

**IN THE COURT OF SH. AJAY KUMAR JAIN : SPECIAL JUDGE NDPS:
PATIALA HOUSE COURTS: NEW DELHI**

Case No. SC/9216/16
ID No. 02403R0219342015

Narcotics Control Bureau
Delhi Zonal Unit, Government of India
West Block No.1, Wing No.7,
2nd floor, R.K. Puram, New Delhi

Versus

1. **Satyam Kumar Sah**
S/o Sh. Rajender Prashad Sah
R/o L-2 A/3,
Mohan Garden, Uttam Nagar
New Delhi
2. **Ashok Kumar Tripathi**
S/o Sh. Rampher Tripathi
R/o H.No. 17, Aliganj,
Kotla Mubarakpur
New Delhi
3. **Santosh Kumar**
S/o Sh. Nand Lal
R/o H.No. 1145, Mahipalpur
New Delhi
4. **Ram Naresh**
S/o Sh. Jotta Pal
R/o C-2/103,
Nand Nagari, Delhi
5. **Brahm Pal Singh**
S/o Sh. Likhi Ram
R/o Village & PO Rupwas, Dadri
Gautam Budh Nagar, UP
6. **Pramod Pandey (not arrested in this case)**
R/o 201, Bhramdev Regency,
Near Mani Palace, Opposite Mc Donald,
Mira Road, Thane, Mumbai
7. **Vikas Pandey (not arrested)**
S/o Sh. Krishna Pandey

R/o H.No. 16, Near Hanuman Mandir,
Mahipalpur, New Delhi
Also at:
Tabela No.26, Juna Nagarda Road,
Mogra Pada, Andheri East Mumbai

8. **Rinku (not arrested)**
R/o H.No.16, Near Hanuman Mandir,
Mahipalpur, New Delhi
9. **Guddu (not arrested)**
R/o H.No.16, Near Hanuman Mandir,
Mahipalpur, New Delhi
10. **Ambalal @ Ammu (not arrested)**
S/o Sh. Bhagwati Prasad
R/o H.No.112, Tarsav, PS Sujanganj,
Tehsil, Machhalishahar, Jaunpur, UP
11. **Deepak (not arrested)**

Date of Institution : 23.10.2015
Judgment reserved on : 27.04.2022
Date of pronouncement : 21.05.2022

JUDGMENT

1. Prosecution story in brief as per complaint filed that on 26.02.2015 at around 02.15 PM, a secret information received that accused Satyam will come to Carex Cargo Express Pvt. Ltd. Mahipalpur at around 04.00 PM to collect the parcel suspected to contain narcotic tablets and other items, thereafter raiding team was constituted which reached the said Carex Cargo Express office at around 1530 hours, and shared the secret information with the staff, then at around 04.25 PM, accused Satyam came to said courier company and collected the said parcel. The enquiries were made from him by NCB officials. Notice u/s 50 was also given however nothing incriminating was recovered from his personal search. Accused told the said parcel was sent by one Pramod, and he was collecting the same on the instructions of Pramod. Accused told that he does not possess any drug license and used to export these medicines with the help of one Ashok Kumar Tripathi of Kotla Mubarakpur, and further disclosed that number

of medicines were lying at his residence thereafter these information were passed by R.K.Verma, IO to Superintendent Jai Kishan telephonically. Parcel was opened and found to contain 500 strips of zolpidem tartrate and each strip had 10 tablets. Thus contained 5000 tablets of 10 mg each. Samples were taken, seizing proceedings were completed, panchnama was prepared, whole procedure was conducted by 06.00 PM.

2. Jai Kishan, Superintendent issued search authorizations at spot u/s 41(2) NDPS Act to IO Amit Kumar to search H.No. L2/A3, Mohan Garden of Satyam Kumar Sah and to Sh. Sanjay Mehta, IO to search H.No. 17, Aliganj, Kotla Mubarakpur of accused Ashok Kumar Tripathi. From the house of accused Satyam at Mohan Garden, Uttam Nagar, tablets (psychotropic substance) and mephedrone approximately 2.6 kg were recovered in presence of landlord Shraavan Kumar. IO Sanjay Mehta, in pursuance of search authorization, reached the premises of Ashok Kumar Tripathi H.No.17, First Floor, Aliganj, Kotla Mubarakpur. There joined public witness Sanjeev Sharma who was residing in nearby house of Ashok Kumar Tripathi, notice u/s 50 was given to accused Ashok Kumar Tripathi by IO Bankey Ram however nothing was recovered from his personal search but from the search of his house 26 number of brown envelopes were found lying on his table, and he disclosed that different types of psychotropic medicines were there in the envelopes which are meant to be exported to foreign countries. Further, 23 numbers of rubber stamps, 2 CPUs were seized. Panchnama proceedings were started at 2045 hours and concluded at around 02.30 AM in the intervening night of 26/27.02.2015.
3. Accused Satyam Kumar Sah in his self written voluntary statement u/s 67 NDPS Act on 27.02.2015 disclosed that in the month of August, 2014, he met one Pramod Pandey at a tea shop who judged him that he is in need of money thereafter asked him to indulge in sending some medicines covered under NDPS Act outside India, and by this way, he can earn huge amount in less time. Thereafter, he used to call Pramod Pandey on his mobile 9899842235 and started collecting and receiving medicines from courier company and after packing the same used to give it to Ashok Tripathi who was running the

franchise of speed post at Kotla Mubarakpur, and started sending medicines to America and European countries and in return Pramod Pandey used to give him Rs. 10,000/- per month. He used to give the address of consignee on email sent by Pramod Pandey. Another associate Santosh Kumar used to give some material to him and was auto driver by profession. He further disclosed that Pramod Pandey and his brother Vikas Pandey were sending medicines in illegal manner, and used to indulge unemployed boys like him by paying money to them and as per his information, some officers of Customs and post office department were also having hand in gloves with Pramod and Vikas Pandey but their names are not known to him. He also informed the email ID of Pramod Pandey as rahul19754@gmail.com and his mobile numbers and also provided the telephone number of Vikas Pandey. He also disclosed that on 26.02.2015, he received a call from Pramod Pandey to collect the parcel containing medicines from cargo company, and was also provided with names and addresses of consignee. He stated, it is also his duty to pack them and book them through Ashok Kumar Tripathi. Pramod Pandey used to give the payment to Ashok Tripathi directly. The work of custom department was also seen by Ashok Kumar Tripathi. At his instructions he collected the parcels from Carex Cargo, but was apprehended by NCB officials, thereafter his house was raided. He during investigation also disclosed his association with Santosh Kumar, an auto driver and Mr. Vikas Pandey. On 27.02.2015, the premises of Vikas Pandey i.e. H.No. 16, Mahipalpur near Hanuman Mandir at second floor was searched after break opening of lock in presence of independent witnesses but nothing incriminating was found.

4. On 27.02.2015 the NCB team also went to the house of Santosh Kumar at Mahipalpur and issued notice u/s 50 to him but nothing was recovered from his personal search.
5. Accused Santosh Kumar on 27.02.2015 in his statement u/s 67 NDPS Act, disclosed that he used to receive parcel from Satyam Kumar Sah, and Vikas Pandey also used to call him to collect the parcels from courier company to hand over to Vikas Pandey or Guddu or Rinku, and he also used to take the parcels of

medicines to Ashok Kumar Tripathi. He also disclosed that he has delivered many parcels to Vikas Pandey, and Pramod Pandey also used to call him and give directions to collect parcels from Carex Courier company.

6. It is also found during investigation that Pramod Pandey and Vikas Pandey are persons and Vikas Pandey is still at large but Pramod Pandey is presently arrested by NCB Mumbai and is in jail.
7. On 02.03.2015, IO R.K. Verma alongwith the team went to Lodhi Road head post office where met Gillu Ram, Head post office, Lodhi Road then Ram Naresh was called who was identified by Ashok Kumar Tripathi. Accused Ram Naresh was given notice u/s 50 and from his personal search, four undelivered packets were recovered found to contain tablets of psychotropic substances. Accused Ram Naresh in his statement u/s 67 NDPS Act admitted that he knew Ashok Kumar Tripathi for last two years and Ashok Kumar Tripathi used to come to post office with heavy quantity of post/parcels and told him to hand over the post of fictitious Rohit Kumar and used to pay him Rs. 200/- per week. At around 10.00 AM, one clerk Babu handed over four packets and then at 11.45 PM, he was called by Gilu Ram and thereafter his search was taken, and these four packets were recovered containing narcotic tablets.
8. On 22.04.2015, after giving number of summons u/s 67 NDPS Act, accused Brahm Pal Singh appeared and made statement u/s 67 stated that he knew Ashok Kumar Tripathi, and also informed that Ashok Kumar Tripathi is post office collection agent, and he knew him for last 2-3 years. He informed his mobile numbers. He also stated that Ashok Kumar Tripathi used to ask him for clearance of parcel containing prohibited medicines and sometimes he used to give Rs. 1000/- or Rs. 2000/- in a month or two. Both were found to be connected through CDR analysis. On 27.04.2015, he again appeared however declined to give any further information, thereafter he was arrested.
9. During investigation on 22.05.2015 an information was received that some undelivered parcels pertaining to above accused persons were also lying at Return Letter Office, RLO, PO building Jhandewalan. The said four suspicious parcels were seized found to be containing psychotropic substances and the

consignor of three parcels is Rohit Kumar and of one parcel is Prem Singh, and the said consignor Rohit Kumar and Prem Singh were also found on envelope seized from Ashok Kumar Tripathi on 22.02.2015.

10. During investigation, CAF and CDR of accused persons were collected, samples were sent to CRCL found positive for psychotropic substances. Bank account statements were also collected of accused. Scanned copy of statement of accused Pramod Kumar Pandey forwarded through email by Superintendent, NCB, Mumbai, and from the said statement, role of accused Ashok Kumar Tripathi, Satyam Kumar Sah and Santosh also surfaced.
11. During investigation, on 07.10.2015 the PW Pardeep Singh IO (complainant) came to know that the case files of this case no. VIII/04/DZU/2015 and VIII/25/DZU/2015 are misplaced and stolen from the office of NCB. Then Zonal Director recommended registration of case and the case was registered at PS R.K. Puram. On 14.10.2015, complainant sent a letter to Zonal director through superintendent for passing order for reconstruction of file. Then the file was reconstructed thereafter, the present complaint is filed with request that supplementary complaint will be filed as and when role of other accused comes to light.

Charges

12. Vide order dated 03.03.2017, charges u/s 29 and 22A, 22B and 22C r/w section 29 NDPS Act framed against the accused to which they pleaded not guilty and claimed trial.

Prosecution Evidence

13. Prosecution for substantiating its case, examined 36 witnesses. PW1 Amit Sharma is the witness to the recovery from Carex Cargo, house of accused Satyam and also from accused Ram Naresh. PW4 Bankey Ram is the witness to recovery from house of accused Ashok Kumar Tripathi, PW5 Sanjay Mehta is the witness of recovery from the house of accused Ashok Kumar Tripathi, PW6 PV Chaudhary is the first Investigating Officer who investigated this case from 13.03.2015 to 16.07.2015, PW14 Jai Kishan Superintendent is the person who had issued the search warrants, PW24 R.K. Verma is the IO who received the

secret information and thereafter the witness to recovery of parcel from accused Satyam. PW27 Pradeep Singh, second investigating officer, PW30 R.S. Joshi, Superintendent, PW34 Vikas Yadav, IO is the witness to recovery of parcel from Satyam.

14. PW27A Ajay Kumar Bari from Carex Cargo alleged to deliver parcel to Satyam, PW33 Rajeshwar Singh also from Carex Cargo, PW22 H.S. Kohli, incharge of Carex Cargo, PW31 Sharvan Kumar, landlord in whose presence search at the room of Satyam had taken place, PW15 Sanjeev Sharma witness to the house search of accused Ashok Kumar Tripathi, PW16 Gilu Ram, Postal Assistant in whose presence accused Ram Naresh was allegedly searched. PW23 Rajesh Hooda, proprietor of Carex Cargo Forwards from Jaipur from where the parcel stated to have travelled. The summary details of depositions of prosecution witnesses are as under:

Testimony of official recovery witnesses (PW1, PW4, PW5, PW24, PW34)

15. **PW-1 Amit Kumar Sharma**, member of the raiding party stated that on 26.02.2015, on the instructions of the Superintendent Jai Kishan he along with R. K. Verma, IO and other raiding team members reached Carex Cargo Pvt Ltd, where at around 4:25 PM accused Satyam came to collect the parcel, and after collection of parcel the NCB team officials introduced themselves to him and notice u/s 50 NDPS Act was given. On opening the parcel, tablets of zolpidem were recovered which were seized and the search and seizure proceedings was concluded by 6:30 PM. Superintendent Jai Kishan also reached at spot and IO put before him a written information that the tablets also lying at his residence at Mohan Garden, thereafter on obtaining the search warrant, he alongwith IO R. K. Verma, IO Vikas Yadav and others reached his house where in presence of Sarvan Kumar landlord, eleven types of tablets were recovered and the 12th item is mephedrone. Search and seizure proceedings were conducted and completed at around 12.50 hours. The keys of premises were given to the landlord. Notice u/S 67 was given to the accused and deposited the seized tablets with malkhana in-charge, and on 27.02.2015, gave report of his seizure to the superintendent Jai Kishan. Thereafter, on 02.03.2015, he alongwith IO R. K. Verma, Sanjay

Mehta and others went to Lodhi Colony post office where they met Gilu ram postal assistant and Postman Ram Naresh was called and accused Ashok Tripathi identified the said Ram Naresh notice u/s 50 was given to him but he refused the presence of Gazetted officer and Magistrate for his search, and from his search 4 undelivered packets were recovered containing the tablets and after the search and seizing proceedings notice u/s 67 was given to the public witness Gilu Ram.

16. In cross examination stated that all the documents exhibited are not original and these photocopies are not made in his presence. He also stated that he do not remember the name of the officer with whom R. K. Verma talked, and also do not remember the name of the independent witness however they are employees of the company. He also stated that he do not remember whether in his presence accused Satyam made any call from his mobile. IO R.K. Verma at the time of briefing did not inform the name of any suspect or any airway bill number. He do not remember whether he had signed on any panchnama or the fact that name of consignor or consignee mentioned in the panchnama. He cannot tell how many persons entered in the courier office before apprehension of accused. He prepared notice u/s 50 and did not mention the airway bill number in the said notice. He did not conduct the personal search of accused Satyam therefore cannot tell if any airway bill was recovered or not. He also cannot tell whether any phone was recovered from accused Satyam or not. They came across the name of one Pramod during the said time however he do not remember whether the names of other persons surfaced. Other than Pramod, the name of Ashok Kumar Tripathi also surfaced. He did not collect photograph of Pramod Kumar and Ashok Kumar Tripathi from accused Satyam. He stated that at Mohan Garden, he met the landlord Sharvan Kumar who resides in the same locality but had not seen any document from Sarvan Kumar that he was the owner of property and even not seen the rent agreement. All the documents were prepared in the middle room of the premises. He did not issue any notice to consignor or consignee. He did not notice whether accused Satyam gave any money or document to the official of Carex, and also did not make any investigation from officials of Carex regarding Pramod Pandey. He did not ask

anything about Pramod Pandey from Sharvan Kumar. He further stated he do not know if Gilu Ram, Postal Assistant was gazetted officer or not. In his presence, no explanation with respect to recovery of packet sought from Ram Naresh vol. primarily the inquiry was conducted by R.K. Verma. He had not recorded the statement of Ram Naresh.

17. **PW4 IO Bankey Ram** accompanied the raid conducted by IO Sanjay Mehta on 26.02.2015 at the house of accused Ashok Kumar Tripathi and given notice u/s 50 to the accused, and in his presence, 26 brown envelopes containing psychotropic tablets ephedrine, 23 rubber stamps, etc were recovered. He recorded the statement of accused Satyam Kumar Sah u/s 67 NDPS Act. In cross-examination stated that he do not remember the name of person to whom accused Satyam talked on telephone about his arrest. He handed over all the documents to Sanjay Mehta. Accused Satyam Kumar Sah had no letter of authority alongwith him for the purpose of collecting the parcel when he met him in the office. Accused Satyam Kumar Sah only took the name of two persons namely Santosh Kumar and Vikas Pandey in his statement. He denied suggestion that accused did not appear before him. One ephedrine was weighed at the spot and weight of tablets were not done at the spot nor they were measured. He denied suggestion that he did not go to the house of Ashok Kumar Tripathi alongwith team. He do not know whether IO Sanjay Mehta, P.V. Chaudhary and Superintendent Ravi Shankar Joshi were under suspension and FIR was registered against them in Prevention of Corruption Act.

