

**HIGH COURT OF TRIPURA
A_G_A_R_T_A_L_A**

Crl. A(J) No. 67 of 2024

Shri Rahul Kumar @ Rahul Kumar Mahato, son of late Mahesh Mahato, resident of Bariyarpur, P.S. Bariyarpur, District: Muzaffarpur, State-Bihar, (present address: Village Lalmati Biharbari, P.S. Basistha, Guwahati, Kamrup, Assam.

.....Appellant

-VERSUS-

The State of Tripura, represented by the Secretary, Home Department, Government of Tripura, Agartala.

..... Respondent.

**B_E_F_O_R_E
HON'BLE JUSTICE DR. T. AMARNATH GOUD
HON'BLE MR. JUSTICE S. DATTA PURKAYASTHA**

For Appellant(s)	:	Mr. J. Bhattacharjee, Advocate. Mr. S. Ghosh, Advocate.
For Respondent(s)	:	Mr. R. Datta, P.P.
Date of hearing	:	11.03.2026
Date of elivery of judgment and order	:	17.03.2026
Whether fit for reporting	:	YES

_F_I_N_A_L_O_R_D_E_R_

[Dr. T. Amarnath Goud, JJ]

Heard Mr. J. 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(2) of the Code of Criminal Procedure, 1973 against the judgment and order of conviction and sentence dated 21.09.2024 passed by the learned Special Judge (NDPS), Dhalai Judicial District, Ambassa in connection with case No. Special (NDPS) 34 of 2022, wherein, convicting and sentencing the convict appellant under Sections-20(b)(ii)(C)/25/29 of the NDPS Act, 1985 to suffer RI for 10 years for the commission of offence punishable under Sections-

20(b)(ii)(C) of the NDPS Act and also liable to pay a fine of Rs.1,00,000/- for the said offence in default, the convict shall undergo further RI for a period of one year and for the commission of offence punishable under Section-25 of the NDPS Act, he is also sentenced to suffer RI for 10 years and liable to pay a fine of Rs.1,00,000/- for the said offence with default stipulation. Further, he shall suffer RI for 10 years for the commission of offence punishable under Section-29 of the NDPS Act and liable to pay a fine of Rs.1,00,000/- for the said offence with default stipulation. All the sentences shall run concurrently.

[3] The factual backdrop of this case is that on 28.07.2022 Sub-Inspector Gobinda Das of Ambassa Police Station (hereinafter referred as complainant) lodged one *suo-motu* complaint to the Officer-in-charge of Ambassa Police Station alleging, inter alia, that on 28.07.2022 at about 1605 hours the Officer-in-charge of Ambassa Police Station received a secret information that a six wheeler container truck bearing registration No.NL01-AF-7084 was proceeding towards Ambassa from Teliamura side with dry cannabis loaded inside the vehicle. Accordingly, the information was entered in Ambassa PS GD Book vide GDE No.40, dated 28.07.2022 and the information was communicated to SDPO, Ambassa seeking permission to conduct search. Thereafter, on receiving permission to conduct raid, the complainant along with the Officer-in-charge of Ambassa Police Station and other police personnel rushed to Bet Bagan Naka Point on National Highway-8 along with investigation kit box and weighing machine and at about 1645 hours they found the vehicle bearing registration No.NL01-AF-7084 and gave signal to stop the vehicle and the accused Rahul Kumar @ Rahul Kumar Mahato was the driver of the vehicle.

[4] During checking of the vehicle, a hidden chamber was found behind the driver cabin of the vehicle and thus, Officer-in-charge of Ambassa Police Station sent a requisition to the SDM, Ambassa to depute one Executive Magistrate to remain present during search and seizure on the spot and thereafter, Executive Magistrate namely, Shri Prasenjit Malakar,

DCM, Ambassa rushed to the spot. In the meantime CRPF personnel of 140 BN also rushed to the spot. Thereafter, the complainant prepared pre-search memo in presence of Executive Magistrate and independent witnesses and the hidden chamber of the vehicle was broken and 94 numbers of packets wrapped by cello tape containing 10 kgs in each packet dry cannabis were found and the complainant conducted preliminary field identification test by applying test kit and on weighing found 940 kgs of dry cannabis.

