

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.762 of 2021**

Arising Out of PS. Case No.-66 Year-2018 Thana- PURUSHOTTAMPUR District- West
Champaran

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Surendra Sah @ Surender Sah Kanu @ Surender Shah, son of late Dawga Sah
@ Surender Patel, Resident of Village - Bada Teuki, Ward No.2, P.S. -
Pokhariya, District - Parsa, Country – Nepal.

... .. Appellant

Versus

The State of Bihar.

... .. Respondents

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Appearance :

For the Appellant	:	Mr. Vatsal Verma, Advocate Mr. Shashank Chandra, Advocate
For the Respondent	:	Mr. Syed Ashfaque Ahmad, APP

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CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR

CAV JUDGMENT

Date : 06-05-2025

Heard the learned counsel for the appellant and the
learned Additional Public Prosecutor for the State.

2. The present appeal is preferred by the
appellant against the judgment of conviction dated 06.07.2020
and the order of sentence dated 07.07.2020 passed by Additional
Sessions Judge-II, West Champaran, Bettiah, in Trial No.07 of
2019, whereby the appellant has been convicted under sections
20(b)(ii)(c) and 23(c) of the Narcotic Drugs and Psychotropic
Substances Act, 1985 (for short “N.D.P.S. Act”). For the
offence under section 20(b)(ii)(c) of the N.D.P.S. Act, the
appellant was sentenced to undergo rigorous imprisonment for
ten years and a fine of Rs.1,00,000/- (one lakh) was imposed,
and in the event of failure of depositing the fine imposed, the



appellant was directed to undergo a further imprisonment of one year. Under section 23(c) of the N.D.P.S. Act, appellant was sentenced to undergo rigorous imprisonment for ten years and a fine of Rs.1,00,000/- (one lakh) was imposed, and in the event of failure of depositing the fine imposed, the appellant was directed to undergo a further imprisonment of one year. Both the sentences were directed to run concurrently.

3. The present case emanates from a secret information regarding transport of a consignment of *charas* coming to India from Nepal, which was received at about 11:00 A.M. by one Padma Vangil, the Head Constable of 44th Company Seema Suraksha Bal (SSB), Narkatiaganj. In the aforesaid information, the description of the person carrying/transporting the consignment was also disclosed as wearing a white checked shirt, blue coloured pant and a green coloured towel (*gamcha*). Accordingly, the officers of the S.S.B. were informed and a joint special quick response team was constituted to carry out the operation of intercepting the consignment. According to the informant, as stated in the written complaint, the informant along with other personnel reached the disclosed location near border pillar no. 411(56) and at about 14:00 hrs a person was spotted matching the description



as disclosed in the information, accordingly, the said person was stopped and he was was given an option for getting himself searched by a Gazetted Officer or by a Magistrate or by the informant, to which, the apprehended person replied that the informant can carry out the search. Thereafter, the search was being carried out in presence of two independent witnesses. It is alleged that while the search was being done, the apprehended person threw some object and tried to flee away but he was prevented from escaping by the team and the object thrown by him was retrieved. It is next alleged that the object appeared to be *charas* which was packed in 8 plastic bundles. The substance was tested by using the narcotics detection kit which gave positive result for *charas*. Thereafter, the contraband was weighed using an electric weighing machine and was found to be weighing 02 kilograms. It is next stated that the apprehended person disclosed his name as Surendra Sah (appellant) and thereafter he was sent to Purushottampur Police Station for further action in accordance with law.

4. Based on the aforementioned written complaint, Purushottampur P.S. Case No.66 of 2018 was registered under sections 20, 22 and 23 of the N.D.P.S. Act on 17.11.2018. After submission of the charge-sheet, the learned



Additional District Judge, II, West Champaran took cognizance against the appellant and accordingly, charge was framed against the appellant.

