



CGHC010508212025



2026:CGHC:26857

AFR**HIGH COURT OF CHHATTISGARH AT BILASPUR****CRA No. 2073 of 2025**

Viral Patel S/o Mukesh Patel Aged About 30 Years R/o Kalol, P.S. Kalol, Distt.
Gandhi Nagar, Gujarat

--- Appellant**versus**

State Of Chhattisgarh Through The Police Station Azad Chowk, Raipur, Distt.
Raipur, Chhattisgarh.

--- Respondent

For Appellant : Mr. Ashish Shrivastava, Senior Advocate
along with Mr. Rahul Ambast, Advocate

For Respondent/State : Mr. Shaleen Singh Baghel, Govt. Advocate

CRA No. 2099 of 2025

Ravindra Goyal S/o - Gopal Das Agrawal Aged About 46 Years R/o - Behind
Super Sweet, Ashawai Nagar, Police Station - Purani Basti, Raipur, District -
Raipur (C.G.)

--- Appellant**versus**

State Of Chhattisgarh Through - Station House Officer, Police Station - Azad
Chowk, Raipur, District - Raipur (C.G.)

--- Respondent

For Appellant : Ms. Fouzia Mirza, Senior Advocate along
with Mr. Navin Shukla, Advocate

For Respondent/State : Mr. Shaleen Singh Baghel, Govt. Advocate

CRA No. 2429 of 2025

Sahil Hasan S/o Mohammad Hasan Aged About 20 Years R/o Shiv Complex,
Mova, 4th Floor, P.S. Pandri, Raipur, Distt. Raipur Chhattisgarh

--- **Appellant**

versus

State Of Chhattisgarh Through The P.S. Azad Chowk, Raipur, Distt. Raipur
Chhattisgarh

--- **Respondent**

For Appellant : Mr. Syed Ishhadil Ali, Advocate

For Respondent/State : Mr. Shaleen Singh Baghel, Govt. Advocate

CRA No. 2583 of 2025

Niyajuddin @ Vikky S/o Rukku Khan Aged About 28 Years R/o Raipur, C.G. In
Front Of Khajana Shop P.S.- Azad Chowk, Raipur, District : Raipur,
Chhattisgarh

--- **Appellant**

versus

State Of Chhattisgarh Through Police Station Azad Chowk, Raipur, District :
Raipur, Chhattisgarh

--- **Respondent**

For Appellant : Mr. Chitranjay Singh Patel, Advocate

For Respondent/State : Mr. Shaleen Singh Baghel, Govt. Advocate

CRA No. 2101 of 2025

Mukesh Kumar Sahu S/o Shri Ramcharan Sahu, Aged About 45 Years R/o
Village Karsa, Post Andhi, P.S. Bhilai District Durg (C.G.)

---Appellant

Versus

State Of Chhattisgarh Through Sho, Azad Chowk Raipur, Distt. Raipur (C.G.)

--- Respondent

For Appellant	:	Mr. Dheerendra Pandey, Advocate
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For Respondent/State	:	Mr. Shaleen Singh Baghel, Govt. Advocate
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CRA No. 598 of 2026

Akash Vishwakarma S/o Lt. Kailash Vishwakarma Aged About 37 Years R/o
Trimurti Nagar Krishna Coloney Jabalpur, District- Jabalpur

---Appellant

Versus

State Of Chhattisgarh Through- Its. P.S. Azad Chowk Raipur District Raipur
(C.G.)

--- Respondent

For Appellant	:	Mr. Apoorv Trivedi and Mr. Abhijeet Mishra, Advocates
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For Respondent/State	:	Mr. Shaleen Singh Baghel, Govt. Advocate
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CRA No. 771 of 2026

J. Bhaskar Rao S/o J. Sampat Rao, Aged About 28 Years R/o Banjari Nagar,
Near Shitla Mandir, P.S. D.D. Nagar, Raipur, Distt. Raipur (C.G.)

--- Appellant

versus

State Of Chhattisgarh Through Police Station Azad Chowk, Raipur, District-
Raipur (C.G.)

--- Respondent

(Cause title taken from Case Information System)

For Appellant : Mr. Pragalbha Sharma, Advocate

For Respondent/State : Mr. Shaleen Singh Baghel, Govt. Advocate

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

Judgment on Board

Per Ramesh Sinha, Chief Justice

01/07/2026

1. All these appeals arise out of the same crime number and the same Special Case No. 32/2023, and were decided by a common judgment dated 01.09.2025; therefore, they are being heard and decided together.
2. The details of criminal appeals filed by the respective appellants are given hereinbelow:-

Criminal Appeals	Appellants/accused persons
CRA No. 2073 of 2025	Viral Patel
CRA No. 2099 of 2025	Ravindra Goyal
CRA No. 2429 of 2025	Sahil Hasan
CRA No. 2583 of 2025	Niyajuddin @ Vikky
CRA No. 2101 of 2025	Mukesh Kumar Sahu
CRA No. 598 of 2026	Akash Vishwakarma
CRA No. 771 of 2026	J. Bhaskar Rao

3. All these appeals have been filed under Section 415 (2) of the Bharatiya Nagarik Suraksha Sanhita, 2023 (in short 'BNSS') by the respective appellants against the impugned judgments of conviction and sentence dated 01.09.2025, passed by the learned Special Judge (NDPS Act), Raipur in Special Case No. 32 of 2023. The said Special case is arising out of Crime No. 306/2022, registered at Police Station Azad Chowk, Raipur, for the offence under Section 22(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short, 'NDPS Act'). The appellants have been convicted and sentenced in the following manner:-

For appellant-Viral Patel (in CRA No. 2073 of 2025)

For appellant- Akash Vishwakarma (in CRA No. 598 of 2026)

Conviction	Sentence
Under Section 29 read with Section 22(c) of NDPS Act	R.I. for 10 years and fine of Rs. 1,00,000/-, in default of payment of fine, additional R.I. for 2 years.

For appellant- Ravindra Goyal (in CRA No. 2099 of 2025)

For appellant- Sahil Hasan (in CRA No. 2429 of 2025)

For appellant- Mukesh Kumar Sahu (in CRA No. 2101 of 2025)

Conviction	Sentence
Under Section 22(c) of NDPS Act	R.I. for 15 years and fine of Rs. 1,50,000/-, in default of payment of fine, additional R.I. for 3 years.

For appellant- Niyajuddin @ Vikky (in CRA No. 2583 of 2025)

For appellant- J. Bhaskar Rao (in CRA No. 771 of 2026)

Conviction	Sentence
Under Section 22(b) of NDPS Act	R.I. for 10 years and fine of Rs. 1,00,000/-, in default of payment of fine, additional R.I. for 2 years.

4. The case of the prosecution in brief is that on 10.10.2022, the Assistant Sub-Inspector of Police, Rajesh Mandalesh PW-13, received secret information that two persons on a two-wheeler were engaged in selling intoxicating tablets near the water tank, Mukut Nagar, Lakhe Nagar, Raipur. The secret information was reduced in writing in the rojnamcha sanha of the Police Station, and two independent witnesses, Sunny Vishwakarma and Ritesh Singh Thakur, were called. The independent witnesses were apprised about secret information, and a notice under Section 160 of Cr.P.C. was given to them and obtained their consent to be the member of raid party. The necessity to search without warrant panchnama was prepared and the copy of the secret information panchnama and necessity to search without warrant panchnama were forwarded to the CSP, Azad Chowk, Raipur through the Constable Abhishek Pandey. The police party along with the independent witnesses and NDPS offence investigation kit were proceeded towards the suspected place. Two persons were intercepted who disclosed their names as Niyajuddin @ Vikky and J. Bhaskar Rao. They were informed about the secret information and their right to search have also been informed that they have their right to be searched by Gazetted Officer, Magistrate or by the Police Officer. The accused persons gave their consent to be searched by the police officer. The police party and independent witnesses have also gave their own search to the accused persons, but nothing incriminating could be found on their search. On being searched of the accused persons, from the pocket of the pant of the accused Niyajuddin @ Vikky 120 alprazolam tablet and from the tool kit box of his motorcycle, 72 nos. of the prohibited tramadol capsule

have been recovered. From the accused J. Bhaskar Rao 72 nos. tramadol capsule has been seized from his pocket of the pant and 72 nos. tramadol capsule have been seized from tool kit box of his motorcycle. The seizure panchnama was prepared on the spot in presence of the witnesses and it was identified to be of intoxicated tablet.

