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WARRANT OF COMMITMENT OF A SENTENCE OF IMPRISONMENT OR FINE
BY ADDITIONAL SESSIONS JUDGE.

IN THE COURT OF PARMINDER PAL SINGH,
ADDITIONAL SESSIONS JUDGE, SAS NAGAR (MOHALI).

CIS/NDPS/0000039/2014

S.C. No. 16/07-04-2014

Date of decision: 17-07-2015

Order of Sentence 20-07-2015

S T A T E

Versus

Dilbagh Singh and others

FIR No.14 of 02-07-2012

U/s 120B, 489B, 489C of IPC and 21-25-28-29
of NDPS Act

Police Station: Amritsar

To

The Superintendent,

New Jail Nabha

Whereas on 20th day of July, 2015, accused Harpal Singh son Baldev Singh age about 32 years gold smith R/o H No. 10170 Gali No. 10, Court Harman Dass PS B-Division Amritsar, has been convicted before me Parminder Pal Singh, Addl. Sessions Judge, SAS Nagar (Mohali) and convicted as under:-

U/s 120-B of IPC	To undergo rigorous imprisonment for seven years and to pay fine of Rs.7,000/-, in default of payment of fine to further undergo simple imprisonment for seven months
U/s 29 of NDPS Act	To undergo rigorous imprisonment for 10 years and to pay fine of Rs.1,00,000/-, in default of payment of fine to further undergo simple imprisonment for one year.
U/s 28 of NDPS Act	To undergo rigorous imprisonment for 10 years and to pay fine of Rs.1,00,000/-, in default of payment of fine to further

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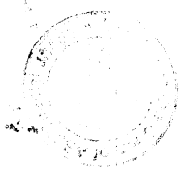
undergo simple imprisonment for one year.

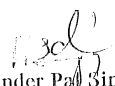
The period of detention during the investigation, enquiry and trial in this case be set off against the term of imprisonment awarded to the convict.
All the sentences run concurrently.

This is to authorise and require you the said Superintendent to receive the above said Harpal Singh into your custody in the said Jail together with the warrant and thereby carry the aforesaid sentence into execution according to law.

Given under my hand and the seal of the court this 20th day of July, 2015.

Note: Fine not paid.




[Parminder Pal Singh]
Addl. Sessions Judge,
SAS Nagar (Mohali).
AS/Judge

No. & Date of Application 211/2015
Date of Preparation 23/7/15
Date of Delivery 23/7/15

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A.D.J. - Mohali
Mohali

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IN THE COURT OF PARMINDER PAL SINGH, ADDL.
SESSIONS JUDGE-CUM-PRESIDING OFFICER, SPECIAL
COURT, SAS NAGAR (MOHALI) CONSTITUTED UNDER THE
NATIONAL INVESTIGATION AGENCY ACT, 2008 FOR THE
STATE OF PUNJAB.

CIS/NDPS/0000039/2014
SESSIONS CASE NO.16/7.4.2014
DECIDED ON : 17.07.2015

National Investigation Agency

Versus

1. Dilbag Singh son of Dharam Singh aged about 70 years,
Agriculturist
2. Bikramjit Singh son of Dilbag Singh aged about 19 years, student,
-both residents of Village Kakkar, P.S. Lopoke, Tehsil Ajrala, Distt.
Amritsar
3. Harpal Singh son of Baldev Singh aged about 52 years, Goldsmith
r/o H.No. 10170, Gali No.10, Kot Harman Dass, P.S. B-Division,
Amritsar.

.../Accused

RC 07/12/NIA/DLI

FIR No. 14 dated 02.07.2012

Under Section : 120-B and 489-B, 489-C IPC and

Section 21, 25, 28, 29 of N.D.P.S. Act.

Police Station : Amritsar

Present: Sh.Surinder Singh Id. P.P. and Sh.H.S. Oberoi, Id. Spl, PP
for NIA assisted by Sh. Devinder Singh DSP
Accused Harpal Singh on bail with counsel
Remaining accused in custody represented by their counsel
Ms. Satwant Mehta and Sh. H.S. Pannu Advocate.

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J U D G M E N T

The above named accused, though were arrested by the police of P.S. State Special Operation Cell, Amritsar but as it was a case pertaining to trans border smuggling of arms and drugs as well as that of fake Indian currency infiltrated from across the border, having international ramifications and the offences attracted in this case were covered under 'The Schedule' appended to the National Investigation Agency Act, 2008, so, the case being the one pertaining to the scheduled offences was referred to the National Investigation Agency which, later on took up the investigation of this case.

2. As per prosecution case, on 2.7.2012 Inspector Balbir Singh alongwith Inspector Harvinder Pal Singh was posted at PS:SSOC, Amritsar. On that day a reliable informer came to the Police Station and gave information to Inspector Harvinderpal Singh that a notorious smuggler of Indo-pak border Dilbag Singh son of Dharam Singh r/o village Kakkar Kalan, his son Bikramjit Singh @ Bikker r/o village Kakkar Kalan and his nephew Gurpartap Singh @ Prince son of Birtha Singh r/o Baba Budha Singh Colony, Shehherata, Amritsar, who are involved in smuggling in Heroin, fake currency and arms ammunition. These smugglers received the consignments of all these incriminating articles from the cross border and further delivered all the smuggled things to the different cities of Punjab and Chandigarh. The information was regarding that they are standing back of GNDU, Amritsar on Ram Tirth road of black colour Platina bearing registration No.PB14-B-6602

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and waiting for delivery of heavy consignment of heroin, FICN and Arms ammunition. Informer further stated that if the raid is conducted without any delay, all of them can be apprehended alongwith the huge quantity of substance [heroin] and incriminating articles. The information appears to be true and reliable and brought into the notice of Sh. S. Bhupati, AIG, SSOC, Amritsar. On the direction of AIG a police team comprising, himself, SI Vikrant Sharma, SI Nirmal Singh etc. constituted. This team was headed by Inspector Harvinderpal Singh. The Police party reached the spot on the back side of GNDU at Ram Tirth Road by Swaraj Mazda and other government vehicles. On reaching the spot, Police party noticed that three persons were standing near the motor cycle make Platina above said near the back gate of GNDU on the Ram Tirath road. On seeing the Police party accused persons tried to start the motor cycle and go inside the University, but the Police party apprehended all of them, alongwith the motor cycle. Inspector Harvinderpal Singh asked from them their names and their identification and on request of Inspector Harvinderpal Singh, one of them, who was sitting on the back seat of motor cycle told his name as Dilbagh Singh son of Dharam Singh r/o Village Kakkar Kalan, his son Bikramjit Singh @ Bikker r/o village Kakkar Kalan, who was driving the motor cycle, whereas the third person told his name as Gurpartap Singh @ Prince son of BIRTHA Singh r/o Baba Budaa Singh Colony, Shehherata, who was sitting in middle of the motor cycle. Accused Dilbagh Singh was having a black colour bag on his right shoulder. Then Inspector Harvinder Pal Singh introduced himself to the

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apprehended persons turn by turn and disclosed that he is a Police Inspector and posted at PS:SSOC, Amritsar. Inspector Harvinderpal Singh was in Uniform alongwith his name plate. Further inspector Harvinderpal Singh stated to them that Police has got information that they were carrying some contraband in their possession [in person], as well as in their motor cycle and in their bag and he wants to search them, their motor cycle and bag, but they have legal right to be searched in presence of gazetted officer or Magistrate, for which he can arrange the concerned officer. They opted to be searched in presence of gazetted officer as they have no confidence on Inspector Harvinderpal Singh. Their non-consent memos in this regard were prepared. First of all non-consent memo of Dilbag Singh was prepared, which is (Ex.PW7/A), the accused also appended his LTI at point-A, thereafter non-consent memo of accused Bikramjit Singh was prepared which is (Ex.PW7/B) and he appended his signatures on it and thereafter non-consent memo of accused Gurpartap Singh was prepared which is (Ex.PW7/C) and he appended his signatures on it. The above said memos were witnessed and attested by himself, SI Vikrant Sharma and Inspector Harvinderpal Singh. Thereafter, Inspector Harvinderpal Singh called DSP Harvinder Singh on mobile phone and requested to reach at the spot. In the mean time Inspector Harvinder Pal Singh contacted the public person and one person named Dilbag Singh son of Swaran Singh r/o village Chhidian of PS:Lopoke, Distt. Amritsar become ready to assist the Police party as public witness and joined the Police party. After some time Sh. Harvinder Singh DSP

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reached at the spot on Govt. vehicle. The whole matter was briefed by Inspector Harvinderpal Singh to DSP Harvinder Singh. After that DSP Harvinder Singh introduced himself to the apprehended persons turn by turn that he is a DSP and Gazetted Officer and in Police Department and posted at SSOC, Amritsar. DSP Harvinder Singh was in uniform and his name plate. On this the DSP Harvinder Singh came to the spot and told them about their legal right in respect of search. These apprehended persons asked individually and they told to the DSP that they have full faith on him and became ready for their search including their black colour bag and motor cycle willingly. On this, the consent memos of all the three accused persons were prepared, which are (Ex.PW7/D, Ex.PW7/E and Ex.PW7/F). On (Ex.PW7/D) Dilbag Singh appended his thumb impression at point-A, whereas accused Bikramjit Singh and Gurpartap Singh signed the memos at point-A of (Ex.PW7/E) and (Ex.PW7/F) respectively. Thereafter, as per the instructions DSP Harvinder Singh, Inspector Harvinderpal Singh conducted the search of black colour bag, which was on the shoulder of Dilbag Singh in the presence of witnesses and after observing all the legal formalities. On search of one packet of Heroin wrapped in polythene was recovered. On weighing, it was found weighing 1 kg. Then two samples of 5-5 grams of Heroin were extracted from the said packet, kept in separate polythene and after that put in the small plastic container and then packed with cloth and then marked with S-1A, S-1B respectively and the remaining heroin weighing 990 grams remained in the same packet and put into a

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plastic box and packed with cloth and prepared a parcel. The said parcel was also marked as 'I'. All the three parcels were sealed with seal of Sh. Harvinder Singh DSP with seal impression 'HS' and also of seal of Harvinder Pal Singh Inspector with seal impression 'HS'. Specimen of seals was prepared separately and form M-29 was also filled on the spot, which is (mark-PW7/A). All the sealed parcels containing heroin were sealed vide the seizure memo which is (Ex.PW7/G). This seizure memo was also signed by him and other witnesses alongwith public witness Di bag Singh and verified by the DSP Harvinder Singh at the spot. Then further Inspector Harvinderpal Singh searched the black bag and found one pistol of 9 mm made of Berretta company made in Italy, which was wrapped in a yellow colour cloth [Parna]. A rough sketch of the recovered pistol was prepared by Inspector Harvinderpal Singh on spot. On unloading 8 numbers of live cartridges were also recovered from the magazine of the pistol. Recovered pistol and recovered magazine and 8 numbers of cartridges were properly packed and sealed with the seal of Hari der Singh DSP and Inspector Harvinder Pal Singh of impression HS and HS and the parcel was marked as II. Sample seals were separately prepared. The recovered pistol and the 8 cartridges were seized with the seizure memo (Ex.PW7/H) and which was signed by the above said witnesses and verified DSP. Then, on further search, 10 bundles of fake Indian currency notes in the denomination of Rs.500/- wrapped in black colour envelope were recovered from the bag. The recovered packets of FICM were kept in separate polythene by giving marks as (III to XII)

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respectively and packed and sealed with seal of impression of HS of Harvinder Singh DSP and of HS of Inspector Harvinderpal Singh. Sample impression of the seals separately prepared. The recovered FICN of total amount of Rs.5 lacs was seized with seizure memo (Ex.PW7/J) and further signed by the witnesses and verified by the DSP on the spot. After that the recovered and seized FICN of Rs.5 lacs was taken into Police possession. Thereafter, the personal search of accused persons was conducted turn by turn and personal search memos were prepared. Personal search memo of Dilbag Singh is (Ex.PW7/K), which bears his thumb impression at point-A. Thereafter, personal search memo of Bikramjit Singh is (Ex.PW7/L), which bears his signatures at point-A and then Personal search memo of Gurpartap Singh is (Ex.PW7/M) which bears his signatures at point-A. Above said witnesses have also signed the memos, which was attested by DSP and also signed by public witness Dilbag Singh. In the presence of DSP and witnesses motor cycle Platina was also searched, but nothing was recovered from him. The motor cycle was also taken into possession vide memo (Ex.PW7/N), which was signed by above said witnesses and verified by the DSP. Then the said black colour bag which contains the Heroin, FICN and Arms Ammunition was also taken into police possession through memo (Ex.PW7/O), which was signed by above said witnesses and verified by the DSP. The seal of Harvinder Pal Singh Inspector after use was handed over to him, which bears the impression HS. DSP retained his seal with him. On being asked by Inspector Harvinderpal Singh apprehended persons Dilbag Singh,

