IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.521 of 2012

Arising Out of PS. Case No.-198 Year-2010 Thana- JAKKANPUR District- Patna

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Rishi Kumar, S/o Arbind Ray, R/o Village - Rampur, P.S. Raghopur, Distt. - Vaishali

... ... Appellant/s

Versus

The State of Bihar

... ... Respondent/s

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Appearance :

For the Appellant : Mr. Dhirendra Kumar Sinha, Advocate
Mr. Yashpal Yadav, Advocate
Ms. Soni Kumari, Advocate
Mr. Amrit Lal, Advocate
Ms. Vaishnavi Kashyap, Advocate

For the Respondent : Mr. Abhay Kumar, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA

C.A.V. JUDGMENT

Date : 25-02-2026

1. Heard learned counsel for the appellant as well as learned A.P.P. for the State.

2. The present criminal appeal has been preferred against the judgment of conviction dated 12.06.2012 and order of sentence dated 14.06.2012 passed by learned Additional Sessions Judge XI, Patna (hereinafter referred to as 'Trial Court') in Special Case No. 28 of 2010 arising out of Jakkanpur P.S. Case No.198 of 2010, wherein the learned Trial Court convicted the appellant herein under Section 20 (b) (ii) (B) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'NDPS Act') and sentenced him to undergo R.I. for five years and to pay fine of Rs.25,000/-, and in

default thereof to undergo further imprisonment for one year. The period of detention already undergone was directed to be set off.

3. The prosecution case, in brief, is that on 18.08.2010 at about 10:30-11:00 PM, the informant P.S.I Amlesh Kumar (P.W.-1) along with h*awaldar* Shaukat Ali Khan (P.W.-2) and constable Manoranjan Kumar (P.W.-5), while on patrolling duty near the eastern portion of *Bhikhari Thakur Pool* in front of Lucky Medical Hall under Jakkanpur Police Station, noticed two persons coming from the northern side. On seeing the police party, both persons attempted to flee, however, one of them, who was carrying a plastic *jhola(bag)*, was apprehended at the spot and disclosed his name as Rishi Kumar (appellant). Upon search of the said *jhola*, in the presence of two witnesses namely, Sanny Rai (P.W.-4) and Pappu Kumar (P.W.-3), 11 kilograms and 500 grams of *ganja*, said to be packed bundle in orange coloured plastic tied with *sutli* (thread) having mark P.K. and Pappu Kumar, was recovered and seized. On the seizure List memo (Ext.-1) two witnesses and the appellant had put their signature (Ext.-1/1). Apprehended accused (appellant), seized *ganja* and written report (Ext.-2) were submitted by the informant to the In-charge Police Station, on the basis of which

the formal F.I.R. bearing Jakkanpur P.S. Case No.198 of 2010 (Exhibit-3) dated 19.08.2010 was registered under Sections 20 and 22 of the NDPS Act and S.I. Rajesh Khalifa (P.W.-6) was made Investigating Officer to investigate the case. The sample of the seized *ganja* was sent to the Forensic Science Laboratory (FSL), Patna *vide* Requisition/Memo No.4009 dated 27.08.2010 (Ext.-4) by Registrar, Civil Court, Patna through I.O., which by report dated 29.07.2011 (Ext.-5) reported the substance to be *ganja*.

4. After completion of the investigation, charge-sheet bearing C.S. No.245 of 2010 was submitted against the appellant under Sections 20 and 22 of the NDPS Act. Further, learned Sessions Judge took cognizance of the offence against the appellant *vide* order of cognizance dated 06.10.2010 and thereafter, the case was transferred to the learned Trial Court for disposal. Subsequently, charges were framed, *vide* order dated 03.01.2011, against the appellant under Sections 8 (c) and 20 (b) (ii) (B) of the NDPS Act wherein the appellant pleaded not guilty and claimed trial.

