

**HIGH COURT OF TRIPURA
A_G_A_R_T_A_L_A**

Crl. A(J) No. 25 of 2024

Sri Harpal Singh (53 years), son of late Sukdev Singh, resident of 117/30 Gali No.1, Mayur Vihar, Gohana Road, Sonipat, P.S. Sonipat, District: Sonipat, Haryana.

.....Appellant

-VERSUS-

The State of Tripura

..... Respondent.

**B_E_F_O_R_E
HON'BLE JUSTICE DR. T. AMARNATH GOUD
HON'BLE MR. JUSTICE BISWAJIT PALIT**

For Appellant(s)	:	Mr. Ratan Datta, Advocate.
For Respondent(s)	:	Mr. Raju Datta, P.P.
Date of hearing	:	22.07.2025
Date of delivery of judgment and order	:	29.07.2025
Whether fit for reporting	:	YES

JUDGMENT & ORDER

[Dr. T. Amarnath Goud, J]

[1] Heard Mr. R. Datta, learned counsel appearing for the appellant also heard Mr. R. Datta, learned P.P. appearing for the respondent-State.

[2] This is an appeal filed under Section-374(2) of Cr. P.C. against the judgment and order of conviction and sentence dated 16.01.2024 passed by the learned Special Judge (NDPS), Khowai Tripura, Khowai in connection with Case No. Special (NDPS) 37 of 2022 whereby and whereunder, the appellant has been convicted under Section-20(b)(ii) (C) of Narcotic Drugs and Psychotropic Substances Act, 1985 [for short, NDPS) and thereby, sentenced him to suffer RI for a period of 14 years and to pay a fine of Rs.1,00,000/- in default to undergo rigorous imprisonment for another 06 months.

[3] The Prosecution case in brief is that on 06.04.2022 at around 10:45 hours St Rathindra Debbarma (the complainant) along with P.S Staffs including constable Bimal Debnath, SPO Parimal Debnath, SPO Amrit Debbarma and SPO Madhura Reang were performing vehicle checking duty at 41 miles Naka Point. At that time while they were performing the said duty the complainant along with his staff intercepted one 12 (Wheeler) vehicle bearing No. HR 69C 1323 which was hailing towards Ambassa. The complainant along with staffs checked the vehicle and found some brown color packets concealed in a hidden chamber built in the driver's cabin of the Truck. The complainant suspected those packets full of dry ganja and accordingly he informed the matter to O.C Mungiakami P.S and requested him to come to the spot to take necessary action. Thereafter O.C P.S along with the staffs rushed to the spot and after few moments SDPO Teliamura also reached at the spot. In the presence of SDPO Teliamura and available police constables and SPO Staffs the complainant checked the vehicles thoroughly and recovered total 102 brown color packets of dry ganja weight about 456 kg from a hidden chamber in the driver's cabin of the said vehicle.

[4] Complainant seized those recovered 456 kgs of suspected dry ganja along with the offending Truck two key pad mobiles and some documents by preparing seizure list in presence of SDPO Teliamura and available witnesses from the possession of accused persons namely Naveen who was the driver and also from one Harpal Singh who was the assistant of the said Truck as they violated the provisions of the NDPS Act and thereafter, the seized contraband along with the vehicle, mobile phones and other seized documents were handed over to the O.C P.S along with the two detained persons and a *suo-moto* complaint was lodged by the complainant before O.C Mungiakami P.S. After completion of investigation charge was framed and Prosecution adduced their respective evidences, Accused was examined under Section 313 Cr. PC. After hearing the parties and on the basis of written evidences and documents on record the Ld Trial Court convicted the appellant 20 (b) (ii) (C) of Narcotic Drugs and Psychotropic Substances Act, 1985 (in short NDPS) and thereby sentenced him to suffer

Rigorous imprisonment for a period of 14 years and to pay fine of Rs. 1,00,000/-(Rupees of One Lakh) in default to undergo rigorous imprisonment for another 06 months.

[5] Based on the information and the *suo moto* complaint of SI Rathindra Debbarma, O.C Mungiakami P.S, registered a case bearing No.2022/MGK/012 under Section-20 (b) (ii) (C)/25/29 of the NDPS Act, 1985 and endorsed the case to SI Ranjit Das for investigation.