5. The prosecution in support of its case has examined four witnesses, which are as under :-

P.W.-01	Ramesh Kumar Singh, Constable, 44 th SSB Battalion, Narkatiganj
P.W.-02	Vipin Kumar, Constable, 47 th SSB Battalion, Raxaul
P.W.-03	Padma Vangil, Head Constable, 44 th Company SSB, Narkatiganj (informant)
P.W.- 04	Rajesh Prasad, S.H.O, P.S. - Purushottampur, (I.O)

6. The prosecution has also exhibited the following 12 documents and one material exhibit during the course of trial :-

Exhibit-1	Performa of seizure report
Exhibit-2	Performa of apprehension
Exhibit-3	Performa of intercepted goods
Exhibit-4	Name and address of the SSB personnel involved in the seizure procedure
Exhibit-5	Notice for search
Exhibit-6	Arrest memo
Exhibit-7	Personal search memo
Exhibit-8	Self-statement of the appellant
Exhibit-9	Chargesheet
Exhibit-10	Formal F.I.R
Exhibit-11	Attestation on the written statement
Exhibit-12	FSL Report
Material Exhibit-01	Seized article

7. The defence in support of its case has examined two witnesses.



D.W.- 01	Yogender Sah, father-in-law of the appellant
D.W.-02	Shravan Mahto

8. The defence has not exhibited any documentary evidence during the trial.

9. After completion of prosecution evidence, the statement of the appellant was recorded under section 313 of the Code of Criminal Procedure, in which the appellant denied the allegation and stated that he is innocent and has falsely been implicated in the present case.

10. The trial court, upon appreciation of the evidence adduced at the trial, has found the appellant guilty of the offences and has sentenced him to imprisonment and fine, as noted above, by its impugned judgment and order.

11. The learned counsel for the appellant submits that the appellant is a resident of Nepal and is married to one Munni Devi and since the paternal home of the wife of the informant is at village-Sukhlahi, P.S.-Mainatand, West Champaran, the appellant used to visit his in-laws along with his wife. The learned counsel for the appellant submits that the main thrust of the defence of the appellant is complete denial of the facts as narrated by the informant rather the true fact of the matter is that the father-in-law of the appellant had invited the appellant and his wife to attend a *puja* at his place and when the



appellant had gone to market along with Bhagmat Sah and Shravan Mahto in order to purchase certain goods, he was apprehended by the police and was taken on a motorcycle from the market place itself.

12. The learned counsel for the appellant drawing from the *fardbeyan* of the informant underscores that the informant is conspicuously silent on the location of the said object/contraband on the person of the appellant. It is submitted that it is not the case of the prosecution that the contraband was concealed by the appellant in his clothes/belt or that the appellant was carrying a bag/packet of any kind. The learned counsel also points that according to the informant the appellant suddenly threw the object and attempted to flee away, which appears to be a fanciful and concocted allegation. The learned counsel for the appellant referring to the provisions contained under section 50 of the N.D.P.S. Act has submitted that since the informant himself was not a Gazetted Officer, the search being carried by the informant violates the statutory right of the appellant.

13. It is emphasized by the learned counsel appearing for the appellant that the learned trial Court has failed to appreciate the defence of the appellant and also the flagrant



disregard and complete breach of the provisions of the N.D.P.S. Act while carrying out the search and seizure. It is emphatically argued that the non-compliance of the mandatory provisions of the N.D.P.S. Act relating to pre and post search, seizure and arrest conditions by the informant and the investigating officer completely vitiates the entire prosecution case.

14. The next leg of the argument advanced by the learned counsel further expounds on the total violation of the section 50 of the N.D.P.S. Act since the search, seizure and arrest of the appellant was done in absence of a Gazetted Officer or a Magistrate at the place of occurrence. The P.W.-3/informant is the Head Constable and during the raid he was acting in the capacity of Party Commandant of the team, which is corroborated by the signature of P.W.-03 on the seizure list wherein P.W.-03 has signed the same as HC/GD. Therefore, it is submitted that P.W.-03 was not authorized under law to carry out the search and seizure.

15. Importing to section 42(1) of the N.D.P.S. Act, the learned counsel for the appellant submits that an officer having any prior information is required to reduce such information in writing. Further, section 42(2) of the Act mandates that such information under section 42(1) must



mandatorily within 72 hours be sent to immediate superior officer. However, in the instant case, even though the P.W.-03/informant had prior information about the contraband being transported to India, yet no written information was given to the superior authorities, rather the P.W.-03/informant has merely deposed that an information was given to superior authority but no supporting evidence was adduced by the prosecution.

16. It has been submitted by learned counsel for the appellant that while conducting search and seizure in addition to the safeguards provided under the Code of Criminal Procedure, 1973 the safeguards provided under the NDPS Act are also required to be followed. The harsh provisions of the Act cast a duty upon the prosecution to strictly follow the procedure and compliance of the safeguards.

