

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.453 of 2018

Arising Out of PS. Case No.-84 Year-2015 Thana- SASARAM RAIL P.S. District- Gaya

Sonu Kumar S/o Raju Ram @ Raju Mehtar, R/o Vill.- Obra, P.S.- Obra,
Dsitric- Aurangabad.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

Appearance :

For the Appellant	:	Mr. Suraj Narain Yadav, Advocate Mr. Chandra Mohan, Advocate Mr. Masoom Alam, Advocate
For the State	:	Mr. Sri Ajay Mishra, APP

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

and

HONOURABLE MR. JUSTICE ASHOK KUMAR PANDEY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHOK KUMAR PANDEY)

Date : 22-07-2025

We have heard Mr. Suraj Narain Yadav, learned counsel for the appellant and Mr. Ajay Mishra, learned Additional Public Prosecutor for the State as also perused the trial court records.

2. The present appeal has been preferred under Section 374(2) of the Code of Criminal Procedure, 1973 (hereinafter referred to as the 'Cr.P.C.') against the judgment of conviction dated 20.12.2017 (hereinafter referred to as the 'impugned judgment') and the order of sentence dated 02.01.2018 (hereinafter referred to as the 'impugned order')



passed by the learned Additional District Judge-1st, Gaya (hereinafter called 'the learned trial court') in N.D.P.S. Case No. 18 of 2015 (arising out of Sasaram Rail P.S. Case No. 84 of 2015), by which the appellant has been convicted for the offences punishable under Sections 20 and 22 of the Narcotics Drugs and Psychotropic Substances Act, 1985 (in short 'NDPS' Act) and he has been sentenced to undergo rigorous imprisonment for fifteen years along with a fine of Rs. 1,00,000/- and in default thereof, the appellant has been directed to further undergo rigorous imprisonment for two years. Both the sentences shall run concurrently.

Prosecution's Case

3. The case of the prosecution in short is that on 20.07.2015, a '*band*' was called on by the political parties. At 8:30 hours, the informant (PW-5) along with other police personnel and Magistrate were on checking duty at platform nos. 3 and 4. The informant (PW-5) has stated in his self-statement that they reached eastern passenger shade and then train no. 12988 (Ajmer Sealdah Express) came on the down line at about 9:45 O' clock and from general boggy of this train, two passengers came out, one of them was aged person and other was young and both were carrying new steel boxes on their head and



were proceeding towards north east side while leaving the boxes on the platform. Both persons were chased by the police and were apprehended and on being asked, they disclosed that there is cloth inside the boxes but were not ready to open the boxes. When they were pressurized by informant and others, the accused persons told them that there is *ganja* inside the boxes. After the boxes were opened, it was found that *ganja* was kept concealed in a cloth, in several small and big plastic packets, whereafter *ganja* was seized with jute sack. The accused persons did not produce any document regarding the contraband and they could not produce their ticket as well. The said accused persons were identified as Baijnath Sao and Sonu Kumar (appellant). Thereafter, weighing machine was brought from the parcel house of the railway station and in the presence of the Magistrate Veer Bahadur (PW-6) and two police personnel, both boxes/packets were weighed and the weight of *ganja* only was found to be 15 and 20 kg respectively. 20 kg *ganja* was recovered from the box of the appellant. Thereafter, seizure list was prepared in presence of the Magistrate, other police personnel and two independent witnesses. It is further stated in the self-statement of the informant that both the independent witness as also the accused persons had put their signature willingly on the seizure list and



the copy of the same was also supplied to them. The accused persons disclosed that they were bringing *ganja* from Tundla (Uttar Pradesh) and taking the same to their house at *Dehri* for the purpose of selling it.

4. On the basis of above self-statement/written report of S.I. Yogendra Kumar (PW-5), Sasaram Rail P.S. Case No. 84 of 2015 dated 20.07.2015 was registered under Sections 21 and 22 of N.D.P.S. Act and Section 147 of the Railways Act.

5. As Baijnath Sao (in Cr. APP (DB) No. 259 of 2018) died during the pendency of appeal, the said appeal got abated vide order dated 16.06.2025.

