

GAHC030002822026



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.A. No. 7 of 2026

Shri. Abdul Mukit (35 years)
s/o Abdul Rahim
R/o Badarkuna, Karimganj, Assam

.... Appellant

-VERSUS-

State of Mizoram & Anr

....Respondents

Advocate for the appellant : Mr. S. Vanlalhriata, Adv.

Advocate for the respondents : Mrs. Mary L. Khiangte, Addl. PP

:::BEFORE:::

HON'BLE MR. JUSTICE SANJEEV KUMAR SHARMA

Date on which judgment is reserved : 24.08.2026.
Date of pronouncement of judgment : 30.09.2026.
Whether the pronouncement is of the
Operative part of the judgment : NA
Whether the full judgment has been
Pronounced : Yes

Judgment & Order(CAV)

Heard Mr. S. Vanlalhriata, learned counsel for the appellant. Also heard Mrs. Mary L. Khiangte, learned Additional Public Prosecutor for the State.

2. This appeal under Section 415(2) of the BNSS is directed against the impugned Judgment dated 17.09.2025 and Sentence Order dated 23.09.2025 passed by the Special Court, ND&PS Act, Champhai in Criminal Trial No. 57/2021 arising out of Champhai P.S. Case No. 8/2021 dated 22.02.2021 convicting the appellant under Section.

3. Brief story of the case of the prosecution is that a written FIR was submitted by SI C. Lalsangliana on 22.02.2021 @ 3:45pm stating that staff of Champhai Police Station conducted random checking at HringlangTlang Junction, Zokhawthar road and halted one vehicle Alto 800 Car B/R No. AS-01B-1467 belonging to Abul Hussain (35) S/o Loimia of Bandarkuna, Karimganj Assam, which was driven by Abdul Mukit (30) S/o Abdur Rahim of Bandarkuna, Karimganj Assam on suspicious ground. On thorough checking of the vehicle, a

black polythene was found and inside it, there were four(4) brown boxes containing five(5) bundles wrapped in cello-tape containing ten(10) sachets and inside the sachets, small tablets suspected to be methamphetamine (40,000 tablets in number) were present which was seized by preparing seizure memo in the presence of witnesses from the driver Abdul Mukit (30) S/o Abdur Rahim of Bandarkuna, Karimganj, Assam i.e., the present appellant. The seizure witnesses' statements were also recorded. The seized contraband items weighted 4.372 kgs and was worth Rs. 12,000,000/- (approx) in local market. The seized contraband items were kept in ND&PS Malkhana vide MR No. 01/2021. Hence, Champhai PS Case No. 08/2021 dated 22.02.2021 u/s 22/25/29 ND&PS Act was registered and investigated into.

4. After completion off investigation, the IO submitted the charge sheet. The learned Trial Court after hearing prosecution and defence and on finding a prima facie case framed charges against the appellant and another accused, Abul Husain under section 22(c)/25 of the ND&PS act to which they pleaded not guilty and claimed to be right.

5. The prosecution examined 5 nos of witnesses at the end of which the accused persons were examined under section 313 CrPC where after the accused persons adduced defence evidence as DW Nos. 1 & 2.

6. Upon consideration of the material on record and upon herein the prosecution and defence, one of the accused, Abul Hussain was acquitted whereas the present appellant Abdul Mukit was convicted and sentenced as aforesaid.

7. At this stage, the evidence of the case may be discussed.

8. PW-1, SI, C. Lalsangliana is the complainant in the instant case. He deposed that he knew the accused persons. On the evening of 22.02.2021, he and his party conducted random checking at Hringlangtlang Peng. While on duty at around 3:45 pm, one Alto Car Bearing Regn No. AS01B-1467, driven by accused No. 2, Abdul Mukit was halted on suspicious ground. On seeing black polythene inside the vehicle, he found that the vehicle might conceal some contraband articles. He called upon two civilian witnesses from Zotlang, Champhai and Mualkawi through telephone. After the civilian witnesses had reached the place of occurrence, he prepared grounds of belief on the spot and he conducted checking over the said vehicle. He recovered a black polythene which was kept in between the front seat and the back seat inside the vehicle. When he opened, there was four numbers of brown boxes which contained five bundles which were wrapped in a cello-tape containing 10 sachets and inside the sachets, there were 40,000 tablets of Methamphetamine. In presence of the

civilian witnesses, weighing and sealing were done on the spot and the total weight was 4.372 kgs. He apprehended the accused Abdul Mukit and seized the contraband items after preparing Seizure Memo in presence of civilian witnesses also seized the vehicle Alto Car Bearing Regn No. AS01B-1467 on the spot. After completing formalities, he produced the seized items and the apprehended person Abdul Mukit before Officer-in-Charge, Champhai Police Station and also submitted the FIR. He interrogated the apprehended Abdul Mukit from Champhai Police Station who stated that the contraband substances belong to Abul Hussain, the owner of the said vehicle. Hence, on the strength of the statement of accused Abdul Mukit, Abul Hussain was brought from Melbuk and produced at Champhai Police Station and the formal arrest was done by SI P. Vanlalhrualtuanga. He exhibited the information in writing, authorisation from Officer in charge, Champhai Police Station, seizure memo, report of seizure and arrest, grounds of beliefs, and his various signatures on the said document.