[6] During the course of investigation, I.O forwarded the documents with a prayer to the learned Special Judge, NDPS, Khowai to pass necessary order for pre-trial disposal of 456 kgs of ganja in 102 numbers of packets in connection with the present case in presence of Drug Disposal Committee Agartala. I.O in the course of investigation, recorded the statement of the complainant under Section-161 of Cr.P.C arrested both the accused persons Naveen and Harpal Singh, visited the P.O and prepared the hand-sketch map of the P.O along with the index of the hand-sketch map. I.O also recorded the statement of the other witnesses and the sent the sample SFSL Narshingarh and collected the same after examination through SDPO Teliamura.

[7] In the course of investigation I.O under Section-67 of the NDPS Act issued notice to the owner of the alleged vehicle and completed all other formalities. In the course of investigation in the Court, sample was drawn, I.O along with O.C Mungiakami P.S was present and has withdrawal the seized contraband from the NDPS Godown. The list of sample was drawn from the seized material on 12.04.2022 in connection with this case which is prepared by the I.O and the sample was drawn on 12.04.2022 in the court with his signature and the signature of J.M 1st Class, Khowai. I.O has also given a prayer to produce the deposited NDPS Articles for the purpose of drawing sample. The deposited NDPS articles were produced as per the order of the court and after drawing the sample I.O had also given a prayer for keeping the remaining stock of NDPS articles in the safe custody. After completion of the investigation I.O has submitted charge-sheet vide C.S No.

34 dated 31.07.2022 under Section-20 (b) (ii) (C)/25/29 of NDPS Act, against the accused persons namely Naveen and Harpal Singh.

[8] When the accused person entered his appearance in Court after due compliance of Section-207 of Cr.P.C, and after hearing the learned counsel appearing for the both sides and after perusing the material on record charge was framed against the accused person under Section-20 (b) (ii) (C) and under Section-25 of the NDPS Act read with Section-29 of NDPS Act. When the contents of the charge was read over and explained to the accused person in Hindi, he pleaded not guilty and claimed to be tried.

[9] During the course of trial, the prosecution in order to bring home the guilt of the accused persons examined as many as 12 (twelve) witnesses and exhibited some material documents before the Court. On the closure of the prosecution evidence the accused person was examined under Section-313 of Cr.P.C and he denied the prosecution case and also declined to adduce any defence evidence on his behalf.

[10] Having heard both the parties and on perusal of the material evidence on record, the learned Court below has observed as under:

“The punishment prescribed for the commission of the offence under Section 20 (b) (ii) (C) of NDPS Act extends to rigorous imprisonment for a term which shall not be less than 10 years but which may extend to 20 years and shall also be liable to fine which shall not be less than Rs. 1,00,000/(Rupees OneLakh) and which may extend to Rs.2,00,000/- (Rupees Two Lakhs). Punishment for Section 25 of the NDPS Act and Section29 of the NDPS Act shall be the punishment provided for that offence.

Accordingly, accused person namely Harpal Singh is convicted and sentenced to undergo rigorous imprisonment for a period of 14 (fourteen) years and fine of Rs.1,00,000/- (Rupees One Lakh) in default to undergo rigorous imprisonment for another 06 (six months), so as to send a clear message to the society to deter other likeminded criminals to commit such crime in future.

All the sentences shall run concurrently.

The period of detention, if any, already undergone by the accused person during the course of investigation, inquiry or trial shall be set off against the term of imprisonment as provided under section 428 of Cr.P.C. The convict namely Harpal Singh is already in custody and he is taken in custody.

Let the copy of the Judgment be furnished to the convict free of cost as provided in Section 363 of Cr.P.C.

The convict Harpal Singh have been informed about his right of appeal to the Higher Court against the judgment of conviction and sentence if he so desire, either through his engaged Counsel or through Superintendent, Khowai Sub-Jail.

Let a copy of the Judgment be forwarded to Ld. District Magistrate ,Khowai as provided in Section 365 of Cr.P.C.

Destroy the seized materials in due course of law and after the expiry of the appeal period if not destroyed already.

The case is disposed of on contest partly in connection with the convict Harpal Singh.

Make necessary entry in the T.R”

[11] The appellant herein, being aggrieved by and dissatisfied with the same, has preferred this appeal before this Court for ends of justice.

