

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE**

PRESENT:

THE HON'BLE JUSTICE TIRTHANKAR GHOSH

CRA 143 of 2020

Sk Mahatab

-vs.-

The State of West Bengal

For the Appellant	:	Mr. Navanil De, Ms. Ayantika Roy, Mr. Rajeshwar Chakraborty, Mr. Srinjan Ghosh, Mr. Subhrajit Dey, Ms. Sruti Dey
For the State	:	Mr. Ranabir Roy Chowdhury, Mr. Sandip Chakraborty
Heard on	:	24.08.2022 & 26.08.2022.
Judgment on	:	01.11.2022

Tirthankar Ghosh, J:-

The present appeal has been preferred against the judgment and order of conviction and sentence dated 07.02.2020 passed by the Learned Judge, Bench-I, NDPS Court at City Sessions Court, Calcutta in NDPS Case No. 25/2015 thereby convicting the appellant for commission of offence under Section 20(b)(ii)(B) of the Narcotic Drugs and Psychotropic Substances Act and sentencing him to suffer Rigorous Imprisonment for two years and also to pay

fine of Rs.3,000/- in default to suffer further rigorous imprisonment for three months.

Maidan Police Station Case no.164/15 dated 04.09.2015 was registered for investigation on the basis of a complaint lodged by Azizul Islam, Sub-inspector of police attached to Maidan Police Station with the Officer-in-charge of the said police station. The allegation made in the letter of complaint treated to be the F.I.R. of the instant case were to the effect that the complainant received a source information that a person would be visiting in the area of Maidan Police Station to sell drugs in the morning of 04.09.2015. As such a team was formed after receiving permission from D.C. South Division to conduct raid. As such on 04.09.2015 at about 10.00 hrs. the raiding team left for the spot and reached New Road in front of Press Club, at about 11.40 hrs. a male being accompanied by two persons were coming along the New Road carrying a black bag, he was intercepted however, the other two persons fled away. The Officers disclosed their identity and also informed him the purpose of detention. A crowd also gathered in and around the area and two persons from the crowd voluntarily agreed to be witness of search and seizure. The detained person disclosed his identity as Sk. Mahatab and he was informed of his legal right to be searched either before a Learned Magistrate or Gazetted Officer. The detained persons agreed to be searched in presence of a Gazetted Officer. As no Gazetted Officer was available in the locality, the complainant informed his superior and at about 13.10 hrs. Inspector Tarun Tikadar, O/C VSOP reached the spot in uniform and introduced himself as Gazetted Officer

to the detainee and the witnesses. The detainee was explained and offered option by the Gazetted Officer when the detainee again confirmed to be searched by the complainant in presence of the Gazetted Officer. The detainee expressed his intention to search the complainant prior to he being searched, however, nothing was found from the complainant except his personal belongings. The complainant thereafter searched the detainee in the spot in presence of others and a black coloured back bag having multiple chamber fitted with chain and zips which was carried by him with his right hand. In the middle chamber of the bag a big block of flowering and fruiting tops of cannabis plant i.e. ganja having characteristic smell wrapped with brown coloured cello tapes was found weighing about 5 kgs and sum of Rs.600/- was seized. The sample was weighed and on testing a small quantity of contraband with the aid of test kit, the sample responded positive to ganja. A seizure list was prepared in respect of the seizure effected, sample of 100 gm were taken from the mother sample. Three packets were packed which are A (mother packet), B (sample packet) and C (cash) respectively. The accused and the witnesses signed/LTI on the seizure list and in the labels. After completing seizure and preparing the seizure list on the spot and as no explanation was offered regarding possession of contraband the accused was arrested at 15.00 hrs. The complainant recorded the statement of the witnesses and the Gazetted Officer under Section 161 of the Code of Criminal Procedure at the spot. The Complainant thereafter prayed before the O/C Maidan P.S. to register FIR and

start a case under Section 20(ii)(B)/29 of NDPS Act against the accused/appellant.