On cross examination, he deposed that the colors of the seized articles are pink and there were two tablets that were green in color. Abul Hussain was apprehended solely on the strength of the statement made by co-accused Abdul Mukit. He did not check the documents of the seized vehicle so as ascertain the real owner of the vehicle. The seized articles were not hidden in the vehicle, it was kept in between the front seat and the back seat. There is no indication

that his superior officer had received the report of Seizure and Arrest. There is no indication to show that the copy of Grounds of Belief recorded by him been was sent to his superior officer. His team detained the seized vehicle and they informed him through telephone and he proceeded to the place of occurrence along with the civilian witnesses. He did not remember the exact time when his team informed him about the detained seized vehicle from where the seized articles were recovered but the sun had not set. He prepared his Information in Writing u/s 42(1) of ND&PS Act at 6:20pm which was after recovery of the seized articles and there was no indication that his superior officer had received the above-mentioned Information in Writing.

9. PW-2, Hmarthangvunga identified the accused. He is a seizure witness in the instant case. He deposed that on 22.02.2021, at around 3:00 PM, he received request from the Seizing Officer that they were about to conduct checking at Hringlangtlang junction, Champhai-Zokhawthar road, Mualkawi area and asked him to witness search and to witness seizure in case recovery is made. He proceeded to the duty place and in his presence, the seizing officer Pu Sangliana said "let us now conduct search" and then the seizing team conducted search on the conveyance of the two accused persons i.e, one Alto car and recovered 40,000 tablets of methamphetamine weighing 4.375 grams. To be more specific, the seized articles were kept inside one polythene and

packed in 4 brown boxes and the seized articles were kept between the front and rear seat of the vehicle and it was covered up with one areca nut bag on the above. In fact, when the seizing officer conducted search on the polythene and discovered that it contains contraband items, he directed the accused to take out the seized articles by themselves. Throughout the whole operation, body search was not conducted. He also witnessed counting, weighment, packaging and sealing. All the tablets were thoroughly counted one by one and as it took so long, he still can recall the moment. As he witnessed the seizure with his own eyes, he put his signature on the Seizure Memo which he exhibited.

On cross examination, he deposed that the vehicle was situated just next to the tea stall on the-road side of higher ground. When they reached the p/o the police were already there. The seized articles were kept on the foot rest of the left back seat and it was kept inside a black polythene. The color of the seized articles were that of the color of lentils i.e, pinkish red (dailuah) and that was the only color that he knows of. The seized articles were counted one by one.

10. PW No. 3, C. Lalchhuanliana identified the accused. He is another seizure witness in the instant case and he deposed similarly as PW No. 2. He exhibited

his signature on the seizure memo.

On cross examination, he deposed that Abdul Mukit is the driver of the Motor Vehicle. The Police Officers counted the seized articles one by one. As far as his knowledge is concerned, the Police Officials counted all the 40,000 tablets of the seized articles at the Place of Occurrence. As far as he can remember, the seized articles are different in color. The Police Officials on duty wore uniform. When they reached the Place of Occurrence, the seizing team, without conducting search upon the vehicle directly opened the bonnet cover and the seized article can be seen.

11. PW No. 4, Lalmuanawma, Asst. Director, FSL Aizawl deposed that he and Dr. Lawmzuali, Jr. Scientific Officer conducted scientific examination on each of the exhibits as per the existing standard protocol and confirm that all the exhibits CHE(CPI-69(1) to CHE (CPI)-69(20) were found to be Methamphetamine. He exhibited the FSL report and his signature on it. Cross examination was declined by Ld. Counsel for the accused persons.

12. PW No. 5, who is the IO of the case deposed the different steps that he had taken during the course of investigation including the fact that the seized articles were produced before the Learned CJM, Champhai on 23.02.2021 where in the inventory was found to be correct, and photographs were taken and

samples were drawn, packed and sealed for laboratory examination. Subsequently, upon receipt of the FSL report, confirming the presence of methamphetamine in the samples examined by it, the IO submitted charge sheet against the accused persons.