5. The prosecution has examined altogether six witnesses in this case to prove charges against the appellant, who are as under:

P.Ws.	Names
P.W.-1	Amlesh Kumar (Informant/Police official)
P.W.-2	Saukat Ali Khan (Police official present at P.O.)
P.W.-3	Pappu Kumar (seizure list witness)
P.W.-4	Sanny Rai (seizure list witness)
P.W.-5	Manoranjan Kumar Singh (Police constable)
P.W.-6	Rajesh Khalifa (Investigation Officer of the case)

6. In support of their case, prosecution has exhibited following documentary evidence:

Exts.	Particulars
Ext.-1	Seizure List
Ext.-1/1	Signature of the witnesses on Seizure list
Ext.-2	Written report of the informant Amlesh Kumar
Ext.-3	F.I.R. bearing Jakkanpur P.S. Case No.198 of 2010
Ext.-4	Requisition for Forensic Science, Bihar, Patna
Ext.-5	Report of FSL, Patna

7. After closure of the prosecution evidence, the statement of the appellant was recorded under Section 313 of the Code of Criminal Procedure, 1973 on 12.04.2012 wherein he denied the allegations and pleaded innocence. However, in his defence, the appellant has not adduced any oral or documentary evidence.

8. Upon appreciation of the evidence on record, the learned Trial Court held that the prosecution has proved the charge under Section 20 (b) (ii) (B) of the NDPS Act beyond

reasonable doubt and accordingly, convicted and sentenced the appellant as stated above. Aggrieved by the said judgment of conviction and order of sentence, the appellant has preferred the present appeal.

9. Learned counsel for the appellant assailed the impugned judgment on the ground that the same is contrary to the facts on record and settled principles governing prosecutions under the NDPS Act. It is submitted that the mandatory safeguards prescribed under the NDPS Act were not complied with in the present case. The seizure list witnesses (P.Ws. 3 and 4) having turned hostile and categorically denied recovery in their presence, the entire case rests solely upon the testimony of interested police witnesses. The independent witnesses have not supported the recovery of ganja from the possession of appellant in their presence which is fatal to the prosecution. It is further submitted that there are material contradictions in the prosecution evidence regarding the manner of search, preparation of seizure list, colour and description of the packet, place of preparation of documents, and delay in dispatch of the sample to F.S.L. which create serious doubt about the alleged recovery. It is also submitted that the seized contraband was never produced before the court during trial so as to connect the

same with the sample sent to the Forensic Science Laboratory and there is no explanation for this failure to produce the same. There is no material produced in this trial, apart from the interested testimonies of the police officers, to show that the ganja was seized from the possession of the appellant or the samples sent to the Forensic Science Laboratory was taken from the the ganja seized from the possession of the appellant. He further submitted that there is no reliable evidence regarding proper sampling, safe custody, and transmission of the sample, thereby breaking the chain of custody.

10. It is further submitted by learned counsel for appellant that though the alleged recovery of 11.5 kg Ganja is said to have been made from the possession of the appellant on 18.08.2010 but the appellant was produced before the court after two days on 20.08.2010 which crates doubt in the prosecution case. He has pointed out that the deposition of prosecution witnesses contradicts the prosecution case. He has submitted that P.W.-2 in para 7 says that the colour of the packet was plain(white) whereas the informant in F.I.R says that the colour of the packet was orange. He has pointed out that P.W.-5 Manoranjan Kumar Singh admitted in his cross-examination that written proceeding relating to seizure was made in the police

station and P.W.-6 (I.O) deposed that he did not weigh the quantity of the sample. The quantity of sample has not been mentioned either in the case diary or in deposition of the witnesses. Further he submitted that F.S.L Report was sent to the court after more than a year which is too doubtful to be believed and the seizure list which bears P.S. Case No. 198 of 2010 denotes that it was prepared at police station and not at spot. He next submitted that the appellant has no criminal antecedent and in this case he has languished in jail custody for more than 2 years and

11. Learned counsel further submitted that the prosecution failed to establish strict compliance with the procedural safeguards contemplated under the NDPS Act, which being a stringent statute carrying severe punishment, mandates scrupulous adherence to statutory requirements. In support thereof, learned counsel put his reliance on the judgment of the Hon'ble Supreme Court in ***Mangilal v. State of Madhya Pradesh***, reported in ***(2023) 19 SCC 364*** wherein it has been held that in cases under the NDPS Act, the prosecution must prove compliance of mandatory provisions beyond reasonable doubt and any serious infirmity in seizure, sampling, or custody of the contraband would vitiate the conviction. It is further

submitted that when independent witnesses have not supported the prosecution and material discrepancies exist regarding recovery and handling of the seized article, the benefit of doubt must necessarily go to the appellant.

