ANURADHA TIWARI
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HIGH COURT OF CHHATTISGARH AT BILASPUR

CRA No. 559 of 2025

Smt. Sneha Goyal W/o Ram Goyal Aged About 33 Years R/o Hemu Nagar Shobha Vihar, P.S. - Torwa District - Bilaspur Chhattisgarh

--- **Appellant**

Versus

State of Chhattisgarh Through The Station House Officer, Police Station - Torwa, District - Bilaspur Chhattisgarh

--- **Respondent**

CRA No. 460 of 2025

1 - Pushpendra Nirmalkar S/o Omprakash Nirmalkar Aged About 29 Years R/o Village- Jarwe, Police Station- Nagarda, District- Sakti (C.G.)
2 - Amar Jangde S/o Santosh Jangde Aged About 27 Years R/o - Village - Jarwe, Police Station- Nagarda, District- Sakti (C.G.)

--- **Appellants**

Versus

State of Chhattisgarh Through- Station House Officer, Police Station, Torva, District- Bilaspur (C.G.)

--- **Respondent**

CRA No. 829 of 2025

Deva Rajak S/o Dharamlal Rajak Aged About 28 Years R/o Torva Daubabu Mandir Ke Paas, Thana Torva, District Bilaspur (C.G.)

--- **Appellant**

Versus

State of Chhattisgarh Through - Police Station Torva, District Bilaspur (C.G.)

... Respondent

(Cause-title taken from Case Information System)

For Appellant (In CRA No.559/2025)	:	Mr. Akash Singh and Mr. Swapnil Keshari, Advocates
For Appellants (In CRA No.460/2025)	:	Mr. Goutam Khetrapal, Advocate
For Appellant (In CRA No.829/2025)	:	Mr. Vikas Kumar Pandey, Advocate
For State/Respondent	:	Mr. Shaleen Singh Baghel, Government Advocate

Hon'ble Shri Ramesh Sinha, Chief Justice
Hon'ble Shri Ravindra Kumar Agrawal, Judge

Judgment on Board

***Per* Ramesh Sinha, Chief Justice**

11.03.2026

1. Heard Mr. Akash Singh and Mr. Swapnil Keshari, learned counsel for the appellant in CRA No.559/2025, Mr. Goutam Khetrapal, learned counsel for the appellants in CRA No.460/2025, Mr. Vikas Kumar Pandey, learned counsel for the appellant in CRA No.829/2025 as well as Mr. Shaleen Singh Baghel, learned Government Advocate, appearing for the State/respondent.

2. Since all the criminal appeals arise out of the same judgment dated 30.01.2025 passed by the learned Special Judge (NDPS Act), Bilaspur, Chhattisgarh in Special Sessions (NDPS) Case No. 124/2023, they were clubbed together for the purpose of hearing. As the facts, evidence on record and the issues involved in these appeals are substantially common and arise out of the same impugned judgment, the appeals were heard analogously

with the consent of the parties and are being disposed of by this common judgment.

3. For the sake of convenience and to avoid repetition of facts and evidence, the matters have been considered together, and the submissions advanced on behalf of the respective appellants as well as the State have been examined in the backdrop of the material available on record of the trial Court. Accordingly, all the connected criminal appeals are being decided together by this common judgment.

4. All the three criminal appeals have been preferred by the respective appellants under Section 374(2) of the Code of Criminal Procedure, 1973 (for short, "Cr.P.C.") against the impugned judgment of conviction and order of sentence dated 30.01.2025, passed by the learned Special Judge (NDPS Act), District–Bilaspur (C.G.) in Special Sessions (NDPS) Case No.124/2023.

5. By the said judgment, the learned Special Judge has held the appellants guilty for the offence punishable under Section 21(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as "the NDPS Act") and has sentenced each of them to undergo rigorous imprisonment for 15 years along with a fine of Rs.1,50,000/-. In default of payment of fine, each of the appellants has further been directed to undergo additional rigorous imprisonment for six months.

6. The case of the prosecution, in brief, is as follows:

- According to the prosecution, on 13.09.2023 at about 18:40 hours, PW-10 Sub-Inspector Bharat Lal Rathore, posted at Police Station Torwa, District Bilaspur, allegedly received secret information from an informer that a woman wearing a black kurti and red leggings along with three other persons was present near the Cultural Stage and Yoga Centre at Shobha Vihar, Hemunagar, Bilaspur, and that they were carrying intoxicating cough syrup for the purpose of illegal sale. The said information was recorded and an Informer Information Panchnama (Ex.P/64) was prepared.

- Thereafter, as per the prosecution case, the said information was entered in the Rojnamcha Sanha (Ex.P/2) and further proceedings were initiated. A panchnama regarding non-obtaining of search warrant (Ex.P/1) was prepared stating that there was likelihood of delay in obtaining a search warrant and that the accused persons might escape or destroy the contraband substance. The prosecution further states that intimation regarding the information received from the informer and the proposed search proceedings was sent to the superior officer through a memo addressed to the City Superintendent of Police (Ex.P/65).

- Thereafter, PW-10 SI Bharat Lal Rathore constituted a raiding party consisting of police personnel including PW-6 Laxmi

Kashyap, Pramod Chauhan, Ashok Chandrakar and PW-9 Woman Constable Ifrani Pandey, and also called two independent witnesses namely PW-1 Tikeshwar Singh and PW-2 Atul Gautam. In their presence, a verification panchnama of informer information (Ex.P/67C / Ex.P/72A and connected documents) was prepared and the police party proceeded towards the alleged place of occurrence.

- It is the prosecution case that at about 20:35 to 20:45 hours, after reaching near Shobha Vihar Cultural Stage and Yoga Centre, the police party surrounded the area and allegedly found four persons, one woman and three men, present there. On being questioned, they disclosed their names as Smt. Sneha Goyal, Pushpendra, Amar Jangde and Deva Rajak.
- According to the prosecution, prior to conducting the search, notices were served upon the accused persons informing them about their legal rights. In this regard, notices to suspects regarding search were prepared (Ex.P/3 to Ex.P/6). The prosecution further claims that the accused persons expressed their consent for search, for which consent panchnamas were prepared (Ex.P/7 to Ex.P/10).
- Before conducting the search of the accused persons, the police officials and witnesses also conducted their own search to rule out any possibility of planting of contraband. In

this regard, search panchnama of police personnel (Ex.P/11), search panchnama of witnesses (Ex.P/12) and search panchnama of the police vehicle (Ex.P/13) were prepared.

- Thereafter, the personal search of the accused persons was carried out between 21:10 to 21:20 hours, and the search panchnamas of the accused persons were prepared (Ex.P/14 to Ex.P/17). During the said search, the police allegedly recovered plastic bags and sacks from the possession of the accused persons. A search panchnama of the polythene bags allegedly recovered from the possession of the accused persons was prepared (Ex.P/18 to Ex.P/21) and a search panchnama of the car was also prepared (Ex.P/22).
- As per the prosecution case, the following contraband articles were allegedly recovered:
  - From the possession of Smt. Sneha Goyal, a plastic sack containing 100 bottles of “KOP Free” cough syrup of 100 ml each, totaling 10,000 ml.
  - From the possession of Pushpendra, a plastic sack containing 25 bottles of “KOP Free” cough syrup of 100 ml each, totaling 2,500 ml, along with a Maruti Ertiga vehicle bearing registration No. CG-13-UC-3789.
  - From the possession of Amar Jangde, a bag containing 30 bottles of “Maxcoff” cough syrup of 100 ml each, totaling 3,000 ml.

- From the possession of Varaj Rajak, a plastic sack containing 20 bottles of “KOP Free” cough syrup of 100 ml each, totaling 2,000 ml.

- Thus, according to the prosecution, a total of 145 bottles of KOP Free cough syrup and 30 bottles of Maxcoff cough syrup were recovered from the possession of the accused persons.

- After the alleged recovery, a recovery panchnama was prepared (Ex.P/23 to Ex.P/26). Thereafter, the seized narcotic substances were identified before the witnesses and an identification panchnama was prepared (Ex.P/27 to Ex.P/30). Subsequently, the seized bottles were counted and a counting panchnama was prepared (Ex.P/31 to Ex.P/34).

- The prosecution further claims that samples were drawn from the seized articles and sample seal panchnamas were prepared (Ex.P/35 to Ex.P/38), followed by sealing panchnamas (Ex.P/39 to Ex.P/42). A list of seized articles was also prepared (Ex.P/56) and the property seizure memos were prepared (Ex.P/43 to Ex.P/46).

- Thereafter, notices under Section 67 of the NDPS Act were issued to the accused persons (Ex.P/82 to Ex.P/85) and it was recorded that the accused persons could not produce any valid license or authorization for possessing the said cough syrup.

- Subsequently, the accused persons were arrested and panchnamas stating the reasons for arrest were prepared (Ex.P/47 to Ex.P/50). Their arrest memos were prepared between 00:05 to 00:20 hours on 14.09.2023 (Ex.P/51 to Ex.P/54) and intimation of their arrest was sent to their relatives through information of arrest (Ex.P/86).

- Thereafter, a Dehati Nalishi (Ex.P/87) was recorded and on its basis First Information Report (Ex.P/93) was registered at Police Station Torwa as Crime No. 478/2023 for offences punishable under Sections 21 and 22 of the NDPS Act.

- The prosecution further states that the seized contraband articles were deposited in the Malkhana, and the Malkhana In-charge PW-11 Sher Singh Pendro received the seized property and made entries in the seized articles register (Ex.P/112C).

- During the course of investigation, a spot map was prepared (Ex.P/104) on the basis of the memo issued to the Tahsildar (Ex.P/104). Photographs of the seized articles were also taken (Ex.P/57).

- On 20.09.2023, the Investigating Officer moved an application before the Judicial Magistrate First Class, Bilaspur for physical verification of the seized narcotic substances (Ex.P/101). In compliance thereof, the learned Magistrate conducted verification and issued a certificate

under Section 52A(3) of the NDPS Act (Ex.P/103) and Form-5 (Ex.P/102) was also prepared.