5. The seized tablets were weighed on the spot and weighment panchnama was prepared. 2-2 strips of the tablets seized from the accused persons were separated and separately sealed as sample packets. The notice under Section 91 of the CRPC. was also given to the accused persons. But, they failed to submit any valid document or medical prescription for its possession and then the said intoxicated tablets have been seized from them.
6. During investigation, these two accused persons Niyajuddin @ Vikky and J. Bhaskar Rao were interrogated and their memorandum statements have been recorded in which accused J. Bhaskar Rao disclosed that the intoxicated tablet was supplied to him by Niyajuddin who purchase it from Pratham Medical Store of Ravindra Goyal. The accused Niyajuddin @ Vikky disclosed in his memorandum statement that he is regularly purchasing the intoxicated tablet from Pratham Medical Store of Ravindra Goyal and sold it to J. Bhaskar Rao. He engaged in selling the intoxicated tablet by roaming in his car. On the basis of the memorandum statement of Niyajuddin @ Vikky, the memorandum statement of Ravindra Goyal was recorded who disclosed that he was purchasing the said intoxicating tablet from Mohammad

Hasan and when Mohammad Hasan was interrogated he disclosed the name of Akash from whom he purchased the said prohibited intoxicating tablet. He also disclosed the channel through which he received supply of said intoxicating tablet from Jabalpur and payment of the price of the said tablet and engaged in the said activity since 2022. During the investigation name of Viral Patel was also disclosed and when his memorandum was recorded the involvement of Mukesh Kumar Sahu and Sahil Hasan in the said transaction of prohibited intoxicating tablet was found. From the accused Ravindra Goyal total 14400 nos. tramadol spasma capsule (8.64 kg.), from the accused Mukesh Kumar Sahu 28800 nos. tramadol spasma capsule (17.280 kg.), from the accused Mohammad Hasan 1,15,200 nos tramadol spasma capsule (69.120 kg.), from the accused Sahil Hasan 3744 nos. of tramadol spasma capsule (2.247 kg.) and 41600 nos. alprazolam tablet (4.996 kg.) were seized. The accused persons could not produce any document of possession of the said quantity of prohibited intoxicating tablets and capsules and then the offence has been registered against them and they have been arrested. The seized prohibited intoxicating capsules were examined by the Food and Durgs Administration Department Raipur and FSL Raipur and after completion of usual investigation charge sheet was filed against the accused persons before the learned trial Court for the offence under Section 22 (c) of the NDPS Act.

7. The learned trial Court framed charge against the accused Niyajuddin @ Vikky, J. Bhaskar Rao for the offence under Section 22(b) of the NDPS Act. Against the accused Ravindra Goyal, Mohammad Hasan, Mukesh Kumar Sahu, Sahil Hasan, the charge for the offence under

Section 22(c) of the NDPS Act have been framed. Against the accused Akash Vishwakarma and Viral Patel, the charge under Section 29 read with Section 22(c) of the NDPS Act have been framed. The accused persons denied the charge and claimed trial.

8. In order to prove the charge against the accused persons the prosecution examined as many as 21 witnesses. Statement of the accused persons under Section 313 of the CRPC have been recorded in which they denied the circumstances that appears against them, pleaded innocence and have submitted that they have been falsely implicated in the offence.
9. After appreciation of oral as well documentary evidence led by the prosecution the learned trial Court convicted the appellants and sentenced them as has been mentioned in the earlier part of this judgment. Hence, these appeals.
10. Ms. Fouzia Mirza, learned Senior Advocate appearing for the appellant Ravindra Goyal in CRA No. 2099 of 2025 would submit that the prosecution has failed to prove its case beyond reasonable doubt. There are material omissions and contradictions in the evidence of prosecution witnesses which cannot be made basis to convict the appellant in the offence in question. There is serious lacuna on the investigation of the alleged offence and non-compliance of the mandatory provisions of the NDPS Act and therefore, the alleged recovery cannot be considered against the appellant for their conviction. She would further submit that there is non-compliance of the provision of Section 42, 50, 52A and 55 of the NDPS Act. In the present case

there is no document showing that the provision of Section 42 of the NDPS Act has been complied with and the secret information was forwarded to the immediate superior officer. From the record produced by the prosecution it is missing that the accused was given option to be searched either by the Gazetted Officer, Magistrate or the Police Officer, which is violative of Section 50 of the NDPS Act. The appellant has been implicated in the offence on the basis of memorandum statement which is inadmissible in evidence. There is no independent witness of the locality where the alleged contraband are said to have been seized. Further, there is no clinching evidence with respect to the safe custody of the seized intoxicating tablet and there is no malkhana register or seal verification record produced by the prosecution. Further, there is no cogent evidence that the same tablet which was allegedly seized from the accused were sent for its chemical examination to the FSL. There are material inconsistency in search, seizure and sealing proceeding and sending the sample to the FSL and in such inconsistent evidence, the appellant cannot be convicted for having possession of intoxicating tablet and he is entitled for acquittal.

11. Mr. Ashish Shrivastava, learned Senior Advocate appearing for the appellant Viral Patel in CRA No. 2073 of 2025 would submit that he has been implicated only on the basis of the memorandum of co-accused persons and there is no seizure of any incriminating tablet. The appellant Viral Patel is the owner of medical store and a wholesaler of the drugs. There are numerous procedural irregularities committed by the Investigating Officer which makes the prosecution case doubtful. Although the police had given 15 days notice to submit the relevant

document, but before 15 days, he has been arrested by the police. No any intoxicated tablet have been seized and only the bills and vouchers have been seized from his medical shop, but the same has also not made as a part of the charge sheet. He would also submit that the independent witnesses have not supported the prosecution's case and in absence thereof the appellant cannot be convicted on the basis of the departmental witness. There are absolutely non-compliance of mandatory provisions of the NDPS Act which makes the appellant entitled for his acquittal.

12. Mr. Pragalbha Sharma, learned counsel appearing for the appellant J. Bhaskar Rao in CRA No. 771 of 2026, in addition to the submissions made by learned counsel for the other appellants, would submit that the prosecution has failed to prove the conscious possession of the alleged intoxicating tablet from the appellant. There is non-compliance of the provisions of Section 42 and 50 of the NDPS Act and there are material discrepancies in the alleged recovery and documentation of the search and seizure proceeding. Even the safe custody of the seized intoxicating tablet have not been proved by the prosecution and there is serious lacuna in the prosecution case and in absence thereof the appellant cannot be convicted.
13. Mr. Dheerendra Pandey, learned counsel appearing for the appellant Mukesh Kumar Sahu in CRA No. 2101 of 2025 also adopted the submissions made by learned counsel for the other accused persons and would submit that the appellant has been convicted on conjecture and surmises and there is lack of cogent and clinching evidence against

the appellant. The prosecution case is based on the sequence of events, but the chain of events is broken as there is no conclusive evidence about the fact the accused persons were interlinked and form a chain of supply of the alleged intoxicating tablet. The prosecution has to independently establish the search and seizure of incriminating tablet in which they failed to do so. There are non-compliance of the mandatory provisions of the NDPS Act and before holding conviction the learned trial Court was required to consider the non-compliance of the provisions of the NDPS Act, therefore, the conviction and sentence of the appellant is bad in law and the same is liable to be set aside.

14. Mr. Apoorv Tripathi, learned counsel appearing for the appellant Akash Vishwakarma in CRA No. 598 of 2026 would also submit that the judgment of conviction and sentence passed by learned trial Court is perverse to the evidence available on record. The learned trial Court has failed to appreciate that the prosecution has miserably failed to bring home the ingredients of the charge for which the appellant has been implicated in the offence. The case of the prosecution is based on the memorandum statement of co-accused Mohammad Hasan which is inadmissible piece of evidence and the appellant cannot be convicted on such evidence. The independent witnesses PW-1 and PW-2 have not supported the prosecution's case and turned hostile. The prosecution is required to prove the guilt of the appellant beyond reasonable doubt in which the prosecution failed and therefore, the conviction of the appellant for the alleged offence cannot be sustained and he is entitled for his acquittal.

15. Mr. Chitranjay Singh Patel, learned counsel appearing for the appellant Niyajuddin @ Vikky in CRA No. 2583 of 2025 adopted the argument advanced by the counsel for other appellants and further submitted that there is non-compliance of the provisions of Section 42 and 50 of the NDPS Act. There is material discrepancy in the notice under Section 50 of the NDPS Act and the personal search of the appellant which is the mandatory provision under the NDPS Act and the non-compliance of the provision of Section 50 of the NDPS Act makes the entire prosecution case doubtful and conviction cannot be hold. The independent witnesses have turned hostile and not supported the prosecution's case and in such facts and evidence produced by the prosecution the conviction and sentence of the appellant suffers from material illegality and perversity and the same is liable to be set aside.
16. Mr. Syed Ishhadil Ali, learned counsel appearing for appellant Sahil Hasan in CRA No. 2429 of 2025 would also submit that the case against the present appellant is false, baseless and fabricated. The material witnesses have turned hostile and not supported the prosecution's case. There are material omissions and contradictions in the evidence of PW-1, PW-2, PW-3, PW-4 and PW-5 and their evidence are shaky. They are not consistent in their evidence. They also did not know about the documents prepared in their presence. There is material inconsistency in depositing the seized intoxicated tablet to the FSL for its chemical examination. The prosecution could not produce the relevant documents which are required to prove their case. He would also submit that the prosecution has failed to prove the exclusive possession of the appellant over the allegedly seized intoxicating tablet. He would also

submit that drawing of a sample in presence of a Gazetted Officer is not sufficient compliance of Section 52-A of the NDPS Act. The appellant Sahil Hasan is the son of Mohammad Hasan who is one of the co-accused in the case and only to show their anger, the police persons involved the present appellant also in the offence. Therefore, there are material discrepancy in the evidence against the appellant and he is also entitled for his acquittal.

