

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.406 of 2023

Arising Out of PS. Case No.-489 Year-2020 Thana- KUCHAIKOTE District- Gopalganj

1. Toofani Ram, Son of Vishwanath Ram, R/O Village- Bagaha, P.S- Jadopur, Distt.- Gopalganj.
2. Ramkripal Yadav, S/O Late Baleshwar Yadav, R/O Koilaswa, P.S- Patherwa, Distt.- Kushinagar (U.P).

... ... Appellants

Versus

The State of Bihar

... ... Respondent

Appearance :

For the Appellant/s	:	Ms. Preety Chaudhary, Advocate
		Mr. Kumar Harshvardhan, Advocate
		Mr. Rajnikant, Advocate
For the Respondent/s	:	Mr. Bipin Kumar, Addl.PP

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

and

HONOURABLE MR. JUSTICE SOURENDRA PANDEY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 15-10-2025

Heard learned counsel for the appellants and learned
Additional Public Prosecutor for the State.

2. This appeal is arising out of judgment of conviction dated 18.03.2023 (hereinafter referred to as the 'impugned judgment') and the order of sentence dated 22.03.2023 (hereinafter referred to as the 'impugned order') passed by learned Additional Sessions Judge-I-cum-Special Judge, NDPS Act (hereinafter referred to as the 'learned trial court') in Trial No. 30 of 2020 arising out of Kuchaikote P.S. Case No. 489 of 2020.



3. By the impugned judgment, the learned trial court has been pleased to convict the appellants for the offences punishable under Section 20(b)(ii)(c) of the Narcotic Drugs and Psychotropic Substances Act (in short 'NDPS Act') and ordered to undergo rigorous imprisonment for twelve years and to pay a fine of Rs.1,20,000/- . In case of default of payment of fine, he has to further undergo one year imprisonment.

Prosecution Case

4. The prosecution case is based on the written application of the informant (PW-1). In his written application (Exhibit '2'), the informant has alleged that he got a secret information on 18.12.2020 at 10:10 AM that a big consignment of illicit *ganja* is likely to come from Gopalganj side. In this regard, he recorded his Sanha bearing No. 494 of 2020 dated 18.12.2020 and gave information to the Senior Police Officers and the nearest Magistrate, who is the Anchaladhikari, Kuchaikote. The Anchalaadhikari was asked to come to the police station. On the direction of the Officer Incharge of the Police Station, the informant (PW-1) along with Sub-Inspector Shankar Paswan and the force of the Reserve Bal, Hawaldar Ramkumar Singh, Sipahi Deepak Kumar, Sipahi Lalu Kumar constituted a raiding team and they along with Anchaladhikari reached Balthari Check Post at



NH-28. It is further alleged that after reaching Balthari Check Post, checking of the vehicles coming from Gopalganj started and in course of conducting the check at the Check Post, he came across a silver coloured Honda City Car coming from Gopalganj side bearing registration number UP-16-N-1820. The said car was stopped, the driver and another person who was in the car tried to flee away but they were caught and on asking, they disclosed their names as (1) Toofani Ram and (2) Ramkripal Yadav. On seeing the police action, people from the neighbouring place had assembled and he took two independent witnesses, namely, (1) Godan Shah and (2) Sandeep Basfor who agreed to become seizure list witnesses. Upon search of the vehicle, from the dickey of the car, the informant found 16 packets in plastic polythene, there were brown coloured substances in the packets which smell like *ganja*. It is alleged that the accused persons said that the substance is *ganja* which they were concealing in the dickey of the car and it belongs to Toofani Ram. Both the apprehended accused were searched and from both of them one mobile each was recovered.

The informant has further alleged that at the place of seizure itself, the weighing machine was called for from the police station and the 16 seized packets were weighed, they were of total 1.30 quintal. At the place of occurrence itself, informant had prepared



two samples in two boxes (*dibbas*) of 25 grams each which were sealed also. All the above articles were seized and seizure list was prepared on which both the independent witnesses and the Circle Officer had put their signature. The owner of the vehicle Suryakant Madesia along with two arrested persons were charged for smuggling of *ganja*.