18. **PW5 Sanjay Mehta** stated that on 26.02.2015 alongwith team he raided house of accused Ashok Kumar Tripathi and one Sanjeev Sharma met near the address of the accused who is the public witness to the search. Accused Ashok Kumar Tripathi was identified by Sanjeev Sharma. The notice u/s 50 was served to him however nothing incriminating was recovered from personal search. From the search of his room 26 packets were recovered containing the address of consignor and consignee having medicine inside it. The recovered ephedrine tablets were 500 gm. Two CPUs were also recovered. On 02.03.2015 on the identification of accused Ashok Kumar Tripathi, postman Ram Naresh was

apprehended and from his search, 4 envelopes containing 180 tablets were recovered. On 22.04.2015 accused Brahmpal Singh appeared in the office and his statement u/s 67 NDPS Act was recorded, and he described his relationship with Ashok Kumar Tripathi in his statement and thereafter his further statement was recorded on 27.04.2015. He stated he did not summon accused Brahmpal and he was summoned by IO P.V. Chaudhary. He had confirmed that accused was same person produced before him as per the statement of Ashok Kumar Tripathi. He denied suggestion that he tortured accused Brahmpal to write the statement and the telephone number mentioned above does not belong to accused Brahmpal.

19. He stated that the FIR against the three officials was registered u/s 384/34 r.w.s 7/13 POC Act. No action was taken against him by the department however IO PV Chaudhary was suspended in the matter and departmental inquiry was also set up. No action was taken against superintendent R.S. Joshi. He further stated that he was associated with present case on 26.02.2015, by that time, seizure was already affected by IO R.K. Verma. During the recording of statement of Brahmpal he came to know about Santosh Kumar. Accused Brahmpal did not say anything about accused Santosh Kumar however he noticed the name of Santosh Kumar in the statement of Ashok Kumar Tripathi. Apart from name of Santosh Kumar, name of Pramod Pandey, Vikas Pandey, Rinku, etc also surfaced. He also stated that he did not go to Carex Cargo on 26.02.2015 or thereafter. The house of accused is situated at the ground floor and office at first floor. He had not verified the addresses mentioned on the rubber stamp recovered from his office and also denied suggestion that neither envelopes nor stamps were recovered from his office. He further stated that he had only signed on last page of panchnama Ex.PW5/2 however denied suggestion he had signed all the pages as it is easy to tamper the panchnama. He also denied suggestion the panchnama was not prepared at the spot. He also stated that parcel with accused Ram Naresh were as per postal procedure and found under jacket which is unusual, however he did not inquire or collect any office circular, standing instructions w.r.t. where a legally earmarked post/parcel is kept for delivery. He also stated

that name of Pramod Pandey, Vikas Pandey, Rinku, Guddu, Deepak and Ambalal did not figure during his stay at the spot i.e. house of accused Ashok Kumar Tripathi till 03.30 AM.

20. **PW24 R.K. Verma** stated that he received the information from secret and reliable source that one Satyam dealing in tablets containing narcotics and psychotropic substances will collect the parcel from Carex Cargo then as per the direction of Superintendent Jai Kishan constituted a team and reached the spot where met Ajay Kumar Bari and Bharat Sharma, accountant and assistant accountant who were joined as independent witnesses then around 1625 hours accused Satyam Kumar Sah came and collected the parcel thereafter, he was apprehended and from the parcel, total tablets around 5000 were recovered. Then the team reached his house and met Shraavan Kumar Sharvana who joined the search and from his middle room recoveries were made. In cross-examination stated he went to superintendent just after receiving the secret information and do not remember whether he received the information through phone or through informer and prepared the information prior to meeting the superintendent. He had seen the name of consignee and consignor of parcel before apprehension of accused. He did not seize any document with the parcel and also do not remember whether any documents were attached with the parcel or not. The airway bill was mentioned on the parcel. However do not remember whether there is any register maintained to record the entry/exit in the courier office. He do not remember whether accused Satyam Kumar Sah gave any payment or document to Ajay Kumar Bari or Bharat Sharma. One cannot see the contents of parcel until the same is opened. He do not remember whether phone number was mentioned on the parcel or not. He do not remember whether any CCTV was installed in the company or not. He denied suggestion that accused Satyam never went to Carex Cargo and he has been implicated at the behest of one Pramod Pandey who was present with them since morning on 26.10.2015 and the said parcel belonged to Pramod Pandey and that Pandey was let off by them. He denied suggestion that mobile phone of Satyam was used by Pramod Pandey or that Satyam was working with Pramod Pandey.

He also denied suggestion that Satyam Kumar Sah was not resident of L-2A/3, Mohan Garden. He also denied suggestion Satyam was picked from different place in the morning. He also denied suggestion that people of Carex Cargo were also involved with Pramod Pandey in falsely implicating accused Satyam Kumar Sah. He further stated he do not remember whether he had collected the slip or document pertaining to the parcel at the time of interception of accused. He could not tell whether the accused had telephoned any person after he was intercepted. He did not conduct any investigation for consignor or consignee nor issued any notice to them. Accused Satyam did not give any particulars of Pandey. He do not remember whether the name of Pandey or Ashok Kumar Tripathi was mentioned on the parcel however he intimated about Pandey and Ashok Kumar Tripathi to Sh. Jai Kishan. He stated that after preliminary inquiry, he informed Superintendent Jai Kishan about the outcome of preliminary inquiry and the name of Pramod Pandey and Ashok Kumar Tripathi. He stated that at around 1830 hours on 26.02.2015 Superintendent Jai Kishan came at courier company for about 15 minutes however did not remember whether he came alone or with NCB officials. He shared all the preliminary inquiries in person with Jai Kishan during said 15 minutes. The name of Pandey was not mentioned in the second information which was handed over to Jai Kishan. He do not know how Satyam reached the courier company. He did not make any inquiry from Carex officials whether Pandey or Ashok Kumar Tripathi came to collect the parcel. He do not remember whether the accused Satyam telephoned during the transportation from Carex Cargo to his house. Public witness Shравan Kumar Sharvana is the resident of same locality. He also submitted that they have checked the identity documents of witness Sharvana Kumar however not collected at the spot. He do not remember whether IO Amit Kumar took any document pertaining to the residence of accused Satyam from his house. The house was single storey. He did not mention in the panchnama prepared at Carex that Satyam was carrying key with him. He had not asked from Sharvana Kumar whether he had seen Ashok Kumar Tripathi or Pandey. He denied suggestion that Satyam was picked from different places in the morning and the

people of Carex cargo were involved with Pramod Pandey in implicating the accused.

21. **PW34 Vikas Yadav** stated that on 26.02.2015 went to Carex Cargo alongwith R.K. Verma as member of raiding team. At around 04.30 PM, accused collected the parcel thereafter, he was intercepted. He was given notice u/s 50. On opening the parcel contained 500 strips of zolpidem tablets. He also disclosed that identical tablets were also at his residence. Superintendent Jai Kishan also reached Carex Cargo company at around 1830 hours who gave the search authorization to search the house of accused Satyam Kumar Sah. There are recoveries from the house of accused Satyam Kumar in presence of Shravan Kumar. In cross-examination stated that IO R.K. Verma did not inform him about the consignor and consignee. IO R.K. Verma took secret information as well as other documents to spot. Search authorization was taken at office premises of Carex Cargo. He saw the parcel first time when the accused collected from the office. He do not remember the name of person from whom he collected. He did not hear the conversation between Satyam and the person who gave the parcel. He cannot say while receiving the parcel accused shown or handed over any identification proof or cash. He do not remember how many documents or what documents were alongwith the parcel. He did not see any name of Satyam in the said documents. Accused Satyam told them that he came to collect the parcel on behalf of one Pramod. In reply to the question that whether the accused gave mobile number and address of accused Pramod, he stated that IO R.K. Verma was enquiring from accused. He also heard the conversation between IO R.K. Verma and Satyam about Pramod. He did not take any action against Pramod as he was not the IO. He cannot tell whether the name Pramod was mentioned in the parcel. No room was found locked inside after they entered the premises. He denied suggestion that mobile phone of Satyam was used by Pramod and Vikas Pandey or that Shravan Kumar was working with Pramod and Vikas Pandey. He denied suggestion that Satyam was picked up from different place in the morning of 26.10.2015.

Testimony of public witnesses to the recovery (PW15, PW16, PW27A, PW31)

22. **PW15 Sanjeev Sharma**, witness to the search of house of accused Ashok Kumar Tripathi stated that on 26.02.2015 when he was sitting at his shop, two persons came and enquired about the house of Ashok Kumar Tripathi and he pointed out that he resided at the back side of his house then these two persons entered and thereafter 10-12 other persons also entered. He met Sanjay Mehta who showed him the card and told that they had come for some inquiry and after about 15 minutes they came back and Ashok Kumar Tripathi was accompanying them. On 27.02.2015, he was called by Sanjay Mehta then asked him 100-150 white sheets and told him to sign all. Thereafter he signed all. Then after 1.5 month, he was told by Sanjay Mehta to write one document then he copied the same and signed it and also given him Rs. 200/- On being declared hostile, he denied the proceedings and recovery conducted at the house of accused Ashok Kumar Tripathi. In cross-examination stated that NCB officials came to the house of Ashok Kumar Tripathi at 10.30 PM and left within 15 minutes and during the said night, he had not signed any document and medicines were also not recovered from the house of Ashok Kumar Tripathi. In reply to the question that NCB officials made him to sign notice u/s 50 as well as 67, he stated that the NCB officials made him to sign 100-150 slips 3X4 size parchi type in the office.
23. **PW16 Gilu Ram** stated that on 2/3.03.2015 at around 08.15-08.30 PM some NCB officials came and met postman Ram Naresh who was under him and at that time, cash lowry came and he was giving cash back to the officials of cash lowry and when he came outside the post office, NCB officials made Ram naresh to sit, and at that time Postmaster Bhagwan Malik also came. NCB officials took Ram Naresh alongwith them to NCB office and he was sent by Bhagwan Malik to NCB office. He was let of from NCB office at around 06.00 PM and no proceedings were done in the entire day. This witness correctly identified Ram Naresh and Ashok Kumar Tripathi. On being declared hostile, he stated that statement u/s 67 was written by him on the dictate of NCB officials. He knew Ashok Kumar Tripathi who was a speed post agent and was working with post

office and used to bring parcels from outside and booking their post office. Ashok Kumar Tripathi came with NCB officials at post office on 02.03.2015 however denied suggestion that Ashok Kumar Tripathi identified Ram Naresh. He also denied that any notice u/s 50 was given to Ram Naresh. He also denied the recovery of packets and panchnama proceedings.

24. **PW-27A Ajay Kumar Bari** stated that accused Satyam Kumar collected the parcel after showing his identity, thereafter, he was intercepted by NCB official who made inquiry from him and conducted search and seizure proceedings. In cross-examination stated that he do not know the name of the persons who brought the parcel in their office. The parcel came from Jaipur. The parcel did not contain any particular address in Delhi and contained the name and mobile number only. No document attached with the parcel except one POD. He had not seen POD today in the Court but seen the same on 26.02.2015. When the parcel received at the office registered entry used to be prepared but presently he did not remember whether the said entries were made or not. The NCB officials had not demanded any register or POD from him or his colleagues. He further stated it is correct that delivery of parcel is not his duty or the duty of Bharat Sharma. H.S Kohli was not present during proceedings however present in his room. The said parcel was delivered to the accused by Rajeshwar. Apart from Rajeshwar and the lady, no other person was present in the said room. Vol. Two NCB officials were inside their office and two were outside. He did not hear the conversation between suspect Satyam and the said lady and Rajeshwar. The suspect did not give any cash and he did not hear the conversation between the suspect and the lady or Rajeshwar.

25. **PW31 Shravan Kumar** stated that he rented out the H.No. L-2/3, Mohan Garden, Uttam Nagar to accused Satyam Kumar Sah. On 26.02.2015 at around 08.30 PM when he was near the tenanted premises, some NCB officials made enquiries from him regarding the ownership. Accused was also with them. NCB officials showed him the search authorization. The NCB officials opened the house as accused Satyam Kumar Sah was having the key. From the middle room various types of medicines lying on the floor and white colour powder was also

in the said room. The weight of powder is around 2.6 kg. The said medicines were seized. He also stated that he went to NCB office for statement on 15.04.2015 and also gave photocopy of agreement to sell and I card. After being allowed for leading questions, he stated that NCB officials showed him the search authorization. In cross-examination stated that NCB officials showed him the search warrants outside his house. He was using mobile no. 9268900299. He met Satyam 1 ½ year prior to 27.02.2015, he also stated that he did not make any bank transaction with regard to the rent collected from Satyam and used to pay the rent in cash. When he had a talk with NCB officials, they were out of car and seen the car nearby. The rented house to Satyam was single storey. The mother and wife of accused were not present inside when he entered alongwith NCB officials. He had seen the wife and mother of accused prior to 26.02.2015 but do not remember the date. He stated IO Chaudhary prepared the documents at the spot but do not remember the names of other officials. He denied suggestion that he used to work with Pramod Pandey and Vikas Pandey. He also denied suggestion that recovered substance belonged to him, Pramod Pandey or Vikas Pandey.

Testimony of investigating officers (PW6, PW27)

26. **PW6 P.V. Chaudhary** (first Investigating Officer) stated that on 13.03.2015, he was assigned the present case and he recorded the statement of Gilu Ram u/s 67 NDPS Act on 20.03.2015, and he also served summons u/s 67 to accused Brahmpal on 31.03.2015. On 15.04.2015 recorded the statement of Shraavan Kumar u/s 67. He also recorded the statement of Sanjeev Sharma and H.S. Kohli. He also seized four parcels lying at RLO, PO Building, SRT Nagar, Jhandewalan. In cross-examination stated that he used to send the summons u/s 67 NDPS Act to the relevant persons on being surfaced the name of the person during inquiry however do not remember the number of persons to whom issued the summons. He has not issued the summons for more than 10-15 persons in this case. Except Biswadeep Bansal of Tirupati Pharma, all others appeared before him. Biswadeep Bansal sent two weeks medical rest and he did not summon him again after lapse of two weeks as the file was transferred from him.

He cannot tell any reason of transfer. Biswadeep Bansal just to save himself has filed a complaint against him in NCB and Delhi Police. However he cannot tell whether summon is a part of judicial record or not. There is an FIR registered on the complaint of Biswadeep Bansal against him as well as IO Sanjay Mehta and Superintendent R.S. Joshi. He had no knowledge about the outcome of FIR and he was repatriated to his parent department i.e. CISF. He did not confront any accused with accused Satyam Kumar Sah. He also sent notices u/s 67 to Vikas Pandey, Amu @ Ambalal and Rinku, and volunteered that Pramod Pandey was already arrested in another case by NCB at Mumbai and all these accused not responded. He informed NCB Mumbai through Zonal Director about this case against Pramod Pandey and NCB DZU also received some reply from NCB Mumbai to this effect (but there is nothing on record what replies are sent from NCB Mumbai). He was associated with investigation of this case for about 4 months. In this case, he wrote letter to manufacturer at Himachal Pradesh then to M/s Leeford House, Ludhiana who told them that these were sold to M/s Tirupati Pharma whose proprietor is Biswadeep Bansal. However he do not remember whether the letters were in the file or not. He also do not remember the exact date when he had given official letters to Leeford or Innova Cap. The investigation remained with him from 13.03.2015 to 16.07.2015. He did not ask any question from accused Ashok Kumar Tripathi pertaining to recovery at Jhandewalan. He stated that there are huge entries i.e. in a single date there were many transactions of big amount from the PNB account of Ashok Kumar Tripathi and he did not ask Ashok Kumar Tripathi any question about these transactions. He not only analysed his PNB account but also account in HDFC and ICICI Bank having huge entries but volunteered that he did not analyse the statement of account of ICICI Bank. He had not made any inquiry regarding entries with Ashok Kumar Tripathi and the analysis was done by him only without making any inquiry from any other person. He did not confront the arrested accused persons after obtaining their call details from the service providers. He also stated he do not remember whether any proceedings were conducted against Pramod Pandey. No transcript was obtained of CDR.

