
(2015) 11 DEL CK 0278
In the Delhi High Court
Case No : Criminal Appeal1543/2014

Mandeep Singh and Others	Vs	APPELLANT
The Directorate of Revenue Intelligence		RESPONDENT

Date of Decision : 03-11-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 21, 21(c),
25, 29, 42

Citation : (2016) 1 JCC 41

Hon'ble Judges : S.P. Garg, J.

Bench : Single Bench

Advocate : Kamal J.S. Mann and Nitin Joshi, Advocates, for the Appellant;
Amish Aggarwala, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

S.P. Garg, J.

Crl.M.A. No. 17607/2014 (Delay)

1. For the reasons mentioned in the application for condonation of delay in filing the appeal, the delay is condoned.
2. The application for condonation of delay is disposed of.

Crl. A. 1543/2014

3. Challenge in this appeal is to a judgment dated 18.11.2013 of learned Addl. Sessions Judge / Special Judge - NDPS in Sessions Case No. 71A/07 by which the appellants - Gurudev Singh and Mandeep Singh were held guilty for committing offences under Sections 21(c) and 29 of NDPS Act. By an order dated 25.11.2013, they were sentenced to undergo Rigorous Imprisonment for ten years with fine Rs. 1 lac each under both the heads. The sentences were to run concurrently.

4. Briefly stated, the prosecution case as reflected in the complaint filed by Directorate of Revenue Intelligence (hereinafter referred to as "DRI") through Gurjit Singh, Intelligence Officer, was that on 07.05.2007, a secret information was received at DRI Headquarters by Kamal Kumar, Intelligence Officer at around 03.00 p.m. to the effect that a silver colour vehicle make Mahindra Scorpio bearing registration No. DL 7CC 8955, in which some narcotics drugs were concealed would arrive near Trilokpuri T-Point, adjacent to Block No. 8 at Gazipur, Noida Road, Delhi in between 05.30 to 06.30 p.m. The secret information was reduced into writing (Ex.PW-1/A) and put up before Pankaj K.Singh, Deputy Director. He, after discussing the matter with Seniors, directed the Investigating Officer to take necessary action.

5. Further case of the DRI is that a raiding party was organised and two independent public witnesses PW-11 (Mohd.Idris) and PW-12 (Irfan Khan) were associated. The raiding team reached the spot and started maintaining surveillance there. At around 05.30 p.m., they spotted one silver colour Mahindra Scorpio vehicle bearing registration No. DL 7CC 8955 coming from the side of Khichripur. The vehicle was signaled to stop. It was being driven by the appellant - Mandeep Singh and the other occupant was the appellant - Gurudev Singh. They were apprised about the secret information and were shown search authorisation (Ex.PW-2/A). Since the spot being a crowded place was not conducive to conduct further search proceedings, the Investigating Officer asked both the appellants to accompany them to the office of DRI situated at Drum Shape Building, IP Bhawan, IP Estate, New Delhi to which they consented. Notices under Section 50 of the NDPS Act (Ex.PW-3/A and Ex.PW-3/B) respectively were served upon the appellants there. Search of the vehicle resulted in recovery of 33 transparent polythene packets containing a cloth packet each, stuffed with some off-white colour powdery / granular substance. Out of 33 packets, 10 packets were found in a light green colour shoulder bag placed in the space for leg room between the front and the middle seat; 12 packets were found concealed beneath the foot mat of the middle and rear seat and the remaining 11 packets were found concealed inside the Stepney of the vehicle.

6. Further case of the DRI is that all the said packets when opened in the DRI Office situated at 7th floor were found to contain white colour cloth bags. On opening the cloth bags, it was found that 23 cloth packets were containing a single layer transparent polythene packet, each containing some off-white colour granular / powdery substance and the other 10 packets were found containing double layer of transparent polythene containing similar off-white colour granular / powdery substance. These packets were opened one by one and a sharp pungent smell was found emanating therefrom. A small quantity of substance was taken from each of these packets and was tested individually and it gave positive results for heroin. Gross weight of the packets was found to be 34.022 KG and the net weight came to be 33.065 KG. Some documents including photocopies of RC, Insurance Certificate, Pollution Certificate, Delivery Receipt,

Toll payment slips and service book of the above vehicle were also recovered from the dashboard of the vehicle. These were seized vide seizure memo. Personal searches of both the accused persons were conducted. Necessary proceedings were conducted at the spot. Two representative samples of 5 grams each out of the heroin of eight different lots were taken and marked. The samples were put in separate zip locked polythene pouches. Test Memos in triplicate and a detailed panchnama (Ex.PW-3/C) were prepared with regard to the proceedings conducted at the spot.

