

HIGH COURT OF TRIPURA
A_G_A_R_T_A_L_A

Crl. A(J) No. 41 of 2024

Md. Karim Khan, son of Md. Abdul Hamid Khan of Kawatiak, Chirang,
P.S. Bijni, Dist: Chirang, Assam.

.....Appellant

-V E R S U S-

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. S. Bhattacharjee, Advocate.
For Respondent(s)	:	Mr. R. Datta, P.P.
Date of hearing	:	02.09.2025
Date of delivery of judgment and order	:	16.09.2025
Whether fit for reporting	:	YES

JUDGMENT & ORDER

[Dr. T. Amarnath Goud, J]

[1] Heard Mr. S. Bhattacharjee, 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 of Code of Criminal Procedure, 1973, against the judgment and order of conviction and sentence dated 16.04.2024 passed by the learned Special Judge, Khowai, Khowai Judicial District, Tripura in connection with Special (NDPS) 44 of 2022, whereby and whereunder, convicting the appellant to suffer RI for 15 years and pay a fine of Rs.1,00,000/- and in default to suffer RI for 6 months for commission of offence punishable under Sections-20(b)(ii)(C) of Narcotic Drugs and Psychotropic Substances Act, 1985 and both the sentences shall run concurrently.

[3] The brief fact of the prosecution case is that on 27.06.2022 at 1445 hours on the basis of Teliamura P.S GDE No. 32, SI Biswajit Das along with constable Narayan Nama Das of Teliamura P.S along with SPO staffs were performing vehicle checking duty at Hawaibari Naka Point on NH-08. It was observed by them that about 1530 hours one vehicle bearing No. NL-01-D5219 (Full Body Truck) was coming from Agartala side to Teliamura. On seeing this, SI Biswajit Das along with his staff tried to stop the said vehicle but on seeing the signal of police after stopping alleged vehicle its driver tried to fled away. But the police personnel somehow managed to apprehend him. According to the complainant the gesture and posture of the alleged driver was suspicious in nature. Then and there, at 1535 hours the complainant informed the matter to O.C Teliamura P.S as well as SDPO Teliamura. On the receipt of the information within a short time O.C Teliamura P.S and SDPO Teliamura arrived at the spot. The complainant consulted with the driver of the alleged vehicle and on being asked he disclosed his identity that his name is Karim Khan S/o- Abdul Hamid Khan of Village- Kawatika P.S Bijni Dist: Chirang, State-Assam.

[4] According to the complainant the driver was preliminary interrogated and the driver confessed that in the said vehicle contraband items (dry ganja) are loaded inside rubber plant poly bags. Accordingly, SDPO Teliamura informed the matter to SDM Teliamura over telephone to remain present at the spot during search of the alleged vehicle. At 1705 hours DCM of Teliamura Sri. Bappaditya Roy Bhowmik of SDM Office arrived at the spot as per direction of O.C Teliamura P.S in presence of independent witnesses complainant issued notice to the driver under section 50 of the NDPS Act for searched the said vehicle and the complainant along with staffs from 1715 hours to 1815 hours started searching of the said vehicle and during search recovered total 38 number bundles wrapped with Grey color cello tape in which suspected dry ganja was found. Accordingly, complainant arranged to collect weight machine tools and measured the said bundles after marking them serially exhibits marked as A1 to A 17 each

packet containing 12 kgs. B1 to B20 each packets containing 11 kgs and C1 packets weighing 10 kgs and found total 434 kgs of suspected dry ganja.

