



2025:CGHC:7198-DB

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**CRA No. 98 of 2024**

1 - Jay Singh Son of Ram Bahadur Singh, Aged About 32 Years,
Resident of Hasanpur Kasar, Thana - Sultanpur Ghosh, District -
Fatehpur (U.P.).

... Appellant**versus**

1 - State of Chhattisgarh Through Station House Officer, Police Station -
Kawardha, District - Kabirdham, Chhattisgarh.

... Respondent

For Appellant : Mr. Vikas Pradhan, Advocate.

For State : Mr. Sangharsh Pandey, Govt. Advocate.

Hon'ble Shri Ramesh Sinha, Chief Justice**Hon'ble Shri Ravindra Kumar Agrawal, Judge****Judgment on Board****Per Ravindra Kumar Agrawal, J.****10-02-2025**

1. The present criminal appeal has been filed under Section 374(2) of the Cr.P.C. against the impugned judgment of conviction and sentence dated 13-12-2023 passed by the learned Special Judge (NDPS Act) Kawardha, District Kabirdham in Special Criminal Case under the NDPS Act No.492/2022 whereby the appellant has been convicted for the offence under section 20(b)(ii)(C) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'the NDPS act')

and sentenced with R.I. for 11 years with fine of Rs.1,00,000/-, in default of payment of fine, additional R.I. for 1 year.

2. Brief facts of the case are that on 17-09-2022 the Sub-Inspector Narendra Singh (PW-11) received secret information that near Jain Dharmshala Kawardha 5 bags contained with Ganja is unloaded from white colour car and the car has run away towards Bilaspur and a person is waiting for someone along with 5 bags of Ganja. The secret information was recorded in rojnamcha sanha No.35 on 17-09-2022 and notice was issued to the independent witnesses Birendra Jhariya and Jahur @ Babbar and the Constable No.41 Kapil Dhruve was sent to serve notice Ex.-P/31 upon the independent witnesses. Both the independent witnesses came to police station along with Constable Kapil Dhruve and their entry have been recorded in rojnamcha sanha 40 which is Ex.-P/37. The intimation about secret information was given to the independent witnesses and panchnama Ex.-P/2 was prepared. Considering the necessity to search without warrant, panchnama Ex-P/3 was prepared and intimation was sent to the SDO(P) under Section 42 of the NDPS Act through Constable Krishna Kumar Laharey and his duty certificate Ex.-P/30 was issued. The police party proceeded towards place of incident and their departure has also been recorded in rojnamcha Ex.-P/41.

When the police party reached near Jain Dharmshala, Bilaspur Road, Kaawardha, they found a person sitting on the side of the road along with 5 big bags. He disclosed his name as Jay Singh R/o Hasanpur Kasar, District Fattepur, U.P. He was apprised by the secret

information and panchnama Ex.-P/44 was prepared. Notice under Section 50 of the NDPS Act Ex.-P/5 was also given to him and he was informed about his right to search. His consent was obtained that he is ready to be searched by the police officer. Before his search, the police party have also given their own search and the Govt. vehicle and motorcycle was also searched by the accused and panchnama Ex.-P/8 was prepared. On being search of the police party no incriminating article have been found. When the bags of the accused/appellant were searched 5 packets from which total 25 packets wrapped with brown colour plastic were found and talashi panchnama Ex.-P/9 was prepared. The recovery panchnama Ex.-P/10 was prepared. All 25 packets were opened and a small quantity was taken out from the packets and it was physically identified by its nature, smell, rubbing and then it was found to be Ganja and the identification panchnama was prepared.

Notice under Section 91 of the Cr.P.C. was also given to the appellant, but he failed to submit any document with respect to the said Ganja. The recovered ganja was weighed by weighment witness Kasid Mohammed., PW-5 and it was found total 117.100 kg. and weigment panchnama Ex.-P/15 was prepared. The Executive Magistrate was called on the spot who homogenized the contents of 25 packets and homogenization panchnama Ex.-P/16 was prepared .After its homogenization two sample packets of 100 gram each were separated which were marked as B1 and B2 and the remaining Ganja was refilled in three white bags which were also marked as C1, C2 and C3. The recovered Ganja were seized vide seizure memo Ex.-P/20 which was

sealed. The seal panchnama Ex.-P/19 was prepared. The accused was arrested and his arrest was intimated to his family members. Dehati Nalisi Ex.-P/43 was recorded on the spot and the inventory of entire proceeding Ex.-P/22 was prepared.

After search and seizure proceeding the police seized ganja and sample packets were taken to police station which was recorded in rojnamcha Ex.-P/44. The FIR Ex.-P/45 was registered by the SHO on the basis of dehati nalisi. The seized articles were handed over to Malkhana Moharrir and acknowledgment Ex.-P/33 was obtained. The sample packets of seized Ganja along with the memo of the S.P. Ex.-P/47 were sent to State FSL Raipur, from where report Ex.-P/51 was received in which the contents of Ganja were found and the sample packets sent for its chemical examination. The inventory of seized Ganja was also prepared by Executive Magistrate Kawardha. Statement of the witnesses under Section 161 of the Cr.P.C. have been recorded and after completion of usual investigation charge sheet was filed before the learned trial Court for the offence under Section 20(b) of the NDPS Act.

3. Learned trial Court has framed charge against the appellant for the offence under Section 20(b)(ii)(C) of the NDPS Act. The appellant denied the charge and claimed for trial.

4. In order to prove the charge against the appellant, the prosecution has examined as many as 12 witnesses. Statement of the appellant under Section 313 of the Cr.P.C. have also been recorded in which he denied the circumstances appearing against him, pleaded innocence

and has submitted that he has been falsely implicated in the offence and he was not having Ganja with him and he he may be acquitted.

5. After considering the evidence led by the prosecution the learned trial Court has convicted and sentenced the appellant as mentioned in the earlier part of this judgment. Hence, this appeal.

