

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.850 of 2015

Arising Out of PS. Case No.-217 Year-2013 Thana- BIHAR District- Nalanda

Santosh Kumar Son of Shankar Singh Resident of Village - Dhanawadih,
Police Station - Sarmera, District - Nalanda.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

with
CRIMINAL APPEAL (DB) No. 720 of 2015

Arising Out of PS. Case No.-217 Year-2013 Thana- BIHAR District- Nalanda

Pawan Kumar S/o Yogi Prasad Yadav, R/o Kachidargah, P.S. - Fatuha, District
- Patna.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

with
CRIMINAL APPEAL (DB) No. 916 of 2015

Arising Out of PS. Case No.-217 Year-2013 Thana- BIHAR District- Nalanda

Manoj Kumar son of Lagan Ray resident of village - Abu Mohammadpur, P.S.
Bakhtiyarpur and Distt. Patna.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

with
CRIMINAL APPEAL (DB) No. 1018 of 2015

Arising Out of PS. Case No.-217 Year-2013 Thana- BIHAR District- Nalanda

Santu Kumar S/o Late Devendra Prasad Gupta, R/o Village- Jethuli, P.S.-
Fatuha, District- Patna.

... .. Appellant/s

Versus

The State Of Bihar



... .. Respondent/s

Appearance :

(In CRIMINAL APPEAL (DB) No. 850 of 2015)

For the Appellant/s : Mr. Dharendra Kumar Sinha, Adv.

For the Respondent/s : Mr.A.K. Sinha App

(In CRIMINAL APPEAL (DB) No. 720 of 2015)

For the Appellant/s : Mr. Dharendra Kumar Sinha, Adv.

For the Respondent/s : Mr.D.K.Sinha App

(In CRIMINAL APPEAL (DB) No. 916 of 2015)

For the Appellant/s : Mr. Dharendra Kumar Sinha, Adv.

For the Respondent/s : Mr.S.B.Verma App

(In CRIMINAL APPEAL (DB) No. 1018 of 2015)

For the Appellant/s : Mr.Dhirendra Kumar Sinha

For the Respondent/s : Mr.S.N. Prasad App

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE HARISH KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 01-05-2023

1. We have heard the Criminal Appeal (DB) No. 850 of 2015 (Santosh Kumar); Criminal Appeal (DB) No. 916 of 2015 (Manoj Kumar) and Criminal Appeal (DB) No. 1018 of 2015 (Santu Kumar vs. the State of Bihar) together, all of which are being disposed of by this common judgment.
2. We have been informed that one more appeal, namely, Criminal Appeal (DB) No. 720 of 2015 (Pawan Kumar) is pending consideration before this Court. The file of the aforesaid criminal appeal has been notified and summoned and the same is also



being disposed of by this common judgment.

3. We have heard Mr. Dharendra Kumar Sinha, the learned Appellant in all the appeals and Ms. Shashi Bala Verma, the learned APP for the State.
4. All the appellants stand charged and convicted under Section 20 (B) (II) (C) of the NDPS Act, 1985 and they have been sentenced to undergo R.I. for 12 years, to pay a fine of Rs. One Lakh each and in default of payment of fine, to further suffer rigorous imprisonment for one year separately.
5. The F.I.R., namely, Bihar P.S. Case No. 217 of 2013 dated 16.07.2013 for offences under Section 20, 21 and 22 of the NDPS Act and Section 414 of the Indian Penal Code was lodged by PW1, who has alleged that at about 3 O' Clock in the morning of 16.07.2013, he was informed by the Special Task Force that two vehicles; one being a Marshal Jeep and the other, a Honda City Car are likely to come from Biharsharif direction and in those vehicles, *Ganja* has been loaded.



6. The afore-noted information was reduced in writing and an entry was made in the station diary. A raiding team was constituted by PW1, which included other police officers, who have been cited and examined as PWs 2, 3 and 4. A request was also made to the Sub Divisional Officer, Biharsharif for deputing one Magistrate, consequent upon which, one Bhola Prasad Singh, the Magistrate (PW8) was deputed. The raiding team took its position on the road. Two vehicles of the make of Marshal and Honda City were spotted at around 4.20 A.M. on 16.07.2013 only. When signalled to stop, two persons came out of the Honda City Car and started fleeing away. The afore-noted persons were nabbed by the police party, who disclosed their names as Pawan Kumar and Santu Kumar, the appellants in Criminal Appeal (DB) No. 720 of 2015 and Criminal Appeal (DB) No. 1018 of 2015 respectively.