During cross examination, he deposed that he did not remember the driver of the motor vehicles from where the seized articles were recovered, nor does he remember the number of sachets present inside one box. He took the samples for the examination from each of the satchets. He did not remember how many numbers of tablets were inside the sachets, but it was around 200 tablets. There were green color tablets among the seized the articles, but he did not know how many and also did not remember whether the green color tablets where sent to FSL or not. He also did not know whether the seized articles were already disposed of and did not see the same before the court.

13. During his examination under Section 313 CrPC, the appellant admitted the fact of interception of his vehicles by the police, and the seizure of the seized articles there from, but explained that one Non-Mizo person had sent the seized articles describing them as motor spare parts to be delivered in Aizawl.

Further, during his deposition as DW No. 1, the appellant stated that on the year 2021, he came to Champhai Melbuk to work on construction of a building

owned by Pu C. Zarzoliana of Melbuk and that he was hired by Adul Hussain to act as his driver and his helper and that they have been to (SIC) Melbuk ever since. The seized vehicle in the instant case was in need of repairing and that he was told by Abul Hussain to travel to Aizawl to fix his car. As he was about to leave for Aizawl, one Non-Mizo person approached him and requested him to deliver a package for him at Aizawl and told him that it was motor vehicle parts. Since he used to see him at Melbuk although they don't exactly know each other and since he was heading to Aizawl as well, he accepted the package as he stated it was motor parts and gave him free of charge unknowingly the articles present in the package and he placed it next to his seat. As he approached the check gate at Khankawn, the arresting authorities checked the vehicle and recovered the package/articles. He had no knowledge of the seized articles present in such package and had no involvement of any illegal intention to transport the seized articles.

On cross examination, he deposed that he was the driver the Seized Vehicle and the transporter of the Seized Articles. The weighment was done by the Police Personnel in his presence who counted the entire tablet at the place of occurrence. He did not have any passenger, and no other person was present in the place of occurrence. He did not lodge FIR or any Complaint before the Magistrate on the false allegation made against him.

14. The other co-accused, Abul Hussain during his examination under Section 313 as also in his evidence as DW No. 2 denied any knowledge of the seized articles and explained that he had sent the appellant, who was his driver to travel to Aizawl and purchase necessary parts to fix the damage parts of his car, i.e., the seized vehicle. Subsequently, he came to know about the arrest of the appellant.

15. Mr. S. Vanlalhriata, learned counsel for the appellant, referring to the cross examination of PW No. 1, pointed out that according to the version of PW No. 1, after his team had detained the seized vehicle, they informed him through telephone and he proceeded to the place of occurrence along with the civilian witnesses, and that he prepared his information in writing under Section 42 (1) of the ND&PS Act at 6:20 p.m., which was after recovery of the seized vehicles and that there was no indication that his Superior Officer had received the above mentioned information in writing. Therefore, there has been non-compliance with the requirements of Section 42 of the ND&PS Act which vitiates the recovery, as well as the trial.

16. The learned counsel for the appellant next submits that the provision of sub Section 52(A) of the ND&PS Act has also been violated and in this regard, he has pointed to the inventory said to have been prepared before the

Magistrate, where in the case number has been mentioned as CPI-PSC/No. 138/2020, dated 12.12. 2020 under Section 21(b) of the ND&PS Act whereas the case number of the present case, which is also reflected in the inventory and certification of the Magistrate, is CPI-PSC/No. 8/2021, dated 22.02.2021 under Section 21(c)/25/29 of the ND&PS Act. The learned counsel has also referred to Section 57 of the ND&PS Act to show that there has been non-compliance with the same as there is no counter signature of the OC on the information regarding seizure and arrest claimed to have been submitted by the Seizing Officer, SI, C. Lalsangliana to the Officer In-Charge of Champhai police station.

17. The learned counsel for the appellant has also contended that the prosecution has failed to prove the chain of custody of the seized articles as it failed to produce any go down register or receipt in this regard. It is further submitted with regard to the aforesaid aspect that the FSL report indicates that it was received by the FSL on 01.03.2021 whereas the same was sent on 23.02.2021 and there is no explanation for the delay of 7 days or as to in whose custody the samples remained from 23.02.2021 to 01.03.2021. It is further submitted that there is no description regarding the manner in which the sample was drawn in the evidence of the IO or any other witness for that matter and nothing has been mentioned about the proper affixing of the seal on the sample

or as to what kind of sealed was affixed thereto.

18. The learned counsel for the appellant therefore submits that the prosecution failed in its duty to adduce evidence to satisfy the Court that the Samples were properly drawn and sealed before sending the same to the FSL and also that they remained in safe custody from the point of time the samples were sealed till the point of time they were received by the FSL. There is also mismatch in the description of the samples as available in the FSL report, which did not indicate the presence of any boxes, although as per the PW No.1/PW No. 5, the contraband was found in 4 boxes.