6. After completion of investigation, police submitted charge-sheet bearing charge-sheet no. 101 of 2015 dated 15.10.2015 under sections 20 and 22 of the N.D.P.S. Act and Section 147 of the Railways Act against both the accused persons. Thereafter, learned Sessions Judge, Gaya took cognizance under the above sections against both the accused persons vide order dated 04.11.2015.

7. The charges were framed against the appellants for the offence punishable under Sections 20 and 22 of the N.D.P.S. Act on 18.01.2016.



8. After completion of evidence of the prosecution, the accused/appellant was examined under Section 313 of the Cr.P.C. on 22.11.2017 wherein he denied the evidence of the prosecution and pleaded innocence.

9. In this case, the prosecution has examined as many as six witnesses and has also adduced documentary evidence, which were exhibited. The description of the witnesses and the documents brought in evidence by the prosecution are given hereunder in tabular form for a ready reference:-

List of Prosecution Witnesses

PW-1	Shambhu Narain Singh (I.O.)
PW-2	Shri Ram Singh (Constable)
PW-3	Ajay Kumar
PW-4	Vinay Kumar Rai
PW-5	Yogendra Kumar (informant)
PW-6	Veer Bahadur (Block Panchayat Raj Officer)

List of Prosecution Exhibits

Ext.-1	Letter dated 14.09.2015 for permission to send the sample to FSL, Patna
Ext.-2	Signature of Sri Ram Singh on the seizure list
Ext.-3	Whole seizure list
Ext.-4	Written statement of FIR
Ext.-5	Endorsement by the S.H.O. on



	the written report
Ext.-6	FSL report
Ext. 7	Signature of Veer Bahadur, the then In-charge Magistrate at Sasaram Railway Station

Findings of the Learned Trial Court

10. Learned trial court has held that upon scrutinizing the evidence of the prosecution, though some contradictions have been pointed out by the defence counsel in the evidence of prosecution witnesses but the same are not material and on the sole basis of such contradictions, accused cannot be given the benefit of doubt. The learned trial court has further held that upon perusal of evidence of PW-1 to PW-6, it is clear that all witnesses have fully supported the prosecution case and upon perusal of documentary evidence, it is apparent that all the formalities prescribed under the N.D.P.S. Act have been followed by the I.O. apart from the fact that in the report of Forensic Science Laboratory, Government of Bihar, Patna, the result of seized samples Ext-A and Ext-B have been found to be *ganja* containing Tetra Hydro Cannabinol as their chief intoxicating ingredient.



11. On the basis of other evidences, learned trial court has held the appellant guilty for the offences under Sections 20 and 22 of the N.D.P.S. Act.

Submissions on behalf of the appellant

12. Learned counsel for the appellant has submitted that the impugned judgment and order are illegal and unjust in the eye of law, in as much as the procedure of collecting samples for sending it to the Forensic Science Lab as prescribed under the N.D.P.S. Act has not been followed. It has also been submitted that the prosecution has failed to produce any independent witness during the course of the trial and on the contrary only official witnesses have been examined, though the occurrence had taken place at a public place i.e., Sasaram platform no. 3. Thus prosecution has totally failed to prove beyond doubt that there is recovery of 20 kg of *ganja* from the physical possession of the appellant. It has been submitted that there is no evidence available on the record regarding weighing of the seized articles nor any railway employee has been examined as witness in the case.

13. Learned Additional Public Prosecutor for the State has submitted that the learned trial court has rightly appreciated all the materials on record and has convicted the appellant considering the oral and documentary evidence produced by the



prosecution. Thus, learned trial court has not committed any error in convicting the appellant.