7. A search was made in both the vehicles. From Marshal Jeep, 100 bundles of *Ganja* was recovered



whereas from Honda City Car, 57 packets of *Ganja* were recovered. Each of the packets weighed one kilogram.

8. Two of the other appellants, namely, Manoj Kumar and Pawan Kumar, the appellants in Criminal Appeal (DB) No. 916 of 2015 and Criminal Appeal (DB) No. 850/2015 were found sitting in the Marshal Vehicle, who too were arrested. The aforementioned persons disclosed before the police party that the narcotics belonged to one Dilip Sao of Fatuha. The consignment had come from Orissa. PW1 has further stated that the narcotics were sealed in presence of two of the on-lookers and brought to police station whereafter formal F.I.R. and seizure list was prepared. Two of the witnesses of the seizure list have been examined as Pws 5 and 6, namely, Pankaj Kumar and Surendra Prasad respectively, both of whom have not supported the prosecution version.

9. During the trial, PW1 supported the allegations



made in the F.I.R. However, during cross-examination, he did not state anything to establish that the arrested persons were given the option of being searched in presence of a Magistrate.

10. There is nothing in the statement of PW1 which would even remotely indicate as to the manner in which the seized articles/ narcotics were sealed or any sample drawn from the same. On the contrary, it has been asserted that it was brought to the police station in the same condition in which it was seized and thereafter it was kept in two bags which were tied up. There is no statement with regard to the same having been sealed or sample having been drawn from the said seized articles. In this context, we have also examined the deposition of Rajesh Kumar (PW7), who is the Investigating Officer of this case. He supports the prosecution case though that on 16.07.2013, 157 packets of *Ganja* was seized and each of the packet contained one kg. of *Ganja*. He had been handed over the investigation by



the Officer-in-Charge (PW1) on 16.07.2013 only. After taking up the investigation, PW7 visited the place of occurrence and also took the statement of seizure list witnesses. Thereafter, further statement of the informant and the statement of the members of the raiding team was recorded. The seized articles, it has been asserted by PW7, was sent to Forensic Science Laboratory Patna and Kolkata which was returned on 02.09.2013; which was again sent on 20.09.2013 before Forensic Science Laboratory, Patna and on 27.09.2013 to Kolkata. In his cross-examination, PW7 had admitted that the narcotics was not seized in his presence and he took control of the same only after taking over the investigation on 16.07.2013. At the time of his taking over the investigation, the narcotics so seized was kept in the police premises only. No date has been provided by the PW7 of the deposit of the narcotics in the *Malkhana*. All that has been said by him is that on 02.09.2013, the seized narcotics was procured from



the *Malkhana* for the purposes of being presented before the District & Sessions Judge. He has further stated that the sample which was sent to Forensic Science Laboratory and which was returned on 02.09.2013 was for the reason that the forwarding note was vague and even the estimated weight of the sample was not indicated in the forwarding note. An application was filed by PW7 before the District & Sessions Judge for rectification of those anomalies for which the samples were sent back from the Forensic Science Laboratories, Patna and Kolkata respectively which was again sent after re-seal.

11 Thus from the deposition of PW1 and PW7, it becomes very clear that even though Bhola Prasad Singh, the Magistrate, was present at the time of raid, no effort was made to draw the sample in his presence. When were the samples drawn is also not known. This is a clear violation of the provisions contained in Section 52A of the N.D.P.S. Act, 1985. Whenever any narcotic drug or psychotropic



substance or controlled substance or conveyance is seized and forwarded to the Officer-in-Charge of the nearest police station or to the Officer empowered under Section 53 of the Act, an inventory is required to be prepared containing such details relating to its description, quality, quantity, mode of packing, marks, the numbers or such other identifying particulars of the seized drugs or the packing in which they are packed, their country of origin and other particulars which would testify to the identify of the narcotics seized. Thereafter an application is required to be made before the Magistrate for certifying the inventory so prepared; for taking in presence of such Magistrate, photographs of such drugs or substances or conveyance and certifying such photographs as true; allowing to draw representing samples of such drugs or substances in the presence of such Magistrate and certifying the correctness of any list of sample so drawn. The Magistrate is supposed to allow such a request of the



Officer immediately. These photographs and certificates form part of the primary evidence in a case dealing with narcotic drugs.

12. From the deposition of PW1 and PW7, as noted above, it does not appear that any such requirement was followed, making the prosecution case highly doubtful and redolent with suspicion.

