IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal (C-SB) No. 39 of 2025

Reserved on: 18.03.2026

Date of Decision: 04.05.2026

Karan Kumar ...Appellant

Versus

State of H.P. ...Respondent

Coram

Hon'ble Mr Justice Rakesh Kainthla, Judge.

Whether approved for reporting?[1] Yes

For the Appellants : Mr Vijender Katoch, Advocate.

For the Respondent/State : Mr Jitender Sharma, Additional Advocate General.

Rakesh Kainthla, Judge

The present appeal is directed against the judgment of conviction and order of sentence dated 06.09.2025, passed by learned Chairman H.P. State Waqf Tribunal Exercising the powers of Special Judge, Dharamshala, District Kangra, H.P. (learned Trial Court) vide which the respondent (accused before learned Trial Court) was convicted of the commission of an offence punishable

1 Whether reporters of Local Papers may be allowed to see the judgment? Yes.

under Section 21 of Narcotic Drugs and Psychotropic Substances Act (NDPS) and was sentenced to undergo rigorous imprisonment for five years, pay a fine of ₹1 lakh and in default of payment of fine to undergo further simple imprisonment for one year for the commission of the aforesaid offence. *(Parties shall hereinafter be referred to in the same manner as they were arrayed before the learned Trial Court for convenience.)*

2. Briefly stated, the facts giving rise to the present appeal are that the police presented a challan against the accused before the learned Trial Court for the commission of an offence punishable under Section 21 of the NDPS Act. It was asserted that Head Constable (HC) Deepak (PW13), Constable Amit Kumar (PW11), and HC Rocky (PW10) were on patrolling duty on 11.07.019. They saw the accused at about 2:45 PM coming towards Indora curve. He was looking over his shoulder. The police became suspicious of the activities of the accused and went towards him. The accused started running away after seeing the police. He took out one packet from his knicker and threw it towards the bushes. The police apprehended the accused after a distance of 10-15 steps and brought him near the bushes where he had thrown the packet. Nikhil Mehra (PW12) reached the spot in the meantime. The police

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joined him in the investigation. The accused revealed his name as Karan Kumar after the enquiry. HC Deepak (PW13) checked the packet and found 6.18 grams of heroin in it. He prepared a memo of identification (Ext.P32/PW11). He put the packet into an empty matchbox (Ext.MO2), the matchbox into a cloth parcel (Ext.MO1) and sealed the parcel with six impressions of seal 'S'. He also prepared the NCB-1 Form (Ext.P29/PW9) and put the seal impression on the NCB-1 Form. He obtained a seal impression (Ext.P33/PW11) on a separate piece of cloth and handed over the seal to witness Nikhil Mehra after its use. Constable Rocky (PW10) took the photographs (Ext.P4/PW2 to Ext.P18/PW2) of the proceedings. HC Deepak (PW13) suspected that the accused might be in possession of some contraband. Hence, he told the accused about his right to be searched before a Magistrate or a Gazetted Officer. The accused consented to be searched before the Magistrate vide Memo (Ext.P35/PW11). The accused was searched before Gian Chand (PW7), Tehsildar, Indora and no incriminating substance was found in his possession. Memo (Ext.P26/PW7) was prepared. HC Deepak (PW13) prepared the rukka (Ext. P36/PW13) and handed it over to Constable Amit Kumar (PW11) with a direction to take it to the Police Station. Constable Amit (PW11)

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handed over the rukka to Ajeet Kumar (PW9), who registered the FIR (Ext.P27/PW9). SI Kuldeep Chand (PW14) investigated the matter. He went to the spot. HC Deepak (PW13) handed over the case property and the documents to SI Kuldeep Chand (PW14) vide memo (Ext.P31/PW10). SI Kuldeep Chand (PW14) prepared the spot map (Ext.P37/PW14) and recorded the statements of witnesses as per their version. SI Kuldeep Chand (PW14) went to the Police Station along with the accused and the case property after the completion of the investigation. He produced the case property, the accused and the case file before Ajeet Kumar (PW9), who verified the seals on the parcel and resealed it with his seal 'T' at three places. He obtained the sample seal 'T' on a separate piece of cloth (Ext.P28/PW9), filled the relevant columns of the NCB-1 form, put the seal impressions 'T' on the NCB-1 form, and issued the re-sealing certificate (Ext.P30/PW9). He handed over the case property and the documents to ASI Vinay Kumar (PW15), who made an entry in the malkhana register at S. No. 68/19 (Ext.P43/PW15) and deposited the case property in Malkhana. ASI Vinay Kumar (PW15) handed over the case property to SI Kuldeep Chand (PW14) on 12.07.2019 for the certification of the inventory. SI Kuldeep Chand (PW14) produced the case property before the

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learned Judicial Magistrate First Class, Indora, along with an application (Ext.P39/PW14) and index (Ext.P4/PW14). Learned Judicial Magistrate First Class, Indora, issued the certificate (Ext.P41/PW14). Photographs of the proceedings (Ext.P20/PW5 to P22/PW5) were taken. SI Kuldeep Chand (PW14) handed over the case property to ASI Vinay Kumar (PW15), who deposited it in Malkhana and made an entry in the Malkhana register. ASI Vinay Kumar (PW15) handed over the case property, documents and sample seal to LHC Kuljeet (PW4) on 14.07.2019, with a direction to carry them to State Forensic Science Laboratory (SFSL) vide RC No. 55/21 (Ext.P44/PW15). LHC Kuljeet (PW4) handed over the case property, documents and the sample seal at SFSL Junga and handed over the receipt to MHC on his return. Kuldeep Chand (PW14) prepared a special report (Ext. P2/PW1) on 13.07.2019 and handed it over to Sub Divisional Police Officer (SDPO) Nurpur through HHG Rashpal (PW8). SDPO Sahil Arora made the endorsement on the special report and handed it over to his Reader ASI Dharampal (PW1). ASI Dharampal made an entry in the register of special report at Sl. No.41 (Ext.P1/PW1) and retained the special report on record. The result of the analysis (Ext.PX) was issued, stating that the exhibit stated as heroin, was a sample of

diacetylmorphine (heroin). The statements of witnesses were recorded as per their version, and after the completion of the investigation, the challan was prepared and presented before the learned Trial Court.

3. Learned Trial Court found sufficient reasons to summon the accused. When the accused appeared, he was charged with the commission of an offence punishable under Section 21 of the NDPS Act, to which he pleaded not guilty and claimed to be tried.

4. The prosecution examined 15 witnesses to prove its case. ASI Dharam Pal (PW1) was working as a Reader to SDPO Nurpur, to whom the special report was handed over. Rajinder Singh (PW2) and Sham Lal (PW5) developed the photographs. HHC Jagdev Chand (PW3) brought the case property and the result of analysis from SFSL, Junga. HC Kuljeet (PW4) carried the case property, documents and sample seal to SFSL Junga. LHHC Aruna Kumari (PW6) proved the entry in the daily diary. Gian Chand (PW7) was working as Tehsildar, in whose presence the personal search of the accused was conducted. HHG Rashpal Singh (PW8) carried the special report to SDPO. Ajeet Kumar (PW9) signed the FIR and resealed the case property. HC Rocky (PW10), Constable Amit Kumar (PW11), Nikhil Mehra (PW12) and HC Deepak (PW13)

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witnessed the recovery. SI Kuldeep Chand (PW14) investigated the matter. ASI Vinay Kumar (PW15) was working as an MHC with whom the case property was deposited.