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Bikramjit Singh and Gurpartap Singh could not produce any licence, permit or document for keeping 1 kg. of heroin, 5 lacs of Indian Fake currency notes, one 9 mm pistol alongwith 8 live cartridges in their custody. All the apprehended persons committed the offences under Section 21/25/29 of N.D.P.S. Act, 25 of Arms Act, 489-A, B, C, 420 of IPC, 120-B of IPC for keeping the above said material in their possession. On this, all the accused persons were arrested and taken into police custody. Also the information regarding the arrest of accused persons was given to their close relatives. In this regard, a ruqa (Ex.PW2/A) was prepared on the spot and sent to the Police station SSOC through HC Kabal Singh for registration of FIR which is (Ex.PW2/B). He alongwith Harvinder Pal Singh and other Police officials remained busy at the spot and make further investigation and prepared documents including rough site plan etc. After that accused Dilbag Singh and Bikramjit Singh were interrogated at the spot and they made a disclosure statement. The disclosure memos were separately prepared, which are (Ex.PW7/P) of Dilbag Singh, which bears the thumb impression of accused Dilbag Singh at point-A and signed by the above said witnesses and attested by the DSP. (Ex.PW7/Q) of Bikramjit Singh, which was signed by accused Bikramjit Singh at point-A and signed by the above said witnesses alongwith and attested by the DSP. Both the accused disclosed that 10 packets of Heroin was concealed in stepeny [tyre] in the fields of Karam Singh son of Baldev Singh r/o village Kakkar. The said smuggled heroin was sent by Pak smuggler Bilal @ Rana. The said Stepeny was lying

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near Shisham [Tahli] tree near the gate of 91 Kakkar forward post of Indo-Pak border. Further the accused persons stated that they are ready to recover the same. Then in pursuance of the disclosure statement, the accused persons got recovered the same which was taken into possession by the police after making the same into separate parcel alongwith the sample parcels. Then on further interrogation of the accused Dilbag Singh and Bikramjit Singh and on suffering of their disclosure statements and then in pursuance of the said disclosure statements, the police party was led by the accused to their house from where one Mobile Phone Nokia with Pakistani SIM which was wrapped in a polythene was recovered. In addition to it 30 live cartridges of 30 bore which were also wrapped in a polythene were recovered which were converted into separate parcels. Indian Currency Notes of denomination of Rs.500/- and Rs.100/- amounting to Rs.2,25,000/- were also recovered which were lying in a plastic bag.

3. On the same day, the investigating Officer had received information to the effect that Jasbir Singh alongwith Harpal Singh who do indulge in dealing of Heroin were standing near Hotel Mid Town on the back side of Sangam Cinema, Amritsar. The police party reached there and apprehended both of them. On the search of the bag which was in the hand of Jasbir Singh an amount of Rs.1,50,000/- of Indian currency were recovered. Then during interrogation of the accused Jasbir Singh, the name of Pakistani smuggler Bilal @ Rana had figured.

4. Later on, the investigation of the case was taken over by the

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National Investigation Agency, the Investigating Officer of which namely DSP Anil Kumar made intensive investigation into the case again, recorded the statements of the witnesses after visiting the site of the commission of the offence. In the meanwhile, one of the accused namely Jasbir Singh moved an application before the Court of learned Chief Judicial Magistrate, SAS Nagar, Mohali for grant of pardon to him which was duly granted to him on the condition of true disclosure of facts of the case. Then on completion of necessary formalities of investigation, the premier investigation Agency of India, constituted under Section 3 of National Investigation Agency Act, 2008 furnished the challan against the accused before this Court constituted for trying its cases in the State of Punjab.

5. On presentation of the challan, copies of the documents relied upon by the prosecution were supplied to the accused in compliance with Section 207 Cr.P.C. Finding a prima-facie case, accused were charge sheeted on 09.05.2014 under section 120-B, 489-B, 489-C IPC and under section 25 of Arms Act, under section 28, 29, 21, and 25 of NDPS Act, to which the accused pleaded not guilty and claimed trial.

6. In order to substantiate the charge, the prosecution examined the following witnesses;

7. PW1 Jasbir Singh son of Bakhsish Singh accomplice turned approver has deposed that he was friendly with one Anolak Singh, who was serving imprisonment in Bathinda jail and was on payroll during those many days so he talked him regarding the financial crises upon him

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and his family. He had supplied him cell phone No. 8566820576 and in turn he has also given his phone number to him i.e. 9478516315. On the next day Amolak Singh met him in the village of Chabal near Khem-saran road Tarantaran. During his conversation with him he had told him that one Bilal resident of District Lahore Pakistan was known to him, who used to deal in the heroin fake Indian currency notes and illegal arms and ammunition. He used to infiltrate the abovesaid things in the Indian territory through his agencies. Initially he talked to abovesaid Bilal on mobile phone number, at his own and then he asked him to converse with Bilal telephonically. Bilal had told him to find out persons for trafficking of narcotics, illegal arms and FICN, since he would be sending the same through Indo Pak Ferozpur Border by one Waris of Pakistan. He had also given the mobile phone number of Waris Jatt of Pakistan. Bilal was used to be known with one more alias Rana. Bilal used to talk on telephone from Indian Mobile phone Sim number. Bilal had also disclosed to him that his mobile phone comes in working order only when he is within one kilometer of area of Indo Pak Border. Amolak Singh had also provided him one mobile phone number of Puran Singh son of Pathana Singh r/o Village Bare-ke District Ferozepur who was at that time was lodged in Ludhiana jail in narcotic case. The said Puran Singh, during those many days was on parole. Amolak Singh gave him the Puran Singh's Mobile Sim Number 9478015669. After meeting Puran Singh in person he told him that he knows Bilal as well as Waris of Pakistan. Then he introduced him with one Sukhchain Singh son of Gurdeep Singh r/o village Bhakhra

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of District Ferozepur. He had reached at a settlement to give him an amount of Rs.50,000/- of per packet of heroin, for bringing the smuggled heroin from Pakistan border. After two three days, he telephonically talked to Sukhchain Singh, who told him that two packets of heroin has been placed near a (Lasurchi) tree concealed underground there opposite of DD Mal Border Out Post at Indo Pak Ferozpur Border in Pakistan territory which is situated in Pakistani territory. Sukhchain Singh had also provided him his telephone number. He now forgotten but still he remember the same to be last three digits to be 778. He came back to Amritsar and talked to Sukhchain Singh and he told him that due to strictness of Border security force, he could not collect the heroin packet. He further deposed that thereafter Sukhchain Singh did not attend his phone call. Thereafter, he talked with Bilal @ Rana. He had told to Bilal that Sukhchain has become dishonest then Bilal gave him another number of Vikramjit Singh son of Dilbag Singh (present accused). After that, he talked to Bikramjit Singh accused on phone in the end of June as he had been told by Bilal that some material is lying with Bikramjit Singh and his father Dilbag Singh. On the next day he and Harpal Singh went to Matakauri temple on motorcycle bearing No PB-02-8371 which was owned by his servant. They reached the spot where Dilbag Singh and Bikramjit Singh were already present there and handed over two packets of heroin which was containing in the black bag and asked them to carry the same to Duburji village, where Shamsher Singh Sarpanch will be wearing white Kurta payama and wearing yellow coloured (Khatta)

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'Patka' (under turban) on his head. He will remove his Patka and again wear it after identifying your motorcycle since the number of motorcycle has already been supplied to him. On 1.7.2012 Bilal @ Rana called him from his mobile No. 7837852296 and told him that he has sent consignment of Heroin, Fake currency (FICN) and arms alongwith ammunition to Bikram Singh and Dilbagh Singh and they have told him on next day i.e. 2.7.2012. On 2.7.2012 he borrowed Rs.3 lacs from Sukhbir Singh @ Vicky who is his immediate neighbor, the rate of interest was settled 4% for the purchase of purchasing of heroin and other articles. After deducting his interest for one month Rs.12000/- he gave him Rs. 2,88,000/- in the denomination of Rs.500/- each at 3 P.M. Around 4 PM he received a phone call from accused Bikramjit Singh and he called him near Matakari Temple around 7 PM. He alongwith co-accused Harpal Singh reached there on his motor cycle bearing No. 'B-02-8371 and carried Rs.1,50,000/- genuine Indian Currency which was in the denomination of Rs.500/- each with 3 packets, which was contained MOMI polythene carry bag further put in the black bag. Thereafter, he reached near that temple and waited for Bikramjit Singh and Dilbagh Singh and waited for 1 and half hour. Thereafter, again they changed their meeting point by telephone and called them at Choganwa bus stand and waited there for 15-20 minutes but they have not turned up. Then he alongwith Harpal Singh co-accused returned home. After reaching home he had received a phone from Bilal @ Rana that the articles which were sent by him have been apprehended by the police from accused Bikramjit

[Signature]
 (Name of the person)

Singh and his father Dilbag Singh. Then Bilal informed him that again he will send the fresh party and he can collect the mater from him. As per the directions, they reached the spot and two persons came towards them and asked their name and purpose of coming, on that they replied that he is Jasbir Singh and he is Harpal Singh and have brought money for the purchase of Heroin. Thereafter, they were surrounded by 6-7 police personnels in the plain clothes and they had over powered both of them. Thereafter, they had been formally arrested by the police and taken to Police Station. The police had seized their currency of Rs 1,50,000/- which were carrying by them. At his own he had made a statement in the Court that he may be given conditional pardon since he undertakes to disclose the true facts before the trial Court. When he was lodged in the jail at Patiala, I.O. of the NIA inquired from him regarding the facts of the case and he had expressed his desire to disclose the true facts. He remained in the judicial custody for around 15 months. After getting release from the jail while he was cleaning his house, he recovered a diary containing phone numbers and a mobile phone with Sim and which was handed over to NIA office DSP Sh. Anil Kumar, which was taken into possession by Inspector NIA vide memo dated 20.12.2013 bearing his signatures at point A and the same is Ex.PW1/C, all the accused are present in the Court and he identifies them as he was keeping dealing with them.

8. PW-2 HC Kabal Singh, No.82/44 PA has deposed that on 2.7.2012 he was posted at SSOC, Amritsar. He alongwith Harmander Pal

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Singh SHO alongwith other Police party went behind the GNDU, Amritsar at Ram Tirth Road, Amritsar. They installed naka and started searching suspicious people. At that time 3 suspected persons Dilbag Singh, Bikramjit Singh and Gurpartap Singh were apprehended. After complying the statutory formalities, one kg heroin, Rs.5 lacs fake currency, one Beretta pistol alongwith 8 live cartridges were recovered from the accused persons in presence of witnesses. After completion of the seizure, Inspector Harminder Pal Singh gave him a ruqa comprising 3 pages which is Ex.PW2/A, which is in the handwriting of one member of raiding party and signed by Inspector Harminder Pal Singh at page No.3 Point-A. He had carried the ruqa to the office Special State Operation Cell, Amritsar and the same was handed over to Duty Officer, ASI Jaswinder Singh. On the basis of the said ruqa FIR was registered, the same is Ex.PW2/B, which bears the signatures of ASI Jaswinder Singh at point-A. After registration of FIR, ASI Jaswinder Singh made the endorsement on the ruqa at Ex.PW2/C. After registration of the FIR, he again came back to Inspector Harminderpal Singh and handed over him the copy of FIR. After that the whole of the Police party proceeded towards village Kakkar. When the Police party had raided the house of the accused Dilbag Singh, nobody was there in the house. Later on the Police party had moved towards the Indo-Pak border fence, where the fields of the accused Dilbag Singh are there. from where Heroin 10 kgs was recovered which was lying down concealed under the earth in the field.

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PW-3 HC Sarup Singh, No.5/563, State Special Operation

Cell, Amritsar has tendered into evidence his duly sworn attested affidavit Ex.PW3/A.

