



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Pronounced on: 26th September, 2025***

+ **CRL.L.P.202/2021**

STATE OF NCT OF DELHI

.....Petitioner

Through:

versus

1. **TAUHID KHAN @ SHAHID @ LAMBA**

S/o Sh. Mallu Khan

R/o Village Mohanpur,

P.S. Faridpur, Distt. Bareilly,

Uttar Pradesh.

2. **ASHHAB KHAN @ SABBU KHAN**

S/o Sh. Nawab Khan

R/o Village Mohanpur,

P.S. Faridpur, Distt. Bareilly,

Uttar Pradesh.

3. **MOHD. TABREZ**

S/o Sh. Abdul Karim

R/o Village Maharaj Ganj,

P.S. Chauparan, Distt. Hazaribagh,

Jharkhand.

....Respondents

Through:

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. Criminal Leave Petition has been preferred on behalf of the State



under Section 378 Cr.P.C. against Order dated 27.11.2020 of the learned Special Judge-NDPS, New Delhi whereby the respondents have been *acquitted of offence under sections 21(c)/25(A)/29 Narcotic Drugs Psychotropic Substance Act (NDPS Act)*, in FIR No.

17/2012, registered at PS Special Cell.

2. It is submitted by learned Add. PP for State that there is ample material on record to establish the offence under Section 21 (c)/25(A)/29 *NDPS Act*, against the accused persons.

3. In view of the submissions made, the Leave to Appeal Petition is allowed.

CRL.A. ____/2025 (To be numbered by the Registry)

4. Criminal Appeal under Section 378 of the Code of Criminal Procedure, 1973, challenging the Judgment of acquittal dated 27.11.2020 passed by the learned Special Judge, NDPS.

5. *The case of the prosecution, in brief, is that on 23.07.2012, PW4/SI Praveen Kumar received secret information that accused Tauhid Khan would be coming on a motorcycle via Ghazipur T-Point, to deliver heroin. A raid was conducted, but the accused did not appear.*

6. On 24.07.2012, similar information was again received. A raiding party was constituted and at about 12:30 PM, accused Tauhid Khan was intercepted at Ghazipur T-Point, on a motorcycle. Upon seeing the police, he attempted to flee, but was apprehended. A search of the bag he was carrying, led to the recovery of *two packets, each containing 1 kg of a substance which tested positive for Heroin.*

7. During interrogation, accused Tauhid Khan disclosed that he could get another 1 kg of Heroin recovered from a house in Khoda Colony, which

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was rented by his cousin, accused Ashhab Khan @ Sabbu Khan. Subsequently, the raiding team went to the house bearing H. No. 149, Shankar Vihar and recovered 1 kg of Heroin from an iron box, at the instance of Tauhid Khan, though none of the neighbours agreed to join the proceedings. The packets were duly sealed, samples taken and contraband deposited in Malkhana.

8. Mobile phones of the suspects were put on interception and it was found that their area of operation was Khoda Colony.

9. On 26.07.2012, based on the interception of mobile phone calls, the location of co-accused **Ashhab Khan @ Sabbu** was traced to be located in the area of Jama Masjid. The team led by SI Praveen Kumar in which accused/Tauhid Khan joined, were instructed by Inspector Attar Singh to reach Jama Masjid. On the instructions of Inspector Attar Singh, SI Jitender Tiwari who was in FSL, Rohini, also reached Jama Masjid. At about 12:30 P.M., on the pointing out of Respondent Tauhid Khan, **Ashhab Khan @ Sabbu Khan** was apprehended from the parking area of Parade Ground, Jama Masjid. He was given Notice under Section 50 NDPS Act, but no contraband was recovered from his personal search. Two SIM Cards, being mobile number 9917819884 and 9917373910, three keys and other articles were however, recovered from **Ashhab Khan @ Sabbu Khan** in his personal search. He was arrested vide Arrest memo.

10. **Ashhab Khan @ Sabbu Khan** disclosed that he used to supply heroin to Tabrez Khan, Phullo @ Kali, Ossi, etc. through Tauhid Khan. He further disclosed that Tabrez Khan would come to receive Heroin on Saturday in a Restaurant at Khoda Colony. He also disclosed that he had taken three



houses on rent in the said Colony and could get the Heroin recovered from the said houses.

11. On 26.07.2012, at about 12:35 P.M., SI Praveen Kumar along with SI Pramod Kumar and ASI Bhushan took accused *Tauhid Khan* to FSL, Rohini for taking his voice samples, but the same could not be taken due to his sore throat.

12. SI Praveen Kumar along with **Ashhab Khan @ Sabbu Khan**, then went to the First Floor of House No.RC-209, B Parbati Niwas, Rajiv Vihar, Khoda Colony which was on rent. *Five litres of Acetic Anhydride* and *500 gm of powder* used in processing of Heroin, was recovered. He also got recovered 1 Kg of heroin from his Wagon R car found parked near to said house.

13. During the investigations, the Respondents were taken to their villages in District Bareilly, but nothing could be recovered from their houses.

14. During monitoring of intercepted mobile numbers of Tabrez, Chand and other associates, on 27.07.2012 at 20:21 hours, a call was directed from mobile phone No.9891815612 used by Tabrez to phone number 7209678766 used by Chand, in which Chand told Tabrez to *meet Ashhab Khan @ Sabbu* on 28.07.2012 before 07:00 A.M., to return 500 gms of Heroin as it was of poor quality. Prior to this also, another call between Chand and **Ashhab Khan @ Sabbu** was recorded in which Chand talked about poor quality of Heroin.

15. **Ashhab Khan @ Sabbu Khan** who was in Police Custody, was made to talk to Chand in tactical move and Inspector Attar Singh recorded the information on a separate paper.