17. Replying the submissions made by learned counsel for the respective appellants, Mr. Shaleen Singh Baghel, learned Govt. Advocate would vehemently opposes and submits that the prosecution has duly proved the case against the appellants beyond reasonable doubt. But for minor omissions and contradiction the evidence of the prosecution witnesses are fully reliable and sufficient to sustain the conviction of the appellants. He would further submit that the minor discrepancies in search and seizure proceeding, which are trivial in nature does not affect the entire prosecution case particularly when such a huge quantity of intoxicating were seized. There is a chain of network framed by the accused persons to supply the intoxicating tablet from one accused to another and thereby they were found in possession of huge quantity of intoxicating tablet. There is no explanation from the accused persons as to how they are found in possession of such a huge quantity of the intoxicating tablet which are easily not available in the open market and their sale is prohibited and restricted only on medical prescription. Although the independent witnesses have not supported the prosecution's case, but they have admitted their signatures over the documents prepared by the investigating agency in their presence. The

other witnesses who were part of the raiding team have duly supported the prosecution's case. All the mandatory provisions of search and seizure, sealing and sending the samples to the FSL and also the safe custody of the seized intoxicating tablet and sample have been duly proved by the prosecution by leading cogent evidence. Merely on the ground that the witnesses are the police personnel, their evidence cannot be discarded when they supported the case on material facts. There is no explanation from the accused persons about the possession of said intoxicating tablet and therefore, considering the evidence available on record against the accused persons, the learned trial Court convicted and sentenced them which are strictly in accordance with law and needs no interference.

18. We have heard learned counsel for the parties and gone through the record of the trial Court with utmost circumspection.
19. PW-13 Rajesh Mandle is the Assistant Sub-Inspector of Police and was posted at Azad Chowk, Police Station Raipur. On 10.10.2022, at 14:10 Hrs. He received a secret information that two persons are roaming in two wheeler and engaged in selling intoxicating tablets. He reduced it in writing in rojnamcha sanha (exhibit P-89). He sent the constable Yogesh Verma to call the independent witness and departure was also reduced in writing in rojnamcha (exhibit P-90). Two independent witness Sunny Vishwakarma and Ritesh Singh Thakur came to police station and then a notice under Section 160 of CRPC (exhibit P-1) was given to them after informing them about secret information. The secret information panchnama (exhibit P-2) was prepared and necessity to search without

warrant panchnama (exhibit P-3) was also prepared. The copies of both these documents were forwarded to CSP, Azad Chowk, Raipur through the constable Abhishek Pandey and his departure was also reduced in rojnamcha, which is exhibit P-92. The arrival rojnamcha of the constable is exhibit P-93. He along with police party and independent witnesses and NDPS investigation kit proceeded towards the informed place and their departure were recorded in rojnamcha (exhibit P-94). Two persons were intercepted, who disclosed their names as Niyajuddin @ Vikky and J. Bhaskar Rao. They informed them about secret information and right to their search by any gazetted officer, magistrate or the police officer and the notice under Section 50 of the NDPS Act is exhibit P-14. The aforesaid two accused persons gave their consent to be searched by the police officers, which is exhibit P-19 and consent panchnama is exhibit P-20. He, police party and the independent witness were searched by the accused persons and the search panchnama (exhibit P-4 and P-8) was prepared and on their search, nothing incriminating could be found. On being search of the accused persons, from the pocket of the pant of the accused Niyajuddin, 120 nos. of alprazolam tablets were seized and from the tool kit box of his motorcycle, 72 nos. of tramadol capsules were seized. From the accused J. Bhaskar Rao, 72 nos. tramadol capsules have been seized from the pocket of his pant and 72 nos. of tramadol capsule have also been seized from the took kit box of his motorcycle. The seizure memo (exhibit P-25) was prepared.

The recovery panchnama of intoxicating tablets from the accused persons was prepared, which is exhibit P-28. The intoxicating tablets were physically identified by him and identification panchnama (exhibit

P-32) was prepared. The weighing witness were called and the physical verification panchnama of weighing machine (exhibit P-45) was prepared and after weighing of the seized intoxicating tablets, weighing panchnama (exhibit P-38) was prepared. Two strips of intoxicating tablets were separated for sample and its weighing panchnama (exhibit P-37) was prepared. The specimen seal panchnama (exhibit P-50) was also prepared after sealing the seized articles. A notice under Section 91 of CRPC (exhibit P-95) was also given to the accused persons, but they failed to submit any valid document of possession of the intoxicating tablets. He recorded the memorandum statement of the accused persons J. Bhaskar Rao and Niyajuddin (exhibit P-53 and P-54, respectively) and the seizure memo (exhibit P-59 and P-60) were prepared.

On the basis of the memorandum statement of these two accused persons, the police intercepted the accused Ravindra Goyal, who was the owner of Pratham Medical Stores, Lakhenagar, Raipur and found him in a car. A notice under Section 50 of NDPS Act (exhibit P-13) was also given to him and his right to be searched by gazetted officer, magistrate or police officer have been informed and then he gave his consent that he is ready to be searched by the police officer and his consent memo (exhibit P-21) was prepared. He and the police party gave their search to the accused Ravindra Goyal and search panchnama (exhibit P-5 and P-9) was prepared. On being search of the car of the accused Ravindra Goyal, 14400 nos. of prohibited tramadol tablets were recovered, which was kept in a cartoon. Recovery panchnama (exhibit P-22) was prepared and a notice under Section 91

(exhibit P-96) was issued to him, but he failed to furnish any valid document of its possession. The said intoxicating tablets were seized from him vide exhibit P-61. The memorandum statement of accused Ravindra Goyal (exhibit P-57) was recorded, in which he disclosed the name of other accused Mukesh Sahu.

Based on the memorandum statement of Ravindra Goyal, he proceeded to village Karsa and gave their own search to the accused Mukesh Sahu and panchnama (exhibit P-6 and P-10) was prepared. Notice under Section 50 of NDPS Act (exhibit P-15) was also served to him and he gave his consent to be searched by the police officers and consent panchnama (exhibit P-18) was prepared. On being search of the house of the accused Mukesh Sahu, total 28,800 nos of tramadol spasma plus tablets were recovered, which were kept in two cartoons and Talashi panchnama (exhibit P-27), identification panchnama (exhibit P-34) and weighment panchnama (exhibit P-40) were prepared. Two-two strips were separated for samples from the seized tablets and relevant panchnama exhibit P-53 was prepared. The weighing machine verification panchnama exhibit P-47) was also prepared. The sample separated from the seized tablets were separately sealed and specimen seal panchnama (exhibit P-51) was prepared. A notice under Section 91 of CRPC (exhibit P-97) was also given to the accused Mukesh Sahu, but he also failed to produce any valid document of its possession. Memorandum statement of accused Mukesh Sahu (exhibit P-56) was recorded, in which he disclosed that he purchased the intoxicating tablets from Mohammad Hasan and then the intoxicating tablets have been seized vide seizure memo (exhibit P-62).

Thereafter, he proceeded to Shiv Complex, Mowa, Raipur and taken Mohammad Hasan and Sahil Hasan into custody and the search party gave their own search to them and panchnama (exhibit P-11) was prepared. Notice under Section 50 of the NDPS Act was also given to them, which is (exhibit P-13) and these accused persons gave their consent to be searched by the police officer, which is exhibit P-16 and their consent panchnama is exhibit P-54. On being search of the house of the accused persons Mohammad Hasan and Sahil Hasan, he prohibited intoxicating tablets have been recovered and Talashi Panchnama (exhibit P-26) was prepared and recovery panchnama (exhibit P-31) was also prepared. The identification panchnama of the seized tablets (exhibit P-35 and P-36) were also prepared. The weighing machine was physically verified and verification panchnama (exhibit P-48) and weighment panchnama (exhibit P-41) were prepared. Two-two strips of intoxicating tablets were separated from the tablets seized from the accused persons Mohammad Hasan and Sahil Hasan and its weighment panchnama (exhibit P-44) was prepared, specimen seal panchnama (exhibit P-52) was also prepared. Notice under Section 91 of CRPC (exhibit P-98) was also given to them, but they failed to produce any valid document of its possession. Their memorandum statement (exhibit P-55) was recorded and the intoxicating tablets were seized vide seizure memo (exhibit P-63 and P-64).

Based on the memorandum statement of Mohammad Hasan and Sahil Hasan, they apprehended Akash Vishwakarma at Trimurti Nagar, Jabalpur, where was running his medical wholesale business in the name of 'Narmada Pharma'. His memorandum statement (exhibit P-77)

was recorded and based on his memorandum statement, the another accused Viral Mukesh Bhai Patel was apprehended and a notice under Section 91 of CRPC (exhibit P-99) was given to him. The memorandum statement of Viral Mukesh Bhai Patel (exhibit P-58) was recorded and the bills and vouchers have been seized from him vide seizure memo (exhibit P-65). He arrested the accused persons and prepared their seizure memos (exhibit P-66 to P-72 and P-78). Their arrest has been informed to their family members through the document (exhibit P-100 to P-107). After conducting the search, he returned to the police station and his arrival was recorded in rojnamcha (exhibit P-108). He handed over the seized articles and intoxicating tablets to Malkhana Moharrir for keeping it in a safe custody and obtained acknowledgment. He registered the FIR against the accused persons, which is exhibit P-112 and Dehati Nalishi is exhibit P-113. He prepared the spot map (exhibit P-73) and forwarded the details of the proceedings to his senior officer, which is exhibit P-80. He also wrote a letter (exhibit P-82) to the Drug Inspector for physical examination of seized intoxicating tablets and then obtained the examination report (exhibit P-109). The panchnama of shop No. 74 and 26 are exhibit P-110 and P-111. Along with the memo of Senior Superintendent of Police, Raipur, he sent the seized intoxicating tablets/capsules for its chemical examination to FSL Raipur through the lady constable Hemin Dhruw and the draft memo is exhibit P-85. The FSL report is exhibit P-114 and P-115. Statement of the witnesses have been recorded and after completion of investigation, charge sheet has been filed against the accused persons before the learned trial Court.