14. We have heard learned counsel for the parties and also perused the records of the learned trial court.

Consideration

15. PW-1 is Shambhu Narayan Singh and he is also the I.O. of this case. He has stated that on 20.07.2015, he was posted at Sasaram Railway Police Station and he received the charge of investigation of this case on the same day. After receiving the charge of investigation, he noted the FIR in the diary and recorded the restatement of the informant and took the defence statement of the accused. After this, he recorded the statement of Veer Bahadur Singh, Block Panchayat Raj Officer. He inspected the eastern part of platform nos. 3 and 4 of the Sasaram Railway Station and its boundary has been given by him. He also recorded the statement of other witnesses. He collected the criminal antecedent of the accused/appellant and also sent the seized contraband to FSL, Patna for scientific analysis, however till filing of the charge-sheet, he had not received the report from FSL. He has identified his signature on the forwarding letter which has been marked as Exhibit-1. This witness has further



stated that he has submitted charge-sheet in this case against the appellant under sections 20 and 22 of the N.D.P.S. Act.

16. In cross-examination, this witness has stated that the seized article was not at the place of occurrence rather it has been brought to the P.S. He has further stated that he was not a member of the raiding party. This witness has categorically stated that during his entire investigation, he has not recorded the statement of any independent witness. This witness has further stated that he has not handed over the seized article to the Station House Officer in sealed form, however he had handed over two steel boxes which were locked and the key of the lock was also handed over to the S.H.O. This witness has stated that before sending the contraband to F.S.L., the exhibits were sealed before the Magistrate. This witness has next stated that the seizure list was not prepared before him and he cannot say as to in how many copies, the same was prepared. This witness has also stated that the seizure list bears only the signature of the Sipoy and it does not bear the signature of any independent witness. This witness has stated that the seized contraband has not been brought in the court rather the same is in the *malkhana*.

17. PW-2 is (Sri Ram Singh) and this witness has reiterated the self statement of the informant in his examination-



in-chief and has further stated that from one box, 20 kg and from another box, 15 kg *ganja* were seized. He has also named his associates who were police personnel. This witness has also stated that the seizure list was prepared on platform itself. He has identified his signature on the seizure list which has been marked as Exhibit-2.

18. In cross-examination, this witness has stated that he did not know the appellant from before. The seizure list was made before him and from the box of the appellant, altogether 20 kg of *ganja* was recovered. It is further stated by this witness that the said contraband was weighed on the platform itself. He has further stated that the same was weighed in parcel department but no voucher is available. This witness has further stated that whether the copy of the seizure list was handed over to the appellant/accused is not known to him. He has stated that he along with Sambhu Sipahi had signed on the seizure list. No case number is written on the box. Seizure list was made on platform no. 3. This witness is not able to disclose whether seizure was made prior to the FIR. This witness has also stated that the seizure was made at platform of the railway station where other persons were also moving.



19. PW-3 is (Ajay Kumar) and this witness has also reiterated the self statement of I.O. in his examination-in-chief.

20. In cross-examination, this witness has stated that they had proceeded for the place of occurrence at 8:30 hours, the appellant/accused started fleeing away towards east but he was apprehended after being chased. This witness has stated that the parcel office at Sasaram railway station is on platform no. 2. This witness has also stated that the seized article is not before him while he is deposing in the court. This witness has stated that the seizure list was prepared at the place of occurrence before the Magistrate. This witness has next stated that before checking the accused/appellant, the police personnel had not searched themselves. No document was made before the Magistrate to the effect that body was not to be searched. This witness has also stated that no article or document was found in the box to connect the box with the accused/appellant. All the packets of the seized articles were seized at the same time. This witness has not put his signature anywhere. This witness has further stated that the samples were taken out from the seized contraband but those samples do not bear the signature of the appellant. This witness has also stated that nothing was recovered from the body of the appellant.



21. PW-4 is (Vinay Kumar Rai) and this witness has stated that he was on platform duty on 20.07.2015 at 9:54 AM and after this, he has reiterated the self statement of the informant in his examination-in-chief.

22. In cross-examination, this witness has stated that he has not put his signature on the seizure list. The seized article was/is not present in the court. This witness has also stated that the contraband was sealed in the box and he has not counted the packets of contraband but the same was weighed. This witness has also stated that no document was recovered from the box to show that the box belonged to the appellant.

23. PW-5 (Yogendra Kumar) is the informant and this witness has stated that he is the informant of this case and he has reiterated his self statement in his examination-in-chief.