12. It is, therefore, submitted that the learned Trial Court failed to properly appreciate the evidence in its correct perspective and erroneously convicted the appellant despite substantial procedural lapses and inconsistencies. Lastly, learned counsel submitted that the impugned judgment of conviction and order of sentence be set aside and the appellant be acquitted of the charge.

13. Per contra, learned APP for the State supported the impugned judgment and submitted that the learned Trial Court has rightly appreciated the oral and documentary evidence on record and has correctly convicted the appellant. It is submitted that the recovery of 11 Kg. 500 grams of *ganja* from the conscious possession of the appellant has been consistently proved by the informant (P.W.1) and other police officials (P.Ws. 2, 5 and 6), whose testimonies remained intact and trustworthy despite lengthy cross-examination. It is submitted that merely because the independent seizure witnesses turned hostile, the prosecution case does not become doubtful, particularly when

they have admitted their signatures on the seizure list and there is no suggestion of prior enmity between the police officials and the appellant. It is further submitted that there was no prior information with the police and the recovery was effected during routine patrolling, therefore, the rigours of Section 50 of the NDPS Act were not attracted, as the search was of a bag carried by the appellant and not of his person. The FSL Report, duly proved and exhibited, conclusively establishes that the seized substance was *ganja*, and the same corroborates the ocular testimony of the prosecution witnesses. Moreover, learned APP submitted that alleged discrepancies pointed out by the appellant are minor in nature and do not go to the root of the prosecution case so as to discredit the otherwise cogent and reliable evidence.

14. Learned APP, thus, submitted that the prosecution has successfully established the charge under Section 20 (b) (ii) (B) of the NDPS Act beyond all reasonable doubt and that the sentence awarded is commensurate with the gravity of the offence. It is lastly submitted that the appeal being devoid of merit be dismissed and the judgment of conviction and order of sentence be affirmed.

15. I have carefully perused the records and

considered the submissions advanced by the learned counsel for the parties. At this stage, I would like to appreciate relevant extract of the entire evidence led by the prosecution before the learned Trial Court.

(i) P.W.-1, Amlesh Kumar, who is informant, deposed that on 18.08.2010 he was posted as Assistant Sub-Inspector at Jakkanpur Police Station. On that day, during night patrolling, he was conducting checking at the eastern end of *Bhikhari Thakur Pool*. At about 11:00 P.M., he was present along with *Hawaldar* Shaukat Ali and Constable Manoranjan Kumar and was engaged in routine checking. In the meantime, he noticed two persons approaching from the northern end of the bridge. One of them was carrying a *jhola* in his hand. On seeing the police party, both persons attempted to flee. Thereafter, he along with the accompanying police personnel chased them and succeeded in apprehending one person along with the plastic bag. On interrogation, the apprehended person disclosed his name as Rishi Kumar, who has been identified in Court. In presence of two independent witnesses, namely Sunny Rai and Pappu Kumar, the plastic bag was searched. Upon search, an orange-coloured plastic packet containing *ganja* was recovered from the bag, on which “P.K.” and “Pappu Kumar” were

written. He has further stated that the recovered *ganja* was seized and a seizure list was prepared. The total weight of the *ganja* was found to be 11 kilograms and 500 grams. The seizure list was prepared in his handwriting and bears his signature as well as the signatures of the witnesses. He further stated that he submitted his written statement to the Officer-in-Charge of the police station.

In his cross-examination, P.W.-1 admitted that one of the seizure witnesses is Pappu Kumar and that Pappu Kumar may also be called “P.K.”, but he has denied the suggestion that the bag belonged to the said Pappu Kumar. He has further denied the suggestion that nothing was recovered from the possession of the accused Rishi Kumar and that the recovery was actually made from Pappu Kumar and the appellant has been falsely implicated in order to save Pappu Kumar.

