



**IN THE COURT OF ALOK SHUKLA, ADDITIONAL SESSION
JUDGE-02, SPECIAL JUDGE (NDPS), EAST DISTRICT,
KARKARDOOMA COURT, DELHI**

CNR no. DLET01-008062-2019
Session Case No. 3360/2019
State versus Arvind Yadav & Anr.
First Information Report No. 61/2019
Police Station Crime Branch, East Delhi
Under Section 21/25/29 Narcotic Drugs and Psychotropic
Substances Act

In the matter of: -
STATE

Versus

(1) Mohan Rai Arora @ Monu
Son of Late Rajender Arora,
Resident of A-74, Malviya Nagar,
South Delhi, Delhi.

(2) Arvind Yadav
Son of Sh. A.A. Yadav,
Resident of C-A4-C, DDA Flat, Munirka Village,
Vasant Vihar, South West, Delhi.

Date of Institution	:	07.09.2019
Date of reserve for judgment	:	21.01.2025
Date of decision	:	14.02.2025

JUDGMENT

1. Accused persons namely Arvind Yadav and Mohan Rai Arora were charged with the offence under Section 21(C)/25/29 of the Narcotic Drugs and Psychotropic Substances Act.
2. Brief Facts of the case as per prosecution are that on 14.03.2019 at about 9:45 PM, a secret information was received by ASI Ashok Kumar at the Office of Narcotics Cell, Crime Branch, Old Kotwali Daryaganj, Delhi that two persons namely Arvind and Monu, who were residing in Munirka along



with their associate Srikant, indulged in supply of Cocaine in wholesale and retail in Delhi, would come to supply Cocaine to someone between 11:00 PM to 12:00 mid-night near the office of SDM, Geeta Colony Delhi and if raid is conducted in time, they may be caught along with Cocaine. Thereafter, ASI Ashok Kumar produced the informer before Inspector Brij Pal Singh in his office at about 10:00 PM, who made enquiries from the informer and after satisfaction, the information was passed on to Shri R.K. Ojha, ACP/Narcotics telephonically, who directed him to take immediate appropriate legal action. The secret information was reduced into writing vide DD No. 26 at 10:20 PM and produced before Insp. Brij Pal Singh in compliance of Section 42 NDPS Act and as per the direction of senior officers, a raiding team comprising Ct. Rajesh No. 1375/Crime, Ct. Sunil No. 1479/Crime and Ct. Pankaj, 925/Crime was constituted by ASI Ashok Kumar and team members were briefed by him. The raiding party departed for the spot vide DD No. 27 at 10:35 PM after taking IO bag, field testing Kit, electronic weighing scale in a private Vehicle driven by Ct. Pankaj along with the informer. At 11:00 PM, raiding party reached the spot i.e. near office of SDM, Geeta Colony Delhi and took position and at about 11:30 PM, one silver colour Scorpio Vehicle No DL-8C-AQ-0099 was seen coming from Pusta road side towards SDM Office, Geeta Colony in which two persons were sitting. The Secret informer identified the person sitting on driver seat as Monu and the person sitting next to him as Arvind. At the instance of informer, the said vehicle was intercepted and both the persons sitting in the car were overpowered. The name and addresses of the apprehended persons were revealed as the Mohan Rai Arora @ Monu s/o Lt. Rajender Arora r/o A-74, Malviya Nagar, Delhi Age 30yrs and Arvind Yadav s/o A. Alexander Yadav r/o CA4C,



DDA Flat, Munirka Delhi Aged 43yrs. The search of vehicle No. DL-8C-AQ-9099 was carried out and a black color polythene packet was recovered from the dash board of the car and from the black color polythene packet, two transparent polythene packets containing white color powdery substance were recovered. The substance recovered from both the transparent polythene packets was tested on testing kit and found to be Cocaine. The transparent polythene packets weighing 200 grams each were given Mark-A and Mark-B. The recovered Cocaine was seized after drawing samples from it. It was explained to the apprehended persons that the police team was having secret information that they (apprehended persons) were indulged in supply of Cocaine and there was possibility of further recovery of cocaine from their possession/personal search. Accused persons were also informed about their legal right to be searched in the presence of a Gazetted Officer or Magistrate and that they could also conduct search of members of police party & police vehicle, prior to their search, but both of them declined to avail their rights and refused to take search of the police party and police vehicle. Thereafter, written notices under Section 50 NDPS Act were served upon the accused persons and they wrote their reply on the carbon copy of notice u/s 50 NDPS Act in their own handwriting and signed the same. Thereafter, both apprehended persons were brought to the office of Narcotics Cell at Darya Ganj and produced before Sh R.K. Ojha, ACP Narcotics Cell, where their personal search was carried out before ACP/Narcotics Cell. During personal search of accused Arvind and accused Mohan Rai @ Monu, nothing incriminating could be recovered. The Vehicle Scorpio bearing No. DL-8C-AQ-9099 used for the transportation of recovered cocaine was also taken in police possession vide a separate



seizure memo. Thereafter, the present case FIR No. 61/19 dated 15.03.19 u/s 21/25/29 NDPS Act was registered at PS Crime Branch and further investigation was entrusted to SI Arvind Kumar. During investigation, accused Arvind and Monu were arrested by SI Arvind Kumar. FSL result was obtained with opinion that *"On Chemical, TLC & GC-MS examination, exhibit 'A-1' & 'B-1' were found to contain 29.9% & 59.4% Cocaine respectively"*. After completion of investigation, chargesheet was filed before the Court. During investigation, third accused person namely Srikant Ranganathan was also arrested and the supplementary charge sheet was filed before the Court on 07.01.2020.

CHARGES AGAINST THE ACCUSED

3. By order dated 18.02.2022, charge for the offences under Sections 21(c)/25/29 of NDPS Act was framed against accused Arvind Yadav and Mohan Rai Arora to which they pleaded not guilty and claimed trial. Co-Accused Srikant Ranganathan was discharged vide the same order.

PROSECUTION WITNESSES

4. Sixteen prosecution witnesses were examined during the course of trial.

5. PW1 Sh. Surender Kumar, Nodal officer, Bharti Airtel produced CAF of mobile number 9999901818 and 8860127771 and CDR of both numbers from 01.01.2019 to 14.03.2019. The certified copy of CAF alongwith with Voter ID is Ex.PW1/A, CDR is Ex.PW1/B and location chart is Ex.PW1/C and certificate under Section 65B Indian Evidence Act is Ex.PW1/D. He deposed that mobile number 9999901818 was issued in the name of Arvind Yadav and mobile number 8860127771 in the name of Mohan Rai Arora. He produced certified copy of CAF alongwith aadhar card Ex.PW1/E, certified copy of CDR



Ex.PW1/F, location Chart Ex.PW1/G and certificate under Section 65B Indian Evidence Act Ex.PW1/H.

6. PW-2 SI Ashok Kumar deposed that on 14.03.2019 he was posted as ASI with Narcotic Cell Crime Branch Delhi and on that day at about 9:45 pm, secret informer came to his office and informed that Monu, Arvind and Srikant resident of Munirka used to deal in cocaine in wholesale and retail and on that day accused Monu and Arvind would come in Scorpio car bearing no. DL 8CAQ 9099 silver colour at Geeta Colony, near SDM office between 11:00 pm to 12:00 night and if nakabandi is done, they could be apprehended and cocaine would be recovered from their car. He further deposed that after being satisfied with the secret information, he produced the secret informer before Inspector Brijpal in his office and also communicated the secret information to him. He further deposed that Inspector Brijpal after being satisfied informed ACP Sh. R.K. Ojha regarding the secret information, who directed to take action immediately and the information was entered in roznamcha vide DD No.26 at 10:20 pm and copy thereof was produced before Inspector Brijpal in compliance of section 42 of the NDPS Act Ex.PW2/A. He further deposed that on the instructions of Inspector Brijpal, a raiding party was prepared including him, Constable Sunil, Constable Rajesh and Constable Pankaj and he took IO bag, field testing kit and electronic weighing scale and made departure entry in roznamcha vide DD No.27 at 10:35 pm Ex. PW2/B. He further deposed that they left their office along with secret informer in Swift Dzire car driven by Constable Pankaj and in the way they stopped the vehicle at red light signal Shantivan, where he asked four public persons to join the raiding party after telling them about the secret information but none of them agreed to



join the raiding party and left after telling their genuine difficulties and due to paucity of time notice could not be served upon them. He further deposed that due to lack of time search warrant for the search of vehicle of the accused persons was not obtained and thereafter, they reached near SDM office, Geeta Colony at about 11:00 pm and parked the car at the road side towards Geeta Colony and started waiting for the accused persons in their car and at about 11:30 pm, Scorpio car bearing no. DL 8CAQ 9099 was seen coming from Pusta Road on slow speed and secret informer identified the driver as Monu and the person sitting on the seat adjacent to driver as Arvind. He further deposed that thereafter secret informer left from there and when the Scorpio car crossed their car then they took their car in front of the Scorpio car and stopped the Scorpio car. He further deposed that they apprehended both accused persons namely Mohan Rai Arora and Arvind Yadav and took the search of the Scorpio car bearing no. DL 8CAQ 9099, wherein one heavy black polythene was found in the dashboard of the Scorpio car. He further deposed that on being checked said polythene, two transparent polyethene containing white powder was found and the substance / white powder of the transparent polyethene were tested through field testing kit, which was found to be cocaine and on being weighed, 200 grams of cocaine was found in each polythene mark A and mark B. He further deposed that he took two samples of 5-gram heroin from polythene mark A in small polyethene which were tied with rubber band and converted into cloth pullandas which were mark A1 and A2 and 190 grams cocaine was left in the transparent polythene mark A. He further deposed that he took two samples of 5 gram heroin from polythene mark B in small polythenes, which were tied with rubber band and converted