The case was assigned by the O/C of Maidan Police Station to Khandakar Sadre Alam, who on conclusion of investigation submitted charge-sheet on 05.12.2015 before the Learned Judge, Bench-I, City Sessions Court, Calcutta under Section 20(b)(ii)(B)/29 of the NDPS Act. The learned Trial Court framed charge against the Appellant/accused under Section 20(b)(ii)(B) of the NDPS Act. The charge was read over to the Accused/Appellant, who pleaded not guilty and claimed to be tried.

The prosecution in order to prove its case relied upon 11 witnesses which included PW1, Amal Kumar Dhar, Director, State Drugs Control and Research Laboratory, Kolkata; PW2, Azizul Islam, S.I. of Maidan P.S., who conducted raid and the informant; PW3, Tarun Kumar Tikadar, O.C. Vidyasagar Setu, Outpost; PW4, Ramesh Chowdhury, Hawker, Seizure list witness; PW5 Haffizuddin Mondal, A.S.I. of Maidan P.S., member of raiding team; PW6, Sandip Coomar, A.S.I. of Police, DD, Lalbazar, Plan Making Section; PW7 Raghunandan Kumar, Shopkeeper, seizure list witness; PW8, Animesh Bhattacharjee, Constable, member of raiding team; PW9 Animesh Kumar Acharjya, Constable, member of raiding team; PW10 Partha Roy, S.I. of Police, DD, Lalbazar, Plan Making Section and PW11 Khandkar Sadre Alam, Investigating Officer.

The prosecution also examined 15 documents which were admitted in evidence and are as follows:

Original Chemical Test Report being No. SDCRL 2027 dated 05.11.15 is marked as Ext.1, forwarding letter being No. SDCRL 2028 dated 05.11.15 is marked Ext.2, permission letter is marked Ext.3; first option and second option are marked Ext.4 and Ext.5, seizure list is marked Ext.6, the complaint is marked Ext.7, inventory list is marked Ext.8; GD Entry Nos. 249, 254 and 274 are marked Ext.9, Ext.10 and Ext.11, Mail copy is marked Ext.12, rough sketch map is marked Ext.13, sketch map is marked Ext.14 and formal FIR is marked Ext.15.

PW1, Amal Kr. Dhar, Director, State Drugs Control and Research Laboratory, Kolkata deposed before the Court that on 18.09.2015 their laboratory received a brown coloured envelope marked as 'B' in intact and sealed condition from Maidan P.S. in connection with the case no. 164 dated. 04.09.2015 vide memo no. SDI-4917 dated 16.09.2015 which was forwarded through DCP South Division, Kolkata. On opening the envelope marked as 'B' they found greenish herbal material containing flowering and fruiting tops, seeds, leaves and stalks weighing 122 grams. The material sample was tested and cannabinoids were found in Exbt.B which was about 116 grams and testing was done by Sanjib Sarkar in his presence and under his supervision the report which bears the signature of the witness was marked as Ext.1 and signature of the witness therein was marked as Ext.1/1. The report was sent to

the concerned police station by forwarding letter vide no. SDCRL/2028 dated 05.11.2015. The forwarding letter which was prepared as per dictation was marked as Ext.2 and signature of the witness marked as Ext.2/1. The witness also deposed that the remnant of the sample was packed and sealed with the seal and impression of the laboratory in one off-white envelope, the said envelope with the remnant was packed, sealed and sent to the concerned police station and was identified by the witness which was marked as Mat Ext. I. The signature therein of the witness was marked as Mat Ext.I/1 and the signature of the chemist was marked as Mat Ext.I/2. The envelope was sealed with red lac seal with seal impression of State Drugs Control and Research Laboratory. The envelope was opened in Court keeping the seal intact and the brown envelope was found inside the said envelope. The said brown envelope marked B was identified and marked as Mat. Ext.II. Seal and signature therein was marked as Mat Ext.II/1 and the signature of the chemist was marked as Mat Ext.II/2. The greenish herbal material which was examined in their laboratory was marked as Mat Ext.III.

