.....(through Ld. Addl. PP)

Vs.

Subhash Chand Jaiswal,
S/o Sh. Kushi Ram,
R/o H.No. 247, Mohalla Para Kanun Goun,
P.S. Faridpur, Bareilly, Kotwali, U.P.

.....accused
(represented by Sh. Nadeem
Khan, Advocate)

Date of institution	:	26.04.2025
Date when Judgment reserved	:	21.07.2026
Date of Judgment	:	30.07.2026
Final Decision	:	Acquitted

DLSSH010023362025 SC No. 139/2025 STATE Vs. SUBHASH CHAND JAISWAL FIR No. 670/2024 (Seemapuri) U/s 21(c) NDPS Act		Page 2 of 48
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J U D G M E N T

CASE OF THE PROSECUTION

1. Brief facts of the present case are that on 05.11.2024 at about 5:45 pm, a secret information was received in the office of ANTF, Shahdara. The said secret information was recorded U/s 42 NDPS Act vide DD No.6 at 6:30 pm. The said information was developed and a raiding party was constituted. The raiding party left the office, vide DD No.7 at 6:40 pm and reached the spot alongwith secret informer. At about 9:15 pm, accused was seen coming on foot from Old Seemapuri side, carrying a black colour *pithu* bag on his shoulder. On identification and at the instance of secret informer, accused was apprehended. Notice U/s 50 NDPS was served upon him. On checking the black colour bag carried by accused, one packet of transparent white colour polythene was found containing 334 grams brown colour powder (smack). It was stated by accused that he had brought the contraband from one Shyam Gupta who lives in 100 foota road, Bareilly. The contraband was seized after drawing samples vide seizure memo. Accused was brought to Police Station, rukka was prepared and the present FIR was got registered U/s 21 NDPS Act. The accused was arrested. The sampling of the contraband U/s 52A NDPS Act was done and sent to FSL. FSL report dated 05.03.2025 has been received wherein it is mentioned that the sample is containing Diacetylmorphine, 6-Monoacetylmorphine, Acetylcodeine, Morphine, Codeine, Papaverine, Alprazolam, Trimethoprim & Acetaminophen.

INVESTIGATION & OTHER PROCEEDINGS

2. Upon completion of investigation, charge-sheet U/s 21 NDPS Act

DLSSH010023362025 SC No. 139/2025 STATE Vs. SUBHASH CHAND JAISWAL FIR No. 670/2024 (Seemapuri) U/s 21(c) NDPS Act		Page 3 of 48
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was filed against accused Subhash Chand Jaiswal.

CHARGE

3. Vide order on charge dated 20.08.2025, charge for commission of offence punishable U/s 21(c) NDPS Act was framed against accused Subhash Chand Jaiswal, to which he pleaded not guilty and claimed trial.

PROSECUTION EVIDENCE

4. To substantiate the aforementioned charges, the prosecution presented 13 witnesses. The details of these witnesses, alongwith the documents they presented during their testimonies, are listed below in tabular form:

PW number and name of witness	Brief role of witness	Documents exhibited	Description
PW-1 ASI Dhan Singh	Duty Officer	Ex. PW-1/A (OSR)	Copy of FIR.
		Ex. PW-1/B	Endorsement on the rukka
		Ex. PW-1/C	Certificate U/s 63 BSA.
PW-2 SI Satish Kumar	Member of raiding party and one of the recovery witness. He received secret information. They apprehended accused. He	Ex. PW-2/A	Copy of notice U/s 50 NDPS Act served upon accused.
		Ex. PW-2/B	Seizure memo of case property.
		Ex. PW-2/C	Seal handing over memo.
		Ex. PW-2/D	Rukka.
		Ex. PW-2/E	Site plan.
		Ex. PW-2/F	Original notice U/s 50 NDPS Act addressed to accused.
		Ex. PW-2/G	DD No. 7.

DLSSH010023362025 SC No. 139/2025 STATE Vs. SUBHASH CHAND JAISWAL FIR No. 670/2024 (Seemapuri) U/s 21(c) NDPS Act		Page 4 of 48
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	served notice U/s 50 NDPS Act on the accused, recovered contraband, seized and sealed the case property and prepared rukka. He prepared report U/s 57 NDPS Act regarding seizure of contraband.	(OSR) Ex. P-1	Black colour <i>pithu</i> bag recovered from possession of accused.
PW-3 ASI Daya Ram	Reader to ACP, Sub-Division Seemapuri.	Ex. PW-3/A	DD No. 6.
		Ex. PW-3/B	Original report U/s 57 NDPS Act prepared by SI Satish Kumar.
		Ex. PW-3/C	Original report U/s 57 NDPS Act prepared by SI Deshpal.
		Ex. PW-3/D (Colly) (OSR)	Corresponding entries at serial nos. 6306, 6307 & 6308 in diary register qua receipt of DD No. 6 and reports U/s 57 NDPS Act.
PW-4 Dr. Adesh Kumar, Sr. Scientific Officer (Chemistry)	Expert witness from FSL.	Ex. PW-4/A (running into two pages)	His detailed report dated 05.03.2025.
PW-5 Sh. Surjeet Singh	Photographer who took photographs of proceedings U/s 52A NDPS Act.	Ex. PW-5/A (Colly)	Photographs of sampling proceedings before Ld. JMFC.
		Ex. PW-5/B	Certificate U/s 65B of IEA issued by him.
PW-6 HC Rakesh	MHC(M), P.S. Seemapuri.	Ex. PW-6/A (OSR)	Entry in register no.19 at serial no. 2388/6348 qua handing over of two sealed parcels and copy of seizure memo by SHO.

DLSSH010023362025 SC No. 139/2025 STATE Vs. SUBHASH CHAND JAISWAL FIR No. 670/2024 (Seemapuri) U/s 21(c) NDPS Act		Page 5 of 48
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		Ex. PW-6/B	Entry in register no.19 at serial no. 2402/6362 qua depositing personal search articles of accused in the <i>maalkhana</i> by SI Deshpal.
		Ex. PW-6/C (OSR)	Copy of RC No. 291/21/24.
		Ex. PW-6/D	Acknowledgment of FSL.
PW-7 Inspector Ajay Kumar Singh			SI Satish Kumar telephonically informed him about secret information. He further telephonically informed Sh. Jagdish Prasad, ACP, Vivek Vihar about the secret information. Further, he forwarded DD No. 6 and reports U/s 57 NDPS Act to ACP, Vivek Vihar at the relevant time.
PW-8 ASI Hitlar Singh	Member of raiding party and one of the recovery witness.	Ex. PW-8/A	Arrest memo of accused.
		Ex. PW-8/B	Personal search memo of accused.
		Ex. PW-8/C	Disclosure statement of accused.
PW-9 Inspector Devendra Singh	SHO, P.S. Seemapuri who conducted proceedings U/s 55 NDPS Act.	Ex. PW-9/A	GD No. 11A qua handing over of sealed parcel and copy of seizure memo to MHC(M) CP.
PW-10 HC Sanjeev Kumar	Member of raiding party and one of the recovery witness. Seal was handed over to him after use.		
PW-11 HC Vinay	Member of raiding party and one of the recovery witness.		
PW-12 SI Satyadev Panwar	Further investigation was marked to		

DLSH010023362025 SC No. 139/2025 STATE Vs. SUBHASH CHAND JAISWAL FIR No. 670/2024 (Seemapuri) U/s 21(c) NDPS Act		<i>Page 6 of 48</i>
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	him. He obtained FSL result. He prepared charge-sheet and submitted the same before the Court.		
PW-13 SI Deshpal	After registration of FIR, investigation of the present case was marked to him. He arrested accused, personally searched him, recovered personal search articles of accused and recorded his disclosure statement. He prepared site plan of the spot at the instance of SI Satish. He obtained PC remand of accused. He also moved an application for conducting sampling proceedings U/s 52A NDPS Act. He obtained copy of order of Court, sample seal during		

<u>DLSH010023362025</u> SC No. 139/2025 STATE Vs. SUBHASH CHAND JAISWAL FIR No. 670/2024 (Seemapuri) U/s 21(c) NDPS Act		Page 7 of 48
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	proceedings U/s 52A NDPS Act and handed over the same to HC Rakesh alongwith three sealed parcels for depositing the same at <i>maalkhana</i> . He prepared report U/s 57 NDPS Act regarding arrest of accused. He sent the exhibits to FSL.		
Admitted documents (Admitted on 07.03.2026 by accused U/s 330 BNSS/ 294 Cr.P.C.)	Ex. AD-1	Proceedings U/s 52A NDPS Act conducted by Sh. Anshul Negi, Ld. JMFC on 11.11.2024.	

After examining the depositions of the witnesses mentioned in the table above, it is found that they gave evidence about the undermentioned facts for the prosecution:-

5. **PW-1 ASI Dhan Singh** deposed that on 06.11.2024, he was posted at P.S. Seemapuri as ASI and was working as Duty Officer from 12:00 midnight to 8:00 am. At about 12:20 am, HC Vinay brought the rukka sent by SI Satish Kumar contents of which were dictated by this witness to the Computer Operator and the FIR was registered vide FIR No. 670/2024 and computerized copy of FIR was obtained. This witness had handed over the copy of FIR and the original rukka to HC Vinay to hand over the same to SI Deshpal as

DLSH010023362025 SC No. 139/2025 STATE Vs. SUBHASH CHAND JAISWAL FIR No. 670/2024 (Seemapuri) U/s 21(c) NDPS Act		Page 8 of 48
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investigation was marked to him after making endorsement of this witness on the rukka. The copy of FIR is **Ex. PW-1/A** bearing signature of this witness at Point-A (OSR). This witness had made endorsement on the rukka and the same is **Ex. PW-1/B** bearing his signature at Point-A. In this regard, the certificate U/s 63 BSA of the Evidence Act is **Ex. PW-1/C** bearing his signature at Point-A.