Continuing his submissions, the learned counsel for the appellant has also referred to the alleged contradictions in the evidence of the PWs regarding the place of recovery of the contraband. Whereas PW Nos. 1 & 2 had deposed that the contraband was found in between the front and back seat of the vehicle, the PW Nos. 3 & 5 stated that the same were kept inside the bonnet cover between the back and front seat of the vehicle.

19. It is lastly submitted that the prosecution failed to produce any destruction certificate under Section, 52(a) of the ND&PS Act and at the same time, failed to produce the seized articles before the Court during the course of the trial and hence, it must be held that the prosecution has miserably failed to prove its

case.

20. In support of his aforesaid submissions, the learned counsel for the appellant has relied upon the following decisions:

- i) ***Karnail Singh Vs State of Haryana*** reported in ***(2009) 8 SCC 539***
- ii) ***Boota Singh & Ors Vs State of Haryana*** reported in ***(2021) 19 SCC 606***
- iii) ***Union of India Vs Mohanlal & Anr*** reported in ***(2016) 3 SCC 379***
- iv) ***Chanam Ranjit Meitei Vs Union of India*** reported in ***(2010) 3 GauLT 361***
- v) ***Vijay Pandey Vs State of Uttar Pradesh*** reported in ***(2019) 8 18 SCC 215***
- vi) ***Noor Aga Vs State of Punjab & Anr*** reported in ***(2008) 16 SCC 417***

21. Countering the aforesaid submissions of the learned counsel for the appellant, the learned Additional Public Prosecutor submits that there is no actual mismatch between the exhibit 8, Inventory of Seized Drugs and the exhibit P9, list of samples drawn. It is submitted that in the exhibit P8 inventory, the marks and numbers column shows that the exhibits were marked as: Ex. A1 to V, Ex. B1 to V, Exhibit C 1 to V Ex. D1 to V, which are the same markings as described in the Ex. P9 List of Samples drawn and the signature is also that of the same Magistrate i.e., the CJM, Champhai. Furthermore, the date of the

registration of the case in exhibits P8 & P9 are also different and the Sections under which the case has been registered also differ and from the above, it appears that it is a mere clerical error as a result of which a wrong case number has been mentioned and on a combined reading of the aforesaid to exhibits, it is evident that the Ex. P9 List of Samples drawn is in relation to the Ex. P8 Inventory of Seized Drugs.

22. Furthermore, no PWs were ever confronted with any such discrepancy which would have allowed the prosecution witnesses concerned to explain the same and therefore the said alleged discrepancy cannot be raised for the first time in appeal. With regard to violation of Section 42 of the ND&PS Act, the learned Additional Public Prosecutor has submitted that the interception of the vehicle of the appellant was not made on the basis of any prior information received regarding commission of any offence under the ND&PS Act and the recovery made pursuant to the said interception was a chance recovery and therefore, the provisions of Section 42(1) of the ND&PS Act does not apply.

23. The learned Additional Public Prosecutor submits that as regards to violation of Section 57 of the ND&PS Act regarding non- furnishing of the report of seizure and arrest to the Officer-in-Charge, although the said report does not contain the counter signature of the Officer-in-Charge, the exhibit P2, which is

addressed to the Messaging Officer, SI, C. Lalsangliana by the Officer-in-Charge of Champhai police station, which is an authorization for search and seizure under Section 41(2) of the ND&PS Act clearly states that from the information laid before him, it transpires that an offence in respect of the narcotic drugs/ psychotropic substances have been committed and this information, evidently is the information of seizure and arrest as intimated by the Seizing Officer to the Officer-In-Charge, Champhai Police station as communicated by the Seizing Officer vide the exhibit P4 letter i.e., report of seizure and arrest. This is so because it has come in the evidence of the PW No. 1 that he had prepared his information in writing under Section 42(1) of the ND&PS Act @ 6:20 p.m. which was after recovery of the seized articles. Since no other intimation was made to the Officer-in-Charge regarding any prior information under section 42(1) of the ND&PS Act, the information referred to by the Officer-in-Charge, Champhai Police Station in the aforesaid authorization to the Seizing Officer vide exhibit P2 relates to nothing else than the report of search and seizure and information sent by the Seizing Officer to the Officer-in-charge under Section 42(1) (Ext. P-2) after the recovery which fully discloses the details of the seizure and arrest. Hence, there has been substantial compliance with Section 57 of the ND&PS Act. As regards the alleged discrepancies in the evidences of the prosecution witnesses regarding the place of recovery, the recovery itself having been

admitted by the appellant both in its defence statement as well as his defence evidence, the same is of no consequence.