[5] The complainant also issued notice under Section 50 of the NDPS Act to the accused person and conducted search upon the body of the accused person and a keypad mobile hand-set along with Indian Currency of Rs. 10,000/- was recovered. Subsequently, the complainant seized the contraband dry cannabis along with the mobile hand-set and the vehicle bearing registration No. NL01-AF-7084 along with its documents besides one Aadhar card, PAN card and driving licence under a proper seizure list in presence of Executive Magistrate and independent witnesses. Thereafter, the complainant arrested the accused Rahul Kumar @ Rahul Kumar Mahato and after returning to police station the complainant lodged a suo-motu complaint against the accused and deposited the seized articles to the Malkhana of Ambassa Police Station.

[6] On receipt of that FIR, Shri Anupam Das, Inspector of Police being the Officer-in-Charge of Ambassa Police Station registered Ambassa Police Station case no. 2022 ABS 044, dated 28.07.2022 for the commission of offences punishable under Section 20(b) (ii) (C)/25/27A/29 of the NDPS Act, 1985 against the accused person and endorsed the case to Sub-Inspector Mizanur Rahaman for investigation.

[7] During investigation the Investigating Officer Sub-Inspector Mizanur Rahaman visited the place of occurrence and prepared hand sketch map with separate index, examined available witnesses and recorded their statement under Section-161 of Cr.P.C. He also forwarded the arrested accused person before the court. Investigating Officer also collected CDR/SDR analysis report of seized mobile phone of accused person.

[8] During investigation on 28.07.2022 the Officer-in-charge prepared inventory and made a prayer before the court to draw samples of the seized contraband and also for certification of correctness of inventory of the seized contraband and for certifying of the photographs and accordingly, representative and control samples have been drawn and collected certificate of correctness issued by the learned JM 1st Class, Ambassa. Investigating Officer has also taken photograph of the procedure of inventory certified by learned JM 1st Class, Ambassa, Dhalai Tripura. After preparation of inventory on 30.07.2022 Investigating Officer kept the seized contraband items to the District NDPS Godown obtaining proper receipt voucher vide MR No. 37/2022, dated 30.07.2022. Thereafter, he also arranged to send the samples to the State Forensic Science Laboratory for examination and report through SDPO, Ambassa and collected report from SFSL, Narsingarh and after completion of investigation submitted charge sheet in the instant case against the accused Rahul Kumar @ Rahul Kumar Mahato for the commission of offences punishable under Section 20(b) (ii)(C)/25/27A/29 of NDPS Act.

[9] Upon receipt of the aforesaid charge sheet and on perusal of the same, cognizance of the offence punishable under Section 20(b) (ii) (C)/25/27A/29 of NDPS Act was taken by this court. Copies of the incriminating documents were supplied to the accused person in compliance with the provision of Section-207 of Cr.P.C. That, upon hearing both sides on the point of framing of charge and being prima-facie satisfied, charge under Sections-20(b)(ii) (C)/25/27A/29 of the NDPS Act, 1985 was framed against the accused person namely, Rahul Kumar @ Rahul Kumar Mahato. Contents of the charges were read over and explained to the accused person in Bengali language in open Court to which he pleaded not guilty and claimed to be tried.

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

“Accordingly, considering all the aspects of this case coupled with the age of the convict in the given case, this court sentenced the convicts namely, Rahul Kumar @ Rahul Kumar Mahato, Son of Late Mahesh Mahato of Bariyarpur, PS- Bariyarpur, District- Muzaffarpur, StateBihar, (Present address- Vill- Lalmati Beharbari, PS- Basistha, Guwahati, Kamrup, Assam) to suffer rigorous imprisonment of 10 (ten) years for the commission of offence punishable under section 20(b)(ii)(C) of the NDPS Act, 1985 and also liable to pay a fine of Rs.1,00,000/- (Rupees one lakh) only for the said offence, in default, of payment of such fine the convict shall undergo further rigorous imprisonment for a period of 01 (one) year.

And for the commission of offence punishable under section 25 of the NDPS Act, 1985 he is also sentenced to suffer rigorous imprisonment of 10 (ten) years and also liable to pay a fine of Rs.1,00,000/- (Rupees one lakh) only for the said offence, in default, of payment of such fine the convict shall undergo further rigorous imprisonment for a period of 01 (one) year.