[12] Mr. R. Datta, learned counsel appearing for the appellant has submitted that the learned Court below held the convict appellant to be guilty of alleged offences on the basis of no evidence in as much as the evidence on record does not constitute the alleged offence and in no case implicated the convict appellant in the commission of alleged offence. It has been further contended that SI Mr Rathindra Debbarma along with some PS Staff and SDPO were performing vehicle checking duty at 41 miles Naga point they intercepted one 12 wheeler vehicle bearing No. HR-69-C-1323 which is a goods carrying truck and the said vehicle was proceeding towards Ambassa. The police checked the vehicle and found some brown colour packets that is 456 kg of suspected dry Ganja concealed in a hidden chamber build in the driver's cabin of the said vehicle and seized those contravene but none of the independent witness were cited as seizure witness except the police personals, so the seizure is suspected because law mandates that impartial inhabitant of that area are required to cite as witness for fair ends of justice but the learned Court below failed to appreciate the same.

[13] According to prosecution, SDPO Teliamura was requested to come to the spot and accordingly he came there and thereafter seizure was made which is absolutely clear violation of Section-43 of the NDPS Act. The learned Court below has failed to appreciate that Sections-42, 50, &

52A are clearly violated during investigation and as such the prosecution case is doubtful and the appellant is liable to be acquitted. According to the prosecution, appellant is a co-driver of the said vehicle however he is not a co-driver of said vehicle rather he is an assistant of the driver of the said vehicle and the driver of the vehicle was absconded. Though not admitting but assuming that some contrabands are recovered from the vehicle, then also the assistant of the vehicle cannot be held responsible for that and there is also no direct evidence against the present appellant regarding his involvement.

[14] No impartial person came forward to lodge complaint against the appellant the police lodged the *suo-moto* complaint developing the story and also covering the ingredients of the NDPS Law, so the concocted FIR is not credible at all. From the possession of appellant no contraband articles were recovered and the appellant has no knowledge regarding the secret chamber in the driver's cabin. During the course of trial prosecution examine as many as 12 witnesses, out of which almost all the witnesses are official staff and naturally as per the direction of the IO and SDPO they tried to establish the case against the appellant and the entire case is false and concocted and the appellant became a victim of circumstances.

[15] Mr. Datta, learned counsel has averred that PW-9 stated in his deposition that inside the packets found some cut pieces of brown colored pieces plant materials with fruiting/flowering tubs/ seeds but not segregated the plant/leaf and the fruiting flowering tubs and seeds, so it is really difficult to find out actual ganja in the seized packets which is most important to find out the quantity as to how much the commercial, and non commercial. It is most important to mention here that the leaves and body of the ganja tree are not at all a ganja only fruit, flower tubs and seeds are treated as a ganja. So police failed to ascertain the actual quantity of real ganja but the learned Court below failed to appreciate the same.

[16] There are no ingredients of Section-20 (b), (ii), (c) of NDPS Act read with Sections-25 & 29 of the NDPS Act against the appellant. The

learned Court failed below to appreciate that no independent witnesses were examined by the prosecution to establish the case. Prosecution is totally failed to establish the case against the appellant and the appellant is liable to be acquitted.

[17] Mr. Datta, in support of his case has placed some reliance on some judgments of the Hon'ble Apex Court i.e. ***in Mangilal v. State of Madhya Pradesh***, reported in ***(2023) 19 SCC 364, Mohammed Khalid and Another v. State of Telengana***, reported in ***(2024) 5 SCC 393 and in Mohan Lal v. State of Punjab***, reported in ***AIR 2018 sc 3853***.

[18] In ***Mohan Lal v. State of Punjab***, reported in ***AIR 2018 SC 3853***, the Hon'ble Apex Court has held thus:

“10. Unlike the general principle of criminal jurisprudence that an accused is presumed innocent unless proved guilty, the NDPS Act carries a reverse burden of proof under Sections 35 and 54. But that cannot be understood to mean that the moment an allegation is made and the F.I.R. recites compliance with statutory procedures leading to recovery, the burden of proof from the very inception of the prosecution shifts to the accused, without the prosecution having to establish or prove anything more. The presumption is rebuttable. Section 35 (2) provides that a fact can be said to have been proved if it is established beyond reasonable doubt and not on preponderance of probability. The stringent provisions of the NDPS Act, such as Section 37, the minimum sentence of ten years, absence of any provision for remission, do not dispense with the requirement of the prosecution to establish a prima facie case beyond reasonable doubt after investigation, only after which the burden of proof shall shift to the accused. The case of the prosecution cannot be allowed to rest on a preponderance of probabilities.

