

GAHC010237732019



2025:GAU-AS:13421

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.A./393/2019

MD. SOHRAB KHAN
S/O- LATE JALIL KHAN, R/O- SALEMPUR, P.O. BAJAORA, P.S. DOBHI, DIST.-
GAYA, BIHAR- 824201.

VERSUS

THE UNION OF INDIA AND ANR
REP. BY NCB.

2:ANJANI KUMAR
INTELLIGENCE OFFICER
NARCOTICS CONTROL BUREAU
GUWAHATI ZONAL UNIT
VIP ROAD
RUPKUNWAR PATH
CHACHAL
GUWAHATI- 781022

Advocate for the Petitioner : MR A K AZAD, MS. S K NARGIS, MS N DAS, MS. A MESEN, MS S
CHOUDHURY, MR. D BORA, MR. P K DAS, MR. A KHAN

Advocate for the Respondent : SC, NCB,

Linked Case : Crl.A./360/2019

SHRI RAM MILAN AND ANR
S/O- LATE SHIV KUMAR
R/O- UNCHAHAR
P.O. BAJAORA
P.S. UNCHAHAR
DIST.- RAEBARELI
UTTAR PRADESH- 229404.

2: MD. ABDUL KALAM
S/O- MD. SAIFULLAH
R/O- MINUTHONG GOLAPATTI
P.O. BAJAORA
P.S. PROMPAT
DIST.- IMPHAL EAST
MANIPUR- 795005.
VERSUS

THE UNION OF INDIA AND ANR
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INTELLIGENCE OFFICER
NARCOTICS CONTROL BUREAU
GUWAHATI ZONAL UNIT
VIP ROAD
RUPKUNWAR PATH CHACHAL
GUWAHATI- 781022.

Advocate for : MS. S K NARGIS
Advocate for : SC
NCB appearing for THE UNION OF INDIA AND ANR

Linked Case : CrI.A./288/2019

MD. MUJIBUR RAHMAN
S/O- MD. SAIFULLAH OF HATTA
P.O. AND P.S. POROMPAT
IMPHAL EAST DISTRICT
MANIPUR PIN- 795005.

VERSUS

NARCOTICS CONTROL BUREAU
INDIA

Advocate for : MR H R A CHOUDHURY
Advocate for : SC
NCB appearing for NARCOTICS CONTROL BUREAU

**BEFORE
HON'BLE MR. JUSTICE MANISH CHOUDHURY
HON'BLE MRS. JUSTICE MITALI THAKURIA**

Date of Hearing : 14-08-2025

Date of Judgment : 26-09-2025

JUDGMENT & ORDER (CAV)

(Mitali Thakuria, J)

Heard Ms. S. K. Nargis, learned counsel for the appellants and Mr. S. C. Keyal, learned Standing Counsel, NCB.

2. All the three appeals are under Section 374(2) of the Code of Criminal Procedure, 1973 and against the same impugned judgment and order dated 22.04.2019, passed by the learned District and Sessions Judge, Kamrup (M), Guwahati in NDPS Case No. 38/2016 arising out of NCB Crime No. 04/2016, whereby the accused appellants are convicted and sentenced to undergo Rigorous Imprisonment for 20 (Twenty) years with fine of Rs. 2,00,000/- (Rupees Two Lakh), in default, imprisonment for another 1 (one) year under Sections 17(c)/21(c) of the NDPS Act.

3. The prosecution case in brief is that a specific information was received from a reliable source on 06.05.2016 at 17:30 hrs., that a delivery of consignment of Morphine and Opium would take place between Md. Abdul Kalam and Md. Mujibur Rahman and two persons namely, Sohrab Khan and Ram Milan near Indira Gandhi Stadium, Sarusajai, Guwahati at 07:00 AM on 07.05.2016. On 07.05.2016 acting upon the said specific information, the officers of NCB, Guwahati intercepted 4(four) persons, who are trafficking

Morphine and Opium near Indira Gandhi Stadium, Sarusajai in presence of 2(two) independent witnesses and seized the plastic bags of Opium weighing about 54.648 Kgs and Morphine weighing about 2.060 Kgs wrapped by a brown colour cello tape and kept in white polythene from the accused persons along with Scorpio and the 6 wheeler truck bearing Registration No.WB-58-C-2157 and MN-04-A-1960 respectively. Thereafter, the NCB Crime No. 04/2016 under Sections 8(c)/21(c)/17(c)/29 of the NDPS Act has been registered against the suspected accused persons and they were also accordingly arrested. Seizure was also completed and on completion of investigation, the Final Complaint has been filed and a case was registered as NDPS Case No. 38/2016.

4. After completion of search and seizure process, Panchnama was prepared and the statements of the accused appellants under Section 67 of the NDPS Act were also recorded. The seized articles were deposited in the official godown and on the next day, the articles were produced before the learned CJM, Kamrup(M) and the original samples were also sent for FSL examination.

5. Accordingly, on receipt of Final Complaint, a NDPS case was registered, copies were served immediately and after hearing both sides, the charge under Section 21(c) of the NDPS Act was framed against the accused persons. The Charge was read over and explained to the accused appellants, who pleaded not guilty and claimed to be tried.

6. The prosecution examined as many as 6(six) witnesses and the defence also examined 2(two) witnesses to rebut the charge. The accused appellants were also examined under Section 313 CrPC, whereby all the accused appellants pleaded not guilty and as stated above, 2(two) DWs were also examined by the defence.

7. After hearing the arguments put forward by the learned counsel for both sides, the learned Sessions Judge, Kamrup(M) had passed the impugned judgment and order dated 22.04.2019 convicting the accused appellants under Sections 17(c)/21(c) of the NDPS Act.

8. Being aggrieved and dissatisfied with the judgment and order dated 22.04.2019 passed by the learned Sessions Judge, Kamrup(M), the accused appellants have preferred the present appeals.

9. It is submitted by Ms. Nargis, learned counsel for the appellants that the learned Trial Court had erred in law and facts in convicting and sentencing the accused appellants. There were serious discrepancies in recovery, seizure and safe custody of the contrabands. The accused appellants also disputed the recovery of contraband from their possession and the prosecution also failed to prove the case beyond all reasonable doubt. But the learned Sessions Judge without appreciating the evidence on record in its true perspective had arrived at a wrong finding which has caused prejudice to the present accused appellants.

10. The learned Sessions Judge also miserably failed to appreciate the evidences, whether the prosecution complied with the requirements of body search as per the provisions of Section 50 of the NDPS Act or not. She further submitted that it is alleged that the accused appellants were holding 2 (two) numbers of bags with contrabands and they were also served with Notices under Section 50 of the NDPS Act, which were marked as Exhibits 10, 11, 12 and 13. Though the consent letters were obtained from the accused appellants, it is an obligatory duty cast upon the officer concerned to apprise the suspect of his right to be searched before a Gazetted Officer or a Magistrate, which is

reiterated in the case of **Arif Khan Vs. State of Uttarakhand** reported in **(2018) SCC Online SC 459**.

11. Ms. Nargis, learned counsel further submitted that the learned Trial Court had considered that there was no independent witnesses, except the official witnesses at the time of seizure and as many as 5 (five) numbers of official witnesses were examined in the instant case, but the prosecution could not produce any documentary evidence or any other evidence to prove that the official witnesses were present at the time of search and seizure. Further, the learned Trial Court also miserably failed to appreciate whether the prosecution followed the procedure of Section 100 of the CrPC or not. Though it is stated that they called 2(two) witnesses, namely, Dineswar Basumatary and one Nilav Rajkhowa as their Panch witnesses, but those witnesses were not produced by the prosecution during trial. Thus, the prosecution could not produce any Panch witnesses in the instant case after issuance of several summons to those independent/Panch witnesses to prove the search and seizure. More so, the prosecution also could not explain, as to why those witnesses could not be brought before the learned Trial Court during the trial to record their evidence.

12. It is further submitted by Ms. Nargis that 2(two) vehicles were stated to be involved in the instant case i.e., one truck and one Scorpio, wherefrom the contraband were alleged to have been recovered, but the vehicles could not be produced before the Court physically at any point before or during trial.

13. The learned Court below also failed to appreciate the fact that there was no proper compliance of Section 42 of the NDPS Act which is obligatory on the part of the seizing officer/investigating officer. In the instant case, though it is stated that the information was reduced in writing, but there is no proof that

the same was sent to the superior officer at the relevant time. In the instant case, there was no such proper compliance of Sections 42(1) and 42(2), which are mandatorily required to be followed and there is no such proof in regards to compliance of the said relevant Sections.

14. Ms. Nargis, learned counsel further raised the issues that the case was initially charge sheeted under Sections 17(c)/21(c)/29 of the NDPS Act, but charge was framed only under Sections 21(c)/29 of the NDPS Act and only at the time of the judgment, the charge was altered and it was reframed under Sections 17(c)/21(c)/29 of the NDPS Act without giving any chance to adduce evidence or to cross examine the PWs for the said altered sections, which caused prejudice to the accused appellants, as they could not take proper defence on the said added Section of 17(c) of the NDPS Act.

15. Further, she raised the issue that while recording the statements of the accused persons under Section 313 CrPC, the answers given by the accused appellants were not recorded, but subsequently, the answers were recorded by the learned Sessions Judge on the day of passing the judgment, thus, the appellants could not take any proper defence as the answers were not recorded at the time of recording their statements under Section 313 CrPC.

16. She further submitted that there was no proper compliance of Section 52 of the NDPS Act and no proper inventory was prepared or certified by the learned Magistrate. Further, she raised the issue of contradictions in the inventory and the report of the FSL expert. She submitted that in the inventory, it is seen that the packets which were seized contains deep brown colour powder believe to be Opium and all the packets are packed with plastic bag and gross weight of the Opium was 54.648 Kgs and the other packets containing

deep brown colour powder believed to be Morphine and the gross weight was 2.060 kgs, but from the evidence of PW-3 it is seen that Material Ext. 1 marked as P-1 at the time of seizure contain 10.080 Kgs of Opium is found in sealed condition and after opening the said packet it was found that there is a dark brown sticky substance inside the packet, which was first wrapped with the brown colour sheet and thereafter it was covered in white markene. Further, another packet seized contraband marked as P-4 containing 10.120 kgs was also opened in the Court in presence of lawyers and both the parties, wherein it was found in properly sealed condition and after opening it was found that there is a sticky brown colour substance inside the packet which was first wrapped with brown colour sheet and thereafter with white colour markene and accordingly, she submitted that the contraband was found to be sticky brown substances, though as per the inventory, it was packed in a dark brown powdery form, which raises suspicion as to whether, the packets which were opened in the Court contains the contraband, which was sent for FSL examination. She further submitted that at the time of examination also the PW-1 found brown coloured pasty substances though it was stated to be powdery substances at the time of recovery and while preparing the inventory.

17. The other issue, raised by Ms. Nargis, learned counsel for the appellants that the godown in-charge did not affix his seal and signature and thus, there was no proper compliance of Section 55 as well as 52 of the NDPS Act.

18. So, the learned counsel for the appellants basically emphasized on the above referred issues and it is submitted that the learned Sessions Judge had passed the judgment and order without appreciating the evidence on record in its true perspective and also without considering the fact that there was no

compliance of Section 52A/55 of the NDPS Act as well as there was no proper compliance of Section 42(1) and 42(2) of the NDPS Act and further, it was also not considered that the accused appellants were prejudiced as no chance was given to the appellants to adduce evidence or to cross examination the PWs on the basis of added Section 17(c) of the NDPS Act and at the same time the appellants were also not given any chance to take proper defence as statement under Section 313 CrPC was also rerecorded only at the time of passing the judgment.