7. On 08.05.2007, summons (Ex.PW-3/D) under Section 67 of the NDPS Act were issued to the appellant - Mandeep Singh who tendered his statement (Ex.PW-3/E) in his own handwriting in Punjabi. Summons (Ex.PW-3/F) dated 08.05.2007 under Section 67 of the NDPS Act were also served upon the appellant - Gurudev Singh who tendered his voluntary statement (Ex.PW-3/G). They were arrested on 08.05.2007 and medically examined. Statements of the witnesses conversant with the facts were recorded. Residential premises of the appellant - Gurudev Singh at Trilokpuri were searched but nothing incriminating were recovered from there. One red colour Tata Safari vehicle bearing No. DL 3CJ 8034 parked in the street near Gurudev Singh's house belonging to accused Mandeep Singh was seized and searched but nothing incriminating was recovered from there.

8. During investigation, eight sealed sample packets were deposited with the CRCL Delhi on 09.05.2007 by PW-6 (Jagdish Rai) along with duplicate Test Memos and the forwarding letter (Ex.PW-5/B) given by PW-5 (Alok Aggarwal). The sealed parcels of the case property were deposited in the Valuable Godown of the New Customs House through PW-4 (D.P. Saxena). During investigation, it revealed that Rajbala Gupta was registered owner of the vehicle in question. It was purchased by the appellants for a sum of Rs. 5,15,000/- from M/s. Durga Motors, Preet Vihar. Rs. 5,00,000/- were paid in cash and they took the delivery of the vehicle on 04.05.2007. Balance amount of Rs. 15,000/- was to be paid at the time of transfer of the vehicle in Gurudev Singh's name. The other vehicle Tata Safari bearing No. DL 3CJ 8034 was found in the name of one Muzzafar Shah. He had already sold it to one Nirmal Singh on 28.02.2003 who further sold it to one Surender Kumar of District Amritsar on 26.05.2003. Surender Kumar had further sold it to one Harchand Singh after about three months of its purchase. Harchand Singh was found to be confined in a case of NDPS Act in Amritsar Jail.

Upon completion of investigation, a complaint for commission of the above said offences was filed against the appellants in the Court on 01.11.2007. The learned Trial Court took cognizance of the offence. The appellants were charged for commission of offences under Sections 29 and 21 read with Section 29 of the NDPS Act. Appellant - Mandeep Singh was further charged under Section 25 read with Section 29 of the NDPS Act. The appellants pleaded false implication and claimed trial. DRI examined twenty-eight witnesses in all to establish their guilt.

In 313 Cr.P.C. statements, the appellants denied their involvement in the crime and pleaded false implication. After hearing the learned counsel for the parties and on appreciating the evidence, the Trial Court held both the appellants guilty of the offences mentioned previously. Being aggrieved and dissatisfied, the appellants had preferred the instant appeal.

9. I have heard the learned counsel for the parties and have examined the file. Learned counsel for the appellants urged that the Trial Court did not appreciate the evidence in its true and proper perspective. Mandatory provisions of Sections 42, 50, 55 and 57 of the NDPS Act were not followed during investigation by the Investigating Agency. PW- 11 (Mohd. Idris) and PW-12 (Irfan Khan) have made vital improvements in their depositions before the Court. Material discrepancies and contradictions have emerged in their statements to suspect their presence at the time of recovery of the contraband; their signatures were obtained on blank papers. They being illiterate were unable to decipher the contents of the documents written in English. Notices under Section 67 of the NDPS Act were manipulated. The appellants were not apprised of their legal right to be searched in the presence of Magistrate or Gazetted Officer. Learned counsel further urged that delay in sending the samples has remained unexplained. The vehicles recovered have not been connected to the appellants. Rajbala Gupta, the registered owner of the vehicle has not been examined. Gurudev Singh did not have conscious possession of the contraband. There are infirmities about the colour / quantity of the contraband recovered in this case. Learned counsel for the respondent urged that there are no sound reasons to disbelieve the statements of the prosecution witnesses including that of the public witnesses. Huge recovery effected from the appellants cannot be planted. Minor discrepancies here and there are of no consequence.

