(2025:HHC:27073)

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No. 204 of 2024
Reserved on: 30.07.2025
Decided on: 12.08.2025

Digvijay Singh ..... Appellant

Versus

State of Himachal Pradesh .....Respondent.

Coram

The Hon'ble Mr. Justice Rakesh Kainthla, Judge.

Whether approved for reporting?[1] *Yes*

For the Appellant: **Ms. Madhurika Sekhon Verma, Advocate.**

For the Respondent: **Mr. Prashant Sen, Deputy Advocate General.**

Rakesh Kainthla, Judge

The present appeal is directed against the judgment and order dated 24.04.2024 passed by learned Special Judge (1), Shimla, District Shimla, H.P. (learned Trial Court) vide which the appellant (accused before the learned Trial Court) was convicted of the commission of an offence punishable under Section 21 of Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'ND&PS Act') and was sentenced to undergo rigorous imprisonment for four years, pay a fine of ₹25,000/-

[1] ***Whether the reporters of the local papers may be allowed to see the Judgment?yes***

and in default of payment of fine to undergo further imprisonment for one year for the commission of aforesaid offence. *(Parties shall hereinafter be referred to in the same manner as they were arrayed before the learned Trial Court for convenience.)*

2. Briefly stated, the facts giving rise to the present appeal are that the police presented a challan against the accused before the learned Trial Court for the commission of offences punishable under Sections 21, 25 & 29 of the ND&PS Act. It was asserted that HC Chander Mohan (PW-14), HC Maan Singh (PW-12), Constable Kapil (PW-13) and Constable Arun (PW-8) had gone towards Dhalli tunnel, Bhatta Kuffar, Shanan, Malyana, etc. on 26.09.2018. When they reached the bifurcation located near Housing Board Colony at 1:10 am, they found a vehicle bearing registration No. HP-10B-1679 parked at a lonely place. Its internal light was switched on. The police approached the vehicle and found a person sitting inside it, who revealed his name as Digvijay Singh. The police asked him as to why he had parked the vehicle in a lonely place, but he could not give any satisfactory answer. The police demanded the documents for the vehicle. He searched for the documents but could not find any. Hence, HC Chander Mohan opened the dashboard to check

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the documents. He found a spherical substance wrapped with ‘khaki’ tape. The accused could not give any satisfactory reply regarding the substance. HC Chander Mohan removed the ‘Khaki’ tape and found a polythene inside it, which was containing beige substance. HC Chander Mohan checked it and found it to be ‘heroin’. HC Chander Mohan sent HC Maan Singh and Constable Kapil to bring an independent witness. They returned after fifteen minutes and disclosed that they could not find any independent witness. HC Chander Mohan associated HC Maan Singh and Constable Kapil as witnesses and weighed the substance in their presence. Its weight was found to be 23 grams. The police put the ‘heroin’, ‘khaki’ tape and the polythene in a cloth parcel and sealed the parcel with six impressions of seal 'K'. The seal impression (Ex. P2/PW12) was taken on a separate piece of cloth. NCB-1 form (Ex. P2/PW5) was filled in triplicate, and the seal impression was also put on the form. The seal was handed over to HC Maan Singh after its use. Digvijay Singh produced the registration certificate, insurance certificate and his driving licence. The parcel, NCB-I form, sample seal, documents, key and the vehicle were seized vide seizure memo (Ex.P4/PW2). Rukka (Ex. P2/PW14) was prepared and sent to the police station, where F.I.R.

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(Ex.P2/PW15) was registered. HC Chander Mohan conducted the investigation. He prepared the site plan (Ex. P3/PW14) and recorded the statements of witnesses as per their version. He arrested the accused vide memo (Ex. P2/PW8). He produced the accused, case file and the case property before Raj Kumar (PW15), who resealed the parcel with seal 'X'. He put the seal impression on the NCB-I form and obtained the sample seal (Ex. P3/PW15) on a separate piece of cloth. He issued the resealing certificate (Ex. P4/PW15). The case property was handed over to HC Om Parkash (PW5), who made an entry at Sr. No.872 in the malkhana register and deposited the case property in the malkhana. He handed over the case property, docket, copy of seizure memo, NCB-I form and sample seal to Constable Mukesh (PW6) with direction to carry them to Forensic Science Laboratory (FSL), Junga vide R.C. No.215/18 (Ex.P3/PW5). Constable Mukesh delivered the case property and other articles at SFSL, Junga and handed over the receipt to MHC on his return. Special report (Ex. P1/PW7) was handed over to Dy.S.P., Dinesh Sharma on 27.09.2018. He made an endorsement on the special report and handed it over to his Reader, ASI Ramesh Chand (PW11), who made an entry at Sr. No.62 of the special report register (Ex. P1/PW11) and retained

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the special report on record. The result of the analysis (Ex.P8/PW14) was issued, in which it was mentioned that the exhibit was a sample of Diacetylmorphine ('heroine'). Chander Mohan (PW14) analyzed the call details record and found that Digvijay Singh and Vipul Thakur were talking to each other. Digvijay Singh disclosed during interrogation that he had purchased the 'heroin' from Delhi. He led the police to Delhi and pointed out pillar No.792, where he had purchased the 'heroin' from auto driver Sunny and another person. Memo of identification (Ex.P1/PW2) was prepared. Chander Mohan filed an application (Ex. P9/PW14) for the certification of the inventory. The Court passed an order (Ex. P10/PW14) and issued a certificate (Ex. P11/PW14). The photographs of the inventory proceedings (Ex. P12/A1/PW14 to Ex. P12/A9/PW14) were taken. Statements of witnesses were recorded as per their version, and after the completion of the investigation, the challan was prepared and presented before the learned Trial Court.

3. Learned Trial Court charged the accused with the commission of offences punishable under Sections 21, 25 and 29 of the 'ND&PS Act', to which he pleaded not guilty and claimed to be tried.

4. The prosecution examined 15 witnesses to prove its case. Anil Kumar (PW1) carried the special report to Dy. S.P. City Shimla. Constable Devinder (PW2) and HC Yogesh (PW3) are the witnesses to the identification of pillar No.792. LC Sulekha (PW4) brought the case property and the result of analysis from SFSL, Junga. Om Parkash (PW5) was posted as MHC with whom the case property was deposited. Constable Mukesh (PW6) carried the case property to SFSL, Junga. Dinesh Sharma (PW7) was posted as Dy.S.P. City to whom the special report was handed over. Arun Kumar (PW8), Maan Singh (PW12) and Constable Kapil Dev (PW13) are the official witnesses to the recovery. Devinder Singh (PW9) proved the call details record and the customer application form. Kamal Dev (PW10) prepared the challan. ASI Ramesh Chand (PW11) was posted as Reader to Dy. S.P. City. ASI Chander Mohan (PW14) conducted the investigation. Dy. S.P. Raj Kumar (PW15) was posted as S.H.O., who resealed the case property.

5. The accused, in their statements recorded under Section 313 of Cr.P.C., denied the prosecution's case in its entirety. They claimed that they were innocent and were falsely implicated. Statements of Vikender Kumar (DW1) and Ashok Kumar Sharma (DW2) were recorded in defence.

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6. Learned Trial Court held that the testimonies of prosecution witnesses corroborated each other on material particulars. The explanation given by the police officials for the non-association of independent witnesses was satisfactory. The defence version that accused Digvijay and Rajan were picked up by the police from ISBT, Shimla, and falsely implicated was not proved. The integrity of the case property was established. Accused Vipul could not be held liable merely because he was in touch with accused Digvijay. Hence, the accused Digvijay was convicted of the commission of an offence punishable under Section 21 and sentenced as aforesaid. Accused Vipul was acquitted of the charged offences.

7. Being aggrieved by the judgment and order passed by the learned Trial Court, the accused has filed the present appeal, asserting that the learned Trial Court erred in convicting and sentencing the accused. The evidence was not properly appreciated. The statements of official witnesses contradicted each other on material particulars. The place of the incident was located on the National Highway in the vicinity of a thickly populated area. There was no explanation for the non-association of independent witnesses. The documents were falsely prepared to comply with the various provisions of the

ND&PS Act. The accused had an altercation with the police officials, and the police falsely implicated the accused. The integrity of the case property was not established. The testimony of the defence witness was wrongly ignored. Therefore, it was prayed that the present appeal be allowed and the judgment and order passed by the learned Trial Court be set aside.