PW2 is Azizul Islam, Sub-inspector at Maidan Police Station who conducted the raid and the informant of the present case. The witness deposed that on 04.09.2015 he was on night duty from 09.00 p.m. of 03.09.2015 to 10.00 a.m. on 04.09.2015. On 04.09.2015 at about 08.30 hrs he received one information that some persons would come on New Road near Press Club within the jurisdiction of Maidan P.S. The said information was communicated verbally to the Officer-in-charge and in written form to D.C., South, Kolkata for

seeking permission. The Deputy Commissioner of Police, South, Kolkata granted permission and as such a raiding team was formed. The permission which was written and signed by the witness and endorsement of permission by the D.C. South, Kolkata was marked as Ext.3, Ext.3/1 and Ext.3/2 respectively. The endorsement of the Officer-in-charge was marked as Ext.3/3. The witness stated that he left office along with his accompanying source, narcotic test kit, weighing scale, packing materials, brass seal of P.S. with gala and other accessories and reached the place of occurrence at around 11.40 hrs. They found that three persons were at the place of occurrence and one of them was holding a bag, when they tried to intercept them two of the persons fled away and the person who was holding the bag was intercepted and detained. They disclosed their identity to the detainee and also divulged the purpose of detention, when some of the onlookers also gathered there. The information was passed to the Officer-in-charge to send a Gazetted Officer at the place of occurrence and at about 13.10 hrs Inspector Tarun Kumar Tikadar, Officer-in-charge of Vidyasagar Setu Outpost reached the place of occurrence. The option was offered to the detainee as to whether he intended to be searched in presence of a Gazetted Officer or Learned Magistrate and the detainee disclosed his intention to be searched in presence of a Gazetted Officer, for which the Officer-in-charge of the police station send the Gazetted Officer. Another option was given to the detainee as to whether he intends to search the person of the witness to which the accused agreed and carried search of the person of the witness, however, nothing was recovered except the

personal belonging of the witness. Thereafter, the informant searched the black bag which was in the hand of the detainee at the place of detention in presence of Gazetted Officer and the local witnesses from which ganja weighing about 5 kg. was recovered after opening the middle chain of the bag. Cash amounting to Rs.600/- was also recovered from the side chain of the bag as personal property of the detainee. On being tested the material was found to be ganja and a sample of 100 grams was collected, packed, sealed and labelled and a seizure list was prepared on the spot and the materials were seized. The first option which was prepared and signed in presence of the witness was marked as Ext.4 and the signature of the witnesses were marked as Ext.4/1 (series). The second option which was prepared and signed was marked as Ext.5 and the signature of the witness was marked as Ext.5/1. The detainee, Gazetted Officer and the local witness also signed on the same. The witness also identified the seizure list containing the pages which was prepared and signed by him and was marked as Ext.6 and the signature of the witness was marked as Ext.6/1 (series) and the detainee, Gazetted Officer and local witnesses also signed the same. The witness also deposed that the seizure was made between 1.30 to 3.00 p.m. and three packets were packed which are A (mother packet), B (sample packet) and C (cash) respectively. He also stated that on being asked the accused person failed to give satisfactory answer regarding possession of ganja, the black colour bag recovered from the possession of the accused was marked as Mat Ext.IV and the label pasted on the same which bears the signatures of the witness was marked as Mat Ext.IV/1. The envelope which

was pasted with one label which had the signature of the witness was marked as Mat Ext.II/3. The witness identified the sample as the material which was sent for chemical examination and the same was marked as Mat Ext.III. Another envelope which was packed, sealed and labelled containing cash was opened in Court and marked as Mat Ext. VI. On being opened by keeping the seal intact it was found that there was a cash of Rs.690/- and coins together with a pouch of khaini, ball pen, piece of paper and a handkerchief. The said articles were identified and marked as Mat Ext.VII (collectively). The witness identified the accused in Court and stated that the accused was arrested and the seized materials were taken to Maidan Police Station. The witness also stated that the complaint was typed as per his dictation in Maidan P.S. and he signed on the same. The written complaint containing three pages was marked as Ext.7/1. The inventory list which was prepared by the witness and signed by him was marked as Ext.8 and Ext.8/1 respectively. The G.D. Entry no. 249 dated 04.09.2015, G.D. No. 254 dated 04.09.2015 and G.D. Entry No.274 dated 04.09.2015 which was written and signed by the witness were marked as Ext.9, Ext.10 and Ext.11 respectively.