27. **PW27 Pradeep Singh** stated that in the month of August, 2015 investigation was handed over to him and after going through the file he came to know that various steps yet to be taken to complete the investigation and same were brought into the knowledge of zonal director. Thereafter he seeks further time for completion of investigation and two months time was granted. The said application alongwith the report is Ex.PW27/1. He also filed an application for noting down the batch number and manufacturing details of seized substances which was allowed and for doing the same, date fixed is 07.10.2015. On 07.10.2015 he was directed to bring the case property in court however in the morning when he was preparing to come to the court, found some files missing (he did not state when he filed the application). Then he brought the said fact into the knowledge of superintendent and his colleagues. The matter was fixed in the court at around 11.30 AM therefore instructed his colleagues to trace the misplaced file. The property was opened in court room on 07.10.2015 and the same was brought by malkhana officials. He prepared the particulars of batch number and manufacturing details. The files could not be traced and it was confirmed that these files had been stolen therefore, prepared a detailed report (Ex.PW27/3) and made an original complaint to SHO PS R.K. Puram. The said report was seen by zonal director on 08.10.2015 as he was out of station on that day having additional charge. The said fact was reported to DDG/NR and DG, NCB and it was instructed to file FIR thereafter FIR was filed. On 16.10.2015 zonal director issued order for reconstruction of file. On 21.10.2015 he wrote a letter to Branch Manager, ICICI Bank to furnish bank details of accused Ashok Kumar Tripathi and bank provided him the summary of accounts from 01.01.2013 to 30.10.2014 and from 01.11.2014 to 30.10.2015. On 22.10.2015 Sh. R.S. Joshi handed over him statement u/s 67 of accused Pramod Pandey recorded by NCB Mumbai alongwith printout of email to show that the same was received by Sh. R.S. Joshi through email. He reconstructed the file and collected photocopy on some of the documents from Sh. Rajesh Manchanda, SPP which he provided at the time of seeking extension of time. He stated that he got photostat copies from original documents and handed over to him after tallying documents

in original. The CDRs categorically show that Ashok Kumar Tripathi, Satyam Kumar Sah, Santosh Kumar, Ram Naresh, Brahmopal Singh, Pramod Kumar Pandey, Rinku, Ambalal, Vikas Pandey were connected. He also analysed the bank details of Ashok Kumar Tripathi showing huge transactions and unaccounted amount derived from illegal deals of drug. He filed two applications for issuance of warrants against unarrested persons and for adducing secondary evidence. Subsequently he also filed list of documents for which permission was sought to lead secondary evidence. He identified all the accused persons. He stated he signed the complaint after reading the same however cannot tell whether it is mentioned in the complaint that the photocopies of documents are with him and he personally handed over the same to Rajesh Manchanda, SPP. He further stated that P.V. Chaudhary was repatriated during the investigation of this case and thereafter, the inquiry was terminated. He denied suggestion that no copies of documents were handed over by him to Rajesh Manchanda. He stated he does not have knowledge about the FIR no. 892/15 u/s 384/34 IPC r/w section 7/13 POC Act registered on 01.08.2015 against Superintendent R.S. Joshi, IO P.V. Chaudhary and IO Sanjay Mehta on the complaint of one Biswadeep Bansal. He denied suggestion that these officials used to notice u/s 67 to various persons for extorting the money. He also denied suggestion that a notice u/s 67 was issued to one Biswadeep Bansal in present case who was left after taking money. He further stated he do not know whether the investigation of this case was handed over to him because Superintendent R.S Joshi, IO PV Chaudhary and IO Sanjay Mehta got suspended. He stated that he do not know when the case was handed over to him and at the time of handing over investigation case file was also handed over to him he denied suggestion that documents were misplaced to conceal the real officials who had done the mischief and also to save the real culprits namely Pramood Pandey, Vikas Pandey and Biswadeep Bansal. He further stated that they have not taken the NBWs against accused Pramood Pandey and Vikas Pandey prior to the filing of the complaint because the offence committed by them are cognizable, and NCB officers are competent to arrest them even

without NBWs. He denied suggest they had not taken any action against Pramod Pandey and Vikas Pandey deliberately.

28. He further stated that he had joined the investigation in the middle of 2015, *the papers were more than thousands when assigned to him*. He stated after assignment of the case he came to know that the original file is missing on 07.10.2015 i.e. after 50 days. He denied suggestion that the FIR has been registered against the NCB official. He stated that he had connected Brahmpal Singh from the said post office on the basis of mobile phone connection between Brahmpal Singh and Ashok Kumar Tripathi and not recorded the statement of any post office official for further narrow down in this regard. He had not seized any mobile of accused Brahmpal Singh and also do not remember whether anybody has seized his mobile. He further stated that he analysed the bank account of accused Ashok Kumar Tripathi, however, none of the accused could be connected through the bank account of accused Ashok Kumar Tripathi.

29. He also stated that he used to report Jai Kishan and R.S Joshi Superintendent. He do not remember whether he took original files before either of the superintendents. He further stated in reply to the question whether he had received any original documents pertaining to this case after investigation was handed over to him stated as far as he remember the CDRs of Santosh Kumar, CFSL reports, statements of Pramod Kumar Pandey received through e-mail etc. but do not remember the name of any other document at this time. The statement of Pramod Kumar Pandey was handed over to him by R.S. Joshi Superintendent on 22.10.2015, however he could not make investigation as further time of extention was not given. He stated that he along with IO Anand Kumar and IO Rajeev Sehrawat after filing of the complaint went to record the statement of Pramod Pandey to Mumbai Court. However, he did not mention this in his complaint. He further stated that he has not given notice under Section 67 to accused Pramod Pandey but efforts were made. He also stated that on 07.10.2015, not made any intimation to the Court regarding loss of original documents. He further stated that he brought the case file of this case lastly on 23.09.2015, prior to his knowledge of missing on 07.10.2015. He had not made

the photocopy of the documents on 23.09.2015 or thereafter. However, the photocopy of the documents got already done. He did not give any notice under Section 67 to Vikas Pandey, Rinku, Guddu, Ambalal and Deepak.

Testimony of superintendents (PW14, PW30)

PW14 Jai Kishan, Superintendent NCB stated that on 26.02.2015 IO R.K. Verma gave him written secret information that accused Satyam will come to collect the parcel from Carex Cargo Express Ltd, then he marked the information to him for legal action. After receiving a call from courier company from R.K. Verma, he reached there with seal movement register and search authorization. It was also informed that house of Ashok Kumar Tripathi was also to be searched. Then he marked the said information to IO Amit Kumar Sharma and IO Sanjay Mehta. The seizure report u/s 57 was submitted by IO Sanjay Mehta on 27.05.2015 and by IO Amit Kumar Sharma on 27.05.2015. On 28.02.2015 IO Sanjay Mehta gave the seizure report u/s 57. In cross-examination stated that there was a reference of pramod Pandey and Santosh in the information put by IO Bankey Ram and there was no reference of Vikas Pandey, Guddu and Rinku however again stated that there was reference of Vikas Pandey also but he do not remember whether Pramod Pandey was in jail in Mumbai at that time. He also stated that he stayed at Carex Cargo for 10 minutes having no talks with Satyam Kumar Sah, and during that time no document qua Satyam was produced or prepared before him. During his stay at Carex Cargo he had not heard the name Vikas Pandey and Pramod Pandey.

30. **PW30 R.S. Joshi** stated that on 15.03.2015 he received a letter from FPO for not to grant leave to accused Dharampal and also received summon serving report from Director, FPO. On 27.04.2015 he received arrest report of accused Dharampal. On 19.05.2015 he received report of analysis of sample from CRCL. On 22.05.2015 IO P.V. Chaudhary put a secret information to him and thereafter on search filed a seizure report. On 29.06.2015 he wrote a letter to Zonal Director NCB Mumbai for locating the co-accused persons of this case and on 30.06.2015 he sent a letter to Zonal Director, Lucknow. On 22.10.2015, he received a scanned copy of statement of Pramod Pandey through email. The

same was marked to IO Pradeep Singh. On 14.10.2015 a letter was written by complainant to him regarding theft of file and reconstruction of case file. On 16.10.2015, he issued office order for reconstruction of file.

31. In cross-examination stated that IO Pradeep informed about missing/theft of files in the month of October, 2015. He also stated that on 22.10.2015 received copy of statement of Pramod Pandey through email and after reading the same, marked to IO Pradeep Singh. The photocopies of documents were not taken in his presence. He denied suggestion that he had deliberately not issued any direction for arresting accused Pramod Pandey and Vikas Pandey. He also denied suggestion that IO of this case was involved in misplacing/theft of files to save Pramod Pandey and Vikas Pandey.

32. He saw the original documents of this case sometime in the month of March/April 2015 and came to know that original file was misplaced in October, 2015. He saw the original file upto September, 2015. He also stated that he had the names of Pramod Pandey, Vikas Pandey, Guddu, Rinku, Deepak, Ambalal during investigation but not received their photographs. He did not take any steps to apprehend the accused as this is the job of IO. He wrote two letters to Zonal Director, Mumbai and Zonal Director, Lucknow in respect of Vikas Pandey and Ambalal however not sent any reminder and no reply was received from Lucknow Zone. In the letter sent to them, he enclosed with the said letters CAF of mobile phones to show the address. After seeing the statements of witnesses, he mentioned the name of the persons but did not take any action against them. He further denied suggestion that he alongwith NCB officials did not take action against Pramod Pandey, Vikas Pandey and others deliberately.

Testimony of other witnesses

33. **PW2 S.S. Shekhawat**, Superintendent, Foreign Post Office exhibited the file of investigation in respect of Brahmopal Singh who was suspended from the office on 29.04.2015, but stated that he do not have any personal knowledge about the case.

34. **PW3 B.L. Bairwa**, IO accompanied IO R.D. Sharma to the house of accused Santosh Kumar where he had given notice u/s 50 to accused Santosh Kumar and

notice u/s 67 to accused Santosh Kumar, then visited house of Vikas Yadav where nothing incriminating was recovered. He recorded the statement of Ram Naresh on 02.03.2015. In cross-examination he denied suggestion that accused Santosh Kumar was lifted forcibly from his house. He had not photocopied the documents exhibited by him and handed over the documents on the same day to concerned IO after its preparation.

35.PW7 Rachit Garg, Manager HDFC exhibited the statement of accounts of Ashok Kumar Tripathi however denied suggestion that the said documents are manipulated and fabricated.

36.PW8 Anita Gupta, parcel clerk in RLO, New Delhi witness who handed over RL packets four in number to the NCB officials containing tablets. **PW9 Israr babu**, Alternate Nodal Officer, Vodafone exhibited the call record of mobile no. 9711851724 in the name of Luvkush Kumar Pandey, 9711555617, 9619158845, 8601774960, 9899256131, 9899842235, 9769776367.

37.PW10 Pawan Singh, Nodal Officer, Idea exhibited the CAF of the mobile number 8573077692, 8682466001. The CDRs of above mobile numbers could not be brought as more than one year old and he did not know whether previously the CDRs of these numbers were provided to NCB. **PW11 Amit Kumar Sharma**, Nodal Officer Reliance Communications exhibited the CAF and CDR of mobile number 9958639192. **PW12 Ajay Kumar**, Nodal Officer Bharti Airtel exhibited the CAF and CDRs of mobile number 8130568580, 9810606538, 9810792826 and 7715930609.

38.PW13 Ajay Kumar Dahiya, IO stated that he recorded the statement of one Ajay Kumar Bari u/s 67 NDPS Act, and accompanied IO P.V. Chaudhary and team to RLO PO as received information regarding undelivered parcel on 22.05.2015.

39.PW17 Satish Nayalkar, Junior Scientific Officer CFSL, Hyderabad and **PW18 S.N. Rasool**, Assistant Director, CFSL, Hyderabad exhibited the CFSL report Ex. PW17/2.

40.PW19 Rajender Dutt Sharma, IO raided the house of Vikas Pandey on 27.02.2015 however it was found locked and the lock was broken in presence of independent witness Ramesh however no incriminating material was recovered

from the said house. Thereafter, NCB officials alongwith Ramesh Kumar went to the house of Santosh Kumar where he was given notice u/s 50 but nothing incriminating was recovered from him. The notice u/s 67 was also given to accused Santosh. He also recorded statement u/s 67 of Santosh Kumar and Ashok Kumar Tripathi. In cross-examination stated that he do not remember whether he had put a question to accused Santosh that he had the knowledge that goods carried by him in his auto rickshaw were prohibited or banned under NDPS Act. **PW20 Rajesh Kumar**, Assistant Chemical Examiner, Customs House, Kolkata exhibited the CRCL report Ex. PW20/C and D. **PW21 Ganga Ram Bharti**, Joint Director CRCL New Delhi also exhibited CRCL reports. **PW22 H.S. Kohli** stated that he was working as Marketing and collection executive at M/s Carex Cargo Pvt. Ltd. In 2015 some medicines from Jaipur came and to collect those medicines different people such as Satyam, Santosh, Pramod, etc. came and one shipment of medicine, the date he do not remember, NCB officials came and some person in the name of Santosh came to collect the medicines who was apprehended by the NCB officials. He had given statement u/s 67. He further stated that the consignments were coming in the office in the form of sealed packages and did not accompany any declaration. He did not disclose that the medicines were coming in the consignments however handed over the relevant documents. It is also correct that the documents which were handed over by him having no mention about the contents. He also denied suggestion that he was not present in the office when NCB officials came. **PW23 Rajesh Hooda** stated that he went to NCB office on receiving the notice and tendered his statement and also documents. In cross-examination stated that he is proprietor of Carex Cargo Forwards, and they used to issue consignment note for booking the consignment in their office and further used to give one copy to consignor and remaining two copies were sent to Delhi office. He cannot produce the original.

41. **PW25 Ajay Sharma** Assistant Chemical Examiner, New Delhi exhibited the chemical examination report. **PW26 Hawaldar Bhuvanesh Kumar** took the sample to CRCL.

42. **PW-28 Sepoy Yogesh Kumar** went to CFSL, Hyderabad to collect the remnant sample. **PW29 Vasudev Bhardwaj**, Hawaldar NCB also collected remnant sample from Hyderabad.
43. **PW32 HC Mahinder Singh** deposited the samples in CRCL, Pusa. **PW33 Rajeshwar Singh** was working at Carex Cargo however stated that he do not remember the date and do not remember whether his statement was recorded regarding delivery of parcel however on being declared hostile, in cross-examination stated that he received notice u/s 67 (Ex.PW6/27). However unable to identify Santosh Kumar. In cross-examination stated that one Mahavir was also working for delivery. The respective parties filled the entries in DRS and there is no telephone number mentioned in airway bill. They can deliver the parcel to any other person then consignee if instructions are issued at the time of booking the parcel. They can deliver the parcel to any other person only on the instructions of higher ones. **PW35 Sanjeev Kumar** Sepoy delivered the case property to CFSL as well as samples mark A1 to D1.
44. **PW36 Surender Kumar Sharma** incharge manager, RLO, SRT Nagar, Post Office Building, Jhandewalan stated that in the month of May, 2015 NCB officials came in the office and shared the information with them that some articles are lying in the office. The questioned four articles lying in the office were opened out of which one had big number of tablets, another having small number of tablets and two other packets also having small number of tablets. Memo was prepared. In cross-examination stated that he cannot tell whether the parcel recovered in his presence contained the address of India or foreign country as consignor/consignee. He do not know whether the questioned parcel/speed post received back contained the stamp of export/import clearance or not.
45. All the accused in their statements u/s 313 Cr.PC denied all the incriminating circumstances put to them. Accused Satyam stated that he was working part time with Pramod Pandey and Vikas Pandey and when he demanded salary, they threatened him. On 26.02.2015 Vikas Pandey alongwith some persons came to his house, thereafter he was taken to NCB office and in NCB office he was

stripped naked and his signatures were obtained on blank papers and his ID was used for obtaining the mobile no. 9958639192. Accused Ashok Kumar Tripathi stated that he is merely a postal agent and he is falsely implicated. No search was conducted at his house. The FIR of the theft of original file was registered to save the erring NCB officials who were implicated in FIR no. 892/2015 PS Shahbad Dairy u/s 384/34 IPC and u/s 7/13 POC Act. Accused Santosh Kumar stated that he is plying auto rickshaw and the sealed parcel were delivered after collection. He only received hiring charges and falsely implicated in this case. Accused Ram Naresh stated that he has not delivered any parcel to Ashok Kumar Tripathi and NCB officials forcibly took him from his desk. Furthermore, there is no restriction or bar in keeping the assigned parcel/packets in the official jacket. Accused Brahm Pal Singh stated that he has nothing to do with recovery of contraband in this case. He is only employee of postal department and has no concern whatsoever qua the accused persons. He also examined in his defence DW1 Rajbir Singh and DW2 Sonu Kumar Jha.