6. **PW-2 SI Satish Kumar** deposed that on 05.11.2024, he was posted at ANTF, Shahdara District. On that day at around 5:45 pm, one secret informer met him in the office and told that one man namely Subhash, who is resident of Bareilly, U.P., who used to sell smack in Delhi and was also earlier arrested in another case of NDPS by Crime Branch, is present in Delhi and will come between 8:00 pm to 10:00 pm near Seemapuri Bus Depot to deliver smack to somebody and can be apprehended if raided.

It is stated by him that at around 6:15 pm, he telephonically informed Inspector Ajay Kumar, Incharge ANTF, Shahdara as he was out of their office and told him about the secret information. This witness also made secret informer talked Inspector Ajay Kumar on mobile phone. After some time, Inspector Ajay Kumar again called this witness on his mobile phone and told that he (Inspector Ajay Kumar) has talked to Sh. Jagdish Prasad, ACP Vivek Vihar and has told him (ACP) about the secret information, who has directed to constitute a raiding team under leadership of this witness and to take legal action. Thereafter, this witness called ASI Hitler Singh, HC Vinay and HC Sanjeev and apprised them about the secret information and constituted a raiding team. This witness lodged DD No. 6 at around 6:30 pm regarding secret

DLSSH010023362025 SC No. 139/2025 STATE Vs. SUBHASH CHAND JAISWAL FIR No. 670/2024 (Seemapuri) U/s 21(c) NDPS Act		Page 9 of 48
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information in DD register and placed the copy of the same in the office of Inspector Ajay kumar.

It is stated by him that at around 6:40 pm, he alongwith ASI Hitlar Singh, HC Vinay & HC Sanjeev and secret informer left their office in a private Creta car bearing no. DL5CS0827. This witness made DD No. 7 in this regard. He also carried IO bag, field testing kit, electronic weighing machine, laptop, printer, UPS etc. He was driving the said car. They reached at 70 foota road, opposite Seemapuri Bus Depot at around 7:40 pm. On their way to the spot, he stopped their car at Dilshad Garden Gol Chakkar and also at Tahirpur Chowk where he requested 4-5 public persons to join the raid after telling them about the secret information, but none agreed to join the raid and left without disclosing their names and addresses while seeking their personal excuses. No notice could be served upon them due to paucity of time.

It is stated by him that he parked the car between the vehicles already parked on the side of the road. They came out of the car and took position while in moving condition. Secret informer was present alongwith this witness beside the wall of the park. At around 9:15 pm, one person was seen coming from the side of Old Seempuri while carrying one black colour *pithu* bag on his shoulder. Secret informer pointed out towards him and identified him as Subhash Chand Jaiswal. The secret informer went towards New Seemapuri. When they started approaching towards him (accused) he took about turn, but they apprehended him. This witness introduced himself to the accused and has shown his ID Card. He (accused) disclosed his name as Subhash Chand Jaiswal. This witness correctly identified accused in the Court.

DLSH010023362025 SC No. 139/2025 STATE Vs. SUBHASH CHAND JAISWAL FIR No. 670/2024 (Seemapuri) U/s 21(c) NDPS Act		Page 10 of 48
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It is stated by him that he requested 4-5 public persons to join the proceedings, but none agreed to join the proceedings and left without disclosing their names and addresses while seeking their personal excuses.

It is stated by him that he told the accused that they have secret information that he is dealing with contraband and for this purpose they have to take his (accused's) search. This witness apprised accused about his legal rights by saying that if he so desires, he can be searched in the presence of a Gazetted Officer or the Magistrate or he can be taken to a Gazetted Officer or the Magistrate and also explained meaning of Gazetted Officer and Magistrate in simple language to the accused and that if he wants he can take their search and search of their vehicle prior to his search. However, accused refused to get himself searched in the presence of any Gazetted Officer or the Magistrate as well as to take search of the raiding team members and their car. This witness prepared notice U/s 50 NDPS Act in duplicate and handed over the original notice U/s 50 NDPS Act to the accused. The accused told that he does not want to get himself searched in presence of a Gazetted Officer or a Magistrate and he also does not want to take search of the police team and their car. Accused himself wrote his refusal on the copy of notice U/s 50 NDPS Act and he signed the same. The copy of notice U/s 50 NDPS Act is **Ex. PW-2/A**, carbon impression of signature of this witness is at Point-A, refusal of accused is from Points X to X1, signatures of accused below his refusal is at Point-B and signatures of this witness below the refusal is at Point-A1.

Thereafter, this witness took the search of *pithu* bag carried by the accused. The same was found containing old clothes and one transparent

DLSSH010023362025 SC No. 139/2025 STATE Vs. SUBHASH CHAND JAISWAL FIR No. 670/2024 (Seemapuri) U/s 21(c) NDPS Act		Page 11 of 48
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polythene packet, opening of which was tied with rubber band. The polythene packet was opened and was found containing brown red colour powder. This witness took out some portion of the powder and tested the same on field testing kit, which gave positive result for heroin. This witness weighed the polythene containing the contraband on electronic weighing machine which came about 334 grams. He again tied the opening of the polythene packet containing contraband with the same rubber band and he kept the same in a plastic box and gave it Mark-A and the plastic box was sealed with the seal of S.K. He kept the black colour *pithu* bag alongwith clothes contain therein into white plastic *katta* and tied the opening of the *katta* with a white cloth strip and it was also sealed with the seal of S.K. and was given Mark-B. Seal was handed over to HC Sanjeev after use.

It is stated by him that he prepared seizure memo **Ex. PW-2/B** which bears his signature at Point-A. He also prepared seal handing over memo **Ex. PW-2/C** which bears his signature at Point-A. Since there was dim light at the spot due to dark, he alongwith other raiding team members brought the accused back to their office. Thereafter, he prepared the rukka which is **Ex. PW-2/D** bearing his signature at Point-X and handed over the original rukka to HC Vinay for registration of FIR at P.S. Seemapuri. This witness also handed over the sealed parcels to HC Vinay alongwith copy of seizure memo with direction to hand over the same to SHO, P.S. Seemapuri.

It is stated by him that HC Vinay left their office at around 12:05 am. After 1:30 am HC Vinay came to their office and handed over copy of FIR and original rukka to SI Deshpal. This witness also handed over the documents

DLSSH010023362025 SC No. 139/2025 STATE Vs. SUBHASH CHAND JAISWAL FIR No. 670/2024 (Seemapuri) U/s 21(c) NDPS Act		Page 12 of 48
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prepared by him to SI Deshpal alongwith custody of accused. SI Deshpal entered the FIR number on the relevant documents. Thereafter, this witness accompanied SI Deshpal again to the spot where SI Deshpal prepared the site plan at instance of this witness which is **Ex. PW-2/E** bearing his signatures at Point-A. Thereafter, they came back to their office.

It is stated by him that he prepared his report U/s 57 NDPS Act regarding seizure of contraband and submitted the same for onward transmission to the senior officers. The report already **Ex. PW-3/B** bears his signature at Point-B.

MHC(M) has produced one white colour envelope containing one original notice U/s 50 NDPS Act in the name of Subhash Chand Jaiswal and one purse containing Rs. 1,510/- stating to be personal search articles of the accused deposited at *maalkhana*. The original notice U/s 50 NDPS Act was taken on record. The original notice U/s 50 NDPS Act is **Ex. PW-2/F** which bears his signature at Point-A.

It is stated by him that the sampling proceedings U/s 52A NDPS Act has already been conducted before Ld. MM. Production of parcel of contraband is therefore dispensed with.

He has brought the original DD register of ANTF, Shahdara containing original DD No. 7 dated 05.11.2024. Copy of DD No. 7 made by him is **Ex. PW-2/G (OSR)**.

MHC(M) has produced one plastic *katta* sealed with the seal of SK. Same was opened. It was found containing one black colour *pithu* bag. Witness identified the same as the same bag which was recovered from possession of

DLSSH010023362025 SC No. 139/2025 STATE Vs. SUBHASH CHAND JAISWAL FIR No. 670/2024 (Seemapuri) U/s 21(c) NDPS Act		Page 13 of 48
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accused. The *pithu* bag is **Ex. P-1**.

During his cross-examination on behalf of accused, it is admitted by him that the place of apprehension was a public place. It is admitted by him that seizure proceedings were neither photographed, nor videographed. It is denied by him that accused was not apprehended at the place and the time as narrated by him and for the said reason neither any public person was made a witness to the seizure proceedings, nor any photography or videography of the seizure proceedings was conducted. It is denied by him that accused was lifted from his house and was falsely implicated in the present case. It is denied by him that the documents were prepared while sitting at the office.

7. **PW-3 ASI Daya Ram** deposed that on 06.11.2024, he was posted as Reader to ACP, Sub-Division Seemapuri. Sh. Jagdish Prasad, ACP, Sub-Division, Vivek Vihar was looking after the work of ACP, Seemapuri as Sh. Mukesh Walia, ACP was on leave. On that day, DD No. 6 dated 05.11.2024 ANTF, Shahdara, Delhi was received in their office. This witness made entry in the diary register while serial no. 6306. On the same day, another report U/s 57 NDPS Act prepared by SI Satish Kumar was received in their office and this witness made entry in diary register while serial no. 6307. On the same, another report U/s 57 NDPS Act regarding arrest of the accused prepared by SI Deshpal was received in their office and this witness made entry in diary register while serial no. 6308. Thereafter, this witness went to the office of ACP, Vivek Vihar where Sh. Jagdish Prasad has seen and signed all the three documents.