(ii) P.W.-2, Shaukat Ali, has deposed that on 18.08.2010 he was posted at Jakkanpur Police Station. On that day, he had proceeded on night patrolling duty along with A.S.I. Amlesh Kumar and Constable Manoranjan Kumar. He further stated that during the course of patrolling, when they reached the eastern end of *Bhikhari Thakur Pool*, they noticed two persons approaching. On seeing the police party, both persons started

running. They chased them and succeeded in apprehending one person. He has further deposed that from the possession of the apprehended person, a plastic bag was recovered, which on search was found to contain approximately 11 to 11.5 kilograms of *ganja*. The apprehended person disclosed his name as Rishi Kumar (appellant). At the time of search, two independent witnesses were present and the seizure list was prepared at the place of occurrence itself.

In cross-examination, P.W.-2 deposed that after apprehending the appellant and before conducting the search, Rajesh Khalifa (I.O.) was called from the police station. He has further stated that the recovered packet was small and white in colour and he did not see what was written on the *jhola* .

(iii) P.Ws. 3 and 4 who are seizure list witnesses, have turned hostile and stated that police did not recover anything from anyone in their presence. However, both the witnesses have admitted their signature on the seizure list.

(iv) P.W.-5, Manoranjan Kumar Singh, who is a constable, has deposed that on 18.08.2010 he was on night patrolling duty along with A.S.I. Amlesh Kumar and other police personnel. During the course of checking, when they reached near *Bhikhari Thakur Pool*, he noticed two persons

coming across the bridge. Out of them, one person was carrying a *jhola* in his hand. On seeing the police party, both persons started fleeing away. However, near Lucky Medical Hall, one person was apprehended while still holding the *jhola* in his hand. He has further deposed that the apprehended person disclosed his name as Rishi Kumar. Upon search of the *jhola*, *ganja* was recovered and the same was seized. He has supported the preparation of the seizure list and has identified the accused in Court.

In his cross-examination, he has admitted that the *jhola* bore the mark “P.K.” and “Pappu Kumar.” He has further admitted that the written proceedings relating to seizure were prepared at the police station.

(v) P.W.-6, who is the Investigating Officer of the case, has deposed that the place of occurrence is situated in front of Lucky Medical Hall near *Bhikhari Thakur Pool*. He has described the place of occurrence in paragraph 2 of his deposition. He has further deposed that 11 kilograms and 500 grams of *ganja* was recovered from the possession of the accused. He has also stated that, with the permission of the learned Sessions Judge, a sample of the seized ganja was sent to the Forensic Science Laboratory for chemical examination.

During cross-examination, he has stated that the weight of the sample is not mentioned in the case diary. He has further admitted that the weight of *ganja* was about 11.5 kilogram, but the measurement of weight was not done. He further stated that the recovered *ganja* was sent for chemical examination in a container (*dibba*). He admitted that appellant was kept whole day in police station and was sent to the Court on 20.08.2010.

16. In view of the rival submissions advanced on behalf of the parties and upon appreciation of the evidence on record, only question that falls for consideration before this Court in the instant appeal is *"whether the learned Trial Court committed any error in holding the appellant herein guilty of the offence under Section 20 (b) (ii) (B) of the NDPS Act vide the impugned judgment of conviction and order of sentence, warranting interference by this Court ?"*

17. At this stage, it is pertinent to examine apropos whether the prosecution has established the conscious possession of contraband beyond reasonable doubt and in strict conformity with the safeguards contemplated under the NDPS Act. It is well settled that the NDPS Act being a stringent penal statute, the procedural safeguards provided therein must be

scrupulously complied with and the burden upon the prosecution is correspondingly heavy. The Hon'ble Supreme Court in ***Mangilal v. State of Madhya Pradesh (supra)*** has reiterated that in cases under the NDPS Act, the prosecution must prove beyond reasonable doubt not only the recovery but also strict adherence to statutory requirements relating to seizure, sampling, and safe custody of the seized article, failing which the benefit of doubt must enure to the accused.

