



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

CRL.A. No.10 OF 2025

Sh. Lalrosanga,
S/o- Lalchhuanmawia,
R/o- Zokhawthar, Champhai District,
Mizoram.

.....Appellant

-Versus-

The State of Mizoram

.....Respondent

- B E F O R E -

HON'BLE MR. JUSTICE KAUSHIK GOSWAMI

For the Appellant(s) : Mr. Johny L. Tochwawng, Advocate.

For the Respondent(s) : Mrs. Vanneihsiami, Additional Public
Prosecutor.

Date on which judgment
is reserved : N/A.

Date of pronouncement
of judgment : **01.09.2026.**

Whether the pronouncement
is of the operative
part of the judgment? : N/A.

Whether the full judgment
has been pronounced? : **Yes.**

JUDGMENT & ORDER (ORAL)

Heard Mr. Johny L. Tochwawng, learned counsel appearing for the appellant. Also heard Ms. Vanneihsiami, learned Additional Public Prosecutor appearing for the State respondent.

2. This criminal appeal is filed under Section 415(2) of the BNSS, 2023 against the impugned judgment of conviction & sentence dated **18.10.2024**, passed by the learned Special Judge, ND&PS Act, Champhai Judicial District, Mizoram (hereinafter referred to as the "trial Court") in **Crl.Trl. No. 197/2023** (Ref: Khawzawl P.S. Case No. 19/2023 dated 26.04.2023), whereby the accused/appellant, i.e., **Sh. Lalrosanga**, and another co-accused were convicted under sections 21(C) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as the "NDPS Act"), and were sentenced to suffer rigorous imprisonment for 10 years and to pay a fine of Rs. 1,00,000/-; in default to suffer simple imprisonment for another six months. Further, under Section 25 of the ND&PS Act, was sentenced to suffer rigorous imprisonment for 10 years and to pay a fine of Rs. 1,00,000/-; in default to suffer simple imprisonment for another six months. Both the sentences were directed to run concurrently.

3. The brief facts of the case, as borne out from the record, are that on 26.04.2023, PW-4, along with another constable, was on duty at the Tuisenphai Check Gate when they intercepted a Hyundai i20 vehicle bearing Registration

No. MZ01E-7744, which was being driven by the co-accused, Joseph Laldingngheta. The accused/appellant, Lalrosanga, was allegedly accompanying him. Suspecting that the vehicle was carrying contraband articles, PW-4 informed the Khawzawl Police Station telephonically. Pursuant thereto, ASI C. Vanlalruata and his team proceeded to the place of occurrence. Upon search of the vehicle, 80 soap cases containing brown powder, suspected to be heroin, weighing 894.18 grams in total, were allegedly recovered from the back carrier/boot space of the vehicle in the presence of two civilian witnesses. Both accused persons were thereafter arrested and Khawzawl P.S. Case No. 19/2023 dated 26.04.2023 was registered under Sections 21(c)/25 of the NDPS Act.

4. Upon completion of investigation, including seizure of the alleged contraband, a charge-sheet was laid against the accused/appellant and the co-accused under Sections 21(c)/25 of the NDPS Act. The learned trial Court, upon both accused persons pleading not guilty, framed the charges accordingly. During trial, the prosecution examined five witnesses, including the seizing officer, two civilian seizure witnesses, the police constable who had allegedly apprehended the accused/appellant and the Investigating Officer. Upon completion of the prosecution evidence, the accused/appellant was examined under Section 313 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the "Cr.P.C."). He denied the incriminating circumstances put

to him. In support of his defence, he examined one Margareth Liani as DW-1.

5. Upon appreciation of the evidence on record and hearing the parties, the learned trial Court convicted the accused/appellant and the co-accused under Sections 21(c)/25 of the NDPS Act and sentenced them accordingly. Aggrieved thereby, the present appeal has been preferred.

6. Mr. Johny L. Tochwawng, learned counsel appearing for the accused/appellant submits that the conviction cannot be sustained either on facts or in law. His principal submission is that the search and seizure proceedings were not conducted in accordance with the statutory safeguards contained in the NDPS Act, particularly Section 52A thereof. It is further contended that the prosecution has failed to establish the foundational fact of conscious possession of the alleged contraband by the accused/appellant, which is the essential ingredient necessary to bring home the charge under Section 21(c) of the NDPS Act.