10. PW-4 Hardev Singh Clerk office of SDM [Motor Vehicle], Ajnala, District Amritsar has deposed that he brought the summoned record pertaining to vehicle No.PB14-B-6602 of Platina motor cycle of Bajaj company. This vehicle was registered on 29.11.2008. As per the record the said vehicle stands registered in the name of Mrs. Paramjit Kaur wife of Dilbag Singh, r/o VPO Kakkar, Distt. Amritsar. Vide letter dated 18.12.20012 SDM -cum- Registration Authority, Ajnala has given some documents regarding ownership of the motor cycle to the NIA. The said letter is Ex.PW4/A, which bears the signatures of SDM Ravinder Singh and he identifies his signatures being worked with him. He also identifies the signatures of SDM Ravinder Singh on Form No.20 [D-53.2 and 3], the same is Ex.PW4/B and PW4/C respectively and on receipt challan [D-53/4] the same is PW4/D and also on temporary registration form [D-53/5] and the same is Ex.PW4/E. He also identifies the copies of bill / invoice of Anand Motors [D-53/6 and 7] and the same are Ex.PW4/F and PW4/G]. Attested copy of the driving licence [D-53/8] of Paramjit Kaur and same is Ex.PW4/H. All the documents which are given by the registration authority to the NIA are the photocopies of the original ones and certified after comparing with the original. The NIA had also recorded his statement.

11. PW-5 Inspector Pintu Kumar Singh, No.030011492, STC BSF Kharka Camp, deposed that he joined BSF in the year 2003. On

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7.11.2012 he was posted at BOP Kakkar Rear near the Indo-Pak border. On that day from NIA, Inspector Anil Kumar alongwith team came to their post and as per the instructions from his higher authorities, he had assisted them in the investigation of this case. BSF has maintained a proper register in respect of passing in and out of the fencing. On the same day he also accompanied Inspector Anil Kumar during the collection of earth control [soil] which was taken as sample from near pillar No 91. The sample soil was sealed in his presence and a proper seizure memo was prepared which is Ex.PW5/A. On the same day, on the request of NIA official, he had supplied the attested copy of gate pass register bearing page No.1 to 22 [D-49 to D-49/21], which bears his signatures and which is Ex.PW5/B. He has also seen the photo I.D documents of farmer maintained by BSF. This document bears his signatures, which is Ex.PW5/C. In this document at point-A the photo identity card details is of accused Bikramjit Singh. These documents were handed over to NIA vide seizure memo Ex.PW5/D and also bears his signatures at point-A. The NIA had also recorded his statement, during investigation of this case.

12. PW-6 ASI Sital Singh, No.608/Asr, Head Armour, Amritsar Rural, Amritsar deposed that on 4.10.2012 he was posted as such, Inspector Harwinder Pal Singh, Inspector SSC C, Amritsar came to him alongwith two parcels duly sealed with seal HS and HS. One parcel was containing Barretta pistol 9 mm. and other parcel was containing 30 rounds of 30 bore. It has been brought for checking the working condition

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of the weapon and also of the cartridges. After making the necessary checking for their working, he had handed over Test Report Ex.PW6/A, which bears his signatures at point-A.

13. PW-7 Inspector Balbir Singh, No.383/BR, PS:SSOC, Amritsar deposed that he is posted at PS:SSOC Amritsar has deposed about the investigation of this case conducted by him and has also proved the documents prepared by him.

14. PW-8 Palwinder Singh, Clerk in Judicial Malkhana, under Chief Judicial Magistrate, Judicial Courts Complex, Amritsar deposed that he is posted as such in the Judicial Malkhana, Amritsar since 2011. On 5.7.2012 Sh. Harvinderpal Singh Inspector, State Special Operation Cell, Amritsar have deposited 11 bulk and 11 sample parcels containing 990 grams Heroin in bulk parcels each and 5 grams Heroin in sample parcels each. The said case property is entered in the Judicial Malkhana register maintained by him and the copy of the relevant entry is Ex.PW8/A. Original register is also brought by him in the Court. The case property remained intact in his custody. His statement was recorded by NIA officials.

15. PW9 Balbir Singh, Patwari deposed that in the year 2012 he was posted as such at village Kakkar, PS Lopoke, District Amritsar and has proved the jamabandi Ex.PW9/A and as per the jamabandi the name of the owners of the land in column No.4 of Ex.PW9/A are Shamsheer Singh, Baldev Singh sons of Gurdial Singh r/o Village Kakkar. This land is situated across the fencing in Indian Territory near Indo-Pak Border.

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He supplied this jamabandi Ex.PW9/A to the Inspector NIA. His statement was recorded.

16. PW-10 ASI Inderdeep Singh, No.27/03, Counter Intelligence, Amritsar deposed that he tender into evidence his duly sworn attested affidavit Ex.PW10/A, which bears his signatures. He also brought the original Register No.19 pertaining to the year 2012 containing relevant entries, copy of which are Ex.PW10/B, Ex.PW10/C, Ex.PW10/D. He has also brought the original register No.21 [Road Certificate] of the year 2012 containing the relevant road entries, copies of which are Ex.PW10/E and Ex.PW10/F. His statement was recorded by the NIA official on 24.11.2012.

17. PW-11 Baldev Singh son of Gurdial Singh, aged about 66 years deposed that he is matriculate. Since his birth he is residing in this village. He alongwith his brothers own 17/18 kallas of agricultural land. The names of his brothers are Shamsher Singh and Dilbag Singh[since deceased]. This agricultural land is situated partially near the gate No.91 of Indo-Pak border across the fencing and the remaining is situated near the village Chota Kakkar towards the canal. In the year March, 2012 he had leased a kalla of land to Bikramjit Singh accused at the rate of Rs.4000/- per acre and this land is situated near the Indo-Pak border near fencing. The Chakota has been terminated in April, 2013 as long as the Chakota was existing the land remained in possession of accused Bikramjit Singh. Whenever a farmer / labour is required to be entered in the field, he has to obtain a permanent pass from the BSF and on every

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entry he has to enter his name in the register and put his signatures. He is married and have two daughters and one son. His son is currently residing in Australia since 2012. He identifies the accused present in the Court. His statement was recorded by the NIA official.

18. PW-12 Harwinder Singh, SP[D] Tarn Taran deposed that on 2.7.2012 he was posted as DSP at SSOC, Amritsar. On that day, at about 9.30 A.M., he got information from Inspector Harwinderpal Singh to reach on the backside of Guru Nanak Dev University, at Ram Tirth Road, Amritsar. He reached at the spot, where Inspector Harwinderpal Singh alongwith police party alongwith three suspected persons namely Dilbagh Singh, Bikramjit Singh and Gurpartap Singh were present. He introduced himself with the accused persons and told them that he is a Gazetted officer of Punjab Police and he was also in Police Uniform alongwith his name plate. He informed them about their legal rights regarding search. He also informed that if they want to be searched in his presence or in presence of any other Gazetted officer or Magistrate, but they repose confidence in him. On this their consent memos were prepared in presence of witnesses, which were signed by the accused party also, which Ex.PW7/D [of Dilbagh Singh] Ex.PW7/E [of Bikramjit Singh] and Ex.PW7/F [of Gurpartap Singh] and attested by him. On his direction, Inspector Harwinderpal Singh first searched the black bag of Dilbagh Singh in his presence and in presence of witnesses. On search of black bag 1 kg. of heroin wrapped in polythene was recovered, out of which of two samples of 5 grams each were drawn and the remaining bulk quantity

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of 990 grams was also separated. Two samples put in the small plastic box and properly packed with clothes and two separate parcels were made. Similarly, 990 grams of bulk heroine was also put in the plastic box, properly packed with cloth and a separate parcel was prepared. These samples marked by the I.O Harvinderpal Singh. The sample and the bulk was sealed with his seal impression HS and also of Inspector Harvinderpal Singh of seal impression HS. Form No.M-29 [D-4] was also prepared. All the sealed parcels seized under proper seizure memo vide memo Ex.PW7/G. On further search of said bag, one pisto of Berretta company "Made in Italy" wrapped in yellow cloth was recovered. On unloading the pistol 8 live cartridges were also recovered from the magazine. Recovered pistol alongwith magazine were properly packed and sealed with his seal and of Inspector Harvinder Pal Singh and also marked by Inspector Harvinderpal Singh. Recovered pistol and cartridges were seized under proper seizure memo which is Ex.PW7/H. On further search 10 bundles of FICN of the denomination of RS.500/- each were recovered from the bag. The recovered FICN bundles were marked separately from III to XII and then kept in polythene bag and then further packed in separate cloth and prepared a parcel. Then the parcel was sealed with his seal impression as well as of Inspector Harvinderpal Singh. Specimen samples are also separately prepared. The recovered FICN of total 5 lacs was seized under proper seizure memo Ex.PW7/J and all these incriminating articles were taken into the Police possession. He further deposed about the investigation conducted by the I.O. of this case.

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19. PW-13 ASI Mangat Singh, No.7/45, Joint Interrogation Centre, Amritsar deposed that on 5.7.2012 I was posted at JIC, Amritsar deposed that on that day he was assigned the interrogation of FIR No.113 dated 5.7.2012 of Police Station Chabhal Distt. Farn Taran regarding the recovery of 500 gram Heroin under NDPS Act. The accused Sukhchain Singh was involved in this case and he also interrogated him. Accused Sukhchain Singh told that in April, 2012 Puran Singh of village Bareke, Ferozepur introduced him with one Jasvir Singh @ Baba son of Bakshish Singh of Amritsar. Jasvir Singh is also involved in smuggling and used to bring assignments of Heroin, FICN and arms. Jasvir Singh has connections with cross-border Pakistan smugglers. Further accused Sukhchain Singh disclosed that Puran Singh told him that smuggled goods comes from border and asked to collect the same from the border and further told that he shall pay Rs.50000/- per packet. Sukhchain Singh agreed. Jasvir Singh also arranged his talk with Pakistani smugglers. Jasvir Singh alongwith other persons was involved in the trafficking and smuggling of Heroin/FICN/Arms.

20. PW14 Sunil Kumar has brought the summoned record. NIA Inspector Anil Kumar vide letter dated 21.12.2013 had given a notice to SDM Office, Khadoor Sahib for the verification of driving licence of Karnail Singh son of Sharmail Singh of Tehsil Ajnala, District Amritsar. At that time he was posted there. The verification report bearing signatures of SDM, Khadoor Sahib was given by him to the NIA officials. He proved the verification report as Ex.PW14/A.

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21. PW15 Inspector Havinder Pal Singh I.O. of the case has also proved tone and tenor of the investigation of this case and the documents prepared during Investigation of this case.

22. PW16 Ram Singh, IPS, Director, Ministry of Textile deposed that he was posted as Commissioner of Police at Amritsar on 20.12.2012 and he had accorded the sanction under section 39 of Arms Act to prosecute accused Dilbagh Singh, Bikramjit Singh and Gurpartap Singh in this case, being competent authority to accord sanction. He further deposed that he has seen the relevant record alongwith statements of witnesses and recovery memos and report of the Armour, connected with the case produced by the investigating officer at the time of according the sanction, after going through the entire record. He considered that it was fit case where the sanction to prosecute under Arms Act necessary be granted. He has seen the sanction order and it bears his signatures and the same is Ex.PW16/A. It was dictated by him.

