

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.107 of 2008**

Rakesh Singh, Son of Sudarshan Singh, Resident of Village- Jokahari, P.S.
Krishnagarh, District- Bhojpur, Bihar.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Rajiv Kumar Singh, Advocate
	:	Mr. Narendra Kumar Singh, Advocate
For the State	:	Mr. A. M. P. Mehta, APP

**CORAM: HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA
ORAL JUDGMENT**

Date: 24-06-2025

Heard Mr. Rajiv Kumar Singh, assisted by Mr.
Narendra Kumar Singh, learned counsel for the appellant and
Mr. A. M. P. Mehta, learned APP for the State.

2. The present appeal is directed against the judgment and order of sentence dated 30.11.2007 passed by the learned Additional Sessions Judge-I-cum-Special Judge (NDPS), Bhojpur at Ara in NDPS Case No. 01 of 1994 arising out of Ara Mufassil P.S. Case No. 03 of 1994 whereby the learned trial Court has convicted the appellant under Section 20(b) of the Narcotic Drugs and Psychotropic Substances Act, 1985 and has sentenced to undergo rigorous imprisonment for a period of five years and also to pay a fine of Rs. 50,000/- and in default of payment of fine he shall further undergo rigorous imprisonment for a period of one year.



3. As per the allegation in the FIR being Ara Muffassil P.S. Case No. 03 of 1994 instituted by one Sona Lal Singh, Sub-Inspector that he received secret information that a person keeping *Ganja* in a gunny bag on a bicycle from Dobaha Bazar towards Basantpur. After making a sanha entry being Entry No. 66 of 1994 he along with police personal and the informant proceeded to verify the truth of the information. On seeing the police party all the accused persons left the bicycle and tried to flee away but he was caught with the help of police. The persons, who was identified himself as the accused of the appellant, herein. On search in presence of two independent witnesses, *Ganja* wrapped with polythene paper was found and weighted as 8 ½ kg. It is further alleged that on being interrogated he disclosed that he had purchased *Ganja* at the rate of Rs. 700/- per kilogram from one person of village Masarh for sale.

4. On the basis of this written report, Ara Mufassil P.S. Case No. 03 of 1994 was drawn and after investigation, charge sheet against the accused was filed. Cognizance of offence was taken on 24.02.1995 under Section 20(b) of the N.D.P.S. Act and charge was framed against the accused on 29.04.1995.



5. On behalf of the prosecution, total seven witnesses were examined to substantiate the charges leveled against the accused/appellant, out of them, PW-1 Janardhan Choudhary, PW-2 Ravi Shanker Singh, PW-3 Dudhnath Thakur, PW-4 Dukhit Ram, PW-5 Narain Chandra Das, PW-6 Shree Ram Shah and PW-7 Sonalal Singh and has also exhibited certain documents. PW-3 and PW-4 have also been declared hostile by the prosecution.

6. PW-1 in his examination-in-chief stated that on 05.01.1994 around 4.30 P.M. at near Vindeshwari Sao's shop on the road from Dhobha to Basantpur an accused was arrested who was carrying *Ganja* on his bicycle. On search, Sub-Inspector recovered 8 ½ Kg. of *Ganja* and in front of two independent witness he prepared the seizure list on which he put his signature and independent witnesses also put their signatures on it which is marked as exhibit-1 and 1/A.

6.i. In his cross-examination, he stated that the place where he was having sweets is near Dhobha thana. He saw 50-100 people gathering around the chowk and he did not saw how many persons were having bicycle with them. When he went near the place of occurrence he saw that bicycle was standing at that place and at the carrier of the bicycle he saw



Ganja and *Odiya* in polythene bag. He was not having information that bicycle belongs to whom and what name was of bicycle. He further stated that he also cannot state about the colour of the bicycle. He got the information about the occurrence from the Sub-Inspector and seized *Ganja* was measured in thana by *bara babu*. For measuring the seized *Ganja* Chowkidar bring *taraju* and *batkhara* from a shop and he did not remember the name of the said Chowkidar. After getting information about the occurrence from the Sub-Inspector PW-1 did not ask about the occurrence from any other person. He saw seized *Ganja* at thana and earlier he has seen *Ganja* at many places including shop. He has purchased *Ganja* many times for use in marriage and other prospects. He has purchased *Ganja* only at the cost of eight ana and one rupee.