[5] The complainant conducted search in the body of the driver in presence of independent witnesses and recovered one smart Vivo Mobile Phone, documents of the vehicle, driving license, one color photocopy Elector Photo identity card of the driver of the vehicle from his possession and accordingly at 1815 hours complainant seized the bundles of suspected dry ganja along with the alleged vehicle, documents of the vehicle, mobile phone and identity card in presence of SDPO Teliamura Sri. Sonacharan Jamatia , DCM of Teliamura SDM Office Sri.Bappaditya Roy Bhowmik, O.C Teliamura P.S including two witnesses. Subsequently, detained persons i.e., driver of the vehicle namely Karim Khan ,S/o- Abdul Hamid Khan of village – Kawatiak P.S -Bijni Dist-ChirangAssam was brought to Teliamura P.S with seized articles and handed over the seized articles to O.C P.S for keeping them in his safe custody as well as further action. According to the complainant *prima facie* it has revealed that the driver of the vehicle namely Karim Khan is involved in connection with illegal business of Ganja across Tripura and other states of our country and the said vehicle bearing No. NL-01-D-5219 is involved in illegal business of smuggling out the contraband items to the said vehicle and accordingly complainant lodged a *suo-moto* complaint against the accused Karim Khan addressed to O.C Teliamura P.S for taking action as per law.

[6] Based on the said information and the *suo moto* complaint of SI Biswajit Das, O.C Teliamura P.S registered a case bearing No.2022/TLM/070 under Section-20 (b) (ii) (C)/25/29 of the NDPS Act, 1985 and endorsed the case to SI Samaresh Chakma of Teliamura P.S for investigation.

[7] During the course of investigation of the case, I.O have visited the PO has shown by the complainant and available eye witnesses, prepared the hand-sketch map of the P.O with separate index. During investigation and from the statement of the witnesses it is clearly established that the

accused Karim Khan is involved in connection with illegal business of Ganja across Tripura to other states of the country. It has been further stated by the I.O in the charge-sheet that on 04.07.2022 O.C Teliamura P.S inspector Subimal Barman drawn one sample and one representative sample of dry ganja of 30 gram each which is marked as X1 and X2 from seized 434 kgs of dry ganja and packed in two envelopes which was sealed by gam and wax and the remaining 433.940kgs ganja was deposited in the District NDPS Store. During investigation of the case on 27.06.2022 O.C Teliamura P.S has prepared the list of seized articles and certification of correctness of the inventory and photographs has been done on 04.07.2022 in presence of learned Judicial Magistrate 1st Class Khowai.

[8] In the course of investigation on 06.07.2022 sealed and packed exhibits marked as X1 in presence of SDPO Teliamura was forwarded to SFSL for drug analysis through special messenger vide DR No.2026 dated 06.07.2022 and the seized Mobile Phone exhibits marked as X was sent to the SFSL (Cyber Division) for forensic examination vide DR No. 2027 dated 06.07.2022. During investigation I.O received SFSL report through SDPO Teliamura dated 06.08.2022 and on perusal of the same found result of chemical examination which was found positive for the presence of ganja. During investigation and from the statement of the complainant the seizure list and the statement of the witnesses and from other circumstantial evidence, it is clearly established that accused Karim Khan and his associates are involved in connection with illegal business of Ganja across Tripura for smuggling and in this respect on 27.06.2022 accused Karim Khan proceeded towards Gauhati from Bishalgarh with fully loaded contraband items suspected to be dry ganja in the seized vehicle which was supposed to be delivered at Gauhati. Accordingly after completion of the investigation I.O has submitted charge-sheet vide C/S No. 91/2022 under Section-20 (b) (ii)(C) /25/29 of NDPS Act against the accused person namely Karim Khan.

[9] During the course of time 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 both sides and after perusing the material on record charge was framed against the accused Karim Khan under Section-20 (b) (ii) (C) of NDPS Act read with Section-25 of the NDPS Act. When the contents of the charge was read over and explained to the accused person in Bengali he pleaded not guilty and claimed to be tried. During the course of trial, the prosecution in order to bring home the guilt of the accused persons examined as many as 13 (thirteen) witnesses along with some material evidence. On the closure of the prosecution evidence accused person namely Karim Khan was examined under Section-313 of Cr.P.C and he denied the prosecution case and he 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 One Lakh) and which may extend to Rs.2,00,000/- (Rupees Two Lakhs). Punishment for Section 25 of the NDPS Act shall be the punishment provided for that offence.