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16. Thereafter, the team went to Khoda Colony to arrest *Tabrez* who had to come to receive the consignment of Heroin from **Ashhab Khan @ Sabbu Khan**, as per disclosure made by him. At about 06:13 A.M on 28.07.2012, *Tabrez* talked to his *handler Chand* who stated that he was going to meet Sabbu Khan. This information was recorded at around 06:14 A.M by Inspector Attar Singh. Thereafter, a trap was laid and *accused Tabrez was apprehended near NH 24, Second Pushta, Khoda Colony* at the pointing out of the *Respondent Sabbu Khan*. **Tabrez** was carrying white plastic bag in his hand. Notice under Section 50 NDPS Act was given and thereafter the search was conducted, whereby **500 gms of Heroin was recovered** from the polythene bag, which was seized and the sealing proceedings were conducted. A mobile phone of make Nokia having one SIM bearing no. 98918151612 was recovered from the possession of *Tabrez*.

17. *Voice samples of both Tabrez and Sabbu Khan* were sent to FSL after seeking prior permission of the Court and the consent of the Respondents.

18. **Third Disclosure Statement** of accused **Ashhab Khan@ Sabbu Khan** was recorded on 30.07.2012, pursuant to which the team went to his house at RC 209B, Rajiv Vihar, Khoda Colony and collected the keys of his house from a secret cavity of bed kept inside his house at Azad Vihar. Thereafter, his house at Rajiv Vihar was searched and three transparent polythene packets each containing *biscuit colour powder*, were recovered. From the same bed, *white colour powder in light parrot colour polythene* was also recovered which was found to be *Phenobarbital weighed 5 Kg*. *Three transparent polythene bags containing 1 Kg each of Heroin* was also recovered.

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19. The mobile phone recovered from accused was kept in active mode and after expiry of PC remand, was switched off and deposited in the Malkhana.

20. The *motor-cycle* that was recovered from accused Sabbu Khan, was found to be in the name of Shabbo Begum, who had purchased it and given to Sabbu Khan. It was in the knowledge of Sabbu Begum that Sabbu Khan is involved in drug trafficking activities. The *WagonR car* recovered at the instance of Sabbu Khan, was found to be in the name of Irfan who stated that Sabbu Khan, his nephew had taken the car for personal use. The owners of the three houses of Sabbu Khan, were also examined.

21. The investigations revealed that **Ashhab Khan @ Sabbu Khan** was the kingpin and used to bring crude Heroin from Bareilly to Khoda Colony, where he used to process it with the help of *Tauhid Khan*. He then supplied the Heroin to various persons with the help of Tauhid Khan in the area of Khoda Colony. Sabbu Khan used to directly talk to the residents.

22. Accused Mohd. Tabrez used to work as a carrier with one Chand. Chand used to talk to Sabbu Khan and sent Tabrez to receive Heroin. The CDRs of mobile phones of the Respondents established their connectivity and their indulgence, associations and conspiracy in drug supply. The voice samples also matched. *The accused Irfan Balidas @ Imran, Guddu, Ossi and Chand could not be arrested.*

23. The investigation revealed that **Ashhab Khan @ Sabbu Khan** was the kingpin who used to process crude heroin at his rented premises in Khoda Colony with the help of Tauhid Khan, who also worked as a delivery person. Mohd. Tabrez worked as a carrier for one 'Chand', who was in contact with Ashhab Khan. The voice samples of the accused were taken and sent to the



FSL, which opined that they matched the intercepted calls. After the completion of the investigation, a Chargesheet was filed.

24. Upon completion of the investigation, **Chargesheet** was filed against all three accused persons.

25. The Charges were framed against all accused for criminal conspiracy under Section 29 of the NDPS Act, on 15.10.2013. *Additionally, separate charges under Section 21(c) NDPS Act* were framed against the three accused (Respondents) as follows:

(i) *Tauhid Khan @ Shahid @ Lambu* for an offence under **Section 21(c) of the NDPS Act** for being in possession of a commercial quantity of Heroin.

(ii) *Ashhab Khan @ Sabbu Khan* for offences under **Section 21(c) for possession of a commercial quantity** of Heroin and Section 25A for allowing his premises to be used for the commission of an offence under the NDPS Act.

(iii) *Mohd. Tabrez* for an offence under **Section 21(c) of the NDPS Act**.

The accused persons pleaded not guilty and claimed trial.

26. The Prosecution examined *30 prosecution witnesses* to prove the recovery and the investigations carried out by the Police officials, for making the recoveries.

27. **PW4/SI Praveen Kumar, First Investigating Officer** deposed about receiving the secret information on 23.07.2012 and 24.07.2012. He detailed the apprehension of accused Tauhid Khan at Ghazipur T-Point on 24.07.2012; the recovery of 2 kg of heroin from his bag and the subsequent

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procedural formalities like serving the Notice under Section 50, Ex.PW2/A and preparing the rukka, Ex.PW4/E.

28. He also deposed about the events of 26.07.2012, when he was informed about Ashhab Khan's location in Jama Masjid and the subsequent apprehension where accused Tauhid pointed out Ashhab Khan.

29. **PW29/Inspector Jitender Tiwari, Main Investigating Officer** detailed about taking over the investigation on 24.07.2012. He testified about arresting Tauhid Khan and recovering a mobile phone from him. He corroborated the recovery of 1 kg of Heroin from the Shankar Vihar house, at Tauhid's instance.

30. He further deposed about the apprehension of Sabbu Khan on 26.07.2012 at Parade Ground, the recovery of chemicals from the Rajiv Vihar house, and 1 kg of Heroin from the Wagon R car.

31. He also narrated the events leading to the apprehension of Mohd. Tabrez on 28.07.2012 and the recovery of 500 gm of Heroin from him. Finally, he testified about the recovery of 3 kg Heroin and 5 kg Phenobarbital from the Azad Vihar at H- 61 I- block house of Sabbu Khan, on 30.07.2012.

32. **PW27/ACP Subhash Tandon** was the Supervising Officer. He testified about receiving the secret information from SI Praveen and Inspector Attar Singh on 23.07.2012 and 24.07.2012 and giving directions to conduct the raids. He also proved the Reports under Section 57 NDPS Act that were put up before him.

33. **PW28 Inspector Attar Singh** corroborated receiving the secret information from SI Praveen and communicating it to the ACP. He testified about monitoring the intercepted calls, which revealed the conspiracy



involving Chand and Tabrez, to return poor-quality Heroin to Sabbu. He stated that he recorded this information and passed it on to the raiding team, which led to Tabrez's apprehension.

