

**IN THE COURT OF SHRI xxxxxxxxxxxxxxxxx, LEARNED
ADDIL. SESSIONS JUDGE, GURUGRAM.**

State Vs. xxxxxxxxxxxxxxxxx

FIR No:xxxxdated xxxxxxxxx
US/s :20/6/85 of NDPS Act and
120-B of IPC
P.S. : xxxxxxxxxxxxx.

Written arguments on behalf of accused.

Sir,

The accused respectfully submits the written submissions as under:

1. That the matrix as culled out from the version of prosecution is that on xxxxxxxxxxxxxxxxx, accused xxxxxxxxxxxxxxxxx s/o xxxxxxxxxxxxxxxxx resident of village xxxxxxxxxxxxxxxxx, visited the Distt. Jail Bhondsi to meet under-trial Sunder son of Prem Singh resident of Halalpur, P.S. Kharkhoda, Distt. Sonipat. As per jail recorde, the articles handed over for delivering to under trial Sunder were Cucumber, Tomato, Carrot, Lemanon, Banana and one coloured canny of Ghee, which was having red

coloured cap, red handle. When the said articles were kept in Dyodi for inspection/Talasi nd Warder Ramesh Gulia belt no.337 inspected the canny of ghee, it was found inside a piece of other canny and underneath, two packets wrapped in black cello tape were also found and the packets were unwrapped, it was found that there was some contrabaneed like Sulph was there in the said packets. Intimation was sent to the Police Stteion and the FIR in the present case was registered.

2. Investigation was carried out by ASI Rakesh Kumar. The contrabaneed was seized after separating the samples, as per rules. On 18.2.2013, accused Sishpal was arrested. Production warrant of accused Sunder were got issued from the Hon'ble Court and accused Sunder was also arrested on 26.3.2013. Remining accused Manjit and Devender were absconded. The accused was charged sheeted for the commission of offence punishable under section

20 of NDPS Act and 120-B of IPC, to which accused pleaded not guilty and claimed trial.

3. During the course of evidence, the prosecution has examined as many as nine witnesses i.e. PW1 SI Mukesh Chand No.16. He is a formal witness only regarding of FIR Ex.PW1/A and its endorsement Ex.PW1/B. PW2 Ct. Raj Kumar No.3420 is attesting witness to the personal search of accused Sishpal and proved search memo Ex.PW2/A. PW3 Ct. Rakesh Kuma No.280 is the witness to the disclosure statement of accused Sishpal and proved the same as Ex.PW3/A. PW4 HC Ramesh No.337 has searched the articles on taken by the outsider persons, to be delivered to the inmates and he has proved the memo Ex.PW4/A. PW5 Sube Singh, Retd. Constable has tendered his affidavit Ex.PW5/A in his evidence. PW6 SI Rakesh Kumar is the Investigating Officer and he has proved the documents of investigation i.e. Ex.P6/A to Ex.PW6/N. PW7 ASI Shish Rm has also

tendered his affidavit Ex.PW7/A in his evidence. PW8 Ramesh Kumar, Deputy Superintendent of Distt. Jail Bhondsi and PW9 ASI Karamvir has proved the disclosure statement of accused Sunder Ex.PW6/N.

6. That the statement of accused under section 313 of Cr.P.C. were recorded, in which the accused pleaded their innocence and claimed trial.

7. Now coming to the submission on behalf of the accused. In the present case, the prosecution has examined as many nine witnesses but from the perusal of deposition of all these witnesses, it becomes the case of the prosecution doubtful and a planted one against the accused persons. If we have perused the testimony of PW4 Ramesh, who was deputed to check the food item taken by the relatives of inmates for deliver them. This witness in his examination in chief categorically stated that his duty was to search the persons coming through the main gate. On that accused Shish Pal

also came to meet accused Sunder, who was lodged in the jail. During his cross examination, he specifically stated that neither he had seen the accused Shishpal putting food articles nor he conducted the search of accused Shishpal. If PW4 was deputed on the main gate only to search the persons coming to meet the inmates and to search the articles taken by them and PW4 has neither seen the accused putting any article nor search the accused. Even the I.O. has not obtained the CCTV footage of the incident, which connect the accused with the alleged occurrence. From the perusal of cross examination of IO PW6, it is apparent clear that CCTV cameras were on the main gate of jail. Even more, the canny from which the contrabanned was recovered was not produced before the Hon'ble Court. In this situation, the connection of the contraband or allegedly recovered article with the accused could not be hold. Thus, the testimony of

this witness has failed to prove the guilt of the accused.