11. A fair trial to an accused, a constitutional guarantee under Article 21 of the Constitution, would be a hollow promise if the investigation in a NDPS case were not to be fair or raises serious questions about its fairness apparent on the face of the investigation. In the nature of the reverse burden of proof, the onus will lie on the prosecution to demonstrate on the face of it that the investigation was fair, judicious with no circumstances that may raise doubts about its veracity. The obligation of proof beyond reasonable doubt will take within its ambit a fair investigation, in absence of which there can be no fair trial. If the investigation itself is unfair, to require the accused to demonstrate prejudice will be fraught with danger vesting arbitrary powers in the police which may well lead to false implication also. Investigation in such a case would then become an empty formality and a farce. Such an interpretation therefore naturally has to be avoided.”

[19] In *Mangilal v. State of Madhya Pradesh*, reported in (2023) 19 SCC 364, the Hon'ble Apex Court has observed as under:

“15. On the issue of disposing narcotic substance in derogation of the compliance contained in Section 52A of the NDPS Act, this Court in *Union of India v. Jarooparam*, (2018) 4 SCC 334 has held as follows:

“8. What transpires from the abovequoted paragraph is that after taking out two samples of 30 gm each, the Executive Magistrate returned the entire remaining seized property to the investigating officer PW 6. To further ascertain the same, we have also carefully perused the exact content of the proceedings dated 14-10-2004 (Annexure P-5) recorded by the Executive Magistrate, Singoli Tappa. The proceedings recorded as far as the respondent herein is concerned, read thus:

Proceedings

14-10-2004: Case submitted. Shri Harvinder Singh, Inspector (Investigating Officer), Narcotics Bureau, Singoli has submitted three sealed packets of seized stuff in Crime No. 1 of 2004 under Sections 8/18 and 8/29 of the NDPS Act, 1985. These packets were marked A, B and C and the details are given as under:

1-A: On the packet marked “A” it was indicated that packet contains 7.200 kg opium seized from Jaroopram, s/o Ganga Ram Bishnoi. On opening the packet, transparent polythene bag was found, in which again two polythene packets were found. One polythene indicated 4.000 kg and the second one 3.200 kg opium, respectively. A composite sample of 30-30 gm each have been taken from the two packets and kept in a small plastic polythene and marked A-3 and A-4 and sealed. The remaining seized stuff and samples sealed as usual are handed over to the presenting officer Shri Harvinder Singh, Inspector.

9. From the above proceedings, it is crystal clear that the remaining seized stuff was not disposed of by the Executive Magistrate. The contraband stuff as also the samples sealed as usual were handed over physically to the Investigating Officer Harvinder Singh (PW 6). Also the trial court in its judgment specifically passed instructions to preserve the seized property and record of the case in safe custody, as the co-accused Bhanwarlal was absconding. The trial court more specifically instructed to put a note with red ink on the front page of the record for its safe custody. In such a situation, it assumes importance that there was nothing on record to show as to what happened to the remaining bulk quantity of contraband. The absence of proper explanation from the prosecution significantly undermines its case and reduces the evidentiary value of the statements made by the witnesses.

10. Omission on the part of the prosecution to produce the bulk quantity of seized opium would create a doubt in the mind of the Court on the genuineness of the samples drawn and marked as A, B, C, D, E, F from the allegedly seized contraband. However, the simple argument that the same had been destroyed, cannot be accepted as it is not clear that on what authority it was done. Law requires that such an authority must flow from an order passed by the Magistrate. On a bare perusal of the record, it is apparent that at no point of time any prayer had been made by the prosecution for destruction of

the said opium or disposal thereof otherwise. The only course of action the prosecution should have resorted to is for its disposal is to obtain an order from the competent court of Magistrate as envisaged under Section 52-A of the Act. It is explicitly made under the Act that as and when such an application is made, the Magistrate may, as soon as may be, allow the application (see also *Noor Aga v. State of Punjab*, (2008) 16 SCC 417 : (2010) 3 SCC (Cri) 748).