This witness has brought original DD No. 6, report U/s 57 NDPS

DLSSH010023362025 SC No. 139/2025 STATE Vs. SUBHASH CHAND JAISWAL FIR No. 670/2024 (Seemapuri) U/s 21(c) NDPS Act		Page 14 of 48
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Act prepared by SI Satish Kumar and report U/s 57 NDPS Act prepared by SI Deshpal alongwith diary register of the relevant act. The original reports and DD are taken on record. DD No. 6 is **Ex. PW-3/A** bearing signatures of ACP Jagdish Prasad at Point-A. Original report U/s 57 NDPS Act prepared by SI Satish Kumar is **Ex. PW-3/B** bearing signatures of ACP Jagdish Prasad at Point-A. Original report U/s 57 NDPS Act prepared by SI Deshpal is **Ex. PW-3/C** bearing signatures of ACP Jagdish Prasad at Point-A. Copies of serial nos. 6306, 6037 (might be 6307) and 6308 of diary register are **Ex. PW-3/D (Colly) (OSR)**.

8. **PW-4 Dr. Adesh Kumar, Senior Scientific Officer, Chemistry, FSL Rohini, Delhi** deposed that he is working at FSL Rohini since 1999. On 20.11.2024, he was posted as Sr. Scientific Officer (Chemistry) at FSL Rohini. On that day, one sealed parcel Mark S1, bearing two seals of ASK in FIR No. 670/24 dated 06.11.2024, U/s 21 NDPS Act, P.S. Seemapuri alongwith specimen seal, forwarding letter, copy of FIR, copy of seizure memo etc. were received in their office from SHO, P.S. Seemapuri, Delhi vide letter reference no. 3161/SHO/Seemapuri dated 20.11.2024. Same were marked to this witness for chemical examination. The seals were intact and were tallying with specimen seal.

It is stated by him that on opening the parcel Mark S1, it was found containing brownish red colour powder with granules kept in plastic container, weight approx. 39.65 grams alongwith plastic container, seal wax and leucoplast and it was marked as Ex. S1. He analyzed the exhibit between

DLSSH010023362025 SC No. 139/2025 STATE Vs. SUBHASH CHAND JAISWAL FIR No. 670/2024 (Seemapuri) U/s 21(c) NDPS Act		Page 15 of 48
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14.02.2025 to 05.03.2025. On Chemical, TLC and GC-MS examination, Ex. S1 was found to contain diacetylmorphine, 6-monoacetylmorphine, acetylcodeine, morphine, codeine, papaverine, alprazolam, trimethoprim and acetaminophen. After the examination the remnants of the exhibit were kept in separate parcel which was sealed with the seal of AY FSL DELHI.

It is stated by him that he prepared the detailed report bearing no. SFSL DLH/15130/CHEM/4483/24 dated 05.03.2025 which is **Ex. PW-4/A (running into two pages)** bearing his signature at Points A and B. He submitted his report in a sealed envelope alongwith the sealed parcels for onward transmissions to the forwarding agency.

9. **PW-5 Sh. Surjeet Singh** deposed that he is running a Photo Studio alongwith his father Prem Singh at their house. On 11.11.2024, on the request of SI Deshpal, this witness appeared before the Court of Sh. Anshul Negi, Ld. JMFC, KKD Courts, where SI Deshpal and other police staff were also present. Accused was produced from J/C.

It is stated by him that on the directions of Ld. JMFC sampling proceedings of the content of the parcel produced by the police were conducted. This witness took the photographs of the sampling proceedings stepwise on the instructions of Ld. JMFC through digital camera.

It is stated by him that he took 30 photographs. After developing two sets of the photographs in his studio, he handed over the same to SI Deshpal alongwith his certificate U/s 65B of IEA qua the print out of the photographs. The photographs annexed with the file are **Ex. PW-5/A (Colly)**. He also issued

DLSH010023362025 SC No. 139/2025 STATE Vs. SUBHASH CHAND JAISWAL FIR No. 670/2024 (Seemapuri) U/s 21(c) NDPS Act		Page 16 of 48
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certificate U/s 65B of IEA which is **Ex. PW-5/B** bearing his signature at Point-A.

10. **PW-6 HC Rakesh** deposed that on 05.11.2024, he was working as MHC(M) at P.S. Seemapuri. On that day at about 12:20 am, SHO Inspector Devender Singh called this witness in his office and handed over to this witness two sealed parcels Mark A and B and copy of seizure memo on which the SHO has already put the FIR Number and his signatures. The pullanda Mark-A was already sealed with the seals of SK and DS. This witness made entry in register no.19 at serial no. 2388/6348. Same is **Ex. PW-6/A (OSR)**. Inspector Devender Singh also countersigned the entry in register no.19 at Point-A.

It is stated by him that on 06.11.2024 SI Deshpal deposited personal search articles of the accused in the *maalkhana*. This witness made entry vide the serial no. 2402/6362 in this regard in register no.19. Copy of entry is **Ex. PW-6/B**.

It is stated by him that on 11.11.2024, on the directions of SI Deshpal, this witness took out sealed parcel Mark-A of the present case from the *maalkhana* and produced the same in the Court of Sh. Anshul Negi, Ld. JMFC, Karkardooma Court where SI Deshpal and photographer Surjeet also met this witness. Accused was produced before Ld. JMFC by his orders. On the direction of the Ld. JMFC, the sampling proceedings were conducted after de-sealing the parcel Mark-A and two samples each were drawn from the contents of both the parcel Mark-A and were kept in two separate containers which were marked as Mark S1 and S2. All the parcels were sealed with the seal of ASK.

DLSH010023362025 SC No. 139/2025 STATE Vs. SUBHASH CHAND JAISWAL FIR No. 670/2024 (Seemapuri) U/s 21(c) NDPS Act		Page 17 of 48
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Ld. JMFC also affixed a sample seal. All the proceedings were photographed stepwise. This witness obtained all the three sealed parcels, sample seal and copy of order of Court and deposited the same at *maalkhana*. This witness made noting in this regard at Points X and Y in the entry Ex. PW-6/A in register no.19.

It is stated by him that on 20.11.2024, on the directions of IO, he handed over one sealed parcel Mark-S1 and sample seal to HC Vinay to be deposited at FSL vide RC No. 291/21/24. After depositing the same, HC Vinay came back and handed over acknowledgment of FSL to this witness. The copy of RC No. 291/21/24 is **Ex. PW-6/C (OSR)** which bears signature of this witness at Point-A and acknowledgment of FSL is **Ex. PW-6/D**.

It is stated by him that till the time the case property was in his possession, it has not been tampered with.

11. **PW-7 Inspector Ajay Kumar Singh** deposed that on 05.11.2024, he was posted as Incharge ANTF/ Shahdara. On that day at about 6:15 pm, when he was not present in the office, SI Satish Kumar telephonically informed him (this witness) about secret information that one person namely Subhash, who is resident of Bareilly, U.P and who was earlier also apprehended in a case of possession of heroin, will come between 8:00 pm to 10:00 pm near Seemapuri Bus Depot to supply smack to one Pramod at Nand Nagri and can be apprehended, if raided. This witness also talk to the secret informer and after satisfying himself from the secret information, he telephonically informed Sh. Jagdish Prasad, ACP, Sub-Division Vivek Vihar about the secret information,

DLSH010023362025 SC No. 139/2025 STATE Vs. SUBHASH CHAND JAISWAL FIR No. 670/2024 (Seemapuri) U/s 21(c) NDPS Act		Page 18 of 48
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who directed to constitute a raiding team under the leadership of SI Satish Kumar and to conduct immediate raid. This witness again called SI Satish Kumar on his mobile phone and told him about the directions of ACP and instructed him to lodge a DD entry regarding the secret information.

It is stated by him that when he came back to office after the midnight, he found that copy of DD No. 6 dated 05.11.2024 was placed on his table. He forwarded it to ACP Vivek Vihar. DD No. 6 already Ex. PW-3/A bears his signature at Point-A. SI Deshpal also produced accused Subhash in office of this witness. This witness made inquiries from accused and found his arrest justified. This witness correctly identified accused in the Court.

It is stated by him that on 06.11.2024 he forwarded one report U/s 57 NDPS Act prepared by SI Satish Kumar dated 06.11.2024 already Ex. PW-3/B and one report U/s 57 NDPS Act prepared by SI Deshpal dated 06.11.2024 already Ex. PW-3/C to the office of ACP, Vivek Vihar bearing signatures of this witness at Point-X, respectively.

During his cross-examination on behalf of accused, it is denied by him that DD No. 6 is ante-dated and ante-timed.

12. **PW-8 ASI Hitlar Singh** deposed that on 05.11.2024, he was posted at ANTF, Shahdara District. On that day at around 5:45 pm, in his presence, one secret informer met SI Satish Kumar in the office and told that one man namely Subhash, who is resident of Bareilly, U.P., who used to sell smack in Delhi and was also earlier arrested in another case of NDPS by Crime Branch, is present in Delhi and will come between 8:00 pm to 10:00 pm near Seemapuri Bus

DLSSH010023362025 SC No. 139/2025 STATE Vs. SUBHASH CHAND JAISWAL FIR No. 670/2024 (Seemapuri) U/s 21(c) NDPS Act		Page 19 of 48
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Depot to deliver smack to somebody and can be apprehended if raided.

This witness deposed on the same lines as deposed by PW-2 SI Satish Kumar.

It is further stated by him that at around 9:15 pm, one person was seen coming from the side of Old Seempuri while carrying one black colour *pithu* bag on his shoulder. SI Satish Kumar made a signal to them. When they started approaching towards him (accused) he took about turn and started moving, but they apprehended him. SI Satish Kumar introduced himself to the accused and has shown his ID Card. The said person disclosed his name as Subhash Chand Jaiswal. This witness correctly identified accused in the Court.