In cross-examination, he admitted that he had given notice (exhibit D-2) to the accused Viral Patel on 14.02.2023, in which 15 days time was given to show cause, but he was arrested before 15 days. He admitted that from Viral Patel no any intoxicating tablet or psychotropic drug has been seized. The documents, which have been seized from Viral Patel are annexed with the charge sheet. With respect to search and seizure from the accused Ravindra Goyal, he stated in his cross-examination that he could not remember as to at what time, he proceeded for conducting raid. He admitted that in the document (exhibit D-1), there is overwriting in the name of police station, but there is no initial of the person concerned, who made overwriting there. He admitted that the independent witnesses had came on the spot when the raid team reached on the spot. The secret information panchnama (exhibit P-2) was prepared on the spot and the panchnama (exhibit P-3) under Section 42(2) of the NDPS Act was prepared after arrest of the accused. The entire documentation was done at Mukut Nagar on one instance. He also admitted that the place, from where the intoxicating tablets have been seized from Ravindra Goyal, other shops were also there. He has not collected the CCTV footage from the spot. He admitted that in the document (exhibit P-49), there is no impression of seal. He has not mentioned the number of strips, which he seized from the accused Ravindra Goyal, but has mentioned the separation of two strips for sampling, which has been mentioned in exhibit P-61. He further admitted that the marka by which the samples were sealed, have not been mentioned. He also admitted in para 40 of his cross-examination that, the inventory under Section 52-A of the NDPS Act was

not done with respect to the intoxicating tablets seized from the accused Ravindra Goyal.

With respect to accused Mukesh Sahu, he stated that he has not received secret information against the accused Mukesh Sahu and the proceedings against him was conducted on the basis of the memorandum statement of accused Ravindra Goyal. He has not conducted investigation about ownership of the house of Mukesh Sahu. He admitted that the intoxicating tablets have been seized from his house.

With respect to the accused Akash Vishwakarma, he stated that he has not annexed any document in the charge sheet regarding his mobile number. Though he disclosed his bank account number, but he has not seized any document of the same, which proves that the said bank account number belongs to the accused Akash Vishwakarma. He further admitted that he has not seized any intoxicating tablet from the accused Akash Vishwakarma and even no any call details report regarding conversation with other accused persons have been collected during investigation. He also admitted that Akash Vishwakarma is having license in the name of Maa Namada firm, which was in his knowledge, but he has not filed any document of the same.

With respect to Mohammad Hasan and Sahil Hasan, he admitted that these two accused persons have given their consent orally that they are ready to be searched by him. He further admitted that sampling in the case is not done in presence of any Magistrate and has not collected any CDR of these accused persons.

For accused J. Bhaskar Rao, he stated in his evidence that the document (exhibit P-3) prepared on 10.10.2022, at 16:00 hrs. and the receiving at CSP office is endorsed at 15:25 hrs. He seized the intoxicating tablets from this accused and seizure panchnama (exhibit P-28) was prepared, but in the document (exhibit P-28), there is no signature of the accused J. Bhaskar Rao. He further admitted that in the document (exhibit P-50), there is no specimen seal and signature of the accused J. Bhaskar Rao. He also admitted that sampling from the intoxicating tablet seized from the accused J. Bhaskar Rao was not done by the Magistrate. Before sending the sample packets to the FSL, it was sent to Drug Inspector for its examination. He admitted in para 55 of his cross-examination that, from the intoxicating tablets seized from J. Bhaskar Rao two strips of tablets have been separated for sample and in each strips, 8 tablets were there. He further admitted that as per the FSL report (exhibit P-115), in the sample packet (article-B), 24 capsules in each strip is mentioned. He could not tell about this discrepancy.

Regarding the accused Niyajuddin, he stated that he has not recorded any statement of the employee of Municipal Corporation. He also has not seized any document about ownership of the bullet vehicle seized from the accused Niyajuddin. He denied that no intoxicating tablets have been seized from the bullet motorcycle. He also admitted that in the specimen seal panchnama, he has not impressed the seal impression. He also admitted that in his memorandum statement (exhibit P-54), the accused Niyajuddin have not disclosed anything about alprazolam and tramadol tablets.

20. PW-14, Gajendra Sahu is the constable posted at the office of Additional Superintendent of Police, West Raipur. When they had gone to Azad chowk police station on the instance of Additional Superintendent of Police and they were informed about secret information and was the member of search party. They conducted search of Bhaskar Rao and Niyajuddin and the tramadol intoxicating tablets has been seized from them. The tramadol and spasmo proxyvon intoxicating tablets have been seized in huge quantity from all the 8 accused persons, but they could not produce any document of its possession. In cross-examination, he admitted that he has not heard about the option given by the raiding officer to the accused persons in informing their rights to search by any gazetted officer, magistrate or by himself.
21. PW-15, Kishore Singh Rajput is another constable posted at police station Azad chowk, Raipur and was a member of raid team. On being secret information, they apprehended two persons at Mukut Nagar, who disclosed their name as Vikky Khan and Bhaskar Rao. After having initial formality of their search, the accused persons were ready to be searched by raiding officer and on being search of accused Vikky Khan, 8 strips of intoxicating tablets and from accused Bhaskar Rao, 10 strips of intoxicating tablets have been seized, but they could not produce any document.

In cross-examination he admitted that, he could not tell the weight of the intoxicating tablets seized on the spot. He could not see the brand name of the tablets, but they have physically identified that it

was the intoxicating tablets. The raiding officer informed about the intoxicating tablets.

22. PW-17, Parmanand Verma is the Drug Inspector. He stated in his evidence that, he received the memo (exhibit P-82) for giving information about the seized Spas Trancane Plus and Spasmo Proxyvon Plus tablets and along with the memo 6 sample packets were received, which were marked as sample packet A, B, C, D, E and F. He physically examined the said tablets as per the information available in its label. In the sample of Article-A (spas trancane plus), 50 mg of tramadol hydrochloride and 0.5 mg of alprazolam were found present. In the sample packet of Article-B (Spas trancane Plus) and 50 mg of tramadol hydrochloride were found present. In the sample of Article-C (spasmo proxyvon plus), 50 mg of tramadol hydrochloride were found present. In the sample of Article-D (spas trancane plus), 50 mg of tramadol hydrochloride was found present. In the sample of Article-E (Spas Trancane Plus), 50 mg of tramadol hydrochloride was found present. In the sample of Article-F (Spas trancane plus), 50 mg of tramadol hydrochloride and 0.5 mg of alprazolam were found present. After its examination, the sample packets were resealed and sent back to the Station House Officer, Azad chowk, Raipur along with his report (exhibit P-109).

In cross-examination, he admitted that in the report (exhibit P-109), how many strips of tables have been examined by him, has not been mentioned. He admitted that he has not chemically analyzed the tablets of the strips, but the report is prepared on the basis of information given in its label.

23. PW-18, Deepak Singh Thakur is a constable and member of raiding party. He is also a witness of search and seizure from the accused Vikky Khan and Bhaskar Rao. He also stated that intoxicating tablets have been seized from Vikky Khan and Bhaskar Rao, but they could not produce any document of its possession. The seized tablets were sealed and weighed. In cross-examination, he denied the suggestion given by the defence that he was not the member of raid party and no any intoxicating tablet has been seized from the accused persons.
24. PW-19, Amrit Prajapati is the resident of District Mehsana, Gujarat and he stated that on 14.03.2023, the Raipur police prepared the panchnama of shop No. 26 situated at Pyke Plot Godown Small Industries Budasan, Mehsana, Gujarat, which was the shop of M/s. Maheshar Health Care. The said shop was closed since last 6 months and the panchnama is exhibit P-111.
25. PW-20, Pankaj Kumar Kantilal Patel and PW-21, Sanjay Bhai Darji are the witness of panchnama (exhibit P-112) with respect to closure of shop No. F-131, Radhanpur road, Mehsana, Gujarat.
26. The question which arises for consideration is whether the prosecution has proved beyond reasonable doubt that the search, seizure, sampling, sealing, safe custody and chemical examination of the alleged psychotropic substances were conducted in strict compliance with the mandatory provisions of the NDPS Act. Since the NDPS Act prescribes stringent punishment and raises statutory presumptions against an accused under Sections 35 and 54 of the NDPS Act, the prosecution is first required to establish by demonstrating strict

compliance to the mandatory procedural safeguards. It is well settled that the safeguards incorporated under Sections 42, 50, 52-A and 55 of the NDPS Act are intended to ensure fairness, transparency and credibility of the investigation, and any substantial deviation therefrom goes to the root of the prosecution case.