11. There is no denial of the fact that the prosecution has not filed any such application for disposal/destruction of the allegedly seized bulk quantity of contraband material nor was any such order passed by the Magistrate. Even no notice has been given to the accused before such alleged destruction/disposal. It is also pertinent here to mention that the trial court appears to have believed the prosecution story in a haste and awarded conviction to the respondent without warranting the production of bulk quantity of contraband. But, the High Court committed no error in dealing with this aspect of the case and disbelieving the prosecution story by arriving at the conclusion that at the trial, the bulk quantities of contraband were not exhibited to the witnesses at the time of adducing evidence.

[20] In ***Mohammed Khalid and Another v. State of Telengana***, reported in **(2024) 5 SCC 393**, the Hon'ble Apex Court has observed as under:

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12.1. (i) That the independent panch witnesses associated with the search and seizure were not examined in evidence and hence the entire search and seizure proceedings become doubtful and are vitiated;

12.3. That the prosecution failed to ensure compliance of the requirements of Section 52A of the NDPS Act inasmuch as, no sampling procedure was undertaken before the Magistrate;

12.8. No document pertaining to deposit of the samples at the Police Station and the transmission thereof to the FSL was exhibited on record. The samples were forwarded to the FSL after a gross delay of more than two months and hence, the FSL report cannot be read in evidence because the required link evidence is missing.

17.5. PW-5 “Originally three bundles of ganja was seized from the accused and as the Ganja was becoming dry and turning into dust, and due to the holes of the bags it is coming out, and therefore we transferred the Ganja into 7 new bags, which was already marked as M.O.1.” “Three samples of Ganja have been taken by LW 10 and handed over the samples to me. We have forwarded the three samples to FSL through A.C.P., and submitted FSL report Ex. P.11.” “The samples were taken on 8.5.2009 and they were forwarded to FSL on 7.7.2009 i.e. after two months of taking of samples. The samples were not deposited in the court.” “I did not file any document to show that where the property was kept in Maalkhana. I did not produce any Maalkhana register in this case. The property was sent to FSL after two months of its seizure. The FSL report, does not disclose about the panch chits and seals and quantity of samples. The property deposited in court is not having any official seals.” “I

did not report to the court till today that the ganja was getting dried up and becoming dust, I converted them from three bundles to 7 bags for safe custody.

24. The FSL report (Exhibit P-11) does not disclose about the panch chits and seals and signature of the accused on samples. The property deposited in the Court(muddamal) was not having any official seals. The witness also admitted that he did not take any permission from the Court for changing the original three packets of muddamal ganja to seven new bags for safe keeping.

23. Contrary to the evidence of PW-1, PW-5 stated that three samples of ganja were taken out by Sub-Inspector LW- 10 and were handed over to the witness who forwarded the same to the ACP for sending it to FSL. In cross-examination, the witness admitted that he did not file any document to show that the property was kept in malkhana. The malkhana register was not produced in the Court.

[21] Stating thus, learned Sr. counsel submits that the prosecution has not been able to prove the case beyond reasonable doubt and urged this Court to allow this appeal and set aside the impugned Judgment and Order of conviction.

[22] On the contrary Mr. R. Datta, learned P.P. appearing for the respondent-State has submitted that the accused person is indulged in possession and transportation of commercial quantity of contraband items and such act is nothing but corroding the society specially the young generations so no leniency or mercy should be shown to the accused person and considering the severity of the crime sufficient punishment should be inflicted upon the accused person. In support of his case, he has placed his reliance on some recent judgments of the Hon'ble Apex Court as well as this Court i.e. in ***Bharat Ambale v. State of Chattisgarh***, reported in **2025 SCC online SC 110**, in ***Rizwan Khan v. State of Chhattisgarh***, reported in **(2020) 9 SCC 627**, in ***Kallu Khan v. State of Rajasthan***, reported in **(2021) 19 SCC 197** and in ***Shri Karanjit Das v. The State of Tripura in Crl. A(J) No.29 of 2023***.

[23] In ***Bharat Ambale v. State of Chattisgarh***, reported in **2025 SCC online SC 110**, the Hon'ble Apex Court has observed as under:

“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 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.

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 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.”

[24] In ***Rizwan Khan v. State of Chhattisgarh*** reported in (2020) 9 SCC 627, the Hon'ble Apex Court has observed ad-infra:

“12. It is settled law that the testimony of the official witnesses cannot be rejected on the ground of non-corroboration by independent witness. As observed and held by this Court in catena of decisions, examination of independent witnesses is not an indispensable requirement and such non-examination is not necessarily fatal to the prosecution case, [see Pardeep Kumar].