24. In cross-examination, this witness has stated that he has proceeded from the police station at 8 AM. He does not remember the boggy number from which the appellant had alighted. He has stated that they had not taken any written consent from the appellant for making search and he has further stated that he has not counted the packets of the contraband and the contraband was sealed in the box. This witness has stated that the samples were taken out from the contraband. This witness has



also stated that by the smell of the contraband, he was able to identify that the same is *ganja*. This witness has next stated that he does not remember as to from how many packets, samples were collected. All the procedures of seizure and search were complied before the Magistrate but they had not taken any permission from the Magistrate. This witness has also stated that there is no object in the box to connect the box with the appellant.

25. PW-6 (Veer Bahadur Singh) has stated that on account of '*band*' call, he was deputed as Magistrate at the Railway Station, where two persons were apprehended by Railway Protection Force (in short 'RPF') and search was made before him. This witness has also stated that from the box of the appellant, 20 kg of contraband was recovered.

26. In cross-examination, this witness has stated that he is not having the authority letter to show that he was Magistrate at that time. This witness has further stated that each packet of contraband was not opened before him and was not seen rather some of the packets were seen and opened. The boxes were sealed.

27. During the course of argument, learned counsel for the appellant has submitted that Section 52A of the N.D.P.S. Act is a mandatory provision which has not been followed in the



present case. At this juncture, we would like to reproduce Section 52A of the N.D.P.S. Act hereinbelow for ready reference:-

¹[52A. Disposal of seized narcotic drugs and psychotropic substances. ²[(1) The Central Government may, having regard to the hazardous nature, vulnerability to theft, substitution, constraint of proper storage space or any other relevant consideration, in respect of any narcotic drugs, psychotropic substances, controlled substances or conveyances, by notification in the Official Gazette, specify such narcotic drugs, psychotropic substances, controlled substances or conveyance or class of narcotic drugs, class of psychotropic substances, class of controlled substances or conveyances, which shall, as soon as may be after their seizure, be disposed of by such officer and in such manner as that Government may, from time to time, determine after following the procedure hereinafter specified.]

(2) Where any ³(narcotic drugs, psychotropic substances, controlled substances or conveyances) has been seized and forwarded to the officer-in-charge of the nearest police station or to the officer empowered under section 53, the officer referred to in sub-section (1) shall prepare an inventory of such ⁴[narcotic drugs, psychotropic substances, controlled substances or conveyances] containing such details relating to their description, quality, quantity, mode of packing, marks, numbers or such other identifying particulars of the ⁴[narcotic drugs, psychotropic substances, controlled substances or conveyances] or the packing in which they are packed, country of origin and other particulars as the officer referred to in sub-section (1) may consider relevant to the identity of the ⁴[narcotic drugs, psychotropic substances, controlled substances or conveyances] in any proceedings under this Act and make an application, to any Magistrate for the purpose of-
(a) certifying the correctness of the inventory so prepared; or



(b) taking, in the presence of such magistrate, photographs of ⁵[such drugs, substances or conveyances] and certifying such photographs as true; or

(c) allowing to draw representative samples of such drugs or substances, in the presence of such magistrate and certifying the correctness of any list of samples so drawn.

(3) Where an application is made under sub-section (2), the Magistrate shall, as soon as may be, allow the application.

(4) Notwithstanding anything contained in the Indian Evidence Act, 1872 (1 of 1972) or the Code of Criminal Procedure, 1973 (2 of 1974), every court trying an offence under this Act, shall treat the inventory, the photographs of ⁴(narcotic & drugs, psychotropic substances, controlled substances or conveyances) and any list of samples drawn under sub-section (2) and certified by the Magistrate, as primary evidence in respect of such offence.]

28. From a bare reading of the afore-mentioned provisions, it is clear that though these provisions are with respect to disposal of seized narcotics drugs and psychotropic substances, however mere non-compliance of the procedure under Section 52A or the Standing Orders/Rules thereunder will not be fatal to the trial unless there are discrepancies in the physical evidence, rendering the prosecution case doubtful. Nonetheless, once foundational facts indicate non-compliance of Section 52A of the NDPS Act, the onus would then shift upon the prosecution to prove by cogent evidence that there was substantial compliance with the mandate of Section 52A and that such non-compliance does not affect the case of the prosecution against the accused. Reference in



connection be had to the judgment rendered by the Hon'ble Apex Court in the case of ***Bharat Aambale v. the State of Chhatishgarh reported in 2025 INSC 78***, Paragraph No.-50 whereof is reproduced hereinbelow:-

“50. We summarize our final conclusion as under: -

(1) 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 sub-section (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.