5. The accused, in his statement recorded under section 313 of Cr.P.C., denied the prosecution's case in its entirety. He stated that he was innocent and was falsely implicated. He did not produce any evidence in his defence.

6. Learned Trial Court held that the statements of prosecution witnesses corroborated each other. It was a case of a chance recovery, and the provisions of Section 42 of the NDPS Act did not apply to it. The statements of prosecution witnesses corroborated each other. Nikhil Mehra (PW12) admitted in his cross-examination by the learned Public Prosecutor that the packet was lifted from the bushes, and it was found to contain heroin. He also admitted his signature on the memo and the other steps taken by the police during the investigation. His testimony could be relied upon to the extent it supported the prosecution's case. There was nothing in the cross-examination of the prosecution's witnesses to show that they were making false statements or had any motive to depose against the accused. The statements of the prosecution witnesses could not be discarded

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simply because they happen to be Police Officials. The integrity of the case property was duly established. The failure to produce the seal in the Court was not fatal. The result of the analysis showed that the samples contained diacetylmorphine. The prosecution had proved its case beyond a reasonable doubt for the commission of an offence punishable under Section 21 of the NDPS Act. Hence, the learned Trial Court convicted and sentenced the accused as aforesaid.

7. Being aggrieved by the judgments and order passed by the learned Trial Court, the accused has filed the present appeal asserting that the learned Trial Court erred in appreciating the material placed before it. The prosecution had failed to prove that the recovery was made from exclusive and conscious possession of the accused. The statements of prosecution witnesses contradicted each other on material aspects. Nikhil Mehra (PW12) did not support the prosecution's case, and this was sufficient to reject the prosecution's version. The seals were not produced before the Court for comparison, and this was fatal to the prosecution's case. No independent witness was associated despite the opportunity and availability. The learned Trial Court has imposed an excessive sentence without any justification. Hence, it was prayed that the

present appeal be allowed and the judgment and order passed by the learned Trial Court be set aside.

8. I have heard Mr Vijender Katoch, learned counsel for the petitioner and Mr Jitender Sharma, learned Additional Advocate General for the respondent/State.

9. Mr Vijender Katoch, learned counsel for the petitioner, submitted that the petitioner is innocent and he was falsely implicated. The statements of prosecution witnesses contradicted each other on material aspects. Anil Mehra was associated as an independent witness, but he failed to support the prosecution's case, which made the prosecution's version highly doubtful. The place of the incident was located in a busy locality, but the police did not join any independent witnesses during the investigation, which is fatal to the prosecution's case. The seal was not produced before the Court, and there was nothing with the Court to compare the seal impression on the parcel. The learned Trial Court ignored all the circumstances and wrongly convicted the accused. The sentence imposed by the learned Trial Court is disproportionate, and no justification was provided for imposing such a harsh sentence. Hence, he prayed that the present appeal be allowed and

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the judgment and order passed by the learned Trial Court be set aside.

10. Mr Jitender Sharma, learned Additional Advocate General for the respondent/State, submitted that the prosecution witnesses corroborated each other on material aspects. Minor contradictions were bound to come with time due to the failure of memory. Anil Mehra had supported the prosecution's version regarding the material aspects after he was cross-examined by the learned Public Prosecutor. The non-production of the seal before the Court is not fatal. The heroin is adversely affecting society, and a deterrent sentence was required to be imposed in the present case. Learned Trial Court had rightly imposed a sentence of five years imprisonment, and no leniency should be shown to the accused. Hence, he prayed that the present appeal be dismissed.

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

12. HC Rocky (PW10) stated that he, HC Deepak and Constable Amit Kumar had left the office for patrolling on 11.07.20219. They reached the Indora curve at about 2:45 PM when they saw the accused. The activities of the accused were suspicious,

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and they went towards the accused. The accused turned around and tried to run away. He took out one packet from his left pocket and threw it on the roadside towards the bushes. The police apprehended the accused after a distance of 10-15 steps. He revealed his name as Karan Kumar. He was brought to the spot where he had thrown the packet. One person was going towards the school. He was called, and he revealed his name as Nikhil Mehra. The police picked up the packet thrown by the accused and checked it. It contained a transparent polythene packet containing some light-yellow substance. The substance was tested and was found to be heroin. The identification memo was prepared, and the substance was weighed. Its weight was found to be 6.18 grams along with the polythene packet. The packet was put inside an empty matchbox, and the matchbox was put in a cloth parcel. The parcel was sealed with six seals of seal 'S'. The NCB-1 Form was filled in triplicate. Sample seal impression was taken on the form and a separate piece of cloth. The seal was handed over to Nikhil Mehra after its use. The parcel, form and sample seal were seized vide seizure memo. The accused was told about his right to be searched before a Magistrate or the Gazetted Officer, and the accused opted to be searched by the Magistrate. The Investigating

Officer requested Tehsildar Indora to visit the spot. Tehsildar Gian Chand arrived on the spot. The personal search of the accused was conducted in the presence of Gian Chand, but no incriminating material was recovered. Rukka was prepared and sent to the Police Station. He photographed the proceedings.

13. He stated in his cross-examination that the police party had reached Indora curve at about 2:45 PM, and the accused was noticed immediately after the arrival. No nakka was laid at any place. They stayed at Damtal and had lunch. No vehicle was checked during the patrolling. Witness Nikhil was noticed near the spot at about 3 PM after the accused was apprehended. The knickers worn by the accused had two pockets. Tehsildar arrived on the spot at about 4:30 PM and left at about 5:10-5:15 PM. It took about 20 minutes to write the rukka. Constable Amit went to the Police Station on foot and arrived before the arrival of the second Investigating Officer. The second Investigating Officer and one Constable arrived on the spot on a motorcycle. The first Investigating Officer remained on the spot till 8:30-9 PM. He, HC Deepak and Constable Amit Kumar returned from the spot at about 8:45-9 PM. No videography was conducted. The factory was located at a distance of 100-150 meters from the spot, and the

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school is located at a distance of about 300 meters from the spot. The proceedings on the spot were conducted by the Investigating Officer, sitting on the spot. He denied that nothing was recovered from the accused.

14. Constable Amit Kumar (PW11) supported the prosecution's case in his examination-in-chief, and it is not being reproduced to avoid prolixity and repetition. He stated in his cross-examination that the police officials started from the office at about 8-10 AM in a private vehicle of HC Deepak Kumar (PW13). They reached the spot at about 2:40 PM. They had not checked any vehicle on the spot. They had reached Damtal at 12 PM, and they had stopped for some time at Damtal. They were at Jassur at 11 AM. They had not checked any vehicle during the patrolling. The accused was noticed at about 2:45 PM. The Tehsildar arrived along with the driver on the spot. The writing of rukka commenced at about 6 PM and was completed at about 6:30 PM. He went on foot to the Police Station. He returned with the case file to the spot at about 7:15-7:20 PM. Tehsildar, Indora, remained on the spot for about 40 minutes. They had not given their search to the accused. The second Investigating Officer arrived about five minutes after his arrival. The second Investigating Officer arrived on a

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motorcycle. The factory was located at a distance of about 100-150 meters from the spot. He admitted that the workers remain present in the factory 24 hours a day. He admitted that Greenland School is located at a distance of about 250-300 meters from the spot. He, the first Investigating Officer and Constable Rocky left the spot at about 9 PM. The second Investigating Officer prepared the document by sitting on the spot. He denied that no recovery was effected in his presence.