into cloth pullandas which were mark B1 and B2 and 190 grams cocaine was left in the transparent polythene mark B. He further deposed that he sealed all the pullandas with the seal of 6CPS/ NB DELHI and filled Form FSL and sealed it with the same seal. He further deposed that all the sealed pullandas and Form FSL were taken into police possession vide seizure memo Ex. PW2/C and he handed over the seal to Constable Rajesh and Scorpio car bearing no. DL 8CAQ 9099 was seized vide seizure memo Ex. PW2/D. He further deposed that he apprised accused persons about the secret information and told them that there are chances of more recovery of contraband from them, hence, their search would be taken and it was their legal right to give their search in presence of Gazetted officer or Magistrate and they can also take search of the police officers and he served notice under section 50 of the NDPS Act to accused persons Arvind Yadav and Mohan Rai Arora @ Monu and carbon copy of the notices are Ex. PW2/E and Ex. PW2/F and receiving of the accused persons were taken on the carbon copy of the notices. He further deposed that both accused persons refused to avail their legal right and replies of the accused persons were recorded on the back of the carbon copy of the notices Ex. PW2/G and Ex. PW2/H and thereafter, they took accused persons to their office at Kotwali and produced them before ACP Sh. R.K. Ojha in his office, where their personal search was carried out, however no contraband was recovered. He further deposed that thereafter, he prepared rukka Ex. PW2/K and handed over rukka, sealed parcels of case property, FSL Form and photocopy of seizure memo to Ct. Sunil and sent him to PS Crime Branch at 4.30 am with the directions to hand over the rukka to duty officer and remaining articles/documents to SHO PS Crime Branch. He further



deposed that after registration of FIR, investigation was assigned to SI Arvind Kumar and he handed over the documents prepared by him and custody of the accused persons to SI Arvind Kumar and also handed over keys of the Scorpio car to him. He along with SI Arvind Kumar went to the spot and SI Arvind Kumar inspected the spot at his instance and prepared site plan Ex. PW2/L and thereafter they returned to office of Narcotic Cell. He further deposed that SI Arvind interrogated accused Arvind Yadav and arrested him at about 10 am on 15.03.2019 vide arrest memo Ex.PW2/M, his personal search was effected vide memo Ex.PW2/M1 and disclosure statement was recorded vide memo Ex.PW2/N. He further deposed that thereafter, SI Arvind interrogated accused Mohan Rai Arora @ Monu and arrested him at about 11am on 15.03.2019 vide arrest memo Ex.PW2/O, his personal search was effected vide memo Ex.PW2/P and disclosure statement was recorded vide memo Ex.PW2/P1. He further deposed that that both accused persons Arvind Yadav and Mohan Rai Arora were produced before Inspector Brijpal. He submitted report under section 57 NDPS Act to senior officers which is Ex.PW2/Q. He identified both accused persons Mohan Rai Arora @ Monu and Arvind Yadav before the Court. He further identified the two transparent polythene containing cocaine Mark A and B tied with rubber band kept in a black polythene as recovered from the dashboard of the Scorpio car of the accused persons. He identified the polythene of cocaine mark A Ex. P-1 and polythene containing cocaine mark B Ex. P-2 and Black polythene Ex. P-3.

7. PW 3 Rahul, Nodal Officer, Vodaphone Idea Ltd. produced original CAF of mobile number 9999259480 issued in the name of Srikant Ranganathan alongwith it's CDR from



01.01.2019 to 13.03.2019. Certified copy of CAF along with Aadhar card is Ex.PW3/A and certified copy of CDR is Ex.PW3/B and the location chart is Ex.PW3/C. He also issued certificates under section 65B of the Indian Evidence Act Ex. PW3/D (colly.).

8. PW4 ASI Satender deposed that on 15.03.2019, he was posted at PS Crime Branch as ASI and was working as duty officer from 8 pm to 8 am. He further deposed that on that day at about 5:23 am, Ct Sunil brought rukka sent by ASI Ashok Kumar and the contents of rukka were dictated by him to the computer operator and FIR was registered vide FIR No. 61/2019 and computerized copy of FIR was obtained. He further deposed that further investigation was assigned to SI Arvind Kumar and he handed over the copy of FIR Ex. PW4/A and original rukka to Constable Sunil to be handed over to the IO. He made endorsement on the rukka Ex. PW 4/B.

9. PW5 Ct. Amit Kumar produced original diary register pertaining to the record of 2019, two reports under section 57 NDPS Act and one report under section 42 NDPS Act pertaining to the case. He deposed that as per record report under section 42 NDPS Act of FIR no. 61/2019 PS Crime was received on 15.03.2019 vide diary no.589 dated 15.03.2019 and report was put up before the then ACP, who had seen and signed the same Ex. PW5/A. The copy of relevant entry of diary register was exhibited as Ex. PW5/B. He further deposed that as per record, report under section 57 NDPS Act of FIR No.61/2019 PS Crime Branch prepared by ASI Ashok Kumar dated 15.03.2019 was received in his office vide diary no.590 on 15.03.2019 and report was seen and signed by the then ACP and the report is Ex. PW5/C and photocopy of relevant entry in diary register is Ex. PW5/A. He further deposed that as per record, report under



section 57 NDPS Act of FIR No.61/2019 PS Crime Branch prepared by SI Arvind Kumar dated 15.03.2019 was received in his office vide diary no.591 on 15.03.2019 and report was seen and signed by the then ACP Ex. PW5/D and photocopy of relevant entry in diary register is Ex. PW5/A. He further deposed that that as per record report, under section 57 NDPS Act of FIR No.61/2019 PS Crime Branch prepared by SI Arvind Kumar dated 16.09.2019 was received in his office vide diary no.1932 on 16.09.2019 and report was seen and signed by the then ACP Ex. PW5/E and photocopy of relevant entry in diary register is Ex. PW5/F.

10. PW6 Retired ACP Sh. R.K. Ojha deposed that on 14.03.2019, he was posted as ACP- N & CP in Crime Branch, Delhi and on that day, Inspector Brijpal at about 10.10 pm informed him telephonically regarding secret information that two persons namely Monu and Arvind would come to supply cocaine near Geeta Colony, SDM Office in Scorpio Car bearing no. DL 8C AQ 9099 between 11.00 to 12.00 midnight and he directed Inspector Brijpal to proceed immediately and he also proceeded to his office. He further deposed that at about 2.30 am on 15.03.2019, accused persons Monu @ Mohan Rai and Arvind Yadav were produced before him by ASI Ashok Kumar and their search was conducted in his presence vide personal memo Ex. PW2/I and Ex. PW2/J and he also produced report under section 42 NDPS Act Ex. PW2/A. He further deposed that on the same day, his Reader put up two reports under section 57 NDPS Act, both dated 15.03.2019, one prepared by ASI Ashok Kumar Ex. PW2/Q and the second prepared by SI Arvind Kumar Ex. PW6/A and he saw both the reports and signed them.

11. PW7 Sanjay Kanhaiya, Senior Assistant, Transport Office



Mall Road, Delhi brought the record of Mahindra Scorpio vehicle bearing registration no. DL 8C AQ 9099 and as per record the vehicle was owned by accused Arvind Yadav s/o Sh. A.A. Yadav, R/o. CA-4C, Block A, Munirka, DDA Flats, Delhi. The record/ particulars of the said vehicle brought by PW7 is Ex. PW7/A.

12. PW8 Ct. Sunil Kumar deposed that he was posted as Constable on 14.03.2019 with Narcotic Cell Crime Branch Delhi and at about 10.30 pm, ASI Ashok Kumar called him to his office along with Ct. Pankaj and Ct. Rajesh and told them that secret information had been received that accused Arvind Yadav and one Monu were involved in large scale trade and retail sale of cocaine with their associate Srikant in Delhi. He further deposed that ASI Ashok Kumar told them that as per information accused Arvind Yadav and Monu would come to supply cocaine to some person between 11.00 pm to 12.00 midnight near SDM office, Geeta Colony in a Scorpio vehicle Silver color bearing no. DL 8CAQ 9099 and the secret informer was also present and thereafter, raiding team was prepared by ASI Ashok Kumar and ASI Ashok Kumar had taken IO bag, field testing kit and electronic weighing machine with him. He further deposed that departure was recorded vide DD No.27 at 10.35 pm from the office of Narcotic Cell for the spot and on the way at Shantivan traffic signal ASI Ashok Kumar asked 4-5 members of the public to join the investigation but all refused citing their reasons and at about 11.00 pm, they reached near the spot and parked the vehicle on the road going towards SDM office Geeta Colony and started waiting for the Scorpio vehicle as per information. He further deposed that at about 11.30 pm, secret informer pointed towards a Scorpio vehicle bearing no. DL 8 CAQ 9099 coming from the side of Pusta Road going towards