Material Exhibits:

46. **Ex.PW27/13** is the complaint filed by IO Pradeep Singh. **Ex.PW14/1** is the secret information dated 26.02.2015 recorded at 1415 hours by IO R.K. Verma regarding the fact that accused Satyam would come at Carex Cargo to collect a parcel at around 04.00 PM regarding airway bill/consignment no. 54693 and the said parcel is suspected to contain tablets and other narcotic items. On the said information the superintendent authorized R.K. Verma to constitute a team and take necessary action. **Ex.PW1/3** are the entries of seal movement register. **Ex.PW1/1** is the notice u/s 50 dated 26.02.2015 issued to accused Satyam. **Ex.PW24/1** is the panchnama dated 26.02.2015 regarding recovery of parcel from accused Satyam at Carex Cargo office. The search was started at 1645 hours and concluded at 1830 hours. **Ex.PW14/2** is another information dated 26.02.2015 recorded at 1835 hours by R.K. Pandey. On preliminary inquiry from accused Satyam that he is involved in exporting psychotropic medicines in association with Ashok Kumar Tripathi which was conveyed to Superintendent Jai Kishan on phone who conveyed that he is reaching the spot to give further

directions. **Ex.PW1/4** is the search authorization regarding house of accused at Mohan Garden. **Ex.PW1/5** is the panchanama dated 26.02.2015 of the house of accused Satyam regarding recovery of medicines from his room in presence of Shravan Kumar. **Ex.PW1/7** is the entry in malkhana register. **Ex.PW1/2** is the information dated 26.02.2015. **Ex.PW4/1** is the notice u/s 50 given to accused Ashok Kumar Tripathi. **Ex.PW5/2** is the panchnama dated 26.02.2015 over the recovery from the house of Ashok Kumar Tripathi in presence of Sanjeev Sharma started at 2045 hours and ended at 0230 hours. The statement of accused Satyam u/s 67 NDPS Act dated 27.02.2015 recorded by IO Bankey Ram (not exhibited). **Ex.PW4/2** is the arrest memo and jamatalashi memo of accused Satyam Kumar Sah. **Ex.PW14/3** is the seizure report u/s 57 NDPS Act. **Ex.PW1/8** is the seizure report u/s 57 prepared by Amit Sharma. **Ex.PW4/3** is the arrest report of accused Satyam Kumar prepared by Bankey Ram. **Ex.PW4/4** is the information dated 27.02.2015 at about 12.20 hours recorded by IO Bankey Ram that on preliminary inquiry, accused Satyam Kumar Sah stated that he was doing the export of psychotropic substances without any valid authorization in association of Santosh Kumar and Vikas Pandey. **Ex.PW14/4** is the search authorization dated 27.02.2015 of the house of Vikas Pandey. **Ex.PW19/1** is the panchnama of the search of the house of the accused Vikas Pandey. **Ex.PW19/3** is the notice u/s 50 to accused Santosh Kumar. **Ex.PW19/4** is the statement of accused Santosh Kumar u/s 67 NDPS Act. **Ex.PW19/7** is the arrest memo and jamatalashi memo of accused Satyam. Jamatalashi memo also showing recovery of Nokia mobile. **Ex.PW19/5** is the statement u/s 67 of accused Ashok Kumar Tripathi. Photocopy of diary containing the payments given by accused Ashok Kumar Tripathi to Brahmpal (not exhibited). **Ex.PW19/8** is the arrest memo of accused Ashok Kumar Tripathi. **Ex.PW19/9** is the jamatalashi of accused Ashok Kumar Tripathi with seizure of one mobile having SIM no. 9810666538. **Ex.PW14/5** is the arrest report of accused Ashok Kumar Tripathi. **Ex.PW14/6** is the arrest report of accused Santosh Kumar. **Ex.PW5/5** is the seizure report u/s 57 regarding recoveries from the house of accused Ashok Kumar Tripathi. **Ex.PW14/7** is the information dated 02.03.2015 recorded at 1045 hours

regarding the accused postman Ram Naresh. **Ex.PW1/9** is the notice u/s 50 to Ram Naresh. **Ex.PW16/1** is the panchnama dated 02.03.2015 at Lodhi Road head office regarding recovery of 4 undelivered parcels from him in presence of Gilu Ram (Postal Assistant) containing medicines. **Ex.PW3/2** is the statement of accused Ram Naresh u/s 67 in which he stated that on 02.03.2015 at around 09.00 AM clerk Babu hand handed him four packets of address Rohit Kumar, 60, B.K. Dutt Colony, and at around 11.45 he was called by postal assistant Gilu Ram. Thereafter his search was taken by police officials and taken the parcels containing medicines. He disclosed his mobile no. 9899256131. He disclosed that he used to get Rs. 200/- from Ashok Kumar Tripathi for handing over undelivered envelopes however he does not have any knowledge what was containing in the said parcel. **Ex.PW3/3** is the arrest memo and jamatalashi memo of accused Ram Naresh showing recovery of his mobile. **Ex.PW24/2** is the copy of test memo of the recovery from Satyam Kumar Sah at Carex Cargo. **Ex.PW3/5** is the arrest report of accused Ram Naresh. **Ex.PW14/10** is the seizure report of the medicines recovered from the envelopes of accused Ram Naresh. **Ex.PW3/6** is the statement of one Ramesh Kumar Patel, witness to the search of room of Vikas Pandey. **Ex.PW2/1** is the letter dated 12.03.2015 accompanying letters dated 11.03.2015, 04.03.2015, 03.03.2015 of Brahmpal Singh regarding leave on various grounds. **Ex.PW6/1** is the statement of Gilu Ram u/s 67 NDPS Act. **Ex.PW6/3** is the statement of Shравan Kumar u/s 67. **Ex.PW2/3** is the letter dated 17.04.2015 by Director, Foreign office to Brahmpal Singh to join investigation with NCB. Statement of Bharat Sharma dated 20.04.2015 u/s 67 NDPS Act (not exhibited). **Ex.PW13/1** is the statement of Ajay Bari u/s 67 NDPS Act. **Ex.PW5/6** is the statement of Brahmpal Singh u/s 67 NDPS Act. **Ex.PW5/7** is another statement u/s 67 NDPS Act of Brahmpal Singh. **Ex.PW5/8** is the arrest memo and jamatalashi memo of accused Brahmpal Singh. **Ex.PW5-9** is the arrest report u/s 57 NDPS Act. **Ex.PW2/8** is the suspension order of accused Brahmpal Singh. **Ex.PW6/9** is the statement of PW Sanjeev Sharma u/s 67 NDPS Act. **Ex.PW6/10** is the statement of PW H.S. Kohli dated 11.05.2015. **Ex.PW22/1** is the receipt of the parcel taken by accused

Satyam showing to be sent by one Deepak of Jaipur to Pramod in Delhi alongwith DRS from page no. 201 to 255. **Ex.PW6/11** is the request for CDR and CAF of mobile no. 9711851724. **Ex.PW6/12** is the request for subscription details and CAF of mobile no. 8652466001, 8573077692. **Ex.PW6/13** is the request to provide subscription details and CAF of mobile no. 7309530784 in the name of Ambalal. **Ex.PW35/1 (colly)** is the sending of CPU to CFSL for examination. **Ex.PW21/C** is the FSL report over the recovery CLD 174-177(N) from accused Ram Naresh with request that the sample be forwarded to some other government laboratory for NDPS testing for identification of zolpidem. **Ex.PW6/15** is the secret information dated 22.05.2015 regarding lying of some parcel containing narcotic drugs at RLO, PO building SRT Nagar, Jhandewalan. **Ex.PW6/16** is the seizure memo of envelopes containing drugs seized from the said post office. **Ex.PW6/17** is the entry of seal movement register dated 22.05.2015. **Ex.PW6/18** is the malkhana entry dated 22.05.2015. **Ex.PW6/19** is the seizure report u/s 57. **Ex.PW21/D** is the FSL report over the drugs seized from the post office showing that for identification of zolpidem, the sample be sent to some other laboratory. **Ex.PW21/A** is the CRCL report over the sample CLD 148, 150, 154 showing positive for alprazolam, mephadrone hydrochloride, diazepam however stated that CLD 145, 146, 147, 149, 151, 152, 153, 155, 156 be sent to some other laboratory. **Ex.PW21/B** is the CRCL report of CLD 163, 164, 165, 166 showing positive for alprazolam and diazepam with request to send CLD 157, 158, 159, 160, 162, 162, 167, 168, 169, 170 and 171 to some other laboratory. **Ex.PW6/22** is the certificate u/s 65B for mobile no. 8130568580 (Saleem Khan), 9810606358, 7715930609 (Vikas Pandey). **Ex.PW6/24** is the request to provide the bank details of Ashok Kumar Tripathi. **Ex.PW6/25** is the HDFC bank statement of Ashok Kumar Tripathi. **Ex.PW6/27** is the statement u/s 67 of PW Rajeshwar Singh of Carex Cargo. **Ex.PW30/4** is the letter dated 29.06.2015 written by R.S. Joshi, Superintendent to Zonal Director NCB Mumbai stating therein that accused Satyam Kumar Sah and Ashok Kumar were doing the work with the help of Pramod Pandey and Vikas Pandey. Vikas Pandey was not found. It also came into the knowledge during investigation that

Vikas Pandey is also having address of Andheri, Mumbai and therefore to locate the said accused and serve the notice u/s 67 to him. **Ex.PW6/28** is the PNB statement of account of accused Ashok Kumar Tripathi. **Ex.PW6/29** is the statement u/s 67 of PW Rajesh Hooda of Care Cargo Forwards, Jaipur. **Ex.PW21/E** is the CRCL report dated 26.05.2015 on CLD 416 showing positive test for alprazolam however CLD 417, 418 and 419 are requested to be sent to some other laboratory. **Ex.PW6/31** is the request to provide subscription details and CAF of mobile no. 8652466001, 7309530784. **Ex.PW6/30** is the certificate u/s/ 65B of mobile no. 9711555617 (in the name of Pramod Pandey). **Ex.PW6/33** is the request to provide subscription and CAF of mobile no. 9958639192 (Satyam Kumar Sah). **Ex.PW30/7** is the CFSL report of Hyderabad detecting zolpidem. **Ex.PW18/1** is the CFSL Hyderabad report detecting zolpidem from exhibits AG-1, AI-1, AJ-1 . **Ex.PW27/2** is the details of case property. **Ex.PW18/4** is the CFSL Hyderabad report detecting clonazepam and Zolpidem. **Ex.PW12/1** is the subscriber details and CDR of mobile no. 9810792826. **Ex.PW12/2** is the certificate u/s 65B of mobile no. 9810792826 (Santosh Kumar). **Ex.PW17/2** is the CFSL examination report of Hyderabad showing lorazepam and zolpidem. **Ex.PW27/9** is the letter to Branch Manager, ICICI Bank Jor Bagh to furnish statement of account of accused Ashok Kumar Tripathi. **Ex.PW27/10** is the statement of account of ICICI Bank of Ashok Kumar Tripathi. **Ex.PW27/11** is the email letter from superintendent NCB Mumbai to Superintendent, Delhi forwarding statement u/s 67 NDPS Act of Pramod Pandey. **Ex.PW27/3** is the letter dated 07.10.2015 from IO Pradeep Singh to Zonal Director regarding the theft of case file bearing no. VIII/04/DZU/2015, VIII/25/DZU/2015. **Ex.PW27/4** is the FIR in respect to the said complaint for theft. **Ex.PW27/7** is the letter of Pradeep Singh to Zonal Director stating therein that a set of photocopy of documents of lost file have already been supplied to Sh. Rajesh Manchanda, SPP and opinion is given by SPP that the complaint can be filed on the basis of secondary documents. **Ex.PW27/8** is the office order for reconstruction of file.

47. Application dated 23.10.2015 on behalf of complainant u/s 65 for leading secondary evidence. Application dated 23.10.2015 u/s 73 Cr.PC for issuance of NBW against escaped accused no.7 to 11. It is stated in the said application that accused Vikas Pandey, Rinku, Dipu, Ambalal and Deepak have not been arrested however accused Pramod Pandey is arrested in another case at Mumbai therefore NBWs be issued against accused no.7 to 11 (no prayer for accused Pramod Pandey (accused no.6)). Order dated 26.08.2015 for extension of time for investigation on the ground that accused Pramod Pandey, his brother Vikas Pandey, Rinku, Amu, Guddu are yet to be arrested and CFSL report are yet to be received. IO of this case to whom investigation was pending has been suspended as found to be indulging in wrong practices. Accordingly, 60 days extension was given.

Submissions of counsels

48. Ld. Counsel for accused Ashok Kumar Tripathi stated that search and seizure proceedings conducted at the house of accused Ashok Kumar Tripathi on 26/27.02.2015 by NCB also in presence in Sepoy Sanjeev Kumar however Sanjeev Kumar (PW35) did not state the said fact. NCB did not examine Sepoy Dinesh Kumar and Driver Malkeet Singh. The independent witness Sanjeev Sharma did not support the case of NCB. As per prosecution case, the name of accused Ashok Kumar Tripathi surfaced in the statement of Satyam Kumar Sah however PW24 IO Bankey Ram who recorded the statement of Satyam Kumar Sah u/s 67 stated that he had only named Santosh Kumar and Vikas Pandey. The search authorization Ex.PW5/1 was given to IO Sanjay Mehta by the statement of Superintendent Jai Kishan at Carex Cargo however IO Sanjay Mehta PW5 stated on 26.02.2015 he did not go to Carex Cargo or even not visit the company after 26.02.2015 and this was given to him in the cabin of the office by Jai Kishan. PW15 Sanjeev Sharma stated that the NCB team came for search at around 10.30 PM and within 15 minutes took away the accused. He also stated that he did not sign any document in the night. He also denied about the recovery from the house of Ashok Kumar Tripathi. He further stated that his signatures were taken on 27.02.2015 in the NCB office. He also stated that he

had not signed any document and medicines were also not recovered from the house of accused Ashok Kumar Tripathi. PW4 IO Bankey Ram stated that he reached the spot at around 08.30 AM and remained there upto 02.30 AM however not able to tell at what time he recorded the statement of Satyam Kumar Sah. There is also contradiction about where PW15 Sanjeev Sharma met the NCB team. PW5 Sanjay Mehta stated that he do not remember that he had sign each and every page and after seeing the judicial file stated that he had only signed on the last page which created doubt about the veracity of panchnama. The psychotropic substances in this case were not weighed at the spot. Further, their batch number were also not noted. PW5 stated that he weighed pseudoephedrine tablets but not other tablets and psychotropic substances however pseudoephedrine is not mentioned in the recovery. He also stated that he did not note the batch number of seized tablets during search and seizure. PW19 Rajender Kumar Sharma stated that he had not issued summons to Ashok Kumar Tripathi u/s 67 though as per the case of prosecution he issued the summons. The statement of Ashok Kumar Tripathi do not bear his signature on each and every paper except on the last page.

49. The diary allegedly seized from Ashok Kumar Tripathi showing entries of payment but no mention of name of Brahmpal on entries. The NCB did not take any step to prove who was the author of alleged note. The original diary is also not produced. No photography or videography was done at the time of search and seizure. PW24 stated that he had received the secret information but did not disclose how the secret information was generated and how it had come in his possession. The NCB alleged some huge and unexplained entry detected in the bank account of accused Ashok Kumar Tripathi however there is no investigation on this point with accused or any other person. PW6 IO P.V. Chuadhary in cross-examination stated that he did not ask any question to accused Ashok Kumar Tripathi. He cannot tell the exact figure of huge amount. The analysis of account was done by him without make any enquiry from any other person. Ld. Counsel submits that entire case of prosecution is false and fabricated and all the recoveries are planted. Written submissions also filed.

- 50.Ld. Counsel for accused Satyam Kumar Sah stated that original documents are not produced by the prosecution. Ld. Counsel submits that Hon'ble High Court in crl. Rev petition no. 271/2016 dated 06.05.2019 held that the prosecution would have to lead evidence to show that requirement of section 65 evidence Act are satisfied prior to secondary evidence being admissible. The NCB has not mentioned in complaint or in other document as to how and where the photocopies of annexures have been take. There is no certificate written at the foot of the copy that it is true copy of the document. PW27 stated that he had not mentioned the handing over of document to SPP in his complaint. PW14 Jai Kishan is completely silent on the factum of theft of files. In cross-examination also stated that no permission was taken from him for getting photocopied. The factum about the theft of file is also not stated by PW30 R.S. Joshi.
- 51.No search authorization issued for alleged recovery at Carex Cargo. The CFSL report regarding zolpidem was made by one Seema Srivastava who has not been named in the list of witnesses nor examined therefore the said report cannot be read against the accused. PW22 H.S. Kohli also dented the prosecution case by stating that somebody Santosh might have come to collect the medicines. PW1 Amit Kumar Sharma stated he did not notice that accused Satyam gave money or any other document of Carex. PW24 R.K. Verma stated that he does not remember whether accused Satyam gave any payment or document to them. PW27A Ajay Kumar Bari stated he did not hear the conversation between the lady and Rajeshwar therefore the prosecution unable to prove whether the said parcel was handed over to the accused or not. PW23 Rajesh Hooda stated that the said parcel was booked by one Deepak in the name of Pramod however it does not contain any direction to give parcel to Satyam. This witness also stated that they used to issue consignment note as well as manifest however no such document was seized during the recovery of parcel. There is no telephone number mentioned with the particulars of airway bill. This witness also stated that he do not remember the name of customer i.e. Pramod Pandey and Vikas Pandey however they can deliver the party to any other person than consignee if the instructions are issued at the time of booking of parcel (however there is

nothing on record that instructions were given that the parcel be delivered to Satyam). Ld. Counsel submits that statement u/s 67 is inadmissible and the said statement was retracted. The statement also indicates name of Pramod Pandey, the kingpin whose name is surfaced in the statement of every accused however the NCB preferred to take the statement after a gap of 8 months that too vide an email without knowing the circumstances. The respondent also do not have the original statement of kingpin Pramod Pandey.

52.Ld. Counsel submits that the phone seized from the accused was in the name of Vikas Pandey and not of the accused. The accused is also not connected with other recoveries and there is no evidence regarding conspiracy. PW27 IO Pradeep Singh categorically stated that none of the accused could be connected through bank account of accused Ashok Kumar Tripathi. PW4 IO Bankey Ram who was allegedly part of team and raided the house of accused Ashok Kumar. PW19 R.D. Sharma in cross-examination stated that he had also seen the seized medicines from the premises of accused Ashok Tripathi however he was never part of raiding team that went to search and seizure proceedings at the house of Ashok Tripathi. This suggests that case property at the house of accused Ashok Tripathi is tampered by prosecution. PW24 IO R.K. Verma in his examination in chief do not identify the case property recovered from L-2A/3, Mohan Garden which casts doubt over the case of prosecution. PW34 IO Vikas Yadav also did not identify the case property recovered at Mohan Garden.