15. Head Constable Deepak (PW13) also supported the prosecution's case in his examination-in-chief, and the same is not being reproduced to avoid repetition. He stated in his cross-examination that they reached the Indora curve at about 2:45 PM. They had not laid any Nakka. They were walking on the road when they saw the accused. They had proceeded from Kangra at about 8:10 PM. They stayed at Jassur for half an hour and at Damtal for 1-1 ½ hours. They were travelling in a private vehicle owned by him. They had not checked any vehicle at Jassur and Damtal. They had seen the accused at a distance of 15-20 steps. All the police team went to apprehend the accused. The accused was brought to the spot. The witness, Anil Mehra, was coming on foot. Tehsildar came to the spot at about 4:30 PM and remained on the spot for about 45

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minutes. The second Investigating Officer arrived on the spot after the departure of the Tehsildar. The second Investigating Officer came to the spot at 7:15 PM along with the Constable in a private vehicle. Constable Amit Kumar (PW11) departed from the spot with rukka at about 6:30 PM. He wrote the rukka at about 5:40 p.m., and it took about 45 minutes to write. Constable Amit Kumar (PW11) proceeded from the spot on foot and returned at about 7:15 PM. He, Constable Amit Kumar (PW11) and Constable Rocky (PW10) departed from the spot at about 9 PM. The factory was located at a distance of 150 meters from the spot. He stitched the parcel and wrote the documents on the spot by sitting on the roadside. The second Investigating Officer had the mobile light with him. The independent witness remained on the spot till his departure. He denied that no recovery was effected from the accused.

16. It was submitted that the factory and the school were located in the vicinity, and no person was associated with the factory or the school, which would make the prosecution's case highly suspect. This submission cannot be accepted. The police officials consistently stated that they were on patrol duty. They saw the accused coming towards him at Indora curve. He was acting suspiciously, and the police proceeded towards the accused,

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

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

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

> "(A)appellant was intercepted, and a search of his bag was conducted on suspicion, when he turned back and tried to

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

18. It was laid down by the Hon'ble Supreme Court of India in ***Raveen Kumar v. State of H.P., (2021) 12 SCC 557: (2023) 2 SCC (Cri) 230: 2020 SCC OnLine SC 869*** that non-association of the independent witnesses will not be fatal to the prosecution case. However, the Court will have to scrutinise the statements of prosecution witnesses carefully. It was observed on page 566:

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

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

> "**12.** It is settled law that the testimony of the official witnesses cannot be rejected on the grounds of non-corroboration by independent witnesses. As observed and held by this Court in a catena of decisions, examination of independent witnesses is not an indispensable requirement and such non-examination is not necessarily fatal to the prosecution's case [see ***Pardeep Kumar [State of H.P. v. Pardeep Kumar, (2018) 13 SCC 808: (2019) 1 SCC (Cri) 420]***].
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> **13.** In the recent decision in ***Surinder Kumar v. State of Punjab [Surinder Kumar v. State of Punjab, (2020) 2 SCC 563: (2020) 1 SCC (Cri) 767]***, while considering somewhat similar submission of non-examination of independent witnesses, while dealing with the offence under the NDPS Act, in paras 15 and 16, this Court observed and held as under: (SCC p. 568)
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> > "*15.* The judgment in ***Jarnail Singh v. State of Punjab [Jarnail Singh v. State of Punjab, (2011) 3 SCC 521: (2011) 1 SCC (Cri) 1191]***, relied on by the counsel for the respondent State, also supports the case of the prosecution. In the aforesaid judgment, this Court has held that merely because the prosecution did not examine any independent witness would not necessarily lead to a conclusion that the accused was falsely implicated. The

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evidence of official witnesses cannot be distrusted and disbelieved merely on account of their official status.

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

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

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

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

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

> "17. The issue raised regarding conviction solely relying upon the testimony of police witnesses, without procuring

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any independent witness, recorded by the two courts, has also been dealt with by this Court in ***Surinder Kumar [Surinder Kumar v. State of Punjab, (2020) 2 SCC 563 : (2020) 1 SCC (Cri) 767]*** holding that merely because independent witnesses were not examined, the conclusion could not be drawn that the accused was falsely implicated. Therefore, the said issue is also well settled and in particular, looking at the facts of the present case, when the conduct of the accused was found suspicious, and a chance recovery from the vehicle used by him is made from a public place and proved beyond a reasonable doubt, the appellant cannot avail any benefit on this issue. In our view, the concurrent findings of the courts do not call for interference."

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

16. As regards non-association of the independent witnesses, it is now well settled that non-association of the independent witnesses or non-support of the prosecution version by independent witnesses itself is not a ground for acquittal of the Appellants/accused. It is also well-settled that the testimonies of the official witnesses, including police officials, carry the same evidentiary value as the testimony of any other person. The only difference is that the Court has to be most circumspect while appreciating the evidence of the official witnesses to rule out the possibility of false implication of the accused, especially when such a plea is specifically raised by the defence. Therefore, while scrutinising the evidence of the official witnesses, in cases where independent witnesses are not associated, contradictions and inconsistencies in the testimonies of such witnesses are required to be taken into account and given due weightage unless satisfactorily explained. However, the contradiction must be a material and not trivial one, which alone would assume significance.

17. Evidently, this is a case of chance recovery; therefore, the police party was under no obligation to join independent

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witnesses while going on patrolling duty, and the association of any person after effecting the recovery would be meaningless.

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

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

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22. A similar reiteration of law can be found in a very recent judgment of the Coordinate Bench of this Court in ***Cr. A. No. 202 of 2020, titled Dillo Begum v. State of H.P., decided on 27.03.2024***."

23. The police had found Nikhil Mehra (PW12) walking on the road and joined him. It was not suggested to any person that

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any other person was present on the spot, and the police had not deliberately joined him. Therefore, the prosecution's case cannot be doubted because no independent person was joined.

