



2026:CGHC:2419-DB

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRA No. 2072 of 2024

1 - Shivam Pratap Singh S/o Udaybhan Singh Aged About 19 Years R/o 66 R.K. Puram Colony Fatherpur Abunagar, P.S. Kotwali Fathepur, District Pathapur, Uttar Pradesh.

2 - Shivam Patel S/o Rajesh Kumar Aged About 23 Years R/o I.T.I. Civil Line In Front Of Mahila College Fathepur, P.S. Kotwali Fathepur, District Pathapur, Uttar Pradesh.

... Appellants

versus

State Of Chhattisgarh Through Station House Officer, Police Station - Kukdur, District Kabirdham, Chattisgarh.

... Respondent

For Appellant(s) : Ms Anjali Pradhan, Advocate.

For Respondent(s) : Mr. S.S.Baghel, Government Advocate

Hon'ble Shri Ramesh Sinha, Chief Justice
Hon'ble Shri Ravindra Kumar Agrawal, Judge

Judgment on Board

Per Ramesh Sinha, Chief Justice

15.01.2026

1. The present appeal has been filed by the appellant under Section 374(2) of the Code of Criminal Procedure 1973, (*for short the, Cr.P.C.*) against the impugned judgment of conviction and

sentence dated 24.10.2024, passed by learned Special Judge (NDPS Act) District-Kawardha, District Kabirdham (C.G.) in Special Criminal Case under the NDPS Act No.288/2023, whereby the learned Special Judge has convicted the appellants for the offence under Section 20(b)(ii)(C) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (*hereinafter referred to as “the NDPS Act”*) and sentenced him for 12 years rigorous imprisonment with fine of Rs.1,00,000/- in default of payment of fine, additional R.I. for one year.

2. The prosecution case in brief is that on 24/05/2023, Sub-Inspector Sushil Verma (P.W.-13), posted at Police Station Kukdoor, received information from an informant that two persons were transporting illegal narcotic substance (ganja) in a four-wheeler bearing registration number OD-05 BG-4937, and that two other persons were conducting police surveillance in a white Swift Dzire car bearing registration number UP-30 MU-7306. The said information was entered in the police station daily diary Sanha No. 22 (Ex.P-41). Thereafter, Constable No. 811 Vijay Sharma was issued a duty certificate (Ex. P-43) and sent to Kukdoor town to serve notices upon witnesses. His departure was recorded in daily diary Sanha No. 23. Constable Vijay Sharma brought two witnesses, namely Chandra Kumar Sakat (P.W.-1) and Hari Prasad Khunte (P.W.-2), after serving notices Ex. P-01 and Ex. P-23. The witnesses were informed about the secret information, and a Secret Information Panchanama (Ex.P-2) and a

Panchanama regarding non-availability of search warrant (Ex.P-3) were prepared. Information under Section 42 of the NDPS Act was forwarded to the Sub-Divisional Police Officer, Pandariya, for which Constable No. 182 Pancham Baghel was issued a duty certificate (Ex.P-45).

3. Investigating Officer Sub-Inspector Sushil Verma (P.W.-13), along with accompanying staff and investigation materials, reached the spot for verification of the information. After some time, a white Swift Dzire vehicle bearing registration number UP-30 MU-7306 was seen coming from the Pandariya side. On noticing the police, the occupants sped away toward Bajag, upon which police staff were sent in pursuit and Police Station Bajag was informed via mobile phone. Shortly thereafter, a Honda Amaze vehicle bearing registration number OD-05 BG-4937 was seen approaching. When signaled to stop, the vehicle did not stop immediately and was finally stopped in front of the house of Dhannu Shrivas, Awas Para. On inquiry, the driver disclosed his name as Shivam Pratap Singh, son of Udaybhan Singh, aged 19 years, resident of 66 K.R.K. Colony, Abu Nagar, Fatehpur (Uttar Pradesh), and the other person disclosed his name as Shivam Patel, son of Rajesh Kumar, aged 23 years, resident of ITI Civil Line, in front of Mahila College, Fatehpur (Uttar Pradesh). As there was no electricity at the spot, consent was obtained from Dhannu Shrivas to provide electricity connection for operating electronic equipment, as per Ex.P-34. In the presence of witnesses, accused Shivam Pratap

and Shivam Patel were informed about the secret information, and a Secret Information Panchanama (Ex.P-4) was prepared. They were also informed of their constitutional rights regarding search, and upon their consent to be searched by the police officer himself, a Consent Panchanama (Ex.P-7) was prepared. Before conducting the search, the accused were offered the opportunity to search the police party and witnesses, as per Ex.P-8, during which no objectionable article was found. However, upon searching the vehicle as per Ex.P-9, 10 packets were recovered from the rear seat and 9 packets from the trunk, all wrapped in khaki-colored tape, emitting an odor similar to narcotic substances.

4. The recovered substance was seized and a Seizure Panchanama (Ex.P-10) was prepared. A small quantity was taken out and identified as ganja by rubbing, smelling, and crushing, and an Identification Panchanama (Ex.P-11) was prepared. Upon issuing notice under Section 91 of CrPC (Ex.P-49) to produce valid documents for possession of the narcotic substance, the accused stated that they had no such documents.
5. For weighing the seized 19 packets, weighman Durgesh Lanjhi (P.W.-8) was called with an electronic weighing scale through Constable No. 566 Ramhau, who was issued a duty certificate (Ex. P-50). After verification of the weighing scale in the presence of witnesses (Ex. P-12), the packets were weighed separately.