Accordingly, accused person namely Karim Khan is convicted and sentenced to undergo rigorous imprisonment for a period of 15 (fifteen) 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 Karim Khan has appeared today before the Court and he has been 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 Karim Khan 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.”

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

[12] Mr. S. Bhattacharjee, learned counsel appearing for the appellant has submitted that the judgment and order of conviction and sentence passed by the learned Court below suffers from illegality as the examination of the appellant under Section-313 of Cr. P.C. was not done in accordance with law. The facts elicited in cross-examination were not at all considered by the learned Court below.

[13] The discrepancies between the statements of the witnesses, yet this fact were not at all considered. It is a cardinal rule of Criminal Jurisprudence that burden of proof lies on the prosecution to prove its story beyond reasonable doubt but in the present case, the learned Court below most illegally shifted the burden of proof on the defence. It has been further contended that the material discrepancies between the depositions of PWs-1 to 13 were not at all considered by the learned Court below and hence the impugned judgment and order of conviction and sentence is liable to be set aside.

[14] From the deposition of PWs it is crystal clear that there are independent witnesses nearby the place of occurrence but they were not examined by the prosecution which creates a serious doubt upon the prosecution case regarding recovery of the alleged contraband items from the possession of the convict appellant but the learned Court below did not consider this aspect. The mandate provision of Sections-41, 42, 43, 50 and 52(A) of the Narcotic Drugs Psychotropic Substances Act, 1985 were not at

all complied by the prosecution but the learned Court below did not consider the same.

[15] The prosecution has failed to prove and produce the Malkhana register before the learned Court wherein, the alleged contraband was safely kept from 27.06.2022 till sending the contraband for chemical examination. The prosecution also failed to examine the in-charge of Malkhana which creates another serious doubt upon the prosecution case and also failed to prove that the source of the document from which, the said alleged contraband was seized but the learned Court below has failed to consider these vital aspects of the present case.

[16] In support of his case has placed some decision of the Hon'ble Apex Court as well as the High Court viz. Ashok Alias Dangra Jaiswal v. State of Madhya Pradesh, reported in (2011) 5 SCC 123, Vijay Jain v. State of Madhya Pradesh with Nilesh Suryakanta Shah v. State of Madhya Pradesh, reported in (2013) 14 SCC 527 and Hanif Khan Alias Annu Khan v. Central Bureau of Narcotics, reported in (2020) 16 SCC 709. In view of the above submissions, he prayed to allow the appeal and set aside the judgment of the learned Court below.

[17] Refuting the arguments of the learned counsel for the appellant, Mr. R. Datta, learned P.P. appearing for the respondent-State has submitted that investigating agencies has complied all the provisions of NDPS Act and there is no procedural lapses in this case. According to learned P.P. they mainly relied upon P.W-3 ,P.W-5, P.W-6, P.W-7, P.W-8 , P.W-9 ,P.W-10, P.W-11, P.W-12 and P.W-13. According to the prosecution P.W-3 who is a seizure witness is a reliable witness and exhibit 4 is GDE No.32 dated 27.06.2023 and the submission of the counsel for the appellant is not fruitful regarding submission of documents. P.W-5 cannot identify the accused due to long lapse of time. Moreover, learned P.P submitted that the driving license of the accused was seized at the spot and the driving license discloses the name of Karim Khan as a driver at the spot. P.W-6 is a Gazetted officer and according to learned P.P., P.W-7 narrated details in his

testimony. P.W-8 who is the complainant of this case has also deposed detailed fact regarding interception of the alleged vehicle and search and seizure. P.W-9 made the inventory and deposited the contraband items and drawn representative sample and Exhibit 4, Exhibit 7, Exhibit 9, Exhibit 10, Exhibit 11 and Exhibit MO-1 clearly proves that provision of Section-52 (A) and Section-57 of NDPS Act has been complied with. P.W-10 chemically examined the exhibits and found positive for presence of Ganja. Though the investigating officer has stated in the cross-examination that the place of seizure was not mentioned but in the seizure list the place of seizure is mentioned.