Convict is further sentenced to suffer rigorous imprisonment of 10 (ten) years for the commission of offence punishable under section 27A of the NDPS Act, 1985 and also liable to pay a fine of Rs.1,00,000/- (Rupees one lakh) only for the said offence, in default, of payment of such fine the convicts shall undergo further rigorous imprisonment for a period of 01 (one) year.

Convict is also further sentenced to suffer rigorous imprisonment for 10 (ten) years for the commission of offence punishable under section 29 of the NDPS Act, 1985 and also liable to pay a fine of Rs.1,00,000/- (Rupees one lakh) only for the said offence, in default, of payment of such fine the convict shall undergo further rigorous imprisonment for a period of 01 (one) year.

6. All the sentences shall run concurrently.

7. Upon realization of fine, the same may be deposited with Govt. Treasury by way of challan.

8. Convicts Rahul Kumar @ Rahul Kumar Mahato has already underwent detention during investigation and trial since 28-07-2022 to 26-09-2022 and 10-09-2024 to till date (21-09-2024), i.e., 71 days, accordingly the period underwent by the convict is hereby set off against the imprisonment.

9. Upon satisfaction of the sentence as above in compliance to the provision of the Code of Criminal Procedure,1973 the convict shall be discharged.

10. Thus, the case is disposed of on conviction and on contest. Seized alat, if any, be disposed of after the expiry of the period of limitation of appeal.”

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

[12] Mr. J. Bhattacharjee, learned counsel appearing for the appellant has submitted that the learned Court below ought to have taken into consideration that for search into the identified vehicle on the basis of

secret information received the police officer did not record the reasons of his believe why search was necessary causing serious miscarriage of justice to the convict appellant. Therefore, the mandatory provision under Section-42(2) of the NDPS Act, not strictly complied with.

[13] The learned Court below did not discuss as to why guilty of the accused has been recorded in absence of mandatory provision of law being complied with when the information of the proceeding was not sent to the superior police officer in connection with the present case and thus, given a goodbye the safety measure provided in the Act to protect the citizen from the onslaught of the high handed police activity. P.W-1, P.W-2 and P.W-4 in their cross examination clearly stated that they did not see the driver of the vehicle, contents of paper was not read over and explained to them on which they put their thumb impression and signatures, the police officers present there did not examine the seized material to identify the genuinity of the seized material by applying test kit and the police personnel did not even care to open any of the bundles to show them that the bundles were containing cannabis or not.

[14] It appears that the independent witnesses of seizure did not support the prosecution case but the learned Court below relying on such type of evidences convicted the appellant and as such, it is liable to be interfered by this Court.

[15] P.W-3, ASI of P.M at Ambassa police station on 28.07.2022 at about 02.00 Betbagan Naka Point while performing mobile duty after lapse of few hours at about 04.00/04.30 P.M, Inspector Anupam Das, O/C of Ambassa police station, Inspector Gobinda Das along with other staff of the police station received at Betbagan Naka Point and seeing the Container truck bearing Registration No. NL-01-AF-7084 proceeding towards Ambassa from Agartala side, they stopped the vehicle and detained the driver, the appellant herein. Thereafter, they conducted search of the vehicle and during search, a secret chamber beside the seat of the driver was found

from it, after breaking, they recovered 94 bundles containing 940 kgs of dry cannabis.

[16] PW-5 and P.W-6, SDPO Ambassa also stated in their depositions on 28.07.2022 at about 16.05 hours, that PW-8, the Officer-in-Charge of Ambassa police station received a secret information from a reliable secret source to the effect that six wheeler container truck bearing Registration No. NL-01-AF-7084 was proceeding towards Ambassa from Teliamura side and the truck was carrying dry ganja. It appears from the evidences of P.W-5, P.W-6 and P.W-8 that there were complete non compliance of mandatory provision under Sections- 42(2)/50, 55/57 of the NDPS Act, but the learned Court below failed to appreciation of their evidences and mechanically convicted the present appellant and as such, it is liable to be set aside.