23. PW-17 DSP Anil Kumar, NIA, New Delhi who had later on took on investigation has deposed that during September, 2012 he remained posted as Inspector in NIA Delhi. By the virtue of above orders dated 19.9.2012 issued by Ministry of Home Affairs, copy of which is Ex.PW17/A, the investigation of this case was handed over to him. On the basis of notification formal FIR No.07/2012 was registered at Police Station NIA Headquarter New Delhi, which bears the signatures of the then SP NIA, which he identify, since he has come across his signatures on various occasions. Copy of the FIR is Ex.PW17/B and endorsement of

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his name is at point-A. The investigation of the case was taken over by him. During the investigation, he has taken over the Police file of the SSOC, Amritsar and have studied the case. The Police file was taken over. He further deposed that during the investigation, he has taken over the case property vide memo dated 6.10.2012 Ex.PW17/C, which bears his signatures at point-A. The case property pertaining to currency notes was also handed over to him vide receipt memo dated 20.11.2012, which is Ex.PW17/D and bears his signatures at point-A. Similarly, on dated 8.11.2012 he had also obtained one stipney [case property] from Inspector Harvinder Pal Singh, which bears his signatures at point-A. Similarly, one parcel containing FICN and one parcel containing the genuine Indian Currency notes alongwith pistol and ammunition was obtained by him from Inspector Harvinder Pal Singh on 8.11.2012, which is Ex.PW17/E, which bears his signatures at point-A. During investigation, he also received documents relating with Bikramjit Singh issued by BSF in respect of gate pass. These documents were sent by Anil Kumar DC/ADJT for Commandant BSF on 28.11.2012. The letter is Ex.PW17/G and the documents which include Sarpanch Certificate, Issue of Fencing Gate Pass, Application of Bikramjit Singh, Janabandi are Ex.PW17/G-1 to Ex.PW17/G-4. He also recorded the statements of prosecution witnesses and have applied for sanction under Section 39 of Arms Act to the competent authority. The FSL and CJ'SL opinion has been received by him, which is enclosed with the report under Section 173 of Cr.P.C. The report of Indian Security Press, Divas on the question currency has also

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been received by him. After completion of the investigation, he has filed first final report against Dilbagh Singh, Bikramjit Singh and Gurpartap Singh. On further investigation, there are sufficient prima-facie evidence stands against Jasvir Singh and Harpal Singh and Jasvir Singh filed an application for granting the benefits of approver before the Id. Court of CJM, Mohali. As such vide order dated 5.12.2013 Jasvir Singh accused has been offered conditional pardon by the said Court. During investigation, it has also been revealed that Bikramjit Singh, in order to seek the undue benefit of juvenile, has relied upon various forged and false documents regarding his date of birth.

24. The learned Special Public Prosecutor for the NIA after tendering into evidence a copy of firearm examination report dated 7.12.2012 Ex.PC, certified copy of the judgment dated 5.12.2013 passed by the Court of Sh. Aashish Saldi, JMFC, Mohali as Ex.PD closed the prosecution evidence.

25. After the closure of the evidence of the prosecution, statements of accused U/S 313 Cr.P.C, were recorded, wherein each and every incriminating piece of evidence was put to them, but they pleaded false implication, in this case.

26. In defence, accused examined DW1 Gurmukh Singh son of Prem Singh who deposed that he is Lambardar of village Kakkar. He knows personally accused Dilbagh Singh, Bikramjit Singh and Gurpartap Singh. Bikramjit Singh and Dilbagh Singh are of his village, whereas accused Gurpartap Singh is the son of Virsa Singh. Virsa Singh is the

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brother of Dilbagh Singh. On 30.6.2012 Gurpartap Singh was also in the house of Dilbagh Singh and in the morning police had come to his house and took Dilbagh Singh, Bikramjit Singh and Gurpartap Singh along with them. On the next day, he along with some other persons of village went to P.S. Lopoke and they told that no person has been brought to the Police Station by them. After three days they again went to SSP office, Amritsar to know the whereabouts of said persons, but they did not find any clue about them. The motor cycle was also taken by the police on 30.6.2012. Thereafter they came to know that the abovesaid persons have been arrested by the police of P.S. At Malamandi Amritsar and a case has been planted upon them. This case has been falsely planted upon the abovesaid persons.

27. I have heard Sh. Surinder Singh, learned P.P. for State, Sh. H.S. Oberoi, Id. Spl. P.P. for NIA assisted by Sh. Devinder Singh DSI and Ms. Satwant Mehta and Sh. H.S. Pannu, Advocates learned defence counsels, and have gone through the record, pertaining to this case, with their able assistance.

28. Mr. H.S. Oberoi, learned Special Public Prosecutor and Mr. Surinder Singh, learned Public Prosecutor for the National Investigation Agency (N.I.A.) while initiating arguments on behalf of the prosecution, have submitted in eloquent manner that PW15 Inspector Harvinder Pal Singh, Investigating Officer of the case has proved the recovery of one Kg of Heroin from the accused Dilbag Singh out of the black coloured bag supported by him on his right shoulder, when the accused was

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apprehended by the police while standing near Platina Motor Cycle near the back gate of Guru Nanak University Ram Tirath road, Amritsar accompanied by his son Bikramjit Singh and nephew Gurpartap Singh. The investigating Officer has also proved the recovery of 10 Kgs of Heroin from the fields of Karam Singh across the fencing of agricultural land situated on Gate No.91 of Indo-Pak Border, Amritsar lying in the stepeny (tyre) of a 'Rehra' lying in the said fields.

29. The learned Public Prosecutors have further submitted that the prosecution has fully proved the receipt of secret information by the Investigating Officer Insp. Harvinder Pal Singh of Special State Operation Cell, Amritsar on 2.7.2012 and has also proved that in pursuance of the said secret information, the police party had recovered the contraband of Heroin from the possession of Dilbag Singh and then, from the fields of Dilbag Singh and Bikramjit Singh. Inspector Harvidner Pal Singh in the course of his testimony as PW15 has fully proved the compliance of Section 42 and Section 50 of NDPS Act by way of proving that search of the person and that of the bag of Dilbag Singh was conducted in the presence of DSP Harvinder Pal Singh, who was immediately called on the spot. After the recovery of initial 1 Kg of Heroin from the accused and after their arrest one Pistol of 9 mm of Barretta Company, which was made in Italy was also recovered from the yellow coloured cloth (Panna) of Dilbag Singh. On unloading the same, eight live cartridges were also recovered from the Magazine of Barretta Pistol, which were taken into possession vide seizure memo Ex.PW7/11.

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30. The learned Public Prosecutors have further maintained that in the course of further search of the accused 10 bundles of denomination of Rs.500/- of fake Indian Currency notes (FICN) wrapped in a coloured envelope were also recovered from the bag of the accused which was also taken into police possession. Inspector Harvinder Pal Singh has further proved the disclosure statements Ex.PW7/P made by accused Dilbag Singh and Ex.PW7/Q made by the accused Bikramjit Singh.

31. On further interrogation of the accused on 3.7.2012, and on their disclosure statements one Mobile Phone of Nokia make with Pakistani SIM wrapped in a polythene bag and 30 live cartridges of 30 bore wrapped in another polythene were also recovered. In addition to it, Inspector Harvinder Singh has proved the recovery of Indian Currency notes to the tune of Rs.2.25 lacs, which were in the denomination of Rs.500/- and Rs.100/-. The testimony of Inspector Harvinder Pal Singh has also proved the proceedings conducted by the police on different places of recovery, as it had prepared Form M-29 and the requisite recovery memos as well as the case property on the spot, which was later on produced before the Court and then deposited in the Malkhana which was later on sent to the respective laboratories.

32. Mr. H.S. Oberoi and Mr. Surinder Singh, learned Prosecutors have also brought to the notice of the Court the intercepting of the accused Harpal Singh alongwith the accomplice turned approver Jasvir Singh at Hotel Mid Town on the back side of Sangam Cinema, Amritsar and recovery of an amount of Rs.1,50,000/- from the bag, in the

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possession of abovesaid Jasvir Singh vide seizure memo Ex.PW7/AA.

33. It has been further argued by the prosecution that although independent witness Dilbag Singh joined hands with the accused and as such, was not examined in the Court but the recovery witness Inspector Balbir Singh as PW7 and HC Kabal Singh as PW3 have lent their full corroboration to the case of the prosecution and have supported the prosecution story in material particulars. In addition to it, the approver Jasvir Singh while appearing as PW1 has laid open the conspiracy amongst all the accused thread bare on record as well as the role of the main Pakistani smugglers Bilal @ Rana and Waris Jatt. PW5 Pintu Kumar of BSF has proved on record the gate pass register and photo ID document of the farmers allowed by the Border Security Forces to go across the fencing so as to cultivate their land, in which the name of the accused Bikramjit Singh also figured. PW11 Baldev Singh has proved on record that one acre of agricultural land situated across the fencing, of Indo-Pak border was given on lease to the accused Bikramjit Singh @ Rs.4,000/- for one year. PW16 Ram Singh, IPS who was posted as Police Commissioner, Amritsar at the relevant time has proved the sanction order Ex.PW16/A accorded for prosecution of the accused persons. The prosecution has clinched the matter by way of placing on record, the report of the Chemical Examiner Ex.PW5/C showing that all the 11 samples taken out of the 11 packets of Heroin recovered from the accused contained Diacetylmorphine above 65% and as such, the same is Heroin. PW6 ASI Sital Singh vide his report Ex.PW6/A has proved on

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record that the pistol Barretta recovered from the possession of accused Dilbag Singh was in working condition. The document Ex.P15/C which is the report given by Asstt. Director (document) Forensic Science Laboratory, Punjab has proved that the currency notes recovered from the possession of Dilbag Singh were not genuine one. PW17 DSP Anil Kumar has proved on record the proceedings conducted by him after taking over the investigation of this case from the Police Station of Special State Operation Cell, Amritsar. Thus, in this premise, the National Investigation Agency has proved the charge of recovery of counterfeit currency notes to the tune of Rs.5 lacs, Barretta Pistol and rounds as well as recovery of 11 Kgs of Heroin smuggled from Pakistan from the possession of the accused persons and as such, they are liable to be convicted under section 120-B, 489B, 489C of IPC, Section 21,25,28 and 29 of NDPS Act as well as Section 25 of the Arms Act.

34. Per contra, Mr. H.S. Pannu, Advocate, learned defence counsel, representing the accused Dilbag Singh and Bikramjit Singh has contended in a vehement manner that initially, the police of Special State Operation Cell, Amritsar and later on the sleuths of National Investigation Agency have falsely implicated the accused in this case so as to win awards and rewards from the Government. Otherwise, no recovery, as alleged by the prosecution has ever been effected from any of the accused near Guru Nanak University, Amritsar, what to talk of the land across the border fencing near Indo-Pak Border. Had it been a genuine case of recovery of Heroin and other things, then, the prosecution would have

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certainly examined independent witnesses but, in this case, the independent witness Dilbag Singh, stated to have joined at Ram Tirath Road, Amritsar has not been examined for the reasons best known to the prosecution. Even at the time of alleged recovery 10 Kgs of Heroin at Indo-Pak border, no independent witness was joined, whereas the police could have taken along very many persons from the nearby locality and even the neighboring agriculturist. Even, no independent witness has been joined at the time of recoveries effected from the house of the accused Dilbag Singh and Bikramjit Singh. This abundantly shows that the police of Special State Operation Cell, Amritsar had falsely implicated the accused in this case. In order to provide impetus to his contention, Mr. Pannu has pressed into service the judgment delivered by the Hon'ble Division Bench of Punjab and Haryana High Court in **State of Punjab Vs. Nachattar Singh @ Bania** 2007(3) RCR (CrI) 1040 wherein it was observed that when independent witness joined by the investigating agency was not examined by the prosecution, then the prosecution story has rightly been taken to be doubtful. Reliance has also been placed upon the judgment delivered in **Jaswant Singh Vs. State of Punjab** 2008(4) RCR (Criminal) 28 (P&H), **Nahar Singh Vs. State of Punjab** 2010(2) RCR (Criminal)-41, **Hukami Vs. State of Haryana** 2004(1) RCR (Criminal) 934.

35.