[18] Mr. Datta, learned P.P. in support of his submission has relied on some decisions of the Hon'ble Apex Court as well as of this Court viz. ***Kallu Khan v. State of Rajasthan***, reported in (2021) 19 SCC 197, ***Bharat Aambale v. State of Chhattisgarh***, reported in (2025) SCC online 110 and ***Crl. A(J) No.25 of 2024 [titled as Sri Harpal Singh v. The State of Tripura]***. In view of the submissions made, he prayed to dismiss the appeal and confirm the judgment of the learned Court below.

[19] Heard both sides and perused the records.

[20] 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, will 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. The minor omissions and additions which do not change the nature of crime is permissible under criminal jurisprudence.

[21] PW-2 Sri. Surojit Rudra Paul, deposed in the examination-in-chief that on 27.06.2022 when he was posted at Teliamura P.S as SPO he along with Biswajit Das, Durba Prasad Jamatia and other police personnel were conducting raid and search at Hawaibari Check Point and they conducted the checking of the vehicle bearing No. NL-01-D -5219 (Full Body Truck) and while checking of the upper level of the vehicle there were some rubber pieces and some dry ganja was found. According to this witness there were 38 packets of dry ganja weighing 438 kgs. According to this witness during the seizure of the said contraband items Sri. Sonacharan Jamatia SDPO Teliamura was present and the name of the driver was Karim Khan.

[22] P.W-3 C/12583 Narayan Nama Das, deposed in examination-in-chief that on 27.06.2022 when he was posted at Teliamura P.S they were at Naka Checking duty at Hawaibari at about 3/3:30 pm. According to this witness they noticed one vehicle was coming from Agartala in full speed and they tried to detain the vehicle but the vehicle tried to fled away and ultimately they were successful in detaining the vehicle. According to this witness the vehicle detained was a truck bearing No.NL-01-D-5219 and after detaining the vehicle 434 Kgs of ganja was recovered from it. The vehicle along with the documents, driving license and other articles were seized in his presence and he has signed in the seizure list which is marked as Exbt. 1/1 and the witness identified the accused Karim Khan before this Court.

[23] P.W-5 Sri. Bappaditya Roy Bhowmik,, deposed in examinationin-chief that on 27.06.2022 when he was posted as a DCM at SDM Office Teliamura on that day SDM has informed him over Phone at around 4:15/4:30 PM that SDM has been informed by SDPO Teliamura that one suspected Truck vehicle has been detained at Hawaibari Naka Point and

P.W- 5 was informed to go there. According to this witness after going to the place of occurrence he found SDPO Teliamura, O.C Teliamura P.S along with other police personnel and a vehicle was stationed at the side of the road at Hawaibari Naka Point and it was searched. On searching the vehicle some packets were recovered beneath the rubber saplings which was present in the vehicle. According to this witness 38 numbers of packets was recovered from the vehicle and the packets contain suspected contraband items and after weighing it was found that it weighed 434 kgs of suspected contraband items. According to this witness there were three types of packets. The first seventeen packets containing 12 kgs of suspected contraband each. The second 20 numbers of packets containing 11 numbers of suspected contraband each and the third category of the packet is a single containing 10 kg of contraband items. The driver of the vehicle was detained who was named as Karim Khan and the vehicle which was detained bears the number NL -01-D5219 and the documents of the vehicle and one mobile was seized in his presence, he has signed in the seizure list and his signature was marked as Exbt. 1/2. This witness cannot recollect the accused before the court.