SDM office and the secret informer disclosed that the person sitting on the driver seat was Monu and person sitting on front passenger seat was accused Arvind Yadav and thereafter, secret informer got down from their vehicle and went towards Pusta Road and just when the Scorpio vehicle passed them, they chased the said vehicle with their vehicle for about 50 meters and stopped the Scorpio vehicle after over taking it in front of SDM office and at about 11.35 pm, they had apprehended both the persons. He further deposed that ASI Ashok Kumar ascertained their names and addresses and the person sitting on the driver seat told his name as accused Mohan Rai Arora @ Monu and person sitting adjacent to the driver seat revealed his name as accused Arvind Yadav. He further deposed that ASI Ashok Kumar took search of the Scorpio car and a heavy black polythene was found from the dashboard of the said car, on being checked, two transparent polythenes containing white powder were found in the black polythene. He further deposed that opening of transparent polythene were closed with interlock zip and ASI Ashok Kumar checked the powder of both the polythenes through field testing kit and it was found to be cocaine and Mark A and B were given to the transparent polythene containing cocaine and on being weighed, each polythenes containing cocaine 200-200 grams each. He further deposed that ASI Ashok Kumar had drawn two samples of cocaine from polythene Mark A of 5-5 grams each and gave mark A1 and A2 to the samples drawn from polythene mark A and the remaining 190 grams cocaine which was kept in polythene mark A was tied with rubber band. He further deposed that ASI Ashok Kumar had drawn two samples of cocaine from polythene Mark B of 5-5 grams each and gave mark B1 and B2 to the samples drawn from polythene mark B



and the remaining 190 grams cocaine which was kept in polythene mark B was tied with rubber band and polythenes containing cocaine mark A and B were kept in the same black polythene and converted into cloth parcel and giving mark C. He further deposed that Form FSL was filled and ASI Ashok Kumar sealed all the parcels Mark A1, A2, B1, B2 and C and Form FSL with the seal of GCPS /NB DELHI and handed over the seal to Constable Rajesh and seized them vide seizure memo Ex. PW2/C and Scorpio car of the accused persons were also taken into police possession through seizure memo Ex. PW2/D. He further deposed that ASI Ashok Kumar apprised the accused persons Mohan Rai Arora and Arvind Yadav about the secret information and told them that there are chances of more recovery of contraband from them, therefore, their search would be taken and it is their legal right to give their search in presence of Gazetted Officer or Magistrate and they can also take search of the police officers and thereafter, ASI Ashok Kumar served notice under section 50 of the NDPS Act to both the accused persons Arvind Yadav and Mohan Rai Arora @Monu, carbon copy of which are already Ex. PW2/E and Ex. PW2/F respectively. He further deposed that both accused persons refused to avail their legal right and their replies were recorded on the back of the carbon copy of notice Ex. PW2/G and Ex. PW2/H respectively. He further deposed that they had taken the accused persons to their office at Kotwali and he had driven the Scorpio car of the accused persons and Ct. Pankaj had driven the white Swift Dzire car in which raiding team came to the spot. He further deposed that they reached their office at about 2.30 am on 15.03.2019 and both the accused persons were produced before ACP Sh. R.K. Ojha in his office and their search was effected but no other contraband was found from



them and ASI Ashok Kumar prepared memos of non recovery Ex. PW2/1 and Ex. PW2/J respectively. He further deposed that ASI Ashok Kumar prepared rukka and handed over to him alongwith all the sealed parcels of case property, FSL Form and photocopy of seizure memo and sent him to PS Crime Branch at 4.30 am with the directions to hand over the rukka to duty officer and case property to SHO PS Crime Branch. He went to PS Crime Branch in white Swift Dzire car driven by Ct. Pankaj and reached there at about 5.15 am and handed over rukka to the duty officer and case property, Form FSL and copy of seizure memo to SHO PS Crime Branch. He further deposed that at about 7.00 am duty officer handed over tehrir and copy of FIR to him alongwith some copies of relevant DD entry. He reached his office at about 7.45 am and handed over the said documents to SI Arvind Kumar, who recorded his statement from 9.00 am to 9.45 am. He identified accused Mohan Rai Arora in the Court and accused Arvind Yadav, who was on interim bail and appeared through video conferencing in the Court. He also identified the polythene of cocaine mark-A Ex. P-1, polythene containing cocaine mark-B Ex. P-2 and Black polythene Ex. P-3. He further identified sample parcel mark A2 Ex. P-4 and Sample parcel mark B2 Ex. P-5 as well as sample parcel mark A1 Ex. P-6 and Sample parcel mark B1 Ex. P-7. He identified original notices under section 50 of the NDPS Act Ex.P-8 and Ex.P-9, Scorpio car bearing No. DL 8CAQ 9099 Ex.P-10 and its four photographs on the judicial file Ex. P-11 (colly.).

13. PW9 HC Rajesh deposed that on 14.03.2019, he was posted with Narcotic Cell, Crime Branch, Daryaganj Delhi as Constable and on that day at about 10.20 pm, ASI Ashok Kumar called him and Ct. Pankaj and Ct. Sunil Kumar in his



office and informed that he had received a secret information that two persons namely Arvind Yadav and Monu, who resided in Munirka and involved in trade of cocaine with their one more associate Shrikant in Delhi. He further deposed that ASI Ashok Kumar further told them that as per secret information accused Arvind Yadav and Monu would come to supply Cocaine between 11.00 pm to midnight to someone near SDM office Geeta Colony in a Scorpio Car bearing no. DL 8CAQ 9099 and at the said time the secret informer was also present there and ASI Ashok Kumar prepared raiding party including him, Ct. Sunil and Ct. Pankaj and ASI Ashok Kumar took IO bag, field testing kit and electronic weighing machine and departed from office vide DD No.27 at about 10.35 pm for the spot in a private car. He further deposed that ASI Ashok Kumar had requested 4-5 public persons to join the raiding party after telling them about the secret information at Shantivan Red light Signal but no one had agreed and left after telling about their genuine difficulties and they reached at the spot near SDM Office Geeta Colony at about 11.00 pm and stopped their vehicle at a side on the road near SDM office Geeta Colony and started waiting the accused persons / Scorpio Car as per secret information. He further deposed that at about 11.30 pm, Scorpio car bearing no. DL 8CAQ 9099 was seen coming from the side of Pusta Road and on seeing the said car, secret informer pointed out it as the same in which accused Arvind and Monu were coming and secret informer disclosed that the person sitting on the driver seat was Monu and the person sitting on the front passenger seat was accused Arvind Yadav and thereafter, secret informer left their car and went towards Pusta Road. He further deposed that when Scorpio passed their vehicle, they chased it and stopped at a distance of 40-50 meters after putting their vehicle



in front of Scorpio car and they apprehended ou accused Arvind Yadav and Monu from said Scorpio car at about 11.35 pm. He further deposed that ASI Ashok Kumar confirmed names and addresses of accused persons and the person sitting on the driver seat disclosed his name as Mohan Rai and the person sitting near him disclosed his name as Arvind Yadav and thereafter, ASI Ashok Kumar took search of the Scorpio car and a black heavy polythene was found from the dashboard of the Scorpio car containing two transparent polythenes having white powder. He further deposed that ASI Ashok Kumar opened the transparent polythenes and checked the powder through field testing kit and same was found to be cocaine and the transparent polythenes containing cocaine were given mark A and B and on being weighed the cocaine in the transparent polythenes were found 200-200 grams of each polythenes. He further deposed that ASI Ashok Kumar had drawn two samples of cocaine from polythene mark A of 5-5 grams each and gave mark A1 and A2 to the samples and the remaining 190 grams cocaine kept in transparent polythenes mark A was tied with rubber band. He further deposed that ASI Ashok Kumar converted mark A1, A2 in pullandas. He further deposed that ASI Ashok Kumar drawn two samples of cocaine from polythene mark B of 5-5 grams each and gave mark B1 and B2 to the samples and the remaining 190 grams cocaine kept in transparent polythenes mark B was tied with rubber band and ASI Ashok Kumar converted mark B1 and B2 in pullandas. He further deposed that ASI Ashok Kumar kept polythenes containing cocaine mark A and B in black polythene and converted into cloth parcel and it was given mark C and he filled form FSL and sealed all the parcels and FSL Form with his seal 6CPS/NB/DELHI and seized vide seizure memo already



Ex.PW2/C and seal after use was handed over to him by ASI Ashok Kumar and the Scorpio car bearing no. DL 8CAQ 9099 was also seized through seizure memo Ex.PW2/D. He further deposed that ASI Ashok Kumar apprised accused persons Mohan Rai Arora and Arvind Yadav about the secret information and told them that there are chances of more recovery of contraband from them and therefore, their search would be taken and it is their legal right to give their search in presence of Gazetted Officer or Magistrate and they could also take search of the police officers. He further deposed that ASI Ashok Kumar served notices under section 50 of the NDPS Act to both accused persons Arvind Yadav and Mohan Rai Arora @ Monu and carbon copy of the notices Ex. PW2/E and Ex. PW2/F respectively and both the accused persons refused to avail their legal right and their replies were recorded on the back of the carbon copy Ex.PW2/G and Ex. PW2/H respectively. He further deposed that they took accused persons to their office at Kotwali and Ct. Sunil was driving Scorpio car of accused persons and Ct. Pankaj was driving white Swift Dzire car in which raiding team came to the spot and they reached their office at about 2.30 am on 15.03.2019. He further deposed that both the accused persons were produced before ACP Sh. R.K. Ojha in his office and their search was effected but no other contraband was found from them and ASI Ashok Kumar prepared memos of non-recovery Ex. PW2/I and Ex. PW2/J. He further deposed that ASI Ashok Kumar prepared rukka and handed over to Ct. Sunil along with all the sealed parcels of case property, FSL Form and photocopy of seizure memo and sent him to PS Crime Branch at 4.30 am with the directions to hand over the rukka to duty officer and case property to SHO PS Crime Branch. He further deposed that Ct. Sunil returned to



the office at about 7.45 am and handed over tehrir and copy of FIR to SI Arvind Kumar as investigation was assigned to him. He further deposed that SI Arvind Kumar arrested accused Arvind Yadav at about 10.00 am and conducted his personal search and accused Mohan Rai Arora was also arrested at about 11.00 am and his personal search was also conducted and he signed on the said documents and during personal search of accused persons, original notice under Section 50 of the NDPS Act were recovered and thereafter, accused persons were produced before Inspector Brijpal at about 12.00 noon. His statement was recorded by the IO from 12:30 pm to 1:00 pm. He identified accused Mohan Rai Arora in the Court and identity of accused Arvind Yadav was not disputed as he was interim bail and was hospitalized. Witness also submits that he can identify the case property but the production of case property was dispensed with as same has already been produced before the court and identified by the other witnesses and Id. counsel for accused persons also not insisted to produce the same.

