



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,  
NAGPUR BENCH AT NAGPUR**

**CRIMINAL APPEAL NO. 197 OF 2023  
WITH  
CRIMINAL APPEAL NO. 23 OF 2024**

**CRIMINAL APPEAL NO. 197 OF 2023**

**1. Bhuralal Chitarlal Meena,**  
Aged 43 years, Occ. Driver,  
R/o. Sanjay Gandhi Nagar,  
Ladpura Dist. Kota.

**2. Chothmal Satyanarayan Meena,**  
Aged about 25 years, Occ. Driver,  
R/o. Bhora, Tah. Ataru, Dist. Baram,  
Rajasthan.

**... Appellants**

**.. Versus ..**

**State of Maharashtra,**  
Through Police Station Officer,  
Police Station, Butibori, Nagpur.

**...Respondent**

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S/Shri Akshay Sudame and Akhilesh Potnis, Advocates for  
appellants.  
Ms. Sneha Dhote, APP for respondent/State.

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**WITH**

**CRIMINAL APPEAL NO. 23 OF 2024**

**Akhilesh Parasram Zaria,**  
Aged about 26 years, Occ. Labour,  
R/o. Bagsawai, Tah. Patan,  
District Jabalpur. (M.P.)

**... Appellant**

**.. Versus ..**

**State of Maharashtra,**  
Through Police Station Officer,  
Police Station, Butibori, Nagpur.

**...Respondent**

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Shri Sunil Kulkarni, Advocate for appellant.  
Ms. Sneha Dhote, APP for respondent/State.

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**CORAM : NEERAJ P. DHOTE, J.**

**DATE OF RESERVING THE JUDGMENT : 11/02/2026**

**DATE OF PRONOUNCING THE JUDGMENT: 06/04/2026**

**JUDGMENT**

This is an Appeal under Section 374(2) of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.') against the judgment and order dated 08/04/2022, passed by the learned Special Judge (NDPS Act) and Additional Sessions Judge-2, Nagpur in NDPS Special Case No. 50/2022, convicting and sentencing the Appellants as follows:-

*"1] Accused Nos. (1) Bhuralal Chitarlal Meena (2) Akhilesh Parasram Zaria and (3) Chothmal Satyanarayan Meena are convicted for the offence under Section 20 of Narcotic Drugs and Psychotropic Substance Act for possession and transportation of commercial quantity of Ganja and sentenced to suffer rigorous imprisonment for 10 years each and to pay fine of Rs. 1,00,000/-(Rs. One lac) by each, in-default of payment of fine, the accused shall suffer simple imprisonment for six months each.*

*2] Accused Nos. (1) Bhuralal Chitarlal Meena (2) Akhilesh Parasram Zaria and (3) Chothmal Satyanarayan Meena are convicted for the offence under Section 29 of Narcotic Drugs and Psychotropic Substance Act for committing criminal conspiracy of offence under Section 20 of N.D.P.S. Act and sentenced to suffer rigorous imprisonment for 10 years each and to pay fine of Rs. 1,00,000/- (Rs. One lac) by each, in-default of payment of fine, the accused shall suffer simple imprisonment for six months each.*

*3] Both the sentences of each accused shall run concurrently.*

*4] The accused Nos. 1 to 3 are in custody from 25-07-2021; they shall get set off, of the custodial period as per Section 428, Criminal Procedure Code.*

*5] ....*

*6] ...*

*7] ...*

*8] ...*

*9] ... ”*

2. The prosecution's case as revealed from the police report is as under:-

2.1 On 24/07/2021, the Local Crime Branch (LCB), Nagpur Rural received the information that, the Narcotic Drugs were to be transported in Truck bearing No. RJ-11/GB-4632 from Higanghat to Nagpur via Butibori. The Assistant Police Inspector (ASI) of the LCB went to the Butibori Police Station and caused

the station diary in that regard. The Senior Officers were informed. The Panchas, Photographer and weighing machine came to be arranged, and the squad reached the spot on the National Highway near the Ruikhairi village. The Nakabandi (roadblock) was done. The Truck bearing the above referred number was seen coming from Hinganghat direction. The Truck was intercepted. The Appellants were found sitting in the Truck. The squad gave then the intimation in respect of search in presence of Gazetted Officer. The Appellants and the Truck were searched. In the Driver's cabin, four (4) plastic sacks were found. They were removed. The said sacks gave unpleasant smell. The sacks were opened and weighed. It weighed 78.360 Kg. The empty sacks weighed 650 grams. The samples were removed from all four (4) sacks of 100 grams each. The samples were sealed. The Appellants and the Truck were brought to the Police Station. The report was lodged and the Crime bearing No. 318/2021 came to be registered against the Appellants for the offences punishable under Sections, 20, 22 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'NDPS Act'). The samples and the Muddemal were kept in the Muddemal room. The statements of the witnesses were recorded.