6. Learned counsel for the appellant would submit that prosecution has failed to prove its case beyond reasonable doubt. There are material omissions and contradictions in the evidence of prosecution witnesses which cannot be made basis to convict the appellant for the alleged offence. There are non-compliance of the mandatory provisions of Section 42, 50, 52, 52A, 55 and 57 of the NDPS Act. There is absolutely non-compliance of the standing Order No.1/89 issued by the Central Govt. with respect to the procedure for drawing samples and in absence of any proper procedure drawn by the investigating officer, the entire proceeding vitiates. He would further submit that there is discrepancies in the entries made in the Malkhana Register and the samples sent for its chemical examination as there is no entry in Malkhana Register taking out the samples from there to send it to FSL. He would further submit that from the entries made in the Malkhana Register Ex.-P/34C there is no mention of taking out the samples from Malkhana. The independent witnesses have not supported the prosecution's case and the prosecution has failed to prove that the appellant was found in exclusive and conscious possession of the seized Ganja and therefore, there is no sufficient evidence on record to connect the appellant with the offence in question and thus, he is

entitled for acquittal.

7. On the other hand, learned counsel for the State opposes and has submitted that the prosecution has proved its case beyond reasonable doubt. But for minor omissions or contradictions their evidence are fully reliable. The minor discrepancies which are trivial in nature does not affect the credibility of the prosecution's case. There is no reason for the prosecution to falsely implicate the appellant in huge quantity of Ganja and in case of having possession of said huge quantity of Ganja. He would further submit that the mandatory provisions of the NDPS Act have duly been proved as per its requirement. There is no explanation from the appellant as to how he came into possession of such huge quantity of Ganja. After considering the entire evidence available on record, the learned trial Court has rightly come into conclusion that the appellant is guilty for the alleged offence and has convicted and sentenced the appellant which needs no interference.

8. We have heard learned counsel for the parties and perused the record with utmost circumspection.

9. PW-11 Narendra Singh, who is Sub-Inspector of Police has stated in his evidence that on 17-09-2022 he received a secret information that a white colour car has unloaded 5 big bags having ganja in it and ran towards Bilaspur road. A person having those 5 packets was waiting for someone near Jain Dharmshala, Kawardha. He recorded the said information in rojnamcha sanha No.35 dated 17-09-2022 and the said rojnamcha is Ex.-P/35. He called the independent witnesses Virendra Jhariya and Jahur @ Gabbar through constable Kapil Dhruve.

Departure of Constable was recorded in rojnamcha sanha No.37 which is Ex.-P/36. The incoming of the constable along with witnesses have also got recorded in rojnamcha sanha No.40 which is Ex.-P/37. The witnesses were apprises about the secret information and panchnama Ex.-P/2 was prepared. The rojnamcha with respect to secret information panchnama is Ex.-P/38. The necessity to search without warrant panchnama has also been prepared which is Ex.-P/3. The secret information panchnama, necessary to search without warrant panchnama were forwarded to the Deputy Superintendent of Police Kabirdham through Constable Krishna Kumar Laharey. The sending of said panchnamas was recorded in rojnamcha sanha Ex.-P/40. The acknowledgment of the notice under Section 42 is Ex.-P/39. Thereafter they proceeded towards place of incident along with the police party and their departure has also been recorded in rojnamcha No.46 which is Ex.-P/41. When they reached near Jain Dharmshala, Bilaspur Road Kawardha they found a person sitting on the side of the road having 5 bags with him. He disclosed his name as Jay Singh R/o Village Hasanpur Kasar, District Fattepur, U.P. He was informed about the secret information and panchnama Ex.-P/4 was prepared. The notice under Section 50 of the NDPS Act has also been given to him Ex.-P/5. The appellant was informed about his right to search that he is free to get his search conducted by a Magistrate, Gazetted Officer or police officer and he gave his consent to be searched by Sub-Inspector PW-11. His consent letter is Ex.-P/6. The police party have also given their own search and panchnama Ex.-P/8 was prepared. On being search of

the appellant, one Adhar Card and mobile phone having SIM Card and Rs.1700/- cash has recovered. When the bags were searched, 5 packets in each bag were found which were rapped with brown plastic. From those packets Ganja like smell was coming out and talashi panchnama Ex.-P/9 was prepared.

Total 25 packets have been from the appellant and recovery panchnama Ex.-P/10 was prepared. About 2-2 gram of the material of each bags were taken out and physically verified by its rubbing, smelling and crushing and identified it as Ganja and physical verification panchnama Ex.-P/13 was prepared. The notice under Section 91 of the Cr.P.C. was also given to the appellant. The mobile seized from the appellant was opened and in its whatsapp account, a photograph of a person along with Ganja and chatting were abstracted and mobile panchnama Ex.-P/12 was prepared. Weightment witness Kasid Mohammed was called and physical verification of weightment apparatus was done and panchnama Ex.-P/14 was prepared. When the recovered article were weighed, it was found total 117.100 kg. and weightment panchnama Ex.-P/15 was prepared. From 25 bags , total 117.100 kg. Ganja was recovered. The packets were of different weights, but the total quantity of Ganja was 117.100 Kg. Tahsildar/Executive Magistrate was called for the inventory proceeding. The Nayab Tahsildar Anil Sen, PW-7 came on the spot and homogenized the entire quantity of Ganja seized from the bags and drawn two samples of 100 gram each. The homogenization panchnama Ex.-P/16 was prepared. The sample packets were marked

as B1 and B2 and the remaining quantity of Ganja was refilled in 3 bags. The weight panchnama Ex.-P/17 was also prepared in presence of the witnesses. Remaining quantity of Ganja which were refilled in 3 bags were sealed and marked as C1, C2 and C3. In another bag brown colour plastic tape, in a separate bag, 5 big empty bags were sealed and marked as D1 and D2. The sealing panchnama Ex.-P/18 was also prepared on the spot. The specimen seal panchnama Ex.-P/19 was also prepared. Total 116.900 kg. Ganja, 2 sample packets of 100 gram each were seized on the spot and seizure memo Ex.-P/20 was prepared.

The appellant was arrested and his arrest was informed to his family members vide intimation Ex.-P/42. Dehati Nalisi Ex.-P/42 was recorded and panchnama of entire proceeding was also prepared which is Ex.-P/22. Statement of the witnesses have been recorded. The seized Ganja, its sample packets and the appellant were taken to police station and incoming was recorded in rojnamcha Ex.-P/44. On the basis of Dehati Nalisi the FIR Ex.-P/45 was registered. The seized Ganja its sample packets and empty bags were kept in safe custody of Malkhana and its acknowledgment is Ex.-P/33. The seized articles were given in Supurdnama which was also endorsed in rojnamcha sanha No.105 which is Ex.-P/46. The sample packets of Ganja B1, B2 were sent for FSL examination along with the memo of Superintendent of Police Kabirdham through Constable Rekhchand Jaiswal and the memo is Ex.-P/47. The departure of the Constable for FSL is recorded in Sanha No.4 which is Ex.-P/48. The acknowledgment of deposition of the sample

packets to FSL is Ex.-P/49 and incoming of the Constable to police station is Ex.-P/50. The FSL report is Ex.-P/51.