29. In this case, all the witnesses are police personnel.

Learned counsel for the appellant has first of all assailed the seizure list which is Ext-7. It has been submitted that on this exhibit, there are two witnesses of seizure list, namely Santosh Kumar and Sri Ram Singh. Sri Ram Singh is PW-2 whereas Santosh Kumar is a *Sipahi*. PW-2 has stated in his examination-in-chief that the seizure list was prepared before him and he had put his signature on it and the same has been marked as Exhibit-2.



30. In cross-examination, this witness has stated that the seizure list was made at platform no.3. PW-2 is the police personnel and the other witness, namely Santosh Kumar, who is also a *sipahi*, has not been examined. It has also been argued that the independent witness of the seizure list have not been examined, which is sufficient to show that seizure list has not been properly proved by the prosecution. According to the version of the prosecution, the contraband was kept in a steel box, wherein it was kept in some small and big packets and was covered with jute sack. From perusal of the seizure list, it transpires that the number of packets have not been mentioned in the seizure list and independent weight of each packet has also not been mentioned in the seizure list.

31. It has also been submitted by the learned counsel for the appellant that the samples were not collected before the Judicial Magistrate. From perusal of the order sheet of the trial court, it transpires that Shri Sanjeev Kumar Rai, ACJM, Gaya was appointed Magistrate for completing the formalities of taking samples and sealing the same but this fact has not been proved by any of the witnesses. The Investigating Officer (PW-1) has stated in his examination-in-chief that the seizure list was sent to FSL



but he did not receive the report. He has merely identified the forwarding application.

32. In cross-examination, this witness (PW-1) has stated that during his investigation, he has not recorded the statement of any independent witness. This witness has also stated that S.H.O. has not handed over to him the contraband in a sealed position. Two boxes were handed over to him which were locked. From the evidence of the I.O., it is not clear as to where the contraband was kept. From perusal of the evidence of PW-4, it is clear that when he was deposing in the court, the seized article was not before him rather the same was in *Malkhana* but no document of *Malkhana* has been produced before the court.

33. PW-5, i.e. the informant has stated that he had not counted the packets. At this place, we would like to refer to Exhibit-6 which is report of the FSL which goes to show that it contained two sealed plastic jars marked as 'A' and 'B' enclosed within a cloth separately, said to be containing samples of *ganja* seized from the accused. It means that only two samples were sent for examination to the office of Director, Forensic Science Laboratory, Patna. It is pertinent to note here that on that day, two accused persons were apprehended with two boxes and from the box of this appellant, it is said that 20 kg of contraband was



recovered. FSL report goes to show that the plastic jars which were sent for examination contained *ganja* Tetra Hydro Cannabinol (THC) as their chief intoxicating ingredient.

34. The prosecution has to prove first of all the number of packets, containing the alleged contraband, which were seized and the weight of each packet has to be independently and collectively given by the prosecution. Apart from this, the sample has to be collected from each packet. From the evidence of prosecution, it is clear that the number of packets in which contraband was kept have not been disclosed by the prosecution witnesses and it has also not been disclosed whether samples were taken from each packet or not. Prosecution has also failed to establish as to which box was carried by this appellant as according to the prosecution, appellant was fleeing after throwing away the box.

35. Regarding weighing of the contraband, the prosecution witnesses have made vacillating statement. Following are the infirmities in the case of the prosecution:-

- (1) One of the seizure list witnesses has not been examined.
- (2) The independent witnesses of the seizure list have not been examined.
- (3) Seizure made on platform no. 3 of the Sasaram Railway Station but no witness of that place.



(4) It is stated in FIR that 20 kg of ganja was recovered from the box of the appellant in different packets but number of packets is not disclosed by the prosecution.