14. PW10 ASI Mahesh Chand brought official seal issuance register for the year 2019 and as per record official seal 6C P.S./NB/DELHI was issued to ASI Ashok Kumar on 21.02.2019 and ASI Ashok Kumar returned the seal on 12.12.2019 and copy of the register having the relevant entry is Ex.PW10/A. He also brought register regarding issuance of electronic weighing machine for year 2019 and as per report on 14.03.2019 at 10.25 pm, electronic weighing machine was issued to ASI Ashok Kumar and copy of the register having the relevant entry at serial no.18 is Ex.PW10/B and ASI Ashok Kumar returned / deposited the electronic weighing machine in Malkhana on 15.03.2019 at 9.00 pm.



15. PW11 HC Pankaj deposed that on 18.03.2019, he was posted with Narcotics Cell Crime Branch, Kotwali, Delhi and on that day on the instructions of IO, he had taken sample parcels mark A1 and B1 and Form FSL duly sealed with the seals of 6C PS NB DELHI and SS pertaining to this case from MHCM PS Crime Branch Pushp Vihar, New Delhi vide RC No.194/21 and deposited the same at FSL Rohini against proper receipt and he handed over the receipt to MHC(M) ASI Jagnarayan after returning from FSL Rohini and stated that during custody of the above exhibits, they were not tampered with and they remained intact.

16. PW12 ACP Satender Sangwan deposed that on 15.03.2019, he was posted as SHO PS Crime Branch, Delhi and on that day at around 5:30 am, Constable Sunil of Narcotic Cell came to his office and produced five sealed parcels pertaining to this case to him along with Form FSL and copy of seizure memo and the parcels having marked A1, A2 and B1, B2 and C and the parcels and form FSL were sealed with the seal impression of 6CPS/NB, Delhi. He further deposed that he affixed his seal of SS on all the parcels and FSL form and mentioned FIR Number on the parcels, FSL form and carbon copy of the seizure memo after ascertaining from duty officer and also put his signatures on parcels and endorsed copy of seizure memo and thereafter, he called MHC(M) ASI Jagnarayan along with register no. 19 and handed over the parcels, FSL form with copy of seizure memo to him to deposit in the malkhana and made entry in register no. 19 and signed on the same. He further deposed that after this, he made GD No. 3A in Rojnamcha in this regard Ex.PW12/A. Copy of relevant entry in register no. 19 is Ex.PW13/A. He further deposed that Constable Sunil was relieved by him and on the



same day, in the evening IO recorded his statement in his office.

17. PW13 Retired ASI Jagnarayan deposed that on 15.03.2019, he was posted and working as MHC(M) at PS Crime Branch New Delhi and on that day Inspector Satender Sangwan, SHO PS Crime Branch called him in his office along with register no.19 at about 5.30 am and handed over 5 sealed pullandas having seals of 6CPS/NB/DELHI and SS having mark A1, A2, B1, B2 and C along with form FSL having the same seal initials and copy of seizure memo of this case to him. He deposited the said articles in Malkhana after making entry in register no.19 at serial no.3209, which was signed by Inspector Satender Sangwan Ex.PW13/A (OSR). He further deposed that on the same day, SI Arvind Kumar deposited one Scorpio Car and personal search articles of the accused persons in the malkhana by handing over the same to him and he made entry in register no. 19 in this regard at serial no.3210 Ex.PW13/B (OSR). He further deposed that on 18.03.2019, he sent the pullandas mark A1, B1 sealed with the seal of 6CPS/NB/DELHI and SS to FSL Rohini vide RC no.194/21/19 through Ct. Pankaj and he made entry in register no.19 Ex. PW13/C. He further deposed that Ct. Pankaj produced copy of receipt and acknowledgment Ex.PW13/D after depositing the said exhibits in the FSL. He further deposed that on 03.12.2019, he received FSL result along with two parcels sealed with the seal of FSL Rohini and handed over the result to the IO and deposited the parcels in malkhana and he made entry in register no.19 in this regard. He further deposed that during custody of the above exhibits, they were not tampered with and remained intact.

18. PW14 ACP Brijpal, Operation Cell Outer North District deposed that on 14.03.2019, he was posted as Inspector



Narcotics Cell, Kotwali Daryaganj Delhi and on that day at about 10.00 pm, he was present in his office and ASI Ashok Kumar produced an informer before him stating that he had received a secret information that accused Arvind and Monu resident of Munirka were indulging in the sale and supply of cocaine in Delhi and both of them would come near SDM Office Geeta Colony in between 11.00 pm to 12.00 night and on that day in their Scorpio car no. DL 8C AQ 9099 to deliver a consignment of cocaine to some of their customers. He further deposed that after verifying the facts and contents of the information from the secret informer, he conveyed the same to ACP Narcotics Cell Sh. R.K. Ojha through telephone at about 10.10 pm and ACP ordered for conducting raid and taking legal action and accordingly, he told ASI Ashok Kumar to conduct raid. He further deposed that ASI Ashok Kumar reduced the secret information in writing vide DD No.26 at about 10.20 pm and presented the same before him, which were seen and signed by him and forwarded by him to ACP Ex. PW2/A. He further deposed that ASI Ashok Kumar constituted a raiding party comprising of him, Ct. Sunil and Ct. Rajesh and briefed them about the secret information and thereafter, raiding party left the office at about 10.35 pm by a private car bearing no. DL 3CCB 2362 driven by Ct. Pankaj vide DD No.27 along with field testing kit, IO kit and electronic weighing machine. He further deposed that on 15.03.2019 at about 12.00 pm, SI Arvind Kumar produced accused Arvind Yadav and Mohan Rai Arora before him and narrated the facts about the case and he made enquiry from accused persons and satisfied himself about the recovery of 400 grams cocaine from their car. He further deposed that ASI Ashok Kumar produced special report under section 57 NDPS Act regarding recovery and seizure of cocaine



prepared by ASI Ashok Kumar and he perused the report Ex.PW2/Q and signed on the same and forwarded it to the ACP. He further deposed that SI Arvind Kumar produced special report under section 57 NDPS Act regarding arrest of both the accused persons prepared by SI Arvind Kumar and he perused the report Ex.PW6/A and signed on the same and forwarded it to the ACP.

19. PW15 SI Arvind Kumar deposed that on 15.03.2019, he was posted with Narcotics Cell, Darya Ganj, Delhi and on that day at about 7.45 am, Ct. Sunil came to him and produced original rukka and copy of FIR alongwith copies of three DD entries bearing no. 2, 3, 4 dated 15.03.2019 as investigation of the present case was marked to him. He further deposed that he perused the rukka and copy of FIR and ASI Ashok, who gave the rukka was also present in the office, produced accused Arvind Yadav and Mohan Rai Arora @ Monu before him and also produced original seizure memos, carbon copies of notices under section 50 NDPS Act, two memos regarding non-recovery and Scorpio car seized by him. He further deposed that he left both the accused persons in the office in the custody of staff and reached the spot alongwith ASI Ashok Kumar and Ct. Pankaj and they reached the spot at about 8.15 am. He prepared site plan at the instance of ASI Ashok Kumar Ex. PW2/L and thereafter, they came to their office at about 8.45 am and he recorded statement of Ct. Sunil. He further deposed that he arrested accused Arvind Yadav and Mohan Rai Arora vide arrest memo Ex. PW2/M & Ex. PW2/O and their personal search were conducted vide memos Ex. PW2/M1 and Ex. PW2/P. He recorded disclosure statements of accused persons Ex. PW2/N and Ex. PW2/P-1. He prepared report under Section 57 NDPS Act Ex. PW6/A and sent to senior



officers and both the accused persons were produced before Inspector Brij Pal, who made enquiry from them. He recorded the statement of Inspector Brij Pal and witnesses including Ct. Rajesh, ASI Ashok Kumar and ACP R.K. Ojha and thereafter, both the accused persons were produced before the court and their police custody remand for two days was obtained. He further deposed that both accused persons were brought to their office and after leaving them, he went to PS Crime Branch, Pushap Vihar and deposited the personal search articles and Scorpio car alongwith copy of seizure memo of Scorpio car in malkhana. He further deposed that on 15.03.2019, he obtained two days PC of accused Arvind Yadav and Mohan Rai Arora@ Monu and on 16.03.2019, he searched co-accused person Shrikant Rangnathan and prepared pointing out memo at the instance of both accused persons Arvind Yadav and Mohan Rai Arora Ex. PW15/1. He further deposed that on verification Ex.PW7/A, it revealed that vehicle bearing no. DL 8C AQ 9099 belonged to accused Arvind Yadav and Mohan Rai Arora. He obtained NBW of co-accused Shrikant Rangnathan and also got conducted proceedings under Section 82 Cr.PC against accused Shrikant Rangnathan. He also obtained certified copy of CDR of mobile number 9999901818 of accused Arvind Yadav and mobile number 8860127771 of accused Mohan Rai Arora and mobile number 9999259480 of accused Shrikant Rangnathan. He further deposed that on analysis of CDR, it was revealed that accused persons Arvind Yadav and Mohan Rai Arora were in contact with each other at relevant time and as per location chart, it was further revealed that accused Rangnathan was in contact with accused Arvind and Mohan Rai Arora. He prepared chargesheet in the present matter and filed before the court. He further deposed that on