It is further stated by him that SI Deshpal interrogated the accused and arrested him vide arrest memo **Ex. PW-8/A** and personally searched vide personal search memo **Ex. PW-8/B** bearing signatures of SI Deshpal at Points A, respectively. Apart from cash of Rs. 1,510/-, one original notice U/s 50 NDPS Act was recovered from the personal search of the accused. SI Deshpal recorded disclosure statement of accused **Ex. PW-8/C** bearing his signatures at Point-A. Thereafter, SI Satish Kumar and SI Deshpal left their office while leaving the accused in their custody.

It is stated by him that the original notice U/s 50 NDPS Act issued to the accused already **Ex. PW-2/F** bears his signature at Point-B. The sampling proceedings U/s 52A NDPS Act has already been conducted before Ld. MM. Production of parcel of contraband is therefore dispensed with.

It was observed that the *pithu* bag recovered from the accused has already been exhibited during the testimony of earlier witnesses.

DLSH010023362025 SC No. 139/2025 STATE Vs. SUBHASH CHAND JAISWAL FIR No. 670/2024 (Seemapuri) U/s 21(c) NDPS Act		Page 20 of 48
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During his cross-examination on behalf of accused, it is stated by him that SI Satish did not conduct any videography when he saw accused approaching towards us. It is admitted by him that there was running traffic on the road where the accused was apprehended. It is stated by him that videography of the recovery proceedings were done on e-sakshya app, but he did not remember who did the same.

13. **PW-9 Inspector Devendra Singh** deposed that on 06.11.2024, he was posted at P.S. Seemapuri as SHO. At about 1:10 am, HC Vinay came to his office and handed over to him one sealed parcel sealed with the seal of 'SK' and having Mark-A and copy of seizure memo. This witness affixed his seal on the parcel with his seal of DS. After confirming the FIR Number from the Duty Officer, this witness wrote the same on the parcel and copy of seizure memo. This witness also signed parcel and copy of seizure memo. He then called the MHC(M) CP alongwith register no.19 in his office and MHC(M) has made entry of all the details in the register no.19 and this witness handed over sealed parcel and copy of seizure memo to MHC(M) CP. This witness also signed at Point-A against the relevant entry in register no.19 which is already Ex. PW-6/A. In this regard, this witness lodged a GD vide no. 11A at about 1:21 am dated 06.11.2024 and same is **Ex. PW-9/A** bearing his signatures at Point-A. Statement of this witness was recorded by the IO.

14. **PW-10 HC Sanjeev Kumar** deposed that on 05.11.2024, he was posted at ANTF, Shahdara District. On that day, at around 6:20 pm, SI Satish

DLSSH010023362025 SC No. 139/2025 STATE Vs. SUBHASH CHAND JAISWAL FIR No. 670/2024 (Seemapuri) U/s 21(c) NDPS Act		Page 21 of 48
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Kumar constituted a raiding team comprising of himself, ASI Hitler Singh, HC Vinay, SI Satish Kumar and secret informer. SI Satish Kumar briefed them about the secret information that one person namely Subhash Jaiswal, resident of Bareilly, who used to sell smack in Delhi will come between 8:00 pm to 10:00 pm, near Seemapuri Bus Depot to deliver smack to somebody and can be apprehended, if raided.

This witness deposed on the same lines as deposed by PW-2 SI Satish Kumar and PW-8 ASI Hitler Singh.

This witness correctly identified the accused in the Court through video conferencing.

It is further stated by him that ASI Hitler conducted the photography and videography of the proceedings on e-sakshya from the mobile phone of SI Satish Kumar.

It is stated by him that the sampling proceedings U/s 52A NDPS Act has already been conducted before Ld. MM. Production of parcel of contraband is therefore dispensed with.

It was observed that the *pithu* bag recovered from the accused has already been exhibited during the testimony of earlier witnesses.

During his cross-examination on behalf of accused, it is admitted by him that there was CCTV cameras installed in the area of Old Seemapuri, however it is voluntarily stated by him that there was no CCTV camera at the spot. It is stated by him that SI Satish did not conduct any videography when he saw accused approaching towards them.

<u>DLSH010023362025</u> SC No. 139/2025 STATE Vs. SUBHASH CHAND JAISWAL FIR No. 670/2024 (Seemapuri) U/s 21(c) NDPS Act		Page 22 of 48
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15. **PW-11 HC Vinay** deposed that on 05.11.2024, he was posted at ANTF, Shahdara District.

This witness deposed on the same lines as deposed by PW-2 SI Satish Kumar, PW-8 ASI Hitlar Singh and PW-10 HC Sanjeev Kumar.

This witness correctly identified accused in the Court.

It is further stated by him that since there was dim light at the spot due to dark, he alongwith other raiding team members brought the accused back to their office. Thereafter, SI Satish Kumar prepared the rukka and handed over the original rukka to this witness for registration of FIR at P.S. Seemapuri. SI Satish Kumar also handed over the sealed parcels to this witness alongwith copy of seizure memo with direction to hand over the same to SHO, P.S. Seemapuri. This witness left their office at around 12:05 am. He went to P.S. Seemapuri where he handed over original rukka to Duty Officer and the remaining articles to SHO, P.S. Seemapuri. After registration of FIR, Duty Officer handed over copy of FIR and original rukka to this witness and thereafter, he came back to his office at around 1:30 am and handed over the same to SI Deshpal. SI Satish Kumar was also present in their office, who handed over all the documents prepared by him and custody of the accused to SI Deshpal.

It is stated by him that on 20.11.2024 on the directions of IO, he obtained one sealed parcel and sample seal from MHC(M) vide RC No. 291/21/24. He deposited the parcels at FSL Rohini, Delhi; came back to Police Station and deposited the receipt of FSL with MHC(M).

It is stated by him that till the time the case property was in his possession, it has not been tampered with.

DLSH010023362025 SC No. 139/2025 STATE Vs. SUBHASH CHAND JAISWAL FIR No. 670/2024 (Seemapuri) U/s 21(c) NDPS Act		Page 23 of 48
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The copy of RC which is already Ex. PW-6/C bears his signature at Point-B. Acknowledgment of FSL which is already Ex. PW-6/D bears his signature at Point-A.

During his cross-examination on behalf of accused, it is admitted by him that there was CCTV cameras installed in the area of Old Seemapuri, however it is voluntarily stated by him that there was no CCTV camera at the spot. It is stated by him that SI Satish did not conduct any videography when he saw accused approaching towards them.

16. **PW-12 SI Satyadev Panwar** deposed that on 24.12.2024, he was posted at ANTF, Shahdara District. On that further investigation of the case was marked to him. He obtained the result of FSL. He prepared the charge-sheet and submitted the same before the Court.

17. **PW-13 SI Deshpal** deposed that on 06.11.2024, he was posted at ANTF, Shahdara District. On that day he was present in his office. HC Vinay came to him and handed over copy of FIR and original rukka to him. SI Satish Kumar also met this witness in the office. He (SI Satish Kumar) handed over the custody of accused alongwith documents prepared by him to this witness. This witness mentioned FIR number on the seizure memo. He arrested the accused vide arrest memo already Ex. PW-8/A and personally searched him vide personal search memo already Ex. PW-8/B which bear his signatures at Point-D, respectively. Apart from one purse containing cash, original notice U/s 50 NDPS Act was recovered from his personal search. This witness recorded

DLSSH010023362025 SC No. 139/2025 STATE Vs. SUBHASH CHAND JAISWAL FIR No. 670/2024 (Seemapuri) U/s 21(c) NDPS Act		Page 24 of 48
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disclosure statement of the accused already Ex. PW-8/C which bears signature of this witness at Point-D. This witness deposited the personal search articles of the accused in the *maalkhana* of P.S. Seemapuri. Thereafter, this witness accompanied SI Satish to the spot where this witness prepared the site plan at instance of SI Satish which is already Ex. PW-2/E and the same bearing signature of this witness at Point-X.

It is stated by him that on the same day, accused was produced in the Court and this witness obtained five days PC remand of accused. This witness also moved an application for conducting the sampling proceedings U/s 52A NDPS Act and the date of sampling was fixed for 11.11.2024. On the same day, this witness prepared report U/s 57 NDPS Act regarding arrest of accused and submitted the same for onward transmission to the senior officers. The report is already Ex. PW-3/C which bears signature of this witness at Point-Y.

It is stated by him that during PC remand of accused, this witness tried to search for the source of contraband and also for the person to whom the accused was about to supply the smack. This witness made inquiries from the persons named by the accused in his disclosure statement i.e. Pira @ Rauf, Sudhir Gupta, Shyam Gupta and Gaurav, but their involvement was not found in the present case and this witness recorded their interrogation reports.

It is stated by him that on 11.11.2024 sampling proceedings of the contraband was conducted by Sh. Anshul Negi, Ld. JMFC, Shahdara in presence of the accused and two samples were drawn from the parcel containing the recovered contraband. Entire sampling proceedings were photographed stepwise. This witness obtained copy of order of Court, sample seal and handed

DLSSH010023362025 SC No. 139/2025 STATE Vs. SUBHASH CHAND JAISWAL FIR No. 670/2024 (Seemapuri) U/s 21(c) NDPS Act		Page 25 of 48
--	--	---------------

over the same to HC Rakesh who was present there alongwith all three sealed parcels for depositing the same at the *maalkhana*.

It is stated by him that during investigation, he sent the exhibits to FSL. He was transferred from ANTF, Shahdara in the end of month of November, 2024 and he submitted the case file with MHC(R).

This witness correctly identified the accused in the Court.