24. It is further submitted with regard to the custody of the seized articles that in the Exb. P-3 Property Search and Seizure Form, at column 8 therein, i.e., Action taken/recommended for keeping of valuable property, the MR No. has been mentioned and the place of deposit is also mentioned as ND&PS, Malkhana and it is also mentioned in the charge sheet i.e., Exb. P-10 that the seized articles are kept in the ND&PS, Malkhana. This according to the learned Public Prosecutor shows that the seized articles were all along in safe custody. It is further submitted that the PW No. 5, IO has clearly deposed that the seized articles were produced before the learned CJM, Champhai on 23.02.2021, in which the inventory was found to be correct and photographs were taken and samples were also drawn packed and sealed for laboratory examination and as per the FSL report also, the samples were found in sealed condition and the seal also matched with the samples provided by the sending authority and therefore there does not arise any reason to doubt the proper custody and safe condition of the seized articles.

25. The learned Additional Public Prosecutor in support of her aforesaid submissions has referred to the following decisions:

- i) ***Narcotics Control Bureau Vs Kashif*** reported in ***(2024) 11 SCC 372*** and
- ii) ***Kashmir Ram @ Pappi Vs State of Punjab*** reported in ***(2026) INSC 854***.

26. I have given my anxious considerations to the rival submissions.

27. With regard to the submission regarding the provision of sub Section 42 of the ND&PS Act, the said provision may be reproduced for better appreciation.

“42. Power of entry, search, seizure and arrest without warrant or authorization-

(1) Any such officer (being an officer superior in rank to a peon, sepoy or constable) of the departments of central excise, narcotics, customs, revenue intelligence or any other department of the Central Government including paramilitary forces or armed forces as is empowered in this behalf by general or special order by the Central Government, or any such officer (being an officer superior in rank to a peon, sepoy or constable) of the revenue, drugs control, excise, police or any other department of a State Government as is empowered in this behalf by general or special order of the State Government, if he has reason to believe from persons knowledge or information given by any person and taken down in writing that any narcotic drug, or psychotropic substance, or controlled substance in respect of which an offence punishable under this Act has been committed or any document or other article which may furnish evidence of the commission of such offence or any illegally acquired property or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act is kept or concealed in any building, conveyance or enclosed place, may between sunrise and sunset,--

(a) enter into and search any such building, conveyance or place;

(b) in case of resistance, break open any door and remove any obstacle to such entry;

(c) seize such drug or substance and all materials used in the manufacture thereof and any other article and any animal or conveyance which he has reason to believe to be liable to confiscation under this Act and any document or other article which he has reason to believe may furnish evidence of the commission of any offence punishable under this Act or furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act; and

(d) detain and search, and, if he thinks proper, arrest any person whom he has reason to believe to have committed any offence punishable under this Act:

Provided that in respect of holder of a licence for manufacture of manufactured drugs or psychotropic substances or controlled substances granted under this Act or any rule or order made thereunder, such power shall be exercised by an officer not below the rank of sub-inspector:

Provided further that if such officer has reason to believe that a search warrant or authorisation cannot be obtained without affording opportunity for the concealment of evidence or facility for the escape of an offender, he may enter and search such building, conveyance or enclosed place at any time between sunset and sunrise after recording the grounds of his belief.

(2) Where an officer takes down any information in writing under sub-section (1) or records grounds for his belief under the proviso thereto, he shall within

seventy-two hours send a copy thereof to his immediate official superior.”

28. A plain reading of the aforesaid provision would clearly indicate that the information referred to in Sub Section (1) above relates to the period prior to the recovery, when a Police Officer/Authorized Officer receives information that an offence under the ND&PS Act has been committed. What Sub Section (1) of Section 42 does is that it authorizes the concerned Officer to take any of the actions enumerated from Clauses (a) to (d) of Sub Section (1) of Section 42, in case he receives any information regarding commission of an offence under the ND&PS act and it is only such information that is required to be taken down in writing. If the interception or recovery is already made without any prior information, there is no scope for application of Section 42(1).

29. The aforesaid aspect has been dealt with by the Hon’ble Apex Court in the case of ***State of Punjab Vs Baldev Singh*** reported in ***(1999) 6 SCC 172***, wherein its decision in ***State of Punjab Vs Balbir Singh (1994) 3 SCC 229*** were considered:

“(2-C) Under Section 42(1) the empowered officer if has a prior information given by any person, that should necessarily be taken down in writing. But if he has reason to believe from personal knowledge that offences under Chapter IV have been committed or materials which may furnish evidence of commission of such offences are concealed in any building etc. he may carry out the arrest or

search without a warrant between sunrise and sunset and this provision does not mandate that he should record his reasons of belief. But under the proviso to Section 42(1) if such officer has to carry out such search between sunset and sunrise, he must record the grounds of his belief.

To this extent these provisions are mandatory and contravention of the same would affect the prosecution case and vitiate the trial.