- Subsequently, the samples were sent to the Drug Inspector for examination through memo (Ex.P/61). The Drug Inspector PW-8 Dushyant Kumar Patel examined the samples and submitted his examination report (Ex.P/62) along with a panchnama prepared by the Drug Inspector (Ex.P/63).
- Thereafter, the samples were forwarded to the Regional Forensic Science Laboratory, Bilaspur, and the FSL report (Ex.P/110) was received, which confirmed the presence of Codeine and Chlorpheniramine in the seized cough syrup samples.
- During the course of investigation, statements of witnesses including PW-1 Tikeshwar Singh, PW-2 Atul Gautam, and other police personnel were recorded. After completion of investigation, PW-10 SI Bharat Lal Rathore, who is both the complainant and the Investigating Officer, submitted the charge-sheet (Ex.P/111) before the competent Court on 07.11.2023 against the accused persons for offences punishable under Sections 21 and 22 of the NDPS Act.
- On the basis of the material placed before it, the learned trial Court framed charges against the accused persons for the offence punishable under Section 21(c) of the NDPS Act.

The charges were read over and explained to the accused persons; however, they denied the allegations and pleaded false implication, and claimed to be tried. The accused persons did not adduce any evidence in their defence.

7. After appreciating the oral as well as documentary evidence adduced by the prosecution and after hearing the submissions advanced on behalf of the prosecution as well as the defence, the learned trial Court came to the conclusion that the prosecution had been able to establish the guilt of the accused persons beyond reasonable doubt. The learned trial Court placed reliance upon the testimonies of the prosecution witnesses, particularly the evidence of the Investigating Officer and other members of the raiding party, along with the documentary evidence such as the seizure memos, panchnamas, and the reports of the Drug Inspector and the Forensic Science Laboratory indicating the presence of codeine in the seized cough syrup.

8. On the basis of the aforesaid appreciation of evidence, the learned Special Judge recorded a finding that the accused persons were found to be in conscious possession of the seized contraband cough syrup containing narcotic substance and that the prosecution had succeeded in proving the essential ingredients of the offence under the provisions of the NDPS Act. Accordingly, the learned trial Court held the appellants guilty of the offence punishable under Section 21(c) of the NDPS Act.

9. Consequently, by the impugned judgment dated 30.01.2025, passed in Special Sessions (NDPS) Case No.124/2023, the learned Special Judge (NDPS Act), Bilaspur, convicted the appellants and sentenced each of them to undergo rigorous imprisonment for a period of 15 years along with a fine of Rs.1,50,000/-, and in default of payment of fine, to further undergo additional rigorous imprisonment for six months, as detailed in the earlier part of this judgment.

10. Being aggrieved by the aforesaid judgment of conviction and order of sentence passed by the learned trial Court, the appellants have preferred the present criminal appeals before this Court seeking setting aside of the impugned judgment and their acquittal from the charges levelled against them.

11. Mr. Akash Singh and Mr. Swapnil Keshari, learned counsel appearing for the appellant in CRA No. 559/2025 would submit that in pursuance of the order dated 03.03.2026 passed by this Court, the appellant has already surrendered before the competent authority and is presently in custody. He would submit that the appellant is innocent person and has been falsely implicated in the present case. According to them, the entire prosecution story is fabricated and the alleged recovery has been planted by the police personnel and no contraband substance was recovered from the conscious possession of the appellant. It is contended that the learned trial Court has committed a grave

error of law as well as fact in holding the appellant guilty for the offence punishable under Section 21(c) of the NDPS Act. The findings recorded by the learned Special Judge are stated to be contrary to the evidence available on record and have been arrived at without proper appreciation of the material placed before the Court.

12. Mr. Sahu and Mr. Keshari would argue that the independent witnesses cited by the prosecution, namely PW-1 Tikeshwar Singh and PW-2 Atul Gautam, have not supported the case of the prosecution in material particulars and have failed to corroborate the alleged search and seizure proceedings. According to them, once the independent witnesses have not supported the prosecution case, the alleged recovery becomes highly doubtful. It is further submitted that the seizure witnesses themselves have not supported the prosecution version regarding the alleged recovery of cough syrup bottles from the possession of the appellant. The learned trial Court, however, failed to properly consider this aspect and erroneously relied mainly upon the testimony of police witnesses. He would also contend that the investigation conducted in the present case suffers from several serious discrepancies, omissions and irregularities. According to them, the mandatory safeguards provided under the NDPS Act, which require strict compliance, have not been followed by the Investigating Agency, thereby rendering the entire prosecution case doubtful.

13. Placing reliance upon the judgment of the Hon'ble Supreme Court in ***Criminal Appeal No. 808 of 2023, Chandrashekhar Shivhare & Another vs. Intelligence Officer***, learned counsel would submit that the Hon'ble Supreme Court has elaborately dealt with the procedure to be followed for drawing, sealing and marking of samples before the Judicial Magistrate. It is submitted that the said judgment, particularly paragraphs 44 and 45, lays down the requirement of proper sampling and marking in the presence of the Magistrate to maintain the sanctity of the seized material. According to learned counsel, the procedure prescribed therein has not been followed in the present case, which casts a serious doubt on the authenticity of the seized samples and the chain of custody. It is also submitted that the evidence of the prosecution witnesses is replete with material omissions and contradictions, which go to the root of the prosecution case. The learned trial Court, however, has failed to consider these contradictions in their proper perspective while recording the finding of guilt against the appellant. They would further contend that there is no reliable or cogent material on record to connect the appellants with the alleged offence. The prosecution has failed to establish conscious possession of the contraband substance beyond reasonable doubt, which is a sine qua non for conviction under the NDPS Act. It is lastly contended that the essential ingredients required for constituting an offence under Section 21(c) of the NDPS Act have not been proved by the

prosecution. In absence of strict compliance with the statutory safeguards and in view of the doubtful recovery and defective investigation, the conviction of the appellant cannot be sustained.

14. Mr. Singh and Mr. Keshari would also submit that one of the accused persons is a woman, however, the mandatory provisions contained in Section 50(4) of the NDPS Act, which require that the personal search of a female shall be conducted only by another female, have not been complied with by the police personnel. According to the appellant, non-compliance of the said statutory requirement vitiates the entire search and seizure proceedings. As such, they would pray that the impugned judgment of conviction and order of sentence passed by the learned trial Court deserves to be set aside, and the appellant is entitled to be acquitted of the charges levelled against her.

15. Mr. Goutam Khetrapal, learned counsel for the appellants in CRA No.460/2025, would submit that the impugned judgment of conviction and sentence passed by the learned Special Judge (NDPS Act) suffers from serious legal infirmities and has been rendered without proper appreciation of the mandatory procedural safeguards prescribed under the NDPS Act. It is contended that the prosecution has failed to establish the case against the appellants beyond reasonable doubt and that the learned trial Court has erred in recording conviction despite glaring lapses in the investigation and material contradictions in

the evidence adduced by the prosecution. He would further submit that there has been a clear violation of the mandatory provisions contained under Section 52A of the NDPS Act read with Rule 13 of the NDPS (Seizure, Storage, Sampling and Disposal) Rules, 2022. It is argued that representative samples of the seized contraband are required to be drawn before the Magistrate and thereafter sent directly to the jurisdictional Forensic Science Laboratory without any delay. However, in the present case, the samples were first forwarded to the Drug Inspector, Food and Drug Administration, Bilaspur and only thereafter sent to the Regional Forensic Science Laboratory, Bilaspur where they were received on 04.10.2023. According to learned counsel, such deviation from the prescribed procedure creates serious doubt regarding the sanctity of the samples and the integrity of the seized material, thereby vitiating the prosecution case.

16. Mr. Khetrapal would submit that similar issues relating to delay in sending samples and failure to maintain proper link evidence have been considered by various Courts. In ***Bocoum Ibrahim Malienne Naigerian National v. Neerajrai, 2005 SCC OnLine Bom 579***, the Bombay High Court observed that unexplained delay in forwarding the samples to the Chemical Analyzer creates serious doubt regarding the safe custody of the contraband and weakens the evidentiary value of the chemical analysis report. Likewise, in ***Sovraj v. State (NCT of Delhi), 2024 SCC OnLine***

Del 4732, the Delhi High Court held that delay in conducting proceedings under Section 52A of the NDPS Act and delay in forwarding samples to the FSL may prove fatal to the prosecution case, particularly when the prosecution fails to explain the delay satisfactorily.

17. Placing further reliance upon the judgment of the Hon'ble Supreme Court in ***Mohd. Khalid v. State of Telangana, (2024) 5 SCC 393***, learned counsel would contend that the Supreme Court has emphasized the necessity of strict compliance with the sampling procedure and the requirement of establishing complete link evidence from the time of seizure till the receipt of samples by the forensic laboratory. It has been held that where the prosecution fails to establish the safe custody of the seized samples and there exists a delay or discrepancy in the transmission of the samples to the FSL, the prosecution case becomes doubtful and the benefit of such doubt must necessarily go to the accused. He would further place reliance upon the judgment of the Hon'ble Supreme Court in ***Union of India v. Mohanlal, (2016) 3 SCC 379***, wherein it has been observed that the process of sampling and certification under Section 52A of the NDPS Act must be carried out without undue delay and cannot be left to the whims of the investigating officers. The Supreme Court has categorically held that the statutory scheme does not brook any delay in making an application before the Magistrate for drawing samples and certification of the seized contraband.