6.1. Learned counsel further submits that the coordinate Bench of this Court, while deciding the appeal preferred by the co-accused, namely, Joseph Laldingngheta, being ***Crl.A./7/2025 (Joseph Laldingngheta v. The State of Mizoram and Anr.)***, arising out of the very same judgment of the learned trial Court, has already examined the legality of the search and seizure as well as the evidence relating to recovery and has found serious deficiencies therein which vitiated the prosecution case. The said judgment having

attained finality, the same findings, insofar as they relate to the common search, seizure, sampling and chain of custody, cannot be ignored while considering the present appeal.

6.2. It is further submitted that the very circumstance upon which the prosecution principally seeks to establish possession against the accused/appellant, namely, that he was carrying the contraband in a plastic sack and thereafter placed the same in the back carrier/boot space of the vehicle, was never put to him during his examination under Section 313 Cr.P.C. Consequently, such circumstance cannot be used against him. In support of the aforesaid contentions, he relies upon the following decisions: -

(i) ***Paramjeet Singh Alias Pamma v. State of Uttarakhand***, reported in **(2010) 10 SCC 439**. (Apex Court)

(ii) ***Binod Yadav & Anr. v. Union of India and Anr.***, reported in **2024 (6) GLT 492**. (Coordinate Bench)

7. *Per contra*, Ms. Vanneihsiami, learned Additional Public Prosecutor appearing for the State submits that the acquittal of the co-accused is of no assistance to the accused/appellant, since the evidence against the accused/appellant is distinct. According to the learned Additional Public Prosecutor, it was the accused/appellant who was carrying the contraband and subsequently placed it in the back carrier of the vehicle. It is submitted that PW-4 has categorically established this circumstance and, therefore, the conviction of the accused/appellant does not warrant

interference. Reliance has been placed upon the judgment of the Apex Court in ***Bharat Aambale v. State of Chhattisgarh***, reported in **2025 SCC OnLine SC 110**.

8. I have considered the rival submissions advanced by the learned counsel for the parties and have carefully examined the materials available on record, including the evidence led before the learned trial Court and the judgment rendered by the coordinate Bench in the appeal preferred by the co-accused. I have also duly considered the case laws cited at the Bar.

9. Since this is an appeal against conviction, this Court is required to independently re-appreciate the evidence on record and arrive at its own conclusion as to whether the prosecution has established the guilt of the accused/appellant beyond reasonable doubt.

10. Upon consideration of the materials on record, the following questions arise for determination:

(i) Whether the prosecution has established beyond reasonable doubt that the accused/appellant was in conscious possession of the alleged contraband so as to bring home the charge under Section 21(c) of the NDPS Act?

(ii) Whether the material incriminating circumstances relied upon by the prosecution, particularly the allegation that the accused/appellant was carrying the contraband and thereafter placed it in the back

carrier/boot space of the vehicle, could be relied upon when such circumstances were not specifically put to him during his examination under Section 313 Cr.P.C.?

(iii) What is the effect of the findings recorded by the coordinate Bench in the appeal preferred by the co-accused with regard to the search, seizure, sampling and chain of custody of the alleged contraband?

11. The first issue goes to the very foundation of the prosecution case. In a prosecution under Section 21(c) of the NDPS Act, the prosecution must establish possession.

12. Section 8 of the NDPS Act prohibits a person from possessing any narcotic drug or psychotropic substance, except as provided under the provisions of the Act and the rules or orders made thereunder. Section 21 of the NDPS Act makes possession, etc., of manufactured drugs and preparations an offence. Section 21(c) relates to an offence involving possession, etc., of such substance in commercial quantity, which reads as under: -

“(C) where the contravention involves commercial quantity, with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees:”

13. The expression “possession” has to be understood in the context of awareness about the particular fact and it is well settled that once possession is established, the person who claims that it was not a conscious possession has to

establish it because it is he who knew how it came to be in his possession. In other words, the prosecution must first establish the foundational fact that the accused was in conscious possession of the contraband. The statutory presumptions under the NDPS Act do not dispense with this initial burden. Possession is the *sine qua non* for bringing home the charge under Section 21(c) of the NDPS Act.