19. Ms. Nargis, learned counsel for the appellants in context of non-examination of independent witnesses has relied on a decision of the Hon'ble Supreme Court of India in the case of **Naresh Kuman alias Nitu Vs. State of Himachal Pradesh** reported in **(2017) 15 SCC 684** and emphasized on paragraph 8 of the said judgment, which reads as follows:-

“8. In a case of sudden recovery, independent witness may not be available. But if an independent witness is available, and the prosecution initially seeks to rely upon him, it cannot suddenly discard the witness because it finds him inconvenient, and place reliance upon police witnesses only. In the stringent nature of the provisions of the Act, the reverse burden of proof, the presumption of culpability under Section 35, and the presumption against the accused under Section 54, any reliance upon Section 114 of the Evidence Act in the facts of the present case, can only be at the risk of a fair trial to the accused. Karamjit Singh vs. State (Delhi Administration), AIR 2003 SC 1311, is distinguishable on its facts as independent witness had refused to sign because of the fear of terrorists. Likewise S. Jeevananthanan vs. State, 2004(5) scc 230, also does not appear to be a case where independent witnesses were available.”

20. Relying on the above noted judgment, she further submitted that in the instant case, it is not a case that there was sudden recovery, where independent witnesses may not be available. But here in the instant case, as evident from the prosecution case that there was prior information regarding the carrying and delivery of contraband on the basis of which the investigating team had visited

the place of interception. But the prosecution failed to adduce evidence of any independent witnesses during the trial.

21. Ms. Nargis, learned counsel further relied on a decision of the Hon'ble Supreme Court in the case of **Bharat Aambale Vs. State of Chhattisgarh** reported in **(2025)SCC OnLine SC 110** and stressed at paragraphs 32 and 33 of the said judgment, wherein, it has been observed that non-compliance of the procedure under Section 52A of the NDPS Act will not render itself helpless but can still prove the seizure or recovery of contraband by leading cogent evidence in this regard such as by examining the seizing officer, producing independent witnesses to the recovery, or presenting the original quantity of seized substances before the Court and the evidentiary value of these materials is ultimately to be assessed and looked into by the Court. She accordingly, submitted that here in the instant case, there was no proper compliance of Section 50 and 52A of the NDPS Act. She further emphasized on paragraph 50(x), wherein it has been held as follows:-

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

22. In regards to non recording of the answers to the questions put to the accused appellants at the time of recording of 313 CrPC statements, it is submitted by Ms. Nargis that recording of statement under Section 313 CrPC confers a valuable right upon the accused to establish his innocence and can well be considered beyond statutory right as a constitutional right to a fair trial under Article 21 of the Constitution, even if, it is not to be considered a piece of

substantive evidence [(2019) 13 SCC 289].

23. Further Ms. Nargis submitted that the accused appellants are in custody for more than 6/7 years and thus, for a considerable period all the appellants are behind the bar. She further stressed on Section 32B of the NDPS Act and submitted accordingly that in the present case, the appellants were sentenced with the maximum period of sentence without considering any factors, which are to be considered as per Section 32B of the NDPS Act. She further submitted that there is no evidence that the accused belong to any organized international or any criminal group, nor there is any evidence that the offence was committed in any educational institution which affected the minors and not even considered the other factors which are to be considered before providing with the maximum period of punishment prescribed under the law. She accordingly, submitted that the period already undergone by the appellants may be considered and applying the provisions under Section 32B of the NDPS Act all the accused appellants may be released. In that context, she also relied on 2(two) decisions of the Hon'ble Supreme Court in the case of (i) **Shahejadkhan Mahebubkhan Pathan Vs. State of Gujarat** reported in (2013) 1 SCC 570 and (ii) **Pradeep Bachhar Vs. State of Chhattisgarh** reported in (2018) 13 SCC 600.

24. In para 9 of the judgment in the case of **Shahejadkhan Mahebubkhan Pathan (supra)** it has been held that:-

“9. It is projected before us that both the appellants are first time offenders and there is no past antecedent about their involvement in offence of like nature on earlier occasions. It is further brought to our notice, which is also not disputed by the learned counsel for the State that as on date, the appellants had served nearly 12 years in jail. In view of the same and in the light of the decision of this Court, in Balwinder Singh (supra), while confirming the conviction, we reduce the sentence to 10 years which is the minimum prescribed sentence under the relevant provisions of the NDPS Act.”

25. Relying on the judgment of **Shahejadjkhan Mahebubkhan Pathan (supra)**, the Hon'ble Supreme Court also expressed the same view in the case of **Pradeep Bachhar (supra)**.

26. Ms. Nargis, learned counsel accordingly submitted that there is no criminal antecedent for the present appellants nor there is any record of conviction to prove their criminal antecedent in the present case. Thus, even if the appellants are convicted in the present case, maximum punishment should not be imposed on the appellants and considering the provisions under Section 32 B of the NDPS Act, the appellants may be provided with minimum term of punishment and the period of sentence already undergone by the accused appellants may also be taken into consideration.

27. Per contra, Mr. Keyal, learned Standing Counsel, NCB submitted that after receipt of the secret information, a team was constituted and accordingly, after observing all necessary formalities, the search and seizure was completed and from the evidence of the PWs it is very much evident that that there is total compliance of Section 42(1) and 50 as well as there is sufficient compliance of Section 52A of the NDPS Act.

28. Mr. Keyal, also submitted in this regard that there was full compliance of Section 52A of the NDPS Act and that there is no mandate of law that drawing of samples of seized substances must be taken place at the time of seizure and further submitted that even if there is any non compliance of Section 52A or the standing order will not be fatal to the trial, unless there are discrepancies in physical evidence which may create reasonable doubt in the veracity of the prosecution case. In that context also he emphasized on para 50 (v) of the judgment of **Bharat Amabale (supra)** relied by the learned counsel for the

appellants, which reads as follows:--

“50 (v) Mere non-compliance of the procedure under [Section 52A](#) or the Standing Order(s) / Rules there-under will not be fatal to the trial unless there are discrepancies in the physical evidence rendering the prosecution’s case doubtful, which may not have been there had such compliance been done. Courts should take a holistic and cumulative view of the discrepancies that may exist in the evidence adduced by the prosecution and appreciate the same more carefully keeping in mind the procedural lapses.”

29. From the evidence of PWs it is very much evident that the Intelligence Officer, PW-3 received information that two persons namely, Md. Abdul Kalam and Md. Mujibur Rahman will deliver consignment of Morphine and Opium to other persons, namely, Sohrab Khan and Ram Milan near Indira Gandhi Stadium and on receipt of such information, he reduced the same into writing and inform the superior officer Tulika Morang, the Superintendent of NCB, Guwahati Zonal Unit by complying Section 42(1) of the NDPS Act. From the evidence of PWs, it also reveals that after receiving the written information, PW-3 was directed to go for seizure and recovery and then the office order was also issued to the Zonal Director, Mr. Praveen Kumar, i.e., PW-6 and observing all required formalities under Section 50 NDPS Act, the search and seizure operation was completed. Thereafter, the seized articles and the samples were handed over to PW-2, who was also discharging her duty as go-down in-charge and accordingly the receipts were also issued to that effect, the inventory was also prepared and after receiving the godown receipt, some of the samples were brought to the Court and then again it was sent for examination to FSL by observing all required formalities. The evidence of those PWs could not be rebutted in respect of compliance of Sections 42, 50 and 52A of the NDPS Act.

30. Mr. Keyal further submitted that the accused appellants also gave consent for their body search and after obtaining their consent the seizure was made

and more so, the contraband was recovered from the bags which were carried by the accused appellants at the time of recovery. He further submitted that there cannot be any manipulation as the authority had maintained all the register and issued notice from godown and even after receipt of the articles, the godown receipt was also issued accordingly. Thus, there cannot be any manipulation of the articles which were recovered/seized at the time of the operation.

31. He further submitted that it is not a case that there was no independent witnesses at the time of search and seizure and from the evidence of all the PWs it is very much evident that two independent witnesses were present at the time of recovery and seizure. But the prosecution failed to examine those independent witnesses as subsequently, those independent witnesses could not be found. But there was proper compliance of Section 100 CrPC and independent witnesses were called for at the time of search and seizure.

32. In that context, he also relied on the decision of the Hon'ble Supreme Court of India in the case of **The State of Himachal Pradesh Vs. Pardeep Kumar (Crl. Appeal Nos. 276-277 of 2018)**, decided on 16.02.2018 and basically relied on paragraph 6 of the said judgment, which reads as follows:-

“6. We have considered the matter and have heard the learned counsels for the parties. So far as examination of independent witnesses in support of the prosecution case is concerned all that would be necessary to say in this regard is that examination of independent witnesses is not an indispensable requirement and such non-examination is not necessarily fatal to the prosecution case. In the present case, according to the prosecution, independent witnesses were not available to witness the recovery of the contraband due to extreme cold. The fact that the incident took place at about 6.30 p.m. on 27-01-2009 and that too on the Manali-Kulu road may lend credence to the prosecution version of its inability to produce independent witnesses. In the absence of any animosity between the police party and the accused and having regard to the large quantity of contraband that was recovered (18.85 kgs.), we are of the view that it is unlikely that the contraband had

been planted/foisted in the vehicle of the accused persons. In so far as the condition of the contraband parcel is concerned, the materials on record indicate that the said parcel was brought to the learned trial Court on 15-9-2009 in a torn condition. The prosecution witnesses examined in this regard had testified that the parcel was in a torn condition due to its bulky nature and also due to nails on the stool on which it was kept. In this regard, it may also be noted that the samples from the contraband parcel were sent to the Forensic Laboratory on 23.7.2010. No suggestion was given to the witnesses (PWs 12 and 13) who had taken the samples to the laboratory that the contraband parcel has been tampered with. PW-16, who had chemically examined the contraband samples, was fully cross-examined by the defence. There is nothing in his evidence to suggest that the sample(s) came to him in a torn or otherwise doubtful condition. In view of all the above, we are of the opinion that the grounds on which the High Court have reversed the findings of conviction of the accused-respondents ought not to be accepted.”

33. Mr. Keyal further submitted that it is a fact that though the case was charge sheeted under Sections 21(c)/17(c)/29 of the NDPS Act, but at the time of framing of charge, inadvertently the Court framed charge only under Section 21(c) of the NDPS Act and coming to know about the irregularity, the charge was accordingly altered at the time of passing of the judgment and it was re-framed under Sections 21(c)/17(c) of the NDPS Act. But from entire evidence on record as well as from the FIR and other documents itself it is seen that it was the allegation of recovery of Morphine and Opium and it is an admitted fact that entire evidence of the PWs were recorded on the recovery of both Morphine and Opium and the defence also cross-examined the PWs elaborately on the alleged recovery of both Morphine and Opium. Thus, merely the alteration of charge at the time of the judgment had not caused any prejudice to the accused appellants, rather, they contest the case having full knowledge about the allegation of recovery of Morphine and Opium from their conscious possession and it is well discussed in paragraph 85 of the judgment in regards to alteration of charge by the learned Special Judge while passing the judgment.

34. In that context, Mr. Keyal also relied on a decision of the Hon'ble Supreme

Court in the case of **Directorate of Revenue Intelligence Vs. Raj Kumar Arora** reported in **2025 0 Supreme (SC) 644** and emphasized on paragraph 145, which reads as follows:--

“145. This Court in [Anant Prakash Sinha v. State of Haryana and Another](#) reported in (2016) 6 SCC 105 summarised the principles as regards [Section 216](#) CrPC. Herein, charges were framed against the appellant-husband for the commission of offences punishable under [Sections 498-A](#) and [323](#) IPC.