[17] It has been contended that the learned Court below committed an error in convicting the appellant on the sole testimony of the police officers wherein, the entire evidence of all the police officers are found non-compliance of mandatory provisions as well as not reliable and trustworthy and more particularly, are found contradictory evidences but, the learned Court below ignoring all these points and mechanically convicted the appellant. The seizure witnesses have not supported the version of the prosecution and the persons who weight the quantity of ganja is also not supported the case of the prosecution.

[18] No sample was sent to the SFSL for the purpose of comparing with the seal appearing on the sample of contraband allegedly recovered from the appellant. It appears that the I/O of this case is also one of the members of the raiding party along with PW-5, the complainant of this case and he conducted the investigation mechanically and finally has filed charge-sheet without *prima facie* evidences against the appellant, but the learned Court below by ignoring all these vital points, most arbitrarily convicted the appellant.

[19] During examination under Section-313 of Code of Criminal Procedure, the appellant in reply disclosed total defence case by way of denying the entire allegations against him and as such, he did not give any defence witness but, the learned Court below ignoring these aspects stated that the defence case is based on only denial. The sample was not collected at spot and after observing mandatory provisions under Section-52A(2) of the NDPS Act, 1985, but the learned Court below ignoring these vital aspects, mechanically convicted the appellant. As such, the same may be interfered with.

[20] No illegal substance(s) could be recovered from the possession of the accused person rather the accused person is a poor and innocent person having his family inclusive of his children. He was implicated in a false case like the present one by the police with an ulterior motive. Learned counsel also submits that the secret information was not reduced into writing and the same was not communicated to the superior authority along with the copy of GD extract which shows non compliance of mandatory provision under the present Act. Learned counsel further submits that the signature of the Executive Magistrate (PW-7) was not taken on any document except the seizure list, as such, the presence of the Executive Magistrate on the spot is doubtful. Learned counsel also submitted that the investigating officer did not collect any malkhana voucher relating to the interim custody of the contraband in between the registration of the case and the sampling and the samples were not sent to the forensic laboratory within the stipulated period of time for examination and report.

[21] Learned counsel also submits that the accused had no knowledge about the presence of any contraband in the vehicle and nothing was seized from the possession of the accused. Furthermore, the independent witnesses have not supported the prosecution story and if this Court carefully scrutinized the oral evidence adduced from the side of the prosecution, it would be seen by this Court that prosecution has failed to bring any cogent and material evidence against the accused person.

Therefore, accused person is completely innocent and he deserves acquittal. In the instant case prosecution has failed to prove their case beyond all reasonable shadow of doubt and from the very inception of this case there are non compliance of mandatory provision under this Act.

[22] On the other hand, learned Public Prosecutor, Mr. R. Datta, submits that prosecution nicely led their evidence and proved the charged framed against the appellant and the investigating agency complied all the mandatory provision under the Act from the very inception of the investigation and there is no lacuna in the evidence of the witnesses which discredit the evidence of the prosecution witnesses.

[23] It has been submitted that drug is a menace in the society at large and it specially affects the young generation. He also emphasizes that now-a-days most of the young boys and girls are severely affected due to the consumption of alcohol, ciggerate, drugs etc and they are having the symptoms of changing friends a lot, spending a lot of time alone, losing interest in favourite things, not taking care of themselves, i.e., not taking shower, changing clothes or brushing their teeth, being really tired and sad, eating more or eating less than usual, being very energetic, talking fast, or saying things that don't make any sense, being in a bad mode, quickly changing between feeling bad and good, missing important appointment, having problems at school, getting bad grades, having problems in personal or in family relationship, lying or stealing, memory lapses, poor concentration, lack of coordination, slurred speech etc.

[24] The Learned Public Prosecutor also emphasized that to curve the situation and to control it, the paddlers of drugs and other psychotropic substances should be booked and social interaction between the children with their family members be improved, i.e., good communication with the children, encouragement, so the children can build confidence and a strong sense of self, parents are to promote cooperation and reduce conflict, teaching the children in problem solving, skills, sitting limits, to teach the children for their self control and responsibility, provide safe boundaries and

show the children that their parents are very careful to them, supervision which help the parents to recognize developing problems, promote safety and stay involves and knowing the children's friend.