15.09.2019, accused Shrikant Rangnathan was detained at IGI Airport and arrested in this case on 15.09.2019 at 12.05 pm (afternoon) vide arrest memo Ex. PW15/4 and his personal search was conducted vide memo Ex. PW15/5. He further deposed that accused Shrikan Rangnathan was produced before Inspector Brijpal Singh in the office Narcotics Cell, Crime branch and accused was sent to JC for one day. He further deposed that on 16.09.2019, two days PC remand of accused Rangnathan was taken and report under section 57 NDPS Act Ex. PW6/B is prepared. He further deposed that nothing incriminating was recovered from the search of house of accused Shrikant Rangnathan on 17.09.2019 and non-recovery memo of accused Rangnathan Ex. PW15/6 was prepared. He further deposed that supplementary disclosure statement of accused Shrikant Rangnathan Ex. PW15/7 was recorded and he obtained account statements of accused persons namely Arvind Yadav and Shrikant Rangnathan from their respective banks Ex. PW15/8 (colly). Ld. Defence Counsel objected to regarding the admissibility of evidence and mode of proof. He further deposed that as per the account statement, there was monetary transaction between them. He obtained FSL result Ex. PW15/9. Ld. Defence counsel objected to regarding the admissibility of evidence and mode of proof. He further deposed that on 15.09.2019, he seized original passport of accused Shrikant Rangnathan vide seizure memo Ex. PW15/10 and recorded statement of witnesses. He also filed supplementary chargesheet qua co-accused Ranganathan. He identified accused persons namely Arvind Yadav and Mohan Rai Arora in the Court.

20. PW16 Dr. Kavita Goyal, Assistant Director (Chemistry), FSL, Rohini, Delhi deposed that on 18.03.2019, two sealed



cloth parcels in connection with the present matter were received in her office, which were assigned to her for examination. She further deposed that the seals were found intact as tallied with the forwarded authority specimen seal. She further deposed that parcel A-1 contained Ex. A-1 i.e. white colour powdery material with lumps and parcel B-1 contained Ex.B-1 i.e. white colour powdery material with lumps. She further deposed that on Chemcial, TLC & GC-MS examination, exhibits A-1 & B-1 found containing 'Cocaine 29.9% & 59.4% respectively. After the examination, the remnants of the exhibits have been sealed with the seal of "K.G. FSL Delhi". She prepared detailed report in this regard Ex. PW15/9.

21. On 14.02.2024, Ld. counsels for accused persons admitted documents i.e. (i) copy of account opening form of account no. 05881530004712 Ex.A1, (ii) certified copy of account details from 01.12.2018 to 14.03.2019 Ex.A2, (iii) certificate under Section 65B Indian Evidence Act Ex.A3, (iv) Copy of account opening form of account no. 163710100021444 Ex.A4, (v) certified copy of account details from 01.12.2018 to 14.03.2019 Ex.A5, (vi) certificate under Section 65B Indian Evidence Act Ex.A6, (vii) certified copy of account opening form of account no. 510101000601526 Ex.A7, (viii) PAN card details of account no. 510101000601526 Ex.A8, (ix) certified copy of account transaction details from 01.12.2018 to 14.03.2019 Ex.A9, (x) certificate under Section 65B Indian Evidence Act Ex.A10 and (xi) reply given by HDFC Bank with certified copy of cheque no. 344857 Ex.A11.

**STATEMENT OF ACCUSED PERSONS U/S 313
Cr.P.C.**

22. After completion of prosecution evidence, statement of accused persons under Section 313 Code of Criminal



Procedure were recorded. Accused persons submitted that they are innocent and have not committed any offence and also have been falsely implicated in this case by the police concerned. Accused Arvind Yadav submitted that on 14.03.2019, somewhere around 6 pm, Mohan Rai Arora called him outside his society Munirka, DDA Flats. His car headlight had broken and Mohan Rai Arora deals in car spare parts, that is why he asked him to bring the same. He had brought the brochure for the car headlights. He deals and trade in garments and also an election campaigner of BJP. As he came outside his house, he saw Mohan standing outside. As he got out of his car, 5-6 policemen, who were in civil dress apprehended/ caught both of them and they made them to sit in his own car on the rear seat. He further submitted that 3-4 policemen also sat with them in the same car and the others followed them in a white Santro Car. He further submitted that the police official who sat with them in the car took their phones and put them on flight mode. Then, they took them to Darya Ganj Police Station, where they were questioned as to how do he know Srikant Rangnathan, who used to reside in the same society, where he resided. They asked him as to why he had given him a cheque of Rs. 8 Lacs. Arvind Yadav and Srikant Rangnathan had good friendly relations as they used to reside in the same society. Generally, Srikant Rangnathan used to ask him for financial help for his business, having good relations with him, he used to give him friendly loan and further the above-said cheque amounting Rs. 8 Lacs was also given for the same purpose. Then, the police asked him whether he was also involved in any drugs supply, he replied that he had never held any cigarette in his hand. Further, they questioned him about his family members and he replied to the same that his wife is



homemaker and his son used to study in DPS School, R.K. Puram. Then, the aforesaid officials asked him to pay hefty amount as bribe for letting him go. They also asked him to pay lesser amount for implicating him in an offence related to intermediate quantity and at around 11.30 pm, they were taken in white Santro to the India Gate area followed by his car driven by one of the police personnel because he had told them that there is GPS installed in his car. Then, they switched on their phone and started receiving every call, however, they were not replying to the callers. Thereafter, they made calls from his phone to Mohan's phone and vice versa in order to create evidence. Then, they drove them to the area of Geeta Colony and parked the car in a secluded place and made them to sit in the car for sometime. There also they kept on receiving the calls on his phone. Then, they took them to PS Darya Ganj. His car was left parked at Geeta Colony area with two constables. In the meantime, his family members, who were looking for him reached Geeta Colony alongwith some police personnel and opened the gate of car. When the police personnel accompanying his family members disclosed their identity to the constables sitting in the car. The constables immediately informed the police personnel at Darya Ganj Police Station/Crime Branch office, the police officials at Darya Ganj immediately lodged the FIR showing the alleged recovery of contraband from him. The said contraband was also not shown to him. They were made to sign on many blank papers. ACP Ojha was not present at any point of time during the entire process. They were produced before the ACP in the next morning. Next afternoon, Inspector Brijpal made them to write and sign on a paper that he does not want himself to be searched before a Gazetted Officer or any Magistrate.



Thereafter, Inspector Brijpal took them to the house of Srikant Rangnathan, where he called him up and was informed that he is out of India. He has been falsely implicated by Inspector Brijpal (promoted to ACP thereafter) as he refused to pay bribe to the police officials for letting him off. ACP Brijpal has also been arrested in some other case by CBI in an extortion case. Accused persons stated that being interested police witnesses, they have deposed falsely against them. Accused persons did not prefer to lead defence evidence.

23. Ld. APP has argued that the prosecution witnesses have proved beyond reasonable doubt that the accused persons namely Arvind Yadav and Mohan Rai Arora were apprehended with 400 grams of Cocaine, which comes under commercial quantity. It has been argued that the testimonies of the prosecution witnesses have remained unrebutted and uncontroverted. It is further submitted that testimonies of prosecution witnesses have proved beyond reasonable doubt that on receipt of a secret information, 400 gram of cocaine was recovered on 14.03.2019 from the car of accused Arvind Yadav driven by accused Mohan Rai Arora near SDM office, Geeta Colony, Delhi and both the accused were apprehended alongwith the car by the raiding team. It is argued that all the mandatory provisions of the NDPS Act were duly complied with by the raiding party.

24. On the other hand, learned counsels for the accused submitted that the applicant has been falsely implicated in the present case. He submits that there are serious infirmities in the case of the prosecution. They submit that even though the purported recovery happened in a public place, there are no independent witnesses. It is further submitted that in the present case, upon seizure, the compliance of Section 52A of



the NDPS Act was not made and the sampling procedure was not carried out before the learned Magistrate, which shows that accused is innocent and the entire proceedings were conducted at the police station by the investigating officers. It is argued that the accused persons have been falsely implicated as they did not accede to the illegal demand made by the police officials.