27. There is material inconsistencies and procedural irregularities, which remain unexplained by the prosecution. With respect to the compliance of Section 42 of the NDPS Act, although PW-13 stated that he had reduced the secret information into writing and forwarded the same to the superior officer, his cross-examination creates a serious doubt regarding the authenticity of such compliance. He admitted that the document under Section 42(2) (Exhibit P-3), which is shown to have been prepared at 16:00 hours, bears the receiving endorsement of the office of the CSP at 15:25 hours. Thus, according to the prosecution's own documents, the superior officer is shown to have received the communication thirty-five minutes prior to its preparation. Such an inherent impossibility has remained wholly unexplained. This contradiction strikes at the very root of the prosecution case and creates a serious doubt whether the mandatory requirement of reducing the information into writing and forwarding it to the immediate superior officer was actually complied with before conducting the search.
28. The prosecution case further becomes doubtful because PW-13 admitted that the secret information panchnama (Exhibit P-2) was prepared on the spot after reaching the place of occurrence and that the proceedings under Section 42(2) were also prepared after the arrest of

the accused. These admissions directly contradict the statutory requirement that the information should be recorded and communicated before conducting the search.

29. The notices under Section 50 of the NDPS Act themselves disclose that the accused persons were simultaneously informed that they could be searched either by a Gazetted Officer, a Magistrate or by the police officer himself. Such an option is not contemplated under Section 50. The statutory right conferred upon the accused is to be searched before a Gazetted Officer or a Magistrate and not by the searching officer himself. Consequently, the option offered was neither clear nor in conformity with the mandate of law. Therefore, the alleged consent obtained from the accused persons loses its legal sanctity.
30. Even otherwise, substantial part of the alleged recovery was effected from houses, vehicles and tool boxes. Nevertheless, the prosecution itself alleges recovery from the pockets of the accused persons. Once personal search formed part of the recovery proceedings, strict compliance of Section 50 of the NDPS Act became imperative. In view of the doubtful evidence regarding communication of the statutory right, the prosecution cannot claim valid compliance of Section 50 of the NDPS Act.
31. The evidence relating to sampling also suffers from serious legal infirmities. PW-13 categorically admitted that the samples were not drawn before any Magistrate. He further admitted that no inventory under Section 52-A of the NDPS Act was prepared in respect of the seizure from accused Ravindra Goyal. Similar admissions have also

been made regarding other accused persons. The prosecution has therefore failed to establish that inventory, sampling and certification were undertaken in accordance with the mandatory procedure contemplated under Section 52-A of the NDPS Act.

32. The specimen seal proceedings also suffer from serious deficiencies. PW-13 admitted that in Exhibit P-49 no seal impression was available. He further admitted that the specimen seal panchnamas did not contain the seal impression and that the mark by which the samples were sealed had not been mentioned. In respect of accused J. Bhaskar Rao, PW-13 further admitted that Exhibit P-50 neither bears the specimen seal nor the signature of the accused. These deficiencies assume considerable significance because the prosecution was required to establish beyond doubt that the very samples drawn from the seized contraband ultimately reached the forensic laboratory without any possibility of tampering.
33. The prosecution evidence regarding sampling is further contradicted by the FSL report itself. PW-13 admitted that from accused J. Bhaskar Rao two strips consisting of eight capsules each were separated as samples, whereas the FSL report mentions twenty-four capsules in each strip of Article-B. He admitted that he could not explain this discrepancy. This inconsistency directly affects the identity of the sample and creates a serious doubt regarding the chain of custody. Further, there is no evidence about marking of samples as A, B, C, D, E and F. It is also relevant here that all the seizures of intoxicating tablets have been

made on different time and at different places, but a common proceeding has been drawn by the police.

34. The prosecution has also failed to establish safe custody of the seized contraband in accordance with Section 55 of the NDPS Act. Although PW-13 stated that the seized articles were deposited with the Malkhana Moharrir, no Malkhana Register, seal register or record proving the condition of the seals at the time of deposit and dispatch has been produced. There is also no independent evidence demonstrating that the seized articles remained intact till their dispatch to the forensic laboratory. In the absence of cogent evidence regarding safe custody, the possibility of tampering cannot be ruled out.
35. Another circumstance creating doubt is that the samples were first sent to the Drug Inspector instead of the Forensic Science Laboratory. PW-17, the Drug Inspector, admitted that he merely examined the labels affixed on the strips and did not chemically analyse the tablets. He also admitted that his report does not mention the number of strips examined. Thus, the report of the Drug Inspector cannot establish the chemical composition of the seized tablets. Rather, the unnecessary intermediate handling of the samples before dispatch to the FSL weakens the integrity of the chain of custody.
36. The evidence regarding seizure proceedings is also not free from doubt. PW-13 admitted that the seizure panchnama relating to accused J. Bhaskar Rao does not bear the signature of the accused. He further admitted that he had not mentioned the number of strips seized from accused Ravindra Goyal. He also admitted overwriting in material

documents without initials. These are not insignificant omissions, particularly in a prosecution under the NDPS Act where every stage of search and seizure must inspire complete confidence.

37. The prosecution has also failed to associate any independent witness from the localities where huge quantities of alleged contraband were seized from commercial establishments and residential houses. PW-13 admitted that several shops existed near the place of seizure from Ravindra Goyal, yet no independent witness from the locality was associated. He also admitted that CCTV footage from the locality was not collected. The two independent witnesses cited by the prosecution did not support the prosecution case on material particulars. Consequently, the prosecution case rests substantially upon official witnesses whose evidence itself suffers from material contradictions.
38. PW-8, Reena Padmawar, who took the samples to the office of Drug Inspector, Raipur has proved the acknowledgment (exhibit P-82). She took the sample packets of A, B, C, D, E and F, which was the subject matter of crime No. 306/2022 for the offence under Sections 22 (b) and 22 (c) of the NDPS Act. In cross-examination, she admitted her duty certificate (exhibit D-2) for taking the samples to the office of Drug Inspector. From perusal of the document (exhibit D-2), there is no mention about the sample packets of the crime No. 306/2022 of Azad Chowk, Police Station Raipur, but exhibit D-2 is with respect to the articles of crime No. 310/2022, which relates to the offence under the Prevention of Cruelty to Animals Act, 1960, which this witness has admitted in the cross-examination also and therefore, the authority

under which the sample packets were sent to the office of Drug Inspector is highly doubtful.

39. So far as accused Viral Patel and Akash Vishwakarma are concerned, PW-13 admitted that no psychotropic substance whatsoever was recovered from either of them. Their implication rests primarily upon disclosure statements of co-accused persons. PW-13 further admitted that no call detail records, banking documents or other independent material connecting them with the alleged transaction were collected during investigation. It is equally admitted that Viral Patel was arrested even before expiry of the fifteen days' period granted to him under the notice issued by the Investigating Officer. These admissions substantially weaken the prosecution case against them.
40. It is also significant that no contraband whatsoever was recovered from appellants Viral Patel and Akash Vishwakarma. Their implication rests principally upon the disclosure statements allegedly made by the co-accused during investigation. Such statements, recorded after the accused had already been apprehended and were under the complete control of the investigating agency, cannot by themselves constitute substantive evidence of guilt. The Constitution Bench of the Hon'ble Supreme Court in **Tofan Singh v. State of Tamil Nadu, (2021) 4 SCC 1** has categorically held that confessional statements recorded under Section 67 of the NDPS Act are inadmissible as confessions against the maker and cannot be made the foundation of conviction. Furthermore, the disclosure statement of a co-accused is not substantive evidence and can at best lend assurance to other independent evidence already

available on record. In the present case, apart from these alleged disclosures, the prosecution has failed to produce any legally admissible material such as recovery, call detail records, banking transactions, documentary evidence of supply, electronic evidence or any other independent circumstance connecting the said appellants with the alleged offence. Consequently, the alleged disclosures lose all probative value and cannot sustain their conviction.

41. The prosecution further relies heavily upon statements allegedly recorded under Section 67 of the NDPS Act. However, admittedly such statements were recorded after the accused had been apprehended and were in the custody and complete control of DRI officers. In view of the law laid down by the Constitution Bench of the Hon'ble Supreme Court in **Tofan Singh** (supra) statements recorded under Section 67 from persons accused of offences under the NDPS Act are inadmissible as confessional statements and cannot form the basis of conviction. Consequently, the alleged disclosures made by the accused lose all evidentiary value.
42. It is trite law that offences under the NDPS Act prescribe stringent punishments and also contain statutory presumptions under Sections 35 and 54 of the NDPS Act. Consequently, strict and substantial compliance of the mandatory safeguards incorporated under the Act becomes indispensable. The burden shifts upon the accused only after the prosecution first establishes a lawful search, seizure and conscious possession through cogent, reliable and legally admissible evidence. The Hon'ble Supreme Court in **State of Punjab v. Baldev Singh**,

(1999) 6 SCC 172, has held in paragraph 26 that:-

“26. The safeguard or protection to be searched in the presence of a gazetted officer or a Magistrate has been incorporated in Section 50 to ensure that persons are only searched with a good cause and also with a view to maintain the veracity of evidence derived from such search. We have already noticed that severe punishments have been provided under the Act for mere possession of illicit drugs and narcotic substances. Personal search, more particularly for offences under the NDPS Act, are critical means of obtaining evidence of possession and it is, therefore, necessary that the safeguards provided in Section 50 of the Act are observed scrupulously. The duty to inform the suspect of his right to be searched in the presence of a gazetted officer or a Magistrate is a necessary sequence for enabling the person concerned to exercise that right under Section 50 because after *Maneka Gandhi v. Union of India* it is no longer permissible to contend that the right to personal liberty can be curtailed even temporarily, by a procedure which is not “reasonable, fair and just” and when a statute itself provides for a “just” procedure, it must be honoured. Conducting a search under Section 50, without intimating to the suspect that he has a right to be searched before a gazetted officer or a Magistrate, would be violative of the “reasonable, fair and just procedure” and the safeguard contained in Section 50 would be rendered illusory, otiose and meaningless. Procedure based on systematic and unconscionable violation of law by the

officials responsible for the enforcement of law, cannot be considered to be a “fair”, just or reasonable procedure. We are not persuaded to agree that reading into Section 50, the existence of a duty on the part of the empowered officer, to intimate to the suspect, about the existence of his right to be searched in the presence of a gazetted officer or a Magistrate, if he so requires, would place any premium on ignorance of the law. The argument loses sight of a clear distinction between ignorance of the law and ignorance of the right to a “reasonable, fair and just procedure”.