A perusal of the record has shown that the Investigating Officer had joined an independent witness Dilbag Singh after sending the information to the DSP Harvinder Singh to reach the spot. This

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independent witness has put his signatures on the consent memos Ex.PW7/D, Ex.PW7/E and Ex.PW7/F and on recovery memos Ex.PW7/G, Ex.PW7/H and Ex.PW7/J as well as personal search memos Ex.PW7/K, Ex.PW7/L, Ex.PW7/M, Ex.PW7/N, Ex.PW7/O in Punjabi (Gurmukhi script). DSP Harvinder Singh has mentioned the detailed address of this witness by way of mentioning his parentage, village, and police station. The mentioning of the detailed address of the independent witness shows that he is not a non-existent person. It is a different matter that he has been given up by the prosecution on the ground of his joining hands with the accused. In fact, the learned Additional Public Prosecutor has exercised his discretion in not examining him as he had satisfied himself that if the said witness is examined, then, he will certainly demolish the case of the prosecution. It was the bonafide and **vise** decision on the part of the public prosecutor of NIA. In **Masalti Vs State of Uttar Pradesh**, AIR 1965 (S.C.) 202, it was held *that it is, undoubtedly, the duty of the prosecution to lay before the Court, all material witnesses, available to it, whose evidence is necessary for unfolding its case, but it would be unsound to lay down it, as a general rule, that every witness, must be examined, even though his evidence, may not be very material, or even if, it is known that he/she has been won over or terrorized.* In **Roop Singh Vs. State of Punjab** 1996(1) RCR 146, a Division Bench of Punjab and Haryana High Court, held that *no adverse inference could be drawn, when the only independent witness, was given up by the prosecution, as won over by the accused. It was*

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further held, in the said ruling, that the panch witness, being human beings, are quite exposed and vulnerable to human feelings of yielding, browbeating, threats and inducements, and giving up of the public witnesses, as won over, its fully justified in the present day situation, prevailing in the society. So, if Dilbag Singh independent witness has not been examined by the prosecution, then in view of the above discussed factual and legal position, it does not affect the case of the prosecution, which is otherwise based upon cogent, convincing and trustworthy evidence of the credible official witnesses. If the accused persons accuse the police or the prosecution in showing a non-existent or stock witness as an independent witness, then the onus was upon the accused to bring the said fact on record in order to put some dent in the case of the prosecution but in the instant case the official witnesses PW15 Inspector Harinder Pal Singh, Investigating Officer, PW12 DSP Harvinder Singh, PW2 HC Kabal Singh, PW7 recovery witness Inspector Balbir Singh have proved the recovery of Heroin, fake currency notes and Berretta pistol alongwith cartridges from the accused by way of cogent and trust worthy evidence.

Their testimonies are not to be doubted in any manner, as the Hon'ble Apex Court in **Appabhai and another Vs. State of Gujarat** AIR 1988 SC 696 has taken the view that the prosecution case cannot be thrown out merely on the ground of failure of the prosecution to examine the independent witness. The Hon'ble Supreme Court in a later judgment titled **Akmal Ahmed Vs. state of Delhi** 1999(3) SCC-337 had also taken the view that the evidence of recovery, search and seizure will not

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become vitiated solely for the reason that the evidence is not supported by independent witness. In **Karnail Singh Vs. State of Punjab** 1983 Criminal Law Journal 1218 (DB), it has been observed that where the independent witness was won over by the accused and only the officials were examined as witnesses but they were not considered to be interested witnesses, then their evidence cannot be doubted on the ground of their official status. This very legal position still holds the field and as such, there is no point, here, to doubt the veracity and credibility of the prosecution case over here. So, in view of the above, the contention raised by the learned counsel for the accused does not hold any water and as such, the same is hereby dismissed.

36. The next contention raised by the learned counsel for the accused is that the Investigating Officer Inspector Harvinder Pal Singh had not complied with the mandatory provisions of Section 42 of NDPS Act, as he had not recorded the secret information in writing, what to talk of sending the same to the superior officers.

37. Here, it is to be said that Section 42 is not attracted in the factual matrix of this case, rather the present one is a case where the provisions of section 43 of NDPS Act are applicable. Section 42 of NDPS Act is applicable only where an Officer has reason to believe from personal knowledge or information derived that any narcotic drug or psychotropic substance is kept or concealed in any building, conveyance or enclosed place. However, here, the secret information received by the Investigating Officer was not in regard to the building or conveyance

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rather the same was in regard to the accused persons waiting for their customers while standing at a public place near back side gate of Guru Nanak University, Amritsar near their motor cycle. So, there was no necessity of complying with the provision of section 42 of NDPS Act. Even when the police after the disclosure statement of the accused Dilbag Singh had recovered 10 Kgs of Heroin from the Stepeny lying in the fields taken on lease by Bikramjit Singh, the provision of section 42 were not attracted as the contraband was not recovered from any building, conveyance or enclosed place. Despite all this, the Investigating Officer Inspector Harvinder Pal Singh, while appearing as PW15 has made it clear that he had brought the factum of secret information into the notice of Sh. S. Bhupati, AIG, SSOC, Amritsar and then a DDR (in writing) was registered, which was sent to the higher police official. Otherwise also, the Investigating Officer who was working as Inspector at that time, had immediately called DSP Harvinder Singh (immediate superior) on the spot and as such, there was no necessity of sending the information in writing to him. Meaning thereby, it was complete compliance of the provision of Section 42 of NDPS Act.

38. In **Karnail Singh Vs. State of Haryana**, the Constitutional Bench of the Hon'ble Supreme Court of India while taking up the matter in regard to the compliance of section 42 of NDPS Act has taken the view that total non-compliance of Section 42 (1&2) is impermissible. However, delay in compliance with satisfactory explanation will be acceptable compliance of Section 42 of the Act. In this case, though the

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Investigating Officer had immediately informed Mr. S. Bhupati AIG, SSOC, Amritsar but the same was not in writing at that very time. A perusal of the testimonies of the Investigating Officer Inspector Harvinder Singh and that of recovery witness Inspector Balbir Singh has shown that after receiving a secret information, the police party had immediately swung into action so as to reach the place where the accused were reportedly standing. Had the police party reached a bit late, then the accused would have left the spot, after completing their mission of delivering of contraband to their prospective customers. So, in such like circumstances, the first priority of Inspector Harvinder Singh was to apprehend the accused, which is in consonance with the spirit of the ruling delivered by the Hon'ble Supreme Court in State of **Karnataka Vs. Dondusa Namasa Baddi** 2010 (4) RCR (C1) 367 wherein an exception of section 42 has been carved out by observing that if the police was not having sufficient time to record the information in writing then the Investigating Officer was not obliged to do so, so as to meet the exigency situation like the one in the present case. Had the I.O. spent some time in reducing the secret information in writing, then the operation of the police party would have certainly failed. So, in such like circumstances, the Investigating Officer has not violated the mandatory provision of Section 42 of the Act.

39. Otherwise also, the place of recovery was not a building or enclosed place, rather the same was a public place behind Guru Nanak Dev University on Ram Tirath Road, Amritsar and as such, the provisions

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of Section 43 and not S.42 of the NDPS Act were to apply in this case, as has been held by the Hon'ble Apex Court in the case of **State of Haryana Vs. Jarnail Singh and others** 2004(2) RCR (Crl.) 960. Thus, the contention raised by the learned counsel for the accused is hereby dismissed because of the reasons discussed above.

40. The other argument is that the mandatory provisions of Section 50 of NDPS Act were not complied with at the time of effecting search of the person of the accused Dilbag Singh and as such, the alleged recovery is illegal.

41. A perusal of the record has shown that the recovery of 1 Kg of Heroin was effected from the black coloured bag which was on the shoulder of Dilbag Singh. So, there was no mandatory requirement of conducting the search of the person of the accused Dilbag Singh. The articles like bag, brief-case, container etc. cannot even remotely be treated as part of the body or human being and as such, 'personal search' as mandated in Section 50 was not required in this case as has been held by the Hon'ble Apex Court in **Ajmer Singh Vs. State of Haryana** 2010(2) RCR (Crl.) 132. It has also been observed in the above titled judgment that the question of compliance or non-compliance of Section 50 of NDPS Act is relevant only in case of a personal search of a person and it does not extend to search of a bag, brief-case or container held by the accused. In view of the above, Section 50 of the NDPS Act can have no application on the facts and circumstances of the present case, as Heroin was recovered from the black coloured bag, which was being carried by the

accused.

42. Still, the record has shown that the Investigating Officer Insp. Harvinder Pal Singh had given an option to the accused to be searched by a Gazetted Officer or a Magistrate, as is clear from the non-consent memos Ex.PW7/A, Ex.PW7/B and Ex.PW7/C respectively in the case of the accused Dilbag Singh, Bikramjit Singh and Gurpartap Singh. As the accused persons had opted to be searched by a Gazetted Officer so, DSP Harvinder Singh was called on the spot, who had given an option to the accused persons to get themselves searched from any other Gazetted Officer or a Magistrate, as is manifest from the consent memos Ex.PW7/C, Ex.PW7/D, Ex.PW7/E in the presence of the independent witness Dilbag Singh. This amounts to sufficient compliance of Section 50 of NDPS Act. Thus, the point raised by the learned defence counsel does not hold ground and as such, discarded.

43. Mr. H.S. Pannu Advocate has further contended in an eloquent manner that the Investigating Officer has not handed over the seals put by him on the parcels of the alleged recoveries of the contrabands to the independent witness Dilbag Singh and that seals had remained with the police officials and as such, there was every possibility of tampering with the contents of the sample of the contraband, before sending the same to the laboratories. In order to strengthen his point, Mr. Pannu has placed reliance upon the judgment delivered by the Hon'ble Punjab and Haryana High Court in the **State of Punjab Vs. Nachattar Singh @ Bania** 2007(3) RCR (Crl.) 1040 wherein it has been held that

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when the seal after use by the Investigating Officer was handed over to a subordinate police officer and it remained with him, then it creates doubt in the mind of the court of tampering with a sample. Reliance has also been placed upon the judgment delivered by the Hon'ble Punjab and Haryana High Court in **Jaswinder Singh and another Vs. State of Punjab** 2013(1) RCR (CrL)-257.

44. There is no dispute in regard to the factual position that the seal after use by the Investigating Officer was not handed over by the Investigating Officer as well as by the DSP (Gazetted Officer) to the independent witness and the said seals were retained by the Officers with themselves, as has been stated by PW15 Insp. Harvinder Pal Singh in his examination-in-chief. However, the reason for non handing of the seals to the independent witness Dilbag Singh might have been the usual conduct of such like persons who are joined by the police as independent witnesses. It is the long drawn experience of the police officers that such like persons (independent witnesses) usually, later on join hands with the accused or refrain from entering the witness box because of fear of the accused persons. However, at the time of deposit of the case property as well as the samples with the MHC of Police Station SSOC, Amritsar. On the next day i.e. 3.7.2012 Insp. Harvinder Pal Singh had produced the case property i.e. 11 bulk parcels of Heroin alongwith 22 parcels alongwith seals and form M-29 before the learned Area Magistrate, Amritsar. As per the orders of the Area Magistrate, the seals of all the parcels were found to be intact and as such, they were deposited in the judicial Malkhana,

15

Amritsar and one set of sample seals was sent for chemical analysis. This categorically shows that the seals were found to be intact by the learned Area Magistrate. Now, a perusal of the report Ex.PW5/C of Forensic Science Laboratory, Punjab, SAS Nagar, Mohali has shown that the Asstt. Director Toxicology of the Laboratory had found the seals on all the parcels to be intact had duly tallied with the specimen seal impression H.S. So, even if the seal was not handed over to the independent witness for the reasons mentioned above, even then, the prosecution has fully proved that there was no scope of tampering with the seals or with the samples of the contraband. All this shows that the contention raised by the learned counsel for the accused is totally unfounded. Otherwise also, the full Bench of the Hon'ble Punjab and Haryana High Court in **Piara Singh Vs. State of Punjab** 1982 Criminal Law Journal 1176 has taken the view that there is neither statutory requirement nor a precedent, a mandate for handing over the seal used by the police officer in the course of investigation to a third person forthwith and as such, it is not to be ipso-facto inferred that the samples were, in any way tampered by the police officials.

45. It has been further canvassed at the bar by Mr. H.S. Pannu, Advocate that the local police was not joined by the police party of State Special Operation Cell, Punjab and even there is no entry regarding the raid in the land from where the alleged recovery has been shown. So, because of such like autocratic attitude and conduct of the Investigating Officer, the recovery of 10 Kgs of Heroin from the border land has

ATTESTED

become doubtful.

46. It has to be made clear over here that State Special Operation Cell, Amritsar was constituted by the Govt. of Punjab so as to effectively tackle the organized crime in the entire State of Punjab and as such, the SHO of P.S. SSOC, Amritsar has got all the powers and jurisdiction to investigate, to make search and investigate a case in the whole of State of Punjab. In view of this, Insp. Harvinder Pal Singh was not obliged or supposed to give any intimation to the local Police Station of Chogawan.

47. As regards the non-informing of BSF authorities, the recovery memo Ex.PW7/R has made it amply clear that Insp. Pawan Kumar of BSF was joined in the said recovery proceedings and he has duly signed these very recovery memos Ex.PW7/R, Ex.PW7/S vide which 10 Kgs of Heroin and the Stepenyof tyre of 'Rehra' was taken into possession from the land near the Indo-Pak border. Had this 10 Kgs of Heroin recovery been in-genuine, then the accused could have examined the abovesaid Inspector Pawan Kumar of BSF, as he did not belong to Police Station of SSOC and BSF. Thus, even these objections carry no weight.