53.Ld. Counsel submits that the kingpin of the case is Pramod Pandey however prosecution not even issued summons to him. This person is the consignee of the contraband recovered at Carex Cargo. The consignor of the said parcel was also not examined. The name of accused Pramod Pandey surfaced on the first day however PW1 Amit Sharma stated that he do not remember as to when the name of consignor and consignee was seen by him at first instance. He also stated that he did not check the names of consignor and consignee during his stay at the Carex Cargo. He also did not issue any notice to consignor and consignee during investigation. PW4 IO Bankey Ram on the other hand stated that accused Satyam Kumar only took the name of Santosh Kumar and Vikas

Pandey. It means statement of Satyam Kumar is fabricated as he has not named accused Pramod Pandey or Ashok Kumar Tripathi. PW14 Jai Kishan stated that during his stay at Carex Cargo, he had not heard the names of Vikas Pandey or Pramod Pandey. He also stated he did not conduct any investigation from consignor or consignee of parcel nor issued any notice to them. He also stated he do not remember whether he had checked the mobile of accused Satyam and cannot say whether accused Satyam contacted Pandey prior to his interception. He intimated about Pandey and Ashok Kumar Tripathi to Jai Kishan. PW27 IO Pradeep Singh did not give any notice to accused Pramod Pandey or Vikas Pandey u/s 67 neither to the manufacturer of tablets/capsules. He however stated that statement of accused Pramod Pandey was given to R.S. Joshi on 22.10.2015. On the basis of this, he alongwith IO Anand Kumar and Rajeev Sehwawat took initiative to record the statement of accused Pramod Pandey and went to Mumbai court to interrogate and arrest him and this exercise was done after filing of complaint but he did not mention this fact in his complaint or any other document filed with the complaint. Name of Pramod Pandey surfaced in panchnama however prosecution did not conduct any investigation for Pramod Pandey. Prosecution also not conducted any raid at the house of accused Pramod Pandey. This court has also directed NCB to explore the legal recourse available to the NCB to bring these accused to the clutches of law however no action was taken by NCB. It is the case of prosecution that present accused was working for accused Pramod Pandey and Vikas Pandey however the prosecution has not apprehended them therefore, no conspiracy is proved. Ld. Counsel for accused submitted that statement of Shravan Kumar, the independent witness of recovery from alleged house of Satyam Kumar Tripathi is not at all credible.

54.Ld. Counsel submits that accused Satyam Kumar Sah in his statement u/s 313 Cr.PC stated that he started working partime with Pramod Pandey and Vikas Pandey in 2014 and during the said time they took his ID however they have not paid the salary and also asked them to shut down or return back the number used on his ID but they used to threaten him. He also complained about them in the concerned PS but they did not return the phone on his ID. On 26.02.2015

Vikas Pandey came to him with some persons and told him to accompany his brother Pramod Pandey. Then they took him to Uttam Nagar. They apprehended number of persons and one Person Shraavan Kumar was the owner of place, however made to sit in a car for Pramod Pandey but he overheard that he was not in Delhi. The persons accompanying Vikas Pandey were NCB officials. All the persons who were apprehended at Uttam Nagar were taken to NCB office during 4-5 PM and also took some medicines which he was unaware and thereafter under pressure he had signed the papers in NCB office. Vikas Pandey, Shraavan Kumar and other persons were let off by NCB officials. He also stated his mobile was used by Vikas Pandey and Pramod Pandey for the mobile 9958639192. Ld. Counsel submits that there is FIR against NCB officials for extortion of money in the garb of recording the statement u/s 67 NDPS Act. Written submissions also filed.

55.Ld. Counsel for accused Ram Naresh submitted that the accused Ram Naresh was authorized postman of the area and he was authorized for the letters which were allegedly recovered from him. The said letters were in the sealed condition returned undelivered and he did not know the contents of the same. Even the recovery was not in presence of gazetted officer/magistrate which is mandatory requirement. He cannot be held to be in conscious possession because the undelivered letters were handed over to him during the course of his duty. Ld. Counsel submits that PW16 Gilu Ram, the panch witness has not supported the prosecution case on the manner of recovery, and the prosecution unable to prove its case qua this accused hence, he is entitled to be acquitted. Written submissions also filed.

56.Ld. Counsel for accused Brahmopal Singh submitted that there is no evidence the accused except his statement u/s 67 which is inadmissible (relied upon Tofan Singh Vs. State of Tamil Nadu CrI. Appeal No. 152/13 dated 29.10.2020 (SC)). Ld. Counsel submits that even in that statement accused has denied knowledge with regard to the contents of parcel in question. Ld. Counsel submits that accused Ashok Kumar Tripathi also not named this accused specifically. He was confused over the names. This accused was not identified by co-accused Ashok

Kumar Tripathi. The only connecting evidence against this accused is the diary stated to be recovered from Ashok Kumar Tripathi however the said diary is not produced, only the photocopy is produced which is inadmissible. Even otherwise, there is nothing in the photocopy of diary which shows that any money paid to present accused. No name like Brahmpal Singh or Dharampal Singh mentioned in the said diary. Even otherwise, no handwriting opinion is sought to connect the said diary with accused Ashok Kumar Tripathi or the present accused. There is nothing which shows that any receiving is given by the accused in the said diary. Ld. Counsel submits that nothing incriminating is recovered from the present accused. No telephone is recovered from present accused to connect him with any conversation with Ashok Kumar Tripathi with regard to the drugs in question. Ld. Counsel submits that there is no evidence on record that this accused has at any point of time deposited the parcels for sending abroad. No statement of any witness was recorded in this regard. Therefore, the entire case of the prosecution against this accused falls flat. There are FIR registered against the NCB officials during the investigation of this case of grabbing the money in the garb of recording the statement u/s 67 and departmental inquiry was also initiated. Ld. Counsel submits that prosecution miserably failed to prove its case against this accused. Written submissions also filed.

57.Ld. Counsel for accused Santosh Kumar submits that there is no evidence against this accused and nothing is recovered from this accused. This accused is wrongly implicated on the basis of the fact that he is auto driver with alleged role of transferring the parcels containing psychotropic medicines however no such parcel was recovered. Furthermore, it is also the case of prosecution as per his statement u/s 67 that he has no knowledge regarding the factum of transportation of prohibited psychotropic medicines. Ld. Counsel submits that the prosecution has deliberately left the main accused Pramod Pandey who has conducted the entire psychotropic substances business and falsely implicated the small fish like the present accused. Ld. Counsel submits that there is no admissible evidence on record against this accused warranting his conviction hence the present accused is entitled to be acquitted.

58.Ld. SPP for NCB submitted that there is recovery of psychotropic medicines from the parcel collected by accused Satyam at Carex Cargo office. The said recovery is conducted in presence of independent witness PW27A Ajay Kumar Bari, employee of Carex Cargo office stated that accused Satyam had taken the delivery. Thereafter, there is recovery of psychotropic medicines from the house of accused Satyam in presence of independent witness PW31 Sharvan Kumar. There is also recovery of medicines in the envelope from the house of accused Ashok Kumar Tripathi in presence of PW15 Sanjeev Sharma. The recovery is also effected from Ram Naresh in presence of PW16 Gilu Ram, Postal Assistant. Ld. SPP submits that recoveries are commercial in nature and besides the statements of independent witnesses, it is proved through the statements of NCB officials therefore there is presumption u/s 35 and 54 NDPS Act against accused persons however accused persons unable to rebut the same. The connections of accused persons is also corroborated through mobile call records.

59.The DRS sheets from Carex office categorically suggest Santosh Kumar is the carrier. The diary maintained by Ashok Kumar Tripathi showing transaction between him and accused Brahmpal to the tune of lacs of rupees. Accounts statement of accused Ashok Kumar Tripathi shows he is indulged in illegal activities of trafficking of psychotropic medicines. The CRCL/FSL reports confirm the presence of psychotropic medicines. The recoveries are commercial in nature. Mere infirmities in this case do not absolve the accused persons from their complicity. Ld. SPP submits that prosecution tried to apprehend other accused persons but unable to do so. The non apprehension is neither deliberate nor intentional. Ld. SPP submits that prosecution able to prove its case beyond reasonable doubt hence accused persons are liable to be convicted for offence charged.

60.*Arguments heard. Record perused.*

61.Brief background facts are that on receiving secret information dated 26.02.2015 regarding collection of a parcel containing psychotropic medicines by accused Satyam, NCB team reached the office of Carex Cargo where at around 04.30 PM accused Satyam came and received the parcel, thereafter, he was apprehended

who disclosed that this parcel contains psychotropic medicines sent by one Pramod, and he was collecting the same on the directions of Pramod who used to export the same with the help of accused Ashok Kumar Tripathi and further revealed some medicines were lying at his home. Thereafter, the raid was conducted at his house in presence of his landlord Shraavan Kumar (PW31) and from middle room of his rented premises tablets as well as crystal powder suspected to be mephedrone around 2.6 kg was recovered. The NCB team reached the house of Ashok Kumar Tripathi, and in presence of Sanjeev Sharma, the house of accused Ashok Kumar Tripathi was searched from where 26 number of brown envelopes containing different types of psychotropic medicines, 23 number of fake rubber stamps, two CPUs were also recovered.

62. Accused Satyam Kumar Sah in his statement u/s 67 revealed that he met Pramod Pandey at a tea shop who was in need of money who thereafter joined Pramod Pandey, and on his instructions collected medicines from courier company and after packing them given to Ashok Kumar Tripathi and in this regard he was also involved with Santosh Kumar who used to deliver him for packing. Pramod Pandey himself informed him that he has only to book the goods at the collection center of Ashok Kumar Tripathi who would take care of getting the same cleared from customs.

63. He also disclosed that he received a call at around 03.35 PM on 26.02.2015 from Pramod Pandey to collect the parcel from Carex Cargo which is corroborated through CDR pursuant to which he collected the same and apprehended. This accused also disclosed his association with Santosh Kumar and Vikas Pandey. Accused Santosh Kumar was also apprehended on 27.02.2015 however the house of accused Vikas Pandey was found locked and on search of his house, after break opening of lock, nothing was recovered. Accused Santosh Kumar disclosed that he used to receive call from Pramod Pandey to collect parcel from Carex Cargo and deliver to Satyam Kumar Sah and both Pramod Pandey and Vikas Pandey are brothers. Accused Vikas Pandey is absconding however Pramod Pandey has been arrested by NCB Mumbai Zonal Unit and is presently in jail.

64. Accused Ashok Kumar Tripathi in his statement stated that he runs his speed post collection work from his residential home and used to book the speed post parcel and used to subscribe the name of sender and consignee on the packet, and also authorized to collect the speed post letters. He also disclosed the mobile number of Pramod Pandey and Vikas Pandey and stated that Santosh, Satyam, Rinku, Amu used to bring packet for booking. He also stated that he had liaisons for accused Brahmpal /BP Singh and accused Ram Naresh used to deliver undelivered packets to him without going to sender's address. One diary was also seized containing the money paid to Dharampal and the diary contained around 18000 packets cleared from Brahmpal/Dharampal from September, 2014 to February, 2015 and had paid around Rs. 36 lacs. On 02.03.2015 in presence of accused Ashok Kumar Tripathi, NCB team reached Lodhi Road post office where in presence of Gillu Ram, Postal Assistant apprehended the accused Ram Naresh and four undelivered packets were recovered from his jacket containing psychotropic medicines.
65. On 05.03.2015 notice was issued to accused Brahmpal Singh to appear however he did not appear but it was also found his leave was not granted, thereafter on 31.03.2015 a notice was sent to Superintendent, Foreign post office intimating that Brahmpal Singh did not turn up in the NCB office. On 20.04.2015 again a letter was sent to Brahmpal Singh to join investigation. On 22.04.2015 Brahmpal Singh appeared and gave a written statement that he knew Ashok Tripathi however stated he do not know whether any prohibited narcotic medicine was sent to foreign countries but stated that Ashok Tripathi used to ask him for clearance of parcel containing prohibited medicines.
66. During investigation, H.S. Kohli (PW22), marketing executing of Carex Cargo gave certified copy of daily run sheets related to Pramod Pandey, Santosh and Satyam, and most of them is related to Santosh. He also disclosed that he deputed Nitin, Rajeshwar and Mahavir for the deliveries and these parcels were booked from Jaipur and those were booked by one Rajesh Hooda. It is also revealed that the parcel received was of Pramod Kumar Pandey, and the DRS also suggests that Santosh received the parcel on behalf of Pramod Kumar

Pandey.

67. PW23 Rakesh Hooda of Care Cargo Forwarders of Jaipur stated that he has a tieup with Carex Cargo at Delhi and the parcels were booked from his place for Santosh, Pramod Pandey, Vikas Pandey and Satyam Kumar Sah and the same was booked by some person by the name of Deepak. On 21.10.2015, Branch Manager ICICI Bank furnished the statement of account of Ashok Tripathi which contains heavy and frequent credit and debit entries, and accused Pramod Pandey in his statement to Mumbai Zonal Unit disclosed that he used to deposit money in Tripathi's account for the trafficking of psychotropic substances to various countries. On 22.10.2015 R.S. Joshi received email alongwith statement u/s 67 of Pramod Kumar Pandey clearing the role of Ashok Kumar Tripathi, Satyam and Santosh Kumar in which he stated that he used to send the shipments to Delhi, UK and USA through Amit but later on through Index courier to Delhi and one Santosh, auto rickshaw driver after receiving the same used to give to Ashok Tripathi. Thereafter he used to pay Ashok Tripathi in his ICICI bank account and also employed Satyam for the purpose of packing.

Whether the Kingpin accused Pramod Kumar Tripathi (A-6) was left by NCB deliberately, and authenticity of secret information (Ex.PW14/1)

68. In present case, the NCB first arrested accused Satyam Kumar Sah for collecting the parcel from the Carex Courier and thereafter also recovered psychotropic medicines from his house then arrested accused Ashok Kumar Tripathi who was found to be assisting Pramod Pandey in sending the psychotropic medicines abroad with the help of accused Brahmopal Singh and Ram Naresh. Accused Santosh used to deliver the psychotropic medicines by collecting from Carex Cargo and supplying the same to Satyam Kumar Sah for packing and thereafter to Ashok Kumar Tripathi.

69. The genesis of psychotropic medicines are at the instance of Pramod Pandey who used to send the same to the courier office at Delhi which was later dealt by other accused for sending abroad. The first parcel in this case was seized after accused Satyam Kumar Sah took the delivery was emanated from Jaipur and came to Delhi. From Jaipur, it was booked by one Deepak in the name of

Pramod Pandey but Pramod Pandey has not collected the same however instructed Satyam Kumar Sah to collect the same. In this regard the prosecution relied upon the mobile call between Pramod Pandey and Satyam Kumar Sah on 26.02.2015 at around 03.25 PM. It is pertinent to notice that the prosecution not tried to trace Deepak who used to book the same at Jaipur which is clear from the statement of PW Rakesh Hooda u/s 67 NDPS Act. This witness categorically mentioned that this Deepak has booked number of parcels from Jaipur to Delhi however NCB has not bothered to trace the said Deepak.

70. Now another interesting fact which emerged from the evidence on record is that accused Pramod Pandey is found to be in the custody of NCB Mumbai on the night of 25.02.2015 well prior to the apprehension of accused Satyam by the NCB, Delhi on 26.02.2015. The case of the NCB is that they apprehended accused Satyam on the basis of secret information however the said stance of secret information of NCB appears suspect because of the fact that the accused Pramod Pandey was already in custody of NCB on the night of 25.02.2015, and from the statement of Pramod Pandey u/s 67 (Ex.27/11), it is clear that he had already disclosed his transactions through accused Santosh, Satyam and Ashok Kumar Tripathi. However despite this fact, NCB not tried to arrest the accused Pramod Pandey. NCB, just after 26.02.2015 through appears to have raided the house of his brother co-accused Vikas Pandey but Vikas Pandey was not found at his address and even after break opening of locks nothing was recovered. The investigating agency is having the address of Pramod Pandey because he got already apprehended at Bombay and also must have been disclosed by other co-accused because they got to know about the address of other co-accused from the apprehended accused person. However, there is nothing on record during investigation or in the evidence that they tried to raid the house of Pramod Pandey like the house of Vikas Pandey. It is pertinent also to notice that during investigation, PW30 R.S. Joshi had written a letter dated 26.06.2015 to NCB, Mumbai (Ex.PW30/4) asking for whereabouts of accused Vikas Pandey though also stated that he is also looking for Pramod Pandey but not tried to get any knowledge about the whereabouts of Pramod Pandey which itself suggests that

NCB has knowledge of the custody of Pramod Pandey in NCB case also on 29.06.2015.

71. It is also the case of prosecution as also mentioned in complaint in para 31 'it is pertinent to mention that Pramod Pandey and Vikas Pandey are possibly brothers (father's name and address are same) and partners in crime while Vikas Pandey is still at large, Pramod Pandey has been arrested by NCB Mumbai Zonal Unit separately and is presently in jail.' PW6 IO P.V. Chaudhary stated he knew about the custody of accused Pramod Pandey at Mumbai. PW6 is first Investigating Officer who prior to being removed from this case investigated from 13.03.2015 to 16.07.2015 for about four months but not taken single step to apprehend kingpin Pramod Pandey. Despite the fact that the NCB know since the inception of this case that accused Pramod Kumar Pandey who is the source and Kingpin of the entire dealing in psychotropic substances in custody at Mumbai not tried to arrest him in this case and filed chargesheet/complaint without arresting him.
72. The non arrest of accused Pramod Pandey suggests that NCB not tried to come with a case depicting the clear picture, and only relied upon the pick and choose recovery from mere conduits i.e. Satyam Kumar Sah, Santosh and Ashok Kumar Tripathi. The real man Pramod Pandey who is in custody since the inception of case at Mumbai is not brought into the picture for connecting the entire dots. The NCB officials neither conducted any investigation from Jaipur or from the places from where the parcels received as per the DRS sheets deposited by PW22 HS Kohli or the record given by PW23 Rajesh Hooda.
73. The genesis of present case is the apprehension of accused Satyam Kumar Sah. The apprehension of accused Satyam Kumar Sah is alleged to be on the basis of secret information but not on the fact of knowledge of the said parcel through accused Pramod Pandey who was already in the custody of NCB on the night of 25.02.2016. This itself as discussed creates doubt over the authenticity of secret information. PW24 R.K. Verma who received and recorded the secret information in cross-examination unable to disclose how he generated secret information and in what manner it came into his possession. He in cross-

examination stated he do not remember weather he got information on phone or through informer. This evasive reply from an official who received information, creates doubt over the authenticity of secret information. The entire sequence thus suggests that non apprehension of accused Pramod Kumar Pandey at the initial stage is deliberate and casts doubt over the intent of NCB to unearth the entire syndicate, and big fishes who work with Pramod Pandey in illegal trafficking of psychotropic medicines.