25. Arguments have been argued. Record perused.

26. In the present case, the prosecution witnesses PW2, PW8 & PW9 have deposed that on 14.03.2019 at about 9:45 pm, secret informer came to the office of PW2 and informed that Monu, Arvind and Srikant resident of Munirka used to deal in cocaine in wholesale and purchoon and on that day, they would come in Scorpio car bearing no. DL 8CAQ 9099 silver colour at Geeta Colony, near SDM office between 11:00 pm to 12:00 night and if nakabandi is done, they could be apprehended and cocaine would be recovered from their car. PW2 further deposed that after being satisfied with the secret information, he produced the secret informer before Inspector Brijpal in his office and also communicated the secret information to him. PW2 further deposed that Inspector Brijpal after being satisfied informed ACP Sh. R.K. Ojha regarding the secret information, who directed to take action immediately and the information was entered in roznamcha vide DD No.26 at 10:20 pm and copy thereof was produced before Inspector Brijpal in compliance of section 42 of the NDPS Act Ex.PW2/A. PW2 further deposed that on the instructions of Inspector Brijpal, a raiding party was prepared including him, PW8 Constable Sunil, PW9 Constable Rajesh and PW11 Constable Pankaj and he took IO bag, field testing kit and electronic weighing scale and made departure entry in roznamcha vide



DD No.27 at 10:35 pm Ex. PW2/B. PW2, PW8 & PW9 have further deposed that they left their office along with secret informer in Swift Dzire car driven by PW-11, Constable Pankaj and in the way they stopped the vehicle at Shantivan red light, where PW2 asked four public persons to join the raiding party after telling them about the secret information but none of them agreed to join the raiding party and left after telling their genuine difficulties and due to paucity of time notice could not be served upon them. These witnesses have further deposed that due to lack of time search warrant for the search of vehicle of the accused persons could not be obtained and thereafter, they reached near SDM office, Geeta Colony at about 11:00 pm and parked their car on the road side towards Geeta Colony and started waiting for the accused persons in their car. PW2, PW8 and PW9 further deposed that at about 11:30 pm, Scorpio car bearing no. DL 8CAQ 9099 was seen coming from Pusta Road at a slow speed and secret informer identified the driver as Monu @ Mohan Rai Arora and the person sitting on the seat adjacent to driver as Arvind Yadav. They further deposed that thereafter secret informer left from there and when the Scorpio car crossed the police vehicle, raiding team intercepted the Scorpio car with their car and apprehended both the accused persons namely Mohan Rai Arora and Arvind Yadav. PW2 took the search of the Scorpio car bearing no. DL 8CAQ 9099 and found one heavy black polythene in the dashboard of the Scorpio car. They further deposed that on being checked said polythene, two transparent polyethene containing white powder was found and the substance / white powder of the transparent polyethene were tested through field testing kit, which was found to be cocaine and on being weighed, 200 grams of cocaine was found in each polythene marked as mark A and



mark B. They further deposed that PW2 took two samples of 5-gram each from polythene mark A in small polyethene which were tied with rubber band and converted into cloth pullandas which were marked as Mark A1 and A2 and 190 grams cocaine was left in the transparent polythene mark A. They further deposed that PW2 took two samples of 5 gram each from polythene mark B in small polythenes which were tied with rubber band and converted into cloth pullandas which were marked as mark B1 and B2 and 190 grams cocaine was left in the transparent polythene mark B. PW2 further deposed that he sealed all the pullandas with the seal of 6CPS/ NB DELHI and filled Form FSL and sealed it with the same seal. PW2 has deposed that all the sealed pullandas and Form FSL were taken into police possession vide seizure memo Ex. PW2/C and PW2 handed over the seal to Constable Rajesh and Scorpio car bearing no. DL 8CAQ 9099 was seized vide seizure memo Ex. PW2/D. PW2, PW8 & PW9 have further deposed that PW2 apprised accused persons about the secret information and told them that there are chances of more recovery of contraband from them, hence, their search would be taken and it was their legal right to give their search in presence of gazetted officer or Magistrate and they can also take search of the police officers and PW2 served notice under section 50 of the NDPS Act to accused persons Arvind Yadav and Mohan Rai Arora @ Monu and receiving of the accused persons were taken on the carbon copy of the notices, which are Ex. PW2/E and Ex. PW2/F. PW2, PW8 & PW9 have further deposed that both accused persons refused to avail their legal right and recorded their replies in their own handwritings on the back of the carbon copy of the notices Ex. PW2/G and Ex. PW2/H. These witnesses have further deposed that they took accused persons to their office at



Kotwali and produced them before ACP Sh. R.K. Ojha in his office, where their personal search was carried out, however no contraband was recovered from them. They further deposed that thereafter, PW2 prepared rukka Ex.PW2/K and handed over rukka, sealed parcels of case property, FSL Form and photocopy of seizure memo to Ct. Sunil and sent him to PS Crime Branch at 4.30 am with the directions to hand over the rukka to duty officer and remaining articles/documents to SHO PS Crime Branch. They have further deposed that after registration of FIR, investigation was assigned to SI Arvind Kumar, who carried out further investigation.

27. PW2 has deposed that he handed over the documents prepared by him and custody of the accused persons to SI Arvind Kumar and also handed over keys of the Scorpio car to him. He further deposed that he along with SI Arvind Kumar went to the spot and SI Arvind Kumar inspected the spot at his instance and prepared site plan Ex. PW2/L and thereafter they returned to office of Narcotic Cell. PW2 further deposed that SI Arvind interrogated accused Arvind Yadav and arrested him at about 10 am on 15.03.2019 vide arrest memo Ex.PW2/M, his personal search was effected vide memo Ex.PW2/M1 and disclosure statement was recorded vide memo Ex.PW2/N. PW2 has further deposed that thereafter, SI Arvind interrogated accused Mohan Rai Arora @ Monu and arrested him at about 11am on 15.03.2019 vide arrest memo Ex.PW2/O, his personal search was effected vide memo Ex.PW2/P and disclosure statement was recorded vide memo Ex.PW2/P1. PW2 has further deposed that that both accused persons Arvind Yadav and Mohan Rai Arora were produced before Inspector Brijpal. PW2 submitted report under section 57 NDPS Act to senior officers which is Ex.PW2/Q. Witnesses PW2, PW8 & PW9



identified both accused persons Mohan Rai Arora @ Monu and Arvind Yadav before the Court.

28. The evidence led by the prosecution shows that there is no public witness. It is established proposition of law vide catena of judgments viz. ***Dharampal Singh v. State of Punjab***, (2010) 9 SCC 608; ***Raveen Kumar v. State of Himachal Pradesh***, 2020 SCC, ***Jarnail Singh v. State of Punjab***, (2011) 3 SCC 521; ***Sumit Tomar v. State of Punjab***, (2013) 1 SCC 395 and ***Mukesh Singh v. State (NCT of Delhi)***, (2020) 10 SCC 120 OnLine SC 869 that the case of the prosecution cannot be rejected merely on account of the case being tethered on the testimonies of official witnesses and non-examination of independent witnesses would thus not be fatal to the prosecution's case. The testimonies of the official witnesses cannot be disregarded merely on account of them being police officials or due to absence of corroboration from independent witnesses and the prosecution may furnish an explanation to justify the non-joinder of public witnesses during the course of the trial.

29. The Hon'ble Apex Court In the case of ***Raveen Kumar v. State of Himachal Pradesh(supra)***, while dealing with the question of whether absence of independent witnesses is fatal to the prosecution's case observed that while reliable testimonies of police officials can form the basis of conviction, lack of corroboration from independent witnesses casts an additional duty on the Court to exercise a higher degree of caution while scrutinizing the testimonies of the official witnesses. Thus, the Court has to see whether the evidence of prosecution witnesses has furnished an explanation to justify the non-joinder of public witnesses. Further the testimonies of the prosecution witnesses have to be scrutinized by exercising



higher degree of caution.

30. In the present case, the timeline as established by the testimonies of the prosecution witnesses shows that at about 9:45 PM a secret information was received by PW2, who thereafter produced the secret informer before Inspector Brijpal in his office and shared the secret information with him. Inspector Brijpal after being satisfied informed ACP Sh. R.K. Ojha regarding the secret information, who directed to take the action immediately. PW2 entered the secret information in the roznamcha vide DD No. 26 at 10:20 PM. Raiding team left for the spot at 10:35 PM as per DD No. 27. PW2, PW8 & PW9 have deposed in their testimonies that raiding team stopped at Shantivan Red light and PW2, ASI Ashok Kumar asked four public persons to join the raiding party after telling them about the secret information, but none of them agreed to join the raiding team. During his cross-examination, PW2 stated that notices are kept in the car/vehicle in which police party go for raid, to be served upon the public witnesses, who do not accept to join the investigation and on the date of incident, the notices were also kept in the Swift Dzire Car, but he did not serve the notices on the public witnessed, who refused to join the investigation. All the witnesses have admitted that though efforts were made by the IO to join the public witnesses at Shantivan redlight, however no public witnesses could be joined. Thus, the court is required to exercise higher degree of caution, while scrutinizing the testimonies of the prosecution witness.

