



IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLA No.553 of 2023

Along with

CRLA No. 573 of 2023

(In the matter of an application under Section 415(2) of Bharatiya Nagarik Suraksha Sanhita, 2023 corresponding to Section 374(2) of Criminal Procedure Code, 1973).

*Chhotu @ Sk. Jamir*

....

*Appellant (s)*

*For CRLA No. 553 of 2023*

*Prabhat @ Pravat Kumar Sethi*

*For CRLA No. 573 of 2023*

*-versus-*

*State of Odisha*

....

*Respondent (s)*

Advocates appeared in the case through Hybrid Mode:

*For Appellant (s)*

:

*Mr. Amulya Ratna Panda, Adv.*

*Mr. Chandan Samantaray, Adv.*

*For Respondent (s)*

:

*Ms. Sarita Moharana, ASC.*

**CORAM:**

**DR. JUSTICE SANJEEB K PANIGRAHI**

**DATE OF HEARING:-09.03.2026**

**DATE OF JUDGMENT:-13.03.2026**

**Dr. Sanjeeb K Panigrahi, J.**

1. The Appellants have filed the instant Criminal Appeals under Section 374(2) of the Code of Criminal Procedure, 1973/ Section 415(2) of Bharatiya Nagarik Suraksha Sanhita, 2023, invoking the appellate jurisdiction of this Court. The appeals are preferred against the Judgment dated 19.04.2023 passed by the learned Additional Sessions Judge-cum-Presiding Officer, Designated Court under OPID, Balasore, in Special



Case No.18/299 of 2022/2020, whereby the appellants were convicted for the offences under Section 21(C) of N.D.P.S Act and was sentenced to undergo rigorous imprisonment for 10 years and to pay fine of Rs.1,00,000/- each and in default of payment of fine undergo simple imprisonment for one year each.

**I. FACTUAL MATRIX OF THE CASE:**

2. The brief facts of the case are as follows:

- (i) On 05.11.2020, while the informant, accompanied by other police personnel, was diligently discharging patrolling duties, they received reliable and actionable intelligence of a grave nature that three persons were lurking in the vicinity of Jyoti Sagar and were actively hatching a nefarious design to traffic contraband substance, i.e., brown sugar, to a dealer. Upon receiving the information, the informant recorded the same in the Station Diary. Thereafter, along with other staff members, he proceeded to the spot and observed three persons standing on near the side of the hotel, one of them was carrying one polythene bag containing some suspected contraband materials.
- (ii) On noticing the raiding party, the accused persons attempted to flee from the spot; however, the informant along with his staff promptly apprehended them. Upon interrogation, the accused disclosed their names and identities, but failed to produce any valid or lawful document justifying their possession of the contraband substance. Thereafter, in the presence of the independent witnesses as well as



the Executive Magistrate, the contraband substance, namely brown sugar, was recovered from the possession of the accused persons. Subsequently, the contraband articles were seized, and the accused persons were forwarded to the Court having jurisdiction.

- (iii) On the basis of the aforesaid allegations, the local police registered an F.I.R., being Bhubaneswar STF P.S. Case No. 28 of 2020, for alleged offences punishable under Section 21(c) and Section 29 of the N.D.P.S. Act against the present Appellants.
- (iv) Upon completion of investigation, the Investigating Officer submitted charge-sheet against the Appellants. Thereafter, on 19.04.2023, the learned Trial Court, upon examining 16 witnesses and considering the oral as well as documentary evidence on record, convicted the Appellants under Section 21(c) of the N.D.P.S. Act and sentenced them to undergo rigorous imprisonment for a period of 10 years and to pay a fine of Rs. 1,00,000/- each, and in default of payment of fine, to undergo simple imprisonment for a further period of one year each
- (v) Aggrieved by the aforesaid facts and circumstances, the Appellants have preferred the present criminal appeal before this Hon'ble Court.