18. It is also submitted by Mr. Khetrapal that the prosecution has failed to establish compliance with Section 55 of the NDPS Act relating to safe custody of the seized articles. Learned counsel would argue that the prosecution has not produced any reliable evidence to demonstrate that the seized contraband was properly sealed and deposited in the Malkhana under the supervision of the officer-in-charge of the police station. In support of this contention, reliance has been placed upon ***Gurbax Singh v. State of Haryana, (2001) 3 SCC 28***, wherein the Hon'ble Supreme Court held that failure to follow the procedure prescribed under Sections 52, 55 and 57 of the NDPS Act and absence of evidence regarding proper sealing and safe custody of the seized contraband creates serious doubt regarding the authenticity of the prosecution case. He would also place reliance upon the judgment of the Hon'ble Supreme Court in ***Ouseph v. State of Kerala, (2004) 10 SCC 647***, wherein it has been held that if the seized contraband is not kept in a properly sealed condition and there exists a possibility of tampering, the prosecution case becomes doubtful and the accused is entitled to benefit of doubt.

19. Mr. Khetrapal would further submit that in the present case the informant, the raiding officer and the investigating officer are the same person, namely PW-10 SI Bharat Lal Rathore, which casts doubt on the fairness of the investigation. Though the Constitution Bench of the Hon'ble Supreme Court in ***Mukesh***

Singh v. State (NCT of Delhi), (2020) 10 SCC 120 has held that merely because the informant and investigating officer are the same person, the trial would not automatically stand vitiated, it has also been observed that the issue of fairness and absence of bias in the investigation must be examined on the facts of each case. In this regard, reliance has also been placed upon S***imarnjit Singh v. State of Punjab, 2022 SCC OnLine P&H 4235*** and Office of the ***Odisha Lokayukta v. Pradeep Kumar Panigrahi, 2023 SCC OnLine SC 175***, wherein the Courts have reiterated that although such investigation is not per se illegal, the evidence in such cases must be scrutinized with greater caution to rule out any prejudice or bias.

20. On the strength of the aforesaid judgments and the settled legal principles laid down therein, Mr. Khetrapal would submit that the prosecution has failed to prove the essential ingredients of the offence beyond reasonable doubt and the conviction recorded by the learned trial Court is unsustainable in law. It is therefore prayed that the impugned judgment of conviction and sentence be set aside and the appellants be acquitted of the charges.

21. Mr. Vikas Kumar Pandey, learned counsel for the appellant in CRA No.829/2025, would submit that the impugned judgment dated 30.01.2025 passed by the learned Special Judge (NDPS Act), Bilaspur is contrary to the facts of the case, the evidence available on record and the settled principles governing

prosecution under the NDPS Act. It is contended that the learned trial Court has committed a grave error in law in convicting the appellant without properly appreciating the mandatory provisions contained in the NDPS Act. According to learned counsel, strict compliance with the statutory safeguards under the NDPS Act is a sine qua non for sustaining a conviction, and failure to adhere to such mandatory provisions vitiates the entire prosecution case. Therefore, it is argued that the conviction and sentence imposed upon the appellant deserve to be set aside.

22. Mr. Pandey would further submit that the star independent witness examined by the prosecution has turned hostile before the learned trial Court and has not supported the prosecution story. Despite the fact that the independent witness did not corroborate the version of the prosecution, the learned trial Court has failed to properly appreciate the effect of such testimony while recording the conviction of the appellant. It is contended that when the independent witness does not support the prosecution case and the prosecution version remains uncorroborated by any reliable independent evidence, the benefit of doubt ought to have been extended to the appellant. It is further submitted that there has been non-compliance of the mandatory provisions contained under Sections 42, 50 and 52 of the NDPS Act. Learned counsel would argue that these provisions are intended to safeguard the rights of the accused and ensure fairness in the investigation process. In the absence

of strict compliance with the said provisions, the prosecution case becomes doubtful and the conviction recorded on the basis of such defective investigation cannot be sustained in the eyes of law.

23. Mr. Pandey also contended that the entire judgment of the learned trial Court is primarily based upon the testimony of the Investigating Officer and other police witnesses, whereas the independent witnesses as well as seizure witnesses have not supported the prosecution case. It is submitted that reliance solely on the testimony of official witnesses, particularly when independent witnesses have turned hostile and there exist material contradictions in the prosecution evidence, renders the prosecution case unreliable. It is further argued that the alleged Codeine-containing “Cop Free” cough syrup has not been seized from the conscious possession of the present appellant. According to learned counsel, the implication of the appellant in the present case is primarily based upon the memorandum statement of a co-accused person, which by itself cannot form the sole basis for conviction in the absence of any corroborative evidence. Learned counsel would submit that there is no substantive material on record connecting the appellant with the alleged contraband.

24. Lastly, Mr. Pandey would submit that the testimony of the prosecution witnesses suffers from various contradictions,

omissions and inconsistencies; however, the learned trial Court has failed to properly consider these material discrepancies while passing the impugned judgment of conviction. It is contended that the evidence on record does not establish the guilt of the appellant beyond reasonable doubt. The appellant has been in judicial custody since 14.09.2023 and has already undergone a substantial period of incarceration. In these circumstances, learned counsel submits that the impugned judgment of conviction and the sentence imposed upon the appellant is liable to be set aside and the appellant deserves to be acquitted of the charges levelled against him.

25. Per contra, Mr. Shaleen Singh Baghel, learned Government Advocate appearing for the State/respondent, would vehemently oppose the submissions advanced by learned counsel for the respective appellants and would submit that the impugned judgment of conviction and order of sentence passed by the learned Special Judge (NDPS Act), Bilaspur is strictly in accordance with law and is based upon proper appreciation of the oral as well as documentary evidence available on record. According to him, the learned trial Court has meticulously examined the entire evidence led by the prosecution and has recorded well-reasoned findings holding the appellants guilty for the offence punishable under Section 21(c) of the NDPS Act. It is contended that no illegality, perversity or infirmity can be said to have been committed by the learned trial Court.

26. Mr. Baghel would further submit that the prosecution has successfully proved the seizure of the contraband substance from the possession of the appellants through reliable and cogent evidence. The evidence of the Investigating Officer and other police witnesses clearly establishes the manner in which the search and seizure proceedings were conducted and the contraband substance was recovered. It is argued that merely because some of the independent witnesses have not fully supported the prosecution case would not by itself render the entire prosecution case doubtful. According to him, it is well settled that the testimony of official witnesses cannot be discarded merely on the ground that they belong to the police force, particularly when their evidence is found to be reliable, consistent and trustworthy. He would also submit that the prosecution witnesses have clearly proved the recovery, seizure and sealing of the contraband substance and there is no material contradiction or discrepancy in their testimony which goes to the root of the case. The minor inconsistencies or omissions pointed out by the learned counsel for the appellants are natural and do not affect the core of the prosecution case. It is contended that the learned trial Court has rightly appreciated the evidence on record and has correctly held that the prosecution has succeeded in establishing guilt of the appellants beyond reasonable doubt.

27. With regard to the submission relating to non-compliance of the provisions contained under Sections 42, 50, 52A and 55 of the

NDPS Act, Mr. Baghel would submit that the prosecution has duly complied with the statutory requirements prescribed under the NDPS Act. According to him, the evidence on record clearly demonstrates that the search and seizure proceedings were conducted in accordance with law and the seized contraband was properly sealed and deposited in the Malkhana. He would further submit that the samples were duly forwarded for chemical examination and the report of the Forensic Science Laboratory conclusively establishes that the seized substance contained Codeine, which falls within the ambit of the NDPS Act.

28. Mr. Baghel contends that the arguments raised by the appellants regarding alleged delay in sending the samples to the forensic laboratory or alleged irregularities in the sampling procedure are not of such a nature so as to vitiate the entire prosecution case. According to him, the prosecution has satisfactorily established the link evidence and the chain of custody of the seized material. The FSL report forms a vital piece of evidence which corroborates the prosecution case and clearly establishes that the seized articles were narcotic substances prohibited under the NDPS Act.

29. With regard to the contention that the informant and the Investigating Officer are the same person, learned Government Advocate would submit that such a circumstance by itself does not vitiate the investigation or the trial. Placing reliance upon the

Constitution Bench judgment of the Hon'ble Supreme Court in ***Mukesh Singh*** (supra), it is argued that merely because the informant and the Investigating Officer are the same person would not automatically lead to an inference of bias or unfair investigation. According to him, unless it is demonstrated that any prejudice has been caused to the accused on account of such investigation, the conviction cannot be set aside on that ground alone. He would also submit that the appellants have failed to produce any material to establish that the alleged recovery was planted or that they have been falsely implicated in the present case. On the contrary, the prosecution evidence clearly establishes the conscious possession of the contraband substance by the appellants. It is argued that the learned trial Court has carefully scrutinized the entire evidence and has rightly concluded that the prosecution has proved the ingredients of the offence under Section 21(c) of the NDPS Act beyond reasonable doubt.

30. Lastly, Mr. Baghel, learned Government Advocate would submit that the offence under the NDPS Act is a serious offence affecting the society at large and the legislature has prescribed stringent punishment for such offences. According to him, once the prosecution has succeeded in proving the recovery of narcotic substance and the involvement of the appellants, the learned trial Court was fully justified in recording the conviction and imposing the sentence as provided under law. Therefore, it is prayed that

the present criminal appeals being devoid of merit deserve to be dismissed and the impugned judgment of conviction and sentence passed by the learned trial Court be affirmed.

31. We have heard learned counsel for the parties at length and have perused the entire record of the learned trial Court with utmost circumspection. We have also carefully examined the impugned judgment of conviction and order of sentence dated 30.01.2025 passed by the learned Special Judge (NDPS Act), Bilaspur in Special Sessions (NDPS) Case No.124/2023, along with the oral and documentary evidence adduced by the prosecution and the defence during the course of trial.

32. While considering the rival submissions advanced by learned counsel appearing for the respective parties, this Court has also undertaken a meticulous scrutiny of the depositions of the prosecution witnesses, the documents exhibited during trial, the seizure proceedings, and the report of the Forensic Science Laboratory forming part of the record. The Court has further taken into account the statutory scheme and safeguards contained in the NDPS Act, which require strict compliance in cases relating to alleged possession and recovery of narcotic substances.