18. In the present case, the seizure witnesses (P.Ws. 3 and 4), though admitting their signatures on the seizure list, have categorically denied recovery of *ganja* in their presence and were declared hostile. They have stated that nothing was recovered from their presence and their signature was taken on plain paper at police station on saying of *Darogajee*. The *panchas* have turned hostile so the *panchnama* is nothing but a document written by the police concerned. Thus, the recovery rests solely upon the testimony of police officials. P.W-5 also deposed that the *jhola* was not opened at spot rather it was opened at police station. Though conviction can be based on the testimony of official witnesses, the same must inspire confidence and be free from material contradictions. There is serious doubt with respect to the seizure. A careful scrutiny of

the record reveals discrepancies regarding the place of preparation of seizure list, absence of clarity about the weight and sealing of the sample, non-production of the material exhibit during trial, and admitted preparation of documents at the police station. The Investigating Officer has not clearly deposed regarding the quantity of sample drawn, the manner of sealing, and the safe custody of the seized article.

19. The The Hon'ble Supreme Court in ***Jitendra and Anr. v. State of Madhya Pradesh***, reported in ***(2004) 10 SCC 562*** has held with respect to the affect of non-production of the seized contraband, as under:

> ***"5.*** *The evidence to prove that charas and ganja were recovered from the possession of the accused consisted of the evidence of the police officers and the panch witnesses. The panch witnesses turned hostile. Thus, we find that apart from the testimony of Rajendra Pathak (PW 7), Angad Singh (PW 8) and Sub-Inspector D.J. Rai (PW 6), there is no independent witness as to the recovery of the drugs from the possession of the accused. The charas and ganja alleged to have been seized from the possession of the accused were not even produced before the trial court, so as to connect them with the samples sent to the Forensic Science Laboratory. There is no material produced in the trial, apart from the interested testimony of the police officers, to show that the charas and ganja were seized from the possession of the accused or that the samples sent to the Forensic Science Laboratory were taken from the drugs seized from the possession of*

the accused. Although the High Court noticed the fact that the charas and ganja alleged to have been seized from the custody of the accused had neither been produced in the court, nor marked as articles, which ought to have been done, the High Court brushed aside the contention by observing that it would not vitiate the conviction as it had been proved that the samples were sent to the Chemical Examiner in a properly sealed condition and those were found to be charas and ganja. The High Court observed, "non-production of these commodities before the court is not fatal to the prosecution. The defence also did not insist during the trial that these commodities should be produced". The High Court relied on Section 465 CrPC to hold that non-production of the material object was a mere procedural irregularity and did not cause prejudice to the accused.

6. *In our view, the view taken by the High Court is unsustainable. In the trial it was necessary for the prosecution to establish by cogent evidence that the alleged quantities of charas and ganja were seized from the possession of the accused.* ***The best evidence would have been the seized materials which ought to have been produced during the trial and marked as material objects. There is no explanation for this failure to produce them. Mere oral evidence as to their features and production of panchnama does not discharge the heavy burden which lies on the prosecution, particularly where the offence is punishable with a stringent sentence as under the NDPS Act. In this case, we notice that panchas have turned hostile so the panchnama is nothing but a document written by the police officer concerned.*** *The suggestion made by the defence in the cross-examination is worthy of notice. It was suggested to the prosecution witnesses that the landlady of the house in collusion with the police had lodged a false*

> *case only for evicting the accused from the house in which they were living. Finally, we notice that the investigating officer was also not examined. Against this background, to say that, despite the panch witnesses having turned hostile, the non-examination of the investigating officer and non-production of the seized drugs, the conviction under the NDPS Act can still be sustained, is far-fetched."*
>
> ***(emphasis supplied)***

20. Moreover, such lapses assume significance in view of the law laid down by the Hon'ble Supreme Court in ***State of Rajasthan v. Gurmail Singh***, reported in ***(2005) 3 SCC 59***, wherein it has been held that failure to establish safe custody and proper link evidence creates serious doubt about the integrity of the seized contraband.

21. Further, though the prosecution contended that Section 50 of the NDPS Act was not attracted as the search was of a bag and not of the person, the surrounding circumstances must still establish fairness and transparency in the search procedure. The Hon'ble Supreme Court in ***State of Punjab v. Baldev Singh***, reported in ***(1999) 6 SCC 172*** emphasized that procedural safeguards under the NDPS Act are intended to ensure credibility of the recovery.