(4-A) If a police officer, even if he happens to be an "empowered" officer while effecting an arrest or search during normal investigation into offences purely under the provisions of CrPC fails to strictly comply with the provisions of Sections 100 and 165 CrPC including the requirement to record reasons, such failure would only amount to an irregularity."

30. In the present case, the PW No. 1 has deposed in his examination-in-chief that he and his party, while conducting random checking intercepted the vehicle of the appellant and then saw a black polythene bag and he found that the vehicle might conceal some contraband articles. However, during cross examination, he stated that it was his team that detained the seized vehicle and they informed him through telephone and he proceeded to the place of occurrence along with the civilian witnesses. It is the contention of learned counsel for the appellant that it is this information which ought to have been taken down in writing by the PW No. 1. There is no indication in the evidence of PW No. 1 during his cross examination that the said information related to commission of any offence under the ND&PS Act so as to attract the provisions

of sub section 1 of section 42 and therefore, there appears to have been no necessity of taking down any such information in writing. At best, the PW No. 1 could be said to have had a reasonable ground to believe that such an offence has been committed but as held by the Hon'ble Apex Court in the case of **Balbir Singh (Supra)**, it is only when specific information is received that the said information is required to be recorded in writing. It has been specifically held therein that the grounds of belief as distinguished from information received need not be taken down in writing. Therefore, the present recovery must be held to be a chance recovery made in the course of normal checking, and therefore the provisions of Section 42(1) of the ND&PS Act are not applicable. Consequently, the decisions in **Karnail Singh (Supra)**, **Boota Singh (Supra)**, cited on behalf of the appellant and **Kashmir Ram (Supra)** detailing with the requirement of extend of compliances with Section 42(1) of the ND&PS Act may not be relevant.

31. Further, with regard to the contention regarding violation of Section 57 of the ND&PS Act, the same constitution bench in **Baldev Singh (Supra)** has held that the compliance with the same is not mandatory. In any event, it appears that the Exb.P-2 communication of the Officer-in-charge, Champhai police station to the Seizing Officer, was made subsequent to the communication

of the report of search and seizure vide Exb. P-4. Admittedly, the PW No. 1 did not record in writing any information received and it was only at 6:20 p.m., on the date of seizure i.e., 22.02.2021 that he reduced to writing the fact of seizure of the articles and detention of the appellant vide Exb. P-1, which is described as an information report in writing under Section 42(1) of the ND&PS Act, as prior to that, PW No. 1 did not communicate anything to the OC of the Champhai police station. Therefore, it is only on receipt of the aforesaid Exb. P-1 record in writing or the Exb. P-4, report of search and seizure that the OC could have gained knowledge of the fact that an offence under the ND&PS Act has been committed and therefore, the information referred to in the said Exb. P-2 authorization would include the report of arrest and seizure. There is also no requirement of any counter signature of the OC on the aforesaid report of search and seizure sent by the Seizing Officer as it was a document to be retained by the OC. Strict proof of such communication of report cannot be therefore insisted upon. Moreover, the same has been 'seen' by the concerned Court. Therefore, the contention with regard to violation of Section 57 having a vitiating effect on the trial also stands negated. Further, the discrepancy as regards the case number mentioned in the list of samples also appears to have been properly explained by the prosecution as reflected in the submissions of learned Additional Public Prosecutor referred to herein above and similarly, the

alleged contradiction as regards the place of recovery as emanating from the evidence of the PWs appears to be without substance, in view of the fact that the appellant has admitted such recovery both in his defence statement and his defence evidence. The non-production of the seized articles before the Court, by itself, is also of no significance inasmuch as Section 52(A) of the ND&PS Act mandates that the inventory, photograph and list of samples are all to be treated as primary evidence and the same having been exhibited before the Court without challenge during the course of the trial, there was no requirement of producing the seized articles in bulk before the Court whether the procedure contemplated by Section 52(A) and subsequent steps thereafter were duly followed or not is another matter, which shall be dealt with subsequently.

32. In this regard, it has been held by the Hon'ble Apex court in the case of

Karif (Supra):

“34. Section 52-A was inserted only for the purpose of early disposal of the seized contraband drugs and substances, considering the hazardous nature, vulnerability to theft, constraint of proper storage space, etc. There cannot be any two opinions on the issue about the early disposal of the contraband drugs and substances, more particularly when it was inserted to implement the provisions of International Convention on the Narcotic Drugs and Psychotropic Substances, however delayed compliance or non-compliance with the said provision by the officer concerned authorised to make application to the Magistrate could never be treated as an illegality which would entitle the

accused to be released on bail or claim acquittal in the trial, when sufficient material is collected by the investigating officer to establish that the search and seizure of the contraband substance was made in due compliance with the mandatory provisions of the Act.