10. At the outset, it may be mentioned that all the above contentions raised before this Court were urged by the learned counsel for the appellants before the Trial Court at the time of final disposal of the case. The Trial Court has dealt with all the relevant submissions minutely in the impugned judgment and has given valid reasons to reject them. This Court finds no good reasons to have a different view.

11. Secret information was received on 07.05.2007 on phone. PW-1 (Kamal Kumar) testified that the secret information (Ex.PW-1/A) received by him on phone in DRI office was reduced into writing bearing his signatures at point "A". The said information was put up before PW-9 (Pankaj K.Singh), the then Deputy Director, who was administratively immediate Senior to him and to whom he used to report directly. In the cross-examination, he disclosed that the secret information was received on official landline phone. Obviously, testimony of PW-1 (Kamal Kumar) remained unchallenged on relevant facts. Merely because the secret information was reduced into writing on a loose paper (Ex.PW-1/A), it cannot be inferred that no such secret information was received. It is true that there remains possibility of manipulation in case such a vital information is

recorded on a "loose" paper. Efforts must be made by the Investigating Agency to record such a crucial information in a proper register duly maintained for such purpose to avoid any misuse or manipulation. No motive was assigned to PW-1 (Kamal Kumar) to fake the secret information received by him. PW-9 (Pankaj K.Singh) has corroborated PW-1's statement. He deposed that the secret information was put up before him by PW-1 (Kamal Kumar), Intelligence Officer on 07.05.2007. He perused it and after having discussion with Kamal Kumar and Senior officers, directed Gurudev Singh, Intelligence Officer, to take appropriate action for possible interception. The secret intelligence report (Ex.PW-1/A) contained his endorsement from point "D" to "D" under his signatures at point "B". He further claimed that PW-1 (Kamal Kumar) was administratively subordinate to him and was bound to report him the intelligence reports, if received directly. There are no good reasons to disbelieve the statement of PW-9 (Pankaj K.Singh) which is in consonance with the statement of PW-1 (Kamal Kumar). Nothing has come on record to show that PW-9 (Pankaj K.Singh) was not immediate superior officer of PW-1 (Kamal Kumar). This secret information was brought to the notice of PW-11 (Mohd.Idris) and PW-12 (Irfan Khan) at the time of associating them in the raid.

12. Crucial testimony to infer the appellants' guilt is that of PW- 3 (Gurjit Singh), Intelligence Officer. The investigation was assigned to him after the secret information was received in DRI Office. In his Court statement, he deposed that a raiding team consisting of he himself, Kamal Kumar, S.K. Sharma and other Intelligence Officers was constituted. Two public witnesses PW-11 (Mohd.Idris) and PW-12 (Irfan Khan) were associated. At around 05.35 p.m., vehicle DL 7CC 8955 driven by Mandeep Singh was signaled to stop. Gurudev Singh was also sitting in the said vehicle that time. They were informed about concealment of narcotics drugs on their person or in the vehicle. Contents of search warrants were explained to them and they put their signatures over it (Ex.PW-2/A). Since the place of interception being a busy road was not suitable to conduct search proceedings, the accused persons were requested to accompany them to Drum Shape Building, IP Bhawan, IP Estate, New Delhi, to which, they agreed. Notices under Section 50 of NDPS Act (Ex.PW-3/A & Ex.PW-3/B) were served upon them there. Subsequently, recovery of the contraband was effected from the vehicle. Punchnama and other proceedings were conducted. Certain documents were also recovered from the dash-board of the vehicle. The accused persons were arrested and from their search, two mobile phones along with driving licence, etc. were recovered He further deposed that the case property was deposited as per law after completion of proceedings at the spot. He further deposed that on 08.05.2007 summons under Section 67 of the NDPS Act were issued to Mandeep Singh and in response to that, he tendered his statement (Ex.PW-3/E). Similarly, Gurudev Singh tendered his statement (Ex.PW-3/G) voluntarily pursuant to the summons issued on 08.05.2007. During investigation, it revealed that Raj Bala Gupta was the original owner of the vehicle in question. Summons (Ex.PW-3/R) were issued for her appearance on 15.06.2007. She herself did not appear but