14. In ***Ram Singh v. Central Bureau of Narcotics***, reported in **(2011) 11 SCC 347**, the Apex Court has held that once an article is found in possession of an accused, it can be presumed that he was in conscious possession. In short, control over the goods is one of the tests to ascertain conscious possession, so also the title. Paragraph 24 of the aforesaid judgment reads as under: -

“24. It is trite that to hold a person guilty, possession has to be conscious. Control over the goods is one of the tests to ascertain conscious possession so also the title. Once an article is found in possession of an accused it could be presumed that he was in conscious possession. Possession is a polymorphous term which carries different meaning in different context and circumstances and, therefore, it is difficult to lay down a completely logical and precise definition uniformly applicable to all situations with reference to all the statutes. A servant of a hotel, in our opinion, cannot be said to be in possession of contraband belonging to his master unless it is proved that it was left in his custody over which he had absolute control”

15. As a necessary corollary to the above, unless the prosecution first establishes the nexus of the accused with the recovered contraband beyond reasonable doubt, the reverse burden cannot be invoked to fill an evidentiary gap. It is,

therefore, necessary to examine whether the evidence on record establishes such nexus.

16. PW-1, the seizing officer, deposed that upon receiving information from the Tuisenphai Check Gate, he proceeded to the spot and searched the Hyundai i20 vehicle. According to him, 80 soap cases containing brown powder suspected to be heroin were recovered from the back carrier of the vehicle. The articles were weighed, repacked and sealed at the spot and were found to weigh 894.18 grams in total. Significantly, however, PW-1 does not claim to have seen the accused/appellant either carrying the alleged contraband or placing it in the vehicle.

17. PW-2 and PW-3, the independent seizure witnesses, also do not provide the necessary link between the accused/appellant and the alleged contraband. Though in their examination-in-chief they stated that the two accused persons were apprehended and described them as occupants/possessors of the seized articles, their cross-examination materially weakens the prosecution case. Both witnesses stated that when they reached the place of occurrence, the two accused persons were already inside the duty check post. Both further stated that they had not seen the accused persons driving or occupying the vehicle or transporting the seized articles. PW-3 could not even remember the accused persons and stated that the owner of the vehicle was not present at the spot.

18. PW-6, the Investigating Officer, likewise does not bridge the evidentiary gap. During cross-examination, he stated that when he reached the place of occurrence, he did not see either accused inside the vehicle. More importantly, he admitted that the seized articles were not present in the vehicle when it crossed the check gate and that he did not actually see who had placed the seized articles in the back of the car.

19. Thus, the prosecution case regarding conscious possession substantially rests upon the testimony of PW-4, the police constable who was on duty at the Tuisenphai Check Gate.

20. PW-4 stated that when the vehicle reached the check gate, the co-accused stepped out of the vehicle and allegedly disclosed that he was smuggling contraband along with the accused/appellant, who had walked away from the vehicle to avoid the check gate. PW-4 thereafter informed the seizing officer and, along with another constable, followed the vehicle. According to him, they proceeded for about two kilometres, waited for the accused/appellant and, when he arrived after about three to four minutes, halted him. PW-4 further stated that the accused/appellant was carrying the contraband in a plastic sack in his hand, and that he thereafter placed it in the back carrier of the vehicle, wherefrom the 80 soap cases were recovered.

During cross-examination, PW-4 further stated that another constable was on duty at the check gate and that,

without any specific direction or order from anyone, both of them accompanied the co-accused in the back seat of the vehicle with the intention of apprehending the accused/appellant. He stated that, after proceeding about 2 kilometres from the check gate, they waited for the accused/appellant, who arrived after about 3–4 minutes. According to him, the accused/appellant was carrying the contraband in a plastic bag which was not transparent, and therefore, they could not ascertain whether the bag contained heroin. He further stated that they gave the information only after returning to the check gate. The witness also stated that he could not say whether the seizing officer had prepared any document before conducting the search and checking the vehicle.