18. During trial, accused admitted the proceedings U/s 52A NDPS Act conducted by Sh. Anshul Negi, Ld. JMFC, Karkardooma Courts, Delhi dated 11.11.2024 (**Ex. AD-1**) U/s 330 BNSS/ 294 Cr.P.C.

19. No other witness was examined by the prosecution. Thereafter, P.E. was closed vide order dated 07.03.2026.

STATEMENT OF ACCUSED

20. Statement of accused was recorded under Section 313 Cr.P.C. wherein he pleaded his innocence and denied entire prosecution's case. It is stated by him that he was falsely arrested. It is stated by him that the reports U/s 57 NDPS Act are manipulated. It is stated by him that FSL report is false. It is stated by him that witnesses are interested witnesses. It is stated by him that being the police officials witnesses have deposed against him in order to prove their false case. It is stated by him that he was lifted from his house at Bareilly and was falsely implicated in the present case.

He chose not to lead any defence evidence.

DLSSH010023362025 SC No. 139/2025 STATE Vs. SUBHASH CHAND JAISWAL FIR No. 670/2024 (Seemapuri) U/s 21(c) NDPS Act		Page 26 of 48
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FINAL ARGUMENTS

21. This Court has heard the Ld. Additional Public Prosecutor and Ld. Counsel for the accused and perused the record carefully.

22. It is contended by Ld. Addl. PP for the State that all the procedures as per NDPS Act have been complied with in the present matter at the time of recovery and thereafter. It is contended that accused was found in possession of 334 grams of heroin in a transparent polythene recovered from black colour *pithu* bag carried by him on his shoulder. There is nothing on record to suggest that police officials had any enmity with the accused. Thus, the offence U/s 21 NDPS Act is proved beyond reasonable doubt against the accused Subhash Chand Jaiswal.

23. Per contra, it is contended on behalf of the accused that accused has been falsely implicated in the present case. It is contended that no public witness was joined in the present investigation. It is pointed out that no CCTV footage qua arrest of accused or his movement towards the spot of his arrest has been filed on record. There is no videography or photography of the alleged recovery, sampling and seizure proceedings.

Legal Requirement to prove the Charges :-

24. Section 21 NDPS Act reads as under:

“21. Punishment for contravention in relation to manufactured drugs and preparations.

DLSH010023362025 SC No. 139/2025 STATE Vs. SUBHASH CHAND JAISWAL FIR No. 670/2024 (Seemapuri) U/s 21(c) NDPS Act		Page 27 of 48
---	--	---------------

Whoever, in contravention of any provision of this Act or any rule or order made or condition of license granted thereunder, manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses any manufactured drug or any preparation containing any manufactured drug shall be punishable,--

(a) where the contravention involves small quantity, with rigorous imprisonment for a term which may extend to one year, or with fine which may extend to ten thousand rupees, or with both;

(b) where the contravention involves quantity, lesser than commercial quantity but greater than small quantity, with rigorous imprisonment for a term which may extend to ten years and with fine which may extend to one lakh rupees;

(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.”

(emphasis supplied)

25. As far as contravention of the provisions is concerned, Section 8 of NDPS Act completely prohibits the possession of narcotic drug or psychotropic substances, except for medical or scientific purposes, that too in the manner as prescribed by the Act. This section reads as under :

“No person shall--

(a) cultivate any coca plant or gather any portion of coca plant; or

(b) cultivate the opium poppy or any cannabis plant; or

(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, except for medical or scientific purposes and in the manner and to the extent provided by the provisions of this Act or the rules or orders made thereunder and in a case where any such provision, imposes any requirement by way of licence, permit or authorisation also in accordance with the terms and conditions of such licence, permit or authorisation:

Provided that, and subject to the other provisions of this Act and the rules made thereunder, the prohibition against the cultivation of the cannabis plant for the production of ganja or the production, possession, use, consumption, purchase, sale, transport, warehousing, import inter-State and export inter-State of ganja

DLSSH010023362025 SC No. 139/2025 STATE Vs. SUBHASH CHAND JAISWAL FIR No. 670/2024 (Seemapuri) U/s 21(c) NDPS Act		Page 28 of 48
--	--	---------------

*for any purpose other than medical and scientific purpose shall take effect only from the date which the Central Government may, by notification in the Official Gazette, specify in this behalf:
Provided further that nothing in this section shall apply to the export of poppy straw for decorative purposes.”*

(emphasis supplied)

26. As per the Section, possession of all narcotic drugs is prohibited by Section 8 of NDPS Act.

27. The term “narcotic drugs” is defined in Section 2(xiv) as under :-

(xiv) "**narcotic drug**" means coca leaf, cannabis (hemp), opium, poppy straw and includes all **manufactured drugs**;

28. As per the definition, ‘narcotic drug’ includes ‘manufactured drug’, therefore, the possession of ‘manufactured drug’ is prohibited by Section 8 of NDPS Act.

29. The term “manufactured drug” is defined in Section 2(ix) of NDPS Act, as under :-

(xi) “**manufactured drug**” means—

(a) all coca derivatives, medicinal cannabis, **opium derivatives** and poppy straw concentrate;

(b) any other narcotic substance or preparation which the Central Government may, having regard to the available information as to its nature or to a decision, if any, under any International Convention, by notification in the Official Gazette, declare not to be a manufactured drug,

but does not include any narcotic substance or preparation which the Central Government may, having regard to the available information as to its nature or to a decision, if any, under any International Convention, by notification in the Official Gazette, declare not to be a manufactured drug;”

(emphasis supplied)

30. “Opium Derivatives” besides other things also means heroin. It is

DLSH010023362025 SC No. 139/2025 STATE Vs. SUBHASH CHAND JAISWAL FIR No. 670/2024 (Seemapuri) U/s 21(c) NDPS Act		Page 29 of 48
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defined in Section 2(xvi) of NDPS Act as under:

(xvi) “**opium derivative**” means—

(a) medicinal opium, that is, opium which has undergone the processes necessary to adapt it for medicinal use in accordance with the requirements of the Indian Pharmacopoeia or any other pharmacopoeia notified in this behalf by the Central Government, whether in powder form or granulated or otherwise or mixed with neutral materials;

(b) prepared opium, that is, any product of opium obtained by any series of operations designed to transform opium into an extract suitable for smoking and the dross or other residue remaining after opium is smoked;

(c) **phenanthrene alkaloids, namely, morphine, codeine, thebaine and their salts;**

(d) **diacetylmorphine, that is, the alkaloid also known as dia-morphine or heroin and its salts; and**

(e) all preparations containing more than 0.2 per cent. of morphine or containing any diacetylmorphine”

(emphasis supplied)

31. The prosecution would also be required to prove that the quantity of the contraband recovered was of small, intermediate or commercial quantity. The terms “small quantity” and “commercial quantity” are defined in Section 2(xxiiia) & 2 (viia), as under :

“(xxiiia) "small quantity", in relation to narcotic drugs and psychotropic substances, means any quantity lesser than the quantity specified by the Central Government by notification in the Official Gazette;

(viia) "commercial quantity", in relation to narcotic drugs and psychotropic substances, means any quantity greater than the quantity specified by the Central Government by notification in the Official Gazette.”

32. The notification specifying small quantity & commercial quantity vide SO1055(E) dated 19.10.2001 mentions the small quantity and commercial quantity for various Narcotic Drugs & Psychotropic Substances, including ‘heroin’. As per entry at serial no.56 in the said notification, the small quantity for Heroin is 5 gms and commercial quantity is 250 gms.

DLSH010023362025 SC No. 139/2025 STATE Vs. SUBHASH CHAND JAISWAL FIR No. 670/2024 (Seemapuri) U/s 21(c) NDPS Act		Page 30 of 48
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33. In order to prove the charge U/s 21(c) NDPS Act, the prosecution is required to prove the following facts:

- (1) That accused was in possession of contraband.
- (2) That the possession was in contravention of the provision of the Act or any rule or order made or condition of license granted thereunder.
- (3) That the contraband was opium derivative/ heroin.
- (4) That the quantity of the contraband was commercial for Section 21(c) NDPS Act.

34. Besides proving the aforesaid facts, the prosecution is also required to prove that the investigating agency carried out the investigation in compliance with the provisions of NDPS Act. The investigating agency must adhere strictly to the legal procedure established during the search, ensuring transparency and fairness in the investigation. By adhering to this procedure, the agency demonstrates its commitment to protecting personal liberty, a fundamental right of citizens. This ensures that the search was conducted in a manner that upholds the principles of the judicial system. The credibility of the evidence presented by the prosecution is enhanced when the investigating agency follows the statute scrupulously as held by Hon'ble Bombay High Court in the case titled as ***Koyappakalathil Ahamed Koya vs. A.S. Menon and Ors.*** (03.07.2002 - BOMHC) : MANU/MH/1838/2002 :-

“In view of the principle that Caesar's wife must be above-board, the investigating agency has to be consistent with the procedure laid down by law while conducting the search and it has to be above-board in following the procedure by investigating into the crime and if that is done it would assure the judicial mind

DLSH010023362025 SC No. 139/2025 STATE Vs. SUBHASH CHAND JAISWAL FIR No. 670/2024 (Seemapuri) U/s 21(c) NDPS Act		Page 31 of 48
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that by giving importance to the personal liberty a fundamental right of (he citizen, the search was conducted. If that is done, then there would be creditworthiness to such evidence which has been adduced by the prosecution. The investigating agency must follow the procedure as envisaged by the statute scrupulously and failure to do so must be viewed by the higher authorities seriously inviting action against the concerned official so that laxity on the part of the investigating authority is curbed.”

Thus, the failure to adhere to the procedure raises a doubt in the mind of the Court regarding the manner in which the investigation is carried out, which obviously favors the accused.