The relevant observations are reproduced hereinbelow:

“18. From the aforesaid, it is graphic that the court can change or alter the charge if there is defect or something is left out. The test is, it must be founded on the material available on record. It can be on the basis of the complaint or the FIR or accompanying documents or the material brought on record during the course of trial. It can also be done at any time before pronouncement of judgment. It is not necessary to advert to each and every circumstance. Suffice it to say, if the court has not framed a charge despite the material on record, it has the jurisdiction to add a charge. Similarly, it has the authority to alter the charge. The principle that has to be kept in mind is that the charge so framed by the Magistrate is in accord with the materials produced before him or if subsequent evidence comes on record. It is not to be understood that unless evidence has been let in, charges already framed cannot be altered, for that is not the purport of [Section 216](#) CrPC.

19. In addition to what we have stated hereinabove, another aspect also has to be kept in mind. It is obligatory on the part of the court to see that no prejudice is caused to the accused and he is allowed to have a fair trial. There are in-built safeguards in [Section 216](#) CrPC. It is the duty of the trial court to bear in mind that no prejudice is caused to the accused as that has the potentiality to affect a fair trial. It has been held in [Amar Singh v. State of Haryana](#) [[Amar Singh v. State of Haryana](#), (1974) 3 SCC 81 : 1973 SCC (Cri) 789] that the accused must always be made aware of the case against him so as to enable him to understand the defence that he can lead. An accused can be convicted for an offence which is minor than the one he has been charged with, unless the accused satisfies the court that there has been a failure of justice by the non-framing of a charge under a particular penal provision, and some prejudice has been caused to the accused. [...]”

(Emphasis supplied)”

35. He further submitted that it is a fact that statements under Section 313 also had to be recorded for the second time as reply was not mentioned in

some of the questionnaires put to the appellants at the time of recording their statements under Section 313 CrPC. But from the perusal of the 313 CrPC statements it reveals that all the same questionnaires were put to the appellants and reply to the questions are also same and in paragraph 28 of the judgment it is well discussed in regards to the answers given by the accused appellants at the time of subsequent recording of 313 CrPC statements. More so, it reveals that the appellants were asked as to whether they are interested to adduce evidence on defence, wherein, they preferred to adduce evidence of both DWs-1 and 2, which were also recorded by the learned Special Judge and thus, it is seen that subsequent recording of 313 CrPC statements did not cause any prejudice to the accused appellants, rather, they availed the opportunity of adducing evidence of DW 1 and DW 2.

36. Mr. Keyal further submitted that the learned Special Judge had made a discussion while imposing sentence on the accused appellants and the quantity of materials also should be considered at the time of imposing sentence in case of NDPS Act. This a case of commercial quantity, wherein there was alleged recovery of commercial quantity of Morphine and Opium from the conscious possession of the accused appellant and considering this aspect of the case, the learned Special Judge had rightly passed the order of sentence imposing maximum sentence to the present accused appellants. To substantiate his argument, he also relied on a decision of the Hon'ble Supreme Court in the case of **Narayan Das Vs. State of Chhattisgarh [Diary No. 30825/2025]** and paragraphs 17, 18 and 19, read as under:--

“17. This Court in Sakshi v. Union of India [Sakshi v. Union of India, (2004) 5 SCC 518 : 2004 SCC (Cri) 1645], held that it is a well-settled principle that the intention of the legislature is primarily to be gathered from the language used, which means that attention should be paid to what has been said as also to what has not been said. A construction

which requires for its support addition or substitution of words has to be avoided. In para 19 of the judgment the following was laid down: (SCC p. 537)

“19. It is well-settled principle that the intention of the legislature is primarily to be gathered from the language used, which means that attention should be paid to what has been said as also to what has not been said. As a consequence a construction which requires for its support addition or substitution of words or which results in rejection of words as meaningless has to be avoided. It is contrary to all rules of construction to read words into an Act unless it is absolutely necessary to do so. Similarly it is wrong and dangerous to proceed by substituting some other words for words of the statute. It is equally well settled that a statute enacting an offence or imposing a penalty is strictly construed. The fact that an enactment is a penal provision is in itself a reason for hesitating before ascribing to phrases used in it a meaning broader than that they would ordinarily bear. (Justice G.P. Singh: Principles of Statutory Interpretation, pp. 58 and 751, 9th Edn.)”

18. The specific words used in [Section 32-B](#) that court may, in addition to such factors as it may deem fit clearly indicates that court's discretion to take such factor as it may deem fit is not fettered by factors which are enumerated in clauses (a) to (f) of [Section 32-B](#).

19. The learned counsel for the appellant has relied on a judgment of the Allahabad High Court in Raj Ku-mar Bajpaee v. Union of India [Raj Kumar Bajpaee v. Union of India, (2016) 95 ACC 896]. A Single Judge of the Allahabad High Court referring to [Section 32-B](#) of the Act stated the following in paras 39 and 40:

“39. After going through the impugned judgment and order very carefully, I find that the trial court while imposing higher than the minimum punishment prescribed under the [NDPS Act](#) on conviction under [Sections 8/20](#) of the NDPS Act, upon the appellants has failed even to advert to the factors enumerated in [Section 32-B](#) of the NDPS Act. In fact, no reason whatsoever is forthcoming in the impugned judgment which lead the trial court to impose higher than the minimum punishment prescribed under the Act upon the appellants.

40. After going through the evidence on record, I am satisfied that in the present case none of the factors as spelt out in [Section 32-B](#) of the Act exist which could have prompted the trial court to award higher than the minimum punishment prescribed under the Act. The sentence awarded to the appellants thus cannot be sustained. While maintaining the conviction of the appellants under [Sections 8/20](#), I allow this appeal in part and modify the sentence awarded to them by the trial court by the impugned judgment and order to 10 years' RI and a fine of Rs 1 lakh and in default of payment of fine the appellants shall be liable to undergo further simple imprisonment for one month. The impugned judgment stands modified accordingly.”

37. Relying on the above referred judgment, it is submitted by Mr. Keyal, that the learned Special Judge had rightly imposed maximum sentence on the

accused appellants considering all relevant factors, including the quantity of the contraband recovered from the conscious possession of all the accused appellants. Mr. Keyal accordingly submitted that the learned Special Judge had rightly passed the order of sentence considering the evidences on record in its true perspective and also considering the relevant provisions of NDPS Act and hence, there is no need of interference in the judgment and order passed by the learned Special Judge.

38. So, before arriving at any decision, let us scrutinize the evidences of the prosecution witnesses.

39. PW-1, Sri Gajendra Nath Deka stated that on 09.05.2016, he was working as a Joint Director in the Drug and Narcotics Division, Directorate of Forensic Science, Assam and on that day, he received a parcel through the Director, D.F.S., Assam in connection with NCB Crime No. 04/NCB/GHY/2016 for examination. The parcel consist of 7 (seven) exhibits enclosed in a sealed envelope cover and the facsimile of the seal was found to be "NARCOTICS CONTROL BUREAU-01" wherein the following articles were found; (i) 6 (six) sealed envelopes, marked as "S-1", "S-2", "S-3", "S-4", "S-5" and "S-6" having 6 (six) closed polythene packets (one packet in each envelope) containing 24 grams dark brown coloured pasty substances in each packet and the samples were marked by him as DN-143/2016(a) to DN-143/2016(f) respectively; (ii) 1(one) sealed envelope, marked as "S-7" having a closed polythene packet containing 05 gram brown coloured powder substance, which was marked by him as DN-143/2016(g). On examination of the samples mentioned above, as per United Nations Drugs Testing Laboratory Manual, the exhibit DN-143/2016(a) to DN-143/2016(f) gave positive tests for Opium and the

percentage of morphine in each exhibit was found to be 16.94. The exhibit DN-143/2016(g) gave positive tests for morphine and the percentage of morphine in the exhibit was found to be 77.81 and the report was forwarded to the Zonal Director, NCB by the then Director, Mr. K. C. Sarma.

40. In his cross examination, PW-1 stated that he has not verified the signature of any person on the sealed envelopes containing the samples. He has not seen the remnant of the samples before the Court. PW-1 also stated that he has not narrated the procedure of the examination in his report, but he followed the procedure laid down in the United Nations Drugs Testing Laboratory Manual. In his cross examination, PW-1 further stated that he has not mentioned regarding the signature of any person on the envelopes containing the samples in his report Ext.1.

41. PW-2 Miss Tulika Morang has deposed that on 06.05.2016, she was posted as the Superintendent in the Office of the Narcotics Control Bureau, Guwahati. On that day, the Intelligence Officer Pavan Baisane informed her in writing that two persons, namely, Md. Abdul Kalam and Md. Mujibur Rahman were going to deliver a consignment of Morphin and Opium to two other persons, namely, Md. Sohrab Khan and Shri Ram Milan, near the entrance of the Sarusojai Stadium, Guwahati. The time of delivery of the consignment was 7:00 a.m., on the next day. After receiving the information, she acknowledged the same and forwarded the information to the Zonal Director, NCB, Guwahati namely, Mr. Prabin Kumar. After receiving the secret information, the Zonal Director, NCB, Guwahati issued an office order on 06.05.2016, directing some Intelligence Officers and Sepoy to proceed to the Indira Gandhi Stadium to intercept the said persons and to seize the narcotic drugs. He also ordered that in the event of recovery of any narcotic

substance, the case No. will be NCB/04/2016 and Intelligence Officer Shri Paban Baisane will be the Seizing Officer. The Ext-3 is the written information (NCB-1) and Ext-3(1) is the signature of Paban Baisane, which she can identify. Ext-3(2) is her signature therein. Ext-3(3) is the signature of the Zonal Director Mr. Praveen Kumar, which she can identify. Ext-4 is the office order issued by the Zonal Director Mr. Praveen Kumar. Ext-4(1) is the signature of the Zonal Director Mr. Praveen Kumar, which she can identify. During that period, She was also working as the In-charge of the NCB godown and on 07.05.2016, at around 5:45 p.m., Shri Paban Baisane, the Seizing Officer came to her, along with the seized articles and samples and handed over her the same and as godown In-charge, she kept the same in the godown and issued a receipt for the same. Ext-5 is the godown receipt No.1. Ext-5(1) is her signature therein. Thereafter, on 08.05.2016, Paban Baisane collected the seized articles and samples for producing in the Court. Ext-6 is the godown receipt No.2 in NCB Crime No. 04/2016. Ext-6(1) is the signature of Paban Baisane, which she can identify. On the same day, i.e., on 08.05.2016, after producing of the seized articles and the samples in the Court, Paban Baisane returned the same to her and she issued the NCB go-down receipt No. 3, dated 08.05.2016 for the same. Ext-7(1) is her signature therein. On 09.05.2016, Paban Baisane collected the original samples from her for sending the same to the FSL Guwahati. Ext-8 is the go-down receipt No. 4 and Ext-8(1) is the signature of Paban Baisane, which she can identify. On the same day, Paban Baisane submitted compliance report under Section 57 of the NDPS Act to her. Ext-9 is the compliance report and Ext-9(1) is the signature of Paban Baisane and Ext-9(2) is her signature therein. She was not a member of the search team. Along with the seized articles and the samples, the NCB team also brought the four accused persons to their office

and she saw them. They were present in the dock.

42. From the cross examination of PW-2 it is seen that she did not issue any separate forwarding letter but the information was simply forwarded to the Zonal Director after receiving the same from PW-3 (seizing officer). She also admitted that in Exhibit 4, names of the accused appellants or of the contraband articles are not mentioned, however, from her cross-examination it reveals that she received 6 (six) numbers of sealed packets which were marked as P1, P2, P3, P4, P5 and P6. It is also found admitted that she did not receive any extra forwarding letter with the report under Section 57 of the NDPS Act. However, she denied to the other suggestion put to her when it was suggested that she did not receive any information on 06.05.2016, Exhibit 3 is manipulated document and she deposed falsely only for the interest of her officer. Further, she stated in her cross examination that she only acknowledged the information received from her junior officer and she did not mentioned any date and time when she received the information from her junior officer and it is also an admitted fact that she was not present at the time of search and seizure, however, from her evidence it is seen that after receiving the articles she issued the go-down receipt to the PW-3.