48. An objection to the effect that Insp. Pawan Kumar of BSF was known to the Investigating Officer Insp. Harvinder Pal Singh is of no relevance as even if Insp. Pawan Kumar was known to the Investigating Officer, even then he would not have allowed the police authorities to enter into their domain, but the raid was allowed by the BSF authorities

ATTESTED

because of the disclosure statement Ex.PW7/P and Ex.PW7/Q made by the accused Dilbag Singh and Bikramjit Singh.

49. The next contention is that the police has not taken into possession the tools of digging of earth as well as the tools with which the heroin was taken out of the Stepeny tyre. It has also been argued that the accused persons had not stated anything in their disclosure statements in regard to the Stepeny of the 'Rehra'.

50. There is no doubt about the fact that the tools of digging and opening of Stepeny have not been taken into possession and that there is no mention of the Stepeny tyre in the disclosure statement Ex.PW7/P and Ex.PW7/R but these circumstances do not render such heavy recovery of 10 Kgs of Heroin doubtful in any manner.

51. Mr. Pannu has further contended that the prosecution has not been able to establish any link of the land from where recovery of 10 Kgs of Heroin has been effected with the accused Dilbag Singh and Bikramjit Singh, as there is no lease deed on record in this regard. Although, there is no lease deed on record in favour of Bikramjit Singh in regard to the land in question but PW9 Balbir Singh Patwari of village Kakkar has proved on record jamabandi Ex.PW9/A so as to show Shamsher Singh and Baldev Singh sons of Gurdial Singh to be owners of the land in question and then, said Baldev Singh while appearing as PW11 has categorically stated on oath that his agricultural land is situated near Gate No. 91 of Indo-Pak border across the fencing and in the year 2012 he had leased one acre of said land to Bikramjit Singh @ Rs.4000/- per acre.

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PW5 Insp. Pintu Kumar Singh of BSF has placed on record Ex.PW5/C in regard to the Gate Pass register issued to the cultivator of the land across the fencing of Indo-Pak Border and the perusal of the said record has shown that Bikramjit Singh was also allotted such like gate pass as is clear from the record Ex.PW5/C appearing photograph of the accused Bikramjit Singh. The entries made in the register Ex.PW5/B have shown the accused Bikramjit Singh as well as Dilbag Singh to be regular visitors to the said land so as to connect the accused persons with the recovery of 10 Kgs of Heroin from the abovesaid land.

52. Mr. Pannu has attacked the prosecution case with another objection to the effect that there was unnecessary and unreasonable delay of 14 days in sending the samples of the contraband to the Forensic Science Laboratory which has again made the prosecution samples to be in-genuine. Here, it has to be mentioned that though there was some delay in sending the sample to the Forensic Science Laboratory, but as all the seals had remained intact and found to be intact by the Asstt. Director (Toxicology) to be intact at the time of examination of the samples. So, the said delay cannot be said to be fatal.

53. Mr. Pannu has also contended that the recovery witnesses have admitted that at the time of alleged recovery of Heroin, the same was in the form of Brownish powder but when the same was produced in the Court, it was in the shape of form of lumpy material. The Forensic Science Laboratory report has shown the sample of the contraband recovered to be Heroin. Earlier at the time of recovery, undoubtedly it was

ATTESTED

in powder form, but later on, at the time of its testing the laboratory it was lumpy material. The reason for such like difference is that powder, when gets in touch with some moisture acquires lumpy form and does not remain pure powder. So, this very change is not fatal to the case of the prosecution. Otherwise also, contraband whether in the powder form or in the lumpy form was Heroin and Heroin only, even after it had taken the shape of a lump. So, even this very objection has not come to the rescue of the accused at all.

54. Ms. Satwant Mehta and Mr. Jasmandeep Advocates learned counsel for the accused Harpal Singh have contended that nothing has been recovered from the accused but still, under the garb of the 'criminal conspiracy', the accused Harpal Singh has been implicated in this case. If genuine currency notes to the tune of Rs.1,50,000/- have been recovered from the approver Jasbir Singh @ Baba, even then the said recovery cannot be attributed to the accused Harpal Singh especially when there is nothing on record to show his antecedents of being involved in smuggling of Heroin or fake currency note or that of arms and ammunition smuggled from Pakistan. Otherwise also, no independent witness was ever joined at the time of apprehension, arrest and recovery of Indian Currency Notes vide recovery memo Ex.PW7/AA. In fact, the recovery effected on the personal search of the accused Harpal Singh is that of Rs.500/- Indian genuine currency notes and one Samsung Mobile Phone. Although, Motor cycle on which the accused Harpal Singh and approver Jasbir Singh were riding was not having any objectionable. This clearly shows

ATTESTED

false implication of the accused.

55. Ms. Satwant Mehta Advocate has eloquently contended that the accused Harpal Singh cannot be taken to task of criminal conspiracy only on the disclosure statement made by the accused Dilbag Singh and by dint of false evidence of accomplice turned approver Jasbir Singh. Thus, there is nothing on record to show that the accused Harpal Singh was party to any criminal conspiracy. In order to strengthen her point, Ms. Satwant Mehta, Advocate has referred to the judgment delivered by the Hon'ble Supreme Court in **Krishna Reddy Vs. State** 2014 (1) RCR (Crl.) 142 wherein it has been held that in order to make good the commission of an offence of criminal conspiracy it should be evident that an agreement between the conspirators was in existence at the material time, but no such agreement between Harpal Singh and other accused persons has been brought on record. Ms. Mehta has further argued that criminal conspiracy cannot be proved by way of substantial evidence, rather the same is to be proved by substantive evidence to show that there was a meeting of minds between the accused persons, as has been observed by the Hon'ble Supreme Court in **S. Arul Raja Vs. State of Tamil Nadu** 2010 (3) RCR -218. It has been argued that when there is not even a scintilla of evidence to show that the accused Harpal Singh was not known to the accused Dilbag Singh & Bikramjit Singh and had never met them, then the conspiracy is not approved at all. Ms. Satwant Mehta has further argued that the Court is not to record conviction only on the testimony of an approver without corroboration in material particulars by

ATTESTED

AGENCY

way of credible evidence as has been held by the Hon'ble Supreme Court in **Venkatesha Vs. State of Karnataka** 2013(2) RCR Page 920. In the above premise, the learned counsel for the accused has prayed for acquittal of the accused Harpal Singh.

56. A conspectus of the record has shown that after the recovery of 1Kg of Heroin from accused Dilbag Singh on 2.7.2012 and after recovery of 10 Kgs of Heroin from the agricultural land cultivated by the accused Dilbag Singh and Bikramjit Singh across the fencing of Indo-Pak Border. Both the above named accused were thoroughly interrogated by the Investigating Officer and during the course of their interrogation, the accused had suffered disclosure statements to the effect that they had supplied Heroin, fake Indian currency, as well as arms and ammunition smuggled from Pakistan, which was sent by Pakistan smuggler Bilal @ Rana to them has been handed over to Jasbir Singh @ Baba son of Bakhsish Singh r/o Sant Nagar and Harpal Singh @ Sonu son of Baldev Singh r/o Kot Harnam Dass Sultanwind road, Anritsar. In these disclosure statements Ex.PW7/Y and Ex.PW7/Z suffered by the accused Dilbag Singh and Bikramjit Singh had disclosed supplying of eight packets of Heroin alongwith fake Indian currency notes to the tune of Rs.2 lacs and one Berretta Pistol to the accused Jasbir Singh and Harpal Singh at the instance of above named Bilal. On the basis of these disclosure statements suffered on 4.7.2012 as well as on the basis of secret information received by the Investigating Officer Inspector Harvinder Singh, the police party had apprehended Jasbir Singh (approver) and

ATTESTED

accused Harpal Singh while standing alongwith Hero Honda Splendor motor cycle in the parking of Mid Town Hotel on the back side of Sangam Cinema, Amritsar, in suspicious condition. While making search of the bag which was in the hand of Jasbir Singh, an amount of Rs.1,50,000/- was recovered.

57. Lateron, when the investigation of this case was taken over by National Investigation Agency (NIA), then the accused Jasbir Singh after making an application under section 306 of Cr.P.C. in the court of learned Chief Judicial Magistrate, Mohali for grant of pardon to him on true disclosure of the facts of the case, which was granted to him vide order dated 14.3.2014. After the grant of pardon on the condition of true disclosure of facts, the prosecution has examined the approver Jasbir Singh as PW1 and has placed on record the statement made by the approver Jasbir Singh before the Court of Id. Chief Judicial Magistrate, Mohali. While appearing as PW1 Jasbir Singh, approver has stated on oath that he had taken a huge loan from Indian Overseas Bank Hall Bazar, Amritsar and Bank of India Amritsar for investing the same in Dairy Farming business but had met with huge losses and as such, was not in a position to pay the loan installments. He has further stated on oath that during those very days he came in contact with one Anolok Singh, who told him about one Bilal resident of District Lahore, Pakistan who used to deal in Heroin, fake Indian currency note and smuggling of illegal arms and ammunition from Pakistan in the Indian territory through his agents. The approver Jasbir Singh has further stated that lateron he came in

ATTESTED

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contact with Dilbag Singh and Bikramjit Singh telephonically on the basis of providing of their Mobile phone numbers by the above named Bilal @ Rana. He had also become friendly with Harpal Singh who used to take milk from his milk dairy and then both of them were handed over two packets of Heroin by Dilbag Singh and Eikramjit Singh. In the course of the abovesaid dealing he as well as accused Harpal Singh were to collect consignment of Heroin, Fake Indian Currency Notes (FICN) as well as arms and ammunition but could not meet them at Mata Kauri Temple on 2.7.2012. Then they had received information through Bilal that the consignment sent for them has already been apprehended from Dilbag Singh and Bikramjit Singh on 2.7.2012 but he had assured of sending a fresh consignment through some other person on 4.7.2012 but they were apprehended by the police of SSOC, Amritsar when they had reached the settled place of Mid Town Hotel Amritsar and money to the tune of Rs.1,50,000/- being carried by them for the purpose of purchase of the consignment was recovered by the police from them.

58. In the above way, the approver Jasbir Singh has narrated the circumstances leading to his and that of the accused Harpal Singh's arrest by the police. This accomplice turned approver has, by way of his above deposition has brought on record the role of the accused Harpal Singh in this case. He has deposed as to how the accused Harpal Singh had conspired with him (Jasbir Singh PW) as well as the accused Dilbag Singh and Bikramjit Singh apart from the pivotal figure Bilal @ Rana a Pakistani National, around whom the whole story of conspiracy of

ATTESTED


sending the consignment of Heroin, Fake Currency Note as well as arms and ammunition in the Indian territory, from the other side of the border.

59. At this very state Ms. Satwant Mehta Advocate has attacked the testimony of PW1 Jasbir Singh by way of arguing that the testimony of an accomplice is unworthy of credit, being that of a person who is involved in that very crime itself and who has earned his pardon only for the purpose of deposing against the co-accused. Ms. Mehta has referred to Section 114 of the Indian Evidence Act wherein illustration 'B' appended to Section 114 has made it clear that the Court is to presume that the testimony of an accomplice is unworthy of credit unless it is corroborated in material particulars.

60. However, Section 133 of the Evidence Act makes it too clear that an accomplice shall be a competent witness against an accused person and conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice.

61. A conjoint reading of Section 133 of the Evidence Act and illustration 'B' appended to Section 114 of Indian Evidence Act has persuaded this Court to reach to the conclusion that it is not illegal to act upon the uncorroborated evidence of an accomplice, but still, it is a rule of prudence so universally followed as to amount almost to a rule of law that it is unsafe to act upon the evidence of an accomplice unless it is corroborated in material aspect so as to implicate the accused, as has been observed in **Bhuboni Sabu V. Emperor** AIR 1949 PC 257. The above said analogy has been followed by the Hon'ble Apex Court in **Ravinder**

ATTESTED

Singh Vs. State of Punjab- AIR 1975 SC-856 wherein it has been observed that every approver comes to give evidence in some such manner seeking to purchase his immunity and that is why, to start with, he is an unreliable person and the rule of caution calling for material corroboration is constantly kept in mind by the time borne judicial practice.