[24] P.W-6 Sri.Sonacharan Jamatia,deposed in his examination-in-chief that on 27.06.2022 when he was posted as SDPO Teliamura on that date SI Biswajit Das informed him over Phone at about 1530 hours that one truck vehicle bearing No.NL-01-D-5219 was intercepted at Hawaibari Naka Point which was coming from Agartala to Teliamura. According to this witness on receiving the phone call he reached at the spot and found the vehicle stationed there. O.C Teliamura P.S was present there and he informed over phone to SDM Teliamura to provide DCM. After sometime Bappaditya Roy Bhowmik arrived at the spot and in presence of the DCM they thoroughly checked alleged vehicle there was poly bag of rubber plantation under which total 38 numbers of packets were wrapped in cello tape paper and the packets contained suspected dry ganja which was weighed and found to be 434 kgs. According to this witness SI Biswajit Das seized the vehicle along with dry ganja and smart Mobile Phone and also

some documents of the vehicle along with the driving license of Karim Khan and this witness have signed in the seizure list and his signature after identification is marked as Exbt. 1/3 (series). The witness identified the accused before the court.

[25] P.W-8 Sri. Sri. Biswajit Das, deposed in the examination-in-chief that on 27.06.2022 he was posted as SI of Police at Teliamura P.S and on that day with reference to Teliamura P.S GDE No.32/2022 he along with his staff were performing vehicle checking duty at Hawaibari Naka Point on NH-08 and they proceeded to the spot at 1445 hours on the basis of Teliamura P.S GDE No. 32 and when they were performing vehicle checking duty at Hawaibari Naka Point at that time at around 1530 hours he found one vehicle bearing No.NL-01-D-5219 (Truck) was proceeding from Agartala towards Teliamura. According to this witness on giving signal the driver of the vehicle tried to ran away but they somehow managed to apprehend the driver and they noticed from his gesture and posture with a suspicious note and after inquiry from the driver they did not find any satisfactory answer and they suspected some contraband items may be inside the vehicle.

[26] According to this witness he informed the matter to O.C Teliamura P.S as well as SDPO Teliamura and on receiving the information both O.C Teliamura P.S as well as SDPO Teliamura arrived at the spot and subsequently SDPO informed the matter to SDM Teliamura and DCM Teliamura arrived at the spot. Thereafter, in presence of O.C Teliamura P.S, SDPO Teliamura and DCM Teliamura they searched the vehicle the name of the driver of the vehicle was Karim Khan and after searching the vehicle they found 38 numbers of packets wrapped in brown color packets to be suspected dry ganja. According to this witness they marked the packet as A1 to A17 each packets containing 12 kgs of ganja, B1 to B20 packets containing 11 kgs of ganja each and C1 packets contains 10kgs of ganja and it was weighed and found that the suspected ganja weighed 434 kgs. According to this witness after searching the driver they found Mobile

Phone, documents of the vehicle, driving license and Electric Photo identity card of the driver. According to this witness on the same date at the spot he seized the contraband items along with the packets, driving license and documents of the vehicle with Mobile Phone and photocopy of Electric Photo identity card of driver Karim Khan at about 1815 hours along with the driving license in presence of independent witnesses, SDPO Teliamura, DCM Teliamura and O.C Teliamura P.S. He detained the accused Karim Khan along with seized contraband and other seized items and handed over to O.C Teliamura P.S for keeping it in safe custody. This witness prepared the seizure list in three pages which is marked as Exbt. 1 (series) and his signature in the seizure list after identification is marked as Exbt. 1/5. Thereafter he lodged a *suo-moto* complaint before O.C Teliamura P.S and the *suo moto* complaint petition prepared by this witness after identification is marked as Exbt. 2 as a whole and signature in the complaint petition of this witness is marked as Exbt. 2/1.

[27] P.W-11 Sri. Bijoy Sen, deposed in examination in chief that on 28.06.2022 he was posted as Deputy Superintendent DIB Khowai and on that date being a nodal officer and in charge of NDPS District Godown Khowai SI Samaresh Chakma has forwarded a prayer to store 436 Kgs of ganja to the District Go-down and accordingly this witness accepted the prayer and made an arrangement to store the suspected contraband items in the Godown. This witness has identified his signature in the prayer of SI Samaresh Chakma which is marked as Exbt. 7/2.