sent a letter along with documents (Ex.PW-3/S) informing that the vehicle was sold by her to one Sirajuddin for Rs. 3 lacs. After recording statements of various other witnesses including PW-13 (Onkar Singh) and PW-14 (Gaurav Mittal), it was found that the vehicle in question was purchased by accused Gurudev Singh for a sum of Rs. 5,15,000/- on 04.05.2007.

13. In the cross-examination, the witness informed that PW-1 (Kamal Kumar) was not present when secret information was discussed by him with Mr.P.K. Singh, Deputy Director. He fairly admitted that in the secret information, there was no physical description of the accused and number of its occupants. He further admitted that information was not conveyed to the local Police Station before or after apprehension of the accused. No document was prepared at the spot. Entire writing work has done at DRI Office except notices under Section 50 of NDPS Act which were given to both the accused on the ground floor of the building where DRI Office was situated. He added that legal rights of the accused persons were explained to them and they had stated that any DRI Officer could take their search. Accused Mandeep Singh was comfortable with Punjabi whereas accused Gurudev Singh was conversant with Hindi language. He further disclosed that the contraband had been placed inside the stepney, and under the mat and part of it was recovered from a bag, though there was no specific cavity created in the vehicle for hiding it. He denied the suggestion that the accused persons were used as scapegoats and real culprit Sirajuddin was permitted to go scot free.

14. On scrutinising the entire statement of this crucial witness, it reveals that despite lengthy and searching cross-examination, no material discrepancies or infirmities could be extracted to suspect his version. The appellants did not deny their apprehension on the date and time disclosed by the witness. No suggestion was put to the witness as to when and under what circumstances and from where, both these accused persons were apprehended at the spot. In 313 Cr.P.C. statements, the appellants came up with the plea that they were lifted from their respective houses. However, they did not elaborate as to when and from where they were lifted and how the Investigating Officer came to know about their presence at any specific place of residence. Nothing has come on record to show if the Investigating Officer was acquainted with accused persons before the incident or had any animosity or ill-will to falsely implicate them in this case. Mandeep Singh is a resident of Amritsar. He did not explain as to how and for what purpose, he happened to visit the accused Gurudev Singh in Delhi. None of the accused persons disclosed as to in which specific business, they were involved.

15. Both the accused persons were found in possession of the vehicle No. DL 7CC 8955. They failed to explain as to how the vehicle in question of substantial value came in their possession and if so, from whom and when. The vehicle having huge value is not expected to be planted upon the accused persons. No other individual had approached the Investigating Agency to claim its ownership or possession. During investigation, it revealed that original registered owner of the