8. I have heard Ms. Madhurika Sekhon Verma, learned counsel for the appellant/accused, and Mr. Prashant Sen, learned Depute Advocate General for the respondent/State.

9. Ms. Madhurika Sekhon Verma, learned counsel for the appellant/accused, submitted that the accused is innocent and he was falsely implicated. The learned Trial Court failed to properly appreciate the evidence on record. The place of the incident was located on a busy highway in the vicinity of a thickly populated area. However, no independent witness was associated. The site plan does not depict the correct spot position. The seal was not produced before the Court, and the same is fatal to the prosecution's case. The statements of prosecution witnesses contradicted each other on material aspects. Therefore, she prayed that the present appeal be

allowed and the judgment and order passed by the learned Trial Court be set aside. She submitted in the alternative that the punishment imposed by the learned Trial Court upon the accused is harsh and disproportionate to the quantity of 'heroin' stated to have been recovered from the possession of the accused. Hence, she prayed that the sentence imposed by the learned Trial Court be modified.

10. Mr. Prashant Sen, learned Deputy Advocate General for the respondent/State, submitted that the prosecution witnesses consistently deposed about the recovery of the 'heroin'. Minor contradictions in the statements of official witnesses are not sufficient to discard them. A proper explanation was given for the non-production of the seal, and mere non-production of the seal is not fatal to the prosecution's case. Narcotics are adversely affecting the young generation, and the learned Trial Court had rightly imposed the sentence of four years' rigorous imprisonment, which cannot be said to be harsh. Hence, he prayed that the present appeal be dismissed.

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11. I have given considerable thought to the submissions made at the bar and have gone through the records carefully.

12. Vikender Kumar (DW1) stated that he, Digvijay and Rajan were coming from Delhi in a government bus. They reached ISBT, Shimla at 7:30 P.M. Digvijay asked them to accompany him to Rohru in his Bolero vehicle. He (Vikender Kumar) went to the washroom. Digvijay and Rajan went to the parking lot to take the vehicle. When he went to the parking, he saw Digvijay and Rajan were surrounded by 3-4 persons who were holding pistols. They were later identified as police officials. They took Digvijay and Rajan in a vehicle. He boarded a bus to Rohru. He came to know subsequently that the accused was apprehended by the police for possessing 'heroin'.

13. The testimony of this witness was rightly rejected by the learned Trial Court. He stated that the police picked up Digvijay and Rajan from the parking located at the bus stand, Tuti Kandi. Significantly accused Digvijay has nowhere stated in his statement recorded under Section 313 of Cr.P.C that he was picked up from the bus stand, Tuti Kandi. Therefore, this version was propounded by Vikender Singh for the first time

and was an afterthought. It was not suggested to Arun Kumar (PW8) that the accused was picked up from ISBT, Tuti Kandi. It was suggested to Maan Singh (PW12) in his cross-examination that the vehicle was parked at ISBT, which is contrary to the statement of Vikender (DW1). A similar suggestion was made to Constable Kapil and ASI Chander Mohan (PW14). Further, Vikender did not take any action when the accused was taken by the persons holding pistols. He boarded the bus and went to Rohru as if nothing had happened. This is not normal human conduct and would make it difficult to rely upon his testimony.

14. It was submitted that the call details record (Ex.P1/PW9) shows that the mobile phone was in Delhi on 23.09.2018. It moved to Punjab on 24th and was in Haryana on 25th, which supports the statement of Vikender regarding the movement of accused Digvijay from Delhi to Shimla in a bus. This submission cannot be accepted. The call details record shows that the mobile phone was last used in Delhi on 23.09.2018 at 23:16:36. Thereafter, it was used in Punjab on 24th and 25th till 15:02:05 and was used in Haryana at 15:27:50. This call detail falsifies the statement of Vikender that accused Digvijay and Vikender had travelled from Delhi to Shimla on 25th. Even if the accused Digvijay and Vikender had travelled

together from Delhi to Shimla on 25th, it will not falsify the prosecution case because the accused was found in possession of 'heroin' on 26th at 1:10 A.M. It was quite possible for the accused to travel from Delhi to Shimla on 25th and thereafter, to be present near Housing Board Colony with the 'heroin' on 26th at 1:10 am. Therefore, the statement of Vikender (DW1) will not help the accused in any manner.

15. Ms. Madhurika Sekhon Verma, learned counsel, submitted that the site plan (Ex.P3/P14) does not depict the correct spot position. There is a link road near the place 'E' where the vehicle is shown. Houses and shops are located in the vicinity, which were not depicted in the site plan. This submission is not based upon any material on record. ASI Chander Mohan (PW14) denied that there were 3-4 shops at the bifurcation. He denied that hotels and other houses were located at a distance of 100 meters from the spot. He also denied that the vehicle was not parked at a secluded place. A denied suggestion does not amount to any proof, and these suggestions do not prove the defence version that the place of incident was not a secluded spot but a heavily populated area.

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16. Constable Kapil (PW13) stated in his cross-examination that there was no hotel or residential house near the spot. Housing Board colony bifurcation was located at a distance of 150-200 meters from the spot. He denied that there were hotels and shops near the spot. He volunteered to say that hotels and shops were located at a distance of 100-150 meters. Thus, his testimony also does not establish the existence of a hotel and shop near the place of the incident. Maan Singh (PW12) stated in his cross-examination that there was no hotel or residence near the spot. He denied that hotels and shops existed near the spot. He volunteered to say that there were no such hotels and shops within 100-150 meters. His testimony also does not establish the existence of shops or the residences near the place of the incident. HC Arun Kumar (PW8) was not asked about the existence of hotels and residences near the place of the incident.

17. Therefore, there is no material on record to support the submission that the site plan was not correctly prepared, or there were shops and residences at the place of incident which were not depicted by the Investigating Officer in the site plan.

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18. HC Arun Kumar (PW8), HC Maan Singh (PW12), Constable Kapil (PW13) and ASI Chander Mohan (PW14) consistently deposed about the police party being on patrolling duty and having seen the vehicle parked at a secluded place. They also deposed that police went near the vehicle and found the accused Digvijay Singh present in the vehicle, who could not give any satisfactory answer regarding the parking of the vehicle. They deposed about the recovery of a sphere-like substance wrapped with 'khaki' cello tape, opening it, and the recovery of 'heroin' from it. They deposed about the weighing of 'heroin', and other steps regarding the investigation. Nothing was suggested to them that they had any enmity with the accused or any motive to falsely implicate the accused.

19. It was submitted that the police did not join any independent witness, which is fatal to the prosecution. The reference was made to the photograph (Ex.P1/PW3) to submit that a truck is visible in this photograph, and the occupants of the truck could have been associated as independent witnesses. This submission is not acceptable. There is no evidence that the truck had any occupants. No person deposed about any such fact. The photographs also do not show the presence of any

person. Therefore, an independent person could not have been associated simply because a truck was parked on the spot.

20. The statements of the police officials show that the police party became suspicious after seeing that a vehicle was parked with its lights on at a secluded place. They went near the vehicle and demanded the papers. When the accused could not produce the papers, the police opened the dashboard, looked for the papers and found a spherical substance wrapped with 'khaki' tape inside the dashboard. There is nothing in the cross-examination of the police officials to show that they had any prior information regarding the transportation of 'heroin'. Therefore, it was a case of chance recovery.