21. The difficulty with this version is not merely that PW-4 is a solitary witness. The material circumstance relied upon by him is itself attended by an unexplained gap. If, as PW-4 states, the accused/appellant was halted immediately upon reaching the spot where PW-4 and another constable were already waiting for him, and if he was then carrying the alleged contraband in his hand, the prosecution has not explained when, and in what manner, the contraband came to be placed in the back carrier of the vehicle. There is no evidence to establish that the accused/appellant thereafter entered the vehicle. There is also no evidence explaining how, when the said two constables were seated in the back seat of the said vehicle, the accused/appellant could have placed the contraband therein.

22. This assumes significance because the other constable was admittedly present with PW-4 throughout this crucial part of the occurrence. He was, therefore, a natural and material witness to the alleged apprehension of the accused/appellant and the events immediately preceding the recovery. Yet, he was neither examined nor was his non-examination explained. The Investigating Officer, on the other hand, candidly admitted that he did not see who had placed the seized articles in the vehicle.

23. The independent seizure witnesses also did not see the accused/appellant driving or occupying the vehicle or transporting the alleged contraband. Consequently, the only evidence sought to establish the crucial act of carrying the contraband and placing it in the vehicle is that of PW-4. Tested against the surrounding circumstances and the evidence of the other witnesses, that testimony does not attain the degree of reliability required to safely sustain a conviction.

24. This Court is conscious of the settled principle that a conviction can rest upon the testimony of a solitary witness if such testimony is wholly reliable and inspires confidence. But the present case is not one where the testimony of PW-4 can safely be placed in that category. The unexplained transition of the alleged contraband from the hands of the accused/appellant, who was allegedly apprehended outside the vehicle, to the back carrier of the vehicle, coupled with the non-examination of the other constable admittedly present at the spot and the admission of the Investigating

Officer that he did not see who placed the articles in the vehicle, creates a serious doubt regarding the prosecution version.

25. This doubt becomes more fortified from the evidence of PW-6, the Investigating Officer, who admitted that the seized articles were not present in the vehicle when it crossed the check gate. Thus, the contraband was admittedly not in the vehicle at the stage when it was initially detained. The prosecution case, therefore, requires the Court to accept that the accused/appellant, after being halted outside the vehicle, somehow placed the contraband inside the back carrier, from where it was subsequently recovered. Yet, the prosecution has led no reliable evidence establishing this crucial intervening circumstance.

26. It is also pertinent that the menace of drugs to society is undoubtedly grave and the offences under the NDPS Act are serious in nature. However, the seriousness of the offence cannot dispense with proof of the essential ingredients of the offence. Where the essential link between the accused/appellant, who was allegedly halted outside the vehicle, and the contraband subsequently recovered from the back carrier of the vehicle driven by the co-accused is lacking, particularly when the prosecution's own evidence shows that the contraband was not present in the vehicle when it was initially detained at the check gate, the Court cannot supply that missing link by conjecture or presumption. The prosecution must establish that link by cogent evidence

before the statutory presumptions can be brought into operation.

27. That apart, the statement of the accused/appellant recorded under Section 313 Cr.P.C. shows that he was asked whether he was halted by police personnel at the Tuisenphai Check Gate and whether 894.18 grams of heroin packed in 80 soap cases had been recovered from his possession. He denied both circumstances and stated that nothing had been seized from his possession and that he had no knowledge of the matter.

28. What was not put to him was the specific prosecution case emerging from the testimony of PW-4 that he had deliberately walked away from the check gate carrying the contraband in a plastic sack; that he was subsequently apprehended about two kilometres away; and, most importantly, that he himself placed the contraband in the back carrier of the vehicle.

29. Section 313 Cr.P.C. is intended to provide the accused a fair opportunity to explain every material circumstance appearing against him. In ***Sharad Birdhichand Sarda v. State of Maharashtra***, reported in ***(1984) 4 SCC 116***, the Apex Court held that circumstances not put to the accused in his examination under Section 313 Cr.P.C. cannot be used against him for recording his conviction, since the accused had no opportunity to explain the same. The principle has also been reiterated in ***Inspector of Customs, Akhnoor, Jammu and Kashmir v. Yashpal***

and Anr., reported in **(2009) 4 SCC 769** and **Paramjeet Singh** (supra).

30. It is equally well settled that every omission in a Section 313 examination does not *ipso facto* vitiate a trial; the Court must examine whether the omission concerns a material incriminating circumstance and whether prejudice has resulted. In the present case, however, the circumstance omitted is not peripheral. It is the very circumstance by which the prosecution seeks to establish the accused/appellant's conscious possession. The failure to put that circumstance to him, therefore, assumes direct significance.