[25] In ***Kallu Khan v. State of Rajasthan***, reported in (2021) 19 SCC 197, wherein, the Hon'ble Apex Court observed as under:

“14. At this state, the argument advanced by the appellant regarding non-production of contraband in the court due to which benefit of doubt ought to be given to accused, is required to be adverted to. In the case of State of Rajasthan vs. Sahi Ram (2019) 10 SCC 649, this Court held that when the seizure of material is proved on record and is not even disputed, the entire contraband material need not be placed on record. It is not a case in which the appellant has proved beyond reasonable doubt that while sending the samples for forensic tests, seals were not intact or the procedure has been materially not followed by protecting the seized substance or was not stored properly, as specified in the case of Mohan Lal (supra) in which case the directions were given to be followed on administrative side. However, in the facts of the case, the said judgment is not of any help to appellant.

15. Similarly, in the case of Than Kumar vs. State of Haryana (2020) 5 SCC 260, this Court observed that if seizure is otherwise proved and the samples taken from and out of contraband material were kept intact; the report of

forensic expert shows potency, nature and quality of contraband material, essential ingredients constituting offence are made out and the nonproduction of contraband in the Court is not fatal. As discussed above, the appellant has failed to show that findings recorded by two Courts suffer from any perversity or illegality on the said issue and warrant interference.”

[26] In view of above and having heard the learned counsel appearing for the parties and the observations made by the learned Court below, for a definite conclusion, let us revisit the material evidence once again. It reveals on scrutiny of the evidence of the witnesses that the defence case is nothing but the denial of the entire prosecution evidence. No strong and credible specific case could be made out on behalf of the defence to rebut the prosecution case. Some omissions and exaggerations are found in the evidence of the witnesses but such omissions and exaggerations also failed to shake the credibility of the evidence of the prosecution witnesses and these omissions and inconsistencies are also not material and are incidental. We cannot become oblivious of the fact that capacity of a person to observe a fact and retain the same in his memory and reproduce the same differs from another. In the process of reproducing the facts from memory there may be some incidental variations which do not go to the root of the main fact.

[27] During argument learned counsel argued that P.W-1 and P.W-2 has stated the number of the vehicle wrongly and P.W-1 could identify only one accused. It has been further argued that P.W-2 and P.W-3 has not stated anything about the seizure and about the accused persons. P.W-4 has not stated about who gave the packet that he handed over to the SFSL Narsingarh and who has sent him for deposit the packets to SFSL Narshingarh. According to learned counsel P.W-5 has not stated anything in the examination-in-chief in Misc case connection the ganja was received and I.O has not recorded his statement under Section-161 of Cr.P.C. P.W-6 has not stated about the number of the vehicle and he has deposed that the articles were seized on the following day. According to learned counsel no independent witnesses were cited in this case. It has been contended that P.W-7 was not examined under Section-161 of Cr.P.C and this witness has

not stated who lodged the complaint and according to him there is non-compliance of Section-57 of the NDPS Act. Learned Counsel further submitted during argument that P.W-8 has not stated who lodged the *suo-moto* complaint and the witness has not stated anything regarding the drawal of sample. The witnesses were examined at different dates so there is defect in the investigation and thus the accused is liable to be acquitted.

[28] Refuting the submission of learned counsel appearing for the appellant, the learned P.P. has submitted during argument that the accused person is hailing from outside the State of Tripura and there is no previous enmity between the police personnel and the accused person. According to learned P.P NDPS Act is a special Act and the police investigation is not similar with other investigation as done in IPC and other crimes. In NDPS Case Special Procedure is followed in connection with the investigation and there is technicality in such cases and special mandate is to be followed as given in the Act. According to him the present case is not related to any murder or other crimes under IPC, and hence it is not necessary to record the statement of the witnesses under Section-161 of Cr.P.C in a single date. The provisions of Sections-57, 52A are fully complied with and in this case provisions of Section-43 is applicable so considering the whole aspect according to learned P.P., the prosecution is successful in proving the case against the accused person and is liable to be convicted.