The necessary communication was made with the Senior Officer. The letter was given to the concerned Court of Magistrate for preparing the inventory. The inventory was prepared. The samples were sent to the Chemical Laboratory. The Chemical Analyzer's report (CA report) disclosed the samples as 'Ganja'. On completion of investigation, the charge-sheet came to be filed.

2.2 The learned Trial Court framed the Charge against the Appellants vide Exh.02 for the offences punishable under Sections 20 and 29 of the NDPS Act. The Appellants pleaded not guilty and claimed to be tried. To prove the charge, the prosecution examined in all ten (10) witnesses and brought on record the relevant documents in the evidence of the witnesses. After the prosecution filed the evidence closure pursis, the learned Trial Court recorded the statement of the Appellants under Section 313(1)(b) of the Cr.P.C. The Appellants stated that, they were falsely implicated. After hearing both the sides and appreciating the evidence available on record, the learned Trial Court passed the impugned judgment and order.

3. Heard the learned Advocates for the Appellants and the learned APP for the State. Scrutinized the evidence on record.

3.1 It is submitted by the learned Advocates for the Appellants that, there is non-compliance of the mandatory provisions under Sections 42, 43 and 50 of the NDPS Act. The samples were not deposited with the Laboratory on the same day and were kept by the carrier with him. At the time of search, the Police had given third option i.e. to be search in the presence of the officer who was not present in the raiding team. The prosecution case was doubtful and it failed to establish the charge against the Appellants. Though there were lapses in the mandatory procedure, the Appellants came to be convicted and the inquiry was directed against the Investigating Officer by the learned Trial Court. Most of the documents were filed in the Court after the charge-sheet and this shows that, the mandatory compliance was not done. The Appeal be allowed. In support of their contentions, they cited the following judgments:-

(i) ***Boota Singh and ors V/s. State of Haryana {2021 (19) SCC 606}***

(ii) ***State of Rajasthan V/s. Parmanand {2014 (5) SCC 345}***

(iii) **Vijay Jain V/s. State of Madhya Pradesh {2013 (14) SCC 527}**

(iv) **Baldev Singh V/s. State of Haryana {2021 (18) SCC 523}**

(v) **State of Maharashtra V/s. Saubai Narhari Babar and ors {Judgment of this Court dated 18/12/2020 in Criminal Appeal No. 1154/2004}**

(vi) **Saraswati and anr. V/s. State rep. by Inspector of Police, NIBCID, Theni District {Judgment of Madras High Court dated 31/08/2021 in Cri. A. No. (MD) No. 227 of 2015}.**

(vii) **Lamin Bojang V/s. The State of Maharashtra {1996 SCC OnLine Bom 305}**

(viii) **Yusuf @ Asif V/s. State { Judgment of the Hon'ble Apex Court dated October 13, 2023 in Criminal Appeal No. 3191 of 2023 (arising out of SLP (Cri.) No. 3010 of 2023}**

3.2 It is submitted by the learned APP for the State that, there were no lapses on the part of the investigating machinery. The required procedure was followed. It was the search of the bags and not of the persons. The Gazetted Officer was present during the raid. There was no discrepancy in respect of the sampling. The samples were sent immediately. No error was committed in sending the samples to the Laboratory. The report from the Chemical Analyzer shows that, the contraband seized

from the possession of the Appellants was the ‘Ganja’. The Arrest Form was admitted by the Appellants, as the charges were established beyond reasonable doubt. The presumption under Section 35 of the NDPS Act comes into operation. There is no merit in the Appeals and the same be dismissed. The learned APP cited the judgment in *Hamidbhai Azambhai Malik V/s. State of Gujarat {2009 (3) SCC 403}*.