The spot map Ex.-P/23 was prepared by the police. Memo was also given to Executive Magistrate under Section 52A of the NDPS Act and the report is Ex.-P/52. He recorded the statement of the witnesses and charge sheet has been filed. In cross-examination he stated that he received secret information at about 1:30 p.m. and the relevant entries have been made in Sanha No.35. He has not recorded any separate sanha for secret information. He denied the suggestion given by the defence that he prepared all the documents at police station and obtained signatures of the appellant as well as the witnesses. He also denied that he has not tried to obtain search warrant. He admitted that looking to the emergent situation of possibility of fleeing the appellant from the place he has not tried to contact to any Gazetted Officer of any other department since his senior officers were not present, therefore, no authority letter was issued in his favour. He also denied that notice under Section 50 of the NDPS Act has not been given to the appellant. He admitted that the bags which were recovered from the bags were wrapped with brown colour polythene, though he admitted that he has not prepared any separate panchnama with respect to the marking of the seized packets. He voluntarily stated that all the packets were marked as A1 to A25 which has been mentioned in seizure memo. He also denied that physical verification panchnama Ex.-P/14 is prepare in police station. He also denied that the weighment apparatus has not physically verified. He admitted that all the 25 packets were weighed

separately and he called the Executive Magistrate for homogenization of the seized Ganja and drawing samples from it. He also admitted that homogenization, sampling and sealing were done by the Executive Magistrate. He admitted that the Executive Magistrate has not affixed his own seal in the sample packets. He admitted that in the sealing panchnama he used inkpad impression of the seal. He himself has deposited the seized articles in Malkhana. He admitted that the S.H.O. has not resealed the seized articles in police station. He admitted that he has not got the videography or photography of the entire proceeding. He denied that he has not investigated with respect to the said car. He voluntarily stated that he could not find any clue about the white colour car. He further admitted that in the memo issued by the Superintendent of Police for sending sample packets to FSL, there is not mention of name of the Constable who has taken the same.

10. PW-1 Birendra Jhariya and PW-2 Jahur @ Gabbar Khan are independent witnesses. Though they have been turned hostile by they have admitted their signature in documents Ex.-P/1 to P/24.

11. PW-3 Mordhwaj Sahu (PW-3), has stated in his evidence that on 07-09-2022 on the instructions of the S.D.O. Kawardha, he homogenized the seized Ganja and drawn the sample packets from it. After its weight total 117.100 kg. was found and he homogenized the Ganja and separated two samples of 100 gram each. The sample packets, remaining Ganja and empty bags were sealed separately. Samras Panchnama Ex.-P/16 was prepared by him. In cross-examination he stated that he homogenized the entire quantity of all the

packets and then got separated two samples. He admitted that he has not sealed any packet and no impression of seal has been affixed by him. He voluntarily stated that he closed the packets and after affixing a slip it was sealed. He put his signature on the said slip in which the signature of witnesses were also there. After homogenization and drawing of samples, he refilled the said Ganja in bags. He admitted that there is no document annexed in the case with respect to homogenization of the seized Ganja by the order of the Executive Magistrate. He also admitted that in homogenization panchnama there is no mention of the fact that it was refilled in bags and any marking on it. From this witness, the defence could not abstract any material which makes the evidence of this witness doubtful or create a doubt over the entire search and seizure proceeding. He is the Executive Magistrate went on the spot, homogenized the entire quantity of Ganja, drawn sample and performed his part of the work which he duly proved.

12. Pradeep Chandrakar, PW-4 is Patwari who prepared the spot map Ex.-P/24.

13. Kasid Mohammed, PW-5 who is the weighment witness has not supported the prosecutions case and turned hostile. However, he admitted his signature in documents Ex.-P/14, Ex.-P/15, Ex.-P/17 and Ex.-P/28.

14. Krishna Kumar Laharey, PW-6 is the Constable who has taken the intimation about the secret information and search without warrant to the office of Deputy Superintendent of Police, Kabirdham.

15. Anil Kumar Sen, PW-7 is another Constable and member of

search party, who also proved the search and seizure proceeding which they have done on the spot. He also remained firm in the entire search and seizure proceedings.

16. Kapilraj Dhruve (PW-8) is another Constable who called the independent witnesses Birendra Jhariya and Gabbar Khan and also a member of search party.

17. Devendra Singh Chandravanshi PW-9, is another Constable through whom the weight witness Kasid Mohammed was called and he too has proved the talashi panchnama Ex.-P/8.

18. Rajesh Singh (PW-10) is the Malkhana Moharrir at Police Station Kawardha. He stated that on 13-09-2022 at about 2:10 Hours the A.S.I. Narendra Singh has given him the seized article to keep in safe custody of Malkhana and he issued acknowledgment Ex.-P/33 he has got entered in Malkhana Register which is Ex.-P/34. He has given two sample packets for its chemical examination from State FSL, Raipur to Rekhchand Jaiswal, Constable No.624. In cross-examination he admitted that he has not endorsed the timing of receiving the articles in Ex.-P/33. He also admitted that Sanha number has not been mentioned in the Malkhana Register by which it has been received. He also admitted that he could not say on the basis of Malkhana register Ex.-P/34 as to when the deposited articles were taken out from Malkhana. He further admitted that in the Malkhana Register there is no mention of any sealing over the sample packets and any marking over it. The seal impression has also not been endorsed in the seizure register. He admitted that in seizure register there is no entry that the

articles were taken out for inventory. Despite certain admissions, this witness has remained firm in saying that the Assistant Sub-Inspector Narendra Singh has deposited the seized Ganja and its sample packets to Malkhana in safe custody.

19. Salik Banjare, PW-12 is the Constable posted at the Office of S.D.O.(P.) has proved the acknowledgment Ex.-P/39 which relates to the information under Section 42 of the NDPS Act.