24. Nikhil Mehra (PW12) stated that the police had called him and obtained his signature on some documents. No recovery was effected from the accused in his presence. He was permitted to be cross-examined by the learned Public Prosecutor. He admitted that he was called by the police on 11.07.2019, towards the link road leading to the factory. He admitted that the police disclosed their identity to him and enquired about his name and address. He admitted that the accused was present with the police officials. He admitted that police had disclosed to him that the accused had thrown some article in the bushes in their presence. He admitted that the packet was lifted from the bushes, and it was found to contain a light-yellow substance. He admitted that the substance was tested, and it was found to be heroin. He admitted that police had prepared the memo (Ext. 32/PW11) and he had signed the memo. He admitted that heroin was weighed, and its weight was found to be 6.18 grams. He did not remember that the packet was put in an empty matchbox, and the empty matchbox was put in a cloth parcel. He did not remember that the NCB-1 Form was filed in

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triplicate and that the seal impression was put on the NCB-1 Form. He admitted his signature on the seizure memo (Ext.P34/PW11), sample seal (Ext.P33/PW11) and the consent memo (Ext.P35/PW11). He admitted that the Investigating Officer requested Tehsildar Indora to visit the spot, and Tehsildar Indora Sh. Gian Chand arrived on the spot at 4:30 PM. He admitted that the Investigating Officer searched the accused, but no incriminating substance was found in his possession. He admitted his signature on the memo of the personal search. He admitted that the rukka was prepared and sent to the Police Station through a Police Officer. He identified himself in the photographs of the spot. He admitted that the police had recorded his statement on the spot. He admitted that all the documents were written before he had signed them. He stated in his cross-examination by learned counsel for the defence that the accused was already apprehended and the contraband was lying on the spot. He admitted that the weighing balance was also put on the spot. He admitted that his signatures were obtained in one go.

25. The statement of this witness materially corroborates the prosecution's version. He has admitted the prosecution's case regarding the picking up of the packet in his presence and the recovery of the heroin from the packet. He admitted that heroin

was tested and weighed in his presence. He admitted his signature on various documents. He was not cross-examined regarding all these aspects. He was only cross-examined regarding the presence of the accused before his arrival and the packet lying on the spot; therefore, this part of the statement is deemed to be accepted. It was laid down by the Hon'ble Supreme Court in ***State of Uttar Pradesh Versus Nahar Singh 1998 (3) SCC 561*** that where the testimony of a witness is not challenged in the cross-examination, the same cannot be challenged during the arguments. This position was reiterated in ***Arvind Singh v. State of Maharashtra, (2021) 11 SCC 1: (2022) 1 SCC (Cri) 208: 2020 SCC OnLine SC 4,*** and it was held at page 34:

> "**58.** A witness is required to be cross-examined in a criminal trial to test his veracity; to discover who he is and what his position in life is, or to shake his credit, by injuring his character, although the answer to such questions may directly or indirectly incriminate him or may directly or indirectly expose him to a penalty or forfeiture (Section 146 of the Evidence Act). A witness is required to be cross-examined to bring forth inconsistencies and discrepancies, and to prove the untruthfulness of the witness. A-1 set up a case of his arrest on 1-9-2014 from 18:50 hrs; therefore, it was required for him to cross-examine the truthfulness of the prosecution witnesses with regard to that particular aspect. The argument that the accused was shown to be arrested around 19:00 hrs is an incorrect reading of the arrest form (Ex. 17). In Column 8, it has been specifically mentioned that the accused was taken into custody on 2-9-

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2014 at 14:30 hrs at Wanjri Layout, Police Station, Kalamna. The time, i.e. 17, 10 hrs mentioned in Column 2, appears to be when A-1 was brought to the Police Station, Lakadganj. As per the IO, A-1 was called for interrogation as the suspicion was on an employee of Dr Chandak since the kidnapper was wearing a red colour t-shirt which was given by Dr Chandak to his employees. A-1 travelled from the stage of suspect to an accused only on 2-9-2014. Since no cross-examination was conducted on any of the prosecution witnesses about the place and manner of the arrest, the argument that the accused was arrested on 1-9-2014 at 18:50 hrs is not tenable.

59. The House of Lords, in a judgment reported as ***Browne v. Dunn (1893) 6 R 67 (HL)***, considered the principles of appreciation of evidence. Lord Chancellor Herschell held that it is absolutely essential to the proper conduct of a cause, where it is intended to suggest that a witness is not speaking the truth on a particular point, to direct his attention to the fact by some questions put in cross-examination showing that imputation is intended to be made, and not to take his evidence and pass it by as a matter altogether unchallenged. It was held as follows:

> "Now, my Lords, I cannot help saying that it seems to me to be absolutely essential to the proper conduct of a cause, where it is intended to suggest that a witness is not speaking the truth on a particular point, to direct his attention to the fact by some questions put in cross-examination showing that that imputation is intended to be made, and not to take his evidence and pass it by as a matter altogether unchallenged, and then, when it is impossible for him to explain, as perhaps he might have been able to do if such questions had been put to him, the circumstances which it is suggested indicate that the story he tells ought not to be believed, to argue that he is a witness unworthy of credit. My Lords, I have always understood that if you intend to impeach a witness you are bound, whilst he is in the box, to give him an opportunity of making any explanation which is open to him; and, as it seems to me, that is not only a rule of professional practice in the conduct of a case, but is

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> essential to fair play and fair dealing with witnesses. Sometimes reflections have been made upon excessive cross-examination of witnesses, and it has been complained of as undue, but it seems to me that cross-examination of a witness which errs in the direction of excess may be far more fair to him than to leave him without cross-examination, and afterwards, to suggest that he is not a witness of truth, I mean upon a point on which it is not otherwise clear that he has had full notice beforehand that there is an intention to impeach the credibility of the story which he is telling."

60. Lord Halsbury, in a separate but concurring opinion, held as under:

> "My Lords, with regard to the manner in which the evidence was given in this case, I cannot too heartily express my concurrence with the Lord Chancellor as to the mode in which a trial should be conducted. To my mind, nothing would be more absolutely unjust than not to cross-examine witnesses upon evidence which they have given, so as to give them notice, and to give them an opportunity of explanation, and an opportunity very often to defend their own character, and, not having given them such an opportunity, to ask the jury afterwards to disbelieve what they have said, although not one question has been directed either to their credit or to the accuracy of the facts they have deposed to."

61. This Court, in a judgment reported as ***State of U.P. v. Nahar Singh, (1998) 3 SCC 561: 1998 SCC (Cri) 850***, quoted from ***Browne v. Dunn, (1893) 6 R 67 (HL)*** to hold that in the absence of cross-examination on the explanation of delay, the evidence of PW 1 remained unchallenged and ought to have been believed by the High Court. Section 146 of the Evidence Act confers a valuable right of cross-examining the witness tendered in evidence by the opposite party. This Court held as under: (***State of U.P. v. Nahar Singh, (1998) 3 SCC 561: 1998 SCC (Cri) 850***], SCC pp. 566-67, para 13)

> "*13*. It may be noted here that part of the statement of PW 1 was not cross-examined by the accused. In the absence

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of cross-examination on the explanation of the delay, the evidence of PW 1 remained unchallenged and ought to have been believed by the High Court. Section 138 of the Evidence Act confers a valuable right of cross-examining the witness tendered in evidence by the opposite party. The scope of that provision is enlarged by Section 146 of the Evidence Act by allowing a witness to be questioned:

(*1*) to test his veracity,

(2) to discover who he is and what his position in life is, or

(3) to shake his credit by injuring his character, although the answer to such questions might tend directly or indirectly to incriminate him or might expose or tend directly or indirectly to expose him to a penalty or forfeiture."