Now coming to testimony of most relevant witness PW6 SI Rakesh Kumar, Investigating Officer of this case. PW6 has proved the investigation conducted by him. In his examination in chief, PW6 has stated tht he has complied with section 50 of NDPS Act. He has also stated that on Ex.PW6/H, the accused has consented that he wanted to get his search by IO and not by any Gazetted Officer. In the present case, the alleged Narcotic substance was not recovered from the body of the accused, so it is very surprised that how he has denied of his search from Gazzeted Officer. In his cross examination, PW6 has admitted that no recovery was affected from the accused in his presence. PW6 has failed to prove that exactly from where the weighing machine was managed. He has only stated that the PCR vehicle of the police station managed

the weighing machine. But the IO has not disclosed the name of person on Police PCR vehicle, who managed the weighing machine or from whom the same was managed. The prosecution has not made the person from whom the weighing machine was managed, as witness. In the circumstances, the availability of weighing machine in itself is also doubtful and the benefit of doubt must go in favour of the accused. It is well settled law that the any recovery memo is duly signed by the accused/person from which the alleged recovery was/is affected but in the present case the recovery memo of the Narcotic Substance was not signed by the accused. The IO has stated that the CCTV Cameras were faulty but he has not mentioned the said fact in the disclosure statement of Jail Superintendent or Jail Warden that the CCTV Cameras were faulty. PW6 has not bothered to bring on record the relations of accused Shishpal with inmate/accused Sunder. The

relation of Sishpal with Sunder has also not been mentioned on the slip Ex.PW6/E. When there was no relation of any kind of accused Shishpal with accused Sunder, how he took food articles for him and why he visited the jail for him. Plastic box/canny was also not produced before the Hon'ble Court. As per version of PW6, the weight of Sulfa in second pouch was 62 gm whereas as per prosecution version the weight of Sulfa in second pouch was 68 gm., which also create the recovery doubtful.

That PW8 in his cross examination has admitted that search of accused was not conducted in his presence and nothing was recovered from the accused after his personal search. PW9 is not related to the investigation regarding accused Shishpal.

That there was delay of 24 days in sending the sample of Narcotic Substance to FSL. The prosecution has filed to explain the said delay in

sending the sample to FSL Madhuban after a gap of 24 days, which has created a serious doubt over the prosecution version. In **Kaku Singh and others versus Stte of Punjab, 2008(2)CCJ, 398(P&H)**, it has been held that " Samples remied in custody of IO till sending the same to FSL. CFSL form ws not filled at the spot. There is a delay of 4 days in sending the sample to the Chemical Examiner. Seal was handed over to ASI. Held. These circumstances are fatal to the prosecution case"

In **Kuldip Singh vs. State of Punjab 2013(1) RCR(Cr1), 510,** conviction of the accused was set aside by the Hon'ble Punjab and Haryana High Court on the grounds that (i) seal after use not handed over to independent witness, (ii) non preparation of CFSL form at the spot and **(iii)Delay of 15 days in sending the sample to the Chemicl Examiner."**

In the present case the alleged Narcotic Substance was recovered at the Dyodi of Jail but no

independent witness was joined by the IO in the investigation of this case. As per own version, the time of recovery was day time and time of meeting of general public to the inmates and numerous persons were present there at jail gate but the prosecution has not joined any independent witness during investigation of this case. In **Radha Bai vs. State of Haryana, 2015(2) RCR(Cr1), 713**, it has been held by the Hon'ble Punjab and Haryana High Court that " where the place of recovery is busy place and the presence of number of independent witnesses cannot be disputed and no independent witness is associated, it becomes the duty of the Court to scrutinize the prosecution case carefully, consciously and minutely. In that eventuality, even the minor circumstances may assume significance". In **Gurnam Singh vs. State of Haryana**, the Hon'ble Punjab & Haryana High Court has acquitted the

accused on the ground of non-joining of independent witness.

That keeping in view the above submissions, the prosecution has miserably failed to prove its case against the accused beyond all reasonable shadow of doubts and thus the accused is liable to be acquitted of charges leveled against him. It is therefore, prayed that the accused may kindly be acquitted of the charges against the accused.

Accused

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Through Counsel

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