21. The term chance recovery was explained by the Hon'ble Supreme Court in the ***State of H.P. v. Sunil Kumar, (2014) 4 SCC 780: (2014) 2 SCC (Cri) 449: 2014 SCC OnLine SC 205,*** and it was held that chance recovery means a recovery made by chance or by accident or unexpectedly. When the police were not looking for the drugs nor expected to find the drugs, any recovery is a chance recovery. A positive suspicion of the police official is not sufficient to show that it was not a case of chance recovery. It was observed at page 784:

> **"13.** The expression "chance recovery" has not been defined anywhere, and its plain and simple meaning seems to be a recovery made by chance or by accident or unexpectedly. In ***Mohinder Kumar v. State [(1998) 8 SCC 655: 1999 SCC (Cri) 79],*** this Court considered a chance recovery as one when a police officer "stumbles on" narcotic drugs when he makes a search. In ***Sorabkhan Gandhkhan Pathan v. State of Gujarat [(2004) 13 SCC 608: (2006) 1 SCC (Cri) 508],*** the police officer, while searching for illicit liquor, accidentally found some charas. This was treated as a "chance recovery".
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> **14.** Applying this to the facts of the present appeal, it is clear that the police officers were looking for passengers who were travelling ticketless and nothing more. They accidentally or unexpectedly came across drugs carried by a passenger. This can only be described as a recovery by chance since they were neither looking for drugs nor expecting to find drugs carried by anybody.
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> **15.** It is not possible to accept the view of the High Court that since the police officers conducted a random search and had a "positive suspicion" that Sunil Kumar was carrying contraband, the recovery of charas from his person was not a chance recovery. The recovery of contraband may not have been unexpected, but the recovery of charas certainly was unexpected, notwithstanding the submission that drugs are easily available in the Chamba area. The police officers had no reason to believe that Sunil Kumar was carrying any drugs, and indeed, that is also not the case set up in this appeal. It was plainly a chance or accidental, or unexpected recovery of charas—Sunil Kumar could well have been carrying any other contraband, such as smuggled gold, stolen property or an illegal firearm or even some other drug.

22. In the present case, the police had no prior information about the transportation of charas by the accused.

They became suspicious of the conduct of the accused, and the present case will fall within the meaning of chance recovery.

23. It was laid down by the Hon'ble Supreme Court in ***Kashmira Singh Versus State of Punjab 1999 (1) SCC 130*** that the police party is under no obligation to join independent witnesses while going on patrolling duty, and the association of any person after effecting the recovery would be meaningless. It was observed:

> "3. Learned counsel for the appellant has taken us through the evidence recorded by the prosecution, as also the judgment under appeal. Except for the comment that the prosecution is supported by two police officials and not by any independent witness, no other comment against the prosecution is otherwise offered. This comment is not of any value since the police party was on patrolling duty, and they were not required to take along independent witnesses to support recovery if and when made. It has come to the evidence of ASI Jangir Singh that after the recovery had been effected, some people had passed by. Even so, obtaining their counter-signatures on the documents already prepared would not have lent any further credence to the prosecution version."

24. In similar circumstances, it was laid down by this Court in ***Chet Ram Vs State Criminal Appeal no. 151/2006 decided on 25.7.2018*** that when the accused was apprehended after he tried to flee on seeing the police, there was no necessity to associate any person from the nearby village. It was

observed: -

> "(A)appellant was intercepted, and a search of his bag was conducted on suspicion, when he turned back and tried to flee, on seeing the police. Police officials did not have any prior information, nor did they have any reason to believe that he was carrying any contraband. They overpowered him when he tried to run away and suspected that he might be carrying some contraband in his bag. Therefore, the bag was searched, and Charas was recovered. *After the recovery of Charas, there was hardly any need to associate any person from the nearby village because there remained nothing to be witnessed.*
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> It is by now well settled that non-association of independent witnesses or non-supporting of the prosecution version by independent witnesses where they are associated, by itself, is not a ground to acquit an accused. It is also well-settled that the testimony of official witnesses, including police officials, carries the same evidentiary value as the testimony of any other person. The only difference is that Courts have to be more circumspect while appreciating the evidence of official witnesses to rule out the possibility of false implication of the accused, especially when such a plea is specifically raised by the defence. Therefore, while scrutinising the evidence of official witnesses, in a case where independent witnesses are not associated, contradictions and inconsistencies in the testimony of such witnesses are required to be taken into account and given due weightage unless satisfactorily explained. Of course, it is only the material contradictions and not the trivial ones, which assume significance." (Emphasis supplied)

25. It was laid down by the Hon'ble Supreme Court of India in ***Raveen Kumar v. State of H.P., (2021) 12 SCC 557: (2023) 2 SCC (Cri) 230: 2020 SCC OnLine SC 869*** that non-association of the independent witnesses will not be fatal to the

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prosecution case. However, the Court will have to scrutinise the statements of prosecution witnesses carefully. It was observed at page 566:

> (C) ***Need for independent witnesses***
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> **19.** It would be gainsaid that the lack of independent witnesses is not fatal to the prosecution's case. [***Kalpnath Rai v. State, (1997) 8 SCC 732: 1998 SCC (Cri) 134: AIR 1998 SC 201***, para 9] However, such omissions cast an added duty on courts to adopt a greater degree of care while scrutinising the testimonies of the police officers, which if found reliable can form the basis of a successful conviction."

26. This position was reiterated in ***Rizwan Khan v. State of Chhattisgarh, (2020) 9 SCC 627: 2020 SCC OnLine SC 730,*** wherein it was observed at page 633:

> "**12.** It is settled law that the testimony of the official witnesses cannot be rejected on the ground of non-corroboration by independent witnesses. As observed and held by this Court in a catena of decisions, examination of independent witnesses is not an indispensable requirement and such non-examination is not necessarily fatal to the prosecution case [see ***Pardeep Kumar [State of H.P. v. Pardeep Kumar, (2018) 13 SCC 808: (2019) 1 SCC (Cri) 420]***].
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> **13.** In the recent decision in ***Surinder Kumar v. State of Punjab [Surinder Kumar v. State of Punjab, (2020) 2 SCC 563: (2020) 1 SCC (Cri) 767]***, while considering somewhat similar submission of non-examination of independent witnesses, while dealing with the offence under the NDPS Act, in paras 15 and 16, this Court observed and held as under: (SCC p. 568)
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> > "*15.* The judgment in ***Jarnail Singh v. State of Punjab [Jarnail Singh v. State of Punjab, (2011) 3***

SCC 521: (2011) 1 SCC (Cri) 1191], relied on by the counsel for the respondent State, also supports the case of the prosecution. In the aforesaid judgment, this Court has held that merely because the prosecution did not examine any independent witness would not necessarily lead to a conclusion that the accused was falsely implicated. The evidence of official witnesses cannot be distrusted and disbelieved merely on account of their official status.

16. In ***State (NCT of Delhi) v. Sunil [State (NCT of Delhi) v. Sunil, (2001) 1 SCC 652: 2001 SCC (Cri) 248]***, it was held as under: (SCC p. 655)

> 'It is an archaic notion that actions of the police officer should be approached with initial distrust. It is time now to start placing at least initial trust in the actions and the documents made by the police. At any rate, the court cannot start with the presumption that the police records are untrustworthy. As a proposition of law, the presumption should be the other way around. That official acts of the police have been regularly performed is a wise principle of presumption and recognised even by the legislature."

27. Similar is the judgment of this Court in ***Balwinder Singh & Anr. Vs State of H.P., 2020 Criminal L.J. 1684***, wherein it was held: -

> "3. (iii) Learned defence counsel contended that in the instant case, no independent witness was associated by the Investigating Officer; therefore, the prosecution case cannot be said to have been proved by it in accordance with the provisions of the Act. Learned defence counsel, in support of his contention, relied upon the titled ***Krishan Chand versus State of H.P.,2017 4 CriCC 531***
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> 3(iii)(d). It is by now well settled that a prosecution case

cannot be disbelieved only because the independent witnesses were not associated."

28. This position was reiterated in ***Kallu Khan v. State of Rajasthan, (2021) 19 SCC 197: 2021 SCC OnLine SC 1223***, wherein it was held at page 204: -

> "17. The issue raised regarding conviction solely relying upon the testimony of police witnesses, without procuring any independent witness, recorded by the two courts, has also been dealt with by this Court in ***Surinder Kumar [Surinder Kumar v. State of Punjab, (2020) 2 SCC 563: (2020) 1 SCC (Cri) 767]*** holding that merely because independent witnesses were not examined, the conclusion could not be drawn that the accused was falsely implicated. Therefore, the said issue is also well settled and in particular, looking at the facts of the present case, when the conduct of the accused was found suspicious, and a chance recovery from the vehicle used by him is made from a public place and proved beyond a reasonable doubt, the appellant cannot avail any benefit on this issue. In our view, the concurrent findings of the courts do not call for interference."