17. In support of this submission, he has relied upon the Constitution Bench decision rendered in the case of *State of Punjab vs. Baldev Singh* reported as *1999 (6) SCC 172*

18. It has been submitted by learned counsel for the appellant that the effect and non-compliance of section 42(2) and 50 of the N.D.P.S. has been considered by the Hon'ble Supreme Court in the case *Beckodan Abdul Rahiman vs. The State of Kerala* reported in *2002(4) SCC 229*. Relevant portion



of paragraph no.3 and paragraph no.4 of the aforesaid decision
reads as under:-

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After referring to host of judgments, the Constitution Bench of the Court held that the provisions of [Sections 42](#) and [50](#) are mandatory and their non compliance would render the investigation illegal. It was reiterated that severer the punishment, greater the care to be taken to see that all the safeguards provided in the statute are scrupulously followed. The safeguards mentioned in [Section 50](#) are intended to serve a dual purpose to protect the person against false accusation and frivolous charges as also to lend credibility to the search and seizure conducted by the empowered officer. If the empowered officer fails to comply with the requirements of the Section, the prosecution is to suffer for the consequences. The legitimacy of the judicial process may come under the cloud if the court is seen to condone acts of lawlessness conducted by the investigating agency during search operations and may also undermine respect for the law and may have the effect of unconscionably compromising the administration of justice.

4. In State of Punjab vs. Balbir Singh [1994(3) SCC 299] it was held that under Section 42(2) the empowered officer who takes down any information in writing or records the grounds under proviso to Section 42(1) should forthwith send a copy thereof to his immediate official superior. If there is a total non compliance of the provisions the same



affects the prosecution case. To that extent it is mandatory. To the same effect is the judgment in Saiyad Mohd. Saiyad Umar Saiyad & Ors. vs. State of Gujarat [1995 (3) SCC 610].”

19. Learned counsel for the appellant has also relied upon the decision of the Hon’ble Supreme Court in the case of ***State of Rajasthan vs. Jagraj Singh @ Hansa*** reported as ***2016 (11) SCC 687*** and has submitted that in the aforesaid case similar view has been taken by the Hon’ble Supreme Court.

20. On the point of non-compliance of section 50 of the NDPS Act, the learned counsel for the appellant has also relied on the decision of the Hon’ble Supreme Court in the case of ***State of Delhi v. Ram Avtar alias Rama*** reported in ***(2011) 12 SCC 207***. Paragraph no.27 of the aforesaid judgment read as under:-

“27. It is a settled canon of criminal jurisprudence that when a safeguard or a right is provided, favouring the accused, compliance thereto should be strictly construed. As already held by the Constitution Bench in the case of Vijay Singh Chandubha Jadeja, the theory of ‘substantial compliance’ would not be applicable to such situations, particularly where the punishment provided is very harsh and is likely to cause serious prejudices against the suspect. The



safeguard cannot be treated as a formality, but it must be construed in its proper perspective, compliance thereof must be ensured. The law has provided a right to the accused, and makes it obligatory upon the officer concerned to make the suspect aware of such right. The officer had prior information of the raid; thus, he was expected to be prepared for carrying out his duties of investigation in accordance with the provisions of Section 50 of the Act. While discharging the onus of Section 50 of the Act, the prosecution has to establish that information regarding the existence of such a right had been given to the suspect. If such information is incomplete and ambiguous, then it cannot be construed to satisfy the requirements of Section 50 of the Act. Non-compliance of the provisions of Section 50 of the Act would cause prejudice to the accused, and, therefore, amount to the denial of a fair trial.”

21. It is next submitted that before conducting search and seizure, the officer should have called two respectable inhabitants of the locality where the search is being conducted or if no such inhabitant is available then from any other locality, however in the present case, the two independent witnesses called were Ravi Kumar and Roshan Kumar. It is emphasized by the learned counsel that the second witness is in fact not a resident of India and rather a resident of Nepal, furthermore it is submitted that neither of the two witnesses were ever called for deposing their statements before the Court



and therefore the prosecution, in such circumstances, could not have proved the case beyond all reasonable doubts owing to the fact that all the witnesses examined during the course of the trial were official witnesses who have merely concocted the entire story.