[28] P.W-13 Sri. Bikramjit Sukla Das stated in examination in chief on 04.07.2022 he was posted as Deputy Superintendent of Police and in-charge of District NDPS Go-down Khowai .On that date a prayer for withdrawal of contraband items was given to him by O.C Teliamura P.S for withdrawal of 434 kgs of suspected dry ganja for sample drawing in connection with case No.17/TLM/2022 vide MR-277 and he has given his signature in the prayer for withdrawal which after identification is marked as Exbt. 10/2. According to this witness on the same date a prayer was given

for depositing 433.940 kgs of suspected ganja by O.C Teliamura P.S in connection with the said case vide MR-277 after drawing of sample and this witness has given his signature in the prayer of keeping the suspected dry ganja in the NDPS Godown store which after identification is marked as Exbt. 11/2.

[29] For purpose of reference, what has been discussed in ***Kallu Khan v. State of Rajasthan***, reported in ***(2021) 19 SCC 197*** may be reproduced 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.”

[30] In ***Bharat Aambale v. State of Chhattisgarh***, reported in ***(2025) SCC online 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.”

[31] 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].

[32] In the present case it is crystal clear that the contraband items were recovered from the vehicle wherein, the appellant was the driver and he has failed to give any satisfactory ground about the availability of contraband items in the 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 vehicle.

[33] Legislature empowered the authorized agency of the Central Government as well as the state Government to detain any conveyance to be followed by search and if contraband goods as mentioned in the Act are found or detected then seize the same. The NDPS Act, prescribes different modes of search and seizure to be mandatorily observed by the officers concerned where the Act provides sufficient power under Section-42 of NDPS Act to make search and seizure as also to arrest an accused is founded upon and subject to satisfaction of the officer as the term “reason to believe” has been used. On plain reading of Section-43 of the Act, we may hold that the legislature in its own wisdom has given some laxity which does

not extract the rigors of Section-42, meaning thereby that even subjective satisfaction on the part of the authority, as his required under Section-42 (1), need to be complied with, only because the place of where the search is to be made is a public place. In that way Section-43 is to be treated as an exception to Section-42. On careful reading of Sections-42 and 43 together will find two different connotations based on two different situations. Section-42 contemplates entry into and search of any buildings, conveyance or enclosed place, while Section-43 contemplates a seizure made in any public place or in transit.

[34] It is clear from the deposition of P.W-2, P.W-3, P.W-4, P.W-5, P.W-6, P.W-7, P.W-8, P.W-9, P.W-11, P.W-12 and P.W-13 that when the police were performing vehicle checking duty they intercepted the alleged vehicle and from the vehicle 38 numbers of packets of ganja weighing 434 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 was not necessary for the police officers to comply with the provisions of Section-50 of the Act. A bare reading of Section-50 shows that it only applies in case of personal search of a person. It does not extent to search of a vehicle or a container or a bag or premises. The language of Section-50 is implicitly clear that the search has to be in relation to a person as contrasted to search of premises, vehicles or articles.

[35] In the present case, when the alleged vehicle was intercepted at Hawaibari Naka Point the driver of the vehicle was accused Karim Khan and the vehicle was carrying contraband items which were recovered by the police personnel and the accused could not give any satisfactory answer regarding the presence of contraband items from the alleged vehicle of which he was the driver having control of the vehicle and thus he has knowingly permitted to carrying the vehicle or use the vehicle for carrying

contraband items which violates the provision of Section-25 of NDPS Act read with Sections 20 (b) (ii) (C) of the NDPS Act. Thus, due to the above discussion accused appellant has also committed an offence under Section-25 of NDPS Act read with Section-20 (b) (ii) (C) of the NDPS Act.

[36] 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 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.

[37] Here is the case at hand; we have discussed the evidence on record of the prosecution in detail as well as the discussion of the learned Court below. 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 necessary for any interference.

[38] Consequently, we find no reason to interfere with the observation made by the learned Court below and thus, the same is affirmed. However, Mr. S. Bhattacharjee, learned counsel appearing for the appellant

has placed his reliance on some judgments of the Hon'ble Apex Court which are, according to this Court, have not relevance.

[39] In the result, the appeal is liable to be dismissed accordingly, it stands dismissed.

[40] 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

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