29. A similar view was taken in ***Kehar Singh v. State of H.P., 2024 SCC OnLine HP 2825,*** wherein it was observed:

> **16.** As regards non-association of the independent witnesses, it is now well settled that non-association of the independent witnesses or non-supporting of the prosecution version by independent witnesses itself is not a ground for acquittal of the Appellants/accused. It is also well-settled that the testimonies of the official witnesses, including police officials, carry the same evidentiary value as the testimony of any other person. The only difference is that the Court has to be most circumspect while appreciating the evidence of the official witnesses to rule out the possibility of false

implication of the accused, especially when such a plea is specifically raised by the defence. Therefore, while scrutinising the evidence of the official witnesses, in cases where independent witnesses are not associated, contradictions and inconsistencies in the testimonies of such witnesses are required to be taken into account and given due weightage unless satisfactorily explained. However, the contradiction must be a material and not a trivial one, which alone would assume significance.

17. Evidently, this is a case of chance recovery; therefore, the police party was under no obligation to join independent witnesses while going on patrolling duty, and the association of any person after effecting the recovery would be meaningless.

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19. A similar reiteration of law can be found in the judgment rendered by the learned Single Judge of this Court in ***Avtar @ Tarri v. State of H.P., (2022) Supreme HP 345***, wherein it was observed as under: —

> "24. As regards the second leg of the argument raised by learned counsel for the appellant, it cannot be said to be of much relevance in the given facts of the case. The factual situation was that the police party had laid the 'nakka' and immediately thereafter had spotted the appellant at some distance, who got perplexed and started walking back. The conduct of the appellant was sufficient to raise suspicion in the minds of police officials. At that stage, had the appellant not been apprehended immediately, the police could have lost the opportunity to recover the contraband. Looking from another angle, the relevance of independent witnesses could be there when such witnesses were immediately available or had already been associated at the place of 'nakka'. These, however, are not mandatory conditions and will always depend on the factual situation of each and every case. The reason is that once the person is apprehended and is with the police, a subsequent

> association of independent witnesses may not be of much help. In such events, the manipulation, if any, cannot be ruled out."
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> **22.** A similar reiteration of law can be found in a very recent judgment of the Coordinate Bench of this Court in ***Cr. A. No. 202 of 2020, titled Dillo Begum v. State of H.P., decided on 27.03.2024***."

30. Thus, in view of the binding precedents of this Court and the Hon'ble Supreme Court, the non-association of independent witnesses is not fatal, and the prosecution's case cannot be discarded due to the non-association of independent witnesses. However, the Court will have to carefully scrutinise the testimonies of the police officials.

31. It was submitted that there are contradictions in the statements of official witnesses, which will make the prosecution's case suspect. The following contradictions were highlighted:-

> i) HC Arun Kumar (PW8) stated in his cross-examination that there was no light on the spot, which is contrary to the prosecution version that the accused had switched on the light of the Bolero vehicle.
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> ii) HC Arun Kumar (PW8) stated in his cross-examination that they went towards Dhalli tunnel, Bhatta Kuffar and returned from Bhatta Kuffar. HC

Maan Singh (PW12) stated in his cross-examination that they stopped at various places to check the vehicles and took 20-25 minutes at every place. ASI Chander Mohan (PW14) stated in his cross-examination that they stopped at three places for checking for about 10 minutes at every place.

32. In the present case, the incident had taken place on 26.09.2018. The statement of Arun Kumar (PW8) was recorded on 22.7.2023. Statements of Maan Singh (PW12) and Kapil Singh(PW13) were recorded on 13.3.2024, and the statement of ASI Chander Mohan(PW14) was recorded on 14.3.2024. Thus, the witnesses made the statements after the lapse of five to six years from the incident. The contradictions were bound to come, in the statements of the prosecution witnesses, due to failure of memory with the passage of time, and mere contradictions are not sufficient to make the prosecution's case doubtful. It was laid down by the Hon'ble Supreme Court in ***Goverdhan v. State of Chhattisgarh (2025) SCC Online SC 69*** that the discrepancies are not sufficient to discard the prosecution case unless they are material. It was observed: -

> "**51.** As we proceed to examine this crucial aspect, it may be apposite to keep in mind certain observations made by this Court relating to discrepancies in the account of eyewitnesses.

In ***Leela Ram (Dead) through Duli Chand v. State of Haryana, (1999) 9 SCC 525***, it was observed as follows:

> "9. Be it noted that the High Court is within its jurisdiction, being the first appellate court to reappraise the evidence, but the discrepancies found in the ocular account of two witnesses, unless they are so vital, cannot affect the credibility of the evidence of the witnesses. There are bound to be some discrepancies between the narrations of different witnesses when they speak on details, and unless the contradictions are of a material dimension, the same should not be used to jettison the evidence in its entirety. Incidentally, corroboration of evidence with mathematical niceties cannot be expected in criminal cases. Minor embellishment, there may be, but variations by reason therefore should not render the evidence of eyewitnesses unbelievable. Trivial discrepancies ought not to obliterate otherwise acceptable evidence. In this context, reference may be made to the decision of this Court in ***State of U.P. v. M.K. Anthony [(1985) 1 SCC 505: 1985 SCC (Cri) 105]***. In para 10 of the Report, this Court observed: (SCC pp. 514-15)
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> > '10. While appreciating the evidence of a witness, the approach must be whether the evidence of the witness, read as a whole, appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the court to scrutinise the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief. Minor discrepancies on trivial matters not touching the core of the case, a hypertechnical

approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer, not going to the root of the matter, would not ordinarily permit rejection of the evidence as a whole. If the court before whom the witness gives evidence had the opportunity to form the opinion about the general tenor of evidence given by the witness, the appellate court which had not this benefit will have to attach due weight to the appreciation of evidence by the trial court and unless there are reasons weighty and formidable it would not be proper to reject the evidence on the ground of minor variations or infirmities in the matter of trivial details. Even honest and truthful witnesses may differ in some details unrelated to the main incident because the power of observation, retention and reproduction differ with individuals.'

10. In a very recent decision in ***Rammi v. State of M.P. [(1999) 8 SCC 649: 2000 SCC (Cri) 26],*** this Court observed: (SCC p. 656, para 24)

'24. When an eyewitness is examined at length, it is quite possible for him to make some discrepancies. No true witness can escape from making some discrepant details. Perhaps an untrue witness who is well tutored can successfully make his testimony totally non-discrepant. But courts should bear in mind that it is only when discrepancies in the evidence of a witness are so incompatible with the credibility of his version that the court is justified in jettisoning his evidence. But too serious a view to be adopted on mere variations falling in the narration of an incident (either as between the evidence of two witnesses or as

between two statements of the same witness) is an unrealistic approach for judicial scrutiny.'

This Court further observed: (SCC pp. 656-57, paras 25-27)

'25. It is a common practice in trial courts to make out contradictions from the previous statement of a witness to confront him during cross-examination. Merely because there is an inconsistency in evidence, it is not sufficient to impair the credit of the witness. No doubt, Section 155 of the Evidence Act provides scope for impeaching the credit of a witness by proof of an inconsistent former statement. But a reading of the section would indicate that all inconsistent statements are not sufficient to impeach the credit of the witness. The material portion of the section is extracted below:

"**155. Impeaching the credit of a witness**.—The credit of a witness may be impeached in the following ways by the adverse party, or, with the consent of the court, by the party who calls him —

(1)-(2) ***

(3) by proof of former statements inconsistent with any part of his evidence which is liable to be contradicted;"

26. A former statement, though seemingly inconsistent with the evidence, need not necessarily be sufficient to amount to a contradiction. Only such an inconsistent statement, which is liable to be "contradicted", would affect the credit of the witness. Section 145 of the Evidence Act also enables the cross-examiner to use any

former statement of the witness, but it cautions that if it is intended to "contradict" the witness, the cross-examiner is enjoined to comply with the formality prescribed therein. Section 162 of the Code also permits the cross-examiner to use the previous statement of the witness (recorded under Section 161 of the Code) for the only a limited purpose, i.e. to "contradict" the witness.