22. The learned counsel for the appellant has next submitted that there are grave and fatal inconsistencies in the statements of P.W.-1 (Ramesh Kumar Singh, Constable), P.W.-2 (Vipin Kumar, Constable) and P.W.-3 (Padma Vangil, informant) gives rise to suspicion regarding the recovery of the contraband from the persons of the appellant. He points towards the cross examination of the P.W.-02 at paragraph no.9 wherein the witness has deposed that the belt and packets were seized and the seizure list for the same was also prepared. However the seizure list marked as Exhibit-1 only mentions the recovery of 02 kilograms of *charas* and there is no whisper of the recovery of any belt on the aforementioned seizure list which was allegedly thrown by the appellant and later recovered by the team of SSB personnel. The learned counsel for the appellant argues that had the contraband being kept concealed in the belt or in a bag, then the said objects would also have been seized, however since no such object was seized, in itself establishes



the falseness of the entire story.

23. The learned counsel for the appellant next draws the attention of this Court to paragraph-10 of the cross-examination of the P.W.-2 wherein this witness had deposed that the police inspector had prepared the seizure list at the place of occurrence, whereas the P.W.-3 in his examination-in-chief at paragraph no.1 had deposed that the seizure list was in fact prepared by him at the place of occurrence.

24. It is next argued that from a perusal of the order dated 20.11.2018 passed by the Court below, it appears an application was filed by the prosecution for deputing a Magistrate to seal the seized material for sending the same to the F.S.L. Muzaffarpur. As such, the learned counsel argues that had the contraband so seized were sealed at the very place of occurrence then the prosecution would have only filed the application for taking samples of the contraband and thereafter re-sealing the same, but the very fact that an application was filed to seal the seized material itself according to the learned counsel demonstrates that the contraband was not sealed at the place of occurrence and as such, the contraband remained unsealed at the *maalkhana* of the police station for 3 days which caused grave prejudice to the appellant since chances of



tampering with the samples during this intervening period could not be negated.

25. It is further argued that the prosecution has failed to establish that the contraband marked as Material Exhibit-1 and produced before the trial Court was stored safely at the *Malkhana* since during the course of the trial neither the *malkhana* register was produced nor the *malkhana* in-charge was examined. Thus, in absence of the any such evidence led by the prosecution, further doubts are cast on the veracity of the seized contraband.

26. The non-compliance of section 57 of the N.D.P.S. Act is also alleged by the counsel for the appellant since no written information was given by P.W.-3 who had conducted the search and seizure and had also prepared the arrest memo. It is emphasized by the learned counsel that the records of the case would illustrate that no such written information was provided to the superior officer further no such report has been marked as exhibited by the prosecution. The appellant has been in custody since 18.11.2018,

27. Learned counsel for the appellant has also relied upon the decision of the Hon'ble Supreme Court rendered in the case of *Kishan Chand vs. State of Haryana* reported in



(2013) 2 SCC 502 and has submitted that in the aforesaid decision the Hon'ble Supreme Court has considered the compliance of Sections 42, 50 and 57 and it has been held in paragraph no.21 as under:-

“21. When there is total and definite non-compliance with such statutory provisions, the question of prejudice loses its significance. It will per se amount to prejudice. These are indefeasible, protective rights vested in a suspect and are incapable of being shadowed on the strength of substantial compliance”.

28. He has also relied upon the judgment of the Division Bench of this Court passed in ***Pratibha Devi vs. State of Bihar*** reported as ***2016 SCC OnLine Pat 10482***.

29. It is also submitted that no inventory in terms of the provisions of section 52(a)(2) of the NDPS Act was prepared by P.W.-03 as no any photograph of the contraband article was taken for certifying the same by the Magistrate. Thus, the seizure was done in complete violation of the mandatory provision of Sections 52(a)(2) of the N.D.P.S. Act.

30. In support of this submission, learned counsel for the appellant has relied upon the decision of the this Court passed in ***Bhuvneshwar Singh @ Bhanu Singh vs. State of Bihar [Cr. Appeal No.183 of 1998]***, more particularly, paragraph no.15, which reads as under:-



“15. Hence, Section 52A of the Narcotic Drugs and Psychotropic Substances Act, 1985, mandates that as soon as the article seized and delivered into the custody of Officer-in-Charge of the Police Station or to the Officer empowered under Section 53 of the Narcotic Drugs and Psychotropic Substances Act, 1985, he is required to make an inventory of such narcotic drugs or psychotropic substances containing such details relating to their description, quality, mode of packing method, number or such identifying particulars of narcotic drugs packing in which they are packed, country of origin and other particulars. He is required to make an application to any Magistrate for certifying the correctness of inventory and taking the photograph of such drugs and certifying photograph and to draw respective sample of drugs in presence of Magistrate and Section 52A of the Narcotic Drugs and Psychotropic Substances Act, 1985, provides a rule of evidence that the inventory prepared and photograph are proving evidence in respect of evidence. Hence, Section 52A of the Narcotic Drugs and Psychotropic Substances Act, 1985, provides the procedure to deal with seized article as well as rule of evidence treating it as primary evidence. Hence, non-compliance has completely deny the primary evidence and create doubt that the seized articles were the article which have actually been seized and has not been substituted by other articles.”