62. This Court, in a judgment reported ***Muddasani Venkata Narsaiah v. Muddasani Sarojana, (2016) 12 SCC 288: (2017) 1 SCC (Civ) 268,*** laid down that the party is obliged to put his case in cross-examination of witnesses of the opposite party. The rule of putting one's version in cross-examination is one of essential justice and not merely a technical one. It was held as under: (SCC pp. 294-95, paras 15-16)

"*15.* Moreover, there was no effective cross-examination made on the plaintiff's witnesses with respect to the factum of execution of the sale deed. PW 1 and PW 2 have not been cross-examined as to the factum of execution of the sale deed. The cross-examination is a matter of substance, not of procedure. One is required to put one's own version in the cross-examination of the opponent. The effect of non-cross-examination is that the statement of the witness has not been disputed. The effect of not cross-examining the witnesses has been considered by this Court in ***Bhoju Mandalv.Debnath Bhagat, AIR 1963 SC 1906***. This Court repelled a submission on the ground that the same was not put either to the witnesses or suggested before the courts below. A party is required to put his version to the witness. If no such questions are put, the Court would

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presume that the witness account has been accepted as held in ***Chuni Lal Dwarka Nath v. Hartford Fire Insurance Co. Ltd., 1957 SCC OnLine P&H 177: AIR 1958 P&H 440***.

16. In ***Maroti Bansi Teli v. Radhabai, 1943 SCC OnLine MP 128: AIR 1945 Nag 60***, it has been laid down that the matters sworn to by one party in the pleadings not challenged either in pleadings or cross-examination by another party must be accepted as fully established. The High Court of Calcutta in ***A.E.G. Carapiet v. A.Y. Derderian, 1960 SCC OnLine Cal 44: AIR 1961 Cal 359*** has laid down that the party is obliged to put his case in the cross-examination of witnesses of the opposite party. The rule of putting one's version in cross-examination is one of essential justice and not merely a technical one. A Division Bench of the Nagpur High Court, ***Kuwarlal Amritlal v. Rekhlal Koduram, 1949 SCC OnLine MP 35: AIR 1950 Nag 83*** has laid down that when attestation is not specifically challenged, and the witness is not cross-examined regarding details of attestation, it is sufficient for him to say that the document was attested. If the other side wants to challenge that statement, it is their duty, quite apart from raising it in the pleadings, to cross-examine the witness along those lines. A Division Bench of the Patna High Court in ***Karnidan Sardav.Sailaja Kanta Mitra, 1940 SCC OnLine Pat 288: AIR 1940 Pat 683*** has laid down that it cannot be too strongly emphasised that the system of administration of justice allows of cross-examination of opposite party's witnesses for the purpose of testing their evidence, and it must be assumed that when the witnesses were not tested in that way, their evidence is to be ordinarily accepted. In the aforesaid circumstances, the High Court has gravely erred in law in reversing the findings of the first appellate court as to the factum of execution of the sale deed in favour of the plaintiff."

26. It was suggested to him that the accused was present on the spot, and he was apprehended by the police, which shows that

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the defence has not disputed the apprehension of the accused on the spot. It was also suggested that the packet was lying on the spot, which shows that the fact that the packet was thrown on the spot has also not been disputed in the cross-examination. It was laid down by the Hon'ble Supreme Court in ***Balu Sudam Khalde v. State of Maharashtra, (2023) 13 SCC 365: 2023 SCC OnLine SC 355*** that the suggestion put to the witness can be taken into consideration while determining the innocence or guilt of the accused. It was observed at page 383: -

> "**38.** Thus, from the above, it is evident that the suggestion made by the defence counsel to a witness in the cross-examination, if found to be incriminating in nature in any manner, would definitely bind the accused, and the accused cannot get away on the plea that his counsel had no implied authority to make suggestions in the nature of admissions against his client.
>
> **39.** Any concession or admission of a fact by a defence counsel would definitely be binding on his client, except for the concession on the point of law. As a legal proposition, we cannot agree with the submission canvassed on behalf of the appellants that an answer by a witness to a suggestion made by the defence counsel in the cross-examination does not deserve any value or utility if it incriminates the accused in any manner.
>
> ****
>
> **42.** Therefore, we are of the opinion that suggestions made to the witness by the defence counsel and the reply to such suggestions would definitely form part of the evidence and can be relied upon by the Court along with other evidence on record to determine the guilt of the accused."

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27. Anil Mehra (PW2) admitted in his cross-examination that the accused was with the police. This admission will not help the defence because it is the admitted case of the prosecution that he was called after the accused was apprehended and was brought to the spot. The prosecution never asserted that the accused had run away in his presence or had thrown the packet in his presence. Therefore, the fact that he has not deposed about these facts will not make the prosecution's case suspicious.

28. Thus, the learned trial Court had rightly relied upon the statement of Anil Kumar to hold that the prosecution's case was corroborated by his testimony.

29. It was submitted that there are various contradictions in the statements of the prosecution witnesses. The following contradictions were pointed out:

i. Gian Chand (PW7) stated that he had arrived on the spot at about 4:30 PM, and he was alone in the vehicle. HC Rocky (PW10) stated that the Tehsildar arrived at 4:30 PM on the spot. He was accompanied by his driver. Constable Amit also stated in his cross-examination that Tehsildar arrived on the spot along with the driver at 4:30 PM.

ii. HC Rocky (PW10) stated that the police party reached Indora curve at 2:45 PM. Constable Amit Kumar (PW11) stated that police reached the spot at 2:40 PM. HC Deepak (PW13) stated that they reached the spot at 2:45 PM.

iii. Constable Amit Kumar (PW11) stated that the Investigating Officer started writing the rukka at 6:00 PM. HC Deepak (PW13) stated that he started writing rukka at 5:30 PM.

iv. HC Rocky (PW10) stated in his cross-examination that they had stopped at Damtal and had lunch. Constable Amit Kumar (PW11) stated in his cross-examination that they reached Damtal at 12 PM, where they stopped for some time. They were at Jaisur at 11:00 AM. HC Deepak (PW13) stated that they had stayed at Jassur for about half an hour and stayed at Damtal for about 1 ½ hours.

30. Hon'ble Supreme Court held in ***Rajan v. State of Haryana, 2025 SCC OnLine SC 1952,*** that the discrepancies in the statements of the witnesses are not sufficient to discard the prosecution case unless they shake the core of the testimonies. It was observed: -

> "**32.** The appreciation of ocular evidence is a hard task. There is no fixed or straitjacket formula for the appreciation of the ocular evidence. The judicially evolved principles for the appreciation of ocular evidence in a criminal case can be enumerated as follows:
>
> > *"I. While appreciating the evidence of a witness, the approach must be whether the evidence of the witness, read as a whole, appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the Court to scrutinise the evidence more particularly, keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief.*
> >
> > *II. If the Court before whom the witness gives evidence had the opportunity to form the opinion about the general tenor of evidence given by the witness, the appellate court which had not this benefit will have to attach due weight*

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to the appreciation of evidence by the trial court and unless there are reasons weighty and formidable it would not be proper to reject the evidence on the ground of minor variations or infirmities in the matter of trivial details.

III. When an eye-witness is examined at length, it is quite possible for him to make some discrepancies. But courts should bear in mind that it is only when discrepancies in the evidence of a witness are so incompatible with the credibility of his version that the court is justified in jettisoning his evidence.

IV. Minor discrepancies on trivial matters not touching the core of the case, a hyper-technical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer, not going to the root of the matter, would not ordinarily permit rejection of the evidence as a whole.