34. PW2/HC Suresh Kumar & PW10/HC Rajbir Singh, both were members of the initial raiding party that apprehended Tauhid Khan. They corroborated the testimony of *PW4/SI Praveen* regarding the secret information, the chase, the apprehension, and the recovery of 2 kg of Heroin from Tauhid's bag. **PW10/HC Rajbir** also took the Rukka and case property, to the Police Station.

35. PW1, PW3, PW7, Nodal Officers from Idea, Airtel, and BSNL proved the Customer Application Forms (CAFs) and Call Detail Records (CDRs) for the mobile numbers allegedly used by the accused. They confirmed that none of the numbers were registered in the names of the accused persons.

36. PW22 V. Lakshmi Narasimhan, FSL (Physics) proved his Report Ex.PW22/A, in regard to voice samples, wherein it was concluded that the questioned voices from the intercepted call recordings, matched the specimen voice samples of all three accused.

37. PW26/Dr. Lingaraj Sahoo, FSL (Chemistry) proved the Chemical Analysis Report Ex.PW26/A, confirming that the samples recovered in the case contained *Diacetylmorphine (heroin) and Phenobarbital*, with varying percentages.

38. PW11/Salim Khan and PW23/Babu Lal (Property Owners) were the owners of the houses in Azad Vihar and Shankar Vihar, respectively, from where major recoveries were made. Both failed to support the case of the Prosecution. PW11 **Salim Khan** denied that accused Ashhab was his



tenant. PW23 **Babu Lal**, while admitting his signatures on the Sale Deed and an affidavit stating Ashhab paid for the house, deposed that he had signed the affidavit out of fear of the police and *could not identify Ashhab in court*.

39. The learned Special Judge on a detailed analysis of the evidence, found numerous material contradictions in the testimony of senior police officers regarding the receipt and handling of the secret information, procedural infirmities, and inherent improbabilities in the case of the Prosecution, making the very genesis of the raid doubtful.

40. The story of **Sabbu Khan's** apprehension at Parade Ground was found unnatural and incredible, as it was highly improbable for him to meet Tauhid Khan, after knowing about his arrest.

41. The apprehension of **Tabrez** was based on an intercepted call which was itself suspect, as co-accused Sabbu was already in police custody at the time of the alleged call with 'Chand'.

42. The Ld. Special Judge noted the consistent failure of the police to join independent public witnesses at any stage of apprehension or recovery, despite all events occurring in public or residential areas. The searches conducted at various houses and the car were found to be suspect due to procedural lapses, particularly the non-compliance with Section 42 of the NDPS Act for searches conducted after sunset.

43. PW11 and PW23, the property owners turned hostile and did not support the Prosecution's claim about the accused's possession of the premises from where large quantities of narcotics were allegedly recovered.

44. The Ld. Special Judge held that the CDs containing the intercepted voice calls were inadmissible in evidence because the prosecution failed to

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produce the mandatory Certificate under **Section 65B of the Indian Evidence Act**. As the primary electronic evidence i.e. the CDs were inadmissible, the FSL Report Ex.PW22/A comparing the voices on those CDs, was rendered inconsequential.

45. The Ld. Special Judge concluded that due to the numerous contradictions and infirmities, the prosecution had failed to prove the foundational facts of apprehension and conscious possession of contraband beyond a reasonable doubt. Consequently, the statutory presumptions under Sections 35 and 54 of the NDPS Act could not be invoked against the accused. The Special Judge thus, ***acquitted all three accused by granting them the benefit of the doubt.***

46. ***The State has challenged the acquittal on the grounds*** that the judgment is based on presumptions, conjectures, and surmises and has drawn wrong conclusions from the factual matrix. The Trial Court failed to appreciate the testimony of the police witnesses, namely PW2/HC Suresh Kumar, PW4/ SI Praveen Kumar, PW27/ACP Subhash Tandon, PW28/Inspector Attar Singh, and PW29/Inspector Jitender Tiwari, which were corroborative and proved the Prosecution's case beyond reasonable doubt.

47. It is submitted that the Court gave *undue weightage to minor contradictions* in the testimony regarding the timing and manner of communication of secret information, while the material aspect of the information being duly recorded and acted upon, was proved.

48. The Court has further, wrongly held the recoveries to be doubtful despite the consistent testimonies of the recovery witnesses. The non-joining



of public witnesses was adequately explained, and the law does not mandate discarding the testimony of police officials, on this ground alone.

49. The Trial Court erroneously disbelieved the chain of events based on phone interceptions, treating the natural conduct of the accused and their associates as improbable. The Court failed to invoke the statutory presumptions *regarding culpable mental state and possession* under Sections 35 and 54 of the NDPS Act, even after the prosecution had established the foundational facts of recovery, from the accused. The law in regard to recovery under NDPS Act has not been appreciated in the right perspective.

50. *Therefore, the judgment is liable to be set aside.*

Submissions heard and record perused.

51. The present Appeal challenges the judgement of Acquittal of the Respondents. Before considering the merits, it may be highlighted that it is well settled that the Appellate court must be circumspect in interfering with an acquittal and should not do so merely because another view is possible. An order of acquittal can be reversed only if the findings of the trial court are found to be *perverse, contrary to the evidence on record, or based on an erroneous interpretation of the law*. The presumption of innocence is further strengthened by an acquittal, which should not be easily interfered unless there are cogent reasons.

I. Accused Tauheed Khan:

52. Of the total three accused persons, Tauhid is the first accused who was arrested and led to the recoveries and arrests of the other two co-accused. It is thus, imperative that the analysis of the Prosecution case begin with him.



a. Secret Information:

53. The case of Prosecution commences from the receipt of secret information on 23.07.2012. The procedure for recording secret information and communicating it to a Superior Officer under Section 42 of the NDPS Act is a vital safeguard to false implication.

54. The Apex Court in Karnail Singh vs. State of Haryana, (2009) 8 SCC 539 culled out the principles to the effect as given under:

“17.

...

(a) The officer on receiving the information (of the nature referred to in Sub-section (1) of section 42) from any person **had to record it in writing** in the concerned Register **and forthwith send a copy to his immediate official superior**, before proceeding to take action in terms of clauses (a) to (d) of section 42(1).