5. On the basis of this written application, Kuchaikote P.S. Case No. 489 of 2020 dated 18.12.2020 was registered under Sections 20, 22, 25 and 29 of the NDPS Act against three accused persons, namely, (1) Suryakant Madesia, (2) Toofani Ram and (3) Ramkripal Yadav. After investigation, Police submitted chargesheet bearing No. 114 of 2021 dated 30.04.2021 against three accused persons under Sections 8, 20(b)(ii)(c) and 25 of the NDPS Act. On the basis of the chargesheet, learned trial court *vide* order dated 02.07.2021 took cognizance of the offences punishable under above-mentioned sections against three accused persons.

6. Charges were read over and explained to the accused persons in Hindi to which they pleaded not guilty and claimed to be tried. Accordingly, *vide* order dated 18.01.2022, charges were framed against Toofani Ram, Ramkripal Yadav and Suryakant Madesia under Sections 20(b)(ii)(c) and 22 of the NDPS Act and



further against Suryakant Madesia charges under Section 25 of the NDPS Act were also framed.

7. In course of trial, the prosecution examined as many as eight witnesses and exhibited several documents to prove it's case. The list of the prosecution witnesses and the list of exhibits are being shown hereunder in tabular form:-

List of Prosecution witnesses

PW-1	Brajnath Singh
PW-2	Lalu Kumar
PW-3	Ram Kumar Singh
PW-4	Nagendra Sahni
PW-5	Shashi Ranjan Prasad
PW-6	Ujjawal Kumar Chaubey
PW-7	Arun Kumar Ram
PW-8	Deepak Kumar

List of Exhibits

Exhibit '1'	Siezure List
Exhibit '2'	Written Application
Exhibit '2/1'	Pagination on Written Application
Exhibit '3'	Formal FIR
Exhibit '4'	FSL Report
Material Exhibits	
Exhibits 'M1' to 'M/16'	16 bundles of <i>ganja</i>

8. Thereafter, the statements of the accused were recorded under Section 313 of the CrPC. The accused took a plea that they are innocent and have been falsely implicated in this case.



9. The defence has examined two witnesses, namely, Suraj Kumar (DW-1) and Rajan Singh (DW-2) and exhibited two documents which are mentioned hereunder in tabular form:-

List of Exhibits on behalf of Defence

Exhibit 'D1/DW1'	Original Sale Letter
Exhibit 'D2/DW1'	Signature of Rajan Singh on the Original Sale Letter

Findings of the Learned Trial Court

10. Learned trial court after analysing the evidences available on the record found that the prosecution has succeeded in proving the allegation of possessing and transporting *ganja* in a vehicle in violation of the NDPS Act and the quantity of the *ganja* was found to be commercial.

11. Learned trial court found that the prosecution has followed the established procedure for making search, seizure and sampling. Learned trial court found that the prosecution has proved the place, date and time of the occurrence.

12. Learned trial court found that on the basis of the cogent, convincing and reliable evidences brought on the record, prosecution has been able to prove the guilt against the accused Ramkripal Yadav and Toofani Ram who were caught at the place of occurrence with the *ganja*. Hence, learned trial court convicted



the appellants for the offences punishable under Section 20(b)(ii) (c) of the NDPS Act.

13. Learned trial court further found that the prosecution has not been able to prove the case against accused, namely, Suryakant Madesia beyond all reasonable doubts, hence, he has been acquitted of the charged levelled against him.

Submissions on behalf of the Appellants

14. Learned counsel for the appellants assailed the impugned judgment and order by submitting that in this case, the established procedure for making search, seizure and sampling has not been followed.

15. Learned counsel submits that (1) Godan Shah and (2) Sandeep Basfor have been made independent witness to the seizure list but have neither been made chargesheet witness nor have been examined by the prosecution in course of trial which shows that the entire seizure list is fabricated. It is submitted that not a single independent witness has been examined in this case and the witnesses who have been examined are the police officials.

16. Learned counsel submits that there are material contradictions between the statement of witnesses regarding the preparation of seizure list, taking out *ganja* from the alleged



vehicle and in fact the prosecution has failed to prove it's case beyond all reasonable doubts.

17. Learned counsel submits that 16 bundles of ganja like substance was recovered from the dickey of the vehicle but individual weight of each bundle has not been mentioned.

