



Non-Reportable

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

Criminal Appeal No. of 2026
[@ Special Leave Petition (Crl.) No. 9460 of 2025]

Doniyar Vildanov

...Appellant

Versus

The State of U.P.

...Respondent

JUDGMENT

K. VINOD CHANDRAN, J.

Leave granted.

2. A search conducted on the Indo-Nepal Boarder led to recovery and seizure of 1.900 kg of charas from a Russian national, who was arrested and later put on trial. The Sessions Court convicted and sentenced the accused to ten years rigorous imprisonment for the offences punishable under Sections 8, 20 and 23 of the Narcotic Drugs and Psychotropic Substances Act, 1985¹ and a fine of Rs.1 lakh with a default sentence of six months. The prosecution

¹ For brevity, 'the NDPS Act'

alleged that after entering the territory of India, 15 meters from the Border Pillar No.517/2 (Sub Pillar), the appellant herein was accosted and searched by a team of Sashastra Seema Bal (SSB). On detection of the contraband in his bag, a police team which was also engaged, along with the SSB team, in the combing operation at the border was summoned after which the recovery was made and the criminal law put into motion.

3. The accused on the other hand claimed that he was taken into custody on the previous day at the no man's land and on his refusal to bribe the police, a false case was registered against him and his pet dog, accompanying him, was also taken away by the police team. The High Court on an appeal affirmed the conviction and sentence handed down by the Trial Court against which the present appeal is filed.

4. We heard Sh. R.P. Luthra, learned counsel appearing for the appellant. The original passport of the appellant, which was part of the Trial Court's record, indicates the appellant having left Nepal on 05.11.2016, while his arrest

was recorded at 7.00 A.M. on 06.11.2016. It is the contention of the learned counsel that he was produced before the learned Magistrate after 24 hours period as stipulated in the Code of Criminal Procedure, 1973²; to facilitate which the arrest was recorded later. It is argued that the contraband was planted and it was never recovered from the body of the accused nor from his possession.

5. Learned Government Counsel vehemently supported the prosecution case and contended that after exit from Nepal, the accused remained in the no man's land till he entered the territory of India on the next day morning. Immediately after which he was arrested on detection of the contraband in his bag. There is no possibility of any plant since the total value of the contraband would be almost Twenty-three lakhs.

6. Both the Trial Court and the High Court had noted discrepancies in the evidence led by the prosecution but entered and upheld the conviction finding those to be minor. The evidence led by the prosecution is of PW1 to

² For brevity, 'the Cr.P.C.'

PW5. As we see from the deposition, the SSB team which carried out the combing operation was led by PW3, a Sub Inspector with the SSB while the police team was led by PW1, also a Sub Inspector attached to the Sonauli Police Station. PW2 was one of the Constables with the SSB who was in the team of PW3. PW4 was the I.O and PW5 was a Head Clerk attached to the Police Station, Sonauli at the time of the registration of the FIR.

7. A reading of the evidence of PW1 to PW3 indicates that it was the SSB team led by PW3, who first confronted the accused and after having detected the contraband in his bag called PW1 and his team, pursuant to which the search was conducted. It is also asserted by PW1 to PW3 that before the search was conducted, they had searched all the members of the team to ensure that no contraband was kept in their possession. It is also deposed that the accused was informed of his rights to be searched before a Gazetted Officer or a Magistrate, upon which he confessed to have purchased the contraband from Nepal with the intention of selling it in India and agreed to the search without the

presence of a Gazetted Officer or a Magistrate. It is also stated that a consent letter was written by PW1, which was translated into English upon which the accused signed the documents. The translation is said to have been done by PW3, the Sub Inspector leading the SSB team who, at the first instance detected the contraband.

8. From the sequence of events as spoken of by PW1 to PW3, the SSB team led by PW3 which also included PW2 intercepted the accused, detected the contraband and then summoned PW1 and his team. It was after PW1 came to the spot, he was informed of his rights to have a search conducted in the presence of Gazetted Officer or a Magistrate, which is said to have been declined along with a confession of the possession of charas intended for sale. The consent letter is said to have been written in Hindi and later translated into English by PW3, after the detection of the contraband itself. After the consent letter was allegedly signed by the accused only the sampling was done; the detection of the contraband being even prior to the

information of rights; to have the search conducted in the presence of a designated authority.

9. The sequence of events as spoken of by PW1 to PW3 clearly indicate that immediately on interception the bag of the accused was searched and the contraband detected. The consent letter was signed after the detection was made and then the confession was alleged to have been made. The attempt is to say that the detection was separate from actual seizure. However the contraband being inside the bag of the accused there was no possibility of detection without a search having been carried out. Obviously, the mandatory stipulation for search and seizure as per the NDPS Act was not carried out in its true letter and spirit.

10. Further, it is to be observed that the original passport which was produced before us clearly indicates the accused having left Nepal on 05.11.2016. The site plan which was marked as Ka.6, as available from the records, indicate that the interception of the accused was after he entered into the territory of India. However, there is no such entry indicated in the passport. Even if the accused was arrested before he

reached the Immigration Counter, it was the bounden duty of the police who took him into custody to get his entry marked in the passport at the Immigration Counter. The fact of his exit from Nepal on 05.11.2016 and the absence of an endorsement of his entry into Indian territory raises yet another reasonable doubt, insofar as his interception at 7 A.M. on 06.11.2016.

11. It is also pertinent that the consent letter as available in the records indicate it to have been written in English and signed only by the accused. Interestingly, the evidence of PW1 as available in the records indicate that the consent letter was confronted to the accused who recognized his signature. The clear deposition of PW1 was that he informed the accused about his rights in Hindi, which was translated into English by PW3. The consent letter also does not indicate the signature of any of the personnel of the SSB or the police who were at the spot.

12. Yet again, PW1 has admitted that the accused had a pet dog accompanying him, the whereabouts of which is neither disclosed nor is the presence of the dog entered in

the Mahazar. This probablises the story of the accused in his Section 313 questioning that the police had an eye on his dog, which he refused to part with, thus leading to the false accusation.

13. We cannot but notice that even the recovery Mahazar does not indicate a bag in which the contraband is said to have been smuggled into India. We cannot but notice that the inconsistencies in the evidence of PW1 to PW3 are not minor and are glaring enough to raise a reasonable doubt as to the complicity of the accused in the alleged smuggling of the contraband into India. We are unable to find the search and seizure to be in accordance with the mandatory prescriptions and hence the foundation of the case charged against the appellant falls apart.

14. In the above circumstances, we are of the opinion that the prosecution has failed to establish beyond all reasonable doubt that the accused is guilty of the offence alleged against him, of bringing in charas from Nepal to India. The judgment of the Trial Court and that of the High Court affirming it are set aside. The accused shall be

released forthwith, if not wanted in any other case. The Original Passport of the accused available in the records shall be returned to the learned counsel for the appellant, by the Registry with due acknowledgment taken.

15. The Criminal Appeal is allowed and the accused stands acquitted.

16. Pending application(s), if any, shall stand disposed of.

..... J.
(SANJAY KUMAR)

..... J.
(K. VINOD CHANDRAN)

NEW DELHI
JANUARY 30, 2026.