(5) Sampling though said to have been done before Magistrate but it is not clear from the evidence of the prosecution as to whether samples were collected from each packet or not.

(6) Seized contraband was not produced before court.

(7) Section 52A of the N.D.P.S. Act has not been followed.

36. Learned counsel for the appellant has relied upon a judgment rendered by the Hon'ble Apex Court in the case of ***Vijay Pandey v. State of Uttar Pradesh reported in (2019) 18 SCC page 215***, to submit that in case the alleged contraband materials seized from the possession of the accused are not produced before the learned trial court as material exhibit, the same would depict lack of evidence to connect the forensic report with the substance that was seized, hence benefit of doubt will have to be given to the accused. In this regard Paragraph No. 8 of the said judgment being relevant is being reproduced hereinbelow:-

8. The failure of the prosecution in the present case to relate the seized sample with that seized from the appellant makes the case no different from failure to produce the seized sample itself. In the circumstances the mere production of a laboratory report that the sample tested was narcotics cannot be conclusive proof by itself. The sample seized and that tested have



to be co-related. The observations in Vijay Jain v. State of M.P.2, as follows are considered relevant: (SCC p. 531, para 10)

“10. On the other hand, on a reading of this Court's judgment in Jitendra case, we find that this Court has taken a view that in the trial for an offence under the NDPS Act, It was necessary for the prosecution to establish by cogent evidence that the alleged quantities of the contraband goods were seized from the possession of the accused and the best evidence to prove this fact is to produce during the trial, the seized materials as material objects and where the contraband materials alleged to have been seized are not produced and there is no explanation for the failure to produce the contraband materials by the prosecution, mere oral evidence that the materials were seized from the accused would not be sufficient to make out an offence under the NDPS Act particularly when the panch witnesses have turned hostile. Again, in Ashok, this Court found that the alleged narcotic powder seized from the possession of the accused was not produced before the trial court as material exhibit and there was no explanation for its non-production and this Court held that there was therefore no evidence to connect the forensic report with the substance that was seized from the possession of the appellant.”

37. Reference be also had to a judgment rendered by the Hon'ble Apex Court in the case of **Gorakh Nath Prasad v. State of Bihar** reported in **AIR 2018 Supreme Court page 704**,



Paragraph No. '12' whereof being relevant is being reproduced hereunder for ready reference :-

“12. Last but not the least, the alleged narcotic powder seized from the possession of the accused, including the appellant was never produced before the trial court as a material exhibit and once again there is no explanation for its non-production. There is, thus, no evidence to connect the forensic report with the substance that was seized from the possession of the appellant or the other accused.

38. On the basis of the above discussions, we are of the considered view that the prosecution has not been able to prove its case beyond all reasonable doubts, more particularly, since there is no evidence on record to connect the forensic report with the substance seized from the appellant. The prosecution had failed to produce the contraband substance in the court and has also not been able to prove that sampling of the contraband substance was carried out as per the procedure laid down under Section 52A of the N.D.P.S. Act, whereas on the contrary there is no evidence to show that sampling was done as per the prescribed procedure. Moreover, the independent witnesses of the seizure list have not been examined. Thus the prosecution has failed to prove the foundational facts, hence the learned trial court has committed a grave error by holding the appellant guilty for the offence under Section 20 & 22 of the NDPS Act.



39. Accordingly, we find that the findings of conviction recorded by the learned trial court, in our opinion, is not sustainable and requires interference. Therefore, the impugned judgment of conviction dated 20.12.2017 and order of sentence dated 02.01.2018 passed by the learned Additional District Judge, 1st, Gaya in N.D.P.S. Case No. 18 of 2015 are set aside. The appellant of the aforesaid appeal is acquitted of the charges levelled against him. The appellant, who is in custody, is directed to be released from the jail forthwith, if not wanted in any other case.

40. In result, this appeal stands allowed.

41. Let the records of the trial court together with a copy of this judgment be sent to the learned trial court.

(Mohit Kumar Shah, J)

(Ashok Kumar Pandey, J)

Shubham/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	18.08.2025.
Transmission Date	18.08.2025,