18. Learned counsel submits that the seized articles were not produced before the court along with the accused persons on 19.12.2020 rather alleged samples prepared by the informant were produced before the court after one month of the occurrence and the same was sent for examination to the FSL after about two months of the occurrence. The samples kept in two *dibbas* did not bear signature of the accused. The sampling was not done in presence of a Magistrate as required under Sub-Section (2) of Section 52A of the NDPS Act. Learned counsel relies upon the judgment of the Hon'ble Supreme Court in the case of **Bharat Aambale Vs. State of Chhattisgarh** reported in **2025 SCC Online SC 110 (para 50)** to strengthen her submissions.

19. Learned counsel further submitted that the prosecution has failed to establish that the sample which was sent for examination to FSL is the same which has been taken from the alleged bundles recovered from the dickey of the vehicle.



20. Learned counsel submits that the prosecution has failed to prove and establish the reasons for delay in sending the samples. Accordingly, the impugned judgment of conviction and order of sentence are bad in the eye of law which are fit to be set aside.

Submission of the State

21. On the other hand, learned Additional Public Prosecutor for the State has defended the impugned judgment and order by submitting that the prosecution witnesses have supported the factum of seizure of *ganja* like substance from the dickey of the vehicle.

22. Learned Additional Public Prosecutor for the State has submitted that the learned trial court after proper appreciation of the evidences available on the record rightly held the appellants guilty of the charges levelled against them. The impugned judgment and order do not require any interference by this Court.

Consideration

23. Having regard to the submissions of learned counsel for the appellants and learned Additional Public Prosecutor for the State as also on perusal of the trial court's record, it is found that in this case, the informant Brajnat Singh is the Police Sub-Inspector



posted in Kuchaikote Police Station. In his written application (Exhibit '2'), the informant, who has deposed as prosecution witness no. 1, has stated that he had received a secret information on 18.12.2020 at 10:10 AM that a big consignment of illicit *ganja* is likely to come from Gopalganj side. PW-1 recorded his Sanha No. 494 of 2020 dated 18.12.2020, gave information of this to the Senior Police Officers and the nearest Magistrate who is the Anchaladhikari, Kuchaikote, the Anchaladhikari was asked to come to the police station. On the direction of the Officer Incharge of the Police Station, the informant (PW-1) along with Sub-Inspector Shankar Paswan and the force of the Reserve Bal, Hawaldar Ramkumar Singh, Sipahi Deepak Kumar, Sipahi Lalu Kumar constituted a raiding team and they reached Balthari check post at NH-28. It is his statement that in course of conducting the check at the check post, he came across a silver coloured Honda City Car which was coming from the Gopalganj side, the registration number of the vehicle is UP-16-N-1820. He has stated that when the car was stopped, the driver and another person who was in the car tried to flee away but they were caught and on asking, they disclosed their names as (1) Toofani Ram and (2) Ramkripal Yadav. In his written statement, he has stated that on seeing the police action, people from the neighbouring place had



assembled and he took two independent witnesses, namely, (1) Godan Shah and (2) Sandeep Basfor who agreed to become seizure list witnesses. In the dickey of the car, the informant found 16 packets in plastic polythene, they were brown coloured substances in the packets which smell like *ganja*. The informant claimed that at the place of seizure itself, the weighing machine was called for from the police station and on arrival of the weighing machine, 16 packets were weighed, they were of total 1.30 quintal. He has stated that at the place of occurrence itself, he had prepared two samples in two dibbas of 25 gms each which were sealed also. The informant claimed that on the seizure list, the two independent witnesses and the Circle Officer had put their signature.

24. It is evident from the materials on the record that the independent seizure list witnesses in this case have not been examined by the prosecution and no plausible reason for their non-examination has been offered in course of trial. The Circle Officer has deposed as PW-6 in course of trial. He has stated that in his presence, the seizure list was prepared and he had put his signature thereon. It is, however, found that the I.O. (PW-4) has categorically stated in his evidence that in course of investigation, he had not recorded the statement of the Circle Officer. PW-6 also



said that the witnesses were labourers but he cannot say they were private labourers or government labourers, he was not aware of the age of the seizure list witnesses. The I.O. has further stated that he had recorded the statement of the witnesses at the police station. This Court, therefore, finds that the independent witnesses of the seizure list have not been examined which will create a lacuna in the prosecution case, however, we will further examine the other materials available on the record.