Apprehension of accused Satyam Kumar Sah at Carex Cargo while taking the delivery of the parcel containing psychotropic substance on 26.02.2015 at around 04.25 PM.

74. As per the case of prosecution, on receiving the secret information, the raiding team was prepared and went to Carex Cargo office, and at around 04.25 PM, accused Satyam Kumar came and then collected the parcel, and after collection of parcel he was apprehended by NCB officials. Now the prosecution has to prove beyond doubt whether the accused Satyam was apprehended after collection of parcel. For collection of parcel, the prosecution has relied upon the testimony of Ajay Kumar Bari (PW27A), PW33 Rajeshwar Singh, though PW27A Ajay Kumar Bari in his examination in chief stated that Satyam Kumar collected the parcel after showing his identity however in cross-examination stated that delivery of parcel is not his duty or the duty of Bharat Sharma but that of Rajeshwar, and Incharge H.S. Kohli (PW22) was also not present during the proceedings. Bharat Sharma is not examined by the prosecution. PW27A in cross-examination stated he has not delivered the parcel, and delivery was by PW33 Rajeshwar. PW33 Rajeshwar however was not asked any question in regard to whether he has delivered the parcel to Satyam. He has not even whispered about proceedings conducted at Carex Cargo on 26.02.2015. None of the official witness or the raiding team members of NCB could categorically state that any of these witnesses have delivered the parcel to the accused Satyam Kumar Sah, and only stated that they have apprehended the accused after he has received the delivery. The prosecution case thus become suspect over the fact which official of Carex Cargo delivered parcel to accused Satyam. Its obvious

implication is that whether Satyam was delivered the parcel in the manner projected by NCB.

75. The accused Satyam came and collected the parcel at 04.25 PM, but from CDR of Satyam calling Parmod Pandey and 16.37 and 16.38 and none of the IO stated that he called Pramod, thus creating doubt over manner of apprehension of accused Satyam.
76. It is also pertinent to notice that the prosecution has not seized any document of delivery regarding the said parcel at the time of apprehension of the accused from the said courier office which is also clear from the panchnama (PW24/1) regarding the said delivery. The prosecution has not seized or filed any document showing that Satyam was authorized to take the delivery. Prosecution also not seized any material that accused Satyam in ordinary course took any delivery of parcel from the office of Carex Cargo. None of the witness i.e. PW27A Ajay Bari or PW33 Rajeshwar stated that any time prior to the present incident, accused Satyam had collected parcels of Pramod and thus no need of him showing any authorization. Admittedly the accused Satyam is not the consignor. PW27A Ajay Kumar Bari stated that the suspect did not give any cash. PW27A also stated that categorically in cross-examination that he has not given the delivery. PW27 also stated that he did not hear any conversation between Satyam and the lady, and the said lady and Rajeshwar. PW1 Amit Kumar Sharma and PW24 R.K. Verma, member of raiding party also stated they do not remember whether accused made any payment or document to them. It is also not stated by PW27A Ajay Kumar Bari or PW22 H.S. Kohli that the accused Satyam had any time prior taken the delivery from the said cargo office. PW23 Rajesh Hooda in his testimony stated that the said parcel was booked by one Deepak in the name of Pramodji however there is nothing in his statement that the said parcel does contain any direction to give the parcel to Satyam or anyone else. He also stated that they used to issue consignment note for booking and one copy to consignor and remaining were sent to Delhi office and also prepared manifest for forwarding the parcel to Delhi office however admittedly, no single document was recovered regarding the consignment note and manifest which

itself creates doubt whether infact the said parcel travelled from Jaipur to Delhi in the manner relied by the prosecution. PW22 also creates doubt whether infact it is Satyam who had taken the delivery because he stated that delivery might have been taken by Santosh.

77. Therefore, in these circumstances, particularly when the secret information is also suspect, then the factum that accused Satyam Kumar Sah had taken the delivery in the manner projected by the prosecution also becomes doubtful. It is possible that the prosecution has shown the delivery on him as he had approached the post office, but prosecution has to prove beyond doubt that the accused Satyam had infact taken the delivery in the manner projected by the prosecution prior to his apprehension. The prosecution not able to prove this fact beyond doubt upon consideration of testimonies of the officials of courier company or the raiding team members, and associated circumstances of concealing the apprehension of accused Parmod Pandey at the inception itself.

Recovery of psychotropic substances at the instance of accused Satyam Kumar Sah from his residence at Mohan Garden.

78. The accused after apprehension at the Carex Cargo office was taken to his room where he disclosed to have kept psychotropic substances/medicines. Thereafter in presence of PW31 Sharvan Kumar landlord, the search was conducted from his room. The search was conducted in presence of PW1 IO Amit Kumar Sharma, PW24 R.K. Verma, PW34 Vikas Yadav. Accused opened the house with the key and it was found to be of three rooms and from the middle room, the psychotropic medicines alongwith the crystal powder suspected to be mephedrone was recovered. The recovery of said psychotropic medicines is being substantiated through the testimony of PW31 Shравan Kumar, who stated that the NCB officials made inquiries from him and the house was opened by Satyam Kumar Sah having the keys and from the middle room various medicines were seized and his statement was recorded in the NCB office on 15.04.2015. This witness though stated about recovery of medicines from the room of the accused however only after being put leading question stated about search authorization, sealing of powder and tablets. This witness in cross-examination stated IO

Chaudhary (PW6) prepared documents at spot, but P.V. Chaudhary IO (PW6) was entrusted investigation on 13.03.2015 and not part of raiding team on 26.02.2015, thus creating doubt over preparation of panchnama etc at the spot i.e. room of Satyam Kumar Sah. Though from the testimony of this witness, it cannot be doubted that search was conducted at the house of accused Satyam but there is doubt about whether infact the material which is seized from the room of accused Satyam is of the same quantity and nature as shown by the prosecution. This case property is also not identified through raiding party members PW 24 R.K. Verma and PW34 IO Vikas Yadav.

79. It is pertinent to notice that the case property seized from the room of the house of accused Satyam is deposited in malkhana, and copy of malkhana entry is exhibited by PW1. The malkhana register copy is exhibited as PW1/7 however in the said register, the entries regarding the deposit of medicines recovered from room are missing, but during the writing of judgment this court called the original malkhana register orally from NCB office to verify the said fact. In the original malkhana register, the entries are there but those entries were not exhibited during evidence before this court. It is also clear from testimony of PW1 that no such malkhana register in original was produced by NCB at the time of recording of testimony of PW1. PW24 Vikas Yadav, Malkhana incharge for day to day activities has also not exhibited the original malkhana register in his testimony. The clear implication is that accused were not provided opportunity to cross-examine over correct entries. This itself makes prosecution case shaky over recording the evidence before the court. Even otherwise, when the apprehension of accused Satyam Kumar Sah in the manner projected by the prosecution as discussed above appears doubtful the consequent proceedings of recovery in the manner relied upon by the prosecution also become somewhat suspect.

Recovery of psychotropic substances and other articles from the house of accused Ashok Kumar Tripathi and the effect of non compliance of section 41(2) NDPS Act

80. After apprehension, accused Satyam Kumar Sah disclosed that he used to supply

the parcel after packing to accused Ashok Kumar Tripathi, thereafter, the NCB team raided the house of accused Ashok Kumar Tripathi in presence of independent witness PW15 Sanjeev Sharma and prepared panchnama Ex.PW5/2. From the search of his house, 26 brown envelopes containing different psychotropic medicines, 23 number of rubber stamps and two CPUs were also seized. PW15 Sanjeev Sharma, independent witness in his testimony stated that when he was sitting at his shop, two persons inquired about the house of Ashok Kumar Tripathi thereafter they entered the house then 10-11 persons entered and after some inquiry for 15 minutes they came back and Ashok Tripathi was accompanying them. Then on 27.02.2015, he was called by IO Sanjay Mehta and took his signatures on blank sheets and then after 1½ month, he was called to write a document. This witness though stated that the NCB officials came to the house of accused Ashok Kumar Tripathi however not supported the case of prosecution over the search and seizure proceedings. PW35 Sanjeev Kumar, Sepoy also part of raid but not stated anything in his testimony regarding the present raid. The prosecution case over the said recovery is also relied upon the testimony of official witness PW5 IO Sanjay Mehta and PW4 IO Bankey Ram. PW5 IO Sanjay Mehta stated that he weighed pseudoephedrine tablets but not other tablets, but pseudoephedrine tablets were not recovered as per panchnama.

81. PW14 Jai Kishan, Superintendent stated that he had given search authorization to PW5 IO Sanjay Mehta for conducting search at the house of Ashok Kumar Tripathi at Carex Cargo on 26.02.2015 however PW5 Sanjay Mehta categorically stated that on 26.02.2015 he did not go to Carex Cargo, and also not visited the said company after 26.02.2015, and the said search authorization was given by Superintendent Jai Kishan at about 06.30/07.00 PM in the office. This create doubt over the fact whether the raid was conducted on the basis of search authorization or it was prepared later on as a ritual. This also create doubt over the fact whether infact PW14 Jai Kishan went to the office of Carex Cargo to give the search authorization for conducting the search of house of accused Satyam Kumar Sah and Ashok Kumar Tripathi. Thus, also creates doubt not only on the

search authorization for house of accused Ashok Kumar Tripathi but also of Satyam Kumar Sah.

82. The search authorizations for raiding the houses of accused Satyam and Ashok Kumar Tripathi do not appear to be issued in the manner relied upon by the prosecution. The prosecution has to prove through cogent evidence that the search authorization was issued in the manner relied by them. The issuance of search authorization is a mandatory requirement in terms of section 41(2) NDPS Act and any violation vitiates the trial. Apex court in case titled *Roy VD vs. State of Kerala CrI. Appeal No. 967/2000 dated 10.11.2000, 2000(8) SCC 590* held as under:

16. Now, it is plain that no officer other than an empowered officer can resort to Section 41(2) or exercise powers under Section 42(1) of the NDPS Act or make a complaint under clause (d) of sub-section (1) of Section 36A of the NDPS Act. It follows that any collection of material, detention or arrest of a person or search of a building or conveyance or seizure effected by an officer not being an empowered officer or an authorised officer under Section 41(2) of the NDPS Act, lacks sanction of law and is inherently illegal and as such the same cannot form the basis of a proceeding in respect of offences under Chapter IV of the NDPS Act and use of such a material by the prosecution vitiates the trial.

17. To the same effect is the view expressed by this Court in State of Punjab Vs. Balbir Singh [1994 (3) SCC 299]. In para 13 Jayachandra Reddy, J. speaking for the Court observed thus :

“13. Therefore, if an arrest or search contemplated under Sections 41 and 42 is made under a warrant issued by any other Magistrate or is made by any officer not empowered or authorised, it would per se be illegal and would affect the prosecution case and consequently vitiate the trial.”

83. The prosecution thus unable to prove the issuance of search authorization in terms of requirement of section 41(2) hence, both the recoveries from the houses of Satyam Kumar Sah and Ashok Kumar Tripathi becomes illegal and vitiated.

84. It is also noticed that prosecution has seized a diary from the house of accused Ashok Kumar Tripathi, and the said fact must have been incorporated in the panchnama (Ex.5/2) but conspicuously missing in panchnama. This also create

doubt over the manner of raid and seizure.

CRCL/FSL reports, effect of non examination of the Ms. Seema Srivastava, Scientific Officer and infirmity in arriving at the weight of the psychotropic medicines/case property

85. As per prosecution case, there are recoveries of psychotropic medicines from the parcel allegedly recovered from Satyam Kumar Sah at Carex Cargo, his rented room at Mohan Garden, from the house of accused Ashok Kumar Tripathi, unclaimed parcels lying at the post office Jhandewalan and the envelopes recovered from accused Ram Naresh. The CRCL reports confirm the presence of psychotropic medicines however the FSL report received from Hyderabad regarding the medicines recovered from the parcel at Carex Cargo is prepared by Seema Srivastava, Scientific officer but she was not made witness in the list of witnesses nor examined by the prosecution. The photocopy of the said report is exhibited during the testimony of PW30 who is not at all competent to exhibit the same, the objection in this regard was also raised by defence counsel during examination. The prosecution has not tried to procure the duplicate copy of the said report from the FSL, Hyderabad and neither tried to exhibit the same through any official of FSL therefore, no opportunity was given to the defence to cross-examine the relevant witness on the said report. Even otherwise as discussed, the recovery of the said parcel from the present accused Satyam Kumar Sah, not found credible.

86. It is also noticeable in this case that vide order dated 24.09.2016 when the entire case property including all the recoveries were opened for weighing before the court, there is a court observation *"It is stated by Sh. S.S.Das that when 10 tablets were weighed the total weight was something but when one tablet was taken out, the weight remained same without any change. This observation is confirmed by the court."* This also creates some doubt over the weight of the medicines calculated in this case.

Effect of statement of of non arrested accused Pramod Pandey u/s 67 NDPS Act (Ex.PW27/11) recorded by NCB Mumbai

87. As already discussed, accused Pramod Pandey who was not arrested by the NCB

in this case is the principal accused at whose instance the entire transactions in present case have taken place. All the other accused as per prosecution case are his conduits who support him in his business. This accused, as per this statement is in custody of NCB Mumbai even on the night of 25.02.2015. The appreciation of this statement thus necessary to show that inaction of NCB in non apprehending this accused is not merely negligent but deliberate.

88. This accused in this statement stated that he started a firm Kumar Traders in 2009 and during the said period, met one Vishnu Shankar Upadhyay in Patparganj and had discussion with him for the business of pharmaceuticals medicines. Thereafter, he arranged his meeting with one Tarun, resident of Jaipur who told him that he usually had 60-70 orders of drop shipments daily, and asked him about the material. Thereafter they both started doing the business together. Then he received the call from one Krishanbhuji Kumar from international number who told that Tarun was his agent and is native of Patna, presently at USA and used to send him email having attached MS-Excel sheets having the details of order of drop shipments. This Krishanbhuji Kumar also disclosed him that he started his medicine business with one partner in USA and settled with Las Vegas, USA, who also stated that he has 3-4 camper van, call center in Cinta, Manila, Philippines, 8-10 agents who had a call center in India who look for shipping of these agent's order and he used to deal in psychotropic medicines. Thereafter, accused Pramod Pandey sent 60-70 drop shipments for him which went upto 150 however in 2009 problem started with drop shipments as custom authorities started asking for NOC from Additional Drug Controller. Thereafter he told him to take license for legally sold medicines and send the other medicines then he started Kumar Traders, and the money was invested by Krishanbhuji Kumar. Then he used to get the products from one Naval Kishore Sharma through Tarun and used to give him advance payment. He also disclosed the account statement of Naval Kishore Sharma, Kushal Singh, etc. He also did hawala transactions through Ambalal and Poornima online both situated near Shishganj Gurudwara, Chandni Chowk. Shyam Sharma used to send him material through Index Courier having consignee name of Rahul and the

consignor name of Deepakji. He had four employees in Kumar Traders who used to receive the same. He used to send Soma and tramadol in bulk quantity through speed post but intercepted by USA customs authority. Then he met one SP Singh partner in courier company. SP Singh agreed to send these products to USA @ Rs. 4000/- per KG and he charged Krishanbhuji Kumar Rs. 6000/- per KG. His courier parcel were received by one Firdaus Mukaddam in New York who then used to send it to Krishanbhuji Kumar in Las Vegas.

89. One Nilesh Shukla provided him the ketamine, ephedrine, alprazolam, zolpidem, soma and tramadol to SP Singh, then SP Singh send them to Firdaus who sent it to Krishanbhuji Kumar. In 2011 accused Nilesh Shukla and Firdaus were arrested by DRI in New Delhi. He however continued to work with Krishanbhuji Kumar for psychotropic medicines and used to get money through various accounts. His account at Axis Bank was seized by NCB Delhi. He also purchased a flat in Bombay. He was also arrested by ANC World Branch in a case in 2008 and remained in jail for 20 days and thereafter again started doing the same business and from 2009 to 2012 he used to earn approximately Rs. 15-16 lacs per month out of this business of drop shipments of psychotropic medicines. He stopped Kumar Traders because it had come in investigation by NCB Delhi in connection with one seizure in which his brother Sanjay Pandey was arrested. In Mumbai employed one Amit Lalani for packing. First they sent the shipments via GPO Mumbai through Amit but later on through Index carrier in which one person Santosh, auto rickshaw driver received the parcel in Delhi, and hand over to Ashok Kumar Tripathi, and used to get Rs. 5000/- for one transaction. He used to pay Rs. 200/- per drop in his ICICI bank account and through Axis Bank account. He also employed Satyam at Delhi for packing who used to send these shipments to Ashok Kumar Tripathi and used to pay him Rs. 15,000/- per month. He also met one Shiv Narain Bansal and arranged for him mephedrone who had made payments in lacs. He also met one Naji Ram @ Naresh and also purchased mephedrone from him and supplied to one Vikas Yadav in New Delhi. He also gave address of Vikas Yadav.