(b) But if the information was received when the officer was not in the police station, but while he was on the move either on patrol duty or otherwise, either by mobile phone, or other means, and the information calls for immediate action and any delay would have resulted in the goods or evidence being removed or destroyed, it would not be feasible or practical to take down in writing the information given to him, in such a situation, he could take action as per clauses (a) to (d) of section 42(1) and thereafter, as soon as it is practical, record the information in writing and forthwith inform the same to the official superior .

(c) In other words, the compliance with the requirements of Sections 42 (1) and 42(2) in regard to writing down the information received and sending a copy thereof to the superior officer should normally precede the entry, search and seizure by the officer. But in special circumstances involving emergent situations, the recording of the information in writing and sending a copy thereof to the official superior may get postponed by a reasonable period



that is after the search, entry and seizure. The question is one of urgency and expediency.

(d) While total non-compliance of requirements of sub-sections (1) and (2) of section 42 is impermissible, delayed compliance with satisfactory explanation about the delay will be acceptable compliance of section 42.

...”

55. The Prosecution’s narrative hinges on two instances of secret information; *the first* received on 23.07.2012 at 10:15 PM, which led to the formation of a raiding party, but yielded no result as the accused did not appear, and *the second* on the morning of 24.07.2012 at around 9:30 AM, projecting a delivery between 12:00 PM and 1:00 PM.

56. The Prosecution’s key witnesses gave conflicting accounts of how this secret information was received, recorded and acted upon by the police officials.

57. ***First contradiction*** is noted in the recording of the secret information itself. PW4/SI Praveen Kumar had deposed that on 23.07.2012 at about 10:15 PM, he received secret information from the secret informer about Tauhid Khan coming to deliver Heroin on motorcycle. He had allegedly handed over the documents to the ACP’s SO and had telephonically informed PW27/ACP Subhash Tandon.

58. However, PW27/ACP Subhash Tandon gave a completely different account in his testimony. He testified that SI Praveen Kumar and Inspector Attar Singh met him in his office and physically submitted the written information.

59. *This is a direct and inexplicable contradiction.* It is not a minor slip of memory, but a fundamental contradiction on the manner of compliance of this mandatory procedural safeguard. It creates serious doubt as to whether



the senior officer was informed as required by law or if the documents were prepared later, to show compliance.

60. *The second contradiction* comes from the testimony of PW27/ACP Subhash Tandon himself. The Prosecution's entire case begins with a raid planned on the night of 23.07.2012 based on information received at 10:15 PM, which was allegedly done under the ACP's direction. However, in his cross-examination, PW27/ACP Tandon unequivocally stated that he first spoke to PW28/Inspector Attar Singh about this case at 09:30 AM on 24.07.2012 and not prior to that. He also stated he could not remember when he first came to know about the case.

61. This testimony shatters the Prosecution's timeline. If PW27/ACP Subhash Tandon who authorized the raid, had no knowledge of the case before the morning of 24.07.2012, then the entire police action on the preceding night, becomes a fabrication.

62. The Trial Court rightly held that the testimony of PW27/ACP Tandon was suspicious. It was based on his wavering and contradictory statements, coupled with the Court's own observation of his demeanor, where while deposing in the Court, he was found to be reading from notes on his palm and had to be cautioned by the Court.

63. The Prosecution's argument that the "material aspect" of the information being acted upon was proved is not free from doubt as the evidence regarding the recording and communication of that very information, is unreliable. The procedural requirements under the NDPS Act are not mere formalities but are substantive safeguards to prevent the misuse of power.



64. The contradictions highlighted by the Trial Court are not minor, but are infirmities that create a reasonable doubt about the authenticity of the very initiation of the investigation.

65. In light of the aforesaid discussion, the case against accused/Tauhid Khan@ Shahid @Lambu, stands on precarious footing due to flaws in the receiving and recording of the secret information that precipitated his arrest and the subsequent recovery.

66. However, the prosecution evidence reveals critical lapses in compliance with Section 42 of the NDPS Act, which mandates that such information be reduced to writing and promptly forwarded to a superior officer. No evidence has been adduced to demonstrate that the information was duly transmitted to a superior, nor is there any DD entry or contemporaneous document confirming substantial compliance, as required under the principles enunciated in Karnail Singh (supra).

b. Recovery & Arrest:

67. *The apprehension and initial recovery* took place at Ghazipur T-Point, a busy public place with a market nearby. The subsequent recovery was from a house in Khoda colony.

68. In both places, independent witnesses were readily available. While **PW4/SI Praveen Kumar** claimed to have asked eight public persons to join, no Legal Notice was served on them for their refusal, and no credible reason was provided for not doing so.

69. This mechanical attempt does not amount to a sincere effort.

70. However, none of the neighbours agreed to join as independent witnesses, citing fear of reprisal, and the proceedings were conducted solely



with police personnel. It cannot be denied that the lack of independent witnesses in some circumstances, casts a shadow over the case of the prosecution, a principle highlighted by the Apex Court in the case of Kishan Chand v. State of Haryana, (2013) 2 SCC 502.

71. The Co-ordinate Bench of this Court, in Prithvi Pal Singh vs. State 2000 SCC OnLine Del 182 and Thomas Karketta vs. State, 2015 SCC OnLine Del 11609, acquitted the accused persons therein after observing that the investigating authority had failed to join witnesses despite sufficient time to procure their presence. It was further observed that there was nothing on record to show that the investigating authority had sought to serve Notice under Section 100 of the CrPC which reflected that no serious effort was made by the investigating authority to join public persons in the investigation. The findings have recently been noted referenced by another Co-ordinate Bench of this Court in State vs. Ravi Kumar @ Toni, 2024: DHC: 9117.

72. Co-ordinate Bench of this Court, in the case of Ram Prakash vs. State, 2014 SCC OnLine Del 6936, while acquitting the accused person therein, took into account the shoddy investigation conducted by the prosecution on account of lack of videography and found the prosecution case to be unbelievable. The Court had observed as under:

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



police to arrange for a videograph of the place or perhaps of the raid itself, if not photographs.