## II. SUBMISSIONS ON BEHALF OF THE APPELLANTS:

- 3. The learned counsel for the Appellants respectfully and earnestly made the following submissions in support of his contentions:



- (i) The Appellants submit that the judgment of conviction and order of sentence passed by the learned Additional Sessions Judge, Designated Court, Balasore in Special Case No. 18 of 2022 whereby the Appellants have been convicted and sentenced to undergo rigorous imprisonment along with imposition of fine, are wholly erroneous, perverse and unsustainable in the eye of law as well as on facts.
- (ii) It is contended that the learned Trial Court has failed to properly appreciate the evidence on record and has arrived at findings contrary to the settled principles of criminal jurisprudence. The Appellants further submit that the learned Trial Court has failed to appreciate the materials and evidence available on record and has thereby erroneously returned the findings of conviction. It is further contended that the learned Court below has overlooked material discrepancies and inconsistencies which were quite apparent in the prosecution case and has failed to adhere to the settled principles governing appreciation of evidence in criminal trials. Consequently, the impugned judgment suffers from serious legal infirmities and is wholly unsustainable in the eye of law.
- (iii) The Appellants further contend that the learned Trial Court has failed to appreciate the glaring non-compliance with the mandatory provisions enshrined under Section 42, 42(1), 42(2) & 50 of the N.D.P.S. Act. It is submitted that adherence to these provisions is not merely procedural but goes to the root of the prosecution case,



and any infraction thereof vitiates the entire trial. The Appellants further assert that the prosecution has failed to establish the essential ingredients of the alleged offence in accordance with law, and the conviction, rests on an unsustainable and legally weak foundation.

- (iv) The Appellants further contend that the evidence of P.W.1 and P.W.2 does not support the prosecution case. It is submitted that both the said witnesses have categorically deposed that the alleged contraband articles were not seized in their presence. Such testimony goes to the root of the prosecution case and renders the alleged seizure doubtful, thereby adversely affecting the credibility of the prosecution case.
- (v) The Appellants submit that P.W.2 who is an official witness, has deposed that at about 9:30 P.M., upon being directed by the I.I.C., he accompanied a Sub-Inspector and other staff to verify certain alleged credible information. However, it is contended that in his deposition, the said witness has neither disclosed the source of such information nor the basis on which it was treated as reliable with regard to the alleged possession of contraband articles by the present Appellants. This omission gives rise to serious doubt regarding the authenticity and legality of the initial information and casts a shadow over the prosecution case.
- (vi) The Appellants further contend that P.W.3 and P.W.4 have categorically deposed that on the relevant day at about 8:00 P.M.,



the Sub-Inspector received reliable information to the effect that the accused persons were to sell contraband articles near Hotel Jyoti Sagar. It is submitted that from the evidence of P.W.3 and P.W.4, it is apparent that there has been clear non-compliance with the mandatory provisions of Section 42(2) of the N.D.P.S. Act, inasmuch as the alleged information was neither reduced into writing nor communicated to the superior officer as required under law. Such non-compliance vitiates the search and seizure process and renders the prosecution case legally unsustainable.

- (vii) The Appellants further submit that a bare perusal of the evidence of P.W.6, P.W.7 and P.W.8 indicates non-compliance with the mandatory provisions of Section 42 of the N.D.P.S. Act. It is further contended that such non-adherence to the statutory mandate vitiates the very foundation of the prosecution case and renders it legally unsustainable. The Appellants further submit that such procedural lapses have caused prejudice to the accused persons, thereby entitling them to the benefit of doubt.
- (viii) The Appellants further contend that the prosecution has failed to comply with the mandatory requirement of Section 42(2) of the N.D.P.S. Act within the prescribed period of 72 hours. On the contrary, the prosecution claims to have affected such compliance only after 144 hours, without offering any plausible explanation for the delay caused. It is submitted that such belated compliance



amounts to a violation of the statutory mandate, thereby vitiating the prosecution case and rendering the proceeding unsustainable.