27. To contradict a witness, therefore, must be to discredit the particular version of the witness. Unless the former statement has the potency to discredit the present statement, even if the latter is at variance with the former to some extent, it would not be helpful to contradict that witness (vide ***Tahsildar Singh v. State of U.P. [AIR 1959 SC 1012: 1959 Cri LJ 1231]***)."

52. Further, this Court also cautioned about attaching too much importance to minor discrepancies of the evidence of the witnesses in ***Bharwada Bhoginbhai Hirjibhai v. State of Gujarat (1983) 3 SCC 217*** as follows:

"5. ... We do not consider it appropriate or permissible to enter upon a reappraisal or reappreciation of the evidence in the context of the minor discrepancies painstakingly highlighted by the learned counsel for the appellant. Overmuch importance cannot be attached to minor discrepancies. The reasons are obvious:

(1) By and large, a witness cannot be expected to possess a photographic memory and to recall the details of an incident. It is not as if a videotape is replayed on the mental screen.

(2) Ordinarily, it so happens that a witness is overtaken by events. The witness could not have anticipated the occurrence, which so often has an element of surprise. The mental

faculties, therefore, cannot be expected to be attuned to absorb the details.

(3) The powers of observation differ from person to person. What one may notice, another may not. An object or movement might emboss its image on one person's mind, whereas it might go unnoticed on the part of another.

(4) By and large, people cannot accurately recall a conversation and reproduce the very words used by them or heard by them. They can only recall the main purport of the conversation. It is unrealistic to expect a witness to be a human tape recorder.

(5) In regard to the exact time of an incident or the time duration of an occurrence, usually, people make their estimates by guesswork on the spur of the moment at the time of interrogation. And one cannot expect people to make very precise or reliable estimates in such matters. Again, it depends on the time sense of individuals, which varies from person to person.

(6) Ordinarily, a witness cannot be expected to recall accurately the sequence of events which take place in rapid succession or in a short time span. A witness is liable to get confused or mixed up when interrogated later on.

(7) A witness, though wholly truthful, is liable to be overawed by the court atmosphere and the piercing cross-examination made by the counsel and, out of nervousness, mix up facts, get confused regarding the sequence of events, or fill up details from imagination on the spur of the moment. The subconscious mind of the witness sometimes so operates on account of the fear of looking foolish or being

> disbelieved, though the witness is giving a truthful and honest account of the occurrence witnessed by him—perhaps it is a sort of psychological defence mechanism activated on the spur of the moment."

53. To the same effect, it was also observed in ***Appabhai v. State of Gujarat 1988 Supp SCC 241*** as follows:

> "13. ... The court, while appreciating the evidence, must not attach undue importance to minor discrepancies. The discrepancies which do not shake the basic version of the prosecution's case may be discarded. The discrepancies which are due to normal errors of perception or observation should not be given importance. The errors due to lapse of memory may be given due allowance. The court, by calling into aid its vast experience of men and matters in different cases, must evaluate the entire material on record by excluding the exaggerated version given by any witness. When a doubt arises in respect of certain facts alleged by such a witness, the proper course is to ignore that fact only unless it goes to the root of the matter to demolish the entire prosecution story. The witnesses nowadays go on adding embellishments to their version, perhaps for fear that their testimony being rejected by the court. The courts, however, should not disbelieve the evidence of such witnesses altogether if they are otherwise trustworthy. Jaganmohan Reddy, J. speaking for this Court in ***Sohrab v. State of M.P. [(1972) 3 SCC 751: 1972 SCC (Cri) 819***] observed: [SCC p. 756, para 8: SCC (Cri) p. 824, para 8]
>
> > '8. ... This Court has held that falsus in uno, falsus in omnibus is not a sound rule for the reason that hardly one comes across a witness whose evidence does not contain a grain of untruth or, at any rate, exaggeration, embroideries or embellishments. In most cases, the

> witnesses when asked about details venture to give some answer, not necessarily true or relevant for fear that their evidence may not be accepted in respect of the main incident which they have witnessed but that is not to say that their evidence as to the salient features of the case after cautious scrutiny cannot be considered....'"

33. Hence, the testimonies of the witnesses have to be examined to determine whether the contradictions are real or apparent, material or minor.

34. The contradiction regarding the time is not material because nobody remembers the time by looking at the watch, and when a person is asked about the time, he generally gives his estimate, which may or may not be correct. This position was laid down by the Hon'ble Supreme Court in ***Bharwada Bhoginbhai Hirjibhai v. State of Gujarat (1983) 3 SCC 217,*** therefore, the discrepancy in the statements of prosecution witnesses about the time cannot be used to discard their testimonies.

35. The contradiction regarding the presence of light is no contradiction, as the witness was deposing about the external light and not the internal light of the vehicle.

36. Similarly, contradiction regarding the number of places where the police had stopped after leaving the police

station and before apprehending the accused is also not material because it is regarding a detail which can come with time due to failure of memory.

37. Therefore, the learned Trial Court had rightly held that the contradictions in the statements of prosecution witnesses were not sufficient to discard them.

38. ASI Chander Mohan (PW14) stated that he handed over the seal to HC Maan Singh after its use. HC Maan Singh (PW12) stated that he had lost the seal somewhere, and he made an entry No.8 (Ex.P3/PW12) to this effect. The entry (Ex.P3/PW12) was recorded on 13.3.2024 and reads that the seal was misplaced during the shifting in the year 2019, which could not be located despite the best efforts. Ms. Madhurika Sekhon Verma, learned counsel for the appellant was highly critical of this entry and submitted that the seal was lost in the year 2019, and the entry was made on 13.3.2024, the date of deposition. The fact that the entry was made on 13.3.2024 shows that it was recorded to cover the non-production of the seal before the learned Trial Court and should not be encouraged. This criticism is unjustified. Maan Singh(PW12) had no reason to search for the seal before appearing in the Court to make a statement.

Hence, he was justified in getting the entry recorded on the date of the deposition regarding the misplacement of the seal.

39. It was submitted that the seal was not produced before the learned Trial Court, and the same is fatal to the prosecution's case. This submission is not acceptable. It was laid down by this Court in ***Fredrick George v. State of Himachal Pradesh*, *2002 SCC OnLine HP 73: 2002 Cri LJ 4600*** that there is no requirement to produce the seal before the Court. It was observed at page 4614:

> **"62.** It is a fact that the seals used for sealing and re-sealing the bulk case property and the samples have not been produced at the trial. In ***Manjit Singh's case (2001 (2) Cri LJ (CCR) 74)*** (supra), while dealing with the effect of non-production of the seal, this Court held as under:
>
> > "In the absence of any mandatory provision in the law/Rules of procedure relating to sealing of the case property, that the seal used in sealing the case property must be produced at the trial, it cannot be said that failure to produce such seal at the trial will be fatal to the case of the prosecution. It will depend on the facts and circumstances of each case whether, by non-production of the seal at the trial, any doubt is raised about the safe custody of the case property or not."
>
> **63.** In view of the above position in law and the conclusion we have already arrived at hereinabove that there is unchallenged and trustworthy evidence that the case property was not tampered with at any stage, the non-production of the seals used for sealing and re-sealing of the bulk case property of the samples is also of no help to the accused."

(2025:HHC:27073)

40. It was laid down by the Hon'ble Supreme Court in ***Varinder Kumar Versus State of H.P. 2019 (3) SCALE 50*** that failure to produce the seal in the Court is not fatal. It was observed:-

> "6. We have considered the respective submissions. PW10 is stated to have received secret information at 2.45 P.M. on 31.03.1995. He immediately reduced it into writing and sent the same to PW8, Shri Jaipal Singh, Dy. S.P., C.I.D., Shimla. At 3.05 P.M., PW7, Head Constable Surender Kumar, stopped PW5, Naresh Kumar and another independent witness, Jeevan Kumar, travelling together, whereafter the appellant was apprehended at 3.30 P.M. with two Gunny Bags on his Scooter, which contained varying quantities of 'charas'. PW8, Shri Jaipal Singh, Dy.S.P., C.I.D., Shimla, who had arrived by then, gave notice to the appellant and obtained his consent for carrying out the search. Two samples of 25 gms. Each was taken from the two Gunny Bags and sealed with the seals 'S' and given to PW5. PW2, Jaswinder Singh, the Malkhana Head Constable, resealed it with the seal 'P'. The conclusion of the Trial Court that the seal had not been produced in the Court is, therefore, perverse in view of the two specimen seal impressions having been marked as Exhibits PH and PK. It is not the case of the appellant that the seals were found tampered with in any manner."