33. Since the conviction of the appellants has been recorded for the offence punishable under Section 21(c) of the NDPS Act, it is incumbent upon the prosecution to establish the foundational facts, including the legality of the search and seizure, proper

sampling and sealing of the contraband, safe custody of the seized material, and the unbroken chain of custody till the samples reach the forensic laboratory for chemical examination. In view of the stringent provisions and the reverse burden of proof contemplated under the NDPS Act, the Courts are required to examine the prosecution case with great caution to ensure that the mandatory procedural safeguards have been strictly adhered to.

34. This Court has also examined the contentions raised on behalf of the appellants regarding the alleged non-compliance of the statutory provisions contained under Sections 42, 50, 52A and 55 of the NDPS Act, the alleged discrepancies in the investigation, the effect of independent witnesses not supporting the prosecution case, and the alleged contradictions and omissions in the testimony of the prosecution witnesses. The submissions made on behalf of the State in support of the impugned judgment have also been duly considered.

35. In the light of the aforesaid submissions and upon careful re-appreciation of the entire evidence available on record, this Court now proceeds to examine the merits of the case and the correctness of the findings recorded by the learned trial Court in the impugned judgment.

36. The first and foremost question that arises for consideration before this Court is whether the prosecution has been able to

establish beyond reasonable doubt that the appellants were found to be in conscious and joint possession of the contraband substance, namely Codeine-containing cough syrup, in commercial quantity and whether the search, seizure, sampling and subsequent investigation were conducted strictly in accordance with the mandatory provisions of the NDPS Act.

37. The determination of this issue necessarily requires a careful scrutiny of the entire prosecution evidence, both oral as well as documentary, and the manner in which the statutory safeguards contemplated under the NDPS Act have been adhered to by the investigating agency.

38. In order to answer the aforesaid question, this Court has minutely examined the entire evidence available on record with utmost circumspection, including the depositions of the prosecution witnesses, the documentary evidence exhibited during the course of trial, the seizure proceedings, the forwarding memos and the reports of the competent authorities. From the record it clearly emerges that after the seizure of the contraband articles, the Investigating Officer had forwarded the samples under a proper memorandum to the Office of the Deputy Director, Food and Drug Administration, Bilaspur. The evidence of the Drug Inspector, who was examined as a prosecution witness, establishes that sealed packets marked as A-1, B-1, C-1 and D-1 were received in the office of the Food and Drug Administration along with the relevant

documents including the First Information Report, seizure memo, forwarding memo and specimen seal. The said witness has categorically stated that the seals affixed on the packets were found intact and tallied with the specimen seal forwarded by the Investigating Officer.

39. Upon opening the sealed packets for the purpose of examination, the Drug Inspector found that packet A-1 contained five bottles of "KOP Free" cough syrup, packet B-1 contained two bottles of "KOP Free" cough syrup, packet C-1 contained three bottles of "Max Coff" cough syrup and packet D-1 contained two bottles of "KOP Free" cough syrup, each bottle containing 100 ml of liquid. On the basis of the labels affixed on the bottles and the chemical analysis conducted by him, it was found that the said cough syrups contained Codeine Phosphate and Chlorpheniramine Maleate. After conducting the preliminary examination, the Drug Inspector resealed the samples with the official seal of the Drug Inspector, CGFDA, and prepared a test report recommending further chemical examination by the forensic laboratory. The resealed samples along with the report were thereafter handed over to the Investigating Officer for being sent to the Regional Forensic Science Laboratory.

40. The record further reveals that the Investigating Officer thereafter forwarded the said sealed samples to the Regional Forensic Science Laboratory, Bilaspur through a police constable along

with the requisite forwarding memo and duty certificate. The evidence of the constable who carried the samples to the forensic laboratory establishes that the samples were delivered in sealed condition and a receipt acknowledging the deposit of the samples was duly obtained from the laboratory authorities. The report of the Regional Forensic Science Laboratory, Bilaspur, which forms part of the record, clearly demonstrates that the seals found on the packets were intact and tallied with the specimen seal sent along with the forwarding memo. Upon conducting physical as well as chemical examination, including Thin Layer Chromatography (TLC) tests, the forensic laboratory confirmed the presence of Codeine and Chlorpheniramine in the samples examined. The said report therefore conclusively corroborates the earlier findings of the Drug Inspector and establishes that the seized cough syrup bottles indeed contained Codeine-based narcotic substance.

41. In order to further appreciate the correctness of the prosecution case, it is also necessary to examine the testimony of PW-10 Sub-Inspector Bharat Lal Rathore, who was not only the informant but also a member of the raiding party and the Investigating Officer in the present case. PW-10 has deposed that on the basis of a secret information received by him regarding transportation of a large quantity of Codeine-based cough syrup, he reduced the said information into writing and informed the superior officer as required under law. Thereafter, a raiding party

was constituted and necessary arrangements were made for conducting search and seizure proceedings. According to this witness, after reaching the spot the appellants were found carrying certain bags and a ladies purse, which aroused suspicion. The accused persons were therefore intercepted and the bags as well as the purse carried by them were searched in accordance with law.

42. PW-10 has further deposed that during the course of search a large number of bottles of Codeine-containing cough syrup were recovered from the bags and the ladies purse carried by the accused persons. The bottles were counted and thereafter sealed and seized in presence of witnesses. A detailed seizure memo was prepared at the spot describing the recovered articles. Samples were drawn from the seized bottles, sealed with the seal of the police station and specimen seal was also prepared. Thereafter, the seized articles were deposited in the Malkhana and the samples were forwarded to the concerned authorities for chemical examination. The testimony of PW-10 thus establishes the entire chain of events relating to receipt of information, constitution of the raiding party, interception of the accused persons, recovery of the contraband substance and subsequent handling of the seized articles.

43. In his cross-examination, SI Bharat Lal Rathore PW-10 was subjected to lengthy and searching questions by the defence with

regard to the manner in which the search and seizure were conducted, the preparation of the seizure memo, the presence of independent witnesses and the forwarding of the samples for examination. However, nothing substantial could be elicited from his cross-examination which could cast any doubt on the authenticity of the prosecution case. The witness has consistently maintained that the search and seizure were conducted strictly in accordance with law and that the contraband articles were recovered from the bags and the purse carried by the accused persons. He has also denied the suggestion that the contraband articles were planted by the police personnel or that the appellants were falsely implicated in the present case. Though the defence has attempted to point out certain minor discrepancies in the testimony of this witness, such discrepancies are trivial in nature and do not go to the root of the prosecution case.

44. At this stage, it would also be apposite to examine the applicability of the provisions contained under Section 43 of the Narcotic Drugs and Psychotropic Substances Act, 1985, which deals with the powers of seizure and arrest in a public place. Section 43 of the NDPS Act confers authority upon officers empowered under Section 42 of the Act to seize any narcotic drug, psychotropic substance or controlled substance in any public place or while the same is in transit, if the officer has reason to believe that an offence punishable under the Act has

been committed. The said provision further authorises the officer to detain and search any person whom he has reason to believe to have committed such offence and, if such person is found to be in unlawful possession of any narcotic drug or psychotropic substance, to arrest him. The explanation appended to Section 43 clarifies that the expression “public place” includes any public conveyance, hotel, shop or any other place intended for use by, or accessible to, the public at large.

45. In the matter of ***Firdoskhan Khurshidkhan v. State of Gujarat and Another, 2024 SCC OnLine SC 680***, the Hon’ble Supreme Court while considering the issue regarding Section 42 of the NDPS Act, has held in paragraph 18, which reads as under :-

> *"18. Section 42 of the NDPS Act deals with search and seizure from a building, conveyance or enclosed place. When the search and seizure is effected from a public place, the provisions of Section 43 of the NDPS Act would apply and hence, there is no merit in the contention of learned counsel for the appellants that non-compliance of the requirement of Section 42(2) vitiates the search and seizure. Hence, the said contention is noted to be rejected."*

46. Further, the Hon’ble Supreme Court in the matter of ***State of Haryana v. Jarnail Singh and Others, 2004 (5) SCC 188*** has held in paragraphs 9 and 10 of its judgment by observing as follows :-

"9. Sections 42 and 43, therefore, contemplate two different situations. Section 42 contemplates entry into and search of any building, conveyance or enclosed place, while Section 43 contemplates a seizure made in any public place or in transit. If seizure is made under Section 42 between sunset and sunrise, the requirement of the proviso thereto has to be complied with. There is no such proviso in Section 43 of the Act and, therefore, it is obvious that if a public conveyance is searched in a public place, the officer making the search is not required to record his satisfaction as contemplated by the proviso to Section 42 of the NDPS Act for searching the vehicle between sunset and the sunrise.

10. In the instant case there is no dispute that the tanker was moving on the public highway when it was stopped and searched. Section 43 therefore clearly applied to the facts of this case. Such being the factual position there was no requirement of the officer conducting the search to record the grounds of his belief as contemplated by the proviso to Section 42. Moreover it cannot be lost sight of that the Superintendent of Police was also a member of the searching party. It has been held by this Court in M. Prabhulal vs. Assistant Director, Directorate of Revenue Intelligence : (2003) 8 SCC 449 that where a search is conducted by a gazetted officer himself acting under Section 41 of the NDPS Act, it was not necessary to comply with the requirement of Section 42. For

this reason also, in the facts of this case, it was not necessary to comply with the requirement of the proviso to Section 42 of the NDPS Act."