[25] The learned Public Prosecutor also submits that young generations of our society badly affected due to the spread of different kinds of psychotropic substances and Narcotic Drugs and for developing habits of consumption of alcohol, drugs etc. mental health of young consumers are badly affected and few of them hardly care to commit suicide even and also to get involved in different types of crimes. Learned P.P. further submits that to save our society, no one involved with drug paddling etc. should be spared and they should be given exemplary punishment.

[26] Learned Public Prosecutor also submitted that the complainant and the investigating officer have taken all precautions and measures which are required to be taken under the provisions of the NDPS Act and the compliance of mandatory provision under the present act has been established and proved by the prosecution by examining the witnesses, i.e., PW-5, PW-6, PW-7, PW-8 and PW-10. Learned Public Prosecutor also submitted that though in the present case the independent witnesses did not support the case of the prosecution, that does not adversely affect the case of the prosecution as the prosecution has been successful in proving the case against the accused by examining the reliable witnesses, i.e., PW-5, PW-6, PW-7, PW-8 and PW-10 and merely because the independent witnesses did not support the prosecution story, the evidence of other witnesses, may be police officials, cannot be discarded.

[27] In support of his case has placed reliance on some decisions of the Hon'ble Apex Court in *Karnail Singh v. State of Haryana*, reported in (2009) 8 SCC 539, *Rizwan Khan v. State of Chhattisgarh*, reported in (2020) 9 SCC 627, *Gurmail Chand v. State of Punjab*, reported in (2021) 14 SCC 334 and *Narcotics Control Bureau v. Kashif*, reported in (2024) 11 SCC 372. For the purpose of reference the relevant paragraph are reproduced hereunder:-

[28] In *Karnail Singh v. State of Haryana*, reported in (2009) 8 SCC 539, the Hon'ble Apex Court has observed as under:

“12) The material difference between the provisions of Sections 42 and 43 is that Section 42 requires recording of reasons for belief and for taking down of information received in writing with regard to the commission of an offence before conducting search and seizure, Section 43 does not contain any such provision and as such while acting under Section 43 of the Act, the empowered officer has the power of seizure of the article etc. and arrest of a person who is found to be in possession of any narcotic drug or psychotropic substance in a public place where such possession appears to him to be unlawful.”

[29] In *Rizwan Khan v. State of Chhattisgarh*, reported in (2020) 9 SCC 627, the Hon'ble Apex Court has discussed as under:

“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 (supra)].”

[30] In *Gurmail Chand v. State of Punjab*, reported in (2021) 14 SCC 334, it has been stated as under:

“7. The learned counsel for the appellant questioning the judgment of High Court contends that Hari Krishan, who was claimed to be independent witness of the seizure, had appeared as DW1 and had stated that in his presence no seizure was made and he had signed on the blank papers. He further submits that seizure having not been proved in accordance with law, Courts below have committed error in convicting the appellant. He further submits that there is violation of Section 57 of the NDPS Act, since the report was not sent to the Higher Official within the period as prescribed, which has vitiated the entire proceeding. He further submitted that case property was not produced in the Court which itself was sufficient to disbelieve the entire prosecution story. He submitted that what was produced in the Court, the seal was illegible.

9. The mere fact that the witness of seizure Hari Krishan has appeared as DW1 does not led to the conclusion that the entire prosecution story has to be disbelieved. There are signatures of Hari Krishan in the seizure memo along with other police officers. The Trial Court as well as the High Court has rightly accepted the seizure, which was held to be in accordance with law. DW1 has not denied his signatures on the seizure memo rather his excuse was that it was taken on the blank paper which was rightly disbelieved by the Courts below.