[29] On the point of compliance of Section-42 of the NDPS Act, learned P.P. submits that the same is not required in the context of the case because police did not receive any prior information about the contraband item but the same was found during checking. On non-compliance of Section-57 of the NDPS Act, the learned PP relied upon para-9 of *Gurbax Singh v. State of Haryana* wherein, it is stated that “*It is true that provisions of Sections-52 and 57 were directory. Violation of these provisions would not ipso facto violate the trial or conviction.*” Learned P.P. has further submitted that the appellant was arrested by the I.O., the detailed report was

submitted by the I.O. and inventory was also prepared by the I.O. Some minor wrongs are there in the proceeding but the same is not fatal.

[30] On the point of inventory not being prepared at the spot, learned P.P. submitted that though there is some procedural fault, the same was prepared by the I.O. certified by the Magistrate and sent to SFSL with seal and cover. As such, there is no chance of manipulation. Further, the SFSL certified that the seized items were contraband items i.e. ganja not other things.

[31] It is admitted position that the appellant herein was the co-driver of the vehicle from which the contraband items were seized. All the witnesses who made search, seizure, and arrest have unequivocally stated that the accused-appellant herein was the co-driver of the vehicle at the time of the search and contraband items were seized from the vehicle which was in possession of the accused-appellant. On the point of non-compliance of Sections-52 and 57 of the Act, this Court considering the principle given by the Hon'ble Supreme Court is convinced with the submission of learned P.P. It is evident that the samples were drawn in the presence of the Magistrate and sent to the SFSL and as per the report, the samples were positive for the presence of 'Ganja'. This Court aligns with the submission of the learned P.P., that though there is some minor procedural fault, but, the same is not fatal and prosecution has been able to prove that the accused-appellant herein was found in conscious possession of 456 kgs of dry 'Ganja' in 102 numbers of packets which he was transporting in the said vehicle.

[32] Further, this Court is of the opinion that as the packets containing contraband items were multiple and the same could have been hidden in multiple locations inside the vehicle, it explains the minor discrepancy among the deposition of the witnesses on the location of the contraband item inside the vehicle. However, the depositions of the witnesses are unequivocally clear that the said contraband items were found inside the crime vehicle. Furthermore, the Judgments as cited by the learned P.P. support and strengthen the case of the prosecution. In the light of the

above discussion and evidence, this Court is of the opinion that the Judgments as cited by the learned counsel appearing for the convict-appellant are not relevant to the facts of this case.

[33] Even without any prior information, the police put routine Nakabandi near forest barrier when narcotic product was recovered from the accused in a vehicle on transit in a public place. Hence, such a case would be covered under Section-43 and not under Section-42. The present case is based almost on the same fact as it is evident from the evidence of P.W-1 SI Rathindra Debbarma. In this case as per evidence of P.W-1, it is found that on 06.04.2022 when SI Rathindra Debbarma along with other police personnel at about 10:45 hours were on vehicle checking duty at 41 miles Naka Point on the National Highway they intercepted one twelve wheeled vehicle though this witness as deposed the number of the vehicle wrongly. On Checking the vehicle in presence of SDPO and O.C Teliamura P.S they recovered 102 packets of dry ganja weighing 456 kgs. The driver and the co-driver of the vehicle was detained and in the presence of the witnesses P.W-1 seized the vehicle by preparing a seizure list which is marked as Exbt. 1 and Exbt.1/1. Thereafter, he went to the P.S from the spot along with the seized vehicle and contraband and handed over both the accused persons before O.C P.S and lodged a *suo-moto* complaint.

[34] It is clear from the deposition of P.W-1, P.W-2, P.W-3, P.W-6, P.W7 and P.W-8 that when the police were performing vehicle checking duty they intercepted the alleged vehicle and from the vehicle 102 numbers of packets of ganja weighing 456 kgs was recovered. The police personnel were on vehicle checking duty and there was no prior information to them about the transportation of contraband items through the alleged vehicle, thus this can only be described as a recovery by chance, since they were neither looking for drugs nor expecting to find drugs carried by anybody. It is a pure case of chance recovery and it was not necessary for the police officers to comply with the provisions of Section-50 of the Act. The version P.W-1, P.W-2, P.W-3, P.W-6 and P.W-7 P.W-8 corroborates the entire

scenario of search and seizure which was carried in presence of P.W-7 Sonacharan Jamatia and P.W-8 Sri. Goutam Debbarma who are SDPO of Teliamura P.S and O.C Mungiakami P.S. SDPO is a Gazetted officer and the entire search and seizure was made in his presence.