4. In *Boota Singh and ors. (supra)*, the contraband was seized from the vehicle. In the said Case, the Hon’ble Apex Court observed that, the explanation to Section 43 shows that, a private vehicle would not come within the expression “public place” as explained under Section 43 of the NDPS Act. In the said case, there was total non-compliance of the requirements of Section 42 of the NDPS Act. The Appellants therein were acquitted.

5. In *State of Rajasthan (supra)*, the provisions of Section 50 of the NDPS was considered. In that case, the accused therein was personally searched and also a bag which was being carried out by the accused was searched. The Police Officer who was a member of raiding party gave notice to the accused therein that, they could be searched before the nearest Magistrate or

before the nearest Gazetted Officer or P.W.5 J.S. Negi, the Superintendent, who was a part of the raiding party. The 3<sup>rd</sup> option could not have been given as the provisions of Section 50(1) of the NDPS Act does not provide for it and therefore, the search was vitiated.

6. In *Vijay Jain* (supra), it was observed that, on a reading of judgment in *Jitendra V/s. State of M.P. (2004) 10 SCC 562*, the view was taken that, in the trial for an offence under the NDPS Act, it was necessary for the prosecution to establish by cogent evidence that, the alleged quantities of the contraband goods were seized from the possession of the accused and the best evidence to prove this fact is to produce during the trial, the seized materials .....

7. In *Baldev Singh* (supra), it was found that, though there was the oral evidence to the effect that, the case property was deposited in the malkhana and it was also produced in the Court, there was no documentary evidence to that effect. There is further observation that, in a series of decisions of this Court, it has been held that, unless there is actual production of the case

property in the Court, the prosecution case would not be established.

8. In *Saubai Narhari Babar and ors (supra)*, it is observed that, for non-compliance of the mandatory provisions of Section 42 of the NDPS Act, the trial was vitiated.

9. In *Saraswati and anr. (supra)*, by considering the previous judgment, it was held that, the procedure adopted by the Police Officers in that case was violative of Section 50(1) of the NDPS Act and the entire prosecution story was vitiated. It was observed that, the prosecution failed to prove their case beyond reasonable doubt.

10. In *Lamin Bojang (supra)*, the trial was held to be vitiated for non-compliance of the mandatory provisions of Section 42(2) of the NDPS Act and the other aspects were not examined.

11. In *Yusuf @ Asif (supra)*, the samples were drawn by the Police in the presence of Gazetted Officer and not in the presence of the Magistrate and considering the judgment in *Union of India V/s. Mohanlal and anr. {2016 (3) SCC 379}*, it

was observed that, there was a failure of the concerned authorities to lead primary evidence and that vitiated the conviction and the conviction was set aside.

12. In *Hamidbhai Azambhai Malik* (supra), the search of the house of the accused therein was made and the contraband was seized. It was the contention of the accused therein that, there was non-compliance of the requirement of Section 42(2) of the NDPS Act. It was held that, Section 42 was invocable only if search was made by Police Officer or authority concerned, upon prior information. When the information or intimation or knowledge comes to the notice of Investigating Officer in course of patrolling or investigation of some other offence, it is not necessary to follow the conditions incorporated in Section 42.

13. Coming to the case at hand, P.W. 1 Jitendra N. Vairagade was the API with the LCB, Nagpur on 24/07/2021, P.W. 2 Javed Shaikh was the chicken shop owner and had taken the weighing machine to the Butibori Police Station, P.W. 3 Satyashil C. Kothare was the Police Constable with LCB, Nagpur and used to click photographs for the Police, P.W. 4 Sudhakar B. Panghate was working as a Cleaner in the Borkhedi Gram

Pahchayat and was summoned to act as a Panch on 24/07/2021, P.W. 5 Saurabh Shahakar was the photographer by profession and was summoned to take photographs on 01/10/2021 for the inventory in the Court. P.W. 6 Pradip A. Deshmukh was Police Constable in the Butibori Police Station, Nagpur and carried the sealed bags to the Chemical Laboratory, P.W. 7 Amrut S. Kinge was the Police Naik with LCB who took and made the communication with the Higher Officers and reached on the spot where the Truck was intercepted and seizure was effected, P.W. 8 Babulal D. Wadame was the Head Moharir of the Butibori Police Station, P.W.-9 Manik B. Choudhari was the Assistant Police Inspector (API) at the Butibori Police Station and P.W.-10 Ashish D. Morkhade was the officer who investigated the Crime.