20. The submission of the learned counsel for the appellant that provisions of Section 42 of the Act have not been complied with.

21. PW-11 has explained that he sent secret information to his senior official through the Constable Salik Banjare PW-12, he proved the acknowledgment Ex.-P/39 with respect to the receipt of the intimation about the secret information. Even otherwise, Section 42 would not be applicable in the case as the Ganja has been seized from the public place and therefore, Section 43 of the NDPS is applicable which provides that:-

“43. Power of seizure and arrest in public place- Any officer of any of the departments mentioned in section 42 may:-

(a) seize in any public place or in transit, any narcotic drug or psychotropic substance or controlled substance in respect of which he has reason to believe an offence punishable under this Act has been committed, and, along with such drug or substance, any animal or conveyance or article liable to confiscation under this Act, any document or other article which he has reason to believe may furnish evidence of the commission of an offence punishable under this Act or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act;

(b) detain and search any person whom he has reason to believe to have committed an offence punishable under this Act, and if

such person has any narcotic drug or psychotropic substance or controlled substance in his possession and such possession appears to him to be unlawful, arrest him and any other person in his company.

Explanation- For the purposes of this section, the expression "public place" includes any public conveyance, hotel, shop, or other place intended for use by, or accessible to, the public."

22. The contraband was recovered and seized from an open place from the bag. As the contraband were recovered and seized from the public place which was kept in 5 bags, as contemplated in Section 43(a), i.e., "**seized in any public or in transit**", this Court is of the considered opinion that Section 43 of the NDPS Act is applicable and as such, recording for reason for belief and for taking down of information received in writing with regard to the Commission of offence before conducting search and seizure, is not required to be complied with under Section 43 of NDPS Act

23. The next submission of the learned counsel for the appellant that Section 50 of NDPS Act has also not been complied with as the right to the appellant about their search have not been informed by the police authority in accordance with law as provided under Section 50 of the NDPS Act.

24. The provisions of Section 50 is applicable to the present search of the accused, whereas in the present case the *Ganja* was recovered from the bags kept by the appellant which cannot be said to be his personal search. The search of the bags of the appellant does not comes under the requirement of Section 50 of the NDPS Act and search of a person is distinguished from search of any bag etc.

25. In the matter of ***State of Punjab vs. Baldev Singh*** reported in

1999 (6) SCC 172 in Para 12 of its judgment the Hon'ble Supreme Court has held:

"12. On its plain reading, Section 50 would come into play only in the case of a search of a person as distinguished from search of any premises etc. However, if the empowered officer, without any prior information as contemplated by Section 42 of the Act makes a search or causes arrest of person during the normal course of investigation into an offence or suspected offence and on completion of that search, a contraband under the NDPS Act is also recovered, the requirements of Section 50 of the Act are not attracted."

26. In the matter of ***Kulwinder Singh and Another vs. State of Punjab*** reported in **2015 (6) SCC 674** in Para 18 and 21 of its judgment the Hon'ble Supreme Court has held that:

"18. In *Dharampal Singh v. State of Punjab*, it has been ruled that the expression "possession" is not capable of precise and complete logical definition of universal application in the context of all the statutes. Recently, in *Mohan Lal v. State of Rajasthan*¹¹, after referring to certain authorities, this Court has held as follows:-

"21. From the aforesaid exposition of law it is quite vivid that the term "possession" for the purpose of Section 18 of the NDPS Act could mean physical possession with animus, custody or dominion over the prohibited substance with animus or even exercise of dominion and control as a result of concealment. The animus and the mental intent which is the primary and significant element to show and establish possession. Further, personal knowledge as to the existence of the "chattel" i.e. the illegal substance at a particular location or site, at a relevant time and the intention based upon the knowledge, would constitute the unique relationship and manifest possession. In such a situation, presence and existence of possession could be justified, for the intention is to exercise right over the substance or the chattel and to act as the owner to the exclusion of others.

22. In the case at hand, the appellant, we hold, had the requisite degree of control when, even if the said narcotic substance was not within his physical control at that moment. To give an example, a person can conceal prohibited narcotic substance in a property and move out thereafter. The said person because of necessary animus would be in possession of the said substance even if he is not, at the moment, in physical control. The situation cannot be viewed differently when a person conceals and hides the prohibited narcotic substance in a public space. In the second category of cases, the person would be in possession because he

has the necessary animus and the intention to retain control and dominion."

21. In *State of H.P. v. Pawan Kumar*, it has been held that:

"10. We are not concerned here with the wide definition of the word "person", which in the legal world includes corporations, associations or body of individuals as factually in these type of cases search of their premises can be done and not of their person. Having regard to the scheme of the Act and the context in which it has been used in the section it naturally means a human being or a living individual unit and not an artificial person. The word has to be understood in a broad common-sense manner and, therefore, not a naked or nude body of a human being but the manner in which a normal human being will move about in a civilised society. Therefore, the most appropriate meaning of the word "person" appears to be — "the body of a human being as presented to public view usually with its appropriate coverings and clothing". In a civilised society appropriate coverings and clothings are considered absolutely essential and no sane human being comes in the gaze of others without appropriate coverings and clothings. The appropriate coverings will include footwear also as normally it is considered an essential article to be worn while moving outside one's home. Such appropriate coverings or clothings or footwear, after being worn, move along with the human body without any appreciable or extra effort. Once worn, they would not normally get detached from the body of the human being unless some specific effort in that direction is made. For interpreting the provision, rare cases of some religious monks and sages, who, according to the tenets of their religious belief do not cover their body with clothings, are not to be taken notice of. Therefore, the work 'person' would mean a human being with appropriate coverings and clothings and also footwear.

11. A bag, briefcase or any such article or container, etc. can, under no circumstances, be treated as body of a human being. They are given a separate name and are identifiable as such. They cannot even remotely be treated to be part of the body of a human being. Depending upon the physical capacity of a person, he may carry any number of items like a bag, a briefcase, a suitcase, a tin box, a thaila, a jhola, a gathri, a holdall, a carton, etc. of varying size, dimension or weight. However, while carrying or moving along with them, some extra effort or energy would be required. They would have to be carried either by the hand or hung on the shoulder or back or placed on the head. In common parlance it would be said that a person is carrying a particular article, specifying the manner in which it was carried like hand, shoulder, back or head, etc. Therefore, it is not possible to include

these articles within the ambit of the word "person" occurring in Section 50 of the Act."