43. Similarly, in “**Noor Aga v. State of Punjab**”, (2008) 16 SCC 417, the Supreme Court has categorically held that because of the severe punishment prescribed under the Act, the procedural safeguards must receive strict interpretation and the prosecution has to prove foundational facts before the statutory presumption can operate, as held in the following paragraphs:-

“58. Sections 35 and 54 of the Act, no doubt, raise presumptions with regard to the culpable mental state on the part of the accused as also place the burden of proof in this behalf on the accused; but a bare perusal of the said provision would clearly show that presumption would operate in the trial of the accused only in the event the circumstances contained therein are fully satisfied. An initial burden exists upon the prosecution and only when it stands satisfied, would the legal burden shift. Even then, the standard of proof required for the accused to prove his innocence is not as high as that of the

prosecution. Whereas the standard of proof required to prove the guilt of the accused on the prosecution is "beyond all reasonable doubt" but it is "preponderance of probability" on the accused. If the prosecution fails to prove the foundational facts so as to attract the rigours of Section 35 of the Act, the actus reus which is possession of contraband by the accused cannot be said to have been established.

91. The logical corollary of these discussions is that the guidelines such as those present in the Standing Order cannot be blatantly flouted and substantial compliance therewith must be insisted upon for so that sanctity of physical evidence in such cases remains intact. Clearly, there has been no substantial compliance with these guidelines by the investigating authority which leads to drawing of an adverse inference against them to the effect that had such evidence been produced, the same would have gone against the prosecution.

113. Justness and fairness of a trial is also implicit in Article 21 of the Constitution. A fair trial is again a human right. Every action of the authorities under the Act must be construed having regard to the provisions of the Act as also the right of an accused to have a fair trial. The courts, in order to do justice between the parties, must examine the materials brought on record in each case on its own merits. Marshalling and appreciation of evidence must be done strictly in accordance with the well-known legal principles governing the same; wherefore the provisions of the Code of Criminal Procedure and the

Evidence Act must be followed. Appreciation of evidence must be done on the basis of materials on record and not on the basis of some reports which have nothing to do with the occurrence in question.”

44. The Hon'ble Supreme Court in **Ashok v. State of Madhya Pradesh**, (2011) 5 SCC 123, observed that failure to establish safe custody and an unbroken chain of possession of contraband materially affects the prosecution case.
45. The evidence further discloses substantial non-compliance of the mandatory provisions contained in Sections 42, 50 and 52-A of the NDPS Act. Though the prosecution asserts that secret information was reduced into writing, there is no satisfactory evidence regarding its proper communication in the manner contemplated under Section 42. There is no endorsement regarding urgency or impossibility of obtaining warrant. The place of interception was admittedly not mentioned in the secret information. In the case of “**Karnail Singh v. State of Haryana**” 2009 (8) SCC 539, the Hon'ble Supreme Court has held that:-

“35. In conclusion, what is to be noticed is that Abdul Rashid (2000) 2 SCC 513 did not require literal compliance with the requirements of Sections 42(1) and 42(2) nor did Sajan Abraham (2001) 6 SCC 692 hold that the requirements of Sections 42(1) and 42(2) need not be fulfilled at all. The effect of the two decisions was as follows:

(a) The officer on receiving the information [of the nature referred to in sub-section (1) of

Section 42] from any person had to record it in writing in the register concerned and forthwith send a copy to his immediate official superior, before proceeding to take action in terms of clauses (a) to (d) of Section 42(1).

(b) But if the information was received when the officer was not in the police station, but while he was on the move either on patrol duty or otherwise, either by mobile phone, or other means, and the information calls for immediate action and any delay would have resulted in the goods or evidence being removed or destroyed, it would not be feasible or practical to take down in writing the information given to him, in such a situation, he could take action as per clauses (a) to (d) of Section 42(1) and thereafter, as soon as it is practical, record the information in writing and forthwith inform the same to the official superior.

(c) In other words, the compliance with the requirements of Sections 42(1) and 42(2) in regard to writing down the information received and sending a copy thereof to the superior officer, should normally precede the entry, search and seizure by the officer. But in special circumstances involving emergent situations, the recording of the information in writing and sending a copy thereof to the official superior may get postponed by a reasonable period, that is, after the search, entry and seizure. The question is one of urgency and expediency.

(d) While total non-compliance with requirements of sub-sections (1) and (2) of Section 42 is impermissible, delayed compliance

with satisfactory explanation about the delay will be acceptable compliance with Section 42. To illustrate, if any delay may result in the accused escaping or the goods or evidence being destroyed or removed, not recording in writing the information received, before initiating action, or non-sending of a copy of such information to the official superior forthwith, may not be treated as violation of Section 42. But if the information was received when the police officer was in the police station with sufficient time to take action, and if the police officer fails to record in writing the information received, or fails to send a copy thereof, to the official superior, then it will be a suspicious circumstance being a clear violation of Section 42 of the Act. Similarly, where the police officer does not record the information at all, and does not inform the official superior at all, then also it will be a clear violation of Section 42 of the Act. Whether there is adequate or substantial compliance with Section 42 or not is a question of fact to be decided in each case. The above position got strengthened with the amendment to Section 42 by Act 9 of 2001.”

46. Even assuming Section 50 may not strictly apply to search of a vehicle, the procedural safeguards embodied in Sections 42 and 52-A continue to remain mandatory. In “**Union of India v. Mohanlal**”, (2016) 3 SCC 379, the Hon'ble Supreme Court emphatically held that preparation of inventory, certification by Magistrate and sampling under Section 52-A constitute mandatory safeguards intended to preserve the sanctity of seized narcotic substances and held that:-

“15. It is manifest from Section 52-A(2)(c)

(supra) that upon seizure of the contraband the same has to be forwarded either to the officer-in-charge of the nearest police station or to the officer empowered under Section 53 who shall prepare an inventory as stipulated in the said provision and make an application to the Magistrate for purposes of (a) certifying the correctness of the inventory, (b) certifying photographs of such drugs or substances taken before the Magistrate as true, and (c) to draw representative samples in the presence of the Magistrate and certifying the correctness of the list of samples so drawn.

16. Sub-section (3) of Section 52-A requires that the Magistrate shall as soon as may be allow the application. This implies that no sooner the seizure is effected and the contraband forwarded to the officer-in-charge of the police station or the officer empowered, the officer concerned is in law duty-bound to approach the Magistrate for the purposes mentioned above including grant of permission to draw representative samples in his presence, which samples will then be enlisted and the correctness of the list of samples so drawn certified by the Magistrate. In other words, the process of drawing of samples has to be in the presence and under the supervision of the Magistrate and the entire exercise has to be certified by him to be correct.

17. The question of drawing of samples at the time of seizure which, more often than not, takes place in the absence of the Magistrate does not in the above scheme of things arise. This is so especially when according to Section 52-A(4) of

the Act, samples drawn and certified by the Magistrate in compliance with sub-sections (2) and (3) of Section 52-A above constitute primary evidence for the purpose of the trial. Suffice it to say that there is no provision in the Act that mandates taking of samples at the time of seizure. That is perhaps why none of the States claim to be taking samples at the time of seizure.

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19. Mr Sinha, learned Amicus Curiae, argues that if an amendment of the Act stipulating that the samples be taken at the time of seizure is not possible, the least that ought to be done is obligatory for the officer conducting the seizure to apply to the Magistrate for samples and certification, etc. without any loss of time. The officer conducting the seizure is also obliged to report the act of seizure and the making of the application to the superior officer in writing so that there is a certain amount of accountability in the entire exercise, which as at present gets neglected for a variety of reasons. There is in our opinion no manner of doubt that the seizure of the contraband must be followed by an application for drawing of samples and certification as contemplated under the Act. There is equally no doubt that the process of making any such application and resultant sampling and certification cannot be left to the whims of the officers concerned. The scheme of the Act in general and Section 52-A in particular, does not brook any delay in the matter of making of an application or the drawing of samples and certification. While we see no room for

prescribing or reading a time-frame into the provision, we are of the view that an application for sampling and certification ought to be made without undue delay and the Magistrate on receipt of any such application will be expected to attend to the application and do the needful, within a reasonable period and without any undue delay or procrastination as is mandated by sub-section (3) of Section 52-A (supra). We hope and trust that the High Courts will keep a close watch on the performance of the Magistrates in this regard and through the Magistrates on the agencies that are dealing with the menace of drugs which has taken alarming dimensions in this country partly because of the ineffective and lackadaisical enforcement of the laws and procedures and cavalier manner in which the agencies and at times Magistracy in this country addresses a problem of such serious dimensions.