62. So, here also, this Court has opted to adopt a cautionary approach while receiving an appreciating the testimony of PW1 Jasbir Singh. The testimony of the accomplice Jasbir Singh as PW1 has been corroborated by PW15 Inspector Harvinder Pal Singh, Investigating Officer of this case, has proved who in the course of his evidence has proved on record the disclosure statements Ex.PW7/Y and Ex.PW7/Z, suffered by the accused Dilbag Singh and Bikramjit Singh, with whom the accused Harpal Singh @ Sonu and the approver Jasbir Singh @ Baba had hatched a conspiracy for carrying further the consignment sent by Bilal @ Rana from across the border. It has received further corroboration from the testimony of PW7 Inspector Balbir Singh who was witness to the disclosure statement suffered by the accused Dilbag Singh and Bikramjit Singh. In this way, the conspiracy hatched by the accused Harpal Singh @ Sonu has not been brought and proved on record only by the approver PW1 Jasbir Singh but also by the accused Dilbag Singh and Bikramjit Singh, who were the main instruments in the conspiracy. Both the accused persons have stated in a categorical manner that the consignment of Heroin, fake Indian currency notes and arms as well as

ATTESTED

ammunition sent by Bilal @ Rana from the other side of the Indo Pak Border was transmitted by them to the accused Harpal Singh @ Soru and Jasbir Singh @ Baba and that they had also taken their due commission in regard to the abovesaid consignment. The recovery of Rs.1,50,000/- from the approver Jasbir Singh vide recovery memo Ex.PW7/AA at the time of his arrest, without any satisfactory explanation, has made it clear that the said money was to be handed over to the person from whom the consignment was to be received. Moreover, the approver Jasbir Singh and accused Harpal Singh had not been able to explain the source of money recovered from them.

63. Even, the cross-examination of the approver could not elicit anything so as to rebut the role of the accused Harpal Singh in the conspiracy to transmit the consignment further. The defence side has not been able to prove that the accused Harpal Singh had not been a conspirator and party to the taking over of the consignments of Heroin etc. from the accused Dilbag Singh and Bikramjit Singh for the purpose of handing over the same to other person. Although, this witness has admitted that nothing was recovered from the accused Harpal Singh but still it cannot be inferred that the accused Harpal Singh was not party alongwith the approver to take packets of Heroin from Dilbag Singh and Bikramjit Singh.

64. It has been held by the Hon'ble Supreme Court of India in the case of **Ajay Aggarwal Vs. Union of India** 1993(3) RCR (Cr.) 34 that the conspiracy itself is a substantive evidence and is distinct from the

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offence to commit in regard to which the conspiracy is entered into. As conspiracy is always hatched in secrecy and it is impossible to adduce direct evidence of the same so this offence can be proved only from inference drawn from acts or illegal omission committed by the conspirator in pursuance of a common design. In the instant case the accused Harpal Singh @ Sonu has entered into a conspiracy not only with Jasbir Singh @ Baba but also with accused Dilbag Singh and accused Bikramjit Singh and even with the protagonist of the conspiracy Bilal @ Rana, though he had never met him. It is not disputed in any manner that all the participants to a conspiracy are not supposed to meet each other, but is to be proved that all of them had a share in the hatching of the conspiracy, though all of them might not be knowing all the incidents, motive and goal of the conspiracy. So, in this case, PW1 Jasbir Singh has fully proved on record that Harpal Singh @ Sonu was the member of the conspiracy plan for transmission and carrying of the Heroin from one place to other while taking the same from the accused Dilbag Singh and Bikramjit Singh for the purpose of delivery of the same to other person. The Investigating Officer Insp. Harvinder Pal Singh as PW15 has lent corroboration to the testimony of PW1 in material particulars by way of proving on record the disclosure statements Ex.PY and Ex.PZ made by accused Dilbag Singh and Bikramjit Singh. Insp. Harvinder Pal Singh and Insp. Balbir Singh PW5, PW15 and PW7 respectively. After coming to know of the conspiracy and after apprehending the accused Harpal Singh, have become material witnesses so as to depose in regard to the

ATTESTED


conspiracy hatched by the accused Harpal Singh @ Sonu with his co-accused and others. So, in this case the prosecution was not to prove the conspiracy by way of substantial evidence and the court was not to draw its inference in regard to the conspiracy especially when there is burgeoning material evidence on record. In view of the above discussion, the arguments advanced by the learned counsel for the accused Harpal Singh are of no merit and as such, do not come to the rescue of the accused and as such, the same are hereby dismissed.

65. Now, when all the contentions and objections raised by the learned counsel for the accused have been jettisoned in the manner mentioned above, but still, it remains to be seen as to whether the prosecution has proved its case beyond the shadow of doubt.

66. The first head of the charge sheet against the accused persons is that of criminal conspiracy under section 120-B of IPC and the 6th head of the charge sheet is that of criminal conspiracy under section 29 of NDPS Act. In preceding paras of this judgment, this Court has dealt in detail as to how the prosecution has proved the charge of criminal conspiracy against all the accused persons. There is ample evidence on record, as discussed above, in the shape of testimony of PW1 Jasbir Singh, PW7 Insp. Balbir Singh and PW15 Insp. Harvinder Pal Singh as well as the disclosure statements Ex.PY and Ex.PZ made by the accused Dilbag Singh and Bikramjit Singh to show and prove that all the three accused persons had entered into a conspiracy to smuggle arms like Berretta Pistol, counterfeit currency into India as well as ~~Haryana~~ and as

ATTESTED

such, they have committed the offence under section 120-B of IPC and Section 29 of NDPS Act. In the case of Harpal Singh, it has to be said over here that though he was not arrested along with the main accused Dilbag Singh and Bikramjit Singh but still, his accomplice has proved that Harpal Singh had conspired with him as well with other accused to smuggle and transmit Berretta Pistol, fake Indian currency note and commercial quantity of Heroin, as proved on record by the disclosure statements to the effect that they had handed over two packets of Heroin on one occasion, six packets of Heroin on another occasion to Jasbir Singh and Harpal Singh. Thus, the offence under section 120-B of IPC and Section 29 of NDPS Act have been proved by the prosecution against all the accused persons beyond doubt.

67. The second head of charge sheet is against the accused Dilbag Singh and Bikramjit Singh in regard to the possession of Italy made Berretta Pistol along with eight rounds of 9 mm and 30 rounds of 30 bore without any licence or permit. Although, the police has not examined any independent witness but still, the investigating Officer and the recovery witness Inspector Balbir Singh have fully proved the recovery of the abovesaid arms and ammunition which was recovered from the accused vide recovery memo Ex.PW7/H along with recovery of fake Indian currency notes of Rs.500/- denomination recovered vide recovery memo Ex.PW7/J. ASI Sihal Singh Head Armour, Amritsar while appearing as PW6 has proved on record the test report Ex.PW6/A showing that Berretta Pistol as well as the rounds recovered were in

ATTESTED

working order. PW16 Ram Singh IPS Commissioner of Police, Amritsar has proved the sanction accorded to prosecute the accused persons vide sanction order Ex.PW16/A. He has proved on record that the said sanction was accorded after going through the relevant record, recovery memos in regard to the arms and ammunition as well as the report of the Armour. The report Ex.PW15/C given by Dr. Ashwani Kalia, Asstt. Director (Document) Forensic Science Laboratory, Punjab, which is permissible under section 293 of Cr.P.C. has opined and proved that all 1000 currency notes of Rs.500/- denomination marked Q1 to Q1000 have been compared by him with genuine currency notes with the help of scientific aid and as such, has concluded that all the said currency notes were not genuine one. Although, the recovery witnesses have been cross-examined at length and the learned counsel for the accused have taken so many objections regarding the credence of the prosecution case but all the said objections have already been dealt with and jettisoned. So, now, it has to be said that the prosecution has fully proved the charge under section 25 of the Arms Act and under section 489-B and 489C of the IPC, as it has been fully proved on record that the accused Dilbag Singh and Bikanjit Singh were found in possession and had trafficked counterfeit currency notes, sent as a consignment from the other side of the border.

68. The next head of charge under section 28 of NDPS Act pertains to accused Harpal Singh. Section 28 attracts within its ambit the mischiefs pertaining to attempt to commit an offence punishable under Chapter IV of NDPS Act. The accused Harpal Singh alongwith the

ATTESTED

approver and PW1 Jasbir Singh was arrested by the police on 4.7.2012 while being in possession of Indian currency to the tune of Rs.1,50,000/- for the purpose of purchasing narcotic. The testimony of PW1 and disclosure statements of the accused Dilbag Singh and Bikramjit Singh Ex.PY and Ex.PZ on record have already proved that the accused Harpal Singh was a part of the conspiracy and member of the group constituted at the behest of Bilal @ Rana so as to smuggle, carry forward and transmit Heroin for its distribution and final destination. It has also been proved by Inspector Harvinder Pal Singh and recovery witness Inspector Balbir Singh that the accused Harpal Singh was apprehended along with motor cycle and currency notes of Rs.1,50,000/- and as per their secret information they were to purchase the contraband of Heroin from some other person. Though, the police party had not been able to catch the accused and his associates red handed while exchanging Heroin with money but there is sufficient material on record to show that the police of State Special Operation Cell, Amritsar was successful in aborting the attempt of the accused Harpal Singh to purchase and take Heroin sent by Bilal through his other agent (This Court had always thought of avoiding mentioning the name of Bilal in this case but when it comes to conspiracy and attempt, and the name of Bilal has figured on record umpteen times in the course of testimony of the witnesses and the documents on record, then it has become necessary to mention his name, as otherwise, the offence of conspiracy and attempt will also not be proved against the accused persons facing trial in this case). And in this way, investigating

ATTESTED

agency and then the prosecuting agency i.e. NIA has fully proved on record the attempt to commit the offence under section 21 of NDPS Act, as such, the charge under section 28 of the Act is proved.

69. Now, regarding the most important and substantial head of the charge sheet under section 21 of NDPS Act. As already discussed in the initial part of this judgment, PW15 Inspector Harvinder Pal Singh has fully proved the recovery proceedings, vide which 1 Kg and then 10 Kgs of Heroin have been recovered from the accused Dilbag Singh and Bikramjit Singh. The recovery of 1 Kg of Heroin was effected from the polythene bag carried by accused Dilbag Singh and recovery of 10 kgs of Heroin from the agricultural land on the other side of the fencing on Gate No.91 of the Indo-Pak border taken on lease by the above named accused by PW11 Baldev Singh owner of the land. The other witness PW2 HC Kabal Singh, PW5 Pintu Kumar Singh and PW7 Inspector Balbir Singh have fully proved on record the material particulars of the recovery of a huge quantity of Heroin from the accused persons. It is already on record that the mandatory and obligatory directions under NDPS Act contained in section 42, 50 and 52 of NDPS Act have been observed and complied with. DSP Harvinder Singh while appearing as PW12, being a Gazetted Officer has scrutinized and verified the recovery proceedings by Inspector Harvinder Pal Singh. Had the proceedings been fictitious one, then DSP Harvinder Singh would not have put his stamp of genuineness on the said proceedings. The record has shown that the accused Dilbag Singh was searched only when he had given his consent vide memo Ex.PW7/D that

ATTESTED

also in the presence of the Gazetted Officer. The production of the accused before the Area Magistrate has also shown that the recovery of Heroin effected from the accused persons was genuine one, which has not been disproved even by way of exhaustive cross-examination conducted upon the prosecution witnesses. PW3 HC Sarup Singh has proved on record the link evidence pertaining to the taking of 11 samples from Insp. Harvinder Pal Singh SHO of PS State Special Operation Cell, Amritsar and had deposited the same on 16.7.2012 in the office of Forensic Science Laboratory, SAS Nagar, Mohali. This witness has specifically stated that as long as the samples had remained with him, he had not himself tampered or allowed any one to tamper with the said samples. The report of the Forensic Science Laboratory Ex.PW15/C, which is per se admissible under section 293 of Cr.P.C. has clinched the matter conclusively to the effect that 11 Kgs of contraband recovered from the accused persons was Heroin, the mere possession of which is punishable under section 21 of NDPS Act. In this way, the prosecution has proved the charge under section 21 of NDPS Act against the accused Dillag Singh and Bikramjit Singh beyond the shadow of reasonable doubt. Otherwise also, the judgment Ex.PD passed by the Court of Sh. Aashish Saldi, learned Principal Magistrate Juvenile Justice Board, SAS Nagar, Mohali has also shown that the co-accused Gurpartap Singh, who was declared a juvenile in conflict with law has also been convicted for the offences under section 120B, 489B, 489C of IPC as well as under section 21 and 29 of NDPS Act and Section 25 of Arms Act, just because of the

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fact that he had confessed his guilt by way of pleading guilty. However, it still remains to be seen as to whether the possession of the contrabands with the accused persons was conscious possession or not.