31. The presumption of innocence until proven guilty is the cardinal principle of the criminal justice system. However, considering the adverse effect of offences under the NDPS Act on the security of the individual, society, economy and country,



which not only endanger the society at present, but hollows out generations, legislature has provided in the form of Section 54 of the Act for a reversal burden of proof upon accused, contrary to normal rule of criminal jurisprudence for presumption of innocence unless proved guilty. Section 35 of the Act provides for presumption of culpable state of mind. The presumptions under Section 35 and Section 54 of the Act, however, does not dispense with the requirement of the prosecution to establish a prima facie case in the backdrop of sufficient, cogent and clear evidence with observance of mandatory provisions under sections 42, 50, 52 and 57 of the Act, where after the accused has to be called to account for his possession. The Hon'ble Supreme Court in **Naresh Kumar vs. State of Himachal Pradesh**, MANU/SC/0908/2017 observed as under:

*9. The presumption against the Accused of culpability Under Section 35, and Under Section 54 of the Act to explain possession satisfactorily, are rebuttable. It does not dispense with the obligation of the prosecution to prove the charge beyond all reasonable doubt. The presumptive provision with reverse burden of proof, does not sanction conviction on basis of preponderance of probability. Section 35 (2) provides that a fact can be said to have been proved if it is established beyond reasonable doubt and not on preponderance of probability. That the right of the Accused to a fair trial could not be whittled down under the Act was considered in **Noor Aga v. State of Punjab** MANU/SC/2913/2008 : (2008) 16 SCC 417, observing:*

58 ...An initial burden exists upon the prosecution and only when it stands satisfied, would the legal burden shift. Even then, the standard of proof required for the Accused to prove his innocence is not as high as that of the prosecution. Whereas the standard of proof required to prove the guilt of the Accused on the prosecution is "beyond all reasonable doubt" but it is "preponderance of probability" on the accused. If the prosecution fails to prove the foundational facts so as to attract the rigours of Section 35 of the Act, the actus reus which is possession of contraband by the Accused cannot be said to have been established.



59. With a view to bring within its purview the requirements of Section 54 of the Act, element of possession of the contraband was essential so as to shift the burden on the accused. The provisions being exceptions to the general rule, the generality thereof would continue to be operative, namely, the element of possession will have to be proved beyond reasonable doubt.

32. During his examination in chief, PW2 deposed that secret information was received that Monu, Arvind and Srikant resident of Munrika, who used to deal in cocaine would come in Silver Colour scorpio on 14.03.2019 near SDM office, Geeta Colony between 11:00 PM to 12:00 PM, which is contrary to the record as DD entry no. 26 dated 14.03.2019, Ex. PW2/A shows that secret information was received that accused Arvind Yadav and Mohan Rai Arora would come to deliver cocaine on the said date, time and place. PW8 & PW9 in their examination in chief have deposed that IO called them and constable Pankaj to his office and shared the secret information, while constable Pankaj, who has deposed as PW11 stated in his examination in chief dated 19.07.2022 that IO did not tell him about the secret information. PW11 has deposed that he was only told by the IO that he had to drive the vehicle.

33. Both the accused persons Arvind Yadav and Mohan Rai Arora in their statements recorded under section 313 Cr.P.C. have levelled allegations against the police officials. Accused Arvind Yadav stated that on 14.03.2019, accused Mohan Rai Arora called him outside around 6 PM. Infact there are two calls from accused Mohan Rai Arora on the mobile of accused Arvind Yadav between 6:31 to 6:37 PM and location of both the mobile phones of both these accused



persons have been shown at Munrika village at the same time as per Ex.PW1/B and Ex.PW1/C. Accused Arvind Yadav further stated in his statement that his car's headlight was broken and thereafter he had asked accused Mohan Rai Arora to bring the same as he deals in the car spare parts. He further stated that when he got out of his car, 5-6 policemen, who were in civil dress apprehended/caught both of them and made them to sit in his own car on the rear seat and the others followed them in white santro car. He further stated that the police official who sat with them in the car took their phones and put them on flight mode. Then, they took them to Darya Ganj Police Station, where they were questioned as to how does he know Srikant Rangnathan, who used to reside in the same society, where he resided. They asked him as to why he had given him a cheque of Rs. 8 Lacs. Arvind Yadav stated that he and Srikant Rangnathan had good friendly relations as they used to reside in the same society and Srikant Rangnathan used to ask him for financial help for his business, having good relations with him, he used to give him friendly loan and further the above-said cheque amounting Rs. 8 Lacs was also given for the same purpose. He further stated that the police asked him whether he was also involved in any drugs supply, he replied that he had never held any cigarette in his hand. He further stated that police officials questioned him about his family members and he replied to the same that his wife is homemaker and his son used to study in DPS School, R.K. Puram. He has alleged that police officials asked him to pay hefty amount as bribe for letting him go. He further stated that police officials also asked him to pay lesser amount for implicating him in an offence related to intermediate quantity



and at around 11.30 pm, they were taken in white Santro to the India Gate area followed by his car driven by one of the police personnel because he had told them that there is GPS installed in his car. He further stated that police officials switched on their phone and started receiving every call, however, they were not replying to the callers. Thereafter, they made calls from his phone to Mohan's phone and vice versa in order to create evidence. He further stated that the police officials then drove them to the area of Geeta Colony and parked the car in a secluded place and made them to sit in the car for sometime. He further stated that there also they kept on receiving the calls on his phone. Thereafter police officials took them to PS Darya Ganj and His car was left parked at Geeta Colony area with two constables. In the meantime, his family members, who were looking for him reached Geeta Colony alongwith some police personnel and opened the gate of car. When the police personnel accompanying his family members disclosed their identity to the constables sitting in the car. The constables immediately informed the police personnel at Darya Ganj Police Station/Crime Branch office, the police officials at Darya Ganj immediately lodged the FIR showing the alleged recovery of contraband from him. He has alleged that said contraband was also not shown to him. He stated that they were made to sign on many blank papers. He further stated that ACP Ojha was not present at any point of time during the entire process and they were produced before the ACP in the next morning. He further stated that next afternoon, Inspector Brijpal made them to write and sign on a paper that he does not want himself to be searched before a Gazetted Officer or any Magistrate. He further stated that thereafter, Inspector Brijpal took them to the house of Srikant Rangnathan, where he called him up and was



informed that he is out of India. Accused stated that he has been falsely implicated by Inspector Brijpal (promoted to ACP thereafter) as he refused to pay bribe to the police officials for letting him off. He alleged that ACP Brijpal has also been arrested in some other case by CBI in an extortion case. Accused Mohan Rai Arora has also given similar version of the events in his statement under section 313 Cr.P.C.

34. CDR of the accused persons, which has been relied upon by the prosecution shows that as per Ex.PW1/B, there are as many as 17 calls between the accused Arvind Yadav and Mohan Rai Arora between 18:37:00 to 22:59:28, however, interestingly during this period, the locations of both the accused persons have been identical. Even at 22:59:28, the location of both the accused persons are shown to be identical. At 23:00:36, another call is shown between the accused persons and their locations though near are not identical. However again at 23:02:09, their location is shown to be same. It seems illogical that two individuals will make 17 calls to each other, while being at the same locations, however this cannot be the sole basis for disbelieving the case of the prosecution. In this regard, it is further pertinent to refer to the personal search memo Ex.PW2/P and Ex.PW2/M1. These seizure memos show that mobile phones of accused Mohan Rai Arora and accused Arvind Yadav were seized by second IO, SI Arvind on 15.03.2019 after their formal arrest at 11AM and 10 AM respectively. There is a note in both the search memos, which states that both the mobile phones have been kept switched on, for investigation and shall be deposited later. In his examination in chief, IO, SI Arvind, who deposed as PW15 has stated that he prepared the arrest memos and personal search memos of the accused persons. PW9, who was part of the raiding team



during his cross-examination stated that several phone calls were coming on the phone of the accused persons after their apprehension and IO, ASI Ashok Kumar seized the same from them. IO, ASI Ashok Kumar, who deposed as PW2 in his cross-examination, firstly stated that mobile phones of the accused persons were seized by IO, SI Arvind Kumar and then he again said that mobile phones were seized by him and after switching off the same, same were handed over to IO, SI Arvind Kumar. In view of the testimonies of PW2 & PW9, there appears stark contradictions with regard to the seizure of mobile phones of the accused persons and the same, when seen together with the identical locations of the accused persons, when calls are shown to have been exchanged between them have created a dent in the case of the prosecution.

35. It is also pertinent to observe that PW11, during his cross-examination stated that accused persons were made to sit in the vehicle driven by him at about 12:30 am on 15.03.2019 and ASI Ashok Kumar also sat in the vehicle. He further stated that IO, ASI Ashok Kumar got out of the vehicle in between. He further deposed that he does not remember, whether accused persons also got down in between or not. The testimonies of PW2, PW8 & PW9 are completely silent in this regard. There is no mention in the entire chargesheet that after the apprehension of the accused persons at the spot, IO left the police vehicle at any point of time before reaching the Narcotics Cell, Kotwali. At this stage, it is also relevant to observe that no seal handing over memo prepared by ASI Ashok Kumar has been produced on record. The recovery of contraband from an accused forms the substratum of presumption under the NDPS Act that the accused is guilty of an offence under the Act. Once recovery of contraband from the accused has been shown,



presumptions under section 35 and 54 of the Act put a reverse burden of proof on the accused. It is unclear from the testimony of the PW11, whether IO left the case property in the car or carried the same with him, while getting out of the vehicle, however in both the scenarios, the prosecution, which is required to prove the factum of recovery of contraband from the accused persons, before the presumptions under the Act comes into operation, is found to be lacking in meeting the standard of '*beyond reasonable doubt*', especially in a case, when there is clear violation of section 52A of the NDPS Act.