47. In the matter of ***Kallu Khan vs. State of Rajasthan, 2021 (19) SCC 197,*** the Hon'ble Supreme Court has held as under :-

"12. After hearing and on perusal of record and the evidence brought, it is apparent that on apprehending the accused, while making search of the motor cycle, 900 gm of smack was seized to which seizure and sample memos were prepared, as proved by the departmental witnesses. In the facts of the case at hand, where the search and seizure was made from the vehicle used, by way of chance recovery from public road, the provisions of Section 43 of the NDPS Act would apply. In this regard, the guidance may be taken from the judgments of this Court in S. K. Raju (supra) and S.K. Sakkar (supra). However, the recovery made by Pranveer Singh (PW6) cannot be doubted in the facts of this case.

13. Now reverting to the contention that the motor cycle seized in commission of offence does not belong to accused, however seizure of the contraband from the motor cycle cannot be connected to prove the guilt of accused. The Trial Court on appraisal of the testimony of witnesses, Constable Preetam Singh (PW1), Constable Sardar Singh (PW2), S.I. Pranveer Singh (PW6) and ConstableRajendra Prasad

(PW8), who were members of the patrolling team and the witnesses of the seizure, proved beyond reasonable doubt, when they were on patrolling, the appellant came driving the seized vehicle from opposite side. On seeing the police vehicle, he had taken back the motor cycle which he was riding. However, the police team apprehended and intercepted the accused and made the search of vehicle, in which the seized contraband smack was found beneath the seat of the vehicle. However, while making search at public place, the contraband was seized from the motor cycle driven by the accused. Thus, recovery of the contraband from the motor cycle of the appellant was a chance recovery on a public road. As per Section 43 of NDPS Act, any officer of any of the departments, specified in Section 42, is having power of seizure and arrest of the accused from a public place, or in transit of any narcotic drug or psychotropic substance or controlled substance. The said officer may detain in search any person whom he has reason to believe that he has committed an offence punishable under the provisions of the NDPS Act, in case the possession of the narcotic drug or psychotropic substance appears to be unlawful. Learned senior counsel representing the appellant is unable to show any deficiency in following the procedure or perversity to the findings recorded by the Trial Court, affirmed by the High Court. The seizure of the motor cycle from him is proved beyond

> *reasonable doubt, therefore, the question of ownership of vehicle is not relevant. In the similar set of facts, in the case of Rizwan Khan (supra), this Court observed the ownership of the vehicle is immaterial. Therefore, the argument as advanced by learned senior counsel is of no substance and meritless."*

48. Reverting to the facts of the present case in the light of aforementioned rulings of the Hon'ble Apex Court, it is quite vivid that the search and seizure were effected at a place which was accessible to the public and therefore squarely falls within the ambit of a "public place" as contemplated under Section 43 of the NDPS Act. The testimony of the Investigating Officer as well as the members of the raiding party reveals that the appellants were intercepted at a public road while they were carrying certain bags and a ladies purse. Upon suspicion, the police personnel stopped them and conducted a search of the articles being carried by them. During the course of the said search, a large number of bottles of Codeine-containing cough syrup were recovered from the bags and the purse which were in their possession. Thus, the recovery of the contraband substance was made at a place which was accessible to the public and at a time when the accused persons were in transit.

49. It is also significant to note that the prosecution evidence indicates that the police officials had intercepted the appellants during routine checking on the road and the recovery was

effected on the spot. The contraband substance was therefore seized while being carried by the accused persons in transit.

50. In such circumstances, the powers exercised by the police officials would clearly fall within the scope and ambit of Section 43 of the NDPS Act, which specifically empowers the authorised officer to seize narcotic drugs or psychotropic substances in any public place or while they are in transit.

51. Once the recovery is effected in a public place or while the contraband substance is in transit, the rigours of Section 42 of the NDPS Act would not be attracted. Section 42 primarily deals with the power of entry, search, seizure and arrest in respect of buildings, conveyances or enclosed places based upon prior information.

52. The requirement of reducing the information into writing and sending it to the superior officer arises only in cases where the search is to be conducted in a private building or enclosed premises on the basis of prior secret information. However, where the recovery is made in a public place or during transit, the provisions of Section 43 would govern the situation and the procedural requirements contemplated under Section 42 would not be applicable.

53. The distinction between Sections 42 and 43 of the NDPS Act has been consistently recognised by the courts. Where the seizure is effected from a public place or from a person in transit, the officer

exercising the power is not required to comply with the requirements of Section 42 regarding recording of prior information in writing or forwarding the same to the superior officer. The reason behind this distinction is that the element of urgency and spontaneity is inherent in searches conducted in public places or during transit, where delay in complying with the formalities under Section 42 may result in the offender escaping or the contraband being removed.

54. Applying the aforesaid legal principles to the facts of the present case, this Court finds that the recovery of the Codeine-containing cough syrup bottles was made from the bags and the ladies purse carried by the appellants at a public place while they were moving in transit. The evidence of the Investigating Officer clearly establishes that the appellants were intercepted on a public road and the contraband articles were recovered from the articles being carried by them. Therefore, the seizure in the present case squarely falls within the scope of Section 43(a) of the NDPS Act, which authorises the seizure of narcotic drugs in any public place or while in transit.

55. In view of the explanation appended to Section 43 of the NDPS Act and the factual matrix of the present case, this Court is of the considered opinion that the provisions of Section 42 of the NDPS Act have no application to the facts of the present case. The search and seizure having been conducted in a public place and

during transit, the police authorities were well within their jurisdiction to act under Section 43 of the NDPS Act. Consequently, the contention raised on behalf of the appellants regarding alleged non-compliance of Section 42 of the NDPS Act is misconceived and does not vitiate the search and seizure proceedings carried out by the investigating agency.

56. The next submission advanced by the learned counsel for the appellants relates to the alleged non-compliance of the provisions contained under Section 50 of the NDPS Act. It has been contended that the mandatory safeguard provided under Section 50 of the NDPS Act was not followed by the police authorities and that the appellants were not informed of their right to be searched before a Gazetted Officer or a Magistrate. According to the learned counsel, such non-compliance vitiates the entire search and seizure proceedings.

57. In order to examine the aforesaid contention, it is necessary to briefly advert to the scope and applicability of Section 50 of the NDPS Act. Section 50 provides that when an authorised officer is about to search any person under the provisions of the Act, he shall inform such person of his right to be searched in the presence of a Gazetted Officer or a Magistrate. The object behind the said provision is to provide a safeguard against arbitrary or false implication and to ensure fairness and transparency in cases where the personal search of an accused is conducted.

However, it is equally well settled that the requirement contemplated under Section 50 becomes applicable only when the search conducted by the authorities amounts to a personal search of the body of the accused.

58. In the present case, the evidence available on record clearly demonstrates that the contraband substance was not recovered from the physical body of the appellants. The prosecution witnesses, particularly PW-10 Sub-Inspector Bharat Lal Rathore and the members of the raiding party, have consistently deposed that the Codeine-containing cough syrup bottles were recovered from the bags and the ladies purse which were being carried by the appellants at the time of interception. The search was therefore confined to the articles and baggage in the possession of the accused persons and not to their physical person. The seizure memo prepared at the spot also reflects that the contraband bottles were recovered from the bags and the purse and thereafter sealed and seized in accordance with law.

59. In such circumstances, the search conducted by the police authorities cannot be characterised as a “personal search” within the meaning of Section 50 of the NDPS Act. The distinction between a personal search and the search of baggage or articles carried by the accused has been consistently recognised in judicial pronouncements. The provisions of Section 50 are attracted only when the body of the accused is searched, and the

said requirement does not extend to the search of bags, containers, vehicles or other articles carried by the accused.

60. The Supreme Court has repeatedly clarified this legal position in several decisions. It has been held that where the recovery of contraband is made from a bag, briefcase, container or any other article carried by the accused, such recovery cannot be treated as a personal search of the accused and therefore the safeguards under Section 50 are not attracted. The rationale behind this principle is that the legislative intent underlying Section 50 is to protect the dignity and privacy of a person during bodily search, and the same does not extend to articles or baggage carried by such person.

61. Applying the aforesaid legal principles to the facts of the present case, this Court finds that the recovery of the contraband Codeine-containing cough syrup bottles was effected from the bags and the ladies purse carried by the appellants and not from their physical body. The purse carried by the female accused was taken from her possession and opened for the purpose of search, and the contraband bottles were recovered therefrom. Such search of a purse or bag cannot be equated with a personal search so as to attract the mandatory requirements of Section 50 of the NDPS Act.

62. Therefore, the contention raised by the learned counsel for the appellants that the provisions of Section 50 of the NDPS Act were

not complied with is devoid of merit. Since the recovery in the present case was made from the baggage and articles carried by the accused persons and not from their person, the requirement of informing them of their right under Section 50 of the NDPS Act did not arise. Consequently, the search and seizure proceedings conducted by the investigating agency cannot be said to be vitiated on the ground of alleged non-compliance of Section 50 of the NDPS Act.

63. At this stage it would also be appropriate to deal with the contention raised by the appellants regarding alleged non-compliance of Section 50 of the NDPS Act. Section 50 of the Act provides certain safeguards to an accused person when a personal search is to be conducted by the authorised officer. Sub-section (1) of Section 50 requires that when an authorised officer intends to search any person, he shall inform such person of his right to be searched before a Gazetted Officer or a Magistrate. Sub-section (4) of Section 50 further stipulates that no female shall be searched by anyone excepting a female. The object behind the said provision is to protect the dignity and privacy of individuals during personal search. However, the applicability of Section 50 arises only in cases where the search in question is a personal search of the body of the accused. In the present case, the evidence on record clearly demonstrates that the contraband articles were recovered from the bags and the ladies purse carried by the accused persons and not from their physical body.

The search conducted by the police personnel was therefore essentially a search of baggage or articles carried by the accused and not a personal body search.