7. PW-2 in his examination-in-chief stated that on 05.01.1994 at around 3.30 PM he was at his shop when he saw a person with bicycle carrying bag and when he reached near Sundar Shah's shop, Sub-Inspector caught him searched his bag then he recovered 8 ½ Kg. *Ganja* which Sub-Inspector seized and accordingly prepared seizure list.

7.i. In his cross-examination, he stated that he did not hear any kind of hulla when he was at his shop. His shop



was open from 8 AM and he cannot state that how many motorcycle and bicycle crossed at that road. His shop is near about 60 gaj North from Dhobha Chowk. He further stated that 15-20 persons already gathered at the place of occurrence when he reached there including Vindeshwari Sao and nearby shopkeepers were there whose name he did not remember. He cannot state about the name of the bicycle and colour of the bicycle. He did not have the knowledge about the bicycle and bag present on the carrier. The seized *Ganja* was opened at the place of occurrence and he did not saw where *Ganja* was measured. He did not told Sub-Inspector to bring *taraju* and *batkhara* from his shop to measure *Ganja*. He did not told Sub-Inspector that the person on bicycle was coming from Dhobha to Vasantpur.

8. PW-5 in his examination-in-chief stated that on 26.01.1995 he was posted at Dhobha Outpost and given charge of investigation of this case on 26.01.1995 by Sub-Inspector Amrendra Narain Kumar. He further stated that he sent the seized *Ganja* to Forensic Science Laboratory for test and finding the case to be true he has filed charge-sheet. He identify the written statement in the pen of Sonalal Singh (Sub-Inspector) and it bear his signature which is marked as Ext. 2 as



a whole. In his cross-examination, he stated that he has not recorded the statement of any witnesses. On the date of occurrence, he was not posted at the said outpost. The seized sample sent for FSL is not in front of him and after filing the charge-sheet, FSL report came.

9. PW-6 in his examination-in-chief stated that signature on seizure list is in his pen which he identify and marked as ext.3. In his cross-examination, he stated that *Ganja* was caught loaded on a bicycle which was parked on the roadside. He don't know whose bicycle was it and whose *Ganja* was it.

10. PW-7 in his examination-in-chief stated that he was working at Dhobha O.P. I/c on 05.01.1994 when he received a secret information that smugglers were carrying *Ganja* on a bicycle by road connecting Dhobha to Vasantpur. He recorded it in the station diary as Entry No. 66 dated 01.05.1994 and departed for the place for verification of that information along with the Hawaldar Surendra Sharma, Home Guard Dev Kumar Singh, Home Guard Ram Kumar, Dinanath Singh and Satnarayan Singh deputed in the police station. He further stated that as soon as we reached near the shop of Shyamsundar Gupta on the Dhobha-Vasantpur road along with force at 04:30 hrs,



then on seeing us one bicycle rider who had kept something on the carrier tried to run away. Two witnesses Shri Ram Sah and Janardan Chaudhary were there. When the bag tied on bicycle was opened in front of accused, *Ganja* wrapped in violet polythene was recovered. He stated that weighing scale and weights were taken from the nearby shop and it was weighed, then the weight came out to be 8 ½ kg. The bicycle and *Ganja* were seized in the presence of both the witnesses and prepared the seizure list which is in my handwriting and signature and it also bears the signature of the witnesses which was marked as ext.4.

10.i. He further stated that he prepared a written report against Rakesh Singh and arrested him. It is same written report which is in my handwriting and signature, which was marked as ext. 5. He inspected the place of occurrence and recorded the statements of the witnesses and made over the charge of investigation of the case to Amrendra Narayan Singh because he was transferred. The formal FIR is in the handwriting and signature of Sri Ravishankar Prasad, Police Station In-Charge which he identify it marked as ext.6.