- (ix) The Appellants further contend that the prosecution has failed to comply with the mandatory provision under Section 55 & 57 of the N.D.P.S Act. It is submitted that P.W.16, who happens to be the I.O. of the case, has categorically deposed; however, he has not stated that he had seized or properly accounted for the essential documents, namely the Section 50 notice, seizure list, zimananma, and the drugs memo. Such material omissions on the part of the Investigating Officer clearly indicate non-compliance with the statutory safeguards, thereby creating serious doubt regarding the fairness and legality of the investigation and rendering the prosecution case is unsustainable.
- (x) The Appellants further contend that there are numerous material discrepancies and inconsistencies with regard to the alleged search and seizure of the contraband articles. It is submitted that a bare perusal of the entire body of evidence relied upon by the N.D.P.S Act. Such lapses strike at the root of the prosecution case and render the same doubtful, thereby entitling the Appellants to the benefit of doubt.

### **III. SUBMISSIONS ON BEHALF OF THE RESPONDENT:**

4. *Per contra*, the learned counsel for the Respondent earnestly made the submission that the present CRLAs deserve to be rejected in limine.



- (i) The Respondent most respectfully submits that the learned Trial Court, upon a proper and meticulous appreciation of the oral as well as documentary evidence available on record, has rightly passed the impugned judgment of conviction and order of sentence against the Appellants. It is further contended that the findings recorded by the learned Trial Court are well-reasoned, based on cogent, credible and trustworthy evidence, and do not suffer from any perversity or legal infirmity. Hence, it is prayed that the judgment of conviction and order of sentence be upheld, and the appeal preferred by the Appellants, being devoid of merit, be dismissed.
- (ii) It is contended on behalf of the Respondent that the prosecution, by adducing cogent and credible evidence, has clearly established the commission of the offence punishable under Section 21(c) of the N.D.P.S. Act. It is submitted that the prosecution has been able to prove a complete and consistent chain of circumstances, supported by reliable oral testimony of the prosecution witnesses as well as duly proved documentary evidence on record, which unerringly points towards the guilt of the accused. It is further contended that there are no material contradictions or discrepancies which go to the root of the prosecution case so as to discredit the same. In such circumstances, the guilt of the accused stands proved beyond reasonable doubt.



- (iii) Accordingly, it is submitted that the learned Trial Court has properly appreciated the evidence in its correct perspective and has arrived at well-reasoned findings, warranting no interference by this Hon'ble Court. It is further submitted that the testimony of the victim, being natural, cogent and trustworthy, is sufficient to sustain the conviction. It is contended that the same stands duly corroborated by the consistent evidence of other prosecution witnesses as well as the attendant facts and circumstances on record. Therefore, it is submitted that the learned Trial Court has properly appreciated the evidence and has rightly arrived at the conclusion that the Appellant has committed the offence as alleged, warranting no interference by this Hon'ble Court.
- (iv) The Respondent further submits that PW 5 had scrupulously complied with all the mandatory procedural safeguards as envisaged under Chapter V of the Narcotic Drugs & Psychotropic Substances Act, 1985. PW-5 personally conducted the search of the Appellant No.1 and recovered the contraband brown sugar from his possession, along with one Samsung mobile phone and cash of Rs. 85, 680/. (Eighty-five thousand six hundred eighty)
- (v) It is further submitted that no incriminating material was recovered from the possession of the other co-accused persons. It is stated that, on the instruction of P.W.5, P.W.4 weighed the seized contraband using a weighing machine, which was found to be 1 kg 130 grams (gross weight), including the jerry bag. Thereafter, the



jerry bag was weighed separately and was found to weigh 25 grams, thereby determining the net quantity of the contraband. The Respondent further contended that, as would be evident from Ext.P-22 (spot map), the place of occurrence is a "public place" within the meaning of Section 43 of the NDPS Act, and therefore, strict compliance of requirements under Section 42 of the Act is not mandatory in facts and circumstances of the present case. He further submits that in *Karnail Singh v. State Of Haryana*<sup>1</sup>, it is held that complete non-compliance with Section 42(2) invalidates the conviction but in the present case, the place being a public place the compliance of this section is not mandatory.