10. In so far as production of the case property, the Judicial Magistrate himself has appeared in the witness box and deposed that it was produced in the Court. The mere fact that one seal was illegible does not vitiate the

proceeding. In so far as submissions on the basis of Section 57 of NDPS Act is concerned, it has been held that the said provision is not to be interpreted to mean that in event the report is not sent within two days, the entire proceeding shall be vitiated. The provision has been held to be directory and to be complied with but mere not sending the report within the said period cannot have such consequence as to vitiate the entire proceeding. A three-Judge Bench of this Court in *Sajan Abraham vs. State of Kerala*¹ has held that non-compliance of Section 57 would not vitiate the prosecution case. In paragraph 12 following was laid down:

“12. The last submission for the appellant is, there is non-compliance with Section 57 of the Act. He submits under it, an obligation is cast on the prosecution while making an arrest or seizure, the officer should make full report of all particulars of such arrest or seizure and send it to his immediate superior officer within 48 hours of such arrest or seizure. The submission is, this has not been done. Hence the entire case vitiates. It is true that the communication to the immediate superior has not been made in the form of a report, but we find, which is also recorded by the High Court, that PW5 has sent copies of FIR and other documents to his superior officer, which is not in dispute. Ext.P-9 shows that the copies of the FIR along with other records regarding the arrest of the appellant and seizure of the contraband articles were sent by PW5 to his superior officer immediately after registering the said case. So, all the necessary information to be submitted in a report was sent. This constitutes substantial compliance and mere absence of any such report cannot be said to have prejudiced the accused. This section is not mandatory in nature. When substantial compliance has been made, as in the present case, it would not vitiate the prosecution case. In the present case, we find PW5 has sent all the relevant material to his superior officer immediately. Thus, we do not find any violation of Section-57 of the Act.”

[31] In *Narcotics Control Bureau v. Kashif*, reported in (2024) 11 SCC 372, the Hon’ble Apex Court has observed as under:

“50.5. Any procedural irregularity or illegality found to have been committed in conducting the search and seizure during the course of investigation or thereafter, would by itself not make the entire evidence collected during the course of investigation, inadmissible. The Court would have to consider all the circumstances and find out whether any serious prejudice has been caused to the accused.

50.6. Any lapse or delay in compliance of Section 52A by itself would neither vitiate the trial nor would entitle the accused to be released on bail. The Court will have to consider other circumstances and the other primary evidence collected during the course of investigation, as also the statutory presumption permissible under Section 54 of the NDPS Act.”

[32] In view of overall analysis and having heard the learned counsel appearing for the parties and perusal of the principle led by the Hon’ble Apex Court, this Court is of the view that the material difference between the provisions of Sections-42 and 43 is that Section-42 requires

recording of reasons for belief and for taking down of information received in writing with regard to the commission of an offence before conducting search and seizure, Section-43 does not contain any such provision and as such while acting under Section-43 of the Act, the empowered officer has the power of seizure of the article etc. and arrest of a person who is found to be in possession of any narcotic drug or psychotropic substance in a public place where such possession appears to him to be unlawful. For the purpose of reference, the relevant provisions may be extracted hereunder:

42. Power of entry, search, seizure and arrest without warrant or authorisation.—

(1) Any such officer (being an officer superior in rank to a peon, sepoy or constable) of the departments of central excise, narcotics, customs, revenue intelligence or any other department of the Central Government including paramilitary forces or armed forces as is empowered in this behalf by general or special order by the Central Government, or any such officer (being an officer superior in rank to a peon, sepoy or constable) of the revenue, drugs control, excise, police or any other department of a State Government as is empowered in this behalf by general or special order of the State Government, if he has reason to believe from persons knowledge or information given by any person and taken down in writing that any narcotic drug, or psychotropic substance, or controlled substance in respect of which an offence punishable under this Act has been committed or any document or other article which may furnish evidence of the commission of such offence or any illegally acquired property or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act is kept or concealed in any building, conveyance or enclosed place, may between sunrise and sunset,-

- (a) Enter into and search any such building, conveyance or place;
- (b) In case of resistance, break open any door and remove any obstacle to such entry;
- (c) Seize such drug or substance and all materials used in the manufacture thereof and any other article and any animal or conveyance which he has reason to believe to be liable to confiscation under this Act and any document or other article which he has reason to believe may furnish evidence of the commission of any offence punishable under this Act or furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act; and
- (d) Detain and search, and, if he thinks proper, arrest any person whom he has reason to believe to have committed any offence punishable under this Act:

[Provided that in respect of holder of a licence for manufacture of manufactured drugs or psychotropic substances or controlled substances granted under this Act or any rule or order made thereunder, such power shall be exercised by an officer not below the rank of sub-inspector;

Provided further that if such officer has reason to believe that a search warrant or authorisation cannot be obtained without affording opportunity for the concealment of evidence or facility for the escape of an offender, he may enter and search such building, conveyance or enclosed place at any time between sunset and sunrise after recording the grounds of his belief.