43. PW-3, Shri Pavan Baisane, the search and seizing Officer of the case has deposed that on 06.05.2016, he was working as an Intelligence Officer in the NCB, Guwahati. On that day, at around 5:30 p.m., he received a secret information that two persons, namely, Md. Abdul Kalam and Md. Mujibur Rahman will deliver a consignment of Morphine and Opium to two other persons, namely, Sohrab Khan and Ram Milan, near the Indira Gandhi Stadium, Sarusajai, Guwahati. After receiving the information, he reduced the same into

writing and informed the same to his superior officer, namely Ms. Tulika Morang, Superintendent, NCB, Guwahati Zonal Unit. Thereafter, an office order was issued by the Zonal Director, NCB, Guwahati namely, Mr. Praveen Kumar, deploying ten persons to carry out the operation and he was appointed the Seizing Officer. Ext-3 is the NCB-1 reduced into writing. Ext-3(1) and Ext-3(4) are his signatures therein. Ext-4 is the office order issued by the Zonal Director and Ext-4(1) is his signature therein. On the next day, i.e. 07.05.2016, as per the office order, they left the NCB Office at 6:00 a.m. After reaching Indira Gandhi Stadium, Sarusajai, Guwahati, they approached two persons who were walking on the road, introduced themselves and told them about the information available with them and requested them to become witness of the search and seizure, if any. The persons agreed to the same. When they reached the spot along with independent witnesses, they saw a white coloured Scorpio vehicle bearing registration No. WB-58-C-2157, parked on the service road. At around 6:30 a.m., a truck bearing registration No. MN-04-A-1960 arrived near the Scorpio vehicle. Thereafter, two persons went out from the Scorpio vehicle and went near the truck. Two persons, who were sitting in the truck, also came out and the four persons discussed something for about one minute. At that time, the informer indicated them that those were the four persons who were trafficking Opium and Morphine. Thereafter, one person entered into the cabin of the truck and handed over few polythene packets to the persons who were standing near the truck. They rushed towards the said truck and Scorpio vehicle and when they reached near the vehicles, all the four persons were standing near the truck holding the polythene packets in their hands. They introduced themselves to them and told them about the information available with the team. Thereafter, they asked their identity and they identified themselves as Md.

Abdul Kalam, Md. Mujibur Rahman, Md. Sohrab Khan and Shri Ram Milan. During body search of the four persons and their belongings, provisions of Section 100 Cr.P.C. were followed. Before conducting the body search, he served notice under Section 50 of the NDPS Act to all the four persons. They acknowledged the same and gave written consent for body search. Ext-10, 11, 12 and 13 are the acknowledgment copy of the body search issued to them under Section 50 of the NDPS Act. Thereafter, the four persons gave written consent in presence of the independent witnesses. In the written consent, they have specifically stated that they did not need to be taken to any Magistrate or Gazetted Officer for searching their body. Ext-14 is the consent given by the accused Sohrab Khan in his own hand writing. Ext-15 is the consent given by the accused Ram Milan in his own hand writing. Ext-16 is the consent given by the accused Mujibur Rahman in his own hand writing. Ext-17 is the consent given by the accused Abdul Kalam in his own hand writing. Opening the plastic bags carried in both hands by the accused Sohrab Khan, a dark brown colour sticky material was found packed in two packets wrapped in brown colour cello tape and kept in white polythene packets. A small quantity of the dark brown colour sticky material was taken out from both the packets and tested with the help of the Drug Detection Kit taken by them. The materials gave positive tests for Opium. Both the white plastic bags were marked as C1 and C2 and the packets containing dark brown colour sticky material were marked as P1 and P2. Weighing with the help of digital weighing machine in presence of the independent witnesses and the four suspected persons, the weight of the P1 and P2 was found to be 10.128 kilograms (gross) and 10.148 kilograms (gross) respectively. Thereafter, he seized the Opium in presence of the independent witnesses and the four accused persons. Thereafter, he collected samples in

duplicate of 24 grams and marked the samples as S1 and D1 and S2 and D2, respectively. All the four samples were dully packed in polythene and then, kept inside an envelope. All the samples and seized dark brown colour sticky material, suspected to be Opium was sealed with the NCB Brass Seal No. 1 and properly labelled and the signatures of the Independent witnesses and four accused persons and the Seizing Officer were taken on the same. He also searched the polythene bags carried by Md. Mujibur Rahman and found dark brown colour sticky materials inside the bag wrapped by brown colour cello tape and kept in white polythene. A small quantity of the dark brown colour sticky material was taken out from the packet and tested with the help of the Drug Detection Kit. The material gave positive colour for Opium. The white plastic bag was marked as C3 and packet containing the dark brown colour sticky material was marked as P3. Weighing the dark brown colour sticky material, the weight was found to be 10.118 kilograms (gross). Thereafter, he seized the Opium and collected samples in duplicate of 24 grams, in presence of the independent witnesses and the four accused persons and marked the samples as S3 and D3. The samples were duly packed in polythene and then kept inside envelopes. All the samples and the seized dark brown colour sticky materials, suspected to be Opium, were sealed with the NCB Brass Seal No.1 and property labelled and signatures of the independent witnesses, the four accused persons and the Seizing Officer was taken. Thereafter, he searched the polythene bags carried by Ram Milan and opening the plastic bags carried in both hands by Ram Milan, the dark brown colour sticky materials was found packed in two packets wrapped by brown colour cello tape and kept in white polythene. A small quantity of the dark brown colour sticky material was taken out from both the packets and tested with the help of the Drug Detection Kit. Both the materials

gave positive tests for opium. He marked the white plastic bags as C4 and C5 and the packets containing the dark brown colour sticky materials as P4 and P5. The weight of P4 and P5 were found to be 10.168 kilograms (gross) and 10.208 kilograms (gross), respectively. He seized the said opium. Thereafter, in presence of the independent Witnesses and the four accused persons, he collected samples in duplicate of 24 grams and marked the samples as S5 and D5, respectively. All the samples were duly packed in polythene and kept inside envelopes. All the samples and the seized dark brown colour sticky materials, suspected to be opium, were sealed with the NCB Brass Seal No. 01 and properly labeled and signatures of the Independent witnesses, all the four accused persons and the Seizing Officer were taken in the envelopes. Thereafter, they searched the polythene bag carried by Md. Abdul Kalam and found dark brown colour sticky material packed in a packet wrapped by brown colour cello tape and kept in white polythene. A small quantity of the dark brown colour sticky material was taken out from the said packet and tested with the help of the Drug Detection Kit. The material gave positive test for Opium. The white plastic bag was marked as C6 and the packet containing the dark brown colour sticky material was marked as P6. Weighing the P6, the weight was found to be 3.878 kilograms (gross). Thereafter, he seized the Opium in presence of the Independent witnesses and the four accused persons, collected samples in duplicate of 24 grams each and marked the samples as S6 and D6. The samples were packed in polythene and kept inside envelopes. Both the samples and the seized dark brown colour sticky material, suspected to be Opium, were sealed with the NCB Brass Seal No. 01 and properly labeled and the signatures of the independent witnesses and the four accused persons and the Seizing Officer were taken in the envelopes. After opening the second plastic

bag carried by Md. Abdul Kalam, brown colour powder was found packed in one packet wrapped by brown colour cello tape and kept in white polythene. A small quantity of the brown colour powder was taken out from the said packet and tested with the help of the Drug Detection Kit. The material gave positive tests for Morphine. The plastic packet bag was marked as C7 and the packet containing the dark brown colour powder was marked as P7. Weighing the same, the weight of the P7 was found to be 2.060 kilograms (gross). Thereafter, he seized the suspected Morphine. Thereafter, in presence of the Independent witnesses and the four accused persons, he collected samples in duplicate of 5 grams each and marked the samples as S7 and D7. Both the samples were duly packed in polythene and kept inside an envelope. Both the samples and the seized dark brown colour powder suspected to be Morphine, were sealed with NCB Brass Seal No. 01 and properly labeled and the signatures of the independent witnesses and the four accused persons and the seizing officer were taken on the envelope. During body search of Md. Abdul Kalam, one PAN Card in the name of Md. Abdul Kalam and Indian currency notes of Rs. 5,000/- were recovered. During body search of Md. Sohrab Khan, one PAN Card in the name of Sohrab Khan and Indian currency notes of Rs. 7,000/- were recovered. During body search of Ram Milan, one PAN Card in the name of Ram Milan and Indian currency notes of Rs. 3,000/- were recovered. During body search of Md. Mujibur Rahman, some copies of the documents relating to the ownership of the truck and Indian currency notes of Rs. 2,000/- were recovered. All the recovered documents were kept inside an envelope and the money was kept in another envelope, duly marked and sealed by the NCB Brass Seal No. 01 and properly labeled. The signatures of independent witnesses, the four accused persons and the Seizing Officer were also taken on the envelope.

44. They also searched the truck and the Scorpio vehicle. In the Scorpio vehicle, they found a special cavity inside the vehicle. On enquiry, the accused Sohrab Khan told that the Scorpio vehicle is registered in his name. He also told that he has made the special cavity in the Scorpio vehicle for trafficking drugs. The truck No. MN-04-A-1960 is registered in his name. On enquiry, Mujibur Rahman told that he brought the consignment of Opium and Morphine from Imphal in the said truck. He seized the truck. He also seized copy of the insurance premium payment receipt, issued by the United India Insurance Company Limited and the Public Carriers Permit, issued by the Transport Authority, Thoubal, from Mujibur Rahman.

45. All the four accused persons admitted their involvement in trafficking drugs. They also told that they have been illegally trafficking Morphine and Opium since last few years for monetary benefits. Therefore, on reasonable belief that all the four accused have committed offence under Section 8(C) of NDPS Act, which is punishable under Sections 21(c)/17(c)/29 of said Act, the entire consignment of suspected Opium and Morphine were seized under Section 43 of the NDPS Act. The Search-Cum-Seizure list and the panchanama were prepared on the spot. The seizure process was completed at around 12:00 p.m., in presence of the Independent witnesses and the accused persons. Ext-18 is the Search-Cum-Seizure list dated 07.05.2016. Ext-18(1) is his signature therein. Ext-18(2) is the signature of the accused Shorab Khan, Ext-18(3) is the signature of the accused Md. Mujibur Rahman, Ext-18(4) is the signature of the accused Md. Abdul Kalam and Ext-18(5) is the signature of the accused Ram Milan therein.

46. Ext-19 is the Panchnama dated 07.05.2016, which was prepared by him in

presence of the independent witnesses and the four accused persons. Ext-19(1) to 19(11) are his signatures therein. Thereafter, notices under Section 67 of the NDPS Act were issued to the four accused persons on 07.05.2016. Exts 20, 21,22 and 23 are the copies of the notice under Section 67 of NDPS Act, issued to four accused persons namely, Ram Milan, Mujibur Rahman, Sohrab Khan and Abdul Kalam, respectively. The notices under Section 67 of the NDPS Act were issued to the four accused persons for recording their voluntary statements. The voluntary statement of accused Ram Milan was recorded on 07.05.2016. In his statement, the accused Ram Milan has stated that he had been involved in trafficking of illicit drugs for the last three years for monetary benefit. Ext-24 is the voluntary statement of accused Ram Milan in Hindi language. Ext-24(1) to Ext-24(4) are his signatures therein. Ext-24(5) to Ext-24(8) are the signatures of the accused Ram Milan therein.