90. On 20.02.2015 Krishanbhuji Kumar sent him Excel Sheets containing orders of drop shipments then he forwarded the email to Satyam on 22.02.2015 to send these on 23.02.2015 after packing however he told he was going to native village in Bihar therefore he went to Delhi on 25.02.2015 then on 25.02.2015 one Ankit Kumar Vadala, Mumbai called him and asked to arrange 25 kg of mephedrone and returned to Mumbai by Indigo flight and reached Sanjay Jain's house where found NCB team also present then he alongwith Sanjay Jain, Lalit and Chandramani Pandey taken to NCB office. He also stated that he revealed about a deal in which 25 kg of mephedrone was seized and NCB seized this 25 kg near hotel Regency, Andheri East, Mumbai.
91. This statement of accused Pramod Kumar Pandey categorically suggests that he was in custody of NCB Mumbai at the relevant time i.e. on the night of 25.02.2015 prior to secret information recorded on 26.02.2015 at around 02.15 PM in the NCB office. In this statement, accused Pramod Pandey disclosed his transactions about illegal exporting of psychotropic medicines through various persons however those persons in Delhi were not examined by NCB in present case. The whereabouts of the accused Pramod Pandey was in the knowledge of NCB at first instance but NCB has not taken any steps to apprehend Pramod Pandey in this case. This statement also suggests that Pramod Pandey disclosed about his national and international links through Delhi, his modus operandi to send the parcels to Delhi from Jaipur and other places in India to be dispatched abroad.
92. He also disclosed about the receiving of the orders through email and deposit of money in his accounts and accounts of other accused persons. The prosecution did not try to ascertain the bank accounts of present accused Pramod Pandey in this case. However, seized the bank statements of Ashok Kumar Tripathi but PW27 IO Pradeep Singh categorically stated that he analysed the bank account of accused Ashok Kumar Tripathi however none of the accused could be connected through bank account of accused Ashok Kumar Tripathi. This witness is second investigating officer after first investigating officer P.V. Chauhdary. He could not connect Ashok Kumar Tripathi's account with that of other accused

arrested in this case. He did not try to connect the account of Ashok Kumar Tripathi with Pramod Pandey suggesting the gross negligence or say a deliberate attempt by the NCB not to connect Pramod Pandey to Ashok Kumar Tripathi. PW6 P.V. Chaudhary though stated that there are huge entries in PNB, HDFC Bank and ICICI Bank of Ashok Kumar Tripathi however he did not analyse his statement of accounts. This itself suggests that the NCB since beginning has no interest in connecting the accused Pramod Pandey who is the kingpin of the syndicate and only interested in prosecuting the small fishes. Accused Ashok Kumar Tripathi even not confronted with his bank account entries to corroborate the fact that he had obtained the said money through Pramod Pandey or any other person dealing in the said illegal trafficking of psychotropic medicines/substances. The omissions appear to conceal real syndicate, not only Pramod Pandey but others also. Through bank account entries, IO could easily reach big fishes but not chooses to do so. This also cast suspicion that later fact of theft of original file containing thousands of documents are eyewash, and registration of FIR of extortion and corruption suggestive of the real conduct of the NCB officials involved in this case.

93. The accused Pramod Pandey appears to have given other statements u/s 67 before the NCB Mumbai however the NCB not made any effort to place on record in present case what was transpired in other statements and just to complete the ritual to show its bonafide placed only one statement on record, and moved an application u/s 73 Cr.PC for issuance of NBWs against accused no.7 to 11 i.e. Vikas Pandey, Rinku, Guddu, Ambalal @ Ammu and Deepak without any action to arrest accused Pramod Pandey already in custody at Mumbai.

94. Now it is pertinent to see the contents of this application u/s 73 Cr.PC dated 23.10.2015 moved by the NCB. NCB stated that these accused no. 7 to 11 have not been arrested in this case besides accused Pramod Pandey who has been arrested in another case in Mumbai and therefore requested that the NBWs be issued against accused no. 7 to 11. This application was disposed of by the Ld. Predecessor vide order dated 17.02.2016 observed that there is nothing on

record to substantiate the role of accused Rinku, Guddu, Ambalal @ Ammu, Deepak except their reference in the statement u/s 67 NDPS Act and furthermore, NCB already moved an application for extension of time u/s 36A4 for investigation and this court has already granted 60 days to complete the investigation however there is nothing on record that any such investigation was conducted against Guddu, Deepak and even could not ascertain their parentage and addresses. The NCB could have moved an application during the investigation but for the reasons best known to them no such application was filed. Accused Pramod Pandey is already in JC in Mumbai however they have not interrogated him therefore, no ground made out for production warrant of accused Pramod Pandey and issuance of NBW against accused no.7 to 11. It is pertinent to notice that in application u/s 73 Cr.PC, the NCB has not sought production warrants of accused Pramod Pandey but court however passed order of not issuing production warrant. Legally speaking, as per mandate of section 267 Cr.PC, the production warrants could be issued from Delhi only if the NCB has arrested the accused. No steps were taken by NCB to arrest the accused at Mumbai.

95. This order categorically suggests that the NCB has the knowledge of arrest of accused Pramod Pandey in Mumbai case since inception but not taken any steps to arrest him in this case. It is also the case of NCB that he is the principal accused who had sent the parcel of which delivery is taken by accused Satyam and also the kingpin at whose instance other accused were working but the NCB not tried to arrest him in this case by moving the appropriate application at relevant stage. There is also nothing on record that NCB moved any application in Mumbai court to examine Pramod Pandey in present case. This lapse of NCB do not appear to be mere lapse but a deliberate attempt to shield Pramod Pandey, Kingpin which is also clear from the fact as NCB even not brought on record the financial dealings of Pramod Pandey, his connections financial or otherwise with other accused persons of this case.

96. It is also pertinent to notice that all the parcels which are subject matter of this case as per the DRS sheets produced by PW22 H.S. Kohli relates to the parcels of

Pramod Pandey emanate from Jaipur however there is no investigation from Jaipur. Only statement of PW23 Rajesh Hooda of Care Cargo Forwards who had sent the parcels was recorded but on his statement NCB not tried to locate/apprehend any person who could tell who had booked the said parcel at the said office to be sent at Delhi. There is name of one Deepak as a consignor in the parcel allegedly shown to be recovered from accused Satyam in present case however did not try to apprehend that Deepak.

97. It is also noticeable that this Deepak as per the statement of accused Pramod Pandey u/s 67 NDPS Act is a fictitious person. This also raised suspicion over the involvement of the courier companies who are sending the parcels merely on the basis of name of the consignor and consignee without their addresses and mobile numbers. There is no consignment notes and manifest accompanying the parcel. There is no mention of any authorization of a person who can collect the said parcel. The parcel in present case stated to be collected by Satyam but there is no record which shows that Satyam is authorized to collect the said parcel. The mere production of his ID/DL without date later on by PW22 H.S. Kohli is not at all reliable, as no document seized when accused Satyam apprehended with parcel. It is very strange that the courier officials handed over the parcel to Satyam without any authority. This itself pointed towards the fact that the courier offices have all the knowledge about this kind of activities of sending medicines without proper documentation. Because of the role of the courier agencies, the officials of courier agencies who deliver or maintain the record do not appear to be independent persons so their testimony is also to be looked from the perspective of the suspect as they would try to save themselves also for their dealing in violation of all procedures.

The connection between theft of files, registration of FIR against PW5, PW6 and PW30 and non apprehension of kingpin Pramod Pandey

98. The non apprehension of Pramod Pandey in this case is also clearly an attempt by NCB to conceal something material. This fact also create doubt over the contention of NCB that the original file of the NCB got lost/stolen. In this regard, it is pertinent to look at the statement of PW27 Pradeep Singh, IO who was

handed over the subsequent investigation after PW6 IO P.V. Chaudhary was removed from investigation. He stated in his examination in chief that after going through the file, he came to know the various steps to be taken for completing the investigation, thus moved an application for extension of time and two months time was granted. Thereafter, an application was moved before the court for noting down the batch number and manufacturing details of seized substances and the said application was allowed and matter was fixed for doing the same for 07.10.2015, however on 07.10.2015 when he was preparing to come to the court for the aforesaid purpose, he noticed that some files of this case were missing from his cabinet and thereafter, he reported the knowledge of the same to higher officials and consequently FIR of theft was registered.

99. It is also to be noticed here that two month's time extension was taken however no steps were taken during this time to apprehend accused Pramod Pandey and other accused persons. There is an FIR no. 892/15 u/s 384/34 IPC and section 7/13 POC Act registered on 01.08.2015 against Superintendent R.S. Joshi (PW30), IO P.V. Chaudhary (PW6) and IO Sanjay Mehta (PW5) on the complaint of one Biswadeep Bansal over misuse of powers and demand of money during the investigation of this case. These circumstances suggest that in present case there are number of persons called for recording of statements u/s 67 NDPS Act which might assist this court in scrutinizing the entire evidence in proper perspective, however the said record is not available to court for scrutiny, except the selective record against present accused persons, to ascertain what has transpired resulting registration of FIR of extortion and corruption. The statements might connect with the principal accused persons who are not apprehended in this case.

100. IO Pradeep Singh (PW27) in his cross-examination categorically stated that he had not seen the files since 23.09.2015 and came to notice about the theft of file on 07.10.2015. It appears somewhat unnatural that IO who is investigating the case after taking two months extension will not look for the files from 23.09.2015 to 07.10.2015 i.e. for almost 15 days. This witness stated in his cross-examination that lost file contains *thousands of documents*. This itself

somehow points towards the fact that NCB has concealed some other material which can cast the real light on its case. This witness PW27 stated when investigation was handed over to him, he received more than thousands of documents. In cross-examination also stated files of only this case lost. He also stated he made photocopies prior to 23.09.2015, and handed over to SPP Sh. Rajesh Manchanda. The case file contains thousands of documents but photocopies produced before this court in hundreds. This clearly suggests some material documents are concealed clearly to save some culprits and also NCB officials against whom there is FIR of extortion and corruption.

101. The factum of FIR of extortion and corruption against PW6 IO PV Chaudhary, PW30 R.S. Joshi and PW5 Sanjay Mehta regarding the present case and the fact that IO P.V. Chaudhary was removed from this case, and investigation was handed over to IO Pradeep Singh, and the fact of theft of the files without any credible explanation suggest hanky panky on the part of NCB officials and shielding of real culprits in this case. The theft of file could not be possible easily from the NCB office as there are number of CCTV cameras in NCB office. Theft of only this file not any other file in itself creates doubt over the factum of theft. The original file appears to contain tons of documents which were not brought to the notice of this court therefore, these all events in itself cast suspicion over the bonafide of investigation, and accentuate the fact that NCB appears to be deliberately not apprehended accused Pramod Pandey who is the kingpin of this case despite the knowledge of his role and his location since beginning.

Role of accused Santosh Kumar

102. Accused Santosh Kumar alleged to the person who used to take the delivery of the parcels sent for Pramod Pandey at the courier office and made the delivery to Satyam for packing and then to Ashok Tripathi for sending the same through Brahmpal Singh abroad. There is no recovery of any incriminating article from the accused Santosh Kumar. Accused Santosh Kumar was not identified during the investigation or before the court by any witnesses. PW22 H.S. Kohli or any other official unable to identify Santosh Kumar in court. This accused in his statement u/s 67 also stated that he do not know what was in the parcel and he

is just an auto driver for delivery. PW19 Rajender Dutt Sharma who apprehended him, in cross-examination stated he do not remember whether he asked him that goods carried by him are prohibited or not. No account of this accused is also seized to corroborate any financial gain. The kingpin Pramod Pandey who stated to have deputed him for delivery has not been apprehended. Therefore, the prosecution unable to connect this accused with alleged transactions.

Role of accused Brahmpal Singh

103. The role attributed to accused Brahmpal Singh is that he is the relevant post office official to whom accused Ashok Kumar Tripathi delivered the parcel to be sent abroad however there is no corroboration of this allegation through any post office official who could stated that the accused Brahmpal Singh had booked the parcels of Ashok Kumar Tripathi. There is no record seized from the post office over the fact which parcels were booked through this Brahmpal Singh. As per prosecution case, there is a diary produced by Ashok Kumar Tripathi during the statement u/s 67 NDPS Act showing the delivery of money for last 18 months to 2 year to this accused amounting to total Rs. 36 lacs however there is nothing in the diary that any amount was paid to him. No name of Brahmpal Singh is mentioned in the said diary. The prosecution also not ascertained that handwriting in said diary is of Ashok Kumar Tripathi. This elementary lapses on the part of prosecution categorically suggest that investigation is conducted ritually without any real intent to collect the concrete evidence. Therefore, there is no substantive evidence connecting the present accused Brahmpal Singh regarding the present offence in this case on record.

Role of accused Ram Naresh

104. Role of accused Ram Naresh is that he used to return the undelivered parcels to Ashok Kumar Tripathi. Ashok Kumar Tripathi in this case was apprehended on the night of 26-27.02.2015. Thereafter on 02.03.2015 i.e. after 5 days, the NCB team reached the post office where accused Ram Naresh was working and apprehended him and from his jacket pocket, four undelivered packets containing psychotropic medicines were recovered. These recoveries are in

presence of PW16 Gilu Ram, Postal Assistant who denied the proceedings of recovery before the court. He stated that no such recovery was conducted in his presence. Ld. Defence counsel also raised the plea that even it is presumed that there is recovery of four such undelivered packets from the present accused, it cannot be held that he has the knowledge about the psychotropic medicines in them. Therefore, cannot be held to be in conscious possession.

105. It is pertinent to appreciate that after apprehension of accused Ram Naresh with these four undelivered packets, the statement of accused u/s 67 was also recorded in which he had stated that these packets were delivered to him by the concerned clerk. However the NCB has not examined the concerned clerk. It is pertinent to notice that these envelopes/packets were delivered to this accused Ram Naresh as a part of his official duty in the post office itself. It is not the case of prosecution that he had himself obtained those envelopes/packets from the clerk to be delivered to the accused Ashok Kumar Tripathi.

106. Now, one thing more pertinent to notice that there is a recovery of some undelivered packets at the office of RLO postal department at Jhandewalan. PW6 IO P.V. Chaudhary categorically stated he did not ask any question from accused Ashok Kumar Tripathi pertaining to recovery of Jhandewalan post office. There is nothing on record that the investigating officer has tried to ascertain from the officials of that postal department that these were also to be collected by present accused Ram Naresh or to be sent at the post office where accused Ram Naresh is posted.

107. The evidence do not suggest that the possession of packets by Ram Naresh were not obtained legally. The mere statement of accused and co-accused u/s 67 is not sufficient to make this possession illegal. It is also unnatural if this accused is involved then he will take the delivery on 02.03.2015 knowing the fact that the accused Ashok Kumar Tripathi had already been apprehended in the night of 26/27.02.2015. The prosecution also not able to prove allegations against this accused.

Consignor Deepak and consignee Pramodji

108. The parcel which is alleged to be taken by accused Satyam Kumar Sah from Carex Cargo office on 26.02.2015 bears the consignor name Deepak and consignee name Pramodji and it is found to be sent from Jaipur. It is pertinent to appreciate that how that parcel came from Jaipur without any accompanying documents i.e. consignee note or manifest /invoice. There is no address or phone number on the parcel. There is nothing recovered with the parcel to show that accused Satyam is authorized to collect the same. There is nothing on record also that accused Satyam had previously collected any parcel from the said Carex Cargo office. The DRS sheets exhibited by PW22 H.S. Kohli do not show that prior to the present parcel, any other parcel is received by accused Satyam. PW23 Rajesh Hooda of Care Forwards though stated that it was delivered from his office, but accompanying documents like consignee note and manifest/invoice however no such document was seized in this case. The prosecution is obliged to prove that how and at what time and in what manner the said parcel emanated from Jaipur to Delhi. The prosecution is also obliged to prove that who has booked the said parcel from Jaipur. The consignor is Deepak. The prosecution has not tried to investigate who is said Deepak who had sent the said psychotropic medicine which is material lapse in the prosecution case. Non identification of Deepak in present case also creates doubt whether infact the said parcel is sent from Jaipur or not. Mere statement of PW23 Rajesh Hooda and other courier officials therefore, in this regard that it emnates from Jaipur are not sufficient. Pramod Pandey in his statement u/s 67 NDPS Act before NCB Mumbai stated that Deepak is fictitious name. Non existence of any document on the other hand also creates doubt over the participation of the courier companies in delivery of these articles as these parcels were delivered without prior documentation and addresses. It somehow indicates that these courier agencies might be assisting consciously in carrying these types of parcels without any particulars. There is only mentioning of airway bill on the parcel but there is no seizure of any airway bill. The non investigation on the aspect of consignor and consignee in present facts and circumstances, associated with the facts of

registration of FIR against PW5, PW6 and PW30, theft of original files which contain huge documents clearly suggest that NCB is concealing some material facts which can connect to the deeper syndicate.