- (vi) It is further submitted that, by way of abundant caution, P.W.5 had intimated the S.P., STF, Bhubaneswar through a telephonic message, as he was present at Balasore during the raid. It is further submitted that Station Diary Entry No. 10 was duly recorded in respect of the seizure effected by the Sub-Inspector (P.W.5). In view of the above, since the seizure was effected in a public place and the superior authority was duly informed, the alleged non-production of the Station Diary or non-examination of the S.P., STF, Bhubaneswar does not vitiate the prosecution case on the ground of non-compliance with Section 42 of the N.D.P.S. Act.
- (vii) The Respondent further submits that the mandatory requirement under Section 50 of the N.D.P.S. Act has been duly complied with. It

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<sup>1</sup> (2009) 8 SCC 539



is also contended that the right of the accused persons to be informed of their option to be searched in the presence of an Executive Magistrate or any Gazetted Officer is clearly reflected from Exts. 5, 6 and 7 series, which bear the endorsements and signatures of the accused persons, evidencing their due awareness and exercise of such right. It is further contended that, in consonance with the procedure prescribed under law, a Gazetted Officer/Executive Magistrate was duly requisitioned and remained present at the time of personal search, thereby ensuring strict adherence to the safeguards contemplated Section 50 of the NDPS Act. Hence, no illegality or procedural lapse can be attributed to the prosecution on this score.

- (viii) The Respondent further submits that the provisions under Sections 55 and 57 of the N.D.P.S. Act have been duly and substantially complied with. It is argued that the seized articles, including the contraband brown sugar, were properly sealed, labeled and marked as Material Objects (M.Os.) in accordance with the prescribed procedure and without any objection from the defence at the relevant stage.
- (ix) It is further submitted that the prosecution has established an unbroken chain of custody of the seized articles from the time of seizure till their production before the learned Trial Court. In such circumstances, the integrity and sanctity of the seized contraband stand duly preserved, and no prejudice has been caused to the



accused on account of any alleged procedural lapse. It is also contended that the STF Police, having jurisdiction over the entire State, is legally competent to retain custody of the seized articles in connection with the present case. It is further submitted that P.W.5 had duly produced the seized contraband and other articles before the S.P., STF, Bhubaneswar, in accordance with the statutorily mandated procedure. It is contended that such production was carried out in the presence of the Appellants, thereby ensuring transparency and eliminating any possibility of tampering. In view of the above, the custody and handling of the seized articles cannot be said to suffer from any illegality or procedural irregularity so as to vitiate the prosecution case. It is further submitted that merely because the seized articles were not deposited in a local police station or nearby police station en route does not, in any manner, create any doubt or infirmity in the prosecution case. The procedure adopted does not give rise to any misleading interference nor does it affect the sanctity or safe custody of the seized contraband. Hence, no prejudice has been caused to the Appellants on this score, and the investigation remains untainted.

**IV. FINDINGS OF THE ADDITIONAL SESSIONS JUDGE-CUM PRESIDING OFFICER, BALASORE:**

5. The learned Trial Court framed charges under Section 21(C) of the N.D.P.S Act. Upon conclusion of the trial and appreciation of the evidence adduced by the prosecution, it was found that the accused guilty and accordingly convicted them.



6. Upon appreciation of the oral and documentary evidence available on record, the learned Trial Court held that sufficient materials were available to substantiate the charges framed against the accused. On a careful evaluation of the testimonies of the victim and the Investigating Officers, the learned Trial Court arrived at the conclusions that the offence has been committed by the accused persons. Accordingly, the Trial Court held that the charges under Section 21 (c) of N.D.P.S Act stood proved.
7. In order to bring home the charges and the requirement of the proviso to Section 42 was also not required to be complied with the since the recovery was made at a public place and was therefore, governed by Section 43 of the Act, which did not lay down any such requirement. Thus, the foundational ingredient of the offence, namely the commission of suicide by the deceased, stands dully established.
8. In the instant matter the accused persons have duly exercised their option, the claim of the accused persons for non-compliance of Section 50 of N.D.P.S. Act which is untenable in the eye of law. Furthermore, no prejudice is caused to the accused persons in the procedure followed only because it was served on the printed formant.
9. On the basis of the aforesaid findings, the learned Trial Court concluded that the prosecution had successfully established the offence under Section 21(C) of N.D.P.S. Act. Consequently, the accused was convicted and sentenced to undergo rigorous imprisonment for a period of 10 years



and pay fine of Rs 1,00,000/- in default whereof he shall undergo simple imprisonment for a period of one year .