35. It is settled legal proposition that the procedure provided under Chapter V of the NDPS Act has to be scrupulously followed for the Court to raise such presumption. For raising the presumption U/s 54 of the Act it must be first established that recovery was made from the accused and the procedure provided under the NDPS Act followed thoroughly without fail. It is further settled law that for attracting the provision of Section 54 of NDPS Act, it is essential for the prosecution to establish the element of possession of contraband by the accused beyond reasonable doubt for the burden to shift to the accused to prove his innocence. This burden on the prosecution is a heavy burden. To decide whether the burden has been discharged or not by the prosecution, it is relevant to peruse the record and evidence and consider the submissions made by the parties.

DLSSH010023362025 SC No. 139/2025 STATE Vs. SUBHASH CHAND JAISWAL FIR No. 670/2024 (Seemapuri) U/s 21(c) NDPS Act		Page 32 of 48
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ANALYSIS OF EVIDENCE

36. The Court will now proceed to examine and discuss the various aspects of the case and the relevant pieces of evidence under distinct headings as follows:-

Discussion on the point of compliance of Sections 42 or 43 of NDPS Act

37. The present case is a case of recovery from public place. Accordingly, the question of compliance of Section 42 NDPS Act does not arise in the facts of this case. However, a secret information was received in the present matter on the basis of which a raiding team was constituted, the said raiding team left the office for going to spot, laid trap at the spot and thereafter, arrested the accused.

38.(a) The most important document in the present case is the DD entry whereby the police party consisting of PW-2 SI Satish Kumar, PW-8 ASI Hitlar Singh, PW-10 HC Sanjeev Kumar and PW-11 HC Vinay left the office on the basis of the secret information received qua transportation of contraband by the accused. The secret information was recorded vide DD No. 6 dated 05.11.2024 and raiding party departed from the office vide DD No. 7 dated 05.11.2024.

(b) The doubt in the story of the prosecution arises from the fact that DD No. 6 and DD No. 7 which are exhibited on record as Ex. PW-3/A and Ex. PW-2/G, respectively are simply typed copies of the DD entries. There is an another GD entry qua deposit of contraband in P.S. Seemapuri bearing no.

DLSSH010023362025 SC No. 139/2025 STATE Vs. SUBHASH CHAND JAISWAL FIR No. 670/2024 (Seemapuri) U/s 21(c) NDPS Act		Page 33 of 48
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0011A dated 06.11.2024 on record as Ex. PW-9/A, which is a computer generated copy of the GD entry taken from the CCTNS site. This computer generated page of GD No. 0011A dated 06.11.2024 shows that on the relevant day Delhi Police was using CCTNS to register their General Diary Entries, however no such print out taken from the site of CCTNS has been filed on record qua DD No. 6 and DD No. 7.

(c) PW-2 SI Satish Kumar has not stated if the typed copy of DD No. 7 which is Ex. PW-2/G was typed by him, as such he was not the right person to exhibit this typed copy of DD as the same was not prepared by him.

(d) It is contended by Ld. Addl. PP for the State that a secret information U/s 42 NDPS Act can be recorded on a plain paper, it is only required to be forthwith conveyed to the senior officers, which has been done in the present matter as clear from Ex. PW-3/A i.e. typed copy of DD No. 6. Ld. Addl. PP for the State is very much correct when he says that a secret information can be recorded on a plain paper, but in the present matter police official himself recorded the secret information as daily diary/ general diary entry. In such circumstances, non-registration of DD or GD entry on CCTNS raises serious doubts qua timing of recording that DD entries.

(e) As per standing order no. Crime/24/2022 dated 27.05.2022 of Commissioner of Police, GD entry and DD entry have to be registered on the CCTNS. Infact, even prior to that since 01.09.2018 CCTNS was upgraded to

DLSH010023362025 SC No. 139/2025 STATE Vs. SUBHASH CHAND JAISWAL FIR No. 670/2024 (Seemapuri) U/s 21(c) NDPS Act		Page 34 of 48
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CAS version 4.5 which allows recording of general diary details on the CCTNS. The recording of GD entry on CCTNS is required as per above-stated rules, further it also negates the manipulation of record by fixing the time stamp on the GD entry. Non-entering of DD No. 6 and DD No. 7 on CCTNS raises a doubt qua genuineness of these entries. There is high possibility of manipulation in the timing of recording these DD entries.

Since the foundational DDs of the present case i.e. DD No. 6 and DD No. 7, both dated 05.11.2024 are simply computer typed copies and their CCTNS generated copies confirming time of recording of the same or the original DD register wherein alleged DDs were recorded, have not been filed before the Court. This fact raises doubt qua receipt of secret information and lodging of DD No. 6 and DD No. 7 on the basis of which police party left for the spot.

(f) The non-production of CCTNS generated copies of DD No. 6 and DD No. 7 raises a doubt qua timing of recording of such DD entries on the basis of which police team reached the spot. In such circumstances, presence of the raiding party at the spot at the time of alleged recovery from public place became doubtful. This discrepancy goes to the root of the matter.

Discussion on the point of compliance of Section 50 of NDPS Act

39. Section 50 NDPS Act is as under :-

“Conditions under which search of persons shall be conducted.

(1) When any officer duly authorised under section 42 is about to search any person under the provisions of section 41, section 42 or section 43, he shall, if such person so requires, take such person without unnecessary delay to nearest

DLSH010023362025 SC No. 139/2025 STATE Vs. SUBHASH CHAND JAISWAL FIR No. 670/2024 (Seemapuri) U/s 21(c) NDPS Act		Page 35 of 48
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Gazetted Officer of any of the departments mentioned in section 42 or to the nearest Magistrate.

(2) If such requisition is made, the officer may detain the person until he can bring him before the Gazetted Officer or the Magistrate referred to in sub-section (1).

(3) The Gazetted Officer or the Magistrate before whom any such person is brought shall, if he sees no reasonable ground for search, forthwith discharge the person but otherwise shall direct that search be made.

(4) No female shall be searched by anyone excepting a female.

(5) When an officer duly authorised under section 42 has reason to believe that it is not possible to take the person to be searched to the nearest Gazetted Officer or Magistrate without the possibility of the person to be searched parting with possession of any narcotic drug or psychotropic substance, or controlled substance or article or document, he may, instead of taking such person to the nearest Gazetted Officer or Magistrate, proceed to search the person as provided under section 100 of the Code of Criminal Procedure, 1973 (2 of 1974).

(6) After a search is conducted under sub-section (5), the officer shall record the reasons for such belief which necessitated such search and within seventy-two hours send a copy thereof to his immediate official superior.”

(emphasis supplied)

40. As per prosecution case, after apprehension of the accused, he was served with the mandatory notice under Section 50 of the NDPS Act, however he refused for his personal search in the presence of any Gazetted Officer or Magistrate. Nothing recovered in the personal search of the accused as contraband were allegedly recovered from the *pithu* bag carried by accused on his shoulder. As regards recovery made from bag carried by suspect is concerned, it has been observed by the Hon’ble Apex Court that the provisions of section 50 NDPS Act do not apply to recoveries other than those made from the person of the accused.

41. In *Saikou Jabbi Vs. State of Maharashtra, MANU/SC/0991/2003*, heroine was found in a bag being carried by suspect. It was held that Section 50 was not applicable as it applies to search of a person.

DLSH010023362025 SC No. 139/2025 STATE Vs. SUBHASH CHAND JAISWAL FIR No. 670/2024 (Seemapuri) U/s 21(c) NDPS Act		Page 36 of 48
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42. In view of the law laid down in *State of Punjab Vs. Baldev Singh, (1999) 6 SCC 172* and *State of Punjab Vs. Baljinder Singh, 2019 INSC 1145* as well as judgment cited above, it is held that the compliance of Section 50 NDPS Act is not mandatory in the present case, as the recovery was effected from the *pithu* bag carried by the accused and not from the person of the accused.

Discussion on the point of recovery of contraband

43. In the present matter, on the basis of secret information, accused was apprehended by patrolling party and from *pithu* bag carried by him, 334 grams of heroin was recovered. However, there are certain doubts qua recovery :-

(i)(a) The recovery of the contraband is shrouded with doubts as there is no videography or photography of the search, arrest or recovery proceedings was clicked/ made. No CCTV footage qua presence of the accused at the time and place of arrest or his movement towards the spot of arrest has been filed on record, despite the fact that members of the raiding party have deposed that there were CCTV cameras installed in the nearby area.

(b) In the present case, alleged recovery was made on 05.11.2024, FIR was registered thereafter on 06.11.2024 i.e. after coming into force of Bharatiya Nagarik Suraksha Sanhita (BNSS) which came into force on 01.07.2024. As per

DLSH010023362025 SC No. 139/2025 STATE Vs. SUBHASH CHAND JAISWAL FIR No. 670/2024 (Seemapuri) U/s 21(c) NDPS Act		Page 37 of 48
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Section 105 BNSS recovery procedure shall be recorded through audio-video electronic means preferably through mobile phone. The Section 105 BNSS reads as under :-

“Recording of search and seizure through audio-video electronic means.

105. The process of conducting search of a place or taking possession of any property, article or thing under this Chapter or under section 185, including preparation of the list of all things seized in the course of such search and seizure and signing of such list by witnesses, shall be recorded through any audio-video electronic means preferably mobile phone and the police officer shall without delay forward such recording to the District Magistrate, Sub-divisional Magistrate or Judicial Magistrate of the first class.”

(c) It is contended by Ld. Addl. PP for the State that though the word ‘shall’ has been used in Section 105 BNSS, however these instructions are only directory and not mandatory as it has not been mentioned in the Section or anywhere else in the BNSS that recovery would be vitiated for non-recording of audiography and videography of the same.