70. The disclosure statements Ex.PW7/P and Ex.PW7/Q made by accused Dilbag Singh and Bikranjit Singh have proved that the accused persons had consciously kept the Stepeny tyre of a 'Rehra' in the said land so as to conceal Heroin sent by Bilal @ Rana from the other side of the border. Suffering of the above like disclosure statements, in pursuance of which recovery of 10 Kgs of Heroin has been effected shows the culpable mental state of the accused and this Court has to draw the presumption of existence of such mental state, after effecting of recovery of 10 Kgs of Heroin from the Stepeny tyre lying concealed in the land. Keeping of 10 Kgs of Heroin in concealed manner and taking of 1 Kg. of Heroin for the purpose of delivery of the same to some customer shows that the accused were having conscious possession of the said huge quantity of Heroin especially when it is known to every one that possession of Heroin is prohibited. The taking of land on lease on the other side of the fencing of Indo-Pak border also shows the intention, motive and knowledge of the accused so as to form culpable mental state, which is to be presumed by this Court under section 35 of NDPS Act.

Here, the presumption of law under section 54 of NDPS Act also comes into play, as the accused has not been able to satisfactorily account for taking of land on lease across the fencing of Indo-Pak border, concealing of Heroin in Stepeny tyre of 'Rehra'. It was for the accused person to rebut

ATTESTED

the above mentioned statutory presumption but they have failed to lead any evidence to rebut the same. In *Madan Lal and Another Vs. State of H.P.* 2003 SCC (Cr) 1664, it has been observed as under:-

"The word 'conscious' means awareness about a particular fact. It is a state of mind which is deliberate or intended. Once possession is established, the person who claims that it was not a conscious possession, has to establish it, because how he came to be in possession, is within his special knowledge. Section 35 of the Act gives a statutory recognition of this position because of the presumption available in law. Similar is the position in terms of Section 54 where also presumption is available to be drawn from possession of illicit articles."

In such like factual matrix of this case, the observations made by the Hon'ble Apex Court in **Madan Lal Case** (supra) are squarely applicable and as such, the prosecution has fully proved the conscious possessor of the accused.

71. As a sequel to the foregoing discussion, the prosecution has not proved the charge under section 25 of NDPS Act against accused Dilbag Singh and as such, he is ordered to be acquitted of the said offence.

72. Now, the head of the charge sheet pertaining to the charge under section 25 of NDPS Act. This charge has been framed against both the accused Dilbag Singh and Bikramjit Singh but a plain reading of Section 25 shows that it takes within its ambit only the mischief of the

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owner or occupier or of the person having control or use of any house, room, enclosure, space, place animal or conveyance. As the offence under this section is committed only when the abovesaid owner or occupier knowingly permits to be used for the commission of the offence by any other person. In the instant case, it was the accused Bikramjit Singh who was the occupier of the land across the fencing of Indo-Pak border and was having control of it as he had taken it on lease from PW11 Baldev Singh who had given the land in question on lease to the accused Bikramjit Singh @ Rs.4,000/- per acre as has been deposed by Baldev Singh as PW11 and shown in jamabandi Ex.PW9/A. As ~~the~~ ^{the} Bikramjit Singh was occupier of the land at the relevant time, so it was his duty that the said land is not misused by any one including himself as well as his father Dilbag Singh but he has deliberately and intentionally permitted his father to use the said land for concealing of Heroin. This act of intentionally and deliberately allowing of using the land for storing of Heroin is punishable under section 25 of the Act. As the accused Dilbag Singh was legally and technically was not the owner or occupier of the said land so, the mischief of this Section is not attracted against him rather the same is attracted against Bikramjit Singh as he was occupier of the land being lessee. So, the offence under section 25 of NDPS Act is not proved against the accused Dilbag Singh. The knowledge in regard to permitting, his father can be easily inferred, as Bikramjit Singh was also in conscious possession of the contraband of Heroin. So, all the ingredients of this Section have been fulfilled so as to prove the charge against the accused

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Bikramjit Singh. Thus, the same has been fully substantiated against the accused Bikramjit Singh.

73. The prosecution i.e. National Investigation Agency (NIA) has fully proved the charges under section 120-B IPC and 29 of NDPS Act against all the accused and the charge under section 28 of NDPS Act against the accused Harpal Singh. In addition to it, the prosecution has proved the charge against the accused Dillbag Singh and Bikramjit Singh under section 25 of the Arms Act, under section 489B, 489-C of IPC and under section 21 of NDPS Act and the charge under section 25 of the Act against Bikramjit Singh and as such, they are hereby held guilty and convicted thereunder. Let they be heard in the point of sentence.

PRONOUNCED/

17.07.2015

(PARMINDER PAL SINGH)

ADDL. SESSIONS JUDGE-CUM-
PRESIDING OFFICER, SPECIAL COURT,
SAS NAGAR (MOHALI) CONSTITUTED
UNDER THE NATIONAL
INVESTIGATION AGENCY ACT, 2008
FOR THE STATE OF PUNJAB.

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23/7/15

N.I.A. Vs. Dilbag Singh and othersORDER OF SENTENCE.

Present: Sh. Surinder Singh Id. P.P. and Sh. H.S. Oberoi, Id. Spl, PP
for NIA assisted by Sh. Devinder Singh DSP
Accused-convicts Dilbag Singh, Bikramjit Singh and Harpal
Singh in custody represented by their counsel Ms.
Satwant Mehta and Sh. H.S. Pannu Advocate.

I have heard the convicts personally and individually as well as through their respective Advocates as well as Mr./ H.S. Oberoi, learned Special Public Prosecutor for NIA, on the point of sentence and statements of the convicts have also been recorded, in this regard. The convict Dilbag Singh stated that he is 68 years of age and is a Senior Citizen. No past criminal history of accused is there, except present one. He has already lost one son in the prime of the youth, during the pendency of this case and he has to take care of his other younger son and wife. So, lenient view may be taken while awarding the sentence.

2. Accused-convict Bikramjeet Singh stated that he is of young age. In front of him whole life is there. He has the age of starting and revision of his declaring Juvenile is still pending before the Hon'ble High Court. He has no criminal past history except the present one. So, lenient view may be taken while awarding the sentence.

3. Accused-convict Harpal Singh has stated that he is married, saddled with the responsibilities of three minor children, 2 daughters and one son aged about 6 years, 5 years and three years respectively. Besides the responsibilities of his wife and children, he has to look after his aged

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parents who are both bed ridden. His mother is suffering from Kidney disease and she has been operated upon. His father is also suffering from age related ailments and is unable to move around. He is the only bread earner of his family and there is no body except him to look after his whole family. Keeping in view his circumstances, lenient view may be taken.

4. Mr. H.S. Pannu, Advocate has pleaded for taking lenient view while awarding sentence on the convicts. However, learned Special Public Prosecutor has pleaded for awarding an exemplary sentence to the convicts, as the acts and the offences they have committed are not only aimed at playing havoc with the integrity and economy of the country, rather the same was with a view to play with the future of the youth of the country.

5. It is an established and cardinal principle of criminal jurisprudence that sentence must commensurate with the gravity of the offence committed. In the instant case, the convicts Dillbag Singh and Bikramjit Singh have been found in possession of 11 Kgs of heroin. Italy made Beretta Pistol and counterfeit currency to the tune of Rs.5 lacs and the convict Harpal Singh has been convicted for hatching conspiracy for transporting 2 Kgs and 6 Kgs of Heroin with the main accused persons as well as with an attempt to transport commercial quantity of Heroin at the time of his apprehension by the police. So, such like persons have to be dealt with sternly so as to curb their illegal activities and nefarious designs with an iron hand, so as to save the future generations of this

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 Convicted for 20-21-22

country from becoming drug addicts. Though, the convicts have pleaded for taking a lenient view by way of pleading their family circumstances but the interests of the nation are of paramount importance as against the personal problems of the convicts. In view of the heinous nature of the offences committed as well as because of the anti national tendencies of the accused persons, it will be in the fitness of things to award sentence in the manner given below:-

Accused-convict Dilbag Singh

U/s 120-B of IPC	To undergo rigorous imprisonment for seven years and to pay fine of Rs.7,000/-, in default of payment of fine to further undergo simple imprisonment for seven months
U/s 489-B of IPC	To undergo rigorous imprisonment for 10 years and to pay fine of Rs.10,000/-, in default of payment of fine to further undergo simple imprisonment for ten months.
U/s 489-C of IPC	To undergo rigorous imprisonment for seven years and to pay fine of Rs.7,000/-, in default of payment of fine to further undergo simple imprisonment for seven months.
U/s 25 of Arms Act	To undergo rigorous imprisonment for seven years and to pay fine of Rs.7,000/-, in default of payment of fine to further undergo simple imprisonment for seven months.
U/s 21 of NDPS Act	To undergo rigorous imprisonment for 20 years and to pay fine of Rs.2,00,000/-, in default of payment of fine to further undergo simple imprisonment for two years.
U/s 29 of NDPS Act	To undergo rigorous imprisonment for 10 years and to pay fine of Rs.1,00,000/-, in default of payment of fine to further undergo simple imprisonment for one year.

Accused-convict- Bikramjit Singh

U/s 120-B of IPC	To undergo rigorous imprisonment for seven years and to pay fine of Rs.7,000/-, in default of payment of fine to further undergo simple imprisonment for seven months
U/s 489-B of IPC	To undergo rigorous imprisonment for 10 years and to pay fine of Rs.10,000/-, in default of payment of fine to further undergo simple imprisonment for ten months
U/s 489-C of IPC	To undergo rigorous imprisonment for seven years and to pay fine of Rs.7,000/-, in default of payment of fine to

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23/11/14

	further undergo simple imprisonment for seven months
U/s 25 of Arms Act	To undergo rigorous imprisonment for seven years and to pay fine of Rs.7,000/-, in default of payment of fine to further undergo simple imprisonment for seven months
U/s 21 of NDPS Act	To undergo rigorous imprisonment for 20 years and to pay fine of Rs.2,00,000/-, in default of payment of fine to further undergo simple imprisonment for two years.
U/s 29 of NDPS Act	To undergo rigorous imprisonment for 10 years and to pay fine of Rs.1,00,000/-, in default of payment of fine to further undergo simple imprisonment for one year.
U/s 25 of NDPS Act	To undergo rigorous imprisonment for 20 years and to pay fine of Rs.2,00,000/-, in default of payment of fine to further undergo simple imprisonment for two years.

Accused-convict-Harpal Singh

U/s 120-B of IPC	To undergo rigorous imprisonment for seven years and to pay fine of Rs.7,000/-, in default of payment of fine to further undergo simple imprisonment for seven months
U/s 29 of NDPS Act	To undergo rigorous imprisonment for 10 years and to pay fine of Rs.1,00,000/-, in default of payment of fine to further undergo simple imprisonment for one year.
U/s 28 of NDPS Act	To undergo rigorous imprisonment for 10 years and to pay fine of Rs.1,00,000/-, in default of payment of fine to further undergo simple imprisonment for one year.

Date of Application 21/07/15
 Name of Applicant A.D.J.
 Name of Convict A. D. Singh
 Agent Fee 100/-
 No. of Pages 6
 Date of Preparation 23/7/15
 Date of Delivery 24/7/15

All the sentences shall run concurrently. The period of detention, if any, already undergone by the convicts during inquiry, investigation and trial of this case, shall be set off against the imprisonment awarded to them. Case property be dealt with as per law. File be consigned to the Record Room.

PRONOUNCED/
 20.07.2015

Attested to be true COPY
 Incharge Copying Agency
 A.D.J.-cum-A.S.J.
 Mohali

(PARMINDER PAL SINGH)
 ADDL. SESSIONS JUDGE-CUM-
 PRESIDING OFFICER, SPECIAL COURT,
 SAS NAGAR (MOHALI) CONSTITUTED
 UNDER THE NATIONAL
 INVESTIGATION AGENCY ACT, 2008
 FOR THE STATE OF PUNJAB.