14. The evidence of the witnesses examined by the prosecution shows that, pursuant to the secret information, the Police team reached the National Highway near village Ruikhairi and intercepted the Truck bearing No. RJ-11/GB-4632 in which the Appellants were found in the cabin. During the search, four (4) plastic bags/sacks were found and since there was a smell unpleasant, the samples were drawn, the Articles were seized and

the Appellants were taken in the custody.

15. As regards, the provisions of Section 42(2) of the NDPS Act, the evidence of P.W.-1 Jitendra shows that, he made necessary station diary entry in respect of the secret information and thereafter, vide letters below Exh. 15 and 16, informed the Superintendent of Police and Dy. Superintendent of Police, respectively about the same. According to P.W. 1 Jitendra, the said communications to the Higher Officers were sent through Mr. Kinge (P.W.-7). He admitted that, he did not enquire as to whether the said communications were received by the offices of the said officers. The said Mr. Kinge is examined as P.W.-7. It has come in his cross-examination that, there were no endorsements on Exh. 15 and 16 from the offices of Superintendent of Police and Dy. Superintendent of Police in respect of receipt of said communications by the said offices. The suggestion is given that, both the said communications were not delivered to the addressees. The evidence of this P.W. 7 shows that, he delivered the communication below Exh. 60, which was under the signature of P.W.-1, to the office of Dy. Supdt. of Police. The suggestion is given in the cross-examination that, the

said Exh. 60 was falsely prepared on 25/02/2022. The Exh. 16 and 60 were both addressed to the Dy. Supdt. of Police having the same date 24/07/2021, having similar subject and contents. Both the communications are similar. However, it shows the stamp of Dy. Superintendent of Police only on Exh. 60 and not on Exh. 16.

16. P.W.-9 Manik B. Choudhari, the first Investigating Officer in his cross-examination admitted that, there is no outward and inward number on Exh. 60. The suggestion is given in the cross-examination that, Exh. 56, 60, 63 & 65 were false and prepared subsequently after the evidence of P.W.-1 Jitendra Vairagade and filed in the Court on 22/02/2022. The learned Trial Court in para 74 of the judgment has observed that, the charge-sheet was filed by withholding the material documents and filed subsequently before commencement of evidence. The learned Trial Court has directed the action against P.W.-10 Mr. Morkhade, the subsequent Investigating Officer. The above referred evidence clearly goes to show that, there was non-compliance of the provisions of Section 42(2) of the NDPS Act.

17. It is deposed by P.W. 1 Jitendra Vairagade that, after inspection of Truck and seizure of four (4) plastic bags/sacks having unpleasant smell, the samples were drawn and report was lodged by him below Exh. 33 and the FIR below Exh. 34 came to be registered. The evidence of P.W. 8 Babulal D. Wadame shows that, he was the Head Moharir at Butibori Police Station on 25/07/2021 and P.W.1 Jitendra Vairagade handed over the four (4) sealed bags and two (2) sealed packets and four (4) mobile phones to him for keeping in the muddemal room. According to P.W.-9, Manik Choudhari, the first Investigating Officer, on 27/07/2021, he sent P.W. 6 Police Constable Pradip Deshmukh to deposit the samples with the Chemical Laboratory and since, the Laboratory did not accept the Muddemal, it was again sent to the Laboratory on 28/07/2021. The cross-examination of P.W.-8 Babulal Wadame, the Head Mohrir shows that, he had not taken the signature of Police Constable Pradip Deshmukh (P.W.-6) on the register on 27/07/2021. He admitted in the cross-examination that, there is no entry in the register in respect of returning of the muddemal packets to the muddemal room on 27/07/2021. The suggestion is given that, the packets were not handed over to P.W.-6 on the date and from 27/07/2021, the

packets were in the possession of P.W.-6 Deshmukh for about 48 hours. The suggestion of tampering with the muddemal samples is given. He admitted that, the copy below Exh. 63, which was in respect of the entry in the muddemal register was not taken by the Investigating Officer till the charge-sheet was filed.