Account statements of accused Ashok Kumar Tripathi

109. NCB during investigation seized the bank account statement of Ashok Kumar Tripathi of PNB, ICICI Bank and HDFC Bank. PW6 IO P.V. Chaudhary (first investigating officer) who had analysed the bank accounts in his examination in chief could not state anything that how this money travelled to his account and even during investigation not taken any steps to connect the same through accused Pramod Pandey or any other person. This witness in cross-examination stated he do not remember the figures of amount, and also not confronted accused Ashok Kumar Tripathi with these entries. The analysis was done by him without making any inquiry from accused person. PW27 IO Pradeep Singh in his cross-examination stated that he analysed the bank account of accused Ashok Kumar Tripathi however none of accused was connected to the bank account of Ashok Kumar Tripathi. The bank account statement is the material evidence regarding the involvement of accused in illegal activities however neither the accused during investigation confronted with bank account entries nor the bank account entries were found connected through the other accused apprehended in this case. The principal accused Pramod Pandey in his statement u/s 67 before Mumbai Court stated that he used to give money to Ashok Kumar Tripathi in his bank account, was not apprehended neither the said fact is corroborated in the investigation or during the evidence before the court. There is nothing in proceedings that any freezing proceedings were initiated qua those accounts in this case. Thus mere presence of huge entries in bank account of Ashok Kumar Tripathi cannot be considered to connect the accused Ashok Kumar Tripathi with present activities.

No proceedings u/s 68F NDPS Act for freezing the accounts

110. Though as per the case of the prosecution there is huge transaction in the account of Ashok Kumar Tripathi suggesting of his involvement in illegal trafficking however surprisingly no proceedings for freezing the account was

initiated u/s 68(F) NDPS Act. This omission do not appear to be casual but deliberate as the prosecution has to connect this account with accused Pramod Pandey and also with some other persons if wished to freeze, but as discussed the investigation agency is not at all interested in apprehending the big fishes and only interested in small fishes for cover up, therefore, not initiated any proceedings for freezing the accounts.

Seizure of CPUs from accused Ashok Kumar Tripathi and omission of NCB to enquire over email accounts of accused to corroborate connectivity.

111. The prosecution at the time of raid at the house of accused Ashok Kumar Tripathi alleged to have recovered the 2 CPUs and it is also transpired during the statement u/s 67 of Pramod Pandey, Satyam Kumar Sah, Ashok Kumar Tripathi that they used to get the emails regarding the parcels however the prosecution has not done any investigation in this regard. Though the CPUs were sent for forensic examination and a forensic examination report no. FLS 2016/CFU/2747 dated 23.12.2016 is on record but the said report is not exhibited during evidence. The prosecution during evidence not relied upon the said report. The said report is only regarding obtaining the cloning of storage but there is nothing exhibited on record what is the material inside the CPU to connect with the illegal activities of accused Ashok Kumar Tripathi or other accused persons. No investigation qua emails of accused persons was conducted. The prosecution primarily relied upon the statements of accused u/s 67 and not tried to corroborate the same through substantive or corroborative evidence. The statement u/s 67 NDPS Act are inadmissible in terms of judgment of Apex Court in case titled *Tofan Singh Vs. State of Tamil Nadu Crl. Appeal No. 152/2013 dated 29.10.2020.*

112. It is also not stated by investigating officer what they have done with cloning material received from FSL of these CPU. It is not pleaded by the NCB anywhere in the record that cloning material seized from FSL is blank. The omission to bring the cloning material and emails also somehow suggest that NCB got some substantial information about the racket but not try to disclose the same. The inference of non disclosure of substantial information through these cloning

material and emails appears to be obviated through the theft of files resulting in missing of thousands of papers, and also from the fact that FIR of extortion and corruption registered against the material witnesses of the present case i.e. PW5, PW6 and PW30. The omission also thus indicates that this factum of FIR of theft is fictitious just to avoid the scrutiny of the documents from departmental inquiry or from this court, and also from the investigation of FIR recorded under offence of extortion and corruption against PW5, PW6 and PW30.

Diary

113. As per prosecution case, the accused Ashok Kumar Tripathi had engaged the services of accused Brahm Pal Singh for sending the packets/parcels and accused Ram Naresh used to return the undelivered parcels to Ashok Kumar Tripathi and the payments made in this regard to both these accused are in the diary. The said diary is alleged to have been provided by accused Ashok Kumar Tripathi during investigation at the time of recording of his statement u/s 67 NDPS Act, but the said diary is not exhibited or marked during the evidence therefore, it cannot be read.
114. It is worth noticing that house of accused Ashok Kumar Tripathi alleged to have been searched on the intervening night of 26/27.02.2015, and his statement was recorded later on. As per the statement of PW15 Sanjeev Sharma, he was taken by NCB officials from his house on that day, there is nothing on record in the testimony of NCB officials that accused was released and sent back to his house thereafter. The diary was not part of panchnama prepared on the night of 26/27.02.2015 therefore the production of diary later on by the accused during the statement on 27.02.2015 is unreliable. Even otherwise, the original diary is not produced before the court and stated to have been stolen from NCB office. The photocopy produced however the said copy neither bears any name of accused Brahm Pal Singh/DP Singh or Ram Naresh or any other accused. The said diary is stated to be written by Ashok Kumar Tripathi however no specimen signature of accused Ashok Kumar Tripathi was taken by NCB to corroborate the fact that the said diary was written by accused Ashok Kumar Tripathi. The diary is a material piece of evidence regarding financial transaction between the

accused however prosecution unable to prove the said evidence.

Secondary Evidence

115. Ld. Counsels for accused persons submitted that no single document in this case filed in original. All the documents are photocopies. The explanation of missing/theft of the originals do not appear to be at all credible, and the Hon'ble High Court vide order dated 06.05.2019 in CrI. Rev. P. 271/2016 of this case have held that the NCB had to lead the evidence to show the requirement of section 65 Evidence Act prior to being secondary evidence admissible however the NCB not able to show theft of files is bonafide.

116. As discussed, the factum of theft of files appears to be for the purpose of concealing some material facts however the documents exhibited in this case are primarily panchnamas, FSL reports, DRS sheets, etc. The relevant witnesses in whose supervision these documents were prepared were examined before the court. Furthermore, there is nothing pointed out in the documents exhibited that these could be different from the original therefore, in present facts and circumstances, the documents exhibited could be read as a secondary evidence.

Mobile phone connections between the accused vis a vis conspiracy

117. During investigation, the prosecution found that the accused Ashok Kumar Tripathi was using mobile no. 9810606538, Brahm Pal-8130568580, 9313459621, Pramod Kumar Pandey-771593060, 9711555617, 9619158845, 9899842235, 9769776367, accused Satyam Kumar-9958639192 and Santosh Kumar 9810792826. According to prosecution, the accused Ashok Kumar Tripathi is connected to mobile phones frequently with Pramod Pandey, Rinku, Santosh, Ram Naresh, Ambalal. Accused Brahmpal Singh is connected with accused Ashok Kumar. Pramod Pandey is connected with Ashok Kumar, Satyam Kumar Sah, Santosh Kumar. Accused Satyam Kumar was found connected with Pramod Pandey, Vikas Pandey, Ashok Kumar and Santosh Kumar. Accused Ram Naresh with accused Ashok Kumar Tripathi and accused Santosh Kumar with Ambalal, Pramod Pandey, Vikas Pandey, Rinku, Ashok Kumar Triapthi. The mobile phone connection corroborates the fact that accused persons were connected with each other. However the story of prosecution is that on the

dictate of Pramod Pandey, accused Santosh Kumar delivers the psychotropic medicines to Satyam thereafter Satyam after packing delivers to Ashok Kumar Tripathi who upon making the parcel sent it through Brahmpal Singh and thereafter Ram Naresh returned back the undelivered parcels to Ashok Kumar Tripathi. The mobile phone connections are only the corroborating evidence of knowledge of accused between themselves but no inference of culpability could be drawn without substantive evidence. The accused persons, except statement u/s 67 NDPS Act which are inadmissible, were not found connected through any admissible and credible evidence. The recoveries as already discussed are not found credible and even not connecting the accused persons. The prosecution deliberately as discussed not arrested the kingpin accused Pramod Pandey. The umbrella of conspiracy is Pramod Kumar Pandey. The said umbrella is conspicuously missing. This court vide order dated 25.11.2019 while granting bail to the accused Ram Naresh and Santosh Kumar have directed the NCB to explore the legal recourse available to them to bring accused Pramod Pandey and Vikas Pandey under the clutches of law however the NCB did not take any steps despite the said order. NCB showed its reluctance since beginning to apprehend the kingpin Pramod Pandey. Therefore merely on the basis of mobile phone connections no inference of conspiracy could be drawn hence, the prosecution unable to prove beyond reasonable doubt the factum of conspiracy between the accused persons.

Effect of loss of thousands of documents

118. PW27 IO Pradeep Singh in his cross-examination categorically stated that thousands of documents being original are lost. The photocopy of documents produced before the court are in hundreds. Both the investigating officers PW6 and PW27 found reluctant to disclose in their testimony what are the other documents or the statement of witnesses recorded. Admittedly, there is no document filed on record connecting the account statement of accused Ashok Kumar Tripathi. There is no investigation over the email records of accused persons. Nothing surfaced during investigation from the material recovered from the CPUs. PW6 P.V. Chaudhary was transferred during investigation all of a

sudden but could not tell any reason for his transfer. Admittedly there is an FIR for extortion and corruption against this IO in present case alongwith PW5 and PW30. PW6 stated in cross-examination that he informed NCB Mumbai in this case regarding Pramod Pandey and also received some reply but there is no reply on record which itself suggests that selective photocopies were presented and the factum of theft is sham. He also stated in his cross-examination that he wrote various letters to the manufacturers however there is nothing in record what kind of replies he received from the manufacturers. Therefore, the loss/theft of files is made to conceal the material facts regarding the present case.

Tainted investigation

119. As discussed, the prosecution during investigation conducted the investigation very selectively and superficially and not even tried to connect all the dots so that the real offenders could be brought to book. The accused Pramod Pandey was in custody on the first day i.e. on 26.02.2015 however tried to conceal the said fact before the court. PW6 PV Chaudhary remained investigating officer from 13.03.2015 to 16.07.2015 however stated he has not taken any steps to apprehend Pramod Pandey who is the main accused lying in the custody in Mumbai case. PW6 PV Chaudhary do not appear to have conducted any material investigation connecting the accused persons except recording their statements u/s 67 which were inadmissible. All the accused persons were not confronted with each other or with their call detail records. The accused persons were not tried to be connected through any bank records. There is no investigation from Jaipur where the first parcel has been received at Carex Cargo. No investigation over the fact why any document was not found with any parcel. There is no investigation over the consignor Deepak of the parcel. The consignee is admittedly Pramod Pandey. He was also not interrogated on that aspect despite the fact that he was in custody at Mumbai. The statement of Pramod Pandey u/s 67 NDPS Act Ex.PW27/11, recorded by NCB Mumbai on 02.03.2015 was brought on record when the period for extension of investigation was over i.e. more than 8 months of investigation. The prosecution also not tried to brought on record the statement given by this

accused earlier to this statement which is apparent from the statement dated 02.03.2015. There is no material on record to show what persons were interrogated on the basis of recoveries. The recoveries are not the loose tablets but there are no inquiries from the manufacturers or the dealers from where it travelled. There is no effort by the investigating agency to connect the accused Ram Naresh with the undelivered parcels. There is also no investigation from post office that the possession of the envelope in custody of Ram Naresh is for illegal purpose. Nobody is examined from the postal department that he was not authorized or he is abusing his authority. Though the accused Brahmpal is found to have avoided the summons from NCB for a long period of time by unauthorizedly remaining on leave however the prosecution not tried to connect him through any independent witness over the fact that he used to deposit the parcel for sending abroad and merely relied upon his CDR for association with other co-accused persons.

120. The investigation on the aspect of accused Pramod Pandey is not merely negligent but appears to be quite deliberate. This fact is clear from the fact that the name of this accused surfaced on panchnama at the first instance being the consignee. Thereafter his name is surfaced in the statement of co-accused Satyam, Santosh, Ashok Kumar Tripathi. PW22 H.S. Kohli also mentioned his name provided the entries regarding his name. Neither investigating officer PW6 PV Chaudhary nor PW27 investigating officer Pradeep Singh took any steps to arrest him. There is a bald statement of Pradeep Singh in cross-examination that he alongwith IO Anand Kumar and IO Rajiv Sehrawat went to Mumbai to record the statement of Pramod Pandey after filing of complaint but this fact is not substantiated through any document. It is however somewhat strange that despite the knowledge since beginning the NCB team went to Mumbai only after filing of complaint that too after extension of two months. The falsity of this contention is also apparent from the fact that it is also not mentioned in the application u/s 73 Cr.PC by which the NCB tried to take the NBWs only against accused no.7 to 11. No steps were taken to arrest the accused Pramod Pandey despite his presence in custody at Mumbai during investigation or after

investigation. Any pretended step to apprehend kingpin Pramod Pandey later after filing of complaint and loss of original files containing tons of documents suggest clear malafide of investigating agency. No steps were taken to prosecute him by resorting to proceedings u/s 319 Cr.PC at any stage. No steps were taken to search his house to seize accounts of Pramod Pandey. The present case is eye wash as only small fishes implicated and big fishes left. The investigation of this case is highly tainted and clearly suggests oblique motives. It is not expected of agencies like NCB.

121. On overall appreciation of evidence on record, the prosecution unable to prove the following foundational facts beyond reasonable doubt:

(i) Secret information and apprehension of accused Satyam alongwith the parcel containing psychotropic medicines.

(ii) Recovery of psychotropic medicines from the house of Satyam as well as Ashok Kumar Tripathi as discussed, appears suspect, and also illegal as there is violation of mandatory compliance of search authorization u/s 41(2). The search authorizations do not appear to be issued in the manner relied upon by the prosecution as discussed.

(iii) The diary seized showing the financial dealings between Ashok Kumar Tripathi and accused Brahmpal not proved.

(iv) The account statement of accused Ashok Kumar Tripathi do not appear to be connected with any other accused or through the present offence.

(v) The recovery of envelopes containing psychotropic medicines from accused Ram Naresh is suspect, and also could not be proved that it was in his possession illegally.

(vi) Neither accused Ashok Kumar Tripathi nor accused Ram Naresh were found connected with the recovery of the undelivered parcels containing narcotic medicines from RLO, Jhandewalan post office.

(vii) The statements of accused u/s 67 are inadmissible in terms of judgment of Tofan Singh. The mobile phone records of accused are not substantiated through any other substantive or corroborative evidence.

(viii) The non apprehension of kingpin accused Pramod Pandey as discussed is

deliberate.

(ix) There is no effort to trace the consignor, consignees of the parcels.

(x) No effort to connect the accused or the other unknown culprits through the material seized through CPU. No effort to collect the email data of accused persons.

(xi) The factum of theft of original files containing thousands of documents appears sham.

(xii) The registration of FIR for offence of extortion and corruption against PW5, PW6 and PW30 suggestive of the malafide investigation.

122. Apex court in case titled *Haneef Khan @ Anu Khan Vs. CBN CrI. Appeal No. 1206/2013 dated 20.08.2019* held in no uncertain terms that though the NDPS Act carries reverse burden of proof but it does not absolve the prosecution from establishing a prima facie case against the accused. Apex court in *Noor Aga Vs. State of Punjab 2008 (16) SCC 417* held that section 35 and 54 no doubt raise presumption with regard to culpable mental state on part of accused however, bare perusal of the said provision would clearly show that presumption would operate in trial of accused only in the event of the circumstances contained therein are fully satisfied. An initial burden exist upon the prosecution and only when it stands satisfied then the legal burden would shift. Therefore the prosecution has to prove first the foundational facts before invoking presumption of culpable mental state u/s 35 and 54 NDPS Act.

123. On overall appreciation of evidence, the prosecution not able to prove the foundational facts beyond reasonable doubt therefore presumption u/s 35 and 54 cannot be invoked. Accordingly, all the accused persons namely Satyam Kumar Sah, Ashok Kumar Tripathi, Santosh Kumar, Ram Naresh and Brahm Pal Singh stand acquitted of the charges framed against them by granting benefit of doubt. All the accused persons are directed to furnish personal bonds in the sum of Rs. 50,000/- u/s 437A Cr.PC. However, it is clarified that no benefit of this acquittal to be accorded to accused Ram Naresh and Brahm Pal in departmental proceedings if any conducted against them.

124. File be consigned to record room after compliance u/s 437A Cr.PC. Case property is confiscated to NCB and the same may be disposed of after the expiry of the period of the appeal/revision.

125. Copy of judgment be also sent to DG, NCB to look into the matter.

**Announced in the open court
on this 21st day of May, 2022**

**(Ajay Kumar Jain)
Special Judge NDPS
Patiala House Courts
New Delhi**