The contention of Ld. Addl. PP for the State is not tenable in view of the observation made by Hon’ble High Court of Delhi in the case titled as ***Bantu Vs. State Govt. of NCT of Delhi (Bail Appl. No.2287/22 dtd.08.07.2024 of Hon’ble Delhi High Court*** which is as under :-

“Absence of Videography and Photography

66. It is also argued by the learned counsel for the applicant that even though the applicant was apprehended during daytime, and the seizure in the present case was made on the basis of secret information, the police officials made no endeavour to arrange for videography of the raid and recovery of the contraband from the applicant.

DLSH010023362025 SC No. 139/2025 STATE Vs. SUBHASH CHAND JAISWAL FIR No. 670/2024 (Seemapuri) U/s 21(c) NDPS Act		Page 38 of 48
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67. *The Hon'ble Apex Court in the case of Mohd. v. State of H.P.: (2018) 5 SCC 311 underscored the importance of videography in police investigation in line with the best practices around the world given the advancement of technology. The Hon'ble Apex Court had directed the implementation of a Plan of Action proposed by the Committee of the Ministry of Home Affairs and further directed for setting up of a Central Oversight Body to plan and implement the use of videography. The relevant portion of the said judgment is reproduced hereunder:*

“3. In order dated 30-1-2018 [Shafhi Mohammad v. State of H.P., (2018) 2 SCC 801 : (2018) 2 SCC 807 : (2018) 1 SCC (Cri) 860 : (2018) 1 SCC (Cri) 865] it was observed: (Shafhi Mohammad case [Shafhi Mohammad v. State of H.P., (2018) 2 SCC 801 : (2018) 2 SCC 807 : (2018) 1 SCC (Cri) 860 : (2018) 1 SCC (Cri) 865], SCC pp. 808-09, paras 21-23)

“21. We have been taken through certain decisions which may be referred to. In Ram Singh v. Ram Sing [Ram Singh v. Ram Singh, 1985 Supp SCC 611], a three-Judge Bench considered the said issue. English judgments in R. v. Maqsum Ali [R. v. Maqsum Ali, (1966) 1 QB 688 : (1965) 3 WLR 229 : (1965) 2 All ER 464 (CCA)] and R. v. Robson [R. v. Robson, (1972) 1 WLR 651 : (1972) 2 All ER 699 (CCC)], and American Law as noted in American Jurisprudence, 2d (Vol. 29) p. 494, were cited with approval to the effect that it will be wrong to deny to the law of evidence advantages to be gained by new techniques and new devices, provided the accuracy of the recording can be proved. Such evidence should always be regarded with some caution and assessed in the light of all the circumstances of each case. Electronic evidence was held to be admissible subject to safeguards adopted by the Court about the authenticity of the same. In the case of tape-recording it was observed that voice of the speaker must be duly identified, accuracy of the statement was required to be proved by the maker of the record, possibility of tampering was required to be ruled out. Reliability of the piece of evidence is certainly a matter to be determined in the facts and circum-

DLSSH010023362025 SC No. 139/2025 STATE Vs. SUBHASH CHAND JAISWAL FIR No. 670/2024 (Seemapuri) U/s 21(c) NDPS Act		Page 39 of 48
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stances of a fact situation. However, threshold admissibility of an electronic evidence cannot be ruled out on any technicality if the same was relevant.

22. In Tukaram S. Dighole v. Manikrao Shivaji Kokate [Tukaram S. Dighole v. Manikrao Shivaji Kokate, (2010) 4 SCC 329 : (2010) 2 SCC (Civ) 112 : (2010) 2 SCC (Cri) 826] , the same principle was reiterated. This Court observed that new techniques and devices are order of the day. Though such devices are susceptible to tampering, no exhaustive rule could be laid down by which the admission of such evidence may be judged. Standard of proof of its authenticity and accuracy has to be more stringent than other documentary evidence.

23. In Tomaso Bruno v. State of U.P. [Tomaso Bruno v. State of U.P., (2015) 7 SCC 178 : (2015) 3 SCC (Cri) 54] , a three- Judge Bench observed that advancement of information technology and scientific temper must pervade the method of investigation. Electronic evidence was relevant to establish facts. Scientific and electronic evidence can be a great help to an investigating agency. Reference was made to the decisions of this Court in Mohd. Ajmal Amir Kasab v. State of Maharashtra [Mohd. Ajmal Amir Kasab v. State of Maharashtra, (2012) 9 SCC 1 : (2012) 3 SCC (Cri) 481] and State (NCT of Delhi) v. Navjot Sandhu [State (NCT of Delhi) v. Navjot Sandhu, (2005) 11 SCC 600 : 2005 SCC (Cri) 1715].”

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5.An affidavit dated 21-3-2018 has been filed by the Director, Ministry of Home Affairs (MHA) annexing thereto report of the Committee constituted by the MHA about use of videography in police investigation dated 22-11-2017. The Committee considered various issues including the present infrastructure and usage, concerns/problems raised by various States for use of videography during investigations, admissibility of electronic evidence in absence of a certificate under Section 65-B(4) of the Evidence Act, operational difficulties, lack of training, funding, forensic facilities. The Committee observed that though crime scene videography was a "desirable and acceptable best practice", the mandatory

DLSH010023362025 SC No. 139/2025 STATE Vs. SUBHASH CHAND JAISWAL FIR No. 670/2024 (Seemapuri) U/s 21(c) NDPS Act		Page 40 of 48
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videography required major issues being addressed. Videography may be done on "best effort" basis. The timeline should be different for different States and the Central Investigating Agencies....

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*9. We are in agreement with the Report of the Committee of Experts that videography of crime scene during investigation is of immense value in improving administration of criminal justice. A Constitution Bench of this Court in Karnail Singh v. State of Haryana [Karnail Singh v. State of Haryana, (2009) 8 SCC 539 : (2009) 3 SCC (Cri) 887] , SCC para 34 noted that technology is an important part in the system of police administration. It has also been noted in the decisions quoted in the earlier part of this order that new techniques and devices have evidentiary advantages, subject to the safeguards to be adopted. Such techniques and devices are the order of the day. Technology is a great tool in investigation [Ram Singh v. Ram Singh, 1985 Supp SCC 611; R. v. Maqsood Ali, (1966) 1 QB 688 : (1965) 3 WLR 229 : (1965) 2 All ER 464 (CCA); R. v. Robson, (1972) 1 WLR 651 : (1972) 2 All ER 699 (CCC); Tukaram S. Dighole v. Manikrao Shivaji Kokate, (2010) 4 SCC 329 : (2010) 2 SCC (Civ) 112 : (2010) 2 SCC (Cri) 826; Tomaso Bruno v. State of U.P., (2015) 7 SCC 178 : (2015) 3 SCC (Cri) 54; Mohd. Ajmal Amir Kasab v. State of Maharashtra, (2012) 9 SCC 1 : (2012) 3 SCC (Cri) 481; State (NCT of Delhi) v. Navjot Sandhu, (2005) 11 SCC 600 : 2005 SCC (Cri) 1715] . **By the videography, crucial evidence can be captured and presented in a credible manner.***

10. Thus, we are of the considered view that notwithstanding the fact that as of now investigating agencies in India are not fully equipped and prepared for the use of videography, the time is ripe that steps are taken to introduce videography in investigation, particularly for crime scene as desirable and acceptable best practice as suggested by the Committee of the MHA to strengthen the Rule of Law. We approve the Centrally Driven Plan of Action prepared by the

DLSSH010023362025 SC No. 139/2025 STATE Vs. SUBHASH CHAND JAISWAL FIR No. 670/2024 (Seemapuri) U/s 21(c) NDPS Act		Page 41 of 48
--	--	---------------

Committee and the timeline as mentioned above. Let the consequential steps for implementation thereof be taken at the earliest.”

(emphasis supplied)

68. The Hon'ble Calcutta High Court in the case of Kalu Sk. @ Kuran and Kabir Sk. v. State of West Bengal: C.R.M (NDPS) 492 of 2022 with C.R.M.(NDPS) 493 of 2022 observed that the legitimacy of the recovery of the contraband is the fulcrum of the cases under the NDPS Act. Following the said judgment as well as the guidelines in the NCB Handbook, the Hon'ble High Court observed that electronic devices enabling videography are readily available and framed guidelines for mandatory recovery:

“Accordingly, we direct as follows:--

(i) In all cases involving recovery of narcotic substance particularly recovery of narcotic above commercial quantity, seizing officers shall make a video recording of the entire procedure unless for reasons beyond the control of seizing officers, they are unable to do so;

(ii) Reasons for failing to videograph the recovery proceeding must be specifically recorded in the investigation records particularly contemporaneous documents including seizure/inventory list;

(iii) Superior Police Officer not lower than the rank of Additional Superintendent of Police shall monitor recovery of narcotic substance above commercial quantity within their territorial jurisdiction and ensure due compliance of statutory provisions regarding search and seizure including compliance of the directives (i) and (ii) relating to videography of recovery and/or recording of adequate reasons for departure from such procedure;

(iv) Non-compliance of the directives (i) and (ii) relating to videography of recovery and/or failure to record just reasons in contemporaneous documents for its noncompliance would attract departmental proceeding so far as the seizing officer is concerned;

DLSSH010023362025 SC No. 139/2025 STATE Vs. SUBHASH CHAND JAISWAL FIR No. 670/2024 (Seemapuri) U/s 21(c) NDPS Act		Page 42 of 48
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(v) Director General of Police shall issue necessary directions for due compliance with the aforesaid directives;

(vi) Superintendent of Police/Commissioner of Police in each district/commissionerate shall undertake training programmes to spread awareness and capacity building of officers regarding compliance of statutory requirements in the matter of search and seizure of narcotic substance under NDPS Act and compliance of the aforesaid directives relating to videograph of recovery including collection, preservation and production of such electronic evidence in Court.”