18. According to P.W. 6 Pradip Deshmukh, on 28/07/2021 while he was on duty, the Investigating Officer Mr. Manik B. Choudhari (P.W.9) directed him to take in his possession the muddemal from the Head Mohrir Babulal Wadame (P.W.8) and deposit the same with the Chemical Laboratory and Pass was issued to him accordingly. He further deposed that, accordingly, he took the sealed muddemal from P.W.8 Mohrir and deposited the same with the Chemical Laboratory. In the cross-examination, it has come that, he had gone to the Laboratory on 27/07/2021 with two copies of the letter and one CA Form, however, there was no signature of the Police Inspector/Investigating Officer on the letter and therefore, he came back. It has come in his cross-examination that, duty pass dated 27 was not on record. In the evidence of second Investigating Officer P.W.10 Ashish Morkhade, it has come that,

the Investigating Officer P.W.-9 Manik Choudhari did not file the copy of case diary showing that, the muddemal was deposited in the muddemal room.

19. The above discussed evidence on record clearly shows a broken chain in handling of the samples drawn from the seized muddemal and thus the possibility of tampering cannot be ruled out. The complete chain of handling of the samples/muddemal is absent in the case at hand. To rule out the possibility of tampering with the samples/muddemal, it is necessary for the prosecution to prove the complete chain of handling of the samples drawn from the muddemal. Considering the above referred evidence on record, the CA report showing the substance as the 'Ganja' cannot be accepted or relied in support of the charge.

20. According to the P.W.1, Jitendra Vairagade, he issued a letter to the Investigating Officer to get the inventory of the muddemal done. According to P.W.-8 Babulal Wadame, Head Mohrir, the entry was made in the register when the muddemal was sent for inventory to the Court and after the inventory, the muddemal was brought again to the muddemal

room and on 27/10/2021, the muddemal was sent to the Police Headquarter and he made the entry in that regard. In the cross-examination, he admitted that, there was no entry in the register in respect of muddemal inventory. The suggestion is given that, the muddemal was not deposited with the Police Station after the inventory. The cross-examination of P.W.-10 Ashish Morkhade, Second Investigating Officer shows that, on going through Exh. 63, which was the extract of muddemal register, there was no entry of 01/10/2021 that, the muddemal was sent to the Court. Though he volunteered that, he made the entry in respect of sending and receiving the muddemal to and from the Court in the station diary, it has come in the cross-examination that, the copy of station diary was not filed with the charge-sheet. It has further come in his cross-examination that, the copy of the logbook showing the transportation of muddemal to the Court was not submitted with the charge-sheet. In the cross-examination of this P.W.-10 Ashish Morkhade, the second Investigating Officer, the Court questions were put to him that, the investigation was completed on 13/10/2021 and the muddemal register and other documents were submitted after submission of the charge-sheet and the said documents were kept by him in 'B' file and he was

asked to respond. This witness responded that, it happened inadvertently.

21. The above discussed evidence show non-compliance of mandatory provisions under the NDPS Act. The evidence of P.W.-1 Jitendra Vairagade who was the member of the team, seized four (4) plastic bags from the possession of the Appellants and lodged the report, admitted in his cross-examination that, he had not submitted the compliance report as per Section 57 of the NDPS Act. The said provision of Section 57 pertains to the report or information of arrest and seizure, which is required to be made within 48 hours of such arrest or seizure to the immediate official superior.

22. In absence of evidence to establish complete chain of handling of the samples and the non-compliance of the mandatory provisions of the NDPS Act, there is no question of drawing a presumption under Section 35 of the NDPS Act. With the above discussed evidence on record, it is not possible to maintain the conviction and sentence recorded by the learned Trial Court. In light of the settled legal position, as is clear from the above referred judgments cited by both the sides, the

Appellants are entitled for acquittal. Hence, the following order:-

**ORDER**

- I) The Criminal Appeals are **allowed**.
- II) The conviction and sentence recorded by the learned Special Judge (NDPS Act) and Additional Sessions Judge-2, Nagpur against the Appellants in NDPS Special Case No. 50/2022, by the impugned judgment and order dated 08/04/2022, is hereby quashed and set aside.
- III) The Appellants are acquitted for the offences punishable under Sections 20 and 29 of the NDPS Act.
- IV) The Appellants are behind bars. They be set at liberty, if not required in any other offence.
- V) The fine amount, if paid by the Appellants, be refunded to them.
- VI) Record and Proceedings be sent back to the learned Trial Court.
- (VII) The Criminal Appeals stand **disposed of** accordingly.

**[NEERAJ P. DHOTE, J.]**