Including the packaging, the total weight of ganja was found to be 196.170 kgs. The packets were marked C-1 to C-19, and a Weighment Panchanama (Ex. P-13) was prepared. An application (Ex. D-1) was submitted to the Tehsildar, Kukdoor for homogenization of the seized substance. The Tehsildar arrived at the spot and all 19 packets were opened and mixed together as per Homogenization Panchanama (Ex. P-14). Upon weighing separately, the net weight of ganja was 192 kilograms, and the empty packaging weighed 4.170 kilograms. The homogenized ganja was filled into 10 white plastic bags, marked B-1 to B-10, and the tape was kept in a separate bag marked B-11. Weighment Panchanama (Ex. P-15) and Sealing Panchanama (Ex. P-16) were prepared. The RC book and insurance documents of vehicle OD-05 BG-4937, along with the mobile phones of the accused, were seized under Ex. P-17, and a spot map (Ex. P-18) was prepared.

6. The accused were arrested, and information of arrest was given to their relatives Akhilesh and Rajesh. A Dehati Nalishi (Ex. P-52) was registered on the spot, and thereafter Crime No. 0/2023 under Section 20(b) NDPS Act was registered. After completion of proceedings, the seized property and accused were brought to the police station and deposited in the Malkhana. Statements of witnesses under Section 161 CrPC were recorded.
7. On producing the seized ganja, accused persons, and vehicle at

the police station, FIR No. 45/2023 (Ex. P-58) was registered. During investigation, memorandum statements of accused Raunak Patel and Vivek Singh were recorded. On the basis of Raunak Patel's statement, his original driving license and mobile phone were seized. From the possession of accused Vivek Singh, in the presence of witnesses Ratan Kumar and Mahesh Kumar, a Swift Dzire car UP-32 MU-7306, a Samsung mobile phone, and a stepney of vehicle OD-05 BG-4937 bearing registration UP-32 M-7306 were seized and a seizure memo Ex. P-29 was prepared.

8. On 25/03/2023 at 18:30 and 18:40 hours, accused Vivek Singh and Raunak Patel were arrested under Section 20(b) NDPS Act vide arrest memos Ex. P-31 and P-32. On 03/06/2023, mobile phones of all accused were seized, and requests were sent for CDR and Section 65-B certificates for the period 01/05/2023 to 25/05/2023 to the Superintendent of Police, Kabirdham. On 07/06/2023, a request for Patwari map was sent to the Tehsildar, Kukdoor. On 02/06/2023, an application was submitted before the Judicial Magistrate, Pandariya for drawing samples, and on 03/06/2023, an application for inventory preparation was submitted. On 06/06/2023, the seized samples were sent to FSL Raipur through the Superintendent of Police. The FSL report (Ex. P-64) was received and attached to the case file. On 02/06/2023, witness Subhash Chand Behra produced the National Insurance certificate and lease agreement (11 pages) of vehicle OD-05 BG-4937, which were seized under Ex. P-65.

9. After completion of investigation, a charge-sheet was filed against Shivam Pratap, Shivam Patel, Vivek Singh, and Raunak Patel under Section 20(b) NDPS Act before the Court.
10. Charges under Section 20(b)(ii)(C) of the NDPS Act were framed against the accused, who denied the charges. After completion of prosecution evidence, statements under Section 313 CrPC were recorded. Accused Shivam Pratap and Shivam Patel claimed false implication and innocence and did not lead any defence evidence. Accused Vivek Singh, however, examined himself and defense witness Premchand Soni in support of his case.
11. In order to bring home the offence, the prosecution examined as many as 18 witnesses and exhibited 33 documents Exs.P-1 to P-53.
12. After appreciation of oral as well as documentary evidence led by the prosecution the learned trial Court has convicted the appellants and sentenced them as mentioned in the earlier part of this judgment. Hence this appeal.
13. Learned counsel for the appellants would submit that the learned trial Court failed to appreciate that the independent witnesses Chandrakumar Saket (P.W.-1), Hariprasad Khunte (P.W.-2) and Ratan Kumar Dhurve (P.W.-3) have not supported the case of the prosecution and they turned hostile. She would further submit that learned trial Court has failed to observe that the prosecution has completely failed to prove its case beyond all reasonable doubt,

hence, the impugned judgment is liable to be set aside. She would also submit that learned trial Court has failed to consider that there is no any reliable evidence to convict the appellants for the alleged offence. Learned trial Court has not properly considered with the fact that the prosecution has failed to prove the case for convicting the appellants for the alleged offence. Looking to the entire evidence produce by the prosecution the alleged offence is not made out against the present appellants and they have been falsely implicated in the present. There are non-compliance of the mandatory provisions of Section 42, 50, 52, 52-A, 55 and 57 of the NDPS Act. There is absolutely non-compliance of the Standing Order of 1/89 issued by the Central Government with respect to the procedure for drawing of the samples and in absence of any proper procedure for drawing the samples, the entire procedure vitiates. Therefore, the appellants cannot be convicted for the alleged offence. There are material irregularity in the search and seizure proceedings and there are major discrepancy in the evidence of the I.O. Therefore, the appellants may be acquitted from the alleged offence.