PW3, Tarun Kumar Tikadar, is Officer-in-charge of Vidyasagar Setu Outpost who acted as the Gazetted Officer at the time of seizure in this case. The witness stated that on 04.09.2015 he received an information over telephone from the office of the D.C. South, Kolkata that he should proceed to Dharmatala, New Road to act as Gazetted Officer relating to search and seizure of contraband material and accordingly at about 1.10 p.m. he reached there

and noticed that a police team of Maidan Police Station detained a person on suspicion of having possession of contraband material. The witness stated that he noticed that the person who was detained was carrying black colour bag on his back and he was introduced by Sub-inspector Alam of Maidan Police Station to the detainee as a Gazetted Officer. The witness also disclosed to the detainee that his person and bag would be searched in his presence to which he agreed. Thereafter the process of search commenced at around 1.30 p.m. Sub-inspector Alam opened the bag and brought out one packed wrapped with cello tape, which was opened and found to contain cannabis commonly known as ganja. Thereafter, sample weighing 100 grams approximately was drawn and the material was examined by test kit to which it responded positive to the test of ganja. The weighing material was found in total to be 5 kg. The material was packed, sealed and labelled and he also signed on the label along with local witness and the accused person. The signature on the label pasted on the black colour bag were identified as Mat Ext.IV/2 and the signature on the label pasted on the sample was marked as Ext.II/4. On being searched cash amount of Rs.600/- was recovered which was also packed and sealed. Seizure was made by preparing one seizure list and the witness signed on the seizure and the signature was identified by the witness which was marked as Ext.6/2 (series). The second option was also identified by the witness which was marked as Ext.5/2. The witness identified the accused in Court.

PW4, Ramesh Chowdhury, is by profession a hawker. He deposed that the incident occurred on 04.09.2015 at around 1.10 p.m. in front of Press

Club, New Road, Kolkata. According to him when he was selling he found that there was a gathering and on being curious he went there and noticed that the Officer-in-charge brought out one black colour bag from the possession of Sk. Mahatab and the same on being opened ganja was recovered. The witness identified the accused in Court. The witness also identified the black coloured bag which was recovered from the possession of the accused.

PW5 is Haffizuddin Mondal, ASI of Police attached to Maidan Police Station and on 04.09.2015 he was working in the same post at the same police station. The witness narrated the incident similarly as PW2 in respect of the interception of the accused, recovery of contraband materials from the black coloured bag which was being carried by the accused as well as the cash of Rs.600/- recovered from the said bag and the sample being drawn from the recovered contraband and the sample being weighed. The witness identified his signature on two pages of the seizure list which was marked as Ext.6/3 (series). The witness identified the accused in Court. The witness also identified his signature on the label pasted over the bag which was marked as Ext.IV/3 (series). The witness also identified the signature on the label pasted on the envelope which contained the sample which was drawn from the contraband which was recovered and the same was marked as Ext. II/5. According to the witness the accused was arrested in his presence and he was taken to police station along with case documents and alamat.

PW6, Sandip Coomar is ASI of Police attached to DD, Lalbazar, Plan Making Section. The witness deposed that on 06.09.2015 he received a mail from Maidan Police Station. The said mail was marked as Ext.12. Thereafter as per direction of the Officer-in-charge, Photography Section he went to the Press Club, New Road where he met Sub-Inspector S. Alam. Two snap of the place of occurrence as per instruction and identification of Sub-Inspector S Alam was taken by him. Two photographs along with negatives in separate were marked as Mat Ext.VIII & IX and the photographs which were developed from the said negatives were marked as Mat Ext.X & XI. He lastly, stated that the photographs were kept in their office by following the proper procedure and same was produced before the Court as per direction of the Court.