47. The voluntary statement of the accused Mujibur Rahman was recorded on 07.05.2016. In his statement, the accused Mujibur Rahman has stated that he has been involved in trafficking illicit drugs since last three years for monetary benefit. Ext-25 is the voluntary statement of the accused Mujibur Rahman in English language. Ext-25(1) to Ext-25(4) are his signatures therein. Ext-25(5) to Ext-25(8) are the signatures of the accused Mujibur Rahman therein.

48. The voluntary statement of the accused Abdul Kalam was recorded on 07.05.2016. In his statement, the accused Abdul Kalam has stated that he has been involved in trafficking illicit drugs since last few years for monetary gain. Ext-26 is the voluntary statement of the accused Abdul Kalam in English language. Ext-26(1) to Ext-26(4) are his signatures therein. Ext-26(5) to Ext-26(8) are the signatures of the accused Abdul Kalam therein.

49. The voluntary statement of the accused Sohrab Khan was recorded on 07.05.2016. In his statement, the accused Sohrab Khan has stated that he has been involved in trafficking of illicit drugs since last three years for monetary benefit. Ext-27 is the voluntary statement of the accused Sohrab Khan recorded in Hindi language. Ext-27(1) to Ext-27(4) are his signatures therein. Ext-27(5) to Ext-27(8) are the signatures of the accused Sohrab Khan therein.

50. After recording of their voluntary statements, he arrested all the four accused persons for contravening the provisions of Section 8(c) of the NDPS Act, which is punishable under Sections 21(c), 17(c) and 29 of the said Act.

Ext-28, 29, 30 and 31 are the copies of the memorandum of arrest issued to the accused Sohrab Khan, Mujibur Rahman, Ram Milan and Abdul Kalam, in connection with NCB Crime Case No. 04/NCB/Ghy/2016.

51. Thereafter, along with seized articles, the two vehicles and the four accused persons, they returned to the NCB Office. He deposited the seized articles, P1 to P7, seized documents, samples S1 to 57 and D1 to D7 and Indian currency notes of Rs. 17,000/- in the go-down. The go-down In-charge received the same and acknowledged the same.

Ext-5 is the go-down receipt No.1. Ext-5(1) is the signature of the go-down In-charge Ms. Tulika Morang.

52. Thereafter, on 08.05.2016, all the seized articles and the contraband were taken out from the go-down for producing in the Court. He has received the go-down receipt No.2 for the same.

Ext-6 is the go-down receipt No.2 and Ext-6(1) is his signature on 08.05.2016.

53. After production of the seized contraband and the articles in the court, he has deposited the same in the go-down. The go-down In-charge Ms. Tulika Morang received the articles and contraband and acknowledged the same vide receipt No. 3, dated 08.05.2016. Ext-7 is the go-down receipt No. 3, dated 08.05.2016. Ext-7(1) is the signature of the go-down In-charge Ms. Tulika Morang. Ext-8 is the go-down receipt No.4 vide which he has received the samples S1 to S7 for sending the same to FSL, Kahillipara. Ext-8(1) is his signature therein.

Ext-32 is the Test Memo, wherein Ext-32(1) is his signature.

Ext-33 is the receipt issued by the FSL, Kahilipara.

Ext-9 is the compliance report under Section 67 of the NDPS Act in connection with NCB Case No. 04/2016. Ext-9(1) is his signature therein. Ext-9(2) is the signature of Ms. Tulika Morang, which he can identify. Ext-33 is the Inventory under Section 52(A) of the NDPS Act. Ext-33(1) to Ext-33(4) are his signatures therein. On 08.05.2016, he produced the seized Opium and Morphine, the documents and the four accused persons in the court of the Judicial Magistrate, Kamrup(M), Guwahati.

He has seized the articles along with the samples produced before the Court.

All the Material Exhibits are accordingly, exhibited as Mat. Exhibits 1 to Mat. Exhibits-19, which included the samples of contrabands and other materials.

54. In his cross-examination PW-3 stated that material Exhibits 3, 5 and 7 bears no signature and seal of the godown In-Charge and the godown entry

number is also not mentioned in the material Exhibit. He denied to disclose the identity of the informer in his cross evidence, though, in NCB 1 one short signature of the informer is available. He also admitted that he did not mention the time when the information was forwarded to the superior officer, but he has forwarded the information immediately on receipt of the same. However, it is admitted that the Superintendent/PW2 did not issue any separate note that she had received the information. He also admitted that the Zonal Director did not issue any separate note that he had received the information. The witness also denied the suggestion that the Exhibit 3 was prepared after the completion of search and seizure and denied when suggested that there was no independent witness and the name of two independent witnesses which were cited are only stock witnesses.

55. Further from the cross examination of PW 3 it is seen that there is no document as to when they went from their office for search and seizure, nor there is any mention about the carrying of the weighing machine, departmental seal envelope and other necessary documents with him. It is admitted by him that he did not mention about the specific colour of the bag wherein the contraband were wrapped at the time of recovery. It is further seen that in Exhibit 33, he mentioned the colour of the materials as deep brown, but in Exhibit 19 i.e., in Panchnama the colour of the seized contraband was mentioned as dark brown. However, he admitted that he did not file any application before the Magistrate for certifying the correctness of the inventory prepared by him. He further stated in his cross examination that before recording the statements of the accused appellants, he has explained the provisions of Section 67 NDPS Act. He stated that the accused appellants have voluntarily wrote their statements under Section 67 of the NDPS Act, but he

cannot say as to why they did not write the same in their mother tongue/language. He further denied the suggestion that the statements were recorded in absence of any independent witnesses and their officers gave the draft to the accused persons and they were compelled to copy the same in the name of statement under Section 67 of the NDPS Act.

56. He denied the suggestion that he did not comply with the provisions of Section 42 (2) of the NDPS Act while sending the NCB 1 to the superior officer and also denied when suggested that the NCB 1 was not prepared prior to the interception of the accused appellants and prior to their search, seizure and arrest and it was subsequently prepared by him. He further stated in his cross examination that before interception they did not inform any security agency, which are engaged in the Sarusajai Stadium or any other staff working inside the Stadium. However, at the time of interception he did not see any player or coach inside the stadium to keep as a witness. He further admitted that they did not call for any CCTV footage of Cameras installed in different places of Sarusajai Stadium and the independent witness were not from the same locality, where the interception took place. He stated further that the substance of notice under Section 50 NDPS Act were written in English but it was explained in Hindi to all the accused appellants though it has not been mentioned about the explanation in Hindi in their consent letters. He further denied when suggested that he did not comply with the requirements of Section 50 NDPS Act at the time of search and seizure. He further denied when suggested that the accused Sohrab Khan and Ram Milan were picked up later on and they were compelled to put their signatures in blank papers, which were subsequently converted to their statement under Section 67 NDPS Act. He further admitted that the accused Sohrab Khan has stated in his statement that he has checked out from

Hotel on 06.05.2016 at about 09:00 pm, but he did not make any enquiry or investigation in the Hotel Fortune regarding the stay of the accused person Sohrab Khan.

57. From his cross examination it further reveals that at the request of the engaged counsel for the accused appellants Sohrab Khan and Ram Milan, the sealed packets of the contraband were opened in the Court considering the prayer of the learned counsel for the appellants and when it was opened it was found that the packets were properly in sealed condition along with the level pasted over the seal.

58. PW-4 Suresh Kr. Singh has deposed that on 06.05.2016, he was posted as an Intelligence Officer in the NCB, Guwahati. On that day, he was informed by the Superintendent, NCB, Miss Tulika Marang that an information was received by the Intelligence Officer Mr. Pawan Baisane that two persons namely, Md. Abdul kalam and Md. Mojibur Rahman were going to deliver a consignment of Opium and Morphine to two other persons namely, Md. Soharab Khan and another, whose name he cannot recollect. A team was formed accordingly and he became a member of the team by the order of Zonal Director Shri Praveen Kumar. Thereafter, on 07.05.2016, at around 6:00 am, the team proceeded from the NCB Office and reached near the entrance of the Indira Gandhi Stadium at Sarusajal with the informer. After reaching there, Shri Pawan Balsane approached two persons and requested them to act as independent witnesses for any probable search or seizure. They saw a Scorpio vehicle parked on the service road near the entrance of the Indra Gandhi Stadium. After few minutes, one Manipur-registered truck arrived near the Scorpio vehicle. After few minutes, two persons from the Scorpio came out and went near the aforesaid

truck. Two persons from the truck also came out and one person of the Scorpio vehicle went to the cabin of the truck and brought out few polythene packets and handed over to the persons who were standing outside the truck. On indication from the informer that these were the four persons who were involved in the trafficking of opium and morphine, they intercepted the said four persons. Thereafter, he started guarding the Scorpio and the truck and Mr. Pawan Baisane started the search and seizure proceedings and recovered more than 54 kilograms of opium and more than two kilograms of morphine from the possession of the aforesaid four persons, namely, Md. Soharab Khan, Md. Mojibur Rahman, Md. Abdul Kalam and Shri Ram Milan. After completion of search and seizure procedure, all the accused persons' voluntary statement under Section 67 of the NDPS Act were recorded and they were subsequently arrested by Mr. Pawan Baisane on the spot. Thereafter, along with the two vehicles, which were also seized, the four arrested persons and the seized articles, they returned to the NCB Office. After reaching the NCB office, the post seizure formalities were completed by Mr. Pawan Baisane and the report of seizure was given to the Zonal Director.

59. PW-4 stated in his cross examination that he did not see the information reduced into writing though he was told about the information. He further stated that except two independent witnesses of the locality, the search and seizing officer did not approach any other person to be the witnesses. Further it is stated that he did not put any signature in any of the documents to show his presence at the time of search and seizure or at the time of recording of the statements of the accused appellants. Further, he denied the suggestion that he does not know what confession was made by the accused persons and also denied when suggested that he does not know what was recovered from the

accused appellants.

60. Further he denied that they apprehended the accused Sohrab Khan from hotel Fortune at Paltan Bazar when he was coming out from the said hotel and also denied when suggested that accused Ram Milan was initially requested to be a witness at the time of arrest of accused Sohrab Khan and as he declined to be a witness, he was forcefully implicated in this case in commission of the alleged crime.

61. However he admitted in his cross examination that he has no personal knowledge about the information and it was told by the superior officer Tulika Morang (PW2) when he was selected to be a team member. He further denied when suggested that accused Abdul Kalam and Mujibur Rahman were not present at the spot and they were apprehended and arrested from a different places at different point of time.