14. On the other hand, learned counsel for the State opposes and have submitted that the entire procedure as prescribed under the NDPS Act has been followed in its letter and spirit and after considering the evidence available on record, the learned trial Court has rightly convicted and sentenced the appellants for the alleged offence. The appellants were found in possession of the

vehicle in which 192 kg of cannabis (*Ganja*) was being transported by the appellants and there has been no explanation offered by the appellants as to how they came into the possession of such a huge quantity of cannabis (*Ganja*) in their vehicle. All the mandatory provisions have been duly complied with, therefore, there is no irregularity or infirmity in the impugned judgment passed by learned trial Court and the appeal of the appellant is liable to be dismissed.

15. We have heard learned counsel for the parties and perused the record of the trial Court with utmost circumspection.
16. Investigating officer Sushil Verma (P.W.-13) has stated in his statement before the trial Court that on 24.05.2023, he received information from an informer that two persons were transporting illegal narcotic substance (*ganja*) in a four-wheeler bearing registration number OD-05 BG-4937, and that two persons in a white Swift Dzire car bearing registration number UP-30 NU-7306 were conducting reconnaissance of the police. He entered this information in the police station's daily diary (Rojnamcha Sanha) at serial number 22, dated 24.05.2023. The daily diary entry No. 22 is Ex.P-41, and its certified copy is Ex.P-41-C. Thereafter, Constable No. 811 was sent to the town of Kui Kukdoor to serve notices upon two witnesses and bring them to the police station. His departure was recorded in daily diary entry No. 23. Daily diary entry No. 23 is Ex.P-42, and its certified copy is Ex.P-42-C. He

has further stated that Constable No. 811 served notices upon two witnesses, namely Chandra Kumar Sakat and Hari Prasad Khute, and brought them to the police station. The notices are Exs.P-1 and P-23, on which his signature appears on the respective marked portions. For this duty, Constable No. 811 Vijay Sharma was issued a duty certificate, Ex.P-43, bearing his signature on the marked portion. The return of Constable No. 811 was recorded in daily diary entry No. 24. The said entry is Ex.P-44, and its certified copy is Ex.P-44-C. After informing the witnesses about the informer's information, he prepared the informer information panchnama (Ex.P-2), bearing his signature on the marked portion. In the presence of the witnesses, he also prepared a panchnama regarding the inability to obtain a search warrant, Ex.P-3, bearing his signature. Information under Section 42 of the NDPS Act was sent to the Sub-Divisional Police Officer, Pandariya, acknowledgment of which is Ex.P-39, bearing his signature. For this purpose, he issued a duty certificate to Constable No. 182, Pancham Baghel, Ex.P-45, bearing his signature. His departure was recorded in daily diary entry No. 25 (Ex.P-46, certified copy P-46-C), and his return was recorded in daily diary entry No. 27 (Ex.P-47, certified copy P-47-C). For verification of the informer's information, he departed for the spot along with the staff and investigation materials. His departure was recorded in daily diary entry No. 26 (Ex.P-48, certified copy P-48-C). Upon reaching the spot, he remained present there with the accompanying staff. After

some time, a white Swift Dzire vehicle bearing registration number UP-30 MU-7306 was seen coming from Pandariya side with two persons inside. On seeing the police, they fled at high speed towards Bajag. The accompanying staff was sent to chase the vehicle, and Police Station Bajag was informed by mobile phone. Shortly thereafter, a Honda Amaze vehicle bearing registration number OD-05 BG-4937 was seen approaching. When signaled to stop, it did not stop. The vehicle was stopped in front of the house of Dhannu Shrivs, located at Awas Para. On enquiring, the driver disclosed his name as Shivam Pratap Singh, son of Udaybhan Singh, aged 19 years, resident of 66, KRK Colony, Abu Nagar, Fatehpur, Uttar Pradesh, and the other occupant disclosed his name as Shivam Patel, son of Rajesh Kumar, aged 23 years, resident of ITI Civil Line, in front of Mahila College, Fatehpur. As there was no electricity at the spot, consent was obtained from resident Dhannu Shrivs to provide an electric connection for operating electronic equipment. The consent notice issued to him is Ex.P-34, bearing his signature. In the presence of witnesses, he informed the accused persons about the informer's information and prepared an informer information intimation panchnama (Ex.P-4), bearing his signature and the signatures of both accused.

17. He stated that he served notices under Section 50 of the NDPS Act to the accused, informing them of their right to be searched before a Gazetted Officer or a Magistrate. The notices are

Ex.P-5, bearing his signature and the signatures of both accused. The accused gave written consent to be searched, which is Ex.P-6, bearing their signatures. In the presence of witnesses, he prepared a consent panchnama regarding search (Ex.P-7). Prior to searching the accused, the accused were asked to search him, the police party, and the witnesses, and a panchnama to that effect was prepared (Ex.P-8). No objectionable article was found. Thereafter, he conducted the search of the accused and the vehicle in their possession in the presence of witnesses. From the rear seat (10 packets) and the boot (9 packets) of the vehicle, a total of 19 packets wrapped with khaki-colored tape were recovered, emitting an odor resembling a narcotic substance. A search panchnama (Ex.P-9) was prepared accordingly. The 19 packets recovered from the vehicle were seized, and a seizure panchnama (Ex.P-10) was prepared. On opening a small portion of the substance, rubbing and smelling it, the substance was identified as ganja, and a narcotic identification panchnama (Exhibit P-11) was prepared. Notices were issued to the accused to produce documents authorizing possession of the narcotic substance (Exhibit P-49). The accused stated that they had no such documents.