V. Too serious a view to be adopted on mere variations falling in the narration of an incident (either as between the evidence of two witnesses or as between two statements of the same witness) is an unrealistic approach for judicial scrutiny.

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

VII. Ordinarily, it so happens that a witness is overtaken by events. The witness could not have anticipated the occurrence, which so often has an element of surprise. The mental faculties, therefore, cannot be expected to be attuned to absorb the details.

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

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

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

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

XII. A witness, though wholly truthful, is liable to be overawed by the court atmosphere and the piercing cross-examination by counsel and, out of nervousness, mix up facts, get confused regarding the sequence of events, or fill in details from imagination on the spur of the moment. The subconscious mind of the witness sometimes operates on account of the fear of looking foolish or being disbelieved, though the witness is giving a truthful and honest account of the occurrence witnessed by him.

XIII. A former statement, though seemingly inconsistent with the evidence, need not necessarily be sufficient to amount to a contradiction. Unless the former statement has the potency to discredit the latter statement, even if the latter statement is at variance with the former to some extent, it would not be helpful to contradict that witness." [See ***Bharwada Bhoginbhai Hirjibhai v. State of Gujarat (1983) 3 SCC 217: 1983 Cri LJ 1096: (AIR 1983 SC 753) Leela Ram v. State of Haryana (1999) 9 SCC 525: AIR 1999 SC 3717*** and ***Tahsildar Singh v. State of UP (AIR 1959 SC 1012)"***

31. It was laid down by the Hon'ble Supreme Court in ***Karan Singh v. State of U.P., (2022) 6 SCC 52: (2022) 2 SCC (Cri) 479: 2022 SCC OnLine SC 253*** that the Court has to examine the evidence of the witnesses to find out whether it has a ring of truth or not. The Court should not give undue importance to omissions, contradictions and discrepancies which do not go to the heart of the matter. It was observed at page 60: -

> "**38.** From the evidence of Mahender Singh, PW 4, it appears that no specific question was put to him as to whether the appellant was present at the place of occurrence or not. This Court in ***Rohtash Kumar v. State of Haryana [Rohtash Kumar v. State of Haryana, (2013) 14 SCC 434: (2014) 4 SCC (Cri) 238]*** held: (SCC p. 446, para 24)
>
> > "24. ... The court has to examine whether the evidence read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the court to scrutinise the evidence more, particularly keeping in view the deficiencies, drawbacks, and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witnesses and whether the earlier evaluation of the evidence is shaken, as to render it unworthy of belief. Thus, the court is not supposed to give undue importance to omissions, contradictions and discrepancies which do not go to the heart of the matter and shake the basic version of the prosecution witness."
>
> **39.** Referring to ***Narayan Chetanram Chaudhary v. State of Maharashtra [Narayan Chetanram Chaudhary v. State of Maharashtra, (2000) 8 SCC 457: 2000 SCC (Cri) 1546]***, Mr Tyagi argued that minor discrepancies caused by lapses in

memory were acceptable, contradictions were not. In this case, there was no contradiction, only minor discrepancies.

40. In ***Kuriya v. State of Rajasthan [Kuriya v. State of Rajasthan, (2012) 10 SCC 433: (2013) 1 SCC (Cri) 202]***, this Court held: (SCC pp. 447-48, paras 30-32)

> "*30.* This Court has repeatedly taken the view that the discrepancies or improvements which do not materially affect the case of the prosecution and are insignificant cannot be made the basis for doubting the case of the prosecution. The courts may not concentrate too much on such discrepancies or improvements. The purpose is to primarily and clearly sift the chaff from the grain and find out the truth from the testimony of the witnesses. Where it does not affect the core of the prosecution case, such a discrepancy should not be attached undue significance. The normal course of human conduct would be that while narrating a particular incident, there may occur minor discrepancies. Such discrepancies may even, in law, render credentials to the depositions. The improvements or variations must essentially relate to the material particulars of the prosecution case. The alleged improvements and variations must be shown with respect to the material particulars of the case and the occurrence. Every such improvement, not directly related to the occurrence, is not a ground to doubt the testimony of a witness. The credibility of a definite circumstance of the prosecution case cannot be weakened with reference to such minor or insignificant improvements. Reference in this regard can be made to the judgments of this Court in ***Kathi Bharat Vajsur v. State of Gujarat [Kathi Bharat Vajsur v. State of Gujarat, (2012) 5 SCC 724 : (2012) 2 SCC (Cri) 740], Narayan Chetanram Chaudhary v. State of Maharashtra [Narayan Chetanram Chaudhary v. State of Maharashtra, (2000) 8 SCC 457: 2000 SCC (Cri) 1546], Gura Singh v. State of Rajasthan [Gura Singh v. State of Rajasthan, (2001) 2 SCC 205: 2001 SCC (Cri) 323]*** and ***Sukhchain Singh v. State of Haryana [Sukhchain Singh v. State of Haryana, (2002) 5 SCC 100: 2002 SCC (Cri) 961]***.

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31. What is to be seen next is whether the version presented in the Court was substantially similar to what was said during the investigation. It is only when exaggeration fundamentally changes the nature of the case that the Court has to consider whether the witness was stating the truth or not. [Ref. ***Sunil Kumar v. State (NCT of Delhi) [Sunil Kumar v. State (NCT of Delhi), (2003) 11 SCC 367: 2004 SCC (Cri) 1055]***].

32. These are variations which would not amount to any serious consequences. The Court has to accept the normal conduct of a person. The witness who is watching the murder of a person being brutally beaten by 15 people can hardly be expected to state a minute-by-minute description of the event. Everybody, and more particularly a person who is known to or is related to the deceased, would give all his attention to take steps to prevent the assault on the victim and then to make every effort to provide him with medical aid and inform the police. The statements which are recorded immediately upon the incident would have to be given a little leeway with regard to the statements being made and recorded with utmost exactitude. It is a settled principle of law that every improvement or variation cannot be treated as an attempt to falsely implicate the accused by the witness. The approach of the court has to be reasonable and practicable. Reference in this regard can be made to ***Ashok Kumar v. State of Haryana [Ashok Kumar v. State of Haryana, (2010) 12 SCC 350: (2011) 1 SCC (Cri) 266]*** and ***Shivlal v. State of Chhattisgarh [Shivlal v. State of Chhattisgarh, (2011) 9 SCC 561: (2011) 3 SCC (Cri) 777]***."

41. In ***Shyamal Ghosh v. State of W.B. [Shyamal Ghosh v. State of W.B., (2012) 7 SCC 646: (2012) 3 SCC (Cri) 685]***, this Court held: (SCC pp. 666-67, paras 46 & 49)

"*46.* Then, it was argued that there are certain discrepancies and contradictions in the statements of the prosecution witnesses inasmuch as these witnesses have given different timings as to when they had seen the scuffling and strangulation of the deceased by the

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> accused. ... Undoubtedly, some minor discrepancies or variations are traceable in the statements of these witnesses. But what the Court has to see is whether these variations are material and affect the case of the prosecution substantially. Every variation may not be enough to adversely affect the case of the prosecution.
>
> ***
>
> 49. It is a settled principle of law that the court should examine the statement of a witness in its entirety and read the said statement along with the statements of other witnesses in order to arrive at a rational conclusion. No statement of a witness can be read in part and/or in isolation. We are unable to see any material or serious contradiction in the statement of these witnesses which may give any advantage to the accused."