41. It was specifically held in ***Varinder Kumar (supra)*** that when the sample seals were produced before the Court, the conclusion of the Trial Court that the seals were produced before the Court was perverse.

42. In the present case, seal impressions were obtained on the NCB-I form (Ex.P2/PW5). Sample seal 'K' (Ex.P2/PW12)

and sample seal 'X' (P3/PW15) were taken on separate pieces of clothes. These seal impressions were available on record. The learned Trial Court had a specimen seal impression on the pieces of clothes and NCB-I form to compare the seal impression on the parcel. Therefore, non-production of the seals before the learned Trial Court is not material and cannot be used to discard the prosecution's case.

43. Ms. Madhurika Sekhon Verma, learned counsel for the accused referred to the entry in the malkhana register (Ex.P4/PW5) in which an entry number 3 of sample seal 'K' and 'X' was made to submit that the statement of Maan Singh regarding loss of seal is incorrect because sample seal was deposited in the malkhana. This submission is not correct. The entry is regarding the sample seal and not the original seal. Sample seals were taken on the spot, on separate pieces of clothes, and their deposit in the malkhana does not mean that no seal was handed over to HC Maan Singh, as deposed by him and SI Chander Mohan. This submission conflates the sample seal and the seal, and is not acceptable.

44. The learned Trial Court found the testimonies of the prosecution witnesses credible. It was laid down by the Hon'ble

Supreme Court in ***Goverdhan*** (supra) that the Appellate Court should not interfere with the findings regarding the credibility of the witnesses recorded by the learned Trial Court unless there is some illegality in it. It was observed: -

> **"83.** The trial court, after recording the testimony of the PW-10, and on consideration of the same, found her evidence trustworthy and credible. We see no reason to question the assessment about the credibility of the witness by the Trial Court, which had the advantage of seeing and hearing the witness and all other witnesses. Nothing has been brought to our notice of any serious illegality or breach of fundamental law to warrant taking a different view of the evidence of PW-10.
>
> In this regard, we may keep in mind the valuable observations made by this Court in ***Jagdish Singh v. Madhuri Devi, (2008) 10 SCC 497***, in the following words:
>
> > **"28.** At the same time, however, the appellate court is expected, nay bound, to bear in mind a finding recorded by the trial court on oral evidence. It should not forget that the trial court had an advantage and opportunity of seeing the demeanour of witnesses and, hence, the trial court's conclusions should not normally be disturbed. No doubt, the appellate court possesses the same powers as the original court, but they have to be exercised with proper care, caution and circumspection. When a finding of fact has been recorded by the trial court mainly on appreciation of oral evidence, it should not be lightly disturbed unless the approach of the trial court in the appraisal of evidence is erroneous, contrary to well-established principles of law or unreasonable.
> >
> > **29. .....**

30. In ***Sara Veeraswami v. Talluri Narayya [(1947-48) 75 IA 252: AIR 1949 PC 32]*** the Judicial Committee of the Privy Council, after referring to relevant decisions on the point, stated [*Quoting from* ***Watt v. Thomas, [1947] 1 All ER 582***, pp. 583 H-584 A.]: (IA p. 255)

> "... but if the evidence as a whole can reasonably be regarded as justifying the conclusion arrived at at the trial, and especially if that conclusion has been arrived at on conflicting testimony by a tribunal which saw and heard the witnesses, the appellate court will bear in mind that it has not enjoyed this opportunity and that the view of the trial Judge as to where credibility lies is entitled to great weight. This is not to say that the Judge of the first instance can be treated as infallible in determining which side is telling the truth or is refraining from exaggeration. Like other tribunals, he may go wrong on a question of fact, but it is a cogent circumstance that a Judge of first instance, when estimating the value of verbal testimony, has the advantage (which is denied to courts of appeal) of having the witnesses before him and observing how their evidence is given."

45. Nothing was shown in the cross-examination of the prosecution's witnesses to shake their credibility, and the finding of the learned Trial Court regarding the credibility of the witnesses is to be accepted as correct.

46. Learned Trial Court held that the testimonies of the police officials cannot be discarded simply because they happened to be police officials. The presumption that an official

act is done regularly applies to the acts done by police officials as well. It was laid down by this Court in ***Budh Ram Versus State of H.P. 2020 Cri.L.J.4254*** that the testimonies of the police officials cannot be discarded on the ground that they belong to the police force. It was observed:

> "11. It is a settled proposition of law that the sole testimony of the police official, which if otherwise is reliable, trustworthy, cogent and duly corroborated by other admissible evidence, cannot be discarded only on the ground that he is a police official and may be interested in the success of the case. There is also no rule of law which lays down that no conviction can be recorded on the testimony of a police officer, even if such evidence is otherwise trustworthy. The rule of prudence may require more careful scrutiny of their evidence. Wherever the evidence of a police officer, after careful scrutiny, inspires confidence and is found to be trustworthy and reliable, it can form the basis of conviction, and the absence of some independent witness of the locality does not in any way affect the creditworthiness of the prosecution case. No infirmity attaches to the testimony of the police officers merely because they belong to the police force."

47. Similar is the judgment in ***Karamjit Singh versus State, AIR 2003 S.C. 3011,*** wherein it was held:

> "The testimony of police personnel should be treated in the same manner as the testimony of any other witness, and there is no principle of law that, without corroboration by independent witnesses, their testimony cannot be relied upon. The presumption that a person acts honestly applies, as much in favour of police personnel as of other persons, and it is not a proper judicial approach to distrust and suspect them without

good grounds. It will all depend upon the facts and circumstances of each case, and no principle of general application can be laid down." (Emphasis supplied)

48. This position was reiterated in ***Sathyan v. State of Kerala, 2023 SCC OnLine SC 986,*** wherein it was observed:

> **22.** Conviction being based solely on the evidence of police officials is no longer an issue on which the jury is out. In other words, the law is well settled that if the evidence of such a police officer is found to be reliable, trustworthy, then basing the conviction thereupon cannot be questioned, and the same shall stand on firm ground. This Court in ***Pramod Kumar* v. *State (Govt. of NCT of Delhi) 2013 (6) SCC 588*** after referring to ***State of U.P. v. Anil Singh [1988 Supp SCC 686: 1989 SCC (Cri) 48], State (Govt. of NCT of Delhi) v. Sunil [(2001) 1 SCC 652: 2001 SCC (Cri) 248]*** and ***Ramjee Rai v. State of Bihar [(2006) 13 SCC 229 : (2007) 2 SCC (Cri) 626]*** has laid down recently in ***Kashmiri Lal v. State of Haryana [(2013) 6 SCC 595: AIR 2013 SCW 3102]*** that there is no absolute command of law that the police officers cannot be cited as witnesses and their testimony should always be treated with suspicion. Ordinarily, the public at large shows their disinclination to come forward to become witnesses. If the testimony of the police officer is found to be reliable and trustworthy, the court can definitely act upon the same. If, in the course of scrutinising the evidence, the court finds the evidence of the police officer as unreliable and untrustworthy, the court may disbelieve him, but it should not do so solely on the presumption that a witness from the police Department of Police should be viewed with distrust. This is also based on the principle that the quality of the evidence weighs over the quantity of evidence.
>
> **23.** Referring to ***State (Govt. of NCT of Delhi)* v. *Sunil 2001 (1) SCC 652***, in ***Kulwinder Singh v. State of Punjab (2015) 6 SCC 674***, this court held that: —
>
> > **"23.** ... That apart, the case of the prosecution cannot be rejected solely on the ground that

independent witnesses have not been examined when, on the perusal of the evidence on record, the Court finds that the case put forth by the prosecution is trustworthy. When the evidence of the official witnesses is trustworthy and credible, there is no reason not to rest the conviction on the basis of their evidence."