(emphasis supplied)

69. This Court, in the case of *Ram Prakash v. State*: 2014 SCC OnLine Del 6936, while acquitting the accused person therein, had taken into account the shoddy investigation conducted by the prosecution on account of lack of videography and found the prosecution case to be unbelievable. The Court had observed as under:

“22.The Court can only observe that with so many technological advances where satellite imagery to the smallest degree of precision of any location in the world is available, the Delhi police can no longer be excused for not improving its methods of gathering and presenting evidence. Considering that the raid was going to take place in a busy place like the Old Delhi Railway Station parking lot, and in broad daylight, it should have been possible for the police to arrange for a videograph of the place or perhaps of the raid itself, if not photographs.

23. Also clearly there are CCTV cameras all over the place outside the Old Delhi Railway Station including its parking lot. There was no effort made to collect the CCTV footage of the relevant time. Not only would it have showed how the Appellant reached the spot with the three bags but also it could have been placed on record to show the raid placed on record to shown the raid as it took place.”

(emphasis supplied)

DLSH010023362025 SC No. 139/2025 STATE Vs. SUBHASH CHAND JAISWAL FIR No. 670/2024 (Seemapuri) U/s 21(c) NDPS Act		Page 43 of 48
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70. On the other hand, another Coordinate Bench of this Court in the case of *Chidi Berr Nwayoga v. State* : 2022 SCC OnLine Del 2558 rejected the contention that the case of the prosecution ought to be disbelieved as there was no videography and no CCTV footage was collected either. In this case, although the raid was conducted on secret information, the Court had explicitly noted that if the police officers had parked their cars or made an attempt for videography in advance, there was a possibility that the accused persons would get alerted about the raid and not gone ahead with the transaction.

71. It is also pertinent to note that a Coordinate Bench of this Court, in the case of *Sagar v. State (NCT of Delhi)* : 2024 SCC OnLine Del 1419, while denying bail to the accused therein, noted that the question as to whether the raiding team followed the NCB Handbook while recovery of contraband is a matter of trial which can only be deliberated upon after the prosecution has received a fair chance to prove its case beyond reasonable doubt.

72. Almost all individuals carry a mobile phone compatible for videography these days. From the above cases, it is clear that it is open for the prosecution to furnish reasons to explain and justify the absence of videography and photography in a case. Mere absence of videography and photography of the recovery does not nullify the case of the prosecution, however, the same can in some circumstances be sufficient to create a doubt as to the veracity of the prosecution's case.”

(d) In the case in hand, no contemporaneous document prepared at the spot mentioning the reason for not videographing the recovery proceedings. Similarly, no reason has been given during evidence by any of the police official for not videographing the recovery proceedings. Accused in the present case was coming on foot. If the video was not started prior to his apprehension, however, after his apprehension by the raiding team consisting of four persons, there was no reason for not recording the video of recovery made from the

DL SH010023362025 SC No. 139/2025 STATE Vs. SUBHASH CHAND JAISWAL FIR No. 670/2024 (Seemapuri) U/s 21(c) NDPS Act		Page 44 of 48
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accused. Despite the fact that the raiding team was well aware that recovery proceedings have to be videographed and also required to be uploaded on e-sakshya app, as it is stated by PW-10 HC Sanjeev Kumar that ASI Hitler conducted the photography and videography of the proceedings on e-sakshya from the mobile phone of PW-2 SI Satish Kumar, though it is stated by PW-8 ASI Hitler Singh that videography of the recovery proceedings was done on e-sakshya app, but he could not tell who did the same. Nothing qua videography of the recovery proceedings or uploading the same on e-sakshya app is stated by PW-11 HC Vinay, and PW-2 SI Satish Kumar categorically stated in his cross-examination that no videography or photography of the seizure proceedings was done. Thus, all the four members of the raiding team are giving different version qua photography or videography of the recovery proceedings, however no such photography or videography has been brought before the Court, no document apprising longitude-latitude of any such videos and no certificate U/s 63(4) Bharatiya Sakshya Adhiniyam, 2023 has been filed on record qua any such video recording.

(ii) The place of recovery was a public place. Admittedly, a number of public persons were present there at that time. Despite that police did not join and did not even sincerely try to join any public person. Though, it is a fact that generally public persons do not become part of police proceedings or investigation, more so in a case of Narcotic Drugs. This inaction on the part of the police raises doubt qua time and place of recovery as stated by the police.

DLSSH010023362025 SC No. 139/2025 STATE Vs. SUBHASH CHAND JAISWAL FIR No. 670/2024 (Seemapuri) U/s 21(c) NDPS Act		Page 45 of 48
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Non-joining of public witness during the proceedings, raises serious doubt as regards the recovery made from the accused. In this regard, reliance can be placed upon judgment titled as ***Bantu Vs. State Govt. of NCT of Delhi (Bail Appl. No.2287/22 dtd.08.07.2024 of Hon'ble Delhi High Court)***.

Thus, in the present matter, it can be safely held that sincere and sufficient efforts were not made by the police party to join the independent witness in the investigation. Further, there is no videography of the recovery proceedings as mandated by Section 105 BNSS. The testimonies of the police officials suffer from material contradictions, specifically with regard to videography of the recovery proceedings as stated above, which raises serious doubt qua their version of recovery. In cases where the factum of recovery of the contraband is supported only by official witnesses as in the present case, lack of videography and photography, especially in the absence of independent witnesses, casts a doubt on the recovery of the contraband, unless the same is justified by cogent reasons. The Hon'ble Apex Court, in a catena of judgments has held that the more severe the punishment, greater has to be the care taken to ensure that all the safeguards provided in the statute are scrupulously followed.

44. Section 55 of the NDPS Act was duly complied with in the present matter as SHO, P.S. Seemapuri PW-9 has also put his seal on the samples and contraband recovered, before depositing the same in the *maalkhana*.

DLSH010023362025 SC No. 139/2025 STATE Vs. SUBHASH CHAND JAISWAL FIR No. 670/2024 (Seemapuri) U/s 21(c) NDPS Act		Page 46 of 48
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45. Section 57 of the NDPS Act which requires that :-

“Whenever any person makes any arrest or seizure, under this Act, he shall, within forty-eight hours next after such arrest or seizure, make a full report of all the particulars of such arrest or seizure to his immediate official superior.”

46. In the present matter, the special reports U/s 57 NDPS Act were prepared by SI Satish Kumar and SI Deshpal. The original reports U/s 57 NDPS Act prepared by SI Satish Kumar and SI Deshpal are exhibited on record as Ex. PW-3/B and Ex. PW-3/C, both the reports are dated 06.11.2024. They were dispatched from the office of ANTF/ Shahdara on 06.11.2024 itself vide dispatch nos. 262 & 263, the same were received in the office of ACP, Seemapuri on 06.11.2024 itself vide diary nos. 6307 & 6308. The reports were submitted to ACP concerned within 48 hours of recovery. Thus, it can be safely held that provisions of Section 57 of the NDPS Act have been duly complied with by the Investigating Agency in the present case.

Discussion on the point of compliance of Section 52A of NDPS

Act

47. As a matter of fact, in the present case the sampling proceedings were conducted before the Ld. Magistrate U/s 52A of the NDPS Act. The said proceedings were admitted during trial by the accused which is on record as Ex. AD-1. One of the sample taken during proceedings U/s 52A of the NDPS Act had duly reached FSL with the seal of ‘ASK’ of Ld. JMFC (i.e. seal of Court) and the FSL report has been duly proved on record as Ex. PW-4/A.

DLSH010023362025 SC No. 139/2025 STATE Vs. SUBHASH CHAND JAISWAL FIR No. 670/2024 (Seemapuri) U/s 21(c) NDPS Act		Page 47 of 48
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48. Thus, in the present case there is due compliance of Section 52A NDPS Act, as the sampling proceedings were done by Ld. JMFC.

49. During trial, PW-4 Dr. Adesh Kumar, Senior Scientific Officer (Chemistry) at FSL, Rohini exhibited on record FSL report dated 05.03.2025 as Ex. PW-4/A wherein it was held that Ex. S-1 i.e. sample of the present case was found to contain Diacetylmorphine, 6-Monoacetylmorphine, Acetylcodeine, Morphine, Codeine, Papaverine, Alprazolam, Trimethoprim & Acetaminophen.

Conclusion

50. Upon reviewing the evidences, particularly the failure on the part of the police to record their departure entry in CCTNS, failure to join public witnesses despite availability and also failure to videograph the recovery proceedings, the prosecution has failed to prove the foundational facts against the accused beyond reasonable doubt. The presumption under sections 35 and 54 of the NDPS Act cannot be raised in this case against the accused, as the presence of police officials at the spot and recovery of contraband could not be established beyond reasonable doubt.

51. In the opinion of the Court, it cannot be said beyond doubt that there is no material contradiction in the story of the prosecution. Therefore, in the opinion of the Court, the benefit of doubt would go in favour of the accused.

DLSH010023362025 SC No. 139/2025 STATE Vs. SUBHASH CHAND JAISWAL FIR No. 670/2024 (Seemapuri) U/s 21(c) NDPS Act		<i>Page 48 of 48</i>
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52. Accordingly, accused **Subhash Chand Jaiswal** is **acquitted** of the offence punishable under Section 21(c) of the NDPS Act. Accused is directed to furnish bail bond U/s 481 BNSS (earlier Section 437-A Cr.P.C.), as per rules.

53. File be consigned to Record Room after due compliance.

Announced in the open Court
on 30th July, 2026

(Gajender Singh Nagar)
Special Judge (NDPS Act)
District Shahdara
Karkardooma Courts, Delhi