22. Most of the offenses under NDPS Act carry stringent punishment and therefore, the prescribed procedure has

to be meticulously followed which are minimum safeguard available to an accused against the possibility of false involvement. The Hon'ble Supreme Court in ***State of Rajasthan v. Paramanand and Ano.*** reported in ***(2014) 5 SCC 345*** in para 15 held that:

> ***"15.*** *……if merely a bag carried by a person is searched without there being any search of his person, Section 50 of the NDPS Act will have no application.****"***

23. The Hon'ble Supreme Court in ***Ranjan Kumar Chandha v. The State of Himachal Pradesh*** reported in ***2023 SCC OnLine SC 1262*** held in para 89 as under :

> ***"89.*** *The larger Bench also considered the dictionary meanings of the word "person" and held that any article like a bag, briefcase or container cannot under any circumstance be considered as a person or a part thereof. This Court stated that one of the tests could be, where in the process of search the human body comes into contact or shall have to be touched by the person carrying out the search. If that be so, then it will be search of a person. However, this Court was quick to clarify that a bag or briefcase or any such article cannot be interpreted to mean a person. It was held as under:—*
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> *"10. We are not concerned here with the wide definition of the word "person", which in the legal world includes corporations, associations or body of individuals as factually in these type of cases search of their premises can be done and not of their person. Having regard to the scheme of the Act and the context in which it has been used in the Section it naturally means a*

human being or a living individual unit and not an artificial person. The word has to be understood in a broad common sense manner and, therefore, not a naked or nude body of a human being but the manner in which a normal human being will move about in a civilized society.Therefore, the most appropriate meaning of the word "person" appears to be - "the body of a human being as presented to public view usually with its appropriate coverings and clothings". In a civilized society appropriate coverings and clothings are considered absolutely essential and no sane human being comes in the gaze of others without appropriate coverings and clothings. The appropriate coverings will include footwear also as normally it is considered an essential article to be worn while moving outside one's home. Such appropriate coverings or clothings or footwear, after being worn, move along with the human body without any appreciable or extra effort. Once worn, they would not normally get detached from the body of the human being unless some specific effort in that direction is made. For interpreting the provision, rare cases of some religious monks and sages, who, according to the tenets of their religious belief do not cover their body with clothings, are not to be taken notice of. Therefore, the word "person" would mean a human being with appropriate coverings and clothings and also footwear.

11.A bag, briefcase or any such article or container, etc. can, under no circumstances, be treated as body of a human being. They are given a separate name and are identifiable as such.They cannot even remotely be treated to be part of the body of a human being. Depending upon the physical capacity of a person, he may carry any number of items like a bag, a briefcase, a suitcase, a tin box, a thaila, a jhola, a gathri,

a holdall, a carton, etc. of varying size, dimension or weight. However, while carrying or moving along with them, some extra effort or energy would be required. They would have to be carried either by the hand or hung on the shoulder or back or placed on the head. In common parlance it would be said that a person is carrying a particular article, specifying the manner in which it was carried like hand, shoulder, back or head, etc. Therefore, it is not possible to include these articles within the ambit of the word "person" occurring in Section 50 of the Act.

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

> *not come in contact of the person conducting the search. Such objects cannot be said to be inextricably connected with the person, namely, the body of the human being. Inextricable means incapable of being disentangled or untied or forming a maze or tangle from which it is impossible to get free."*
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> *(Emphasis supplied)"*

24. The Hon'ble Supreme Court in ***The State of Kerla v. Prabhu*** reported in ***2024 SCC OnLine SC 5300*** held in para 7 as under:

> ***"7.** Thus, it is evident that the exposition of law on the question regarding the requirement of compliance with Section 50 of the NDPS Act is no more res integra and this Court in unambiguous term held that if the recovery was not from the person and whereas from a bag carried by him, the procedure formalities prescribed under Section 50 of the NDPS Act was not required to be complied with. It is to be noted that in the case on hand also the evidence indisputably established that the recovery of the contraband was from the bag which was being carried by the respondent."*

25. In the present case, there is nothing to indicate that search of the person of the accused was also undertaken along with the bag which he was carrying in his hand.