31. Learned counsel for the appellant has also relied upon the decision of the Hon'ble Supreme Court in the



case of ***Union of India vs. Mohanlal*** reported as **2016 (3) SCC 379** and has submitted that in the aforesaid decision the Hon'ble Supreme Court has considered the fact that whether it is incumbent upon the Officer-in-charge to forthwith file an application for drawing representative samples before the Magistrate after recovery of contraband. Paragraph no.19 of the aforesaid decision reads as under :-

"19. Mr. Sinha, learned Amicus, argues that if an amendment of the Act stipulating that the samples be taken at the time of seizure is not possible, the least that ought to be done is to make it obligatory for the officer conducting the seizure to apply to the Magistrate for drawing of samples and certification etc. without any loss of time. The officer conducting the seizure is also obliged to report the act of seizure and the making of the application to the superior officer in writing so that there is a certain amount of accountability in the entire exercise, which as at present gets neglected for a variety of reasons. There is in our opinion no manner of doubt that the seizure of the contraband must be followed by an application for drawing of samples and certification as contemplated under the Act. There is equally no doubt that the process of making any such application and resultant sampling and certification cannot be left to the whims of the officers concerned. The scheme of the Act in general and Section 52-A in particular, does not brook any delay in the matter of making of an application or the drawing of samples and certification. While we see no room for prescribing or



reading a time frame into the provision, we are of the view that an application for sampling and certification ought to be made without undue delay and the Magistrate on receipt of any such application will be expected to attend to the application and do the needful, within a reasonable period and without any undue delay or procrastination as is mandated by sub-section (3) of Section 52A. We hope and trust that the High Courts will keep a close watch on the performance of the Magistrates in this regard and through the Magistrates on the agencies that are dealing with the menace of drugs which has taken alarming dimensions in this country partly because of the ineffective and lackadaisical enforcement of the laws and procedures and cavalier manner in which the agencies and at times Magistracy in this country addresses a problem of such serious dimensions." (emphasis supplied)

32. It has next been submitted that in all criminal trials the importance is given to all the witnesses examined during the trial and depositions of witnesses, whether they are examined on the prosecution side or defence side or as court witnesses, are all oral evidences in the case and hence the scrutiny thereof shall be without any predilection or bias, as such no witness is entitled to get better treatment merely because they were examined as a prosecution witness or defence witness or even as a court witness.

33. On this point, learned counsel for the appel-



lant has relied upon the following decisions :-

(i) *Dudh Nath Pandey vs. State of U.P.*

reported as *(1981) 2 SCC 166*.

(ii) *Munshi Prasad and Others v. State of Bihar*

reported as *(2002) 1 SCC 351*

34. I have heard learned counsel appearing for the parties and perused the materials on record.

35. The N.D.P.S. Act, 1985 is a special statute to combat the menace of illicit trafficking of drugs. The statute provides for procedural safeguards to balance the rights of the accused while also effectively combating the fight against drug trafficking. In the present case, the appellant has primarily contented that the authorities on multiple scores have failed to satisfy these mandatory procedural safeguards under the Act.

36. Section 42 of the N.D.P.S. Act, provides that it is mandatory that an officer having prior information, must reduce the same in writing within 72 hours and report the same to his superior officer. From evidence of P.W.-3 (informant), it appears that he had prior information based on secret information, about contraband being transported, yet no written information was given to the superior authorities. There is no written proof communicating the said information to his



superior authorities. Section 42(2) requires that where an officer takes down an information in writing under sub-section (1) he shall send a copy thereof to his immediate senior officer. In the present case, there is no whisper of any such transmission taking place in accordance with law and such document has been marked as exhibit in the trial which could satisfy the mandate of the aforesaid sections. The non-compliance of the mandate of section 42 is not only impermissible but also goes against the case of the prosecution.

37. From the decisions of the Hon'ble Supreme Court in the case of *Karnail Singh vs. State of Haryana* reported as (2009) 8 SCC 539 and subsequent string of decisions in the case of *Sukhdev Singh v. State of Haryana* reported as (2013) 2 SCC 212 and *State of Rajasthan v. Jagraj Singh @ Hansa* reported as (2016) 11 SCC 687 what clearly flows is that though strict and literal compliance may not be pressed, yet flagrant disregard and non-compliance would definitely go against the case of the prosecution.