vehicle was Raj Bala Gupta. Investigating Officer had issued notice (Ex.PW-3/R) to her to explain about the vehicle in question. She herself did not appear but sent a letter along with certain documents (Ex.PW-3/S) informing that the vehicle in question was sold by her on 23.02.2007 to one Sirajuddin. The Investigating Officer issued notice to Sirajuddin who made statement (Ex.PW-3/U). On that, summons (Ex.PW-3/V) were issued on 07.08.2007 to Onkar Singh. He surrendered certain documents i.e. delivery receipt, vehicle registration certificate, insurance note, Form 29/30 and insurance papers of ICICI Lombard (Ex.PW-3/W1 to Ex.PW-3/W9) pursuant to his statement (Ex.PW-3/W). Summons (Ex.PW-3/X) were issued thereafter to PW-Gaurav Mittal on 07.08.2007 who gave his statement (Ex.PW-3/Y) and identified photos of both the accused persons (Ex.PW-3/Y1 to Ex.PW-3/Y2). He informed that the photos were of Mandeep Singh and Gurudev Singh who had purchased the vehicle from Onkar Singh and had taken the delivery on 04.05.2007 at around 03.30 pm. The prosecution examined PW-13 (Onkar Singh), Commission Agent for sale and purchase of cars. In his Court statement, he deposed that on 04.05.2007, he had sold the vehicle DL 7CC 8955 for a sum of Rs. 5,15,000/- to Mandeep Singh and Gurudev Singh. On the date of deal for purchase of the vehicle, they had given Rs. 5,00,000/- and were to make the balance payment within 3 - 4 days. The vehicle was to be transferred in the name of Gurudev Singh. On the day of deal, they had given him copy of the driving licence and assured to supply voter I-card on return from Punjab. The possession of the vehicle and the receipt of Rs. 5,00,000/- were given on 04.05.2007. They had kept the original papers as balance payment was due towards the accused. Subsequently, the accused persons did not turn up. He corroborated PW-3's statement of tendering statement (Ex.PW- 3/W) and of furnishing various documents (Ex.PW-3/W1 to Ex.PW- 3/W9). Nothing material emerged in the cross-examination to disbelieve him. PW-14 (Gaurav Mittal) has corroborated in its entirety the statement of PW-13 (Onkar Singh). He also revealed that he was running a partnership firm in the name of M/s. Durga Motors. Vehicle No. DL 7CC 8955 was purchased by them from one Sirajuddin and at that time it stood in the name of Raj Bala. The said vehicle was sold by them through PW- 13 (Onkar Singh) to the accused Gurudev Singh and Mandeep Singh for a sum of Rs. 5,15,000/-. Both these witnesses had no ill-will / enmity against the accused persons to falsely implicate them in this case. The prosecution was able to establish complete chain of transactions from the registered owner of the vehicle Rajbala Gupta to the accused persons. The independent public witnesses PW-11 (Mohd.Idris) and PW-12 (Irfan Khan) have also categorically deposed about the apprehension of the accused persons from the vehicle in question in their presence. Recovery of the several documents pertaining to the accused persons including their photographs and driving licence lends credence to the prosecution case about the vehicle in question to be in their possession at the relevant time.

16. PW-3's version has been fully corroborated by independent public witnesses PW-11 (Mohd.Idris) and PW-12 (Irfan Khan). PW-11 (Mohd. Idris) deposed that

on 07.05.2007, he was working as "carpenter" in CR building at ITO. On that day, when he along with his acquaintance Irfan Khan (PW-12) was taking tea, 2 - 3 Officers requested them to join some investigation. Both of them accompanied them in their vehicle at Trilokpuri. After waiting for about 15 - 20 minutes, a silver colour vehicle arrived at the spot which was in the occupation of two individuals. At the spot, the occupants of the vehicle were shown a paper by the Officer and thereafter the vehicle and both its occupants were escorted to DRI Office. They also accompanied them to Drum Shape Building. On reaching at the parking area of the DRI Office, both the occupants alighted from the vehicle. They were again shown some papers by the officers. Some inquiries about search of the vehicle in the presence of a Magistrate were made. Both the occupants gave their replies that any officer of DRI could take search of their vehicle. On search of the vehicle, 20 - 25 packets were recovered; 10 -15 packets were concealed in the dickey and some were recovered from below the mat. The recovered packets were taken by the officers to 7th floor of the building. They examined the recovered packets with some white colour powder. Thereafter, recovered material i.e. white powder and its packing were seized and sealed by the officers. Certain documents prepared by them were signed by him and his associate. He identified his signatures on various documents. He further deposed that after 2 -3 days again, he was called to sign certain documents. He identified both the accused persons in the Court. In the cross-examination, he informed that he was illiterate and could only sign his name in Hindi. He was working as a carpenter for the last 15 - 16 years. Irfan Khan was working with him for the last 8 years as carpenter. He and Irfan Khan both were approached and asked simultaneously by DRI Officers to accompany them on the day of occurrence. The officers had two vehicles. No barricades were put on the road by DRI staff. He fairly admitted that no special space was created for concealing the substance and it was kept below the mat and stepney. He admitted the suggestion that they had remained present in DRI Office till late evening. He volunteered to add that they were there till 09.00 pm. He denied if they had put any signatures under pressure from DRI Officers. Similar is the testimony of PW-12 (Irfan Khan) who has corroborated PW-11's version in its entirety without major deviations.