18. He stated that for weighing the seized packets, he issued a duty certificate (Ex.P-50) to Constable No. 566, Ramhu Dhurve, to bring weigher Durgesh Lanjhi along with an electronic weighing scale to the spot. Constable No. 566 served notice (Ex.P-35) upon

the weigher and brought him to the spot with the electronic scale. After checking the weighing scale, a panchnama regarding physical verification of the weighing scale (Ex.P-12) was prepared. The weigher weighed all the packets separately. The total weight of the ganja along with packaging was found to be 196.170 kgs. The packets were marked C-1 to C-19, and a weighing panchnama (Ex.P-13) was prepared. Subsequently, an application (Ex.D-1) was submitted for the presence of the Tahsildar for sampling proceedings. After some time, the Tahsildar arrived at the spot and, after opening all 19 packets, mixed the contents together and prepared a homogenization panchnama (Ex.P-14). After homogenization, the pure weight of ganja was found to be 192 kgs., and the weight of the packaging material was 4.170 kgs. The ganja was filled into 10 white plastic bags, marked B-1 to B-10, and the empty tape was filled into one white bag marked B-11. A panchnama regarding the weighing of the empty tape (Ex.P-15) was prepared. The bags were sealed in the presence of witnesses, and a sealing panchnama (Ex.P-16) was prepared. I seized 11 bags (B-1 to B-11), one white Honda Amaze vehicle bearing registration number OD-05 BG-4937, the original RC book and insurance documents of the vehicle, and one mobile phone each belonging to accused Shivam Pratap Singh and Shivam Patel. A seizure memo (Ex.P-17) was prepared. He also prepared the spot map (Ex. P-18). Accused Shivam Pratap Singh and Shivam Patel were arrested, and arrest memos (Exs.P-20 and P-

21) were prepared. Information of arrest was given to Akhilesh and Rajesh, and acknowledgment thereof is Exs.P-51. At the spot, he registered a *Dehati Nalishi* (Ex.P-52) and registered Crime No. 0/2023 under Section 20(b) of the NDPS Act. He also prepared a comprehensive proceedings panchnama (Ex.P-53). After completing the proceedings, he returned to the police station with the seized property and the accused. His return was recorded in daily diary entry No. 39 (Ex.P-54, certified copy P-54-C). The seized property was deposited in the *Malkhana* for safe custody and handed over to the *Malkhana* in-charge, as per receipt (Ex.P-55). Entry regarding deposit of the property was made in daily diary entry No. 40 (Ex.P-56, certified copy P-56-C). He recorded the statements of witnesses Chandra Kumar Sakat and Hari Prasad Khute under Section 161 CrPC. After returning to the police station, he handed over the case diary to the Station House Officer for formal registration of the offence and further investigation.

19. Recently in the matter of ***Bharat Aambale vs. The State of Chhattisgarh*** in **CRA No. 250 of 2025**, order dated 06.01.2025, the Hon'ble Supreme Court has held that irrespective of any failure to follow the procedure laid under Section 52-A of the NDPS Act if the other material on record adduced by the prosecution inspires confidence and satisfies the Court regarding both recovery and possession of the contraband and from the accused, then even in such cases the Courts can without hesitation proceed for

conviction notwithstanding any procedural difficulty in terms of Section 52-A of the NDPS Act.

20. In the matter of ***Bharat Aambale*** (supra) the Hon'ble Supreme Court in Para 25 to 37 has held as under:

25. In ***Noor Aga*** (supra) the order of conviction had been set-aside not just on the ground of violation of Section 52A but due to several other discrepancies in the physical evidence as to the colour and weight, and due to the lack of any independent witnesses. In fact, this Court despite being conscious of the procedural deficiencies in the said case in terms of Section 52A observed that the matter may have been entirely different if there were no other discrepancies or if the other material on record were found to be convincing or supported by independent witnesses. The relevant observations read as under: -

“107. The seal was not even deposited in the malkhana. As no explanation whatsoever has been offered in this behalf, it is difficult to hold that sanctity of the recovery was ensured. Even the malkhana register was not produced.

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108. There exist discrepancies also in regard to the time of recovery. The recovery memo, Exhibit PB, shows that the time of seizure was 11.20 p.m. PW 1 Kulwant Singh and PW 2 K.K. Gupta, however, stated that the time of seizure was 8.30 p.m. The appellant's defence was that some carton left by some passenger was passed upon him, being a crew member in this

regard assumes importance (see Jitendra para 6). The panchnama was said to have been drawn at 10 p.m. as per PW 1 whereas PW 2 stated that panchnama was drawn at 8.30 p.m. Exhibit PA, containing the purported option to conduct personal search under Section 50 of the Act, only mentioned the time when the flight landed at the airport.