38. So far as the recovery of *charas* from the appellant is concerned, the compliance of section 50 of the N.D.P.S. Act is also mandatory. In the present case, the search and seizure has been made by the head constable in violation of



section 50 of the N.D.P.S. Act and the search and seizure from the appellant is in complete violation of sections 42 and 50 of the N.D.P.S. Act and in view of law laid down by the Hon'ble Supreme Court in *State of Punjab vs. Baldev Singh (supra)*; *Beckodan Abdul Rahiman (supra)* and *Jagraj Singh @ Hansa (supra)*.

39. Now coming to the fatal error regarding the seizure and the seizure report prepared. In the present case, the seizure carried out by the police authorities suffers from fatal errors which cannot be overlooked. On first score, two independent seizure list witnesses namely, Ravi Kumar and Roshan Kumar have not been produced by the prosecution during the course of the trial to corroborate the prosecution story. On the second score, according to the prosecution, the appellant had thrown an object (bag/belt), however, the glaring discrepancy is that the police had failed to seize the aforesaid object and the same is not a part of the seizure list.

40. Further, there are grave inconsistencies in the statements of P.W.-1, P.W.-2 and P.W.-3. P.W.-2, in his cross examination, at paragraph no.9 has deposed that the belt and packets were seized and the seizure list for the same was also prepared. However, the seizure list marked as Exhibit-1 only



mentions the recovery of 02 kilograms of *charas* and there is no whisper of recovery of any object (belt/bag) on the aforementioned seizure list, which was allegedly thrown by the appellant and later retrieved by the team of S.S.B. personnel. Contrary to the deposition of P.W.-2, the P.W.-1 in his cross-examination at paragraph no.13 has deposed that the object (belt/bag) was not seized. Therefore, it is clear that there are fatal inconsistencies in the deposition of aforesaid witnesses which casts shadow of doubt on the veracity and genuineness of the seizure carried out by the police.

41. Moreover, though mere non-examination of the seizure list witnesses in itself may not have been fatal if the seizure list would have been uncontroverted and proved in accordance with law beyond all shadow of doubt. However, the absence of the independent witness assumes significance since the statements of the official witnesses are conflicting and non-seizure of the belt/bag further casts doubt on the veracity and genuineness of the seizure, which goes to the very root of the present case. It is in this backdrop that the non-examination of independent seizure list witnesses would be fatal to the prosecution case.

42. It also appears from the record that on



28.11.2018 an application was filed by the Investigating Officer to seal the seized material for sending the same to the F.S.L. Muzaffarpur and it appears that seized material was not sealed from the place of occurrence otherwise there was no occasion for the Investigating Officer to file an application for sealing the contraband. This Court finds merit in the argument advanced by the appellant that had the contraband so seized were sealed at the very place of occurrence then the prosecution would have only filed the application for taking samples of the contraband and thereafter re-sealing the same, but the very fact that an application was filed to seal the seized material itself demonstrates that the contraband was not sealed at the place of occurrence and as such, the contraband remained unsealed at the *maalkhana* of the police station for 3 days. This lapse on the part of the prosecution has caused prejudice to the appellant since chances of tampering with the samples during this intervening period could not be negated. Further, non-production of the *Malkhana* register and non-examination of the Malkhana in-charge during the course of the trial is also damaging the prosecution case.

43. In view of the aforesaid discussions particularly the grave procedural lapses vitiates the prosecution



case since the very seizure could not stand the scrutiny of law. I am of the view that the prosecution has failed to prove its case beyond all shadow of doubt and therefore, the impugned judgment of conviction and the order of sentence can not be sustained.

44. Therefore, the impugned judgment of conviction dated 06.07.2020 and the order of sentence dated 07.07.2020 passed by Additional Sessions Judge-II, West Champaran, Bettiah, in Trial No.07 of 2019, is hereby set aside.

45. The appellant is acquitted of all the charges levelled against him.

46. Accordingly, the appeal stands allowed. The appellant is discharged from the liabilities of his bail bonds.

(Sandeep Kumar, J)

pawan/-

AFR/NAFR	N.A.F.R.
CAV DATE	20.01.2025
Uploading Date	14.05.2025
Transmission Date	14.05.2025