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

(emphasis supplied)

73. Furthermore, the arrest of Tauhid itself becomes suspect and the consequent recovery of 1 kg of Heroin from his bag, which is inextricably linked to this apprehension on the flawed secret information, cannot be held reliable.

74. The absence of independent corroboration, coupled with reliance solely on police witnesses whose accounts exhibit significant inconsistencies, reinforces the reasonable doubt about the recovery of which benefit has rightly been extended to respondent Tauhid, by the Ld. ASJ.

c. *Interception/ Tracking of Calls through Cell IDs:*

75. The Prosecution explicitly stated that the “*mobile phones of suspects were on interception,*” which enabled tracking via cell ID to Khoda Colony on 26.07.2012. Although the Prosecution termed the phone tracking as “interception,” the evidence primarily consists of CDRs (call detail records), which include call logs, durations, and cell IDs, but not call content. CDRs can be obtained under Section 91 of the Cr.P.C. without permission required for interception.

76. Moreover, the CDRs produced by PW1 pertain to numbers 9917375910, 9917899884, 9891815612, and 8750576557 that do not match



with the SIMs of number 9411622923 and 950006594 recovered from Tauhid. These numbers were linked to the appellants through Customer Application Forms (CAFs) under pseudonyms or names of relatives (Nasiruddin Khan for 9917375910, potentially aliasing Tauhid and Gantha Khan for 9917819884, linking to Ashhab @ Sabbu Khan. The prosecution has miserably failed to lead any evidence to prove that these numbers to which the CDRs pertain, were ever in possession or had any concern with Tauhid. The phone number may have been in the name of the relative of Tauhid, but that itself cannot lead to any adverse inference.

77. Without direct proof of ownership or usage by the appellants, and absence of Certificates under Section 65B Evidence Act proving tamper-proof data integrity, this linkage through CDRs, remains tenuous.

78. The Supreme Court in Anvar P.V. vs. P.K. Basheer, (2014) 10 SCC 473, emphasized that electronic records must satisfy stringent admissibility criteria, which are not fully met here.

79. Tauhid's disclosure and the purported call interception are marred by critical flaws including but not limited to absence of independent witnesses, unverified disclosure, and lack of interception permissions.

80. These deficiencies introduce reasonable doubt and compromise the fairness of the trial and the reliability of the evidence under the NDPS Act's stringent framework.

d. Tauhid Khan's Role in Leading to the recovery from House No.- No.149, Khoda Colony rented by Ashhab Khan @ Sabbu Khan:

81. During interrogation, *Tauhid* made a disclosure statement under Section 27 of the Indian Evidence Act, 1872, revealing that an additional 1

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kg of Heroin was stored in one of two houses in Khoda Colony, which he claimed had been rented by **Ashhab Khan @ Sabbu Khan**. His disclosure led the Investigating Officer, SI Jitender Tiwari, on 24.07.2012 to the House No.149, Shankar Vihar, Khoda Colony, which he opened with the keys recovered from Tauhid. The search of the House yielded 1 kg of Heroin, which was seized, sampled, and sealed.

82. Interestingly, according to the Prosecution witnesses, this house was opened from the key produced by Tauhid Khan @ Shahid @ Lamba but it is the Case of the Prosecution itself that the house was the rented premises, taken by Ashhab Khan @ Sabbu Khan, the co-accused, who had till then not been arrested. This recovery directly implicated **Ashhab Khan @ Sabbu Khan** and formed the basis for his subsequent arrest and charges under Sections 21(c) and 29 of the NDPS Act.

83. Pertinently, witness **PW23/ Babu Lal** stated he did not know Ashhab Khan and that the property belonged to him, not Ashhab Khan. However, documents showed the property was purchased by Ashhab Khan in Babu Lal's name. Babu Lal denied knowing Ashhab Khan and stated he signed papers out of fear of the police. The owner denied possession by Ashhab Khan, and his statement contradicted the police theory, making the connection suspect.

84. The Prosecution while asserted that the premises was rented by Ashhab Khan @ Sabbu Khan but the alleged recovery was at the instance of Tauhid Khan @ Shahid @ Lamba, who was not concerned or involved with the house in question.

85. At best what can be attributed to Tauhid Khan @ Shahid @ Lamba is that he had knowledge but that in itself is not sufficient to attribute the



recovery of this 1 Kg heroine from the house to him. Likewise, since it has not been proved that the premises was owned by Ashhab Khan @ Sabbu Khan, the alleged recovery from the said house, can also not be attributed to Ashhab Khan @ Sabbu Khan, who was subsequently arrested, which is discussed below.

II. Accused Ashhab Khan @ Sabbu Khan

a. Arrest of Ashhab Khan @ Sabbu Khan:

86. The disclosure of Tauhid Khan led to the alleged recovery of 1 KG Heroin from the house allegedly rented by **Ashhab Khan @ Sabbu Khan** on 24.07.2012, but pertinently, he had not been arrested by the Police till then.

87. PW4/SI Praveen Kumar deposed that on the next day i.e. 25.07.2012, accused Tauhid Khan pointed out different places for the search of **Ashhab Khan @ Sabbu Khan**, but **he could not be traced**.

88. Finally, the Accused **Ashhab Khan @ Sabbu Khan**, as per the Prosecution, was tracked to Jama Masjid on the basis of his mobile interception on **26.07.2012**. As deposed by the IO the mobile phones of suspects were already on interception.

89. Pertinently, no evidence has been led, nor any explanation given by the IO as to how he got these mobile numbers which he had put on interception. Interestingly, these two mobiles were subsequently recovered from **Ashhab Khan @ Sabbu Khan** on his arrest. The circumstances create a doubt about this entire story as no record has been proved of any permission for interception. The IO (PW29) and other officials implicitly suggested or produced some documents related to authorization. PW16/Dinesh Kumar, a

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LDC, Home General Department Government of NCT, mentioned that orders regarding interception were officially “destroyed” on 18/12/2013 by the order of Sh. Subhash Ranjan, Superintendent Home (G), Govt. of NCT. This is significant as the manner of tracing Ashhab Khan @ Sabbu Khan is intriguing.