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111. In a case of this nature, where there are a large number of discrepancies, the appellant has been gravely prejudiced by their non-examination. It is true that what matters is the quality of the evidence and not the quantity thereof but in a case of this nature where procedural safeguards were required to be strictly complied with, it is for the prosecution to explain why the material witnesses had not been examined. *The matter might have been different if the evidence of the investigating officer who recovered the material objects was found to be convincing. The statement of the investigating officer is wholly unsubstantiated.* *There is nothing on record to show that the said witnesses had turned hostile. Examination of the independent witnesses was all the more necessary inasmuch as there exist a large number of discrepancies in the statement of official witnesses in regard to search and seizure of which we may now take note."*

(Emphasis supplied)

26. Non-compliance or delayed compliance with the procedure prescribed under Section 52A of the NDPS Act or the Rules / Standing Order(s) thereunder may lead the court to draw an adverse inference against the prosecution. However, no hard and fast rule can be laid down as to when such inference may be drawn, and it would all depend on the peculiar facts and circumstances of each case. Such delay or deviation from Section 52A of the NDPS Act or the Standing Order(s) / Rules thereunder will not, by itself, be fatal to the case of the prosecution, unless there are discrepancies in the physical evidence which may not have been there had such compliance been done. What is required is that the courts take a holistic and cumulative view of the discrepancies that exist in the physical evidence adduced by the prosecution and correlate or link the same with any procedural lapses or deviations. Thus, whenever, there is any deviation or non-compliance of the procedure envisaged under Section 52A, the courts are required to appreciate the same keeping in mind the discrepancies that exist in the prosecution's case. In such instances of procedural error or deficiency, the courts ought to be extra-careful and must not overlook or brush aside the discrepancies lightly and rather should scrutinize the material on record even more stringently to satisfy itself of the aspects of possession, seizure or recovery of such material in the first place.

27. In such circumstances, particularly where there has been lapse on the part of the police in either following the procedure laid down in Section 52A of the NDPS Act or the prosecution in adequately proving compliance of the same, it would not be

appropriate for the courts to resort to the statutory presumption of commission of an offence from the possession of illicit material under Section 54 of the NDPS Act, unless the court is otherwise satisfied as regards the seizure or recovery of such material from the accused persons from the other material on record. Similarly, irrespective of any failure to follow the procedure laid under Section 52A of the NDPS Act, if the other material on record adduced by the prosecution inspires confidence and satisfies the court regarding both the recovery and possession of the contraband from the accused, then even in such cases, the courts can without hesitation proceed for conviction notwithstanding any procedural defect in terms of Section 52A of the NDPS Act.

28. In *Khet Singh v. Union of India* reported in **(2002) 4 SCC 380** this Court held that the Standing Order(s) issued by the NCB and the procedure envisaged therein is only intended to guide the officers and to see that a fair procedure is adopted by the officer-in-charge of the investigation. It further observed that there may, however, be circumstances in which it would not be possible to follow these guidelines to the letter, particularly in cases of chance recovery or lack of proper facility being available at the spot. In such circumstances of procedural illegality, the evidence collected thereby will not become inadmissible and rather the courts would only be required to consider all the circumstances and find out whether any serious prejudice had been caused to the accused or not. Further it directed, that in such cases of procedural lapses or delays, the officer would be duty bound to indicate and explain the

reason behind such delay or deficiency whilst preparing the memo. The relevant observations read as under: -

“5. It is true that the search and seizure of contraband article is a serious aspect in the matter of investigation related to offences under the NDPS Act. The NDPS Act and the Rules framed thereunder have laid down a detailed procedure and guidelines as to the manner in which search and seizure are to be effected. If there is any violation of these guidelines, the courts would take a serious view and the benefit would be extended to the accused. The offences under the NDPS Act are grave in nature and minimum punishment prescribed under the statute is incarceration for a long period. As the possession of any narcotic drug or psychotropic substance by itself is made punishable under the Act, the seizure of the article from the appellant is of vital importance.

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10. The instructions issued by the Narcotics Control Bureau, New Delhi are to be followed by the officer-in-charge of the investigation of the crimes coming within the purview of the NDPS Act, even though these instructions do not have the force of law. They are intended to guide the officers and to see that a fair procedure is adopted by the officer-in-charge of the investigation. It is true that when a contraband article is seized during investigation or search, a seizure mahazar should be prepared at the spot

in accordance with law. There may, however, be circumstances in which it would not have been possible for the officer to prepare the mahazar at the spot, as it may be a chance recovery and the officer may not have the facility to prepare a seizure mahazar at the spot itself. If the seizure is effected at the place where there are no witnesses and there is no facility for weighing the contraband article or other requisite facilities are lacking, the officer can prepare the seizure mahazar at a later stage as and when the facilities are available, provided there are justifiable and reasonable grounds to do so. In that event, where the seizure mahazar is prepared at a later stage, the officer should indicate his reasons as to why he had not prepared the mahazar at the spot of recovery. If there is any inordinate delay in preparing the seizure mahazar, that may give an opportunity to tamper with the contraband article allegedly seized from the accused. There may also be allegations that the article seized was by itself substituted and some other items were planted to falsely implicate the accused. To avoid these suspicious circumstances and to have a fair procedure in respect of search and seizure, it is always desirable to prepare the seizure mahazar at the spot itself from where the contraband articles were taken into custody.

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16. Law on the point is very clear that even if there is any sort of procedural illegality in

conducting the search and seizure, the evidence collected thereby will not become inadmissible and the court would consider all the circumstances and find out whether any serious prejudice had been caused to the accused. If the search and seizure was in complete defiance of the law and procedure and there was any possibility of the evidence collected likely to have been tampered with or interpolated during the course of such search or seizure, then, it could be said that the evidence is not liable to be admissible in evidence.”