31. Accordingly, the specific incriminating circumstance that the accused/appellant had carried the contraband and thereafter placed it in the back carrier of the vehicle cannot be used against him. Once that circumstance is excluded, the remaining evidence does not establish that the accused/appellant was in conscious possession of the contraband recovered from the vehicle.

32. The position is also to be examined in the backdrop of the judgment rendered by the coordinate Bench in **CrI.A./7/2025**, preferred by the co-accused against the very same judgment of the learned trial Court. The coordinate Bench, upon examination of the same search and seizure, found material deficiencies in the prosecution case concerning the proof of recovery, compliance with the statutory safeguards, sampling and chain of custody, and held that the foundational facts necessary to sustain the prosecution under

the NDPS Act had not been established beyond reasonable doubt. The co-accused was accordingly acquitted.

33. The learned Additional Public Prosecutor is correct in submitting that the acquittal of the co-accused does not, by itself, result in an automatic acquittal of the accused/appellant, particularly where the evidence against the two accused persons is not identical. However, the search, seizure, sampling and chain of custody in the present case are the very same proceedings which were considered by the coordinate Bench. The findings recorded in respect thereof, having attained finality, constitute a relevant and binding part of the factual and evidentiary backdrop of the present case.

34. More importantly, even independently of the aforesaid findings, the prosecution has failed to establish the essential link between the accused/appellant and the contraband. The prosecution cannot rely upon the statutory presumptions without first establishing conscious possession. Nor can the Court supply the missing link by inference or conjecture merely because the accused/appellant was allegedly associated with the co-accused or was found in the vicinity of the vehicle.

35. On an overall appreciation of the evidence, the prosecution case therefore suffers from a fundamental deficiency. The alleged contraband was not recovered from the person of the accused/appellant. The independent witnesses did not see him possessing or transporting it. The

Investigating Officer did not see him placing it in the vehicle. The other constable who was admittedly present at the crucial time was not examined. The only witness seeking to establish the missing link, PW-4, gives a version which does not satisfactorily explain how the contraband came to be recovered from the back carrier after the accused/appellant had allegedly been halted outside the vehicle. Significantly, the Investigating Officer himself stated that the contraband was not present in the vehicle when it crossed the check gate. Added to this is the failure to put the crucial incriminating circumstance to the accused/appellant under Section 313 Cr.P.C.

36. The learned trial Court convicted the accused/appellant primarily on the evidence that he was occupying the vehicle along with the co-accused from which the contraband was seized. However, the evidence of the prosecution witnesses, including PW-4, who had apprehended the accused/appellant, does not support the aforesaid finding of the learned trial Court insofar as the accused/appellant is concerned.

37. In such circumstances, it would be unsafe to sustain the conviction on the basis of the testimony of PW-4. The doubt that arises is not fanciful or remote; it emerges from the prosecution's own evidence and concerns the very circumstance necessary to establish conscious possession.

38. The prosecution was required to establish the foundational fact of conscious possession beyond reasonable

doubt, that being the *sine qua non* for bringing home the charge under Section 21(c) of the NDPS Act. On the evidence available, that foundational fact remains unproved.

39. Where the evidence reasonably admits of two views, the view favourable to the accused must necessarily prevail. The present case is one where the prosecution version does not exclude a reasonable possibility that the accused/appellant's connection with the contraband was not established. The benefit of that reasonable doubt must, therefore, go to the accused/appellant.

40. Consequently, the judgment of conviction and sentence dated 18.10.2024 passed by the learned Special Judge, ND&PS Act, Champhai Judicial District, Mizoram in CrI. Trl. No. 197/2023, arising out of Khawzawl P.S. Case No. 19/2023 dated 26.04.2023, convicting the accused/appellant under Sections 21(c)/25 of the NDPS Act, cannot be sustained and is hereby set aside and quashed.

41. The accused/appellant, Lalrosanga, is accordingly acquitted of the charges. He shall be set at liberty forthwith, if his detention is not required in connection with any other case.

42. The criminal appeal stands allowed and is accordingly disposed of.

JUDGE

Comparing Assistant