(2) Where an officer takes down any information in writing under subsection(1) or records grounds for his belief under the proviso thereto, he shall within seventy-two hours send a copy thereof to his immediate official superiors.

43. Power of seizure and arrest in public place.—

Any officer of any of the departments mentioned in section 42 may—

(a) seize in any public place or in transit, any narcotic drug or psychotropic substance or controlled substance in respect of which he has reason to believe an offence punishable under this Act has been committed, and, along with such drug or substance, any animal or conveyance or article liable to confiscation under this Act, any document or other article which he has reason to believe may furnish evidence of the commission of an offence punishable under this Act or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act;

(b) detain and search any person whom he has reason to believe to have committed an offence punishable under this Act, and if such person has any narcotic drug or psychotropic substance or controlled substance in his possession and such possession appears to him to be unlawful, arrest him and any other person in his company.

[33] When seizure of material is proved on record and is not even doubted or disputed, entire contraband material need not be placed before the Court. At times the material could be so bulky, herein the present case there were total number of 94 bags containing 10kgs of cannabis in each bag, that it may not be possible and feasible to produce the entire bulk before the Court. Further, if seizure is otherwise proved, what is required to be proved, is fact that samples taken from and out of contraband material were kept intact, that when samples were submitted for forensic examination seals were intact, that report of forensic experts shows potency, nature and quality of contraband material and that based on such material, essential ingredients constituting an offence are made out.

[34] Mr. Datta, learned P.P. has drawn the attention of this Court in the FIR wherein, he has stated that due process has been followed regarding search and seizure and the case falls under the provision of Section-43 of the

NDPS Act, not under Section-42 of the NDPS Act. The provision of Section-57 has been held to be directory and to be complied with but merely not sending the report within the said period cannot have such consequence as to vitiate the entire proceeding. When substantial compliance has been made, it would not vitiate the prosecution case.

[35] This court observed that the crime is undoubtedly very serious and heinous and the conduct of the convict is very reprehensible. Drug trafficking is now a menace in the world and the young stars of entire world especially African countries and countries of the South-East-Asia came within the garb of illicit drug trafficking. The narcotic drugs and psychotropic substances have medicinal and scientific value for which they have been used in India since decades. But with the passage of time and development, the practice turned into illicit drug trafficking. Also, India is signatory to UN conventions on Narcotic Drugs which prescribes for the controlled and limited use of these narcotic drugs and psychotropic substances. Therefore, the legislation is framed with the objective of using these narcotic drugs and psychotropic substances in controlled manner for medicinal and scientific purpose without in contravention to the obligations to UN conventions. The NDPS Act regulates and controls the abuse of drug trafficking through its stringent provisions. It empowers the competent authority for the supervision of the operation related to narcotics drugs and psychotropic substances. The NDPS Act prescribes stringent punishment.

[36] Hence a balance must be struck between the need of the law and the enforcement of such law on the one hand and the protection of citizens from oppression and injustice on the other. This would mean that a balance must be struck in. However, after treating the case with the touchstone of the guidelines laid down by the Hon'ble Apex Court of India in different judgment, this court opines that if the convict is spared, it will also adversely affect the society. As there is no other instance of having involved with similar activities and considering that the convict is having his family consists of his wife, two sons and mother coupled with all the

balancing factors, since it is case is under NDPS Act, 1985 and drug trafficking presently is a menace in the world, we find that there is no question of extending sympathy to the convict and thus the scale of justice tilts towards the prosecution and therefore it is opined that it is not necessary what is just but also as to what the accused person deserves keeping in view of the impact on the society at large.