PW7, Raghunandan Kumar, deposed that on 15.09.2015 a person was apprehended with ganja near Press Club and at the relevant point of time he was in his shop and after hearing hue and cry he went to the place of occurrence. He further stated that the said person was arrested and taken to police station. He knew nothing as to what happened in the police station. The signature in the seizure list was tendered to the witness. The witness identified his signatures in the seizure list which was marked as Ext.6/4. Witness stated that ganja was sealed at the spot and the bag which was seen by him on that day and the labels pasted on the bag contained his signature and was marked as Ext.IV/4. The witness expressed inability to identify the accused person in Court. Further sample packet was tendered to the witness and the signature

on the label of the envelope was identified by him and as such the same was marked as Ext.II/6.

PW8, Animesh Bhattacharjee, is a Constable who was attached to Maidan Police Station on 04.09.2015 and was also a member of the raiding team. The witness deposed that on 04.09.2015 they went to New Road along with other Officers and police personnel who conducted raid and maintained watch on the area. They noticed that a person having a black coloured bag with him was coming from north to south direction through the road and was intercepted in front of the Press-club. Two persons also followed him but by seeing the raiding team they fled away. The witness thereafter narrated the incident in the same manner as PW2 and PW5.

PW9, Animesh Acharjya, is a Constable of police and was attached to Maidan Police Station on 04.09.2015. The witness stated that on the relevant date he along with other officers came to New Road to maintain watch as there was information that transaction relating to ganja would take place. On being pointed by the source an officer intercepted a person along with his black coloured bag. According to him another officer also reached and thereafter the bag was opened and polythene packet containing ganja was found inside the bag. Seizure list was prepared and thereafter they returned to police station. The detained person was identified in Court by the witnesses.

PW10 is Partha Roy, Sub-Inspector of Police attached to Plan Making Section, DD, Lalbazar. He deposed that on 04.12.2015 as per verbal direction

of the then O/C he had to been to Maidan Police Station to prepare rough sketch map of the place of occurrence which was New Road in front of Press Club. He stated that the sketch map was prepared with reference to Maidan PS case no. 164 dated 04.09.2015. The rough sketch map that contained his signature and also of the Investigating Officer was produced in Court. The rough sketch map was marked as Ext.13 and the signature of the witness was marked as Ext.13/1. The witness stated that on 01.12.2015 on the basis of rough sketch map he prepared a final sketch map. He identified the same along with his signature which was marked as Ext.14, Ext. 14/1 respectively. He lastly stated that he handed over the sketch map to the Officer-in-charge of the case.

PW11, Khandakar Sadre Alam is the Investigating Officer of the case who deposed that he is retired Inspector of Kolkata Police and on 04.09.2015 and 05.09.2015 he was posted at Maidan Police Station. He took up the investigation of the case on 04.09.2015 after filling up the formal FIR with permission of the Court he sent the seized narcotic substance to the SDCRL, Kolkata for chemical examination, he collected the sketch map and photo of the place of occurrence from OC, Scientific Wing, DD, Lalbazar and also collected sample report from SDCRL, Kolkata. Thereafter he submitted charge-sheet under Section 20(b)(ii)(B)/29 of the NDPS Act against the accused Sk Mahatab. During investigation he recorded the statement of the accused and examined the witnesses. He identified the accused in Court. The witness also identified his signature in the formal FIR which was marked Ext.15/1 and the

Formal FIR was marked as Ext.15. He lastly stated that the complaint was forwarded to him by the Officer-in-charge of Maidan Police Station, he took the custody of the accused and the seized alamats and kept the alamats at Malkhana. While the accused was detained in custody and on 05.09.2015 he produced the accused before the Court.