90. In any case, Inspector Attar Singh, who was monitoring the interception, informed the team led by SI Praveen Kumar (which was in the Khoda Colony area searching for him along with co-accused Tauhid Khan) about the location of Sabbu Khan at Jama Masjid. SI Praveen Kumar was informed through the mobile of Ct. Sandeep. The IO, SI Jitender Tiwari, who was at FSL Rohini, was also instructed to reach Jama Masjid.

91. Both police teams converged on the area. At around **12:30 PM**, Ashhab Khan was identified and apprehended in the **parking area of Parade Ground, Jama Masjid**, on the pointing out of the already arrested co-accused, **Tauhid Khan**.

92. PW4/SI Praveen and PW29/Inspector Jitender Tiwari both testified that PW28/Inspector Attar Singh informed them on 26.07.2012 about **Ashhab Khan @ Sabbu Khan’s** location via a call made to the mobile phone of PW8/Ct. Sandeep. However, PW28 Inspector Attar Singh himself, in his detailed examination-in-chief, is completely silent about making this critical call or tracking **Ashhab Khan @ Sabbu Khan’s** location on that day. His testimony fails to corroborate the version of PW4 and PW29.

93. More importantly, PW8/Ct. Sandeep directly contradicted the story, stating in his cross-examination that PW28/Inspector Attar Singh did not disclose any information to him on his mobile phone.



94. Further, there was no call location data presented for either Tauhid Khan or Ashhab Khan for the Parade Ground, Jama Masjid area. Furthermore, Tauhid was allegedly able to spot him immediately in the crowded Parade Ground is also quite intriguing.

95. This is a glaring contradiction on a vital link leading to the arrest of **Ashhab Khan @ Sabbu Khan**. The testimony of these Prosecution witnesses, far from being corroborative, is mutually destructive and renders the entire circumstance of Sabbu's apprehension doubtful.

96. The court has rightly noted it was highly unlikely that Ashhab Khan would plan to meet Tauhid Khan at a public and crowded place like Parade Ground when he had knowledge of Tauhid's arrest on 24.07.2012.

b. Recovery from Ashhab Khan @ Sabbu Khan's

97. After his arrest, Ashhab Khan led the police to three key recoveries in the Khoda Colony area, all of which the court viewed with suspicion. The accused led the police team to his rented/owned house at **RC-209B, Parbati Niwas, Rajiv Vihar, Khoda Colony**.

98. The house was opened using a key from his personal search. From the kitchen slab, **5 liters of Acetic Anhydride** and **500 gm of processing powder** were recovered. Ashhab Khan then disclosed that he had moved heroin to his **Wagon R car** (UP 21AC 6123) because he learned of Tauhid's arrest. Using the car key from his personal search, **1 kg of heroin** was recovered from beneath the driver's seat of the car. This removal of Heroin to the car from his House, and that too the right outside of the said house, is quite unbelievable a story given the circumstances as disclosed by the Prosecution.



99. The court found the recovery doubtful because **no independent witnesses** were joined, despite the place being crowded. The lack of photographs of the car's location was also a deficiency, particularly given that the car belonged to his relative, Irfan. Furthermore, the court questioned the legality of the car search, as it took place after sunset without proper authorization under Section 42 of the NDPS Act.

100. Ashhab Khan made a supplementary disclosure (Ex.PW4/H) revealing a second secret cache. He stated the key for **H. No. I-61, I Block, Azad Vihar** was **concealed in a cavity of the bed** at the Rajiv Vihar house. The IO stated he collected the keys of the Rajiv Vihar house from the malkhana to access the cavity and retrieve the new set of keys. **PW13 Rajkumar** (Assistant Account Officer, Vidyut Nagri) exhibited documents showing the **electricity connection** of the house was in the name of **Ashhab Khan**, however, the owner of the House is one Raja Ram. The house had an electricity connection in Ashhab Khan's name, but this alone was not enough to overcome the overall suspicion of the recovery from the House concerned.

101. The team went to the Azad Vihar house, found no public witness to join the search, and recovered the **3 kg of heroin** (three 1kg packets) & **5 kg of Phenobarbital** from a cavity in the wooden bed on the ground floor.

102. However, the Court expressed doubt on the entire mechanism of key recovery. The PW24/MHC(M) never testified that the Rajiv Vihar keys were taken out of the malkhana and handed back to the IO, thereby **falsifying the IO's account**. The owner of the Azad Vihar house, PW11/Saleem Khan, was declared hostile and stated Ashhab Khan never resided in that property. The recovery, occurring on the very last day of



remand, was deemed suspicious, suggesting the police had ample time to obtain proper search authorizations or witnesses earlier.

103. The police evidence regarding Ashhab Khan's arrest and subsequent recoveries was plagued by **material inconsistencies** in official testimony, **non-compliance** with procedural safeguards, and a complete **lack of independent corroboration**. Consequently, the court held that the prosecution failed to prove the foundational facts of the case, leading to Ashhab Khan's acquittal.

104. In NDPS cases, where recoveries carry presumptive value under Section 54 of the NDPS Act, the absence of independent corroboration is fatal, as it opens the door to allegations of planting or fabrication. Courts have repeatedly held that reliance solely on police witnesses, especially in recovery proceedings, must be scrutinized strictly for which reference may be made to *Ajmer Singh vs. State of Haryana*, (2010) 3 SCC 746.

105. The factor which demolishes the Prosecution case is significantly that there is no evidence whatsoever to prove *that it was the rented premises of Ashhab Khan @ Sabbu Khan*. The owners of the properties, PW11 Salim Khan and PW23 Babu Lal, turned hostile and they did not support the Prosecution's claim that the accused/ *Ashhab Khan @ Sabbu Khan* had the possession of the premises from which huge quantities of heroin and chemicals, were allegedly recovered.

106. PW23/Babu Lal went so far as to state that he signed an affidavit, Ex.PW23/B, regarding the property's ownership out of fear of the police. This testimony, far from supporting the police, directly impeaches the fairness of the investigation.