**V. COURT'S REASONING AND ANALYSIS:**

10. Upon hearing learned counsel for the respective parties and upon careful perusal of the materials available on record, this Court proceeds to examine the applicability and scope of Section 42(2) of the N.D.P.S. Act in the light of the facts of the present case. The said provision, being mandatory in nature, is attracted only upon the existence of certain foundational requirements. It contemplates two distinct sources of information, namely: (i) personal knowledge of the empowered officer, and (ii) information received from any person, which is required to be reduced into writing and forthwith communicated to the immediate superior officer. Further, such information must relate to the commission of an offence punishable under Chapter IV of the Act, or to the concealment or storage of any narcotic drug, psychotropic substance, or any incriminating article in any building, conveyance or enclosed place capable of furnishing evidence of such offence. It is only upon the satisfaction of these conditions that the rigour of Section 42(2) is attracted, and any deviation therefrom may have a bearing on the legality of the search and seizure. It is a settled position of law that unless both the essential components are satisfied in their entirety, the rigours of Section 42 cannot be invoked. In the absence of compliance with either of these conditions, the proviso would have no application to the facts of the case.



11. At the outset, this Court considers it apposite to reiterate the well-settled principle that a conviction can, in appropriate cases, be based solely on the testimony of official witnesses, provided such evidence is found to be reliable and trustworthy. Section 134 of the Indian Evidence Act, 1872 embodies the principle that it is the quality and not the quantity of evidence which is of paramount importance. Thus, the mere absence of independent witnesses or the fact that the prosecution case rests on official witnesses alone cannot, by itself, be a ground to discard the prosecution case, if the evidence on record inspires confidence and stands the test of careful scrutiny. However, it is equally incumbent upon the Courts, particularly in prosecutions under the N.D.P.S. Act, to subject such evidence to a more rigorous and cautious scrutiny. This heightened standard assumes greater significance in situations where independent witnesses fail to support the prosecution case, thereby necessitating careful evaluation of the evidence to ensure that the evidence of official witnesses inspires confidence and is free from any doubt.
12. In the present case, it is an undisputed position that the place of occurrence was a "public place". In such circumstances, the rigour of Section 42 of the N.D.P.S. Act *stricto sensu* will not be attracted, as the said provision primarily governs search and seizure in buildings, conveyances or enclosed places. Where the recovery is effected from a public place, the matter would fall within the ambit of Section 43 of the Act, and consequently, the requirements stipulated under Section 42 stand diluted in their application.



13. Be that as it may, even assuming for the sake of argument that the telephonic information was not reduced into writing and communicated to the immediate superior officer, thereby resulting in non-compliance with Section 42(2) of the N.D.P.S. Act, but such omission, in the facts and circumstances of the present case, cannot be construed as ipso facto fatal to the prosecution case. It is well settled that unless such non-compliance is shown to have caused prejudice to the accused or has resulted in a miscarriage of justice, the same would not vitiate the entire prosecution. The Appellants have, with considerable vehemence, assailed the prosecution case on the ground of alleged non-compliance of Section 50 of the N.D.P.S. Act. The legal position on this issue is no longer res integra and stands authoritatively settled by the Constitution Bench of the Supreme Court in *State of Punjab v. Baldev Singh*<sup>2</sup>, which authoritatively held that Section 50 is mandatory insofar as it relates to personal search of an accused.