(Emphasis supplied)

29. A similar view as above was reiterated in the decision of **State of Punjab v. Makhan Chand** reported in **(2004) 3 SCC 453** wherein this Court after examining the purport of Section 52A of the NDPS Act and the Standing Order(s) issued thereunder, held that the procedure prescribed under the said order is merely intended to guide the officers to see that a fair procedure is adopted by the officer in charge of the investigation and they were not inexorable rules. The relevant observations read as under: -

“10. This contention too has no substance for two reasons. Firstly, Section 52-A, as the marginal note indicates, deals with “disposal of seized narcotic drugs and psychotropic substances”. Under sub-section (1), the Central Government, by a notification in the Official Gazette, is empowered to specify certain narcotic drugs or psychotropic substances, having regard to the hazardous nature,

vulnerability to theft, substitution, constraints of proper storage space and such other relevant considerations, so that even if they are material objects seized in a criminal case, they could be disposed of after following the procedure prescribed in sub-sections (2) and (3). If the procedure prescribed in sub-sections (2) and (3) of Bharat Aambale vs The State Of Chhattisgarh on 6 January, 2025 Indian Kanoon - <http://indiankanoon.org/doc/94312390/> 27

Section 52-A is complied with and upon an application, the Magistrate issues the certificate contemplated by sub-section (2), then sub-section (4) provides that, notwithstanding anything to the contrary contained in the Indian Evidence Act, 1872 or the Code of Criminal Procedure, 1973, such inventory, photographs of narcotic drugs or substances and any list of samples drawn under sub-section (2) of Section 52-A as certified by the Magistrate, would be treated as primary evidence in respect of the offence. Therefore, Section 52-A(1) does not empower the Central Government to lay down the procedure for search of an accused, but only deals with the disposal of seized narcotic drugs and psychotropic substances. 11. Secondly, when the very same Standing Orders came up for consideration in Khet Singh v. Union of India this Court took the view that they are merely intended to guide the officers to see that a fair procedure is adopted by the officer in charge of the investigation. It was also held that they were not inexorable rules as there could be

circumstances in which it may not be possible for the seizing officer to prepare the mahazar at the spot, if it is a chance recovery, where the officer may not have the facility to prepare the seizure mahazar at the spot itself. Hence, we do not find any substance in this contention."

(Emphasis supplied)

30. Thus, from above it is clear that the procedure prescribed by the Standing Order(s) / Rules in terms of Section 52A of the NDPS Act is only intended to guide the officers and to ensure that a fair procedure is adopted by the officer- in-charge of the investigation, and as such what is required is substantial compliance of the procedure laid therein. We say so because, due to varying circumstances, there may be situations wherein it may not always be possible to forward the seized contraband immediately for the purpose of sampling. This could be due to various factors, such as the sheer volume of the contraband, the peculiar nature of the place of seizure, or owing to the volatility of the substance so seized that may warrant slow and safe handling. There could be situations where such contraband after being sampled cannot be preserved due to its hazardous nature and must be destroyed forthwith or vice-verse where the nature of the case demands that they are preserved and remain untouched. Due to such multitude of possibilities or situations, neither can the police be realistically expected to rigidly adhere to the procedure laid down in Section 52A or its allied Rules / Orders, nor can a strait-jacket formula be applied for insisting compliance of each procedure in a specified timeline to the letter, due to

varying situations or requirements of each case. Thus, what is actually required is only a substantial compliance of the procedure laid down under Section 52A of the NDPS Act and the Standing Order(s) / Rules framed thereunder, and any discrepancy or deviation in the same may lead the court to draw an adverse inference against the police as per the facts of each and every case. When it comes to the outcome of trial, it is only after taking a cumulative view of the entire material on record including such discrepancies, that the court should proceed either to convict or acquit the accused. Non- compliance of the procedure envisaged under Section 52A may be fatal only in cases where such non-compliance goes to the heart or root of the matter. In other words, the discrepancy should be such that it renders the entire case of the prosecution doubtful, such as instances where there are significant discrepancies in the colour or description of the substance seized from that indicated in the FSL report as was the case in **Noor Aga** (supra), or where the contraband was mixed in and stored with some other commodity like vegetables and there is no credible indication of whether the Bharat Aambale vs The State Of Chhattisgarh on 6 January, 2025 Indian Kanoon - <http://indiankanoon.org/doc/94312390/> 28 narcotic substance was separated and then weighed as required under the Standing Order(s) or Rules, thereby raising doubts over the actual quantity seized as was the case in **Mohammed Khalid** (supra), or where the recovery itself is suspicious and uncorroborated by any witnesses such as in **Mangilal** (supra), or where the bulk material seized in

contravention of Section 52A was not produced before the court despite being directed to be preserved etc. These illustrations are only for the purposes of bringing clarity on what may constitute as a significant discrepancy in a given case, and by no means is either exhaustive in nature or supposed to be applied mechanically in any proceeding under the NDPS Act. It is for the courts to see what constitutes as a significant discrepancy, keeping in mind the peculiar facts, the materials on record and the evidence adduced. At the same time, we may caution the courts, not to be hyper-technical whilst looking into the discrepancies that may exist, like slight differences in the weight, colour or numbering of the sample etc. The Court may not discard the entire prosecution case looking into such discrepancies as more often than not an ordinarily an officer in a public place would not be carrying a good scale with him, as held in **Noor Aga** (supra). It is only those discrepancies which particularly have the propensity to create a doubt or false impression of illegal possession or recovery, or to overstate or inflate the potency, quality or weight of the substance seized that may be pertinent and not mere clerical mistakes, provided they are explained properly. Whether, a particular discrepancy is critical to the prosecution's case would depend on the facts of each case, the nature of substance seized, the quality of evidence on record etc.