107. *A recovery from a place where the possession of accused is not proved cannot be attributed to be a recovery from him. Moreover, no independent public witnesses were associated at the time of recovery to corroborate the authenticity of recovery.*

III. Accused Mohd. Tabrez:

108. Mohd. Tabrez, the third accused in the case was implicated primarily through circumstantial evidence rather than direct possession of narcotics at the time of his arrest. Unlike the initial recovery from Tauhid Khan and the subsequent house and vehicle searches linked to Ashhab Khan, there was no specific recovery of Heroin or related substances from Tabrez's person or from the place under his immediate control.

109. His role appears to be tied to the conspiracy under Section 29 of the NDPS Act, supported by Call Detail Records (CDRs) showing frequent communication with the other accused persons and location data placing him in the operational area.

a. Apprehension of Tabrez:

110. On 27.07.2012, at around 8:21 PM, a call was intercepted between a person named Chand and Tabrez (mobile number 9891815612), where Chand (mobile number 7209672766) asked Tabrez to meet Sabbu (Ashhab Khan) on 28.07.2012, before 7:00 AM to return 500 gm of poor-quality Heroin. A prior call between Chand and Sabbu concerning the inferior quality of Heroin was also recorded. Inspector Attar Singh recorded this information on a separate paper and put it before the ACP.

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111. On 28.07.2012, at about 6:13 AM, Tabrez talked to his handler Chand, stating he was going to meet Sabbu Khan. Inspector Attar Singh recorded this information and informed IO SI Jitender Tiwari, who was then deputed to lay a trap.

112. Mohd. Tabrez was apprehended near NH-24, second Pushta, Khoda Colony at about 6:55 AM. This was done at the pointing out of co-accused Ashhab Khan. He was carrying a white plastic bag in his hand. Notice under Section 50 of the NDPS Act was served, but he refused to be searched in the presence of a gazetted officer or magistrate. From the polythene packet, 500 gm of heroin was recovered. A Nokia mobile phone with a SIM (no. 9891815612) was recovered from his possession.

113. The Court's doubt regarding the interception that led to the arrest of Mohd. Tabrez is well-founded.

114. When the key intercepted call was allegedly made between Chand and Sabbu (Ashhab Khan), **Ashhab Khan was already in the custody** of IO SI Jitender Tiwari, who was with him in Bareilly. However, the IO never stated in his testimony that Ashhab Khan was made to talk to Chand on the phone, which creates material doubt over the interception information. Further, it was rightly deemed **unnatural** that associates like Chand and Tabrez would not know about the arrest of Tauhid Khan and Ashhab Khan and would still talk on mobile phones about returning defective heroin.

115. Another discrepancy to be noted is in the information noted on the basis of the intercepted call which did not mention the specific location of the meeting, only recorded "at the place where they used to meet before". However, the IO's statement that Inspector Attar Singh informed him about



the specific location as “pushta no. 2, NH-24” contradicts the written information.

116. A police witness, PW30/SI Rakesh Kumar, stated that a call came from Chand on Sabbu Khan’s mobile at **6:15 AM** saying Tabrez was about to reach, but this was neither the prosecution’s main case nor corroborated by PW29/SI Jitender Tiwari, the IO.

117. Ultimately, the prosecution failed to prove the foundational facts beyond a reasonable doubt.

118. Furthermore, the trap operation occurred without independent public witnesses. The prosecution story notes refusal of public witnesses to join during the trap at a public location like NH24 Pusta. Section 100(4) Cr.P.C. requires respectable inhabitants as witnesses for searches and arrests, and their absence in NDPS cases, where presumptions under Sections 35 and 54 apply, is suspicious and can indicate fabrication as noted by the Apex Court in Ajmer Singh v. State of Haryana (2010) 3 SCC 746).

119. There is no mention of arrest memos, *panchnamas*, or videography for the trap, which is a mandatory safeguard in sensitive cases to ensure transparency. The timing, early morning at 6:55 AM, in a residential/highway area should have allowed for witness procurement, but the reliance on police testimony alone weakens the case.

120. The location of trap aligns with cell ID data. Additionally, the CDRs linking Tabrez rely on aliases (e.g., Suraj Ram Verma), and there is no direct proof of usage, the connection is circumstantial at best, as noted in Anvar P.V. v. P.K. Basheer (2014) 10 SCC 473, on admissibility of electronic evidence.

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121. Tabrez's role is framed as part of the conspiracy under Section 29 NDPS Act, based on CDR patterns showing co-location and contacts.

122. The Supreme Court in Noor Aga v. State of Punjab (2008) 16 SCC 417 emphasizes that procedural violations in NDPS cases shift the burden back to the prosecution, potentially warranting acquittal.

123. These issues highlight violations of procedure and make the apprehension vulnerable.

b. Interrogation of Tabrez:

124. Upon his apprehension on the morning of 28.07.2012, Mohd. Tabrez was taken into custody and interrogated. During this process, a disclosure statement, Ex.PW17/F, was recorded. In this statement, Tabrez acknowledged his association with the co-accused, stating that he met Ashhab Khan @ Sabbu Khan through a handler named Chand.

125. Tabrez confirmed that Chand used his mobile number (9661789955) to instruct him *via* his own mobile number (9891815612) to collect Heroin from Sabbu Khan. He disclosed that he would typically take supply from Sabbu Khan and Tauhid by communicating with them and coming to the vicinity of Khoda Colony.

126. Subsequent to this disclosure and the recovery of 500 gm of Heroin from his possession, Tabrez was taken to his house located in Hospital wali Gali, Jama Masjid, where the police conducted a search, but nothing further was recovered. Despite Tabrez disclosing the use of mobile number 9891815612, a different mobile (8750576557) was recovered during his personal search. He was then taken on a two-day Police Custody (PC) remand.

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127. The court disbelieved the manner of Tabrez's apprehension itself, finding it unnatural that he would show up at an undisclosed location for a meeting under these circumstances. Since the arrest is doubtful, any disclosure made immediately upon that arrest cannot be relied upon, as it suggests the accused was already in custody and coerced into signing pre-prepared documents, which Tabrez himself alleged in his statement under Section 313 Cr.P.C.

c. **Recovery & Sealing from Tabrez:**

128. As established, the very apprehension of Tabrez, an intercepted call involving an accused already in police custody, was found to be doubtful. When the foundation for the police action is suspect, the subsequent recovery becomes doubtful by extension.