17. Presence of both these witnesses at the time of recovery of the contraband has not been challenged. No ulterior motive was assigned to them for falsely making statements against them. In the absence of prior ill-will or animosity, both these independent witnesses who had no familiarity with the accused persons whatsoever were not expected to depose falsely. They were available to the prosecution even after the recovery of the contraband and pursuant to summons issued under Section 67 of the NDPS Act, they had tendered their statements on 08.05.2007. Minor contradictions, inconsistencies and discrepancies in their statements highlighted by appellants' counsel are inconsequential. They do not go to the root. Moreover, their statements before the Court were recorded after a considerable period of the occurrence. They were

not so well educated to give minute details of the documents prepared long back by DRI officers. The fact remains that both these independent public witness were present at the time of appellant's apprehension and recovery of the contraband from their possession in the vehicle. They have clearly and categorically identified both of them to be the individuals arrested in their presence and from whom the contraband was recovered. They clearly deposed that the appellants were duly apprised their legal rights to be searched in the presence of the Magistrate or a Gazetted Officer. The Court has no reasons to disbelieve them. Nothing has come on record to infer if they were stock witnesses and were in the habit of making such statements in various other similar cases.

18. I find no merit in the appellants' contention that there was no substantial compliance of Section 50 of the NDPS Act. Record reveals that after the appellants were brought in the parking area of Drum Shape Building, notice under Section 50 of the NDPS Act (Ex.PW-3/A) was served and explained to accused Gurudev Singh and he was given option to get conduct the search in the presence of a Magistrate or a Gazette Officer. In response to it, the accused Gurudev Singh in its own handwriting from portion "B" to "B" clearly permitted any DRI officer to search. It also bears signatures of PW-11 (Mohd.Idris) and PW-12 (Irfan Khan) at point "D" and "E". Similarly, notice under Section 50 of the NDPS Act (Ex.PW-3/B) was served to Mandeep Singh. His endorsement in Punjabi script, finds mention from portion "B" to "B" under his signatures at point "C". It also bears signatures of independent public witnesses at point "D" and "E". Apparently, there was due compliance of Section 50 of the NDPS Act. The Trial Court has discussed this aspect in detail in the impugned judgment.

19. The prosecution was fair enough to inform that the premises of co-accused Gurudev Singh were searched on 08.05.2007 and nothing incriminating was recovered from there. PW-7 (Poonam Aggarwal) informed that one Raj Kaur was present in the house at Trilokpuri at the time of search. She had informed that a vehicle of red colour brought by accused Mandeep Singh was lying parked outside in the "gali" and she provided its key. On search of the said vehicle, nothing incriminating was found. PW-10 (Jyotimon) also stated that the vehicle Tata Safari bearing No. DL 3CJ 8034 and Gurudev's residence were searched vide punchnama (Ex.PW-10/A). The execution report (Ex.PW-10/B) was submitted by him to Assistant Director. During inquiry, it revealed that vehicle No. DL 3CJ 8034 was registered in the name of Muzzafar Shah a resident of B-20, 2nd Floor, Pamposh Enclave, New Delhi. He could not be traced at the given address and was found to be residing in the State of Jammu and Kashmir. PW-23 (Taseem Sultan) of DRI conducted enquiry regarding him and submitted report (Ex.PW-23/B) and letter (Ex.PW- 23/A) whereby it came to the knowledge of the Investigating Agency that said vehicle had already been sold to Nirmal Singh in 2003. Nirmal Singh was working as a broker and was resident of Punjab. He did not get the vehicle transferred and his statement (Ex.PW-25/C) was recorded. He also produced original documents including the delivery receipt of

the said vehicle sold to one Surender Kumar. On examination, PW-22 (Surender Kumar) stated that he has purchased the vehicle in 2003 itself and had sold it to one Harchand Singh. He also tender statement (Ex.PW-22/A) during investigation. Harchand Singh was found to be confined in jail in some other case. Ownership and possession of the vehicle No. DL-3CJ 8034 is of no much relevance as on its search, nothing incriminating was recovered from inside it.