27. The next submission made by learned counsel for the appellant is that the Section 52A of the NDPS Act as well as Circular of 1/89 issued by Central Government have not been complied with in the case for drawing of the samples from the seized articles. Therefore, there is substantial non-compliance of the mandatory provisions of the NDPS Act and the appellant is entitled for acquittal.

28. From the evidence of PW-11 ASI Narendra Singh it comes on record that when he went on the spot he found the appellant along with 5 bags, he was waiting for someone and he called the Executive Magistrate/ Tahsildar for verification of seizure of Ganja and for preparation of inventory and also for drawing of sample. The Executive Magistrate PW-3 Mordhwaj Sahu came on the spot and after homogenization of seized Ganja he drawn two samples of 100 gram each and prepared the report. The total quantity of Ganja was found 117.100 kg. on its weighment.

29. Recently in the matter of ***Bharat Aambale vs. The State of Chhattisgarh*** in ***CRA No. 250 of 2025***, order dated 06-01-2025, the Hon'ble Supreme Court has held that irrespective of any failure to follow the procedure laid under Section 52-A of the NDPS Act if the other material on record adduced by the prosecution inspires confidence and satisfies the Court regarding both recovery and possession of the contraband and from the accused, then even in such cases the Courts can without hesitation proceed for conviction notwithstanding any procedural difficulty in terms of Section 52-A of the NDPS Act.

30. In the matter of ***Bharat Aambale*** (supra) the Hon'ble Supreme Court in Para 25 to 37 has held as under:

“25. In ***Noor Aga*** (supra) the order of conviction had been set-aside not just on the ground of violation of Section 52A but due to several other discrepancies in the physical evidence as to the colour and weight, and due to the lack of any independent witnesses. In fact, this Court despite being conscious of the procedural deficiencies in the said case in terms of Section 52A observed that the matter may have been entirely different if there were no other discrepancies or if the other material on record were found to be convincing or supported by independent witnesses. The relevant observations read as under: -

“107. The seal was not even deposited in the malkhana. As no explanation whatsoever has been offered in this behalf, it is difficult to hold that sanctity of the recovery was ensured. Even the malkhana register was not produced.

xxx xxx xxx

108. There exist discrepancies also in regard to the time of recovery. The recovery memo, Exhibit PB, shows that the time of seizure was 11.20 p.m. PW 1 Kulwant Singh and PW 2 K.K. Gupta, however, stated that the time of seizure was 8.30 p.m. The appellant's defence was that some carton left by some passenger was passed upon him, being a crew member in this regard assumes importance (see Jitendra para 6). The panchnama was said to have been drawn at 10 p.m. as per PW 1 whereas PW 2 stated that panchnama was drawn at 8.30 p.m. Exhibit PA, containing the purported option to conduct personal search under Section 50 of the Act, only mentioned the time when the flight landed at the airport.

xxx xxx xxx

111. In a case of this nature, where there are a large number of discrepancies, the appellant has been gravely prejudiced by their non-examination. It is true that what matters is the quality of the evidence and not the quantity thereof but in a case of this nature where procedural safeguards were required to be strictly complied with, it is for the prosecution to explain why the material witnesses had not been examined. *The matter might have been different if the evidence of the investigating officer who recovered the material objects was found to be convincing. The statement of the investigating officer is wholly unsubstantiated. There is nothing on record to show that the said witnesses had turned hostile. Examination of the independent witnesses was all the more*

necessary inasmuch as there exist a large number of discrepancies in the statement of official witnesses in regard to search and seizure of which we may now take note.”

(Emphasis supplied)

26. Non-compliance or delayed compliance with the procedure prescribed under Section 52A of the NDPS Act or the Rules / Standing Order(s) thereunder may lead the court to draw an adverse inference against the prosecution. However, no hard and fast rule can be laid down as to when such inference may be drawn, and it would all depend on the peculiar facts and circumstances of each case. Such delay or deviation from Section 52A of the NDPS Act or the Standing Order(s) / Rules thereunder will not, by itself, be fatal to the case of the prosecution, unless there are discrepancies in the physical evidence which may not have been there had such compliance been done. What is required is that the courts take a holistic and cumulative view of the discrepancies that exist in the physical evidence adduced by the prosecution and correlate or link the same with any procedural lapses or deviations. Thus, whenever, there is any deviation or non-compliance of the procedure envisaged under Section 52A, the courts are required to appreciate the same keeping in mind the discrepancies that exist in the prosecution's case. In such instances of procedural error or deficiency, the courts ought to be extra-careful and must not overlook or brush aside the discrepancies lightly and rather should scrutinize the material on record even more stringently to satisfy itself of the aspects of possession, seizure or recovery of such material in the first place.

27. In such circumstances, particularly where there has been lapse on the part of the police in either following the procedure laid down in Section 52A of the NDPS Act or the prosecution in adequately proving compliance of the same, it would not be appropriate for the courts to resort to the statutory presumption of commission of an offence from the possession of illicit material under Section 54 of the NDPS Act, unless the court is otherwise satisfied as regards the seizure or recovery of such material from the accused persons from the other material on record. Similarly, irrespective of any failure to follow the procedure laid under Section 52A of the NDPS Act, if the other material on record adduced by the prosecution inspires confidence and satisfies the court regarding both the recovery and possession of the contraband from the accused, then even in such cases, the courts can without hesitation proceed for conviction notwithstanding any procedural defect in terms of Section 52A of the NDPS Act.