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31. To sum up we direct as under:

31.1. No sooner the seizure of any narcotic drugs and psychotropic and controlled substances and conveyances is effected, the same shall be forwarded to the officer in charge of the nearest police station or to the officer empowered under Section 53 of the Act. The officer concerned shall then approach the Magistrate with an application under Section 52-A(2) of the shall be allowed by the Magistrate as soon as may be required under sub-section (52-A, as discussed by us in the body of this judgment under the heading "seizure and

sampling". The sampling shall be done under the supervision of the Magistrate as discussed in Paras 15 to 19 of this order.

31.2. The Central Government and its agencies and so also the State Governments shall within six months from today take appropriate steps to set up storage facilities for the exclusive storage of seized narcotic drugs and psychotropic and controlled substances and conveyances duly equipped with vaults and double-locking system to prevent theft, pilferage or replacement of the seized drugs. The Central Government and the State Governments shall also designate an officer each for their respective storage facility and provide for other steps, measures as stipulated in Standing Order No. 1 of 1989 to ensure proper security against theft, pilferage or replacement of the seized drugs.

31.3. The Central Government and the State Governments shall be free to set up a storage facility for each district in the States and depending upon the extent of seizure and store required, one storage facility for more than one districts.

31.4. Disposal of the seized drugs currently lying in the Police Malkhanas and other places used for storage shall be carried out by the DDCs concerned in terms of the directions issued by us in the body of this judgment under the heading "disposal of drugs".

47. Similarly, in **Yusuf @ Asif v. State**, (2023) 13 SCC 1, the Supreme Court reiterated that compliance with Section 52-A is not an empty

formality and substantial deviation from the prescribed procedure seriously affects the prosecution case.

48. In the case of “**Surepally Srinivas v. State of Andhra Pradesh (now State of Telangana)**” 2025 SCC Online SC 683, the Hon'ble Supreme Court has held that:-

“13. In *Bharat Aambale* (supra), this Court held that the purport of Section 52-A, NDPS Act read with Standing Order No. 1/89 extends beyond mere disposal and destruction of seized contraband and serves a broader purpose of strengthening the evidentiary framework under the NDPS Act. This decision stresses upon the fact that what is to be seen is whether there has been substantial compliance with the mandate of Section 52-A and if not, the prosecution must satisfy the court that such non-compliance does not affect its case against the accused. This is also what has been held in *Kashif* (supra).”

49. The cumulative effect of the aforesaid deficiencies cannot be ignored by treating each irregularity in isolation. The law is well settled that where several suspicious circumstances cumulatively create reasonable doubt regarding the fairness of search and seizure, benefit thereof must necessarily enure to the accused. In **Noor Aga** (supra), the Hon'ble Supreme Court held that the higher degree of proof expected from the prosecution. Likewise, in **Tofan Singh** (supra), it has been authoritatively held that statements recorded under Section 67 of the NDPS Act are inadmissible as confessional statements against an accused and cannot by themselves sustain conviction. Once such

statements are excluded from consideration, the remaining evidence suffers from serious procedural defects and fails to establish conscious possession or conspiracy beyond reasonable doubt.

50. Relying the judgment of **Tofan Singh** (supra), the Hon'ble Supreme Court in the case of "**Balwinder Singh (Binda) v. Narcotics Control Bureau**" 2024 (13) SCC 734 has held that:

“(a) Significance of Toffan Singh (supra) decision

16. We have perused the impugned judgment and the records and given our thoughtful consideration to the arguments advanced by the learned counsel for the parties.

17. When the present matter was considered by the High Court in the year 2013, it had accepted the arguments advanced by the learned counsel for the respondent NCB that officers of the Department of Revenue Intelligence who are vested with the powers of an officer in charge of the police station under Section 53 of the Act, are not "police officers" within the meaning of Section 25 of the Evidence Act and therefore held that a confessional statement of a person accused of an offence under the NDPS Act recorded by such an officer in the course of investigation, is admissible against him. The said argument had found favour with the High Court in the light of the decisions of this Court in *Kanhaiyalal* and *Raj Kumar Karwal* wherein it was held that a confession made by the accused before an officer of the NCB, is admissible in evidence because the said officer cannot be treated as a "police officer" within the meaning of

Section 25 of the Evidence Act. It was further held that a conviction can be maintained on the sole confession made by an accused under Section 67 of the NDPS Act. A similar view taken by this Court in Ram Singh, was cited by the High Court to fortify its decision that the confessions made by the appellants herein before the officers of the NCB were admissible in evidence, being of voluntary nature.

18. However, much water has flown under the bridge since the year 2013. In the year 2020, a three-Judge Bench of this Court answered a reference order of a Division Bench in Tofan Singh v. State of T.N. and re-examined the ratio of Kanhaiyalal 20 and Raj Kumar Karwal to decide as to whether the officer investigating a matter under the NDPS Act would qualify as a "police officer" or not. The other related issue which was examined by the larger Bench in Tofan Singh was whether the statement recorded by the investigating officer under Section 67 of the NDPS Act can be treated as a confessional statement or not even if the officer is not treated as a "police officer".

19. After a detailed examination of the legal position in the light of the provisions of the NDPS Act, vis-à-vis revenue statutes like the Customs Act, 1962 and the Central Excise Act, 1944 as also the CrPC and Section 25 of the Evidence Act, the majority decision authored by Nariman, J., arrived at the following conclusion: (Tofan Singh case, SCC p. 141, paras 155-58)

"155. Thus, to arrive at the conclusion that a confessional statement made before an officer

designated under Section 42 or Section 53 can be the basis to convict a person under the NDPS Act, without any non obstante clause doing away with Section 25 of the Evidence Act, and without any safeguards, would be a direct infringement of the constitutional guarantees contained in Articles 14, 20(3) and 21 of the Constitution of India.

156. The judgment in Kanhaiyalal then goes on to follow Raj Kumar Karwal in paras 44 and 45. For the reasons stated by us hereinabove, both these judgments do not state the law correctly, and are thus overruled by us. Other judgments that expressly refer to and rely upon these judgments, or upon the principles laid down by these judgments, also stand overruled for the reasons given by us.

157. On the other hand, for the reasons given by us in this judgment. the judgments of Noor Aga and Nirmal Singh Pehlwan v. Inspector, Customs are correct in law.

158. We answer the reference by stating:

158.1. That the officers who are invested with powers under Section 53 of the NDPS Act are "police officers" within the meaning of Section 25 of the Evidence Act, as a result of which any confessional statement made to them would be barred under the provisions of Section 25 of the Evidence Act, and cannot be taken into account in order to convict an accused under the NDPS Act.

158.2. That a statement recorded under Section 67 of the NDPS Act cannot be used as a

confessional statement in the trial of an offence under the NDPS Act." (emphasis supplied)

20. In view of the aforesaid decision that declares that any confessional statement made by an accused to an officer invested with the powers under Section 53 of the NDPS Act, is barred for the reason that such officers are "police officers" within the meaning of Section 25 of the Evidence Act, a statement made by an accused and recorded under Section 67 of the NDPS Act cannot be used as a confessional statement in the trial of an offence under the NDPS Act.

(b) Effect of Tofan Singh (supra) verdict on Balwinder Singh's case

21. Now that it has been declared in Tofan Singh case that the judgments in *Kanhaiyalal v. Union of India*, (2008) 4 SCC 668 and *Raj Kumar Karwal* did not state the correct legal position and they stand overruled, the entire case set up by the prosecution against Balwinder Singh, collapses like a house of cards. It is not in dispute that Balwinder Singh was not apprehended by the NCB officials from the spot where the naka was laid and that Satnam Singh alone was apprehended in the Indica car. The version of the prosecution is that after Satnam Singh was arrested, his statement was recorded under Section 67 of the NDPS Act wherein he ascribed a specific role to the co-accused- Balwinder Singh and the Sarpanch. The NCB officers claimed that they were on the lookout for both of them since they had managed to run away from the spot. While Sarpanch could not

be apprehended, the NCB officers learnt from reports in the newspaper that Balwinder had been arrested by Amritsar Police in an NDPS case and was lodged in Central Jail, Amritsar. Permission was taken from the court concerned to take Balwinder Singh into custody in the instant case and he was arrested. A notice was served on him under Section 67 of the NDPS Act and his statement was recorded. Treating his statement as a confessional statement, Balwinder Singh was arrested.