64. The legal position in this regard has been authoritatively settled by the Supreme Court. In ***Madan Lal v. State of Himachal Pradesh, (2003) 7 SCC 465***, the Supreme Court has explained the concept of possession under the NDPS Act and has held that once possession of a contraband article is established, the burden shifts upon the accused to explain that such possession was not conscious and held as under :-

> *"16. A bare reading of Section 50 shows that it only applies in case of personal search of a person. It does not extend to search of a vehicle or a container or a bag, or premises. (See Kalema Tumba v. State of Maharashtra and Anr. (JT 1999 (8) SC 293), The State of Punjab v. Baldev Singh (JT 1999 (4) SC 595), Gurbax Singh v. State of Haryana (2001(3) SCC 28). The language of Section 50 is implicitly clear that the search has to be in relation to a person as contrasted to search of premises, vehicles or articles. This position was settled beyond doubt by the Constitution Bench in Baldev Singh's case (supra). Above being the position, the contention regarding non-compliance of Section 50 of the Act is also without any substance.*
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21. It is highlighted that unless the possession was coupled with requisite mental element, i.e. conscious possession and not mere custody without awareness of the nature of such possession, Section 20 is not attracted.

22. The expression 'possession' is a polymorphous term which assumes different colours in different contexts. It may carry different meanings in contextually different backgrounds. It is impossible, as was observed in Superintendent & Remembrancer of Legal Affairs, West Bengal v. Anil Kumar Bhunja and Ors. (AIR 1980 SC 52), to work out a completely logical and precise definition of "possession" uniformally applicable to all situations in the context of all statutes.

23. The word 'conscious' means awareness about a particular fact. It is a state of mind which is deliberate or intended.

24. As noted in Gunwantlal v. The State of M.P. (AIR 1972 SC 1756) possession in a given case need not be physical possession but can be constructive, having power and control over the article in case in question, while the person whom physical possession is given holds it subject to that power or control.

25. The word 'possession' means the legal right to possession (See Health v. Drown (1972) (2) All ER 561 (HL). In an interesting case it was observed that where a person keeps his fire arm in his mother's flat which is safer than his

own home, he must be considered to be in possession of the same. (See Sullivan v. Earl of Caithness (1976 (1) All ER 844 (QBD).

26. 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 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"

65. Similarly, in ***State of Himachal Pradesh v. Pawan Kumar, (2005) 4 SCC 350***, it has been held that the search of a bag, briefcase or container carried by the accused cannot be treated as a personal search and therefore the provisions of Section 50 would not apply in such a situation and observed as under :-

"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.

12. An incriminating article can be kept concealed in the body or clothings or coverings in different manner or in the footwear. While making a search of such type of articles, which have been kept so concealed, it will certainly come within the ambit of the word "search of person". One of the tests, which can be applied is, where in the process of search the human body comes into contact or shall have to be touched by the person carrying out the search, it will be search of a person. Some indication of this is provided by Sub-section (4) of Section 50 of the Act, which provides that no female shall be searched by anyone excepting a female. The legislature has consciously made this provision as while conducting search of a female, her body may come in contact or may need to be touched and, therefore, it should be done only by a female. In the case of a bag, briefcase or any such article or container, etc., they would not normally move along with the body of the human being unless some extra or special effort is made. Either they have to be

carried in hand or hung on the shoulder or back or placed on the head. They can be easily and in no time placed away from the body of the carrier. In order to make a search of such type of objects, the body of the carrier will not come in contact of the person conducting the search. Such objects cannot be said to be inextricably connected with the person, namely, the body of the human being. Inextricable means incapable of being disentangled or untied or forming a maze or tangle from which it is impossible to get free.

13. The scope and ambit of Section 50 of the Act was examined in considerable detail by a Constitution Bench in State of Punjab v. Baldev Singh 1999 (6) SCC 172 and para 12 of the reports is being reproduced below :

> *"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 a 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."*
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> *The Bench recorded its conclusion in para 57 of the reports and sub- paras (1), (2), (3) and*

(6) are being reproduced below :

"57. On the basis of the reasoning and discussion above, the following conclusions arise: (1) That when an empowered officer or a duly authorized officer acting on prior information is about to search a person, it is imperative for him to inform the person concerned of his right under sub-section (1) of Section 50 of being taken to the nearest gazetted officer or the nearest Magistrate for making the search. However, such information may not necessarily be in writing.

(2) That failure to inform the person concerned about the existence of his right to be searched before a gazetted officer or a Magistrate would cause prejudice to an accused.

(3) That a search made by an empowered officer, on prior information, without informing the person of his right that if he so requires, he shall be taken before a gazetted officer or a Magistrate for search and in case he so opts, failure to conduct his search before a gazetted officer or a Magistrate may not vitiate the trial but would render the recovery of the illicit article suspect and vitiate the conviction and sentence of an accused, where the conviction has been recorded only on the basis of the possession of the illicit article, recovered from his person, during a search conducted in violation of the provisions of Section 50 of the Act.

***

(6) That in the context in which the protection has been incorporated in Section 50 for the benefit of the person intended to be searched, we do not express any opinion whether the provisions of Section 50 are mandatory or directory, but hold that failure to inform the person concerned of his right as emanating from sub-section (1) of Section 50, may render the recovery of the contraband suspect and the conviction and sentence of an accused bad and unsustainable in law."

14. The above quoted dictum of the Constitution Bench shows that the provisions of Section 50 will come into play only in the case of personal search of the accused and not of some baggage like a bag, article or container, etc. which he may be carrying."

66. The same principle has been reiterated in ***Ajmer Singh v. State of Haryana, (2010) 3 SCC 746***, wherein the Supreme Court held that recovery of contraband from a bag carried by the accused does not amount to personal search of the accused.

67. The Supreme Court has again reiterated the said principle in ***Arif Khan @ Agha Khan v. State of Uttarakhand, (2018) 18 SCC 380*** and ***Baljinder Singh v. State of Punjab, (2019) 10 SCC 473***, holding that the requirement of informing the accused of his right under Section 50 arises only in cases of personal body search and not when the recovery is made from a bag, container

or other article carried by the accused. In such circumstances, the search is treated as search of an article and not of the person of the accused. The Supreme Court has held as follows :-

> *"13. The law is thus well settled that an illicit Article seized from the person during personal search conducted in violation of the safe-guards provided in Section 50 of the Act cannot by itself be used as admissible evidence of proof of unlawful possession of contra-band. But the question is, if there be any other material or Article recovered during the investigation, would the infraction with respect to personal search also affect the qualitative value of the other material circumstance ?*
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> *14. At this stage we may also consider following observations from the decision of this Court in Ajmer Singh v. State of Haryana [(2010) 3 SCC 746]:*
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> > *"15. The learned Counsel for the Appellant contended that the provision of Section 50 of the Act would also apply, while searching the bag, briefcase, etc. carried by the person and its non-compliance would be fatal to the proceedings initiated under the Act. We find no merit in the contention of the learned Counsel. It requires to be noticed that the question of compliance or non-compliance with Section 50 of the NDPS Act is relevant only where search of a person is involved and the said Section is not applicable nor attracted where no search of a person is*

involved. Search and recovery from a bag, briefcase, container, etc. does not come within the ambit of Section 50 of the NDPS Act, because firstly, Section 50 expressly speaks of search of person only. Secondly, the Section speaks of taking of the person to be searched by the gazetted officer or a Magistrate for the purpose of search. Thirdly, this issue in our considered opinion is no more res Integra in view of the observations made by this Court in Madan Lal v. State of H.P. [(2003) 7 SCC 465]. The Court has observed: (SCC p. 471, para 16)

16. A bare reading of Section 50 shows that it only applies in case of personal search of a person. It does not extend to search of a vehicle or a container or a bag or premises (see Kalema Tumba v. State of Maharashtra [(1999) 8 SCC 257], State of Punjab v. Baldev Singh-[(1999) 6 SCC 172] and Gurbax Singh v. State of Haryana [(2001) 3 SCC 28]). The language of Section 50 is implicitly clear that the search has to be in relation to a person as contrasted to search of premises, vehicles or articles. This position was settled beyond doubt by the Constitution Bench in Baldev Singh case (1999) 6 SCC 172 Above being the position, the contention regarding non-compliance with Section 50 of the Act is also without any substance."

15. As regards applicability of the requirements

Under Section 50 of the Act are concerned, it is well settled that the mandate of Section 50 of the Act is confined to "personal search" and not to search of a vehicle or a container or premises.

16. The conclusion (3) as recorded by the Constitution Bench in Para 57 of its judgment in Baldev Singh clearly states that the conviction may not be based "only" on the basis of possession of an illicit Article recovered from personal search in violation of the requirements Under Section 50 of the Act but if there be other evidence on record, such material can certainly be looked into."

68. Applying the aforesaid settled legal principles to the facts of the present case, it becomes manifest that the recovery of the contraband Codeine-containing cough syrup bottles was not effected from the physical body of the accused persons but from the bags and the ladies purse which were being carried by them at the time of interception. The prosecution witnesses have consistently deposed that the raiding party, upon intercepting the appellants, conducted a search of the bags and the purse in their possession and during such search the contraband bottles were recovered. The recovery memo prepared at the spot also clearly indicates that the seized articles were taken out from the baggage and purse carried by the accused persons and thereafter sealed and seized in accordance with the prescribed procedure.

69. In view of the authoritative pronouncements of the Supreme Court, the search of a bag, briefcase, purse or any other container carried by an accused cannot be equated with a personal search of the accused. Such articles are separate and independent from the human body and merely because they are carried by a person would not bring them within the ambit of the expression “person” used in Section 50 of the NDPS Act. The legislative safeguard contemplated under Section 50 is intended to protect the dignity and privacy of an individual in cases where the search involves the body of the accused, and the said protection does not extend to the search of baggage, containers or other articles which can easily be detached from the person carrying them.

70. In the present case, the purse carried by the female accused was taken from her possession and opened for the purpose of search, and the contraband bottles were recovered from the said purse. Such search of a purse or bag does not involve touching or searching the body of the accused and therefore cannot be construed as a personal search so as to attract the mandatory requirement under Section 50 of the NDPS Act. Consequently, the contention raised on behalf of the appellants that the provisions of Section 50(4) of the NDPS Act were violated, on the ground that the purse of the female accused was searched without complying with the said provision, is wholly misconceived and devoid of merit.