35. It is significant to note that as per Section 54 of the said Act, the courts are entitled to presume, unless and until the contrary is proved that the accused had committed an offence under the Act in respect of any narcotic drug or psychotropic substance, etc. for the possession of which he failed to account satisfactorily. Therefore, unless such statutory presumption is rebutted by the accused during the course of trial, there would be a prima facie presumption that the accused had committed the offence under the Act, if he is found to have possessed the contraband drug and substance, and if he fails to account for satisfactorily, as contemplated in the said provision of Section 54. An anomalous situation would arise if a non-compliance or delayed compliance with Section 52-A is held to be vitiating the trial or entitling the accused to be released on bail, though he is found to have possessed the contraband substance, and even if the statutory presumption is not rebutted by him. Such could not be the intention of the legislature."

33. In *Than Kunwar Vs State of Haryana* reported in **(2020) 5 SCC 260**, it was observed:

"30. The Court also went to hold in Sahi Ram [State of Rajasthan v. Sahi Ram, (2019) 10 SCC 649 : (2020) 1 SCC (Cri) 85] that if seizure is otherwise proved on record and it is not even doubted or disputed, it need not be placed before the Court. The Court further held that if the seizure is otherwise proved what is required to be proved is the fact that samples taken out of a contraband are kept intact. This Court held as follows:

“15. It is true that in all the aforesaid cases submission was advanced on behalf of the accused that failure to produce contraband material before the court ought to result in acquittal of the accused. However, in none of the aforesaid cases the said submission singularly weighed with this Court to extend benefit of acquittal only on that ground. As is clear from the decision of this Court in Jitendra [Jitendra v. State of M.P., (2004) 10 SCC 562 : 2004 SCC (Cri) 2028] , apart from the aforesaid submission other facets of the matter also weighed with the court which is evident from paras 7 to 9 of the decision. Similarly in Ashok [Ashok v. State of M.P., (2011) 5 SCC 123 : (2011) 2 SCC (Cri) 547] , the fact that there was no explanation where the seized substance was kept (para 11) and the further fact that there was no evidence to connect the forensic report with the substance that was seized (para 12) were also relied upon while extending benefit of doubt in favour of the accused. Similarly, in Vijay Jain [Vijay Jain v. State of M.P., (2013) 14 SCC 527 : (2014) 4 SCC (Cri) 276] , the fact that the evidence on record did not establish that the material was seized from the appellants, was one of the relevant circumstances. In the latest decision of this Court in Vijay Pandey [Vijay Pandey v. State of U.P., (2019) 18 SCC 215] , again the fact that there was no evidence to connect the forensic report with the substance that was seized was also relied upon to extend the benefit of acquittal.

16. It is thus clear that in none of the decisions of this Court, non-production of the contraband material before the court has singularly been found to be sufficient to grant the benefit of acquittal.

18. If the seizure of the material is otherwise proved on record and is not even doubted or disputed, the entire contraband material need not be placed before the court. If the seizure is otherwise not in doubt, there is no requirement that

the entire material ought to be produced before the court. At times the material could be so bulky, for instance as in the present material when those 7 bags weighed 223 kg that it may not be possible and feasible to produce the entire bulk before the court. If the seizure is otherwise proved, what is required to be proved is the fact that the samples taken from and out of the contraband material were kept intact, that when the samples were submitted for forensic examination the seals were intact, that the report of the forensic experts shows the potency, nature and quality of the contraband material and that based on such material, the essential ingredients constituting an offence are made out."

Therefore, if the bulk of the seized contraband is not produced in evidence, all of the aforesaid aspects are to be duly proved.

34. Section 55 of the ND&PS Act provides:

"An officer-in-charge of a police station shall take charge of and keep in safe custody, pending the orders of the Magistrate, all articles seized under this Act within the local area of that police station and which may be delivered to him, and shall allow any officer who may accompany such articles to the police station or who may be deputed for the purpose, to affix his seal to such articles or to take samples of and from them and all samples so taken shall also be sealed with a seal of the officer-in-charge of the police station."

35. In the instant case, the PW No. 1, Seizing Officer has deposed that after completing the formalities in weighing and sealing of the articles, he produces them before the OC, Champhai Police Station.

36. The said witness, however, has not produced the malkhana register or receipt evidencing the deposition depositing of the seized articles with the O.C of the Police Station/malkhana. Far from that, the said PW, nor for that matter or any other PW, has deposed anything as to what was done by the seizing Officer with respect to the seized articles after he produced it before the O.C of the concerned Police Station.