42. In ***Rohtash Kumar v. State of Haryana [Rohtash Kumar v. State of Haryana, (2013) 14 SCC 434: (2014) 4 SCC (Cri) 238]***, this Court held: (SCC p. 446, para 24)

> "24. ... The court has to examine whether the evidence read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the court to scrutinise the evidence more, particularly keeping in view the deficiencies, drawbacks, and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witnesses and whether the earlier evaluation of the evidence is shaken, as to render it unworthy of belief. Thus, the court is not supposed to give undue importance to omissions, contradictions and discrepancies which do not go to the heart of the matter and shake the basic version of the prosecution witness."

32. Similar is the judgment in ***Anuj Singh v. State of Bihar, 2022 SCC OnLine SC 497: AIR 2022 SC 2817***, wherein it was observed:

> "17. It is not disputed that there are minor contradictions

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with respect to the time of the occurrence or injuries attributed on hand or foot, but the constant narrative of the witnesses is that the appellants were present at the place of occurrence, armed with guns, and they caused the injury on informant PW-6. However, the testimony of a witness in a criminal trial cannot be discarded merely because of minor contradictions or omissions, as observed by this court in ***Narayan Chetanram Chaudhary & Anr. Vs. State of Maharashtra, 2000 8 SCC 457***. This Court, while considering the issue of contradictions in the testimony while appreciating the evidence in a criminal trial, held that only contradictions in material particulars and not minor contradictions can be grounds to discredit the testimony of the witnesses. The relevant portion of para 42 of the judgment reads as under:

> "42. Only such omissions which amount to a contradiction in material particulars can be used to discredit the testimony of the witness. The omission in the police statement by itself would not necessarily render the testimony of the witness unreliable. When the version given by the witness in the court is different in material particulars from that disclosed in his earlier statements, the case of the prosecution becomes doubtful and not otherwise. Minor contradictions are bound to appear in the statements of truthful witnesses as memory sometimes plays false, and the sense of observation differs from person to person. The omissions in the earlier statement, if found to be of trivial details, as in the present case, the same would not cause any dent in the testimony of PW 2. Even if there is a contradiction of a statement of a witness on any material point, that is no ground to reject the whole of the testimony of such witness."

33. Therefore, in view of the binding precedents of the Hon'ble Supreme Court, the statements of the witnesses cannot be discarded due to omissions, contradictions, or discrepancies. The

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Court must consider whether the discrepancies negatively affect the prosecution's case and whether they pertain to the core of the case rather than the details.

34. The contradiction regarding the time is not significant because no person remembers the time by looking at the watch, and when anyone is asked about the time, he gives a different time, which may or may not be correct. It was laid down by the Hon'ble Supreme Court in ***Bharwada Bhoginbhai Hirjibhai v. State of Gujarat (1983) 3 SCC 217*** that people make their estimates by guesswork regarding the time on the spur of the moment, and one cannot expect people to make very precise or reliable estimates in such matters. It was observed:-

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

35. Therefore, the contradiction regarding the time cannot be used to discard the prosecution's version.

36. The contradiction regarding the presence of the driver is more apparent than real. It is nobody's case that Tehsildar was driving the vehicle himself and the presence of the driver is

natural. Hence, there is no material contradiction in the statements of the prosecution witnesses making their testimonies doubtful.

37. Learned Trial Court had rightly held that the testimonies of Police Officers cannot be discarded because they happened to be the Police Officers. It was laid down by the Hon'ble Supreme Court in ***Kripal Singh v. State of Rajasthan*, *(2019) 5 SCC 646: (2019) 2 SCC (Cri) 680: 2019 SCC OnLine SC 207*** that the testimonies of the police officials cannot be ignored because they are police officials. It was observed at page 656:

> "**21.** The submission of the learned Senior Counsel for the appellant that recovery has not been proved by any independent witness is of no substance for the reason that, in the absence of an independent witness to support the recovery, in substance cannot be ignored unless proved to the contrary. There is no such legal proposition that the evidence of police officials, unless supported by an independent witness, is unworthy of acceptance or that the evidence of police officials can be outrightly disregarded."

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

> "11. It is a settled proposition of law that the sole testimony of the police official, which if otherwise is reliable,

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

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

"The testimony of police personnel should be treated in the same manner as the testimony of any other witness, and there is no principle of law that without corroboration by independent witnesses, their testimony cannot be relied upon. The presumption that a person acts honestly applies, as much in favour of police personnel as of other persons, and it is not a proper judicial approach to distrust and suspect them without good grounds. It will all depend upon the facts and circumstances of each case, and no principle of general application can be laid down." (Emphasis supplied)

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

22. Conviction being based solely on the evidence of police officials is no longer an issue on which the jury is out. In other words, the law is well settled that if the evidence of such a police officer is found to be reliable and trustworthy, then basing the conviction thereupon cannot be questioned,

and the same shall stand on firm ground. This Court in ***Pramod Kumar* v. *State (Govt. of NCT of Delhi) 2013 (6) SCC 588***, after referring to ***State of U.P. v. Anil Singh [1988 Supp SCC 686: 1989 SCC (Cri) 48], State (Govt. of NCT of Delhi) v. Sunil [(2001) 1 SCC 652: 2001 SCC (Cri) 248]*** and ***Ramjee Rai v. State of Bihar [(2006) 13 SCC 229 : (2007) 2 SCC (Cri) 626]*** has laid down recently in ***Kashmiri Lal v. State of Haryana [(2013) 6 SCC 595: AIR 2013 SCW 3102]*** that there is no absolute command of law that the police officers cannot be cited as witnesses and their testimony should always be treated with suspicion. Ordinarily, the public at large shows their disinclination to come forward to become witnesses. If the testimony of the police officer is found to be reliable and trustworthy, the court can definitely act upon the same. If, in the course of scrutinising the evidence, the court finds the evidence of the police officer as unreliable and untrustworthy, the court may disbelieve him, but it should not do so solely on the presumption that a witness from the Department of Police should be viewed with distrust. This is also based on the principle that the quality of the evidence weighs over the quantity of evidence.

23. Referring to ***State (Govt. of NCT of Delhi)* v. *Sunil 2001 (1) SCC 652***, in ***Kulwinder Singh v. State of Punjab (2015) 6 SCC 674***, this court held that: —

> "23. ... That apart, the case of the prosecution cannot be rejected solely on the ground that independent witnesses have not been examined when, on the perusal of the evidence on record, the Court finds that the case put forth by the prosecution is trustworthy. When the evidence of the official witnesses is trustworthy and credible, there is no reason not to rest the conviction on the basis of their evidence."