71. Thus, in the light of the settled position of law and the evidence available on record, this Court is of the considered opinion that the recovery in the present case having been effected from the bags and purse carried by the accused persons and not from their physical body, the provisions of Section 50 of the NDPS Act were not attracted. Accordingly, the alleged non-compliance of Section 50(4) of the NDPS Act cannot be made a ground to vitiate the search, seizure or the prosecution case.

72. The next aspect which requires consideration is whether the prosecution has been able to establish conscious possession of the contraband substance by the appellants. In this regard, the learned trial Court has relied upon the testimony of the investigating officer as well as other members of the raiding party who have consistently deposed regarding the recovery of the cough syrup bottles from the possession of the appellants. The contraband was recovered from the bags and plastic sacks which were under the control and possession of the appellants at the spot. Once such possession is established, the statutory presumptions contained under Sections 35 and 54 of the NDPS Act come into operation, shifting the burden upon the accused to explain the circumstances under which the contraband came to be found in their possession.

73. In the present case, apart from making a bald denial during their examination under Section 313 Cr.P.C., the appellants have not

adduced any evidence whatsoever to rebut the statutory presumption of conscious possession. The plea of false implication raised by them remains a mere assertion unsupported by any material evidence. The defence has also attempted to rely upon the fact that some independent witnesses have not supported the prosecution case. However, it is well settled that merely because independent witnesses have turned hostile, the testimony of official witnesses cannot be discarded if it is otherwise reliable and trustworthy.

74. The Supreme Court in ***Rajesh Dhiman v. State of Himachal Pradesh, (2020) 10 SCC 740*** has clearly held that minor deficiencies or lapses in investigation cannot be made a ground to discard otherwise credible prosecution evidence unless such lapses cause serious prejudice to the accused and observed as follows :-

> *"10. The primary issue debated by both sides concerns the effect of the complainant in the present case, PW8, also being the investigating officer. The appellants sought to contend that a long line of cases, ending with Mohan Lal v. State of Punjab, (2018) 17 SCC 627 has laid down the legal proposition that investigation by the complainant himself would be contrary to the scheme of the NDPS Act, thus jeopardizing the entire trial.*
>
> *11. Suffice to say that the law on this point is no longer res integra and the controversy, if any,*

has been set at rest by the Constitutional Bench of this Court in Mukesh Singh (supra). The earlier position of law which allowed the solitary ground of the complainant also being the investigating officer, to become a spring board for an accused to be catapulted to acquittal, has been reversed. Instead, it is now necessary to demonstrate that there has either been actual bias or there is real likelihood of bias, with no sweeping presumption being permissible. It would be worthwhile to extract the following conclusions drawn in the afore-cited judgment:

> *"102. From the above discussion and for the reasons stated above, we conclude and answer the reference as under:*
>
> *I. That the observations of this Court in the cases of Bhagwan Singh v. State of Rajasthan, (1976) 1 SCC 15; Megha Singh v. State of Haryana, (1996) 11 SCC 709; and State by Inspector of Police, NIB, Tamil Nadu v. Rajangam, (2010) 15 SCC 369 and the acquittal of the accused by this Court on the ground that as the informant and the investigator was the same, it has vitiated the trial and the accused is entitled to acquittal are to be treated to be confined to their own facts. It cannot be said that in the aforesaid decisions, this Court laid down any general proposition of law that in each and every case where the informant is the investigator there is a bias caused to the accused and*

the entire prosecution case is to be disbelieved and the accused is entitled to acquittal;

II. In a case where the informant himself is the investigator, by that itself cannot be said that the investigation is vitiated on the ground of bias or the like factor. The question of bias or prejudice would depend upon the facts and circumstances of each case. Therefore, merely because the informant is the investigator, by that itself the investigation would not suffer the vice of unfairness or bias and therefore on the sole ground that informant is the investigator, the accused is not entitled to acquittal. The matter has to be decided on a case to case basis. A contrary decision of this Court in the case of Mohan Lal v. State of Punjab, (2018) 17 SCC 627 and any other decision taking a contrary view that the informant cannot be the investigator and in such a case the accused is entitled to acquittal are not good law and they are specifically overruled." [emphasis supplied]

12. We, therefore, see no reason to draw any adverse inference against PW8 himself investigating his complaint. The appellants' claim of bias stems from the purported delays, noncompliance of statutory mandates and non-examination of independent witness. In effect, the appellants are seeking to circuitously use the very same arguments which have individually been held by the High Court to be

factually incorrect or legally irrelevant. Although in some cases, certain actions (or lack thereof) by the Investigating Officer might indicate bias; but mere deficiencies in investigation or chinks in the prosecution case can't be the sole basis for concluding bias. The appellants have at no stage claimed that there existed any enmity or other motive for the police to falsely implicate them and let the real culprits walk free. Further, such a huge quantity of charas could not have been planted against the appellants by the police on its own.

13. The appellants have creatively sought to argue that failure of the police to investigate the alternate theory proffered at the stage of Section 313 CrPC, has caused serious prejudice to them and that reason alone is sufficient not to hold them guilty 'beyond reasonable doubt'. They have explicitly relied upon Paras 3.19 and 3.20 of Mukesh Singh (supra), which we deem appropriate to extract as follows:-

> *"3.19. If the defence of the accused is not properly investigated to rule out all other possibilities, it cannot ever be said that the prosecution has established the guilt "beyond reasonable doubt". A tainted investigation by a complaint who is a "witness" himself to a substantial ingredient of an offence, would in fact give rise to a "doubt" and it is impossible that the case can be established on the parameter of "beyond reasonable doubt";*

3.20. A person accused of criminal offence punishable with a peril to his life or liberty, enjoys certain rights under the Constitution or through long standing development of criminal jurisprudence. Any action which impinges or affects those rights would be said to cause "prejudice to an accused". That in the case of Rafiq Ahmad v. State of U.P., (2011) 8 SCC 300, it is observed and held that prejudice to an accused or failure of justice has to be examined with reference to (i) right to fair trial (ii) presumption of innocence until pronouncement of guilt and (iii) the standards of proof. It is observed in the said decision that whenever a plea of prejudice is raised by the accused, it must be examined with reference to the above rights and safeguards, as it is the violation of these rights alone that may result in the weakening of the case of the prosecution and benefit to the accused in accordance with law;"

14. At the outset, we may clarify that the observations relied upon by the appellants, are not findings, conclusion or resolution by this Court in Mukesh Singh (supra). Instead, a perusal of the judgment shows that it was a contention put forth by one of the parties which the Bench eventually disagreed with. Further, not only the alternative version projected by the appellants is vague and improbable, but it escapes our comprehension how non investigation of a defence theory disclosed only at an advanced stage of trial, could indicate

bias on part of the police."

75. Reverting to the facts of the present case in the light of the aforesaid ruling rendered by the Hon'ble Supreme Court, it becomes evident that the defence has failed to demonstrate that any alleged irregularity or deficiency in the investigation has caused prejudice to the appellants or has in any manner affected the fairness of the trial. The appellants have not been able to point out any material circumstance indicating that the investigation was conducted in a biased or unfair manner or that the investigating officer had any motive to falsely implicate them in the present case. Mere bald allegations regarding procedural lapses, without substantiating the same with cogent material, cannot be made a ground to discard the otherwise reliable and consistent evidence adduced by the prosecution.

76. In the case at hand, the prosecution witnesses, particularly the members of the raiding party and the investigating officer, have consistently and cogently deposed regarding the manner in which the appellants were intercepted and the contraband cough syrup bottles were recovered from the bags and plastic sacks in their possession. Their testimonies remain unshaken on material particulars and nothing substantial has been elicited during cross-examination so as to discredit their version. The seizure of the contraband articles has also been duly supported by the contemporaneous documentary evidence, including the seizure memo and the sealing procedure adopted at the spot. The

samples drawn from the seized bottles were subsequently sent to the Forensic Science Laboratory and the report received therefrom confirms that the seized articles contained Codeine in commercial quantity.

77. Furthermore, once the possession of the contraband substance by the appellants stands established from the evidence on record, the statutory presumptions contained under Sections 35 and 54 of the NDPS Act automatically come into operation. These provisions cast a burden upon the accused to satisfactorily explain the circumstances under which the contraband came to be found in their possession. However, in the present case, the appellants have not produced any material evidence to rebut the said presumption. Their defence is confined merely to a denial of the prosecution allegations, which by itself is insufficient to dislodge the presumption of conscious possession arising under the statute.

78. It is also noteworthy that the appellants have not set up any plausible alternative version of events nor have they suggested any circumstance which would probabilise the theory of false implication. In the absence of any such explanation, and having regard to the consistent testimony of the prosecution witnesses coupled with the documentary evidence on record, this Court finds no reason to disbelieve the prosecution case. Consequently, the contention of the appellants that the alleged irregularities in

investigation have vitiated the prosecution case is liable to be rejected.

79. Accordingly, this Court is of the considered opinion that the prosecution has been able to establish beyond reasonable doubt that the appellants were in conscious possession of the contraband cough syrup bottles recovered from the bags and sacks in their possession, and the statutory presumptions under Sections 35 and 54 of the NDPS Act remain unrebutted. The findings recorded by the learned trial Court in this regard, therefore, do not warrant any interference.