31. At the same time, one must be mindful of the fact that Section 52A of the NDPS Act is only a procedural provision dealing with seizure, inventory, and disposal of narcotic drugs and psychotropic substances and

does not exhaustively lay down the evidentiary rules for proving seizure or recovery, nor does it dictate the manner in which evidence is to be led during trial. It in no manner prescribes how the seizure or recovery of narcotic substances is to be proved or what can be led as evidence to prove the same. Rather, it is the general principles of evidence, as enshrined in the Evidence Act that governs how seizure or recovery may be proved.

32. Thus, the prosecution sans the compliance of the procedure under Section 52A of the NDPS Act will not render itself helpless but can still prove the seizure or recovery of contraband by leading cogent evidence in this regard such as by examining the seizing officer, producing independent witnesses to the recovery, or presenting the original quantity of seized substances before the court. The evidentiary value of these materials is ultimately to be assessed and looked into by the court. The court should consider whether the evidence inspires confidence. The court should look into the totality of circumstances and the credibility of the witnesses, being mindful to be more cautious in their scrutiny where such procedure has been flouted. The cumulative effect of all evidence must be considered to determine whether the prosecution has successfully established the case beyond reasonable doubt as held in **Noor Aga** (supra).

33. Even in cases where there is non-compliance with the procedural requirements of Section 52A, it does not necessarily vitiate the trial or warrant an automatic acquittal. Courts have consistently held that procedural lapses must be viewed in the context of

the overall evidence. If the prosecution can otherwise establish the chain of custody, corroborate the seizure with credible testimony, and prove its case beyond reasonable doubt, the mere non-compliance with Section 52A may not be fatal. The Bharat Aambale vs The State Of Chhattisgarh on 6 January, 2025 Indian Kanoon - <http://indiankanoon.org/doc/94312390/> 29 emphasis must be on substantive justice rather than procedural technicalities, and keeping in mind that the salutary objective of the NDPS Act is to curb the menace of drug trafficking.

34. At this stage we may clarify the scope and purport of Section 52A sub-section (4) with a view to obviate any confusion. Sub-section (4) of Section 52A provides that every court trying an offence under the NDPS Act, shall treat the inventory, photographs and samples of the seized substance that have been certified by the magistrate as primary evidence.

35. What this provision entails is that, where the seized substance after being forwarded to the officer empowered is inventoried, photographed and thereafter samples are drawn therefrom as per the procedure prescribed under the said provision and the Rules / Standing Order(s), and the same is also duly certified by a magistrate, then such certified inventory, photographs and samples has to mandatorily be treated as primary evidence. The use of the word "shall" indicates that it would be mandatory for the court to treat the same as primary evidence if twin conditions are fulfilled being (i) that the inventory, photographs and samples drawn are certified by the magistrate AND (ii) that the court is satisfied that the

entire process was done in consonance and substantial compliance with the procedure prescribed under the provision and its Rules / Standing Order(s).

36. Even where the bulk quantity of the seized material is not produced before the court or happens to be destroyed or disposed in contravention of Section 52A of the NDPS Act, the same would be immaterial and have no bearing on the evidentiary value of any inventory, photographs or samples of such substance that is duly certified by a magistrate and prepared in terms of the said provision. We say so, because sub-section (4) of Section 52A was inserted to mitigate the issue of degradation, pilferage or theft of seized substances affecting the very trial. It was often seen that, due to prolonged trials, the substance that was seized would deteriorate in quality or completely disappear even before the trial could proceed, by the time the trial would commence, the unavailability of such material would result in a crucial piece of evidence to establish possession becoming missing and the outcome of the trial becoming a foregone conclusion. The legislature being alive to this fact, thought fit to introduce an element of preservation of such evidence of possession of contraband in the form of inventory, photographs and samples and imbued certain procedural safeguards and supervision through the requirement of certification by a magistrate, which is now contained in sub-section (4) of Section 52A. In other words, any inventory, photographs or samples of seized substance that was prepared in substantial compliance of the procedure under Section 52A of the NDPS Act and the Rules / Standing Order(s)

thereunder would have to mandatorily be treated as primary evidence, irrespective of the fact that the bulk quantity has not been produced and allegedly destroyed without any lawful order.

37. Section 52A sub-section (4) should not be conflated as a rule of evidence in the traditional sense, i.e., it should not be construed to have laid down that only the certified inventory, photographs and samples of seized substance will be primary evidence and nothing else. The rule of 'Primary Evidence' or 'Best Evidence' is now well settled. In order to prove a fact, only the best evidence to establish such fact must be led and adduced which often happens to be the original evidence itself. The primary evidence for proving possession will always be the seized substance itself. However, in order to mitigate the challenges in preservation of such substance till the duration of trial, due to pilferage, theft, degradation or any other related circumstances, the legislature consciously incorporated sub-section (4) in Section 52A to bring even the inventory, photographs or samples of such seized substance on the same pedestal as the original substance, and by a deeming fiction has provided that the same be treated as primary evidence, provided they have been certified by a magistrate in substantial compliance of the procedure prescribed. This, however, does not mean that where Section 52A has not been complied, the prosecution would be helpless, and cannot prove the factum of possession by adducing other primary evidence in this regard such as by either producing the bulk quantity itself, or examining the witnesses to the recovery etc. What Section 52A sub-section (4) of

the NDPS Act does is it creates a new form of primary evidence by way of a deeming fiction which would be on par with the original seized substance as long as the same was done in substantial compliance of the procedure prescribed thereunder, however, the said provision by no means renders the other evidence in original to be excluded as primary evidence, it neither confines nor restricts the manner of proving possession to only one mode i.e., through such certified inventory, photographs or samples such that all other material are said to be excluded from the ambit of 'evidence', rather it can be said that the provision instead provides one additional limb of evidentiary rule in proving such possession. Thus, even in the absence of compliance of Section 52A of the NDPS Act, the courts cannot simply overlook the other cogent evidence in the form of the seized substance itself or the testimony of the witnesses examined, all that the courts would be required in the absence of any such compliance is to be more careful while appreciating the evidence.