[35] Going through the depositions of P.W-1 P.W-2, P.W-3 P.W-6, P.W-7 and P.W-8 it is very much clear that P.W-1 on detaining the vehicle and finding the contraband items along with both the driver and the co-driver Naveen and Harpal Singh immediately informed the matter to P.W-10 Sri. Goutam Debbarma of O.C Mungiakami P.S who informed the matter to P.W-7 Sri. Sonacharan Jamatia SDPO Teliamura and both of them rushed to the spot and their presence 102 numbers of packets of ganja weighing 456 kgs was recovered by breaking the secret chamber of the driver's cabin of the vehicle bearing No. HR 69C 1323 (Twelve Wheeler Goods carrying Truck). From the version of the prosecution witnesses along with the seized contraband and the vehicle, the vehicular documents, including driving license AADHAR Card, Registration Certificate and Mobile Phone was seized from the accused persons namely Naveen and Harpal Singh. Thereafter a *suo-moto* complaint was lodged informing the matter to O.C Mungiakami P.S which has been marked as Exbt.2 and Exbt. 2 /1. The matter was informed to O.C Mungiakami P.S within the stipulated time period and on the basis of which O.C Mungiakami P.S registered a case under Section-20 (b) (ii) (C)/25/29 of NDPS Act. The printed FIR form was filled up by P.W-8 bearing his signature which is marked as Exbt. 4 (series) and Exbt.4/1. The version of P.W-1 is corroborated by P.W2, P.W-3, P.W-6 P.W-7 and P.W-8.

[36] In the present case, P.W-1 has informed over telephone to O.C Mungiakami P.S who in turn informed the matter to SDPO Teliamura and both were present at the time of search and seizure. Thus the material of record shows the presence of superior officer at the time of incident which is a sufficient compliance of Section 57 of the Act. On going through the prosecution evidence especially during cross-examination, this Court finds

that only some suggestions and denials were given, but suggestions and denials in cross-examination are no evidence. This proposition of law is good both in the case of prosecution and the defence. Mere hurling of some suggestions which are denied, can hardly take the place of proof or evidence. The law of evidence is alike both for the prosecution and for the defence. If the accused wants to establish a certain fact, he has to lead evidence on that score. Such suspicion cannot have any place in the realm of appreciation of evidence. Thus, a suggestion denied by witness remains only a suggestion and has no evidentiary value at all.

[37] In the present case it is crystal clear that the contraband items were recovered from the vehicle of which the appellant herein, was the co-driver and he has failed to give any satisfactory ground about the availability of contraband items in the secret alleged vehicle which clearly imports possession of contraband items on his behalf. In most of the NDPS Cases the moot question is about conscious possession which is found aptly related in this case because the accused person has failed to explain regarding his possession of recovery of contraband items from the Secret chamber of the driver's cabin of the vehicle.

[38] Having given our anxious consideration to the plea and taken into consideration the nature and gravity of the offence proved, the Court must balance the punishment to accuse and to keep in mind the societal interest as well. The severe crime against society need to be dealt with severely irrespective of age, the socio-economic status, religion, race, caste or creed and position of the accused. The protection of interest of the society and deterring the criminals from committing crime is the avowed object of law. So, keeping in mind all relevant factors, particularly, the serious dimension of the case at hand who were found in handling commercial quantity of drugs, which has the propensity of damaging a future of many young persons, particularly the students who are vulnerable, this Court is of considered view that in order to keep the faith of public, in the judiciary

intact, accused person needs to be dealt with sternly commensurate with the punishment prescribed under the statute.

[39] Here is the case at hand; we have discussed the evidence on record of the prosecution in detail. Now we are to conclude our decision on the basis of material evidence on record. In our ultimate analysis, it is crystal clear that there is no reason as to why the continuity of the chain of circumstances and the complaint made against the appellant to be disbelieved. The witnesses supported the entire case of the prosecution with regard to the commission of offence by the appellant herein, thus, there is no necessity for any interference. Consequently, we find no reason to interfere with the observation made by the learned Court below and thus, the same is affirmed.

[40] In the result, the appeal stands dismissed. As a sequel, miscellaneous applications pending, if any, shall stand closed. Send down the LCRs forthwith.

B. PALIT, J

DR. T. AMARNATH GOUD, J

A.Ghash

ANJAN GHOSH Digitally signed by ANJAN GHOSH
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