80. Having considered the entire evidence available on record in its proper perspective and after carefully scrutinizing the depositions of the prosecution witnesses along with the documentary evidence adduced during the course of trial, this Court is of the considered opinion that the prosecution has been able to successfully establish that the appellants were found to be in joint as well as conscious possession of Codeine-containing cough syrup bottles. The record clearly demonstrates that a total of 175 bottles of cough syrup were recovered from the possession of the appellants, each bottle containing 100 ml of liquid, thereby making the total quantity 17,500 ml. The evidence of the prosecution witnesses, particularly the members of the raiding party including PW-10 Sub-Inspector Bharat Lal Rathore, coupled with the seizure memo prepared at the spot, clearly establishes

that the contraband bottles were recovered from the bags and the ladies purse carried by the appellants. The seized articles were duly sealed at the spot, samples were drawn in accordance with the procedure and the same were forwarded for examination through proper channel. The report of the Drug Inspector as well as the chemical analysis report of the Regional Forensic Science Laboratory conclusively confirms that the seized bottles contained Codeine Phosphate and Chlorpheniramine Maleate, thereby establishing the presence of narcotic substance. When the quantity so recovered is taken into consideration, it clearly falls within the category of “commercial quantity” as defined under the NDPS Act. Thus, the oral evidence of the prosecution witnesses, the seizure proceedings and the scientific reports placed on record collectively establish the prosecution case beyond reasonable doubt.

81. It is also necessary to address the submission raised on behalf of the appellants regarding the alleged irregularity in forwarding the seized samples for chemical examination. The defence has attempted to suggest that the prosecution has not satisfactorily explained the dispatch of the sealed samples to the Forensic Science Laboratory and therefore the possibility of tampering cannot be ruled out. However, upon a careful examination of the record, this Court finds that the said contention is devoid of substance.

82. A perusal of the cross-examination of PW-10 Sub-Inspector Bharat Lal Rathore clearly reveals that no specific question has been put to him by the defence with regard to the exact timing of dispatch of the sealed samples to the Forensic Science Laboratory or regarding any alleged delay in sending the same. The defence has also not confronted the witness with any suggestion that the sealed packets were tampered with at any stage or that the seals were not intact when the samples reached the laboratory. In the absence of any such specific challenge during cross-examination, the prosecution version regarding the proper handling and forwarding of the seized samples remains unshaken.

83. In this context, it would be appropriate to refer to Rule 13 of the Narcotic Drugs and Psychotropic Substances (Seizure, Storage, Sampling and Disposal) Rules, 2022, which governs the procedure relating to dispatch of samples for testing. Rule 13(1) specifically provides that the samples, after being certified by the Magistrate, shall be sent directly to any one of the jurisdictional laboratories of the Central Revenue Control Laboratory, the Central Forensic Science Laboratory or the State Forensic Science Laboratory, as the case may be, for chemical analysis without any delay. The legislative intent behind the said provision is to ensure that the integrity of the seized samples is preserved and that the possibility of tampering is eliminated. The rule emphasises prompt dispatch of the samples to the designated

laboratory so that the chemical analysis may be carried out expeditiously.

84. In the present case, the material available on record clearly demonstrates that the seized samples were duly sealed and forwarded through proper channel to the competent authorities for examination. Initially, the samples were forwarded to the Office of the Drug Inspector, Food and Drug Administration, Bilaspur, where they were examined and thereafter resealed. Subsequently, the sealed samples were sent to the Regional Forensic Science Laboratory, Bilaspur for detailed chemical examination. The report of the Forensic Science Laboratory, which forms part of the record, clearly records that the seals found on the sample packets were intact and that the same tallied with the specimen seal forwarded along with the samples. This clearly indicates that the chain of custody of the seized articles remained intact and there was no tampering with the sealed samples at any stage.

85. Significantly, during the course of trial, the defence did not specifically question PW-10 Sub-Inspector Bharat Lal Rathore or any other prosecution witness regarding alleged non-compliance of Rule 13 of the NDPS Rules, 2022 or regarding any delay in dispatching the samples to the forensic laboratory. No suggestion was put to the witnesses that the samples were not sent promptly or that the statutory procedure governing the dispatch of samples

was violated. In criminal trials, cross-examination is the most effective method available to the defence to challenge the credibility of prosecution witnesses and to expose any irregularity in the investigation. When the defence has not chosen to confront the witnesses on such crucial aspects during cross-examination, it cannot subsequently be permitted to raise such a contention at the appellate stage merely by way of argument.

86. It is well settled that unless a specific challenge is put to the prosecution witnesses during cross-examination, the defence cannot later contend that the evidence regarding a particular fact should be disbelieved. In the present case, the defence having failed to question the investigating officer regarding the timing of dispatch of the sealed packets or the alleged violation of Rule 13 of the NDPS Rules, the appellants cannot now derive any benefit from such an argument. The record rather indicates that the seized samples were properly sealed, preserved and forwarded to the competent laboratory where the seals were found intact and the samples were duly analysed.

87. In view of the foregoing discussion and the material available on record, this Court does not find any infirmity, illegality or perversity in the findings recorded by the learned Special Judge (NDPS Act), Bilaspur in the impugned judgment. The learned trial Court has meticulously appreciated the oral as well as documentary evidence available on record and has rightly arrived

at the conclusion that the appellants were found to be in conscious possession of the contraband substance in violation of the provisions of the NDPS Act. The learned trial Court has also correctly invoked the statutory presumptions available under Sections 35 and 54 of the NDPS Act. Once the possession of the contraband substance was established, the burden shifted upon the appellants to explain that such possession was not conscious. However, the appellants have failed to discharge the said burden and have not adduced any evidence whatsoever to rebut the statutory presumption.

88. Consequently, upon an overall appreciation of the entire evidence available on record, this Court is of the considered opinion that the prosecution has been able to prove its case against the appellants beyond reasonable doubt. The evidence led by the prosecution, both oral as well as documentary, clearly establishes that the appellants were found to be in conscious and joint possession of Codeine-containing cough syrup bottles in a quantity which falls within the category of commercial quantity under the provisions of the Narcotic Drugs and Psychotropic Substances Act, 1985.

89. The seizure proceedings conducted at the spot, the testimony of the members of the raiding party, the deposition of the Investigating Officer, the report of the Drug Inspector as well as the chemical analysis report of the Regional Forensic Science

Laboratory collectively form a complete chain of evidence which conclusively proves the recovery and nature of the contraband substance. Once such possession was established, the statutory presumptions contained under Sections 35 and 54 of the NDPS Act came into operation, shifting the burden upon the appellants to rebut the presumption of conscious possession. However, the appellants have failed to discharge the said burden and have not placed any material on record to probabilise their defence or to create any dent in the prosecution case.

90. The submissions advanced on behalf of the appellants, including the alleged procedural irregularities in search, seizure and investigation, have been carefully examined by this Court, but the same do not create any reasonable doubt regarding the authenticity or credibility of the prosecution case. The evidence on record clearly establishes the guilt of the appellants and inspires full confidence of this Court.

91. Minor discrepancies or omissions pointed out by the defence are not of such nature as to affect the core of the prosecution case or to discredit the otherwise cogent and reliable testimony of the prosecution witnesses. On the contrary, the learned trial Court has meticulously analysed the entire evidence placed before it and has recorded well-reasoned findings after proper appreciation of the material available on record and correct application of the relevant provisions of law.

92. This Court, therefore, finds that the conclusions arrived at by the learned Special Judge (NDPS Act), Bilaspur are fully supported by the evidence on record and do not suffer from any illegality, perversity or material irregularity warranting interference in appellate jurisdiction. The conviction of the appellants for the offence punishable under Section 21(C) of the Narcotic Drugs and Psychotropic Substances Act, 1985 and the sentence imposed upon them are thus found to be justified and in accordance with law. Accordingly, no ground is made out for interference with the impugned judgment of conviction and order of sentence passed by the learned trial Court in the present criminal appeals.

93. As a result, this Court does not find any merit in the present criminal appeals. The impugned judgment of conviction and order of sentence dated 30.01.2025 passed by the learned Special Judge (NDPS Act), Bilaspur in Special Sessions (NDPS) Case No.124/2023 is hereby affirmed. Consequently, all the criminal appeals being CRA No.559/2025, CRA No.460/2025 and CRA No.829/2025, stand dismissed.

94. It has been brought to the notice of this Court that the appellant in CRA No.559/2025 has already surrendered before the competent authority and is presently lodged in jail. It is further reported that the appellants in CRA No.460/2025 have been in judicial custody since 13.09.2023, whereas the appellant in CRA No.829/2025

has been in custody since 14.09.2023 in connection with the present case.

95. In view of the dismissal of the present criminal appeals and affirmation of the impugned judgment of conviction and order of sentence passed by the learned Special Judge (NDPS Act), Bilaspur, the appellants shall continue to remain in custody and shall serve out the remaining part of the sentence as awarded to them by the learned trial Court.

96. The Registry is directed to forthwith transmit a copy of this judgment to the concerned Superintendent of Jail where the appellants are presently lodged and undergoing their jail sentence. Upon receipt of the same, the Superintendent of Jail shall ensure that a copy of this judgment is duly served upon each of the appellants and its contents are properly explained to them in a language known to them. The appellants shall also be informed that they are at liberty to challenge the present judgment before the Hon'ble Supreme Court of India by preferring an appeal in accordance with law, and that in case they are unable to engage a private counsel, they may avail free legal assistance through the High Court Legal Services Committee or the Supreme Court Legal Services Committee for the purpose of filing such appeal. The Superintendent of Jail shall extend necessary assistance to the appellants in this regard, if so required.

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

Sd/-	**Sd/-**
(Ravindra Kumar Agrawal)	**(Ramesh Sinha)**
Judge	**Chief Justice**

Anu

Head Note

Section 50 of the NDPS Act applies only to the personal search of a person and not to the search of a vehicle, bag, container or premises; therefore, plea of non-compliance with Section 50 would be untenable. Likewise, mere delay in forwarding samples to the Forensic Science Laboratory or their routing through another authority, even with reference to the procedure contemplated under Section 52A of the NDPS Act read with Rule 13 of the NDPS (Seizure, Storage, Sampling and Disposal) Rules, 2022, does not by itself vitiate the prosecution case when safe custody of the seized contraband and link evidence are duly established, and thus it cannot be a ground for acquittal.