22. Once the confessional statement of the co-accused, Satnam Singh recorded by the NCB officers under Section 67 of the NDPS Act, who had attributed a role to Balwinder Singh and the subsequently recorded statement of Balwinder Singh himself under Section 67 of the NDPS Act are rejected in the light of the law laid down in Tofan Singh, there is no other independent incriminating evidence that has been brought to the fore by the prosecution for convicting Balwinder Singh under the NDPS Act. On ignoring the said confessional statements (Exts. PW-1/B and P-17) recorded before the officers of the NCB in the course of the investigation, the vital link between Balwinder Singh and the offence for which he has been charged snaps conclusively and his conviction order cannot be sustained.

23. As a result of the above discussion, we are of the opinion that Balwinder Singh deserves to be acquitted of the charge of being in conscious possession of commercial quantity of heroin under the NDPS Act. Ordered accordingly.”

51. It is a settled principle of criminal jurisprudence that suspicion, however grave, can never substitute proof. Where the prosecution evidence itself gives rise to substantial doubts regarding the legality of search, genuineness of seizure, integrity of sampling, preservation of seized material and compliance with mandatory statutory safeguards, the accused are entitled to the benefit of doubt. Reference may also be made to “**Sharad Birdhichand Sarda v. State of Maharashtra**”, (1984) 4 SCC 116, wherein the Hon'ble Supreme Court reiterated that where two views are possible, the one favourable to the accused must be adopted.
52. The prosecution has not produced any satisfactory evidence demonstrating an unbroken chain of custody from seizure till forensic examination. In prosecutions under the NDPS Act, the prosecution must establish that the sample analysed by the FSL was the very same sample drawn from the seized contraband. The inconsistencies regarding seal impression, absence of specimen seal, discrepancy in number of capsules, absence of Malkhana records and non-compliance of Section 52-A collectively create a serious dent in the prosecution case. The contradictions relating to compliance of Section 42 of the NDPS Act, doubtful communication of the right under Section 50, admitted non-compliance of Section 52-A of the NDPS Act, absence of reliable evidence regarding safe custody under Section 55 of the NDPS Act, unexplained discrepancies in the sampling process, defective specimen seal proceedings and the broken chain of custody collectively render the prosecution case highly doubtful.

53. Accordingly, this Court is of the considered opinion that the prosecution has failed to establish beyond reasonable doubt that the mandatory procedural safeguards prescribed under the NDPS Act were complied with in their true letter and spirit. Consequently, the alleged recovery loses its evidentiary value, and the appellants are entitled to the benefit of doubt.
54. Upon an overall appreciation of the oral and documentary evidence available on record, this Court is of the considered opinion that the prosecution has failed to establish the foundational facts necessary for recording the conviction of the appellants under the provisions of the NDPS Act. The evidence on record suffers from serious procedural infirmities and material inconsistencies touching the very root of the prosecution case. The admitted contradictions regarding compliance of Section 42 of the NDPS Act, the defective communication of the statutory right under Section 50, the admitted non-compliance of the mandatory procedure prescribed under Section 52-A, the absence of reliable evidence regarding safe custody under Section 55, the unexplained discrepancies in the sampling process, the defective specimen seal proceedings, the absence of Malkhana records, and the broken chain of custody cumulatively create a serious doubt about the genuineness of the alleged recovery and the identity of the samples examined by the Forensic Science Laboratory. These are not mere procedural irregularities but go to the very substratum of the prosecution case.

55. So far as appellants Viral Patel and Akash Vishwakarma are concerned, admittedly no contraband was recovered from either of them and their implication rests substantially upon the disclosure statements of co-accused persons. In view of the law laid down by the Constitution Bench of the Hon'ble Supreme Court in **Tofan Singh** (supra), such statements cannot be treated as substantive evidence to sustain conviction. Apart from those inadmissible disclosures, no independent incriminating material such as call detail records, banking transactions, documentary evidence of supply, or any other legally admissible evidence has been brought on record to establish their alleged involvement in the conspiracy. Even with respect to the remaining appellants, the prosecution has failed to prove conscious possession through a search and seizure conducted strictly in accordance with the mandatory safeguards of the NDPS Act. Since the prosecution has failed to prove the foundational facts, the statutory presumptions contained under Sections 35 and 54 of the NDPS Act do not arise against the appellants.
56. It is a settled principle of criminal jurisprudence that suspicion, however strong, cannot take the place of legal proof. In prosecutions under the NDPS Act, where stringent punishments are prescribed and statutory presumptions operate against an accused, the prosecution is under a corresponding obligation to demonstrate scrupulous compliance with the mandatory procedural safeguards enacted by the legislature. Once serious doubts arise regarding the legality of the search, seizure, sampling, sealing, safe custody and forensic examination, the benefit thereof must necessarily enure to the accused. In the present case, the cumulative effect of the aforesaid infirmities renders the prosecution

story wholly unreliable and creates a reasonable doubt regarding the guilt of the appellants.

57. Consequently, the impugned judgment of conviction and order of sentence dated 01.09.2025 passed by the learned Special Judge (NDPS Act), Raipur, in Special Case No. 32 of 2023 cannot be sustained in law and deserve to be set aside.
58. Accordingly, all the criminal appeals are **allowed**. The judgment of conviction and order of sentence dated 01.09.2025 passed against the appellants in Special Case No. 32 of 2023 are hereby **set aside**. The appellants are acquitted of all the charges levelled against them by extending the benefit of doubt.
59. The appellants who are in custody shall be released forthwith, if not required in connection with any other case.
60. Keeping in view the provisions of Section 481 of the Bharatiya Nagarik Suraksha Sanhita, 2023, the appellants- **Viral Patel** (in CRA No. 2073 of 2025), **Ravindra Goyal** (in CRA No. 2099 of 2025), **Sahil Hasan** (in CRA No. 2429 of 2025), **Niyajuddin @ Vikky** (in CRA No. 2583 of 2025), **Mukesh Kumar Sahu** (in CRA No. 2101 of 2025), **Akash Vishwakarma** (in CRA No. 598 of 2026) and **J. Bhaskar Rao** (in CRA No. 771 of 2026) are directed to furnish a personal bond for a sum of Rs. 50,000/- each with one surety in the like amount before the Court concerned, which shall be effective for a period of six months along with an undertaking that in the event of filing of Special Leave Petition against the instant judgment or for grant of leave, the aforesaid

appellant, on receipt of notice thereof, shall appear before the Hon'ble Supreme Court.

61. Before parting with the matter, this Court considers it necessary to record its grave concern and dissatisfaction over the manner in which the investigation has been conducted by the state police. The present case pertains to seizure of a huge quantity of intoxicating tablets, constituting a grave offence under the NDPS Act, where strict compliance with the statutory safeguards is not merely desirable but mandatory. However, the evidence on record reveals glaring lapses at almost every stage of the investigation, including serious deficiencies in search, seizure, sampling, sealing, preservation of seized articles, maintenance of the chain of custody and compliance with the mandatory provisions of the NDPS Act. These are not isolated procedural irregularities but substantial violations having a direct bearing on the fairness and credibility of the prosecution. What is even more disturbing is that the present matter is the second case taken up by this Court on the same day wherein similar glaring lapses in the investigation under the NDPS Act have been noticed by the officers of the Department of Revenue Intelligence in the CRA No. 1883 of 2024 (**Dorilal v. Directorate Of Revenue Intelligence Raipur**) and other batch of criminal appeals. Such failures cannot be dismissed as mere coincidence or inadvertent omissions. They disclose a disturbing pattern of negligence, lack of professional competence and complete indifference towards the mandatory safeguards under the NDPS Act. Such an approach inevitably weakens otherwise serious prosecutions and creates a legitimate apprehension that investigations are being

conducted in a manner which ultimately facilitates the accused in securing the benefit of procedural lapses, thereby frustrating the very object of the NDPS Act.

62. This Court is of the considered opinion that unless immediate corrective measures are undertaken at the highest level, such recurring lapses will continue to erode public confidence in the criminal justice delivery system and seriously impair the effectiveness of enforcement against narcotic offences. The Director General of Police, State of Chhattisgarh, being the head of the State Police Force, is expected to ensure that investigations under the NDPS Act are conducted with accountability and strict compliance with the statutory mandate and the law declared by the Hon'ble Supreme Court.
63. Accordingly, the Registry is directed to forthwith forward a copy of this judgment to the Director General of Police, Chhattisgarh, for his personal attention. The Director General shall examine the lapses noticed by this Court in the present case, identify the officers responsible for such lapses, and take appropriate action against the erring officials, if warranted in accordance with law. The Director General shall further issue comprehensive instructions and Standard Operating Procedures to all investigating officers dealing with offences under the NDPS Act, ensure periodic training and effective supervisory mechanisms, and impress upon all concerned that any future deviation from the mandatory statutory safeguards will be viewed seriously. The object of the NDPS Act can be achieved only when investigations are conducted with fairness, integrity and strict fidelity to law, and not in a

manner that enables offenders to escape on account of avoidable and inexcusable lapses committed by the investigating agency.

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

Sd/-
(Ravindra Kumar Agrawal)
Judge

Sd/-
(Ramesh Sinha)
Chief Justice

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HEAD NOTE

The mandatory provisions relating to search and seizure under the NDPS Act must be strictly followed. Since the Act prescribes severe punishments and gives wide powers to the investigating officers, any non-compliance with these mandatory safeguards affects the fairness of the investigation, prejudices the rights of the accused, and weakens the prosecution case.