28. In *Khet Singh v. Union of India* reported in **(2002) 4 SCC 380** this Court held that the Standing Order(s) issued by the NCB and the procedure envisaged therein is only intended to guide the officers and to see that a fair procedure is adopted by the officer-in-charge of the investigation. It further observed that there may, however, be circumstances in which it would not be possible to follow these guidelines

to the letter, particularly in cases of chance recovery or lack of proper facility being available at the spot. In such circumstances of procedural illegality, the evidence collected thereby will not become inadmissible and rather the courts would only be required to consider all the circumstances and find out whether any serious prejudice had been caused to the accused or not. Further it directed, that in such cases of procedural lapses or delays, the officer would be duty bound to indicate and explain the reason behind such delay or deficiency whilst preparing the memo. The relevant observations read as under: -

“5. It is true that the search and seizure of contraband article is a serious aspect in the matter of investigation related to offences under the NDPS Act. The NDPS Act and the Rules framed thereunder have laid down a detailed procedure and guidelines as to the manner in which search and seizure are to be effected. If there is any violation of these guidelines, the courts would take a serious view and the benefit would be extended to the accused. The offences under the NDPS Act are grave in nature and minimum punishment prescribed under the statute is incarceration for a long period. As the possession of any narcotic drug or psychotropic substance by itself is made punishable under the Act, the seizure of the article from the appellant is of vital importance.

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10. The instructions issued by the Narcotics Control Bureau, New Delhi are to be followed by the officer-in-charge of the investigation of the crimes coming within the purview of the NDPS Act, even though these instructions do not have the force of law. They are intended to guide the officers and to see that a fair procedure is adopted by the officer-in-charge of the investigation. It is true that when a contraband article is seized during investigation or search, a seizure mahazar should be prepared at the spot in accordance with law. There may, however, be circumstances in which it would not have been possible for the officer to prepare the mahazar at the spot, as it may be a chance recovery and the officer may not have the facility to prepare a seizure mahazar at the spot itself. If the seizure is effected at the place where there are no witnesses and there is no facility for weighing the contraband article or other requisite facilities are lacking, the officer can prepare the seizure mahazar at a later stage as and when the facilities are available, provided there are justifiable and reasonable grounds to do so. In that event, where the seizure mahazar is prepared at a later stage, the officer should indicate his reasons as to why he had not prepared the mahazar at the spot of recovery. If there is any inordinate delay in preparing the seizure mahazar, that may give an opportunity to tamper with the contraband article allegedly seized from the accused. There may also be allegations that the

article seized was by itself substituted and some other items were planted to falsely implicate the accused. To avoid these suspicious circumstances and to have a fair procedure in respect of search and seizure, it is always desirable to prepare the seizure mahazar at the spot itself from where the contraband articles were taken into custody.

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16. Law on the point is very clear that even if there is any sort of procedural illegality in conducting the search and seizure, the evidence collected thereby will not become inadmissible and the court would consider all the circumstances and find out whether any serious prejudice had been caused to the accused. If the search and seizure was in complete defiance of the law and procedure and there was any possibility of the evidence collected likely to have been tampered with or interpolated during the course of such search or seizure, then, it could be said that the evidence is not liable to be admissible in evidence." (Emphasis supplied)

29. A similar view as above was reiterated in the decision of **State of Punjab v. Makhan Chand** reported in **(2004) 3 SCC 453** wherein this Court after examining the purport of Section 52A of the NDPS Act and the Standing Order(s) issued thereunder, held that the procedure prescribed under the said order is merely intended to guide the officers to see that a fair procedure is adopted by the officer in charge of the investigation and they were not inexorable rules. The relevant observations read as under: -

"10. This contention too has no substance for two reasons. Firstly, Section 52-A, as the marginal note indicates, deals with "disposal of seized narcotic drugs and psychotropic substances". Under sub-section (1), the Central Government, by a notification in the Official Gazette, is empowered to specify certain narcotic drugs or psychotropic substances, having regard to the hazardous nature, vulnerability to theft, substitution, constraints of proper storage space and such other relevant considerations, so that even if they are material objects seized in a criminal case, they could be disposed of after following the procedure prescribed in sub-sections (2) and (3). If the procedure prescribed in sub-sections (2) and (3) of **Bharat Aambale vs The State Of Chhattisgarh** on 6 January, 2025 Indian Kanoon - <http://indiankanoon.org/doc/94312390/> 27 Section 52-A is complied with and upon an application, the Magistrate issues the certificate contemplated by sub-section (2), then sub-section (4) provides that, notwithstanding anything to the contrary contained in the Indian Evidence Act, 1872 or the Code of Criminal Procedure, 1973, such inventory, photographs of narcotic drugs or substances and any list of samples drawn under sub-section (2) of Section 52-A as certified by the Magistrate, would be

treated as primary evidence in respect of the offence. Therefore, Section 52-A(1) does not empower the Central Government to lay down the procedure for search of an accused, but only deals with the disposal of seized narcotic drugs and psychotropic substances. 11. Secondly, when the very same Standing Orders came up for consideration in Khet Singh v. Union of India this Court took the view that they are merely intended to guide the officers to see that a fair procedure is adopted by the officer in charge of the investigation. It was also held that they were not inexorable rules as there could be circumstances in which it may not be possible for the seizing officer to prepare the mahazar at the spot, if it is a chance recovery, where the officer may not have the facility to prepare the seizure mahazar at the spot itself. Hence, we do not find any substance in this contention.” (Emphasis supplied)

30. Thus, from above it is clear that the procedure prescribed by the Standing Order(s) / Rules in terms of Section 52A of the NDPS Act is only intended to guide the officers and to ensure that a fair procedure is adopted by the officer- in-charge of the investigation, and as such what is required is substantial compliance of the procedure laid therein. We say so because, due to varying circumstances, there may be situations wherein it may not always be possible to forward the seized contraband immediately for the purpose of sampling. This could be due to various factors, such as the sheer volume of the contraband, the peculiar nature of the place of seizure, or owing to the volatility of the substance so seized that may warrant slow and safe handling. There could be situations where such contraband after being sampled cannot be preserved due to its hazardous nature and must be destroyed forthwith or vice-verse where the nature of the case demands that they are preserved and remain untouched. Due to such multitude of possibilities or situations, neither can the police be realistically expected to rigidly adhere to the procedure laid down in Section 52A or its allied Rules / Orders, nor can a strait-jacket formula be applied for insisting compliance of each procedure in a specified timeline to the letter, due to varying situations or requirements of each case. Thus, what is actually required is only a substantial compliance of the procedure laid down under Section 52A of the NDPS Act and the Standing Order(s) / Rules framed thereunder, and any discrepancy or deviation in the same may lead the court to draw an adverse inference against the police as per the facts of each and every case. When it comes to the outcome of trial, it is only after taking a cumulative view of the entire material on record including such discrepancies, that the court should proceed either to convict or acquit the accused. Non- compliance of the procedure envisaged under Section 52A may be fatal only in cases where such non-compliance goes to the heart or root of the matter. In other words, the discrepancy should be such that it renders the entire case of the prosecution doubtful, such as instances where there are significant discrepancies in the colour or description of the substance seized from that indicated in the FSL report as was the case in