62. PW-5 Anjani Kumar has deposed that on 06.05.2016, he was posted as an Intelligence Officer at the NCB, Guwahati. On that day, one of his colleagues namely Shri Pawan Baisane had received a secret information and placed the same before the Superintendent Miss Tulika Morang and she forwarded the to the Zonal Director, NCB Shri Praveen Kumar. After receiving the said information, the Zonal Director, NCB Shri Praveen Kumar issued an Officer Order, constituting a team of Officers and employees of the NCB to proceed for an operation. He was one of the members of the team. On 07.05.2016, at 06:00 am, the NCB team proceeded and reached the spot at the entrance of the Indira Gandhi Stadium, Sorusajal, Guwahati. After reaching the spot, Shri Pawan Baisane approached two persons to become independent witness during search and seizure, if any. Shri Pawan Baisane disclosed their identity to the witnesses and

also shared the information available with the NCB team to them. Thereafter, along with the informer and independent witnesses, the NCB team reached near the entrance of the Indira Gandhi Stadium at Sarusajal. Near the service lane, they saw that a Scorpio vehicle bearing registration No. WB-58-C-2157 was parked there. After sometimes, the truck bearing registration No. MN-04-A-1960 arrived there and stopped. Thereafter, two persons came out from the truck and two persons also came out from the Scorpio vehicle. They talked for some time and thereafter, one of the persons who came out from the truck, again went inside the cabin of the truck and handed over few polythene packets to the person who were standing outside. At that time the NCB team members and with Independent witnesses intercepted all the four persons, who were standing with some polythene packets in their hands. Section 100 of the Cr.P.C was followed during the search and seizure. He was near the Scorpio vehicle when the search was conducted. All the four persons were searched by the Intelligence Officer Pawan Baisane. Section 50 of the NDPS Act was complied with during body search of the four persons. During the search, total 54.648 kilograms of Oplum and 2.060 kilograms of morphine were recovered from seven polythene packets holding in their hands by the four persons. Indian currency notes amounting to Rs. 17,000/- and some documents relating to the persons and the two vehicles were also recovered during the search and seizure. All the search and seizure formalities along with weighing of the contraband were also done on the spot, in presence of the two independent witnesses, the seizing officers, and the team members. The signatures of all the four persons were obtained in the seizure lists. Notice under Section 67 of the NDPS Act was issued to all the four persons and their voluntary statements were also recorded. They confessed their guilt and were arrested by Shri Pawan

Baisane on the spot with proper arrest memo. Copy of the search-cum-seizure list and arrest memo were handed over to all the four arrested persons. Thereafter, along with seized articles, two seized vehicles, the four arrested persons, the NCB team went to the NCB office, situated at Rupkuwanr Path, Chachal, Guwahati. Thereafter, an office order was issued to him on 10.05.2016, for investigating the case and filing the complaint within the stipulated time. The office order was issued by the Zonal Director Shri Praveen Kumar. He received the record of the NCB Crime No. 4/2016 from Shri Pawan Baisane. Ext. 35 is the office order dated 10.05.2016 and Ext. 35(1) is the signature of the Zonal Director Shri Praveen Kumar Ext. 35(2) is the signature of Pawan Baisane, which he can identify.

63. During investigation, he had sent letters to the District Transport Officer (DTO), Thobal and to the RTO, Bahrapur, Murshidabad to ascertain ownership of the seized vehicles. Ext. 36 is the office copy of the letter in respect of the request letter sent to the DTO Thobal in connection with seizure of the truck bearing registration No. MN-04-A-1960. A report was received and it is stated in the report that the vehicle was registered in the name of one Mujibur Rahman, who was arrested in this case. Ext. 37 is the report prepared by the DTO, Thoubal, Manipur, dated 09.08.2016. A letter was also sent to RTO Bahrapur Murshidabad to ascertain the ownership of seized Mahindra Scorpio vehicle bearing registration No. WB-58-C-2157. Ext. 38 is the office copy of the letter dated 04.08.2016. A report was received and it is stated in the report that the seized vehicle was registered in the name of Kalpana Bidi Manufacturing Co. Ltd. Ext. 39 is the report received from the RTO Murshidabad dated 24.08.2016. Thereafter, a notice was issued to the Kalpana Bidi Manufacturing Co. Ltd. In this regard a report was received from Kalpana Bidi Manufacturing Co. Ltd., that

the registered owner of the Scorpio vehicle is Sohrab Khan, who was arrested in connection with the instant case. Along with the report, the Kalpana Bidi Manufacturing Co. Ltd, also annexed a document which shows that the current status of the said vehicle. A letter was issued to the Station Manager, Air Asia, Guwahati Airport, asking for passenger manifesto of the Air Asia Flight on 05.05.2016, as the accused Sohrab Khan has stated in his voluntary statement that he travelled from Imphal to Guwahati in the Air Aisa flight along with accused Abdul Kalam. The passenger manifesto was received and the names of Abdul Kalam and Sohrab Khan were listed in the passenger manifesto. Ext. 41 is the copy of the letter issued to the Station Manager, Air Asia on 13.07.2016. Ext. 41(1) is his signature therein. The officers of the Air Asia acknowledged the letter on 13.07.2016 and had given the passenger manifesto with seal and signature. He further described in detail in respect to verification of addresses of the arrested accused persons. Further, he stated that the Guest Registration Card of the Hotel Fortune was received with signature of the Manager of the Hotel where entry of Sohrab Khan was made. The Photostat copy of the register of the Hotel Ritz situated, near Apsara Cinema Hall, Ulubari, Guwahati, was also received with signature of the Partner of the Hotel, where the entry was made of Md. Abdul Kalam.

64. The examination report of the samples of the suspected seized Opium and Morphine was received from the FSL, Guwahati. As per the report, the samples gave positive tests for Opium and Morphine. Thereafter, he filed the final complaint in the instant case within the stipulated time on 26.10.2016, against the four arrested accused persons, namely, Sohrab Khan, Abdul Kalam, Mujibur Rahman and Ram Milan. Ext. 46 is the said complaint and Ext. 46(1) to Ext. 46(13) are his signatures with office seal, under Section 36(A)1(d) of the NDPS

Act.

65. In the cross examination the PW-5 has stated that he was a member of the NCB team which carried out the operation. He is also the Investigating officer. In his final complaint, he has mentioned the location as near the Indira Gandhi Stadium, Sarusajal. But, the exact location has not been mentioned. In his final complaint, he did not mention specifically that the service lane is just in front of the entrance gate of the Sarusajal Stadium. He did not investigate separately regarding the time of receipt of the secret information and forwarding of the information to the superior officer. He did not collect the CCTV footage of the place during investigation of the case. From his cross examination it also reveals that in the seizure list, there is no mention of any document of the Scorpio vehicle. However, he collected the documents during investigation. He did not mention specifically about the location of the cavity in the Scorpio vehicle. He did not collect any report from the NBI regarding the cavity of the Scorpio vehicle. The Scorpio vehicle was registered in the name of Kalpana Bidi Manufacturing Co. Ltd. He did not submit copy of the letter issued to Kalpana Bidi Manufacturing Co. Ltd. The Managing Director of the Kalpana Bidi Manufacturing Co. Ltd. gave reply stating that at the relevant time, the Scorpio vehicle was transferred to Sohrab Khan and Sohrab Khan was the owner of the vehicle. However, after receiving the written reply, he did not interrogate the Managing Director. He wrote a letter to the DTO, Chatra regarding the status of the registration of the vehicle. But, he did not receive any reply. He denied the suggestion that whatever documents he had collected or submitted before the court as regards the ownership of the Scorpio vehicle, the same are manufactured documents. He has denied the suggestion that as per Ext. 42, Sohrab Khan and Abdul Kalam travelled on 27.04.2016, not on 05.05.2016. He

did not collect the E-Ticket of both the persons. He did not collect the CCTV footage from the Airport. He has denied the suggestion that he did not get any material against the accused Sohrab Khan and Ram Milan and in spite of that, without proper investigation, he submitted charge sheet against them. He has denied the suggestion that the accused Sohrab Khan was not found at the place of occurrence. He has denied the suggestion that he was intercepted and picked up on 05.05.2016, in front of the Hotel Fortune and he was falsely implicated in this case. He has denied the suggestion that the accused Ram Milan was approached to become a witness against the accused Sohrab Khan and as he refused to become witness, he has falsely implicated him in this case. He has denied the suggestion that his investigation is a defective one.

66. He has further stated that he did not mention in the final complaint that at the time of proceeding to the spot, they had taken with them all the Forms of notices, printed Form of seizure lists, notice under Section 67 of the NDPS Act, notice under Section 50 of the NDPS Act, Departmental Seal, lead, packing items, etc. He has denied the suggestion that the independent witnesses shown in the seizure list are the pocket witnesses. He has denied the suggestion that during the entire process of search and seizure or before that, they did not approach any local inhabitants to become witness of the search and seizure. He has denied the suggestion that no weighment sheet was prepared at the time of search and seizure. As per the Panchnama, both the vehicles were seized by the seizing officer, however, in the seizure lists, there is no mention of both the vehicles. There is no mention of having any secret cavity in the truck. He did not find any material that Abdul Kalam funded Sohrab Khan for travelling by Air Asia. As per the Guest Register of Hotel Ritz, the accused Abdul Kalam came to Guwahati for medical purpose. He has denied the suggestion that they picked

up the accused Abdul Kalam from his hotel and as such, there is no check-out time. He was present at the time of recording of statements of all the accused persons, but he did not put his signature as a witness. He has denied the suggestion that the accused Abdul Kalam and Majibur Rahman were not present at the time of the operation. He denied the suggestion that they picked up the accused Abdul Kalam and Majibur Rahman from two different places and falsely implicated them in this case.

67. PW-6 Praveen Kumar has deposed that on 06.05.2016, he was posted as the Zonal Director, NCB, Guwahati. On that day, he received an information through Intelligence Officer Shri Pawan Baisane and Miss Tulika Morang, Superintendent, NCB, that Md. Abdul Kalam and Md. Mujibur Rahman would be carrying a consignment of opium and morphine and would deliver the same to Sohrab Khan and Ram Milan on 07.05.2016, at around 07:00 Hrs, near Indra Gandhi Stadium, Guwahati. He therefore issued an office order constituting a team and directed the team to proceed in the morning of 07.05.2016, to take action against said persons. Shri Pawan Baisane was authorized to be the seizing officer. It was also directed that in the case of seizure, the case will be booked as Crime No. NCB 4/2016. Thereafter, a team was formed consisting of Intelligence Officers Shri Suresh Kr. Singh, Shri Anjani Kumar, Shri Pawan Baisane (he was authorized to seize the illicit consignment of drugs), Swarup Chanda, TA Comm., Shri Sujit Sil Sarma, DEO, Shri Santanuh Guha, SA, Shri Vipin Kumar, Shri Bhupendra Singh Yadav, Shri Sandeep Kumar and Shri Vikram Singh, all sepoy. Ext. 3 is the NCB 1 reduced into writing. Ext. 3(1) is the signature of Pawan Baisane, Ext. 3(2) is the signature of Miss Tulika Morang, Ext. 3(3) is his signature. Ext. 3(4) is the signature of Pawan Baisane. Ext. 4 is the office order. Ext. 4(1) is his signature. A case was booked and consignment

of 54.648 kg Opium and 2.060 kg morphine was seized on 07.05.2016 and four persons were arrested. All the four persons were produced before him.

68. In the cross-examination, he has stated that in the NCB 1, there is no mention of the vehicle No. and the description of the vehicles. There is no specific mention exactly at what time it was sent to the superior officer and again at what time it was produced before him. In NCB 1, the information discloses the place, where the transaction would take place. He did not mention separately in his note, where to the officers would proceed. But, he has mentioned the same in the office order. In his office order, he did not mention the time of issuance of the order. He has denied the suggestion that both NCB 1 and the office order were prepared subsequently, after the entire search and seizure process, to fill up the lacuna. He has further stated that in the office order, he did not mention the names of the suspected persons. He also did not mention in his office order about the specific contraband. He has stated that in the final complaint, he was not cited as a witness. In the Ext. 4, i.e. in the office order, he did not mention any case number. He has denied the suggestion that prior to the operation; he had no information regarding the illegal transaction of narcotic drugs. He has denied the suggestion that both the NCB 1 and the office order were manufactured subsequently.

69. DW-1 Ejaz Ahmed Khan has deposed that he knows the accused Sohrab Khan. He used to work under the accused Sohrab Khan in Jharkahand. On 06.05.2016, he came to Guwahati to work under the accused Sohrab Khan and went to the Hotel Fortune, near the Mosque at Paltan Bazar, at around 07:00/08:00 pm, to meet him. While he was waiting for him in front of the Hotel Fortune, the accused Sohrab Khan came out but, as soon as he reached the

gate, four/five persons apprehended him. Thereafter, many people gathered there but, the persons took away the accused Sohrab Khan in a Bolero vehicle. At the time of arrest, the accused Sohrab Khan was not carrying anything in his hands. He tried to talk with the persons who had apprehended the accused Sohrab Khan but, they did not talk to him.