Mr. Navanil De, learned advocate appearing for the accused submitted that the appellant has been falsely implicated in the instant case by the police authorities and by relying upon stock witnesses as also by way of illegal seizures he has been arraigned in the instant case. According to the learned advocate, as there is non-compliance of Section 52A of the NDPS Act the accused is entitled to benefit of the same. It has also been submitted that learned trial Court accepted the prosecution evidence to be gospel truth and without appreciating the statutory provisions convicted him. The judgment of the learned trial Court suffers from serious illegalities which are against the settled principles of law and as such, according to the learned Advocate the same is liable to be set aside.

Mr. Ranabir Roy Chowdhury, learned Advocate appearing for the State submitted that the prosecution by way of cogent evidence has proved the case beyond reasonable doubt. According to him the evidence of PW2, PW5 would show that from the inception the police authorities strictly followed the rules apart from the law and as such after seeking permission from the superior formed the raiding team and proceeded to the place of occurrence. There has

been corroboration in respect of interception of the accused, recovery and seizures made in the instant case. The evidence of the expert, PW1 reflects that it was the seized material which tested positive and as such there was no scope for alternative interpretation in respect of the contraband which was seized from the present appellant. Additionally it has been submitted that there is nothing in the cross-examination which would reflect that the search and seizure was doubted by the accused nor there is anything to show that there has been non-compliance of statutory provisions of the NDPS Act, as such there is no scope for interference in respect of the judgment and order of conviction and sentence so passed by the learned trial Court.

The issues canvassed by the Learned Advocates appearing for the appellant was basically restricted to non-compliance of Section 52A of the NDPS Act and the independent witnesses who have been examined in this case are stock witnesses of the police authorities.

The learned advocate for the State on the other hand contended that the prosecution witnesses which included independent witnesses deposed in support of the prosecution case and nowhere in the evidence it appears that the witness were confronted in respect of the quantity of the samples so seized. The sampling was also never challenged, even the seals were found to be intact and no questions were asked to the witnesses regarding any tampering of the seal. Additionally it has been argued that the evidence of prosecution relating to the search and seizure, the Chemical Examiner's report including the

oral/documentary and materials having been proved there is no scope for interference in the order of the conviction and sentence so passed by the learned Trial Court.

In order to appreciate the contentions relating to Section 52A of the NDPS Act where the main thread of contention is that the seized materials or contraband were never produced in Court and there is nothing in evidence to show that the samples which were sent for chemical analysis/examination were derived from the seized contraband alleged to be from the possession of the accused, the Hon'ble Supreme Court in State of Rajasthan –Vs. – Sahi Ram reported in (2019) 10 SCC 649 dealt with the issues relating to non-compliance of Section 52A of the NDPS Act which was main thrust of contention of the learned Advocate appearing for the appellant. The Hon'ble Supreme Court was categoric in distinguishing the foundation of acquittal in respect of the earlier judgments which considered amongst others the subject matter relating to non-compliance of Section 52A of the NDPS Act. The reference was made in Jitendra – Vs. – State of Madhya Pradesh reported in (2004) 10 SCC 562; Ashok @ Dangra Jaiswal –Vs. – State of M.P. reported in (2011) 5 SCC 123 and Vijay Jain –Vs. – State of Madhya Pradesh reported in (2013) 14 SCC 527. Subsequently in Than Kunwar –Vs. – State of Haryana reported in (2020) 5 SCC 260, the distinction in respect of the aforesaid three judgments and the applicability of the ratio laid down in Sahi Ram's (supra) case was followed, paragraphs 29, 30, 31, 33 and 34 are relevant for dealing with the contention raised in this appeal and are set out as follows:

“29. *In the facts of this case we, however, notice certain features. Before the trial court, the contention as such that not been raised about the non-production of the contraband articles. We may also however refer to the judgment of this Court in Sahi Ram [State of Rajasthan v. Sahi Ram, (2019) 10 SCC 649 : (2020) 1 SCC (Cri) 85] . This was a case where the vehicle was searched, during which 7 bags of poppy straw, the gross weight being 233 kg, were found behind the driver's seat. Samples were taken. The High Court in appeal by the respondent found that only 2 sample packets and one bag of poppy straw weighing 2.5 kg were produced and relying upon the case law which we have referred to, acquitted the respondent. The Court also noted para 9 of the judgment in Jitendra [Jitendra v. State of M.P., (2004) 10 SCC 562 : 2004 SCC (Cri) 2028] where the Court observed, taking the cumulative effect of all circumstances, it was not sufficient to bring home the charge. The Court also referred to the judgment of this Court in Mohinder Singh [Mohinder Singh v. State of Punjab, (2018) 18 SCC 540 : (2019) 3 SCC (Cri) 197] .*

30. *The Court also went to hold in Sahi Ram [State of Rajasthan v. Sahi Ram, (2019) 10 SCC 649 : (2020) 1 SCC (Cri) 85] that if seizure is otherwise proved on record and it is not even doubted or disputed, it need not be placed before the Court. The Court further held that if the seizure is otherwise proved what is required to be proved is the fact that samples taken out of a contraband are kept intact. This Court held as follows : (SCC pp. 657-58, paras 15-16 & 18)*

“15. It is true that in all the aforesaid cases submission was advanced on behalf of the accused that failure to produce contraband material before the court ought to result in acquittal of the accused. However, in none of the aforesaid cases the said

submission singularly weighed with this Court to extend benefit of acquittal only on that ground. As is clear from the decision of this Court in Jitendra [Jitendra v. State of M.P., (2004) 10 SCC 562 : 2004 SCC (Cri) 2028] , apart from the aforesaid submission other facets of the matter also weighed with the court which is evident from paras 7 to 9 of the decision. Similarly in Ashok [Ashok v. State of M.P., (2011) 5 SCC 123 : (2011) 2 SCC (Cri) 547] , the fact that there was no explanation where the seized substance was kept (para 11) and the further fact that there was no evidence to connect the forensic report with the substance that was seized (para 12) were also relied upon while extending benefit of doubt in favour of the accused. Similarly, in Vijay Jain [Vijay Jain v. State of M.P., (2013) 14 SCC 527 : (2014) 4 SCC (Cri) 276] , the fact that the evidence on record did not establish that the material was seized from the appellants, was one of the relevant circumstances. In the latest decision of this Court in Vijay Pandey [Vijay Pandey v. State of U.P., (2019) 18 SCC 215] , again the fact that there was no evidence to connect the forensic report with the substance that was seized was also relied upon to extend the benefit of acquittal.

16. It is thus clear that in none of the decisions of this Court, non-production of the contraband material before the court has singularly been found to be sufficient to grant the benefit of acquittal.

18. If the seizure of the material is otherwise proved on record and is not even doubted or disputed, the entire contraband material need not be placed before the court. If the seizure is otherwise not in doubt, there is no requirement that the entire material ought to be produced before the court. At times the material could be so bulky, for instance as in the present material when those 7 bags weighed

223 kg that it may not be possible and feasible to produce the entire bulk before the court. If the seizure is otherwise proved, what is required to be proved is the fact that the samples taken from and out of the contraband material were kept intact, that when the samples were submitted for forensic examination the seals were intact, that the report of the forensic experts shows the potency, nature and quality of the contraband material and that based on such material, the essential ingredients constituting an offence are made out.”

31. *In the facts of this case, no doubt the contraband article weighed 6 kg 300 gm. A perusal of the judgment of the trial court does not appear to suggest that the appellant had taken the contention regarding non-production of the contraband before the trial court. This contention as such is not seen as taken before the High Court. This is a case where the sample was produced. There is no argument relating to the tampering with the seal. We further notice that in the deposition of the investigating officer (PW 7), he has stated as follows:*

“The case property is Ext. P-1, sample is Ext. P-2, sample seal is Ext. P-3 and the bag in which the case property was recovered from the possession of the accused present in the court is Ext. P-4.”