26. The Hon'ble Supreme Court in ***Narcotics Control Bureau v. Kashif*** reported in ***(2024) 11 SCC 372*** has discussed with regard to lapse of Section 52-A of NDPS Act and relevancy of primary evidence in para 43, which is as under :

> ***"43.****Though it is true that the inventory certified, photographs taken and the list of samples drawn under sub-section (2) has to be treated by the court as primary evidence in view of sub-section (3), nonetheless the documents like panchnama, seizure memo, arrest memo, etc. prepared by the investigating officer on the spot or during the course of investigation are also primary evidence within the meaning of Section 62 of the Evidence Act, carrying the same evidentiary value as any other primary evidence. Such primary evidence with regard to search and seizure of the contraband substance could not be overlooked merely because some lapse or non-compliance is found of Section 52-A of the Act."*

27. There is no material on record to prove that the Magistrate had certified the inventory seized or the list of sample so drawn. The Hon'ble Supreme Court in ***Yusuf alias Asif v. State*** reported in ***(2024) 14 SCC 217*** has held under :

> ***"14.*** *In Mohanlal [Union of India v. Mohanlal, (2016) 3 SCC 379 : (2016) 1 SCC (Cri) 864] case, the Supreme Court while dealing with Section 52-A of the NDPS Act clearly laid down that it is manifest from the said provision that upon seizure of the contraband, it has to be forwarded either to the officer-in-charge of the nearest police station or to the officer empowered under Section 53 who is obliged to prepare an inventory of the seized contraband and then to make an application to the Magistrate for the purposes of getting its correctness certified. It has been further laid down that the samples drawn in the presence of the Magistrate and the list thereof on being certified alone would constitute primary evidence for the purposes of the trial."*

28. It is pertinent to note that under NDPS Act provisions like Sections 21, 23, 52A, timely FSL testing is vital for narcotic confirmation. In the present case, the unexplained delay of over 9-days contrary to the legitimate delay in forwarding the sample to the FSL also casts a shadow of doubt upon the prosecution's case. On the aforesaid pretext, the unexplained delay in forwarding the sample to the FSL and non-production of the bulk contraband during trial weaken the prosecution case, particularly when independent witnesses have not supported the recovery. Moreover, the inconsistencies pointed out in the description of the packet and the absence of clear evidence regarding weighing of the contraband further create doubt. In criminal jurisprudence, especially under the NDPS Act, suspicion, however strong, cannot substitute proof beyond reasonable doubt. Therefore, upon cumulative consideration of the evidentiary deficiencies, inconsistencies, absence of reliable independent corroboration, and non-establishment of an unbroken chain of custody, this Court finds that the prosecution has not been able to prove the charge against the appellant beyond reasonable doubt in the strict sense required under the NDPS Act. The appellant is, therefore, entitled to the benefit of doubt.

29. In view of the discussions and findings recorded hereinabove, this Court is of the considered opinion that the prosecution has failed to establish the charge under Section 20 (b) (ii) (B) of the NDPS Act against the appellant beyond reasonable doubt. The learned Trial Court, while passing the impugned judgment of conviction dated 12.06.2012 and order of sentence dated 14.06.2012 in Special Case No. 28 of 2010, did not properly appreciate the material inconsistencies and the legal infirmities touching the recovery, sampling, and safe custody of the alleged contraband. The impugned judgment is liable to be set aside and the appellant to be acquitted by rendering the benefit of doubt.

30. Resultantly, the judgment of conviction and order of sentence passed by the learned Additional Sessions Judge XI, Patna in Special Case No. 28 of 2010 are hereby set aside. The appellant, Rishi Kumar, is acquitted of the charge under Section 20 (b) (ii) (B) of the NDPS Act by extending to him the benefit of doubt. The appellant, has already undergone more than 2 years of imprisonment out of 5 years awarded to him. He is on bail. Therefore, his bail bond, if any, shall stand discharged.

31. Accordingly, the present appeal is allowed.

32. Let the Trial Court Records be transmitted back forthwith along with a copy of this judgment for information and necessary compliance.

(Sunil Dutta Mishra, J)

utkarsh/-

AFR/NAFR	NAFR
CAV DATE	10.02.2026
Uploading Date	25.02.2026
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