70. In the cross-examination, he has stated that he came to Guwahati on 06.05.2016, by a train, travelling in the general compartment. He has not brought the railway ticket to prove the same. He does not remember the phone number of the accused. He has denied the suggestion that the accused Sohrab Khan is his relative and hence, to save the accused, he has deposed falsely. He also denied the fact that the accused was not arrested in front of Hotel Fortune. He also denied the suggestion that the accused was not arrested in his presence.

71. DW-2 Hiranya Salkia has deposed that from 8th July, 2018 to 31st January, 2019, he was working in the Hotel Fortune, Paltan Bazar, as the General Manager. He has brought the Ext. A (three sheets) Guest Registration Card of the Fortune Hotel. The Ext. A is not filled up properly as there are many blank spaces. The check out time and date is not mentioned in the Ext. A. The Photostat copy of the Voter ID card enclosed with the Ext. A is of one Sohrab Khan. The Photostat copy of the Voter ID Card enclosed with the Ext. A was photocopied from the original Voter ID Card produced by Sohrab Khan at the time of admission in the hotel. In the Hotel Invoice enclosed with the Ext. A, the departure date is mentioned as 06.05.2016 and the time is mentioned as 9:20 P.M. They did not maintain separate register of the guests and enter everything about the guests in their computers. They preserve the CCTV footage of the

Hotel for one month. He does not know anything about any seizure made by the Investigating officer in connection with this case.

72. Prosecution declined to cross-examine him.

73. Heard the submissions made by the learned counsel for the parties, we have also perused the case records, the exhibits and the judgment and order passed by the learned Sessions Judge.

74. It is the case of the prosecution that the PW-3, the search and seizing officer had received a secret information that two persons, namely, Md. Abdul Kalam and Md. Mujibur Rahman would deliver consignment of Morphine and Opium to another two persons, namely, Sohrab Khan and Ram Milan near Indira Gandhi Stadium, Sarusajai, Guwahati and from the evidence of both PWs-2 and 3 it reveals that after receipt of information, he reduced the same into writing and informed the superior officer i.e., PW-2, who was discharging her duty as a Superintendent of NCB, Guwahati Zonal Office and also was the in-charge of Go-down. Thus, it is seen that after receiving the information by complying the provisions under Sections 42(1) of the NDPS Act, it was reduced to writing and then, it was sent before the PW-2 and the PW-2 also acknowledged the same and forwarded the information to the Zonal Director, NCB, namely, Praveen Kumar (Pw-6) and accordingly, PW-6 issued the office order to constitute a team and directed the team to proceed in the morning of 07.05.2016 to take action against the said persons. PW-3 was also authorized to be the search and seizing officer.

75. Thus, it is seen that there was total compliance of Section 42(1) and 42(2) of the NDPS Act and observing all necessary formalities, PW-3 in pursuant to the communication of the office order, he immediately rushed to the place of

occurrence and worked as a search and seizing officer and this part of the evidence of these PWs could not be rebutted by the defence by adducing any evidence or by cross examining them in regards to compliance of Section 42 of the NDPS Act.

76. In that regard, the PWs have also exhibited the following documents: (i) Exhibit-3, the written information issued by Pavan Baisane (PW-3) with his signature; Exhibit-4, the office order issued by the Zonal Director (PW-6) after receipt of information from PW-2, the Superintendent of NCB.

77. Further, it is seen that at the time of search and seizure, the PW-3 also approached two persons who were walking on the road and introduced them and told about the information available with them and also requested them to become the witnesses of the search and seizure, if any. Those persons agreed to the same and they also reached the spot along with the team to stand as independent witnesses. Thereafter as described by the PWs in their evidence, they seized suspected Morphine and Opium from the possession of the accused appellants in presence of the independent witnesses. Thus, it is not a case that the prosecution completed the search and seizure operation without the presence of the independent witnesses and there was compliance of Section 100 CrPC (check). But, it is a fact that during the trial of the case, those two independent witnesses could not be produced by the prosecution inspite of taking several steps by the prosecution. But, it cannot be denied that search and seizure was completed in presence of independent witnesses.

78. Coming to the compliance of Section 50 NDPS Act, it is seen that from the evidence of PWs that at the time of conducting the body search, Notice under Section 50 NDPS Act were served upon all the four accused appellants and they

acknowledge the same and also gave written consent for their body search. The acknowledgement receipts were also exhibited as Exhibits 10, 11, 12 and 13 by the PW-3. The written consent were also given in presence of independent witnesses, wherein it was specifically stated that they need not be taken before any Magistrate or Gazetted Officer for search of their body. Further, the consent letters given by all the accused appellants were also exhibited as Exhibits 14, 15, 16 and 17 respectively. Thus, it cannot be said that there was no compliance of Section 50 of the NDPS Act, rather, there was proper and total compliance of Section 50 NDPS Act. Further, it is the case of the prosecution that some of the documents like, PAN Card, Aadhar Card, Mobile Handsets were also recovered from the body of the accused appellants, but the contraband which are alleged to have been recovered from the possession of the accused appellants, were not recovered from their body, but from the bags which were carried by the accused appellants at the time of search and seizure.

79. In case of recovery from the hand and/or car or from the bags of any accused persons, there may not be any requirement of compliance of Section 50 NDPS Act, which is only required when if the contraband was recovered from the body of any accused person.

80. In the case of **Jarnail Singh** (supra) (**State of Haryana Vs. Jarnail Singh and others**, decided on 29.04.2004, it has been observed by the Hon'ble Apex Court that Section 50 NDPS Act is not applicable if the contraband is recovered on search of a vehicle or there was no personal search involved.

81. In the present case also it is seen that the contraband were recovered from the bags which were carried by the accused appellants at the time of search and seizure. However, for the body search, there is specific compliance

of Section 50 NDPS Act. However from the evidence of PWs 2 and 3 and other PWs also, it is evident that soon after the recovery of the contraband, the quantity of the suspected contraband to be Morphine and Opium were weighted with the help of digital weighing machine in presence of independent witnesses and accordingly, those were marked and then, the samples in duplicate were also collected respectively and all the four sample packets duly packed in polythene and then kept inside the envelope, which were suspected to be Morphine and Opium.

82. The Panchnama was also accordingly prepared by the PW-3 in presence of independent witnesses and all the accused appellants also put their signatures in the Panchnama, which were exhibited as Exhibit 19 and the signatures of the accused appellants were exhibited as Exhibits 19(1) to 19(11).

83. From the evidence of PW-2 it also reveals that on the same day i.e., on 07.05.2016 at around 05:45 pm, the PW-3 the seizing officer came along with seized articles and the samples and those were handed over to her and as a godown in-charge she kept the same in the go-down and issued godown receipts for the same. The Exhibit 5 is the godown receipt which contains her signature. Thereafter, on 08.05.2016 again PW-3 collected the seized articles and samples for production before the Court and in that case also she again issued godown receipts, which is exhibited as Exhibit 6, wherein, PW-3 also put her signature as Exhibit 6 (1) and on the same day i.e., on 08.05.2016, after producing the seized articles and samples before the Court, PW-3 returned the same to the PW-2 and accordingly, PW-2 again issued a receipt, which is exhibited as Exhibit-7 with her signature. It further reveals that PW-3 then collected the original samples from her for sending the same to FSL and in that

context also she issued a godown receipt as Exhibit-8 and on the same day, PW-3 also submitted the compliance report under Section 57 of the NDPS Act which is also exhibited as Exhibit-9 by PW-2.

84. Thus, from the exhibits which were annexed with the signatures of both PWs 2 and 3, it is seen that there is no scope for manipulation of the seized articles and after complying all required formalities, those were sent for FSL examination and after receiving the report from the FSL, it was confirmed that the seized contraband contains both Morphine and Opium.

85. Issue raised by the learned counsel for the appellants regarding non-compliance of Section 52A NDPS Act, it is seen that inventory/panchnama was duly prepared by the seizing team but it is a fact that inventory was not certified by the Magistrate concerned. As per Section 52A NDPS Act, the certificate is necessary only when the question of disposal arises. But, here in the instant case, there is no prayer for any disposal of the contraband, rather, from the available materials, it is seen that the prosecution has produced the entire seized contraband of Morphine and Opium before the Court during trial in sealed condition and the same was found to be in proper condition at the time of opening. Thus, there is sufficient compliance of Section 52A, while preparing the Panchnama etc., and only because of non certification of the contraband, it cannot be held that there was non-compliance of Section 52A NDPS Act. More so, in the present case, the entire contraband was produced before the Court during the trial by the prosecution.

86. In the case of **Rajwant Singh Vs. The State of Haryana**, passed in Criminal Appeal No.201/2019, decided on 09.01.2025 [(2025) 0 Supreme (SC) 135], the Hon'ble Supreme Court in paragraph 9 held as follows:--

“9. This Court in its recent decision in [Bharat Aambale v. State of Chhattisgarh](#) [2025 INSC 78] summarized the position of law as regards the scope of [Section 52A](#) of the NDPS Act and the consequences of any non-compliance of the same as under: -

“50. We summarize our final conclusion as under: -

(I) Although [Section 52A](#) is primarily for the disposal and destruction of seized contraband in a safe manner yet it extends beyond the immediate context of drug disposal, as it serves a broader purpose of also introducing procedural safeguards in the treatment of narcotics substance after seizure inasmuch as it provides for the preparation of inventories, taking of photographs of the seized substances and drawing samples therefrom in the presence and with the certification of a magistrate. Mere drawing of samples in presence of a gazetted officer would not constitute sufficient compliance of the mandate under [Section 52A](#) sub-section (2) of the [NDPS Act](#).

(II) Although, there is no mandate that the drawing of samples from the seized substance must take place at the time of seizure as held in Mohanlal (supra), yet we are of the opinion that the process of inventorying, photographing and drawing samples of the seized substance shall as far as possible, take place in the presence of the accused, though the same may not be done at the very spot of seizure.

(III) Any inventory, photographs or samples of seized substance prepared in substantial compliance of the procedure prescribed under [Section 52A](#) of the NDPS Act and the Rules / Standing Order(s) thereunder would have to be mandatorily treated as primary evidence as per [Section 52A](#) sub section (4) of the [NDPS Act](#), irrespective of whether the substance in original is actually produced before the court or not.

(IV) The procedure prescribed by the Standing Order(s) / Rules in terms of [Section 52A](#) of the NDPS Act is only intended to guide the officers and to see that a fair procedure is adopted by the officer in-charge of the investigation, and as such what is required is substantial compliance of the procedure laid therein.

(V) Mere non-compliance of the procedure under [Section 52A](#) or the Standing Order(s) / Rules thereunder will not be fatal to the trial unless there are discrepancies in the physical evidence rendering the prosecution's case doubtful, which may not have been there had such compliance been done. Courts should take a holistic and cumulative view of the discrepancies that may exist in the evidence adduced by the prosecution and appreciate the same more carefully keeping in mind the procedural lapses.

(VI) If the other material on record adduced by the prosecution, oral or documentary inspires confidence and satisfies the court as regards the recovery as-well as conscious possession of the contraband from the accused persons, then even in such cases, the courts can without hesitation proceed to hold the accused guilty notwithstanding any procedural defect in terms of [Section 52A](#) of the NDPS Act.

(VII) Non-compliance or delayed compliance of the said provision or rules thereunder may lead the court to drawing an adverse inference against the prosecution, however no hard and fast rule can be laid down as to when such inference may be drawn, and it would all depend on the peculiar facts and circumstances of each case.

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

(IX) The initial burden will lie on the accused to first lay the foundational facts to show that there was non-compliance of [Section 52A](#), either by leading evidence of its own or by relying upon the evidence of the prosecution, and the standard required would only be preponderance of probabilities.