13. In this context, it would be necessary to refer to the deposition of PW4, namely, Alok Kumar, who was also one of the members of the raiding team. He has stated in his examination in chief that no person was called for being a witness to the seizure as during the course of raid, approximately 20 persons had assembled at the place of occurrence. The weighment of the seized narcotic was done at the place of raid only by means of mechanical weighing instrument. Did the raiding team carry the weighing instrument or was it procured from the nearby shop was not known. He has further testified that nothing was done to the seized narcotics when



the same was brought to the police station. In his presence, there was no attempt to seal the same or to draw any sample from the stock. In his presence, the narcotic which was seized was only kept in the *Malkhana* of the police station. It was not sent to the *Malkhana* of the district where the inventory is made.

14. Surprisingly, the two of the seizure list witnesses, namely, PWs 5 and 6 have completely denied that any such seizure was made in their presence.

15. This takes us to the deposition of PW8, the Magistrate, who was deputed along with the raiding team. Though he supports the allegation that in his presence, four persons were arrested from two vehicles and 157 bundles of *Ganja* in all was recovered from two vehicles but has stated that he had no idea as to where from the weighing scale was brought. Only few bundles, according to him, were weighed and on the basis of such sample weighing,



inventory was made. Not all bundles were even opened for confirmation whether it contained narcotics. Whichever bundle was opened for such confirmation was tied at the place of raid. He has further testified that he remained for approximately 45 minutes during the time of the raid whereafter he went to his residence. Both the vehicles were mentioned in one seizure list only.

16. From his deposition, therefore, it further gets confirmed that the inventory was not made in his presence nor was any sample drawn in his presence as mandated under Section 52A of the N.D.P.S. Act, 1985.

17. Anup Kumar (PW-9) is the person, who had brought the narcotics before the Trial Court on being demanded. In his cross-examination, he had very candidly accepted that the seized articles contained only 4 to 5 kgs of *Ganja* as rest of it had been eaten away by rodents. The bag in which the *Ganja* was kept was also found torn from many places. There



was no seal of certification on such material exhibits before the Trial Court.

18. Thus, it becomes rather clear that the mandatory requirements under the N.D.P.S. Act have not been followed.

19. The Court is left with no information as to whether the seized articles from the constructive possession of the appellants was actually contraband. The certificate from the Forensic Science Laboratory that the samples sent to them corresponded to *Ganja* would not bolster up the case of the prosecution for the reason that nothing is known about the manner in which the samples were drawn or whether those were drawn from the seized narcotics. Thus, the entire material exhibits of the seized articles loses its significance for any adjudication of the guilt of the appellants.

20. For the afore-noted reasons, we are not persuaded to believe the prosecution version. The Trial Court appears to have only taken note of the



fact that the report of the Forensic Science Laboratory talked about the sample corresponding to narcotics and that the samples had marking with red lac. This was no sufficient material for the Trial Court to have come to a definite conclusion that the samples were drawn from the same seized bundles of narcotics from the constructive possession of the appellants.

21. We have also found that the requirement under Section 50 of the N.D.P.S. Act has also been violated with impunity though from the personal search of the appellants, no narcotics was recovered. Even then, the Miranda principles are not to be ignored. The safeguards, which have been provided in the N.D.P.S. Act, 1985 appeared to have been completely left unguarded giving us no clue whether the samples which tested positive for the narcotics drugs were from the seized narcotics from the appellants.

22. We, therefore, are unable to sustain the



judgment of conviction and order of sentence of the appellants and we set aside the same.

23. Out of the four appellants, only appellant/Manoj Kumar in Criminal Appeal (DB) No. 916 of 2015 is in custody. Rest of the appellants, namely, Santosh Kumar, Pawan Kumar and Santu Kumar in Criminal Appeal (DB) No. 850 of 2015, Criminal Appeal (DB) No. 720 of 2015 and Criminal Appeal (DB) No. 1018 of 2015 respectively have been released on bail only recently but only after staying in jail for more than eight years.

24. The appellant / Manoj Kumar Criminal Appeal (DB) No. 916 of 2015 is directed to be released from jail forthwith. Since the appellants, namely, Santosh Kumar, Pawan Kumar and Santu Kumar are on bail, they are discharged from the liabilities of the bail bonds.

25. All the four appeals stand allowed.

26. The release warrant of the appellant / Manoj Kumar in Criminal Appeal (DB) No. 916 of 2015 be



sent to the concerned Jail Superintendent immediately.

27. The records of this case be returned to the Trial Court forthwith.

(Ashutosh Kumar, J)

(Harish Kumar, J)

sunilkumar/-
rohit

AFR/NAFR	AFR
CAV DATE	N/A
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