21. Further in Para 41 and 42 of the said judgment of **Bharat Aambale** (supra) held that:

41. As per Clause 2.5 of the Standing Order No. 1 of 89 i.e., the relevant standing order in force at the time of seizure, where multiple packages or packets are seized, they first have to be subjected to an identification test by way of a colour test to ascertain which packets are of the same sized, weigh and contents. Thereafter, all packets which are identical to each other in all respects will be bunched in lots, in the case of ganja, they may be bunched in lots of 40

packets each. Thereafter from each lot, one sample and one in duplicate has to be drawn. The relevant clause reads as under: -

"2.5 However, when the packages/containers seized together are of identical size and weight, bearing identical markings, and the contents of each package given identical results on colour test by the drug identification kit, conclusively indicating that the packages are identical in all respects, the packages/containers may be carefully bunched in lots of ten packages/containers except in the case of ganja and hashish (charas), where it may be bunched in lots of 40 such packages/containers. For each such lot of packages/containers, one sample (in duplicate) may be drawn."

42. As per Clause 2.8 of the Standing Order No. 1 of 89, while drawing a sample from a particular lot, representative samples are to be drawn, in other words, equal quantity has to be taken from each packet in a particular lot, that then has to be mixed to make one composite sample. The relevant clause reads as under: -

"2.8 While drawing one sample (in duplicate) from a particular lot, it must be ensured that representative samples in equal quantity are taken from each package/container of that lot and mixed together to make a composite whole from which the samples are drawn for that lot."

22. Having considered the evidence on record, particularly the detailed and cogent testimony of the Investigating Officer, Sushil Verma

(P.W.-13), this Court finds that the prosecution has successfully established the factum of recovery and conscious possession of the contraband ganja from the accused beyond reasonable doubt.

23. The evidence of P.W.-13 inspires full confidence. His testimony is consistent, coherent, and duly corroborated by contemporaneous documentary evidence in the form of daily diary entries, panchnamas, seizure memos, arrest memos, and acknowledgments, all of which have been duly exhibited. The sequence of events commencing from receipt of secret information, its recording in the Rojnamcha, compliance with Section 42 of the NDPS Act, association of independent witnesses, service of notice under Section 50 of the NDPS Act, conduct of search and seizure, weighing, sealing, and deposit of seized articles in the Malkhana has been clearly and satisfactorily proved. The recovery of 19 packets of ganja weighing 192 kilograms (net weight) from the vehicle in possession of the accused has been specifically proved through the unimpeached testimony of the Investigating Officer, supported by independent witnesses and documentary evidence. The accused were apprehended at the spot while travelling in the vehicle from which the contraband was recovered, and no plausible explanation was offered by them regarding lawful possession of the seized substance. Their conscious possession is thus clearly established.
24. So far as the alleged procedural irregularities with regard to

Section 52-A of the NDPS Act are concerned, this Court is guided by the authoritative pronouncement of the Hon'ble Supreme Court in **Bharat Aambale** (supra). The Supreme Court has categorically held that non-compliance or deviation from the procedure under Section 52-A of the NDPS Act is not ipso facto fatal to the prosecution case, and that conviction can be safely recorded if the other evidence on record inspires confidence and satisfactorily proves recovery and possession of the contraband.

25. In the present case, there are no material discrepancies in the prosecution evidence regarding the nature, quantity, or recovery of the seized ganja. The evidence does not suggest any possibility of tampering, substitution, or false implication. The chain of custody has been duly established, and the testimony of the Investigating Officer remains unshaken despite cross-examination.
26. In view of the settled legal position as reiterated in **Bharat Aambale** (supra), this Court holds that once possession and recovery of contraband from the accused stand proved by reliable and trustworthy evidence, it is not necessary for the prosecution to further prove each ancillary procedural act in a hyper-technical manner. The substantive evidence on record is sufficient to bring home the guilt of the accused.
27. Accordingly, this Court records a clear finding that the accused were found in conscious and unlawful possession of commercial quantity of ganja, and the prosecution has proved its case beyond

reasonable doubt.

28. For the foregoing reasons, the appeal being devoid of merit is liable to be and is hereby **dismissed**.
29. It is stated at the Bar that the the appellants are in jail, they shall serve out the sentence as ordered by the learned trial Court.
30. The trial court record along with a copy of this judgment be sent back immediately to the trial Court concerned for compliance and necessary action forthwith.
31. Registry is directed to send a copy of this judgment to the concerned Superintendent of Jail where the appellant is undergoing his jail term, to serve the same on the appellant informing him that he is at liberty to assail the present judgment passed by this Court by preferring an appeal before the Hon'ble Supreme Court with the assistance of the High Court Legal Services Committee or the Supreme Court Legal Services Committee.

Sd/-
(Ravindra Kumar Agrawal)
Judge

Sd/-
(Ramesh Sinha)
Chief Justice