[37] On scrutiny of the evidence of PW-5 and PW-6 it is revealed that PW-5 is the complainant of the instant case and PW-6 was the SDPO, Ambassa at the time of incident and they deposed that on 28.07.2022 at about 16:05 hours, Inspector Anupam Das (PW-8), Officer-In-Charge of Ambassa Police Station received a secret information from reliable secret source to the effect that a six wheelers Container Truck bearing Registration No. NL-01-AF-7084 was proceeding towards Ambassa from Teliamura side and the Truck was carrying dry Ganja, accordingly, Inspector Aupam Das (PW-8) entered the information in the GD Entry Book vide Ambassa Police Station GD Entry No. 40, dated 28.07.2022 and sent a message to PW-6 seeking permission to detain the vehicle and to conduct search and after a little while, after obtaining permission from the PW-6, the complainant (PW-5) along with Inspector Anupam Das (PW-8) and other police personnel rushed to Bet Bagan Naka Point on National Highway No.8 with Tool Box, weighing machine, etc. In the meantime, PW-6 also arrived to the spot.

[38] It is also revealed from the evidence of PW-5 and PW-6 that while the vehicle in question bearing Registration No. NL-01-AF-7084 arrived at Bet Bagan Naka Point, the vehicle was detained along with the accused Rahul Kumar @ Rahul Kumar Mahato who was the driver of the vehicle and on preliminary enquiry accused replied that there was no illegal substance in his vehicle. Thereby, on suspicion PW-5 and other police personnel searched the vehicle and found a secret chamber behind the driver's seat in the driver's cabin and thereby, SDM, Ambassa was

requested to deploy a Magistrate to remain present at the time of conducting search in the vehicle.

[39] It is also revealed from the evidence of aforesaid witnesses that PW-5 removed the bundles from the secret chamber and in total 94 bundles were recovered from the vehicle and the driver failed to give any explanation with regard to the presence of the bundles in his vehicle and on weighing 940 kgs of dry cannabis were found. Thereafter, PW-5 examined the contraband by applying Test Kit which was found positive towards the presence of Cannabis and thereby, PW-5 seized those contraband along with the vehicle under a proper seizure list in presence of the witnesses.

[40] It is also revealed from the evidence of PW-5 and PW-6 that PW-5 issued a notice under Section 50 of the NDPS Act (Exhibit: P-2) to the accused to which he replied in affirmative that he had no objection on his personal search and thereby, a mobile handset, Indian Currency of Rs. 10,000/-, one GPS tracking terminal/device, Aadhaar Card, Driving Licence and one registration certificate of the vehicle were recovered from the possession of the accused and the PW-5 seized the same under a proper seizure list.

[41] On scrutiny of the evidence of PW-10 (Md. Mizanur Rahaman) it is revealed that the witness is the Investigating Officer of the instant case and he deposed that on 28-07-2022 on the basis of a *suo-moto* complaint of complainant (PW-5), Inspector Anupam Das, the Officer-in-Charge of Ambassa Police Station, registered Ambassa Police Station Case No. 2022/ABS/044, dated 28.07.2022, for the commission of the offences punishable under Sections 20(b)(ii)(C)/25/27A/29 of the NDPS Act, 1985 and endorsed the investigation to the witness, accordingly, the witness took up the investigation. It is further revealed from the evidence of PW-10 that Inspector Anupam Das (PW-8) made a prayer before the Court to certify the correctness of the inventory, photographs, etc.

[42] Accordingly, the witness obtained the certificate of correctness [Exhibit: P-17 (as a whole)] under sub-section 3 of Section 52A of the NDPS Act, 1985 from the Learned Magistrate with regard to the photographs of sampling procedure. It is also revealed from the evidence of PW-10 that he drawn the sample and prepared the list of samples (Exhibit: P-18) before the Learned Magistrate. It is also revealed that the witness took photographs [Exhibit: P-19 series (as a whole)] during sampling and the photographs were certified by the Learned Magistrate. It is also revealed that after sampling procedure, the witness deposited the contraband to the District Godown and also obtained the Godown Receipt [Exhibit: P-21 (as a whole)].

[43] Having gone through the entire evidence on record and the findings recorded by the Court below, we are of the opinion that in the present case the crime against the appellant is proved beyond shadow of doubts. Here in 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 and furthermore, we find that the statement made by the witnesses needs no interference. Consequently, we find no reason to interfere with the observations made by the learned Court below and thus, the same is affirmed.

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

S. DATTA PURKAYASTHA, J

DR.T. AMARNATH GOUD, J

A.Ghosh

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