*“32..... However, the question whether the provision of Section 50 are mandatory or directory and, if mandatory, to what extent and the consequences of non-compliance with it does not strictly speaking arise in the context in which the protection has been incorporated in Section 50 for the benefit of the person intended to be searched. Therefore, without expressing any opinion as to whether the provision of Section 50 are mandatory or not, but bearing in mind the purpose for which the safeguard has been made, we hold that the provision of Section 50 of the Act implicitly make it imperative and obligatory and cast a duty pf the investigating officer (empowered officer) to ensure the search*

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<sup>2</sup> (1999) 6 SCC 172



*of the person (suspect). Concerned is conducted in the manner prescribed by Section 50, by intimating to the person concerned about the existence of his right, that if he so requires, he shall be searched before a gazetted officer or a Magistrate and in case he so opts, failure to conduct his search before a gazetted officer or a Magistrate would cause prejudice to the accused and render the recovery of the illicit article suspect and vitiate the conviction and sentenced of the accused, where the conviction has been recorded only on the basis of the possession of the illicit article, recovered during a search conducted in violation of the provision of Section 50 of the Act.....”*

14. In the present case, the right of the accused persons to be duly apprised of their entitlement to be searched in accordance with law is clearly borne out from Exts. 5, 6 and 7 series, which contain endorsements made by the accused persons under their respective signatures. The said documents unmistakably demonstrate that the accused were informed of their valuable right to exercise an option to be searched in the presence of either an Executive Magistrate or a Gazetted Officer. Pursuant thereto, and in strict adherence to the procedure prescribed under Section 50 of the NDPS Act, the concerned authority ensured the presence of such an officer, thereby lending due sanctity and procedural compliance to the personal search conducted.
15. This Court is of the considered view that the requirement under Section 57 of the N.D.P.S. Act, compliance of which has been brought on record and marked as Ext. P-14 through the testimony of P.W.5 without any objection from the defence, is directory in nature. Non-compliance, or any alleged irregularity therein, would not, by itself, inure to the benefit of the



accused so as to vitiate the prosecution case. In view of the foregoing discussions, particularly with regard to the circumstance of seizure, the place of occurrence, and the safe custody of the seized contraband articles, this Court finds that the prosecution has been able to establish its case with cogency and consistency, the culpability of the accused persons under Section 21 (c) of the N.D.P.S. Act, therefore, remains intact and unrebutted, especially in light of the statutory presumption operating under Section 54 of Act.

16. In view of the comprehensive reappraisal of the evidence on record, this Court finds no infirmity or perversity in the findings retained by the learned Trial Court. The conclusions arrived at are well-founded, based on proper appreciation of both oral and documentary evidence, and do not call for any interference.
17. The learned Trial Court has rightly held that the Appellants guilty of the offence punishable under Section 21(c) of the N.D.P.S. Act and has justifiably sentenced them to undergo rigorous imprisonment for a period of ten years, along with a fine of Rs. 1,00,000/- each, with a default stipulation of simple imprisonment for a further period of one year. Accordingly, the judgment of conviction and order of sentence so passed by the learned Trial Court are hereby affirmed.

#### **VI. CONCLUSION:**

18. In view of the foregoing analysis upon perusal of the material produced on record and meticulous consideration of the material facts and circumstances of the case, this Court is of the considered and firm opinion



that the judgment of conviction and order of sentence passed by the learned Additional Sessions Judge-cum-Presiding Officer, Designated Court under OPID, Balasore, in Special Case No.18/299 of 2022/2020, arising out of STF Case No.28 of 2020, do not suffer from any illegality, infirmity or perversity so as to warrant interference by this Court.

19. The findings recorded by the learned Trial Court are based on proper appreciation of the evidence on record and are supported by cogent and convincing reasons. Accordingly, the present Criminal Appeals, being devoid of merit, stand dismissed. The judgment of conviction and order of sentence passed by the learned Trial Court are hereby affirmed. Consequently, this Court is not inclined to grant the reliefs prayed for by the Appellants.
20. Accordingly, both the CRLAs stand **dismissed**.
21. Interim order, if any, passed earlier stands vacated.

*(Dr. Sanjeeb K Panigrahi)*  
**Judge**

*Orissa High Court, Cuttack,  
Dated the 13<sup>th</sup> March, 2026/*