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

> "21... At any rate, the court cannot start with the presumption that the police records are untrustworthy. As a proposition of law, the presumption should be the other way around. That official acts of the police have been regularly performed is a wise principle of

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> presumption and recognised even by the legislature... If the court has any good reason to suspect the truthfulness of such records of the police, the court could certainly take into account the fact that no other independent person was present at the time of recovery. But it is not a legally approvable procedure to presume the police action as unreliable to start with, nor to jettison such action merely for the reason that police did not collect signatures of independent persons in the documents made contemporaneous with such actions."
>
> 25. Recently, this Court in ***Mohd. Naushad* v. *State (NCT of Delhi) 2023 SCC OnLine 784*** had observed that the testimonies of police witnesses, as well as pointing out memos, do not stand vitiated due to the absence of independent witnesses.
>
> 26. It is clear from the above propositions of law, as reproduced and referred to, that the testimonies of official witnesses cannot be discarded simply because independent witnesses were not examined. The correctness or authenticity is only to be doubted on "any good reason" which, quite apparently, is missing from the present case. No reason is forthcoming on behalf of the Appellant to challenge the veracity of the testimonies of PW - 1 and PW - 2, which the courts below have found absolutely to be inspiring in confidence. Therefore, basing the conviction on the basis of testimony of the police witnesses as undertaken by the trial court and confirmed by the High Court vide the impugned judgment, cannot be faulted with."

41. In the present case, the official witnesses corroborated each other. There is nothing in the statements of the official witnesses to show that they were making false statements or that they had any motive to falsely implicate the accused. Therefore, the learned Trial Court had rightly relied upon the statements of

official witnesses to hold that the accused was found in possession of a packet containing heroin.

42. It was submitted that the seal was not produced before the Court, and this is fatal to the prosecution's case. This submission cannot be accepted. It was laid down by the Hon'ble Supreme Court in ***Varinder Kumar Versus State of H.P. 2019 (3) SCALE 50*** that failure to produce the seal in the court is not fatal. It was observed: -

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

43. In the present case, the sample seals (Ext.P33/PW11 and Ext.P42/PW14) were produced before the Court. The seal

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impressions were also put on the NCB-1 Form. Therefore, the Court had the seal impression with it to compare the seal impression on the Form, and it cannot be said that the failure to produce the seal used for sealing the case property is fatal in the present case.

44. The integrity of the case property has been duly established. The report of the analysis (Ext.PX) mentions that one sealed cloth parcel bearing six seals of seal 'S' and three seals of Civil Judge Indora was brought to SFSL, Junga. The seals were found intact, and they were tallied with the specimen seals sent by the forwarding authority. The report clearly shows that the seals were intact when the parcel was received in the laboratory. It was held in ***Baljit Sharma vs. State of H.P 2007 HLJ 707,*** where the report of analysis shows that the seals were intact, and the prosecution's claim that the case property remained intact is to be accepted as correct. It was observed:

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

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

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

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

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

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case property might have been tampered with, in our opinion, is based on surmises and conjectures and cannot take the place of proof.

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

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

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

10. According to learned senior counsel for the appellant, Joginder Singh, ASI to whom Yogi Raj, SHO (PW-3), handed over the case property for producing the same before the Illaqa Magistrate and who returned the same to him after such production was not examined, as such link evidence was incomplete. In this regard, it is to be noticed that Yogi Raj, SHO, handed over the case property to Joginder Singh, ASI, for production before the Court. After producing the case property before the Court, he returned the case property to Yogi Raj, SHO (PW-3), with the seals intact. It is also to be noticed that Joginder Singh, ASI, was not in possession of the seals of either the investigating officer or Yogi Raj, SHO. He produced the case property before the Court on 13.09.1996 vide application Ex.P-13, the concerned Judicial Magistrate of First Class, after verifying the seals on the case property,

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

48. Therefore, the prosecution's version is to be accepted as correct that the case property remained intact till its analysis at SFSL, Junga.

49. The report of analysis mentions that the total weight of the exhibit with a poly packet was 6.170 grams. The weight of the poly packet was 0.295 grams, and the actual weight of the exhibit was 5.875 grams. Therefore, the actual weight of the heroin, i.e., 5.875 grams, has to be considered in the present case.

50. Learned Trial Court had imposed a sentence of five years. The Central government has notified 5 grams of heroin as a small quantity and 250 grams of heroin as a commercial quantity,

which means that a person possessing 250 grams of heroin can be sentenced to 10 years imprisonment. It was laid down by the Hon'ble Supreme Court in ***Uggarsain v. State of Haryana*, *(2023) 8 SCC 109: 2023 SCC OnLine SC 755*** that the Courts have to apply the principle of proportionality while imposing a sentence. It was observed at page 113:

> **10.** This Court has, time and again, stated that the principle of proportionality should guide the sentencing process. In ***Ahmed Hussein Vali Mohammed Saiyed v. State of Gujarat [Ahmed Hussein Vali Mohammed Saiyed v. State of Gujarat, (2009) 7 SCC 254 : (2009) 3 SCC (Cri) 368 : (2009) 8 SCR 719]*** it was held that the sentence should "*deter the criminal from achieving the avowed object to (sic break the) law,*" and the endeavour should be to impose an "*appropriate sentence*." The Court also held that imposing "*meagre sentences*" *merely on account of lapse of time* would be counterproductive. Likewise, in ***Jameel v. State of U.P. [Jameel v. State of U.P., (2010) 12 SCC 532 : (2011) 1 SCC (Cri) 582 : (2009) 15 SCR 712]*** while advocating that sentencing should be fact dependent exercises, the Court also emphasised that : (***Jameel case [Jameel v. State of U.P., (2010) 12 SCC 532 : (2011) 1 SCC (Cri) 582 : (2009) 15 SCR 712***], SCC p. 535, para 15)
>
> > "*15. ...* the *law should adopt the corrective machinery or deterrence based on a factual matrix. By deft modulation, the sentencing process be stern where it should be, and tempered with mercy where it warrants to be. The facts and given circumstances in each case, the nature of the crime, the manner in which it was planned and committed, the motive for commission of the crime, the conduct of the accused, the nature of weapons used and all other attending circumstances are relevant facts which would enter into the area of consideration*." (emphasis supplied)

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

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

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

12. In ***Sham Sunder v. Puran [Sham Sunder v. Puran, (1990) 4 SCC 731: 1991 SCC (Cri) 38: 1990 Supp (1) SCR 662]***, the appellant-accused was convicted under Section 304 Part I IPC. The appellate court reduced the sentence to the term of imprisonment already undergone, i.e. six months. However, it enhanced the fine. This Court ruled that the sentence awarded was inadequate. Proceeding further, it opined that: (SCC p. 737, para 8)

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

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

51. If the principle of proportionality is applied to the present case, the sentence of five years is excessive and is required to be reduced. Keeping in view the quantity of heroin found in possession of the petitioner, the petitioner is sentenced to undergo rigorous imprisonment for one year, pay a fine of ₹10,000/- and in default of payment of the fine, to further undergo simple imprisonment for one month. He will be entitled to set off the imprisonment, if any, undergone during the Trial.

52. Therefore, the present appeal is partly allowed, and the sentence imposed by the learned Trial Court is ordered to be modified, and the accused is sentenced to undergo rigorous imprisonment for one year, pay a fine of ₹10,000/- and in default

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of payment of fine, to further undergo simple imprisonment for one month.

53. Modified jail warrants be prepared.

54. A copy of this judgment, along with the record of the learned Trial Court, be sent back forthwith. Pending applications, if any, also stand disposed of.

(Rakesh Kainthla)
Judge

4th May, 2026
(Nikita)