25. We have found on perusal of the ordersheets of the learned trial court that in this case, the FIR was received in the court on 19.12.2020. The accused were also arrested and produced with the forwarding letter, arrest memo, checklist, however, order dated 19.12.2020 does not mention that the seized packets of *ganja* were produced in the court. It is, thus, evident that the seized *ganja* was not produced in the court. The evidence of the I.O. (PW-4) would show that he has made a statement in paragraph '4' that the seized exhibits were produced in the court on 19.12.2020 and the learned court had put its signature on all the bundles. We are afraid that such statement of the I.O. (PW-4) is not getting support from the ordersheets of the trial court.

26. From the evidence of the I.O. (PW-4), it may be further found that in paragraph '10' of his deposition, he has stated



that the seized *ganja* was not handed over to him but he had received the sample of the seized *ganja* which was in a plastic *dibba* tied with a cloth. He has stated that on the said sample, there were signatures of the informant, witnesses of the seizure list and the Circle Officer. In the court, the *dibba* was not opened. He has stated that on 19.12.2020, when he was going to the court, he was given the sample by the 'Malkhana Prabhari' but he did not know the name of the 'Malkhana Prabhari'. He did not know that on the said date how much *ganja* was lying in the Malkhana. It is, thus, evident from the statement of the I.O. that the seized *ganja* was not handed over to him and as such, on 19.12.2020 when he produced the accused in the court, he could not have produced the seized *ganja* in the court. His own statements with regard to the production of the seized *ganja* in court is self-contradictory.

27. This Court has further noticed from the evidence of the informant (PW-1) in paragraph '20' of his deposition that on the sample, the signature of the witnesses were obtained but there was no signature of the accused persons. PW-1 has gone to the extent of saying that the plastic *dibba* was sealed but the bundles were not sealed. It is, therefore, evident that the bundles from which some quantity of *ganja* was taken out and from which the samples were prepared, were not sealed and those bundles were



kept in the Makhana without bundles being sealed. PW-1 has also not stated that he had handed over the seized *ganja* to the I.O. (PW-4). It is evident from the deposition of the informant (PW-1) and the I.O. (PW-4) read together that the bundles of *ganja* were kept in the police station without sealing the bundles and the samples which PW-1 claims to have prepared at the place of occurrence were not containing signature of the accused on the seal.

28. This Court has further found from the ordersheets of the learned trial court that on 27.01.2021, one application was filed in the court with a request to send the seized exhibits to Forensic Science Laboratory, Muzaffarpur for testing. The court permitted to send the samples but it is evident from the deposition of the prosecution witnesses that the *dibbas* in which samples were kept were not opened in the court. Despite the order of the court obtained on 27.01.2021 i.e. after five weeks of the seizure, the samples were sent to the FSL, Muzaffarpur only on 19.02.2021. It is not known where the samples were lying from the date of seizure of *ganja*, preparation of samples till sending the same to the FSL. The FSL Report has been marked exhibit as public document, it is Exhibit '3(4)'. A perusal of the FSL Report would show that Chaukidar 7/3 Babujaan Ansari and Chaukidar 6/3



Vasirudin Ansari had handed over the sample in the office of FSL on 19.02.2021 but they were not produced in course of trial, therefore, the defence had no opportunity to cross-examine them on material aspects of the matter.

29. This Court further finds that in this case, police submitted chargesheet on which cognizance was taken by the learned Special Court on 02.07.2021 but by that date, the FSL Report had not come. The FSL Report seems to have been prepared only on 26.04.2022 and it was called from the prosecution by order of the court on 23.11.2022.

30. This Court further finds that in course of trial at the time when the prosecution evidence was on the verge of closure on 09.11.2022, the 16 bundles material exhibits were produced by the prosecution. On the same day, PW-7 was examined and the material exhibits were marked 'M1' to 'M16'. It is evident from the deposition of PW-7 that he is Arun Kumar Ram, Chaukidar of Kuchaikate Police Station who had brought the seized exhibits from Thave Godown on the order of Station House Officer of Kuchaikate Police Station. He has stated in his deposition that the material exhibits were produced before the learned court on 19.12.2020. We have already recorded hereinabove that the order dated 19.12.2020 nowhere shows so. It is evident from the records



that after seizure of the alleged *ganja*, no certification of inventory was made and the sampling was not done either at the place of occurrence in accordance with law or thereafter in terms of Sub-Section (2) of Section 52A of the NDPS Act. In this regard, we would refer the judgment of the Hon'ble Supreme Court in the case of **Bharat Aambale** (supra). The Hon'ble Supreme Court has summarised the law relating to the search, seizure and sampling of narcotic drugs and psychotropic substances in the following words:-