33. *Next aspect, which we consider is, whether the conviction of the appellant made by two courts requires interference on the ground that independent witnesses were not associated with the investigation, seizure and recovery. We have noticed the evidence which is referred to by the appellant to criticise the impugned judgment on this score. Two courts have reposed confidence in the deposition of the prosecution witnesses.*

34. *The investigating officer, PW 7, when examined, has stated as follows:*

“ ... At the time of apprehension of the accused none from the public was there. There were shops but there was no residential house. Residential colony is at some distance. No woman from the locality was called. Some respectables were tried to be called. I do not remember the names of the said persons. Prem Singh, son of Raja Ram resident of Kahri, Sunil, son of Ram Mehar resident of Panipat, Gushan Kumar, son of Gainda Ram resident of 8, Marla Colony, Panipat were asked to do so. It was about 2 p.m. DSP had also arrived. The aforesaid persons remained with us for 5/10 minutes. They had showed their inability to such a nature that I did not think it proper to take legal action against them. No shopkeeper was called...”

In the light of the observation made in the Than Kunwar (supra) and Sahi Ram (supra) the following factual circumstances assumes importance.

PW1, Amal Kumar Dhar, the Director of State Drugs Control and Research Laboratory, Kolkata was never cross-examined in respect of the seals, as to whether they were tampered in any manner or not. No doubt was raised regarding the seals and in the examination-in-chief the said witness categorically deposed as follows:

“On 18.09.2015 our laboratory received one brown colour envelope marked as B in intact and sealed condition from Maidan P.S. in connection with case no.164 dt. 04.09.2015 vide memo no.SDI-4917 dt. 16.09.2015 forwarded through DCP South Division, Kolkata.”

The cross-examination of PW2, Azizul Islam, also do not reflect that he was confronted with any question relating to the signatures appearing in the seizure list. Ext.6 which happens to be the seizure list was admitted in

evidence and there was not even any objection made by the accused when the document was admitted in evidence. No objection was also raised in respect of Ext.8 which happens to be the inventory list.

The independent witnesses PW4 and PW7 were also not confronted regarding their signatures appearing in the seizure list. Therefore, the seizure of the materials having been proved by way of documentary evidence and the same being not even doubted or disputed do not call for any assessment regarding the production of the seized material in Court at the time of evidence. Thus the point so raised that non compliance of Section 52A of the NDPS Act would entitle the accused to an acquittal is not acceptable to this Court as the same has no foundation in law and facts. So far as the issue relating to PW4 and PW7 being stock witnesses are concerned, no questions were put in cross-examination to these two witnesses regarding they being earlier made witnesses in other cases by the Investigating Officer or the Police Authorities, neither any document was produced at the time of trial reflecting that the present witnesses have been aiding the police authorities as witnesses in any other case. This plea is a mechanical plea and as such do not satisfy the test of stock witness so canvassed by the appellant.

In the light of the observation made above I am of the opinion that no interference is called for in respect of the judgment and order of conviction and sentence so passed by the learned trial Judge being the Learned Special Judge,

Bench-I (NDPS Act), City Sessions Court, Calcutta in NDPS Case No. 25 of 2015.

Consequently, Criminal Appeal No. 143 of 2020 is dismissed.

Pending Applications, if any, are consequently disposed of.

Records of the case reflect that at the time of admission of appeal on 08.01.2021, the appellant was granted bail, in view of the appeal being dismissed the bail bonds are cancelled and the appellant is directed to surrender before the jurisdictional Court immediately, in the alternative learned Trial Court will pass directions for execution of the sentence so passed.

Department is directed to send back the Lower Court Records to the learned trial Court and communicate this judgment, so that effective steps are taken by the learned trial Court.

All parties shall act on the server copy of this judgment duly downloaded from the official website of this Court.

Urgent Xerox certified photocopy of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Tirthankar Ghosh, J.)