20. Regarding non-compliance of Section 55 of the NDPS Act about safe deposit and custody of the case property, nothing has come on record to show that it was tampered with any time in any manner. Since DRI did not have any "malkhana" for deposit of the case property, it was kept in the Valuable Godown of the New Customs House. PW-3 (Gurjeet Singh) specifically deposed that the sealed parcels of the case property and samples along with Test Memos were handed over by him to PW-5 (Alok Aggarwal) for safe custody after its seizure. PW-5 (Alok Aggarwal) deposed that on 08.05.2007 after getting the case property and samples along with Test Memos in triplicate for safe custody after its seizure from PW-3 (Gurjeet Singh), he had kept it in his custody under lock and key. On 09.05.2007, he had written a letter (Ex.PW-5/B) to the Chemical Examiner, CRCL whereby he had authorised PW-6 (Jagdish Rai) to carry eight sample packets in sealed condition for depositing in CRCL besides the forwarding letter and sample packets. He had also handed over the Test Memos in duplicate to PW-6 and after depositing the same, he had handed over to him the acknowledgment issued by CRCL in token of its receipt. PW-6 (Jagdish Rai) also deposed and corroborated PW-5's statement regarding handing over of eight sealed sample packets having the seal of Directorate of Revenue Intelligence 10 along with Test Memos in duplicate and forwarding letter (Ex.PW-5/B) for depositing in CRCL. He had deposited the said samples in intact condition vide acknowledgement (Ex.PW-6/A). PW-16 (Jaiveer Singh), Lab Assistant, CRCL had received the sealed samples from PW-6 and had issued the acknowledgment (Ex.PW-6/A) indicating that all these samples were in intact condition. He further deposed that he had checked the seals and found these in intact conditions. These bore impression of Directorate of Revenue Intelligence-10 and matched with the facsimile of seal given on the Test Memos. These statements prove beyond doubt that the case property was deposited in intact condition with CRCL.

21. PW-5 (Alok Aggarwal) informed that on 10.05.2007, he had directed PW-4 (D.P. Saxena) to prepare a deposit memo with the assistance of IO PW-3 (Gurjeet Singh) for depositing the case property in Valuable Godown. After the preparation of the memos, he had signed it and had also handed over the memos and sealed case property to PW-4 (D.P. Saxena) to deposit in the Valuable Godown. Subsequently, its acknowledgment was given to him by PW-4. PW-4 (D.P. Saxena) also corroborated his version regarding the preparation of the deposit of memos and deposit of the sealed parcels of the case property by him in the Valuable Godown on the said date. He also informed that he had handed over the sealed parcel of the case property to PW-8 (D.B. Sharma) of Valuable Godown and he had made an endorsement about its receipt in safe

condition. Similar is the statement of PW-8 about the deposit of the case property and the endorsement made by him. He was specific to say that at the time of deposit of the case property, he had checked the detailed particulars given in the deposit memo and the seal affixed on it which were of the impression of Directorate of Revenue Intelligence-10 and had sent to the Godown for safe custody. He proved entry (Ex.PW- 8/A) entered by him in the relevant register of Valuable Godown in this regard. Moreover, when the case property was produced before the Court, it was found in intact condition. It cannot be inferred at all that the parcels were tampered with at any stage during investigation / trial.

22. Statements recorded under Section 67 of the NDPS Act made by the accused further corroborate the prosecution's version. The personal details recorded therein are not expected to have come into the knowledge of the Investigating Officer without their disclosure by the accused concerned.

23. In 313 Cr.P.C. statements, the accused persons did not give plausible explanation about the incriminating circumstances proved against them. They did not produce any cogent and reliable evidence in defence to prove their false implication. The impugned judgment based upon fair and proper appreciation of the legal evidence can't be faulted at all. No intervention by this Court is required. Conviction of the appellants is, thus, sustained.

24. Regarding sentence, the appellants have been granted minimum sentence prescribed under the NDPS Act which cannot be altered or reduced.

25. While maintaining conviction, Sentence Order is modified to the extent that the default sentence for non-payment of fine under both the heads will be one month each. Other terms and conditions of the Sentence Order are left undisturbed.

26. The appeal stands disposed of in the above terms. Trial Court record be sent back forthwith with the copy of the order. A copy of the order be sent to the Superintendent Jail for information.