129. The learned Trial Judge correctly concluded that in a case replete with such material contradictions in police testimonies, inherent improbabilities in the narrative, procedural lapses, and hostile key witnesses, the failure to join any independent witness at any stage becomes a significant factor that fortifies the doubt against the prosecution.

130. The court's finding is a logical outcome of a holistic appreciation of a flawed investigation.

131. The seizure memo for the 500-gm Heroin recovered from accused Mohd. Tabrez shows that the *pullandas* were sealed with the seal of 'BK'. The raid was conducted by PW29/Inspector Jitender Tiwari; whose seal initial is 'JT'. The seal after use was handed over to PW30/SI Rakesh Kumar. The Prosecution failed to lead any evidence to explain who the



officer with 'BK' initials was, whether he was present at the spot, and why his seal was used by the Investigating Officer.

132. This unexplained discrepancy in a crucial procedural safeguard like sealing the case property makes the recovery process highly suspect.

133. The learned Trial Judge correctly concluded that these are not minor discrepancies but are material contradictions that strike at the very core of the Prosecution's narrative. The State's claim that the testimony of the Prosecution witnessess was corroborative is, therefore, not borne out by the record.

134. When the evidence of the police officials themselves is so inconsistent and unreliable, the failure to join any independent public witness at any stage of the investigation assumes great significance and rightly led the Trial Court to view the prosecution case with suspicion.

135. The court's appreciation of the evidence is thus based on sound legal principles, not on conjectures or surmises.

IV. Analysis of Chain of events and conduct of Accused persons:

136. A court of law, while appreciating evidence, is not expected to act in a vacuum. The evidence must be weighed on the touchstone of probabilities and the ordinary course of human conduct. The "prudent man" test is fundamental to the evaluation of evidence. If a narrative presented by the prosecution is so inherently improbable that it defies logic and normal human behavior under the circumstances, the court is not only justified but duty-bound to view it with suspicion.

137. Before delving into the probability of the content of the calls, it is pertinent to first address the trial court's primary finding on this issue, which



relates to the admissibility of the evidence itself. The Prosecution's entire case of a criminal conspiracy and the subsequent apprehensions of *Ashhab Khan and Mohd. Tabrez* is built upon the foundation of intercepted telephone conversations.

138. This evidence was presented to the court in the form of Compact Discs (CDs). The learned Special Judge has correctly held that these CDs are secondary electronic evidence. For such evidence to be admissible, the mandate of Section 65B of the Indian Evidence Act, 1872, must be strictly complied with. This requires a Certificate from the person in charge of the computer system from which the data was retrieved, authenticating the process. The Trial Court rightly found that no such Certificate under Section 65B was placed on record by the prosecution. In the absence of this Certificate, the CDs are legally inadmissible.

139. Therefore, the Trial Court did not "*erroneously disbelieve*" the chain of events based on phone interceptions; rather, it correctly refused to consider the evidence that was legally inadmissible in the first place.

140. In any case, the Trial Court's finding that the narrative was improbable is a well-reasoned and based on the evidence. The Prosecution's own case is that upon learning of Tauhid Khan's arrest on 24.07.2012, accused Ashhab Khan shifted a kilogram of heroin from his house to his car out of fear of being caught.

141. It is contrary to natural human conduct that the same person, who is actively trying to conceal evidence because his associate has been arrested, would then, just two days later on 26.07.2012, proceed to a crowded public place like Parade Ground for no established reason, making himself an easy target for the police.

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142. The Trial Court's conclusion that this conduct is "*quite unlikely*" and that the "*entire prosecution story is unnatural over the presence of accused at parade ground*" is a logical inference based on prudence, not a mere surmise.

143. The basis of Tabrez's apprehension is the intercepted call on the night of 27.07.2012 between 'Chand' and Ashhab Khan, wherein they allegedly discussed the return of 500 gm of heroin.

144. As the Trial Court noted that at the time of this alleged call, accused Sabbu Khan was already in the police custody of PW29/SI Jitender Tiwari's team in Bareilly.

145. It defies all logic that experienced members of a drug syndicate would openly discuss the logistics of returning contraband with a person who is in the custody of the police. The IO PW29/SI Jitender Tiwari never testified that he made Ashhab Khan take the call as a "tactical move" to trap others.

146. The Trial Court rightly concluded that this circumstance creates a "*material doubt over the information... recorded by PW28/Inspector Attar Singh*". Disbelieving such an improbable chain of events is not an error, but a hallmark of careful judicial assessment.

147. In conclusion, the learned Trial Judge did not decide on conjectures. The Court first correctly applied the law to find the primary evidence of interception inadmissible. Secondly, it is rightly concluded that even if the narrative were to be considered, it was so contrary to the natural conduct of individuals involved in a criminal activity that it could not be believed.

148. The findings of the Trial Court are based on a reasonable appreciation of evidence.



V. Presumption under Section 35 & 54 NDPS Act:

149. The NDPS Act contains stringent provisions that create statutory presumptions against the accused, shifting the burden of proof under certain circumstances. These are primarily found in Sections 35 and 54 of the Act.

150. The Apex Court has repeatedly held that these presumptions do not absolve the prosecution of its primary and initial duty to first establish the foundational facts of the case beyond all reasonable doubt. It is only upon satisfactorily proving possession that the presumption kicks in, and this issue has been considered by the Apex Court in Madan Lal and another vs. State of H.P., 2003 (7) SCC 465.

151. The trial court rightly noted that “*an initial burden exists upon the prosecution and only when it stands satisfied then the legal burden would shift*”. In the instant case, the Prosecution has hasn’t satisfactorily discharged this burden and thus, the same cannot be presumed against the Accused persons.

Conclusion:

152. In view of the aforesaid discussion, the Prosecution has failed to establish a case beyond reasonable doubt against the Respondents.

153. Accordingly, the impugned judgment of Acquittal dated 27.11.2020, is upheld and **the Appeal is hereby dismissed.**

154. The Pending Applications are disposed of accordingly.

**(NEENA BANSAL KRISHNA)
JUDGE**

SEPTEMBER 26, 2025

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