24. We must note that in the former it was observed: —

"21... At any rate, the court cannot start with the presumption that the police records are untrustworthy. As a proposition of law, the presumption should be the other way around. That official acts of the police have been regularly performed is a wise principle of presumption and recognised even by the legislature... If the court has any good reason to suspect the truthfulness of such records of the police, the court could certainly take into account the fact that no other independent person was present at the time of recovery. But it is not a legally approvable procedure to presume the police action as unreliable to start with, nor to jettison such action merely for the reason that police did not collect signatures of independent persons in the documents made contemporaneous with such actions."

25. Recently, this Court in ***Mohd. Naushad*** **v.** ***State (NCT of Delhi) 2023 SCC OnLine 784*** had observed that the testimonies of police witnesses, as well as pointing out memos, do not stand vitiated due to the absence of independent witnesses.

26. It is clear from the above propositions of law, as reproduced and referred to, that the testimonies of official witnesses can nay be discarded simply because independent witnesses were not examined. The correctness or authenticity is only to be doubted on "any good reason", which, quite apparently, is missing from the present case. No reason is forthcoming on behalf of the Appellant to challenge the veracity of the

> testimonies of PW-1 and PW-2, which the courts below have found absolutely to be inspiring in confidence. Therefore, basing the conviction on the basis of testimony of the police witnesses as undertaken by the trial court and confirmed by the High Court vide the impugned judgment, cannot be faulted with."

49. It was submitted that the case property was not produced before the learned Magistrate, which is violative of the mandatory provisions of Section 52A of the NDPS Act. This submission is not acceptable. It was laid down in ***Sandeep Kumar Vs State of H.P., 2022 Law Suits (HP) 149***, that the provisions of Section 52-A of the NDPS Act is not mandatory and its non-compliance is not fatal to the prosecution case. It was observed:-

> "24. It has also been strenuously argued on behalf of the appellants that the investigating agency had failed to comply with the provisions of Section 52-A of the NDPS Act and thus cast a shadow of doubt on its story. The contention raised on behalf of the appellants is that the rules framed for investigations under the NDPS Act are mandatory and have to be strictly followed. Neither the required sample was taken on the spot, nor were the samples preserved by complying with Section 52-A of the Act. It has been argued that compliance with Section 52-A of the Act is mandatory.....
>
> xxxxxx
>
> 27. The precedent relied upon on behalf of the appellants, however, did not lay down the law that non-compliance with Section 52-A of the Act is fatal to the prosecution's case under the NDPS Act. On the other hand, in ***State of Punjab vs. Makhan Chand, 2004 (3) SCC 453***, the Hon'ble Supreme Court, while dealing with the question of the

effect of non-compliance of Section 52-A, has held as under: -

> 10. This contention, too, has no substance for two reasons. Firstly, Section 52A, as the marginal note indicates, deals with the "disposal of seized narcotic drugs and psychotropic substances". Under Sub-section (1), the Central Government, by notification in the Official Gazette, is empowered to specify certain narcotic drugs or psychotropic substances having regard to the hazardous nature, vulnerability to theft, substitution, constraints of proper storage space and such other relevant considerations, so that even if they are material objects seized in a criminal case, they could be disposed of after following the procedure prescribed in Sub-sections (2) & (3). If the procedure prescribed in Sub-sections (2) & (3) of Section 52A is complied with and upon an application, the Magistrate issues the certificate contemplated by Subsection (2), then Sub-section (4) provides that, notwithstanding anything to the contrary contained in the Indian Evidence Act, 1872 or the Code of Criminal Procedure, 1973, such inventory, photographs of narcotic drugs or substances and any list of samples drawn under Sub-section (2) of Section 52A as certified by the Magistrate, would be treated as primary evidence in respect of the offence. Therefore, Section 52A(1) does not empower the Central Government to lay down the procedure for the search of an accused but only deals with the disposal of seized narcotic drugs and psychotropic substances.
>
> 11. Secondly, when the very same standing orders came up for consideration in ***Khet Singh v. Union of India, 2002 (4) SCC 380***, this Court took the view that they are merely intended to guide the officers to see that a fair procedure is adopted by the Officer-in-Charge of the investigation. It was also held that they were not inexorable rules, as there could be circumstances in which it may not be

> possible for the seizing officer to prepare the mahazar at the spot if it is a chance recovery, where the officer may not have the facility to prepare the seizure mahazar at the spot itself. Hence, we do not find any substance in this contention."

50. Therefore, the prosecution's case cannot be discarded due to the non-compliance with the provisions of Section 52A of the NDPS Act.

51. The case property was sent to SFSL, Junga and the report (Ex.P8/PW14) was issued stating that the parcel had six seals of seal 'K' and three seals of seal 'X'. The seals were found intact and were tallied with the specimen seals signed by the forwarding authority and the seal impression on the NCB-I form. This report establishes the integrity of the case property. It was held in ***Baljit Sharma vs. State of H.P 2007 HLJ 707,*** that where the report of analysis shows that the seals were intact, the case of prosecution that the case property remained intact is to be accepted as correct. It was observed:

> "A perusal of the report of the expert Ex.PW8/A shows that the samples were received by the expert in a safe manner, and the sample seal was separately sent, tallied with the specimen impression of a seal taken separately. Thus, there was no tampering with the seal, and the seal impressions were separately taken and sent to the expert also."

52. Similar is the judgment in ***Hardeep Singh vs State of Punjab 2008(8) SCC 557,*** wherein it was held:

> "It has also come to evidence that to date, the parcels of the sample were received by the Chemical Examiner, and the seal put on the said parcels was intact. That itself proves and establishes that there was no tampering with the previously mentioned seal in the sample at any stage, and the sample received by the analyst for chemical examination contained the same opium, which was recovered from the possession of the appellant. In that view of the matter, a delay of about 40 days in sending the samples did not and could not have caused any prejudice to the appellant."

53. In ***State of Punjab vs Lakhwinder Singh 2010 (4) SCC 402,*** the High Court had concluded that there could have been tampering with the case property since there was a delay of seven days in sending the report to FSL. It was laid down by the Hon'ble Supreme Court that the case property was produced in the Court, and there was no evidence of tampering. Seals were found to be intact, which would rule out the possibility of tampering. It was observed:

> "The prosecution has been able to establish and prove that the aforesaid bags, which were 35 in number, contained poppy husk, and accordingly, the same were seized after taking samples therefrom, which were properly sealed. The defence has not been able to prove that the aforesaid seizure and seal put in the samples were in any manner tampered with before it was examined by the Chemical Examiner. There was merely a delay of about seven days in sending the samples to the Forensic Examiner, and it is not proved as to how the aforesaid delay of seven days has affected the said examination, when it could not be proved that the seal of the sample was in any manner tampered with. The seal having been found intact at the time of the examination

by the Chemical Examiner and the said fact having been recorded in his report, a mere observation by the High Court that the case property might have been tampered with, in our opinion, is based on surmises and conjectures and cannot take the place of proof.

17. We may at this stage refer to a decision of this Court in ***Hardip Singh v. State of Punjab reported in (2008) 8 SCC 557*** in which there was a delay of about 40 days in sending the sample to the laboratory after the same was seized. In the said decision, it was held that in view of cogent and reliable evidence that the opium was seized and sealed and that the samples were intact till they were handed over to the Chemical Examiner, the delay itself was held to be not fatal to the prosecution case. In our considered opinion, the ratio of the aforesaid decision squarely applies to the facts of the present case in this regard.