Noor Aga (supra), or where the contraband was mixed in and stored with some other commodity like vegetables and there is no credible indication of whether the *Bharat Aambale vs The State Of Chhattisgarh* on 6 January, 2025 Indian Kanoon - <http://indiankanoon.org/doc/94312390/> 28 narcotic substance was separated and then weighed as required under the Standing Order(s) or Rules, thereby raising doubts over the actual quantity seized as was the case in **Mohammed Khalid** (supra), or where the recovery itself is suspicious and uncorroborated by any witnesses such as in **Mangilal** (supra), or where the bulk material seized in contravention of Section 52A was not produced before the court despite being directed to be preserved etc. These illustrations are only for the purposes of brining clarity on what may constitute as a significant discrepancy in a given case, and by no means is either exhaustive in nature or supposed to be applied mechanically in any proceeding under the NDPS Act. It is for the courts to see what constitutes as a significant discrepancy, keeping in mind the peculiar facts, the materials on record and the evidence adduced. At the same time, we may caution the courts, not to be hyper-technical whilst looking into the discrepancies that may exist, like slight differences in the weight, colour or numbering of the sample etc. The Court may not discard the entire prosecution case looking into such discrepancies as more often than not an ordinarily an officer in a public place would not be carrying a good scale with him, as held in **Noor Aga** (supra). It is only those discrepancies which particularly have the propensity to create a doubt or false impression of illegal possession or recovery, or to overstate or inflate the potency, quality or weight of the substance seized that may be pertinent and not mere clerical mistakes, provided they are explained properly. Whether, a particular discrepancy is critical to the prosecution's case would depend on the facts of each case, the nature of substance seized, the quality of evidence on record etc.

31. At the same time, one must be mindful of the fact that Section 52A of the NDPS Act is only a procedural provision dealing with seizure, inventory, and disposal of narcotic drugs and psychotropic substances and does not exhaustively lay down the evidentiary rules for proving seizure or recovery, nor does it dictate the manner in which evidence is to be led during trial. It in no manner prescribes how the seizure or recovery of narcotic substances is to be proved or what can be led as evidence to prove the same. Rather, it is the general principles of evidence, as enshrined in the Evidence Act that governs how seizure or recovery may be proved.

32. Thus, the prosecution sans the compliance of the procedure under Section 52A of the NDPS Act will not render itself helpless but can still prove the seizure or recovery of contraband by leading cogent evidence in this regard such as by examining the seizing officer, producing independent witnesses to the recovery, or presenting the original quantity of seized substances before the court. The evidentiary value of these materials is ultimately to be assessed and looked into by the court. The court should

consider whether the evidence inspires confidence. The court should look into the totality of circumstances and the credibility of the witnesses, being mindful to be more cautious in their scrutiny where such procedure has been flouted. The cumulative effect of all evidence must be considered to determine whether the prosecution has successfully established the case beyond reasonable doubt as held in *Noor Aga* (supra).

33. Even in cases where there is non-compliance with the procedural requirements of Section 52A, it does not necessarily vitiate the trial or warrant an automatic acquittal. Courts have consistently held that procedural lapses must be viewed in the context of the overall evidence. If the prosecution can otherwise establish the chain of custody, corroborate the seizure with credible testimony, and prove its case beyond reasonable doubt, the mere non-compliance with Section 52A may not be fatal. The *Bharat Aambale vs The State Of Chhattisgarh* on 6 January, 2025 Indian Kanoon - <http://indiankanoon.org/doc/94312390/> 29 emphasis must be on substantive justice rather than procedural technicalities, and keeping in mind that the salutary objective of the NDPS Act is to curb the menace of drug trafficking.

34. At this stage we may clarify the scope and purport of Section 52A sub-section (4) with a view to obviate any confusion. Sub-section (4) of Section 52A provides that every court trying an offence under the NDPS Act, shall treat the inventory, photographs and samples of the seized substance that have been certified by the magistrate as primary evidence.

35. What this provision entails is that, where the seized substance after being forwarded to the officer empowered is inventoried, photographed and thereafter samples are drawn therefrom as per the procedure prescribed under the said provision and the Rules / Standing Order(s), and the same is also duly certified by a magistrate, then such certified inventory, photographs and samples has to mandatorily be treated as primary evidence. The use of the word "shall" indicates that it would be mandatory for the court to treat the same as primary evidence if twin conditions are fulfilled being (i) that the inventory, photographs and samples drawn are certified by the magistrate AND (ii) that the court is satisfied that the entire process was done in consonance and substantial compliance with the procedure prescribed under the provision and its Rules / Standing Order(s).

36. Even where the bulk quantity of the seized material is not produced before the court or happens to be destroyed or disposed in contravention of Section 52A of the NDPS Act, the same would be immaterial and have no bearing on the evidentiary value of any inventory, photographs or samples of such substance that is duly certified by a magistrate and prepared in terms of the said provision. We say so, because sub-section (4) of Section 52A was inserted to mitigate the issue of degradation, pilferage or theft of seized substances affecting the very trial. It was often seen that, due to prolonged trials, the substance that was seized would deteriorate in quality

or completely disappear even before the trial could proceed, by the time the trial would commence, the unavailability of such material would result in a crucial piece of evidence to establish possession becoming missing and the outcome of the trial becoming a foregone conclusion. The legislature being alive to this fact, thought fit to introduce an element of preservation of such evidence of possession of contraband in the form of inventory, photographs and samples and imbued certain procedural safeguards and supervision through the requirement of certification by a magistrate, which is now contained in sub-section (4) of Section 52A. In other words, any inventory, photographs or samples of seized substance that was prepared in substantial compliance of the procedure under Section 52A of the NDPS Act and the Rules / Standing Order(s) thereunder would have to mandatorily be treated as primary evidence, irrespective of the fact that the bulk quantity has not been produced and allegedly destroyed without any lawful order.