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

87. From the evidences of PWs 4 and 5, it is also seen that they were also part of the team and were also present during the search and seizure and as per them also the entire operation was conducted by PW-3 and some of the other team members were also present during the search and seizure operation. From the evidence of PW-6, it reveals that he constituted a team including the PW 4 and 5 and as a team member PW 3 was authorized as a search and seizing officer. The evidence of this witness also could not be rebutted by the defence, while cross-examining them and the suggestions which were put to them were also denied by the prosecution witnesses.

88. Coming to the evidence of the expert, i.e., PW-1, it is seen that he duly received the parcel for examination through the Directorate of DSFS, Assam in

connection with NCB Crime No.04/NCB/GHY/2016 for examination. All the samples were also examined as per the United Nations Drugs Testing Laboratory Manual, which gave positive test for Opium and the percentage of Morphine in each exhibit was found to be 16.94 and other exhibit samples gave positive test for Morphine and the percentage of Morphine was found to be 77.81 and accordingly, he prepared a report and forwarded the same to the Zonal Director, NCB by the then, Director Mr. K. C. Sarma.

89. From his evidence it is seen that he has not narrated the entire procedure which were applied during the examination, but as per him, he examined the samples as per the United Nations Drugs Testing Laboratory Manual. It is a fact that as per description made in the inventory/panchnama, the seized article was dark brown powdery substance. But as per description of articles by the PW-1, it was dark brown pasty substance. But from the entire evidence on record as well as from the exhibited document, as discussed above, it is seen that there is no chance of any manipulation of the contraband which were seized and forwarded for examination to FSL, more so, the sealed packets were also opened in the Court and it was opened during the course of trial before the Court only at the request made by the defence and thus, there cannot be any manipulation of the contraband which were seized and forwarded to FSL for examination. Rather, the entire seized articles were produced before the Court during trial which were found in a sealed condition.

90. Another issue raised by the learned counsel for the appellants is that no formal charge was framed against the accused appellants under Section 17(c) of the NDPS Act and the charges were altered and framed only at the time of passing the judgment without giving any chance of taking proper defence for

the altered/modified charge. But from the charge initially framed, it is seen that there was mention of recovery of both contraband i.e., Morphine and Opium, though inadvertently, the charge was framed only under Sections 21(c)/29 of the NDPS Act. While altering/modifying the charge, the learned Sessions Judge had discussed in detail and also discussed the provisions of Section 215 CrPC and it is rightly observed that only for non framing of formal charge under Section 17(c) of the NDPS Act, did not cause any prejudice to the accused appellants as the entire case is based on the recovery of both the contraband i.e., Morphine and Opium and during trial the entire defence was also taken in regards to recovery of both Morphine and Opium. Only for non framing of formal charge under Section 17(c) i.e., for recovery of Morphine will not cause any prejudice to the accused appellants, as they got ample opportunity during the entire trial to take their proper defence for recovery of both Morphine and Opium at the time of search and seizure.

91. Coming to the recording of statement under Section 313 CrPC, it is also seen that in some of the questions, answers were not recorded by the predecessors. But coming to know about the non-recording of the answers, the statements of the accused appellants under Section 313 CrPC were re-recorded with their proper answers. But from the record, it is seen that questionnaires put to the accused appellants at the time of recording their initial statements and at the time of recording their subsequent statement are same and the reply to the last question, whereby they took the defence is also same and it is also seen that they were asked as to whether they are interested to adduce any defence evidence, to which the appellants inclined to adduce evidence in their defence and accordingly, 2 (two) defence witnesses were also examined by the defence. Thus, it is seen that simply recording of subsequent statements under

Section 313 CrPC, wherein, some formal answers were recorded, did not cause any prejudice to the accused appellants, rather, they also availed the opportunity of adducing evidence of DW 1 and DW 2.

92. The defence also adduced the evidence of two defence witnesses as DW-1 and DW-2 basically for the accused Sohrab Khan. The DW-1 as discussed above has stated that he came to meet Sohrab Khan as he was working with him in Jharkhand and when he came to Guwahati to work under accused appellant Sohrab Khan. When he came to meet him in the hotel on 06.05.2016 at around 7/8 pm, some 5/6 persons came there and took him in a Bolero car. There was nothing with him at the time of his apprehension. So, as per DW-1, he came to Guwahati only to work under the accused appellant Sohrab Khan, but surprisingly, he did not have the phone number of the accused, though he stated that he came to contact with the accused appellant Sohrab Khan and went to meet him in the hotel. Thus, his testimony cannot be considered to be believable statement. At the same time, DW-2 who was working in the hotel at the relevant point of time of incident came before the Court along with 3 (three) sheets of guest registration card of the hotel Fortune and those were also exhibited as Exhibit-A. But at the time of his examination, it is seen that those were not properly filled up and there are many blank spaces and the check out time and date is also not mentioned in the Exhibit-A. However, in the Exhibit-A, the departure date is mentioned as 06.05.2016 and the time is mentioned as 9:20 pm. From his evidence it also reveals that they did not maintain any separate Register of the guest and enter everything about the guest in their computer.

93. Thus, it is seen that the check out time of the accused Sohrab Khan is also

contradictory as per the version of both DW- 1 and DW-2. As discussed above, as per the DW-1 he came out from the hotel at about 7/8 p whereas as per DW-2 the accused Sohrab had checked out from hotel at about 9:20 pm. Thus, the evidence of both the DWs cannot be considered as believable and trustworthy testimonies.

94. Learned counsel for the appellants raised the issue of compliance of Section 32B NDPS Act and it is submitted accordingly, that in the present case, the appellants were sentenced with the maximum period without considering any factors which are to be considered as per Section 32B of the NDPS Act.

95. It is further submitted by the learned counsel for the appellants that there is no criminal antecedent for the present appellants, nor there is any record to prove their criminal antecedent in the present case and accordingly she submitted that even if the appellants are convicted, they should not be sentenced with maximum punishment and the factors should be taken into consideration as per Section 32B of the NDPS Act.

96. As stated above, Ms. Nargis, learned counsel also relied on the decision of the Hon'ble Supreme Court in the cases of **Shahejadjkhan Mahebubkhan Pathan (supra)**, and **Pradeep Bachhar (supra)**.

97. Section 32 B of the NDPS Act read as follows:--

“32B. Factors to be taken into account for imposing higher than the minimum punishment.—

Where a minimum term of imprisonment or amount of fine is prescribed for any offence committed under this Act, the court may, in addition to such factors as it may deem fit, take into account the following factors for imposing a punishment higher than the minimum term of imprisonment or amount of fine, namely:--

(a) the use or threat of use of violence or arms by the offender;

(b) the fact that the offender holds a public office and that he has taken advantage of that office in committing the offence;

(c) the fact that the minors are affected by the offence or the minors are used for the commission of an offence;

(d) the fact that the offence is committed in an educational institution or social service facility or in the immediate vicinity of such institution or faculty or in other place to which school children and students resort for educational, sports and social activities.;

(e) the fact that the offender belongs to organised international or any other criminal group which is involved in the commission of the offences; and

(f) the fact that the offender is involved in other illegal activities facilitated by commission of the offence.

98. In reply to the submissions made by the learned counsel for the appellants, Mr. Keyal, learned Standing Counsel, NCB submitted that while imposing sentence, the Court also should consider the quantity of the contraband recovered from the conscious possession of the appellants. To substantiate his arguments, he also relied on a decision of the Hon'ble Supreme Court in the case of **Narayan Das (Supra)** as referred above, wherein in paragraph 18 it has been observed that – “a specific word used in Section 32B that Court may, in addition to such factors as it may deem fit clearly indicates that Courts discretion to take such factors as it may deem fit is not fettered by factors which are enumerated in clauses (a) to (f) of [Section 32-B](#)”.

99. On this point, i.e., compliance of Section 32B NDPS Act, it is seen that there are no specific details about the criminal antecedents of the present accused appellants, nor the prosecution could produce any document to prove that the appellants had earlier convicted or had the criminal antecedents, but at the same time it also cannot be denied that all the accused appellants in a conspiracy had committed the offence, wherein huge quantity of contraband was recovered and accordingly, the case was registered under the commercial

quantity.

100. As relied by Mr. Keyal, learned Standing Counsel, NCB in the case of **Narayan Das (supra)** the Hon'ble Supreme Court had expressed the view that the Court should be guided by the factors mentioned in Section 32B of the NDPS Act and other relevant factors, while imposing the sentence, higher than the minimum. Therefore, the factors mentioned in Section in 32B of the NDPS are in addition to other relevant facts. In paragraph 18 of the said judgment the Hon'ble Supreme Court has held as under:-

“18. We may also refer to the decision of this Court in [Gurdev Singh vs. State of Punjab](#), reported in (2021) 6 SCC 558. In the said case, it was held that the court should be guided by the factors mentioned in [Section 32-B](#) of the NDPS Act and other relevant factors while imposing a sentence higher than the minimum. Therefore, factors mentioned in [Section 32-B](#) of the NDPS Act are in addition to other relevant facts, and it cannot be said that the minimum sentence under the [NDPS Act](#) is to be considered as a maximum sentence. It was observed at page 564:

“7. Therefore, while imposing a punishment higher than the minimum term of the imprisonment or an amount of fine, the court may take into account the factors enumerated in [Section 32-B](#) of the Act referred to hereinabove. However, it is required to be noted (2025:HHC:2309) that [Section 32-B](#) of the Act itself further provides that the court may, in addition to such factors as it may deem fit, take into account the factors for imposing a punishment higher than the minimum term of imprisonment or amount of fine as mentioned in [Section 32- B](#) of the Act. Therefore, while imposing the punishment higher than the minimum term of imprisonment or amount of fine, the court may take into account such factors as it may deem fit and also the factors enumerated/mentioned in [Section 32-B](#) of the Act. Therefore, on fair reading of [Section 32-B](#) of the Act, it cannot be said that while imposing a punishment higher than the minimum term of imprisonment or amount of fine, the court has to consider only those factors which are mentioned/enumerated in [Section 32-B](#) of the Act.

xx xx xx xx xx xx

10. Therefore, the quantity of substance would fall into “such factors as it may deem fit” and while exercising its discretion of imposing the sentence/imprisonment higher than the minimum, if the court has taken into consideration such factor of larger/higher quantity of substance, it cannot be said that the court has committed an error. The court has a wide discretion to impose the sentence/imprisonment ranging between 10 years to 20 years and while imposing such sentence/imprisonment in addition, the court may also take into consideration other factors as enumerated in [Sections 32-B\(a\)](#) to (f). Therefore, while imposing a punishment higher than the minimum sentence, if the court

has considered such factor as it may deem fit other than the factors enumerated in [Sections 32-B\(a\) to \(f\)](#), the High Court has to only consider whether "such factor" is a relevant factor or not."

101. From the above discussion made above and after considering all the aspects of the case, we are of the opinion that the learned Sessions Judge committed no error or illegality while convicting the accused appellants under Section 17(c)/21(c) of the NDPS Act and thus, there is no infirmity in the order of conviction passed by the learned Sessions Judge.

102. However, considering all these aspects and also considering the view of the Hon'ble Apex Court, we are of the opinion that it may not be a case to impose highest punishment as prescribed under the law, however, considering all aspects of the case, we are of the considered opinion that slight modifications may be required in the sentence passed without interfering with the fine imposed on the appellants.

103. Accordingly, the appellants/convicts, namely, Md. Sohrab Khan, Mr. Mujibur Rahman, Shri Ram Milan and Md. Abdul Kalam are hereby sentenced to undergo Rigorous Imprisonment for 12 (twelve) years along with fine of Rs.2,00,000/- (Rupees Two Lakh) each, in default to undergo Rigorous Imprisonment for another 1(one) year each, for committing the offence under Sections 17(c)/21(c) of the NDPS Act and both the sentences shall run concurrently against all the accused appellants.

104. All the appeals are accordingly disposed of.

JUDGE

JUDGE