36. It is also pertinent to observe that as per case of the prosecution, notices under section 50 NDPS Act were served upon both the accused persons, which are Ex.PW2/F and Ex.PW2/E at the spot by PW2, ASI Ashok Kumar. However, Ex.PW2/I and Ex.PW2/J, which are the non-recovery memos state that in presence of the following witnesses personal search of the accused persons Arvind Yadav and Mohan Rai Arora was carried out, after serving upon them the notice under section 50 NDPS Act, but no contraband was recovered. ACP R.K. Ojha has also signed Ex.PW2/I & Ex.PW2/J as a witness. ACP Ojha as per the prosecution story never visited the spot and his signature on Ex.PW2/I & Ex.PW2/J witnessing the fact that personal search of the accused persons was carried out in his presence after serving notice under section 50 NDPS Act makes it doubtful as to when and where, the notices under section 50 NDPS Act were served upon the accused persons.

37. There is no DD entry produced on record, which shows arrival of the raiding team with the accused persons at Narcotic Cell, Crime branch Delhi. Further photocopy of the MHCM register, Ex.PW10/B shows only issuance of electronic weighing machine to ASI Ashok Kumar and does not show issuance of



field-testing kit to him on 14.03.2019. The testimony of PW11 is very relevant in this regard. PW11 was part of the raiding team. In his testimony, he has deposed that he did not notice IO kit. He also deposed that he could not see whether any articles were recovered from the car of accused persons. As per testimony of PW2, PW8, PW9 & PW11, they reached the spot at about 11PM and remained there for about 3 hours and during the period, ASI Ashok Kumar conducted search of the vehicle, tested the contraband in field testing kit, drew samples, filled FSL form, served notices under section 50 NDPS Act upon the accused persons. ASI Ashok Kumar PW1 stated during his cross-examination that he enquired from the accused persons while coming back to the police station to whom they were going to deliver the contraband. As per case of prosecution, accused persons and PW1 arrived in the vehicle driven by PW11. It raised serious doubt as to the case of prosecution that PW11, who had remained at the spot for almost 3 hours, neither witnessed the service of notice u/section 50 NDPS Act upon the accused persons nor he saw any articles being recovered from the car of accused Arvind Yadav or the sampling procedure done by ASI Ashok Kumar at the spot. PW11 though stated that he could see ASI Ashok Kumar making inquiries from the accused persons. The glaring inconsistencies in the case of prosecution have remained unexplained and raises reasonable doubt as to the version of the prosecution.

38. There is no documentary evidence on record to show that the proceedings under section 52 A NDPS, Act were undertaken. Testimony of PW10 is silent in this regard. Section 52 A of NDPS Act provides as under:

Section 52A of the NDPS Act

"52A. Disposal of seized narcotic drugs and



psychotropic substances.— (1) The Central Government may, having regard to the hazardous nature, vulnerability to theft, substitution, constraint of proper storage space or any other relevant consideration, in respect of any narcotic drugs, psychotropic substances, controlled substances or conveyances, by notification in the Official Gazette, specify such narcotic drugs, psychotropic substances, controlled substances or conveyance or class of narcotic drugs, class of psychotropic substances, class of controlled substances or conveyances, which shall, as soon as may be after their seizure, be disposed of by such officer and in such manner as that Government may, from time to time, determine after following the procedure hereinafter specified.

(2) Where any narcotic drugs, psychotropic substances, controlled substances or conveyances has been seized and forwarded to the officer-in-charge of the nearest police station or to the officer empowered under Section 53, the officer referred to in sub-section (1) shall prepare an inventory of such narcotic drugs, psychotropic substances, controlled substances or conveyances containing such details relating to their description, quality, quantity, mode of packing, marks, numbers or such other identifying particulars of the narcotic drugs, psychotropic substances, controlled substances or conveyances or the packing in which they are packed, country of origin and other particulars as the officer referred to in sub-section (1) may consider relevant to the identity of the narcotic drugs, psychotropic substances, controlled substances or conveyances in any proceedings under this Act and make an application, to any

39. A bare reading of section 52A NDPS, Act reveals that when any contraband/narcotic substance is seized and forwarded to the police or to the officer so mentioned under Section 53, the officer so referred to in sub-section (1) shall prepare its inventory with details and the description of the seized substance like quality, quantity, mode of packing, numbering and identifying marks and then make an application to any Magistrate for the purposes of certifying its correctness and for allowing to draw representative samples of such substances in the presence of the Magistrate and to certify the



correctness of the list of samples so drawn. The testimony of prosecution witnesses shows that neither any inventory of contraband recovered from the accused persons were drawn nor the same was forwarded to the Magistrate concerned for the purpose of certifying the correctness of inventory, taking relevant photographs in his presence and certifying them as true. Further the samples sent to the FSL were also not drawn in the presence of magistrate. The Hon'ble Supreme Court in **Mangilal v. State of M.P.**, 2023 SCC OnLine SC 862 has observed as under:

6. The obvious reason behind this provision is to inject fair play in the process of investigation. Section 52A of the NDPS Act is a mandatory rule of evidence which requires the physical presence of a Magistrate followed by an order facilitating his approval either for certifying an inventory or for a photograph taken apart from list of samples drawn...

40. The Hon'ble Apex Court recently in **Mohd. Khalid v. State of Telangana**, (2024) 5 SCC 393 observed as under:

26. Admittedly, no proceedings under Section 52-A of the NDPS Act were undertaken by the investigating officer PW 5 for preparing an inventory and obtaining samples in the presence of the jurisdictional Magistrate. In this view of the matter, the FSL report (Ext. P-11) is nothing but a waste paper and cannot be read in evidence. The accused A-3 and A-4 were not arrested at the spot.

41. In the present case, PW2 has deposed that he drew two samples of 5 gram each from both the packets. The samples drawn from the first packet were converted into cloth pullindas marked as Mark A1 and Mark A2 and the remaining contraband was also sealed in a cloth parcel after taking the same into white cloth and was marked as Mark A. Similarly the samples drawn from the second packet were converted into cloth pullindas marked as Mark B1 and Mark B2 and the remaining



contraband was also sealed in a cloth parcel after taking the same into white cloth and was marked as Mark B and all the parcels were sealed with the seal of 6CPS/NB DELHI. FSL Report Ex.PW15/9 show Parcel A-1 and B-1 sealed with one seal of 6CPS/NB DELHI and one seals of SS. PW12, SHO has deposed that seal of SS was affixed on the parcels by him after the same were handed over alongwith the FSL Form and copy of seizure memo by Ct. Sunil. The testimonies of the prosecution witness shows that no sample was drawn in the presence of magistrate nor any inventory was prepared by the SHO. The fact that the samples of the seized contraband were not drawn in the presence of the Magistrate and the inventory of the seized contraband was also not certified by the Magistrate has further shrouded the testimony of prosecution witnesses under doubt. The Hon'ble Apex Court in **Yusuf v. State**, 2023 SCC OnLine SC 1328, while discussing the mandatory nature of Section 52A of the NDPS Act observed as under:

15. In Mohanlal's case, the apex court while dealing with Section 52A of the NDPS Act clearly laid down that it is manifest from the said provision that upon seizure of the contraband, it has to be forwarded either to the officer-in-charge of the nearest police station or to the officer empowered under Section 53 who is obliged to prepare an inventory of the seized contraband and then to make an application to the Magistrate for the purposes of getting its correctness certified. It has been further laid down that the samples drawn in the presence of the Magistrate and the list thereof on being certified alone would constitute primary evidence for the purposes of the trial.

16. In the absence of any material on record to establish that the samples of the seized contraband were drawn in the presence of the Magistrate and that the inventory of the seized contraband was duly certified by the Magistrate, it is apparent that the said seized contraband and the samples drawn therefrom would not be a valid piece of primary evidence in the trial. Once there is no primary evidence available, the



trial as a whole stand vitiated.

42. In the present case, the samples drawn by PW2 on the spot at time of recovery, were sent to FSL and no samples were drawn before the Ld. Magistrate therefore in the absence of sample drawn before Ld. Magistrate and absence of Inventory of seized contraband duly certified by Ld. Magistrate as per Section 52A NDPS Act, it is apparent that the seized contraband and the sample drawn are not a primary evidence in trial, accordingly, in the absence of primary evidence with regard to samples, the whole trial stands vitiated in view of settled legal proposition as discussed by the Hon'ble Apex Court in ***Yusuf Vs. State, Supra***. Further the case prosecution is full of inconsistencies as already discussed and fall short to meet the standard of 'beyond reasonable doubt'. Accordingly, the prosecution has failed to prove the charge under section 21C, 25 & 29 of the NDPS Act against accused persons namely Arvind Yadav and Mohan Rai Arora beyond reasonable doubt.

43. In view of the abovesaid discussion, prosecution has failed to prove its case and accused Arvind Yadav and Mohan Rai Arora are acquitted of the offences under Section 21C, 25 & 29 of the NDPS Act.

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

**Announced in the open court
on this 14th Day of February, 2025.**

**(Alok Shukla)
Additional Session Judge-2/
Special Judge (Narcotic Drugs And Psychotropic
Substances)
East/Karkardooma/Delhi/14.02.2025**