“**50.** We summarize our final conclusion as under:—

(I) Although Section 52A is primarily for the disposal and destruction of seized contraband in a safe manner yet it extends beyond the immediate context of drug disposal, as it serves a broader purpose of also introducing procedural safeguards in the treatment of narcotics substance after seizure inasmuch as it provides for the preparation of inventories, taking of photographs of the seized substances and drawing samples therefrom in the presence and with the certification of a magistrate. Mere drawing of samples in presence of a gazetted officer would not constitute sufficient compliance of the mandate under Section 52A sub-section (2) of the NDPS Act.

(II) Although, there is no mandate that the drawing of samples from the seized substance must take place at the time of seizure as held in *Mohanlal* (supra), yet we are of the opinion that the process of inventorying, photographing and drawing samples of the seized substance shall as far as possible, take place in the presence of the accused, though the same may not be done at the very spot of seizure.

(III) Any inventory, photographs or samples of seized substance prepared in substantial compliance of the procedure prescribed under Section 52A of the NDPS Act and the Rules/Standing Order(s) thereunder would have to be mandatorily treated as primary evidence as



per Section 52A subsection (4) of the NDPS Act, irrespective of whether the substance in original is actually produced before the court or not.

(IV) 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 see 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.

(V) Mere non-compliance of the procedure under Section 52A or the Standing Order(s)/Rules thereunder will not be fatal to the trial unless there are discrepancies in the physical evidence rendering the prosecution's case doubtful, which may not have been there had such compliance been done. Courts should take a holistic and cumulative view of the discrepancies that may exist in the evidence adduced by the prosecution and appreciate the same more carefully keeping in mind the procedural lapses.

(VI) If the other material on record adduced by the prosecution, oral or documentary inspires confidence and satisfies the court as regards the recovery as-well as conscious possession of the contraband from the accused persons, then even in such cases, the courts can without hesitation proceed to hold the accused guilty notwithstanding any procedural defect in terms of Section 52A of the NDPS Act.

(VII) Non-compliance or delayed compliance of the said provision or rules thereunder may lead the court to drawing 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.

(VIII) 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 proving the same, it will not be appropriate for the court 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.



(IX) The initial burden will lie on the accused to first lay the foundational facts to show that there was non-compliance of Section 52A, either by leading evidence of its own or by relying upon the evidence of the prosecution, and the standard required would only be preponderance of probabilities.

(X) Once the foundational facts laid indicate non-compliance of Section 52A of the NDPS Act, the onus would thereafter be on the prosecution to prove by cogent evidence that either **(i)** there was substantial compliance with the mandate of Section 52A of the NDPS Act **OR (ii)** satisfy the court that such non-compliance does not affect its case against the accused, and the standard of proof required would be beyond a reasonable doubt.”

31. Recently, in the case of **Surepally Srinivas versus The State of Andhra Pradesh (Now State of Telangana)** reported in **2025 SCC OnLine SC 683**, the Hon’ble Supreme Court has once again followed the same view with regard to the effect of non-compliance with the provisions of Sub-Section (2) of Section 52A of the NDPS Act.

32. In ultimate analysis, we find that in this case, the prosecution is not able to prove the primary evidence/documents such as seizure and sampling of the *ganja* in accordance with law. The basic requirements as laid down by the Hon’ble Supreme Court to sustain the prosecution case are lacking. In such circumstances, we are of the considered opinion that it would not be safe to sustain the conviction of the appellants.



33. We, therefore, set aside the impugned judgment and order and acquit the appellants of the charges giving them benefit of doubt.

34. The appellants are in jail, therefore, they shall be released forthwith if not wanted in any other case.

35. This appeal is allowed.

36. Let the copy of this judgment together with the trial court's record be sent down.

(Rajeev Ranjan Prasad, J)

(Sourendra Pandey, J)

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