18. The case property was produced in the Court, and there is no evidence to show that the same was ever tampered with."

54. Similar is the judgment of the Hon'ble Supreme Court in ***Surinder Kumar vs State of Punjab (2020) 2 SCC 563***, wherein it was held: -

"10. According to learned senior counsel for the appellant, Joginder Singh, ASI, to whom Yogi Raj, SHO (PW-3), handed over the case property for producing the same before the Illaqa Magistrate and who returned the same to him after such production was not examined, as such, the link evidence was incomplete. In this regard, it is to be noticed that Yogi Raj, SHO, handed over the case property to Joginder Singh, ASI, for production before the Court. After producing the case property before the Court, he returned the case property to Yogi Raj, SHO (PW-3), with the seals intact. It is also to be noticed that Joginder Singh, ASI, was not in possession of the seals of either the investigating officer or Yogi Raj, SHO. He produced the case property before the Court on

> 13.09.1996 vide application Ex.P-13. The concerned Judicial Magistrate of First Class, after verifying the seals on the case property, passed the order Ex.P-14 to the effect that since there was no judicial malkhana at Abohar, the case property was ordered to be kept in safe custody, in Police Station Khuian Sarwar, till further orders. Since Joginder Singh, ASI, was not in possession of the seals of either the SHO or the Investigating Officer, the question of tampering with the case property by him did not arise at all.
>
> 11. Further, he has returned the case property, after production of the same, before the Illaqa Magistrate, with the seals intact, to Yogi Raj, SHO. In that view of the matter, the Trial Court and the High Court have rightly held that the non-examination of Joginder Singh did not, in any way, affect the case of the prosecution. *Further, it is evident from the report of the Chemical Examiner, Ex.P-10, that the sample was received with seals intact and that the seals on the sample tallied with the sample seals. In that view of the matter, the chain of evidence was complete*." (Emphasis supplied)

55. Therefore, the submission that the integrity of the case property has not been established cannot be accepted.

56. The result of the analysis shows that the exhibit stated as 'heroine' was a sample of Diacetylmorphine ('heroin'). Since the integrity of the case property from the time of recovery till analysis has been proved, therefore, it was duly established on record that the accused was found in possession of 23 grams of 'Heroin', and there is no infirmity in the judgment passed by the learned Trial Court convicting the

accused for the commission of an offence punishable under Section 21(b) of N.D.& P.S. Act.

57. The learned Trial Court sentenced the accused to undergo rigorous imprisonment for four years and pay a fine of ₹25,000/-, and in default of payment of fine to undergo further simple imprisonment for one year. The Central Government has notified the commercial quantity of 'heroin' as 250 grms, which means that a person possessing 250 grams of 'heroin' can be sentenced to 10 years' imprisonment. It was laid down by the Hon'ble Supreme Court in ***Uggarsain v. State of Haryana*, *(2023) 8 SCC 109: 2023 SCC OnLine SC 755*** that the Courts have to apply the principle of proportionality while imposing sentence. It was observed at page 113:

> **10.** This Court has, time and again, stated that the principle of proportionality should guide the sentencing process. In ***Ahmed Hussein Vali Mohammed Saiyed v. State of Gujarat [Ahmed Hussein Vali Mohammed Saiyed v. State of Gujarat, (2009) 7 SCC 254 : (2009) 3 SCC (Cri) 368 : (2009) 8 SCR 719]*** it was held that the sentence should "*deter the criminal from achieving the avowed object to (sic break the) law,*" and the endeavour should be to impose an "*appropriate sentence*." The Court also held that imposing "*meagre sentences*" *merely on account of lapse of time* would be counterproductive. Likewise, in ***Jameel v. State of U.P. [Jameel v. State of U.P., (2010) 12 SCC 532 : (2011) 1 SCC (Cri) 582 : (2009) 15 SCR 712]*** while advocating that sentencing should be fact dependent exercises, the Court also emphasised that : (***Jameel***

case [Jameel v. State of U.P., (2010) 12 SCC 532 : (2011) 1 SCC (Cri) 582 : (2009) 15 SCR 712], SCC p. 535, para 15)

> "*15. ...* the *law should adopt the corrective machinery or deterrence based on a factual matrix. By deft modulation, the sentencing process is stern where it should be, and tempered with mercy where it warrants to be. The facts and given circumstances in each case, the nature of the crime, the manner in which it was planned and committed, the motive for commission of the crime, the conduct of the accused, the nature of weapons used and all other attending circumstances are relevant facts which would enter into the area of consideration.*"(emphasis supplied)

11. Again, in ***Guru Basavaraj v. State of Karnataka [Guru Basavaraj v. State of Karnataka, (2012) 8 SCC 734: (2012) 4 SCC (Civ) 594 : (2013) 1 SCC (Cri) 972 : (2012) 8 SCR 189]*** the Court stressed that: (SCC p. 744, para 33)

> "*33. ... It is the duty of the court to see that an appropriate sentence is imposed, regard being had to the commission of the crime and its impact on the social order*" (emphasis supplied)

and that sentencing includes "*adequate punishment*". In ***B.G. Goswami v. Delhi Admn. [B.G. Goswami v. Delhi Admn., (1974) 3 SCC 85: 1973 SCC (Cri) 796 : (1974) 1 SCR 222]***, the Court considered the issue of punishment and observed that punishment is designed to protect society by deterring potential offenders as well as prevent the guilty party from repeating the offence; it is also designed to reform the offender and reclaim him as a law-abiding citizen for the good of the society as a whole. Reformatory, deterrent and punitive aspects of punishment thus play their due part in judicial thinking while determining the question of awarding appropriate sentences.

12. In ***Sham Sunder v. Puran [Sham Sunder v. Puran, (1990) 4 SCC 731: 1991 SCC (Cri) 38: 1990 Supp (1) SCR 662]***, the appellant-accused was convicted under

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Section 304 Part I IPC. The appellate court reduced the sentence to the term of imprisonment already undergone, i.e. six months. However, it enhanced the fine. This Court ruled that the sentence awarded was inadequate. Proceeding further, it opined that : (SCC p. 737, para 8)

> "*8. ... The court, in fixing the punishment for any particular crime, should take into consideration the nature of the offence, the circumstances in which it was committed, and the degree of deliberation shown by the offender. The measure of punishment should be proportionate to the gravity of the offence. The sentence imposed by the High Court appears to be so grossly and entirely inadequate as to involve a failure of justice. We are of the opinion that to meet the ends of justice, the sentence has to be enhanced.*"
>
> (emphasis supplied)

This Court enhanced the sentence to one of rigorous imprisonment for a period of five years. This Court has emphasised, in that sentencing depends on the facts, and the adequacy is determined by factors such as "*the nature of crime, the manner in which it is committed, the propensity shown and the brutality reflected*" [***Ravada Sasikala v. State of A.P. [Ravada Sasikala v. State of A.P., (2017) 4 SCC 546: (2017) 2 SCC (Cri) 436: (2017) 2 SCR 379]***]. Other decisions, like: ***State of M.P. v. Bablu [State of M.P. v. Bablu, (2014) 9 SCC 281 : (2014) 6 SCC (Cri) 1 : (2014) 9 SCR 467]; Hazara Singh v. Raj Kumar [Hazara Singh v. Raj Kumar, (2013) 9 SCC 516 : (2014) 1 SCC (Cri) 159 : (2013) 5 SCR 979]*** and ***State of Punjab v. Saurabh Bakshi [State of Punjab v. Saurabh Bakshi, (2015) 5 SCC 182 : (2015) 2 SCC (Cri) 751 : (2015) 3 SCR 590]*** too, have stressed on the significance and importance of imposing appropriate, "adequate" or "proportionate" punishments.

58. Learned Trial Court held that the sentence has to be imposed after considering the nature of the offence and the manner in which it was committed. The legislature has already considered these factors while providing a punishment of 10 years to a person in possession of 250 grams of 'heroin'. No reason for deviation from the principle of proportionality was given by the learned Trial Court. Hence, applying the principle of proportionality, the sentence of four years cannot be justified.

59. The accused was taken into custody on 24.4.2024, and he has already undergone more than one year of sentence, which is more than sufficient after applying the principle of proportionality. Therefore, he is ordered to undergo sentence for the period already undergone by him and pay a fine of ₹10,000/-, and in default of payment of fine, to further undergo imprisonment for three months for the commission of an offence punishable under Section 21(b) of the 'N.D& P.S Act'.

60. In view of the above, the present appeal is partly allowed and the appellant/accused is sentenced to undergo imprisonment for the period already undergone by him and to pay a fine of ₹10,000/- and in default of payment of fine to

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further undergo simple imprisonment for three months for the commission of an offence punishable under Section 21(b) of 'N.D & P.S Act'. Subject to this modification, the rest of the judgment passed by the learned Trial Court is upheld.

61. The modified warrants be prepared accordingly.

62. Records of the learned Trial Court be sent back forthwith, along with a copy of this judgment.

(Rakesh Kainthla)
Judge

12 August 2025.
(yogesh)