37. It cannot be left to the presumption of the Court that since the articles were produced before the O.C, the requirements of Section 55 of the ND&PS Act have been complied with. The entry in paragraph 8 of the exhibit-3, property search and seizure form, i.e."1/21 (ND&PS) malkhana, as against the column action taken/recommended for keeping of valuable property, does not prove anything regarding the safe custody of the seized articles inasmuch as the aforesaid seizure list, as per requirement was presumably prepared at the place of occurrence and at that time, there could not have been any entry in the said list to the effect that the seized articles have been deposited in the ND&PS malkhana, what was sought to be conveyed by the said entry is therefore, presumably the action recommended for keeping of the valuable property and not action taken as delineated in the aforesaid paragraph 8 of exhibit-3. The fact that it has been mentioned in the charge sheet that the seized articles were

deposited in the NDPS malkhana in the remark's column is neither here nor there as there is no indication with regard to date and time as to where as to the date and time of alleged deposit of the seized articles in the malkhana. Therefore, a question mark naturally arises as to whether the articles produced before the CJM, Champhai on the next day were in fact the articles that were seized from the possession of the petitioner since there is no evidence regarding the safe custody of the said articles during the intervening period of one day.

38. The PW-5, I.O has deposed that the seized articles were produced before the CJM, Champhai, on 23.02.2021 in which the inventory was found correct, photographs were taken and samples were drawn, packed and sealed for laboratory examination. The Magistrate has certified vide exhibit P-8, list of samples drawn that the seized articles were brought before him with seals intact from which the samples mentioned there under were drawn and packed in his presence. But the Magistrate does not certify that the samples were also sealed in his presence. There is nothing in the order of the Magistrate of even date as regards the manner in which the samples were drawn and also does not indicate that the same were sealed in his presence. It is a cryptic order merely stating that the samples were drawn. Although the Magistrate has certified that the seized articles were brought before him with seals intact, in the absence of

proof that during the period commencing from the time when the articles were seized to that time when they were produced before the Magistrate, that is on the next day, the articles were kept in safe custody as per the provisions of the ND&PS Act, mere presence of the seal is not of much value as such seals can be tampered with unless they are kept in proper custody. Furthermore, the PW-5 despite having stated that the samples were drawn, packed and sealed for laboratory examination did not state anything as to the custody of the said sealed samples during the period of seven days from the date of production before the Magistrate and the date on which it was received by the FSL. Therefore, the safe custody of the samples as well during an apparently lengthy period of seven days becomes clouded with doubt. Although the FSL report indicates that the samples were received in sealed condition and the seal upon the samples tallies with the sample seal forwarded, it cannot be denied that in the absence of proof of safe custody, there arises scope for tampering with the seal during this period of seven days.

39. Under the NDPS Act, the chain of custody is the unbroken chronological documentation establishing that the contraband seized from the accused is the exact untampered substance produced before the Magistrate and analyzed by the Forensic Science Laboratory. Since the act carries stringent penal provisions

and statutory reverse burdens of proof (Section 35 and Section 54 of the ND&PS Act), insistence must be placed on strict compliance with the chain of custody and any unexplained gap or delay leads to grave doubt as regards the fact as to whether the seized articles are one and the same as that produced before the Magistrate under Section 52A and whether the samples examined by the FSL are properly relatable to the list of samples/inventory.

40. In the case of ***Karandeep Sharma alias Razia alias Raju Vs. State of Uttarakhand***, reported in ***(2025) SC OnLine SC 773***, the Hon'ble Apex Court emphasized that for a FSL report to be acceptable and reliable, the prosecution must establish an unbroken chain of custody and demonstrate that the samples remained duly sealed and untampered throughout and held as follows:-

“54. In order to make the DNA report acceptable, reliable and admissible, the prosecution would first be required to prove the sanctity and chain of custody of the samples/articles right from the time of their preparation/collection till the time they reached the FSL. For this purpose, the link evidence would have to be established by examining the concerned witness.

55. Evidently, there is not even a semblance of evidence on record to satisfy the Court that the samples/articles collected from the dead body of the child-victim and those collected from the appellant which were later forwarded to the FSL were properly sealed or that the same remained in a self-same condition right from the time of the seizure till they reached the FSL. No witness from the FSL was examined by the prosecution to prove that the samples/articles were

received in a sealed condition. Hence, there is every possibility of the samples being tampered/manipulated by the police officers so as to achieve a favourable result from the FSL, thereby, inculcating the appellant in the crime."

41. As already discussed above, the link evidence has not been established through any of the prosecution witnesses and in fact, there is not even a mention as to who carried the samples to the FSL.

42. Under the aforesaid circumstances, it cannot be said that the prosecution has established the link evidence beyond reasonable doubt.

43. In the aforesaid view of the matter, the impugned judgment of conviction cannot be sustained and accordingly, the same stands set aside and the appeal stands allowed.

44. Return the TCR.

JUDGE

Comparing Assistant