37. Section 52A sub-section (4) should not be conflated as a rule of evidence in the traditional sense, i.e., it should not be construed to have laid down that only the certified inventory, photographs and samples of seized substance will be primary evidence and nothing else. The rule of 'Primary Evidence' or 'Best Evidence' is now well settled. In order to prove a fact, only the best evidence to establish such fact must be led and adduced which often happens to be the original evidence itself. The primary evidence for proving possession will always be the seized substance itself. However, in order to mitigate the challenges in preservation of such substance till the duration of trial, due to *Bharat Aambale vs The State Of Chhattisgarh* on 6 January, 2025 Indian Kanoon - <http://indiankanoon.org/doc/94312390/> 30 pilferage, theft, degradation or any other related circumstances, the legislature consciously incorporated sub-section (4) in Section 52A to bring even the inventory, photographs or samples of such seized substance on the same pedestal as the original substance, and by a deeming fiction has provided that the same be treated as primary evidence, provided they have been certified by a magistrate in substantial compliance of the procedure prescribed. This, however, does not mean that where Section 52A has not been complied, the prosecution would be helpless, and cannot prove the factum of possession by adducing other primary evidence in this regard such as by either producing the bulk quantity itself, or examining the witnesses to the recovery etc. What Section 52A sub-section (4) of the NDPS Act does is it creates a new form of primary evidence by way of a deeming fiction which would be on par with the original seized substance as long as the same was done in substantial compliance of the procedure prescribed thereunder, however, the said provision by no means renders the other evidence in original to be excluded as primary evidence, it neither confines nor restricts the manner of proving possession to only one mode i.e., through such certified inventory, photographs or samples such that all other material are said to be excluded from the ambit of 'evidence', rather it can be said that the

provision instead provides one additional limb of evidentiary rule in proving such possession. Thus, even in the absence of compliance of Section 52A of the NDPS Act, the courts cannot simply overlook the other cogent evidence in the form of the seized substance itself or the testimony of the witnesses examined, all that the courts would be required in the absence of any such compliance is to be more careful while appreciating the evidence.”

31. Further in Para 41 and 42 of the said judgment of **Bharat Aambale** (supra) held that:

“41. As per Clause 2.5 of the Standing Order No. 1 of 89 i.e., the relevant standing order in force at the time of seizure, where multiple packages or packets are seized, they first have to be subjected to an identification test by way of a colour test to ascertain which packets are of the same sized, weigh and contents. Thereafter, all packets which are identical to each other in all respects will be bunched in lots, in the case of ganja, they may be bunched in lots of 40 packets each. Thereafter from each lot, one sample and one in duplicate has to be drawn. The relevant clause reads as under: -

“2.5 However, when the packages/containers seized together are of identical size and weight, bearing identical markings, and the contents of each package given identical results on colour test by the drug identification kit, conclusively indicating that the packages are identical in all respects, the packages/containers may be carefully bunched in lots of ten packages/containers except in the case of ganja and hashish (charas), where it may be bunched in lots of 40 such packages/containers. For each such lot of packages/containers, one sample (in duplicate) may be drawn.”

42. As per Clause 2.8 of the Standing Order No. 1 of 89, while drawing a sample from a particular lot, representative samples are to be drawn, in other words, equal quantity has to be taken from each packet in a particular lot, that then has to be mixed to make one composite sample. The relevant clause reads as under: -

“2.8 While drawing one sample (in duplicate) from a particular lot, it must be ensured that representative samples in equal quantity are taken from each package/container of that lot and mixed together to make a composite whole from which the samples are drawn for that lot.”

32. In the present case the entire search and seizure proceeding have been found genuine and correct procedure have been drawn by the police persons when the police persons on secret information went on the spot, he found on the spot, he found the appellant along with 5 bags

in which Ganja was kept in total 25 packets which was seized by police under the procedure and provisions of NDPS Act. Its weight and sampling were proved by the Executive Magistrate/Tahsildar and nothing adverse could be found to disbelieve the evidence of the prosecution witnesses and it is found proved that the appellant was found in possession of such a huge quantity of Ganja, i.e, 117.100 kg. The appellant did not able to impute any palpable to make good his case that there has been non-compliance of any mandatory provisions of the NDPS Act.

33. There is no material available on record so as to arrive at finding that the accused has been falsely implicated in the case. Section 20 of the NDPS Act provides that whichever in contravention of any provisions of this Act or any rule made therein possess Ganja shall be punished in accordance with the said provisions. Section 20 (b) uses the "possess". In the present case the appellant was found in possession of 117.100 kg. of Ganja in his possession. The judgment passed by learned trial Court is quite detailed judgment which has dealt with every aspect of the matter and the analysis made therein clearly proves that the appellant has committed the offence in question. He could not given any suggestion as to how that huge quantity of Ganja came to be found in his possession.

34. The FSL report Ex.-P/51 further proves that the sample packets of Ganja which were drawn from the total quantity of the Ganja were found to be contained with Ganja contents which further corroborates the allegation against the appellant.

35. In view of the above discussion, this Court is of the considered opinion that the judgment passed by learned trial Court is based on proper appreciation of evidence which is neither perverse nor contrary to the record as well as law laid down by the Hon'ble Supreme Court and the same needs no interference as such the judgment of conviction and order of sentence awarded to the appellant is hereby affirmed.

36. In the result, the appeal filed by the appellant is hereby **dismissed**. The appellant is reported to be in jail. He shall serve the remaining period of jail sentence as has been awarded to him by the learned trial Court.

37. Registry is directed to send a copy of this judgment to the concerned Superintendent of Jail where the appellant is undergoing his jail sentence to serve the same on the appellant informing him that he is at liberty to assail the present judgment passed by this Court by preferring an appeal before the Hon'ble Supreme Court with the assistance of High Court Legal Services Committee or the Supreme Court Legal Services Committee.

38. Let a copy of this judgment and the original records be transmitted to the trial Court concerned forthwith for necessary information and compliance.

Sd/-

(Ravindra Kumar Agrawal)
Judge

Sd/-

(Ramesh Sinha)
Chief Justice

Head Note

Even if there is any sort of procedural irregularity with respect to non-compliance of Standing Order No.1/89 issued by the Central Government and delay or deviation from Section 52A of the NDPS Act, the same will not by itself fatal to the case of prosecution if recovery and seizure of contraband from the possession of the appellant is established from other evidence.