10.ii. In his cross-examination, he stated that there is short description in the case diary of what I had noted in



the station diary and he prepared the seizure list first than prepared the written report. He received it on 06.01.1994 after registering of the case. After that, he received the instructions for the investigation and then inspected the place of occurrence and recorded the statement of the witnesses. There is no reference of the word smuggler in the case diary and he had also seized the bicycle. He can not say whether any investigation was carried out about the bicycle or not because he had been transferred. The seized material was kept in O.P. Maalkhana. He had not given any formal information of this to the Court. It is wrong to say that the alleged bicycle and *Ganja* did not belong to the accused and the bicycle owner ran away in a rush and the accused was apprehended on the basis of suspicion.

11. Learned counsel for the appellant submitted that the impugned judgment of conviction and the order of sentence passed by learned trial Court are not sustainable in the eye of law or on facts. The trial Court has not applied its judicial mind and has failed to properly appreciate the evidence on record. He further claimed that the prosecution has failed to prove its case against the appellant beyond shadow of all reasonable doubts.

11.i. Learned Counsel further contended that the



present is a case of no evidence with regard to the identification of the appellant as the carrier of the *Ganja* allegedly seized or as the person riding the bicycle from which the *Ganja* is alleged to have been recovered, as is manifest from the following:

a) Though the informant (PW-7) in his testimony has stated that he had caught the appellant in the presence of the seizure witnesses PW-1 and PW-6, neither of the seizure witnesses have supported the said statement and there is not even a whisper in their statements about PW-7 having caught the appellant in their presence. Rather, PW-1 in his testimony has stated that when he reached the place of occurrence he saw the bicycle parked on its stand and all the information that he received about the incident was from the informant. He has denied having any information about the owner of the cycle from before. He has not stated anything about the presence of the appellant at the place of occurrence when he reached there. Similarly, PW-6 who is the other seizure witness has not stated anything about the appellant having been caught by the police party while attempting to flee from the place of occurrence leaving the bicycle behind. He has only proved with signature on the seizure list and contrary to the statement of PW-7 has stated that he does not know the owner of the bicycle or that of



the *Ganja* recovered. He has gone on to state that the appellant has got nothing to do with the seized item and that he was having breakfast at a nearby shop.

b) Even PW-2 who claims to be the owner of a the cement shop on the same road and has been examined by the prosecution, has stated that when he reached the place of occurrences, saw the bicycle parked on its stand and has not mentioned anything about the appellant having been apprehended by the police party while trying to flee away or that he was the owner of the bicycle.

11.ii. Learned counsel further submitted that there is no evidence at all to prove that any article was actually seized from the carrier of the bicycle was *Ganja* as is manifest from the following:

a) There is no evidence at all that the sample of the substance seized was taken at the time of seizure and sent for chemical analysis.

b) PW-7 in his testimony as stated that seized articles i.e., the bicycle and the substance alleged to be *Ganja* was deposited in the Malkhana of the outpost and no formal information of the seizure was sent to the Court. Nor has the



Malkhana register being exhibited.

c) There is no evidence at all to suggest that the seized articles were sent to the Officer-in-Charge of the nearest police station or that the same was sealed before being kept in the malkhana by the Officer-in-charge or by some one else at his behest. Neither the bicycle nor the seized *Ganja* was produced in Court.

11.iii. Learned counsel submitted that there is no evidence to show that it was the substance allegedly seized from the bicycle that was sent for chemical examination and that it was *Ganja*. Further, there is no evidence to show that any sample of the seized substance was taken before it was kept in the Malkhana of the Out Post. Admittedly, the substance alleged to have been seized and kept in the Malkhana of the outpost was sent for chemical analysis after one year of its alleged seizure, not by the Officer who had seized the same but by his successor in office namely PW-5. Again, PW-5 has not stated as to whether a sample of the substance was sent for chemical analysis or the whole of it was sent. In the absence of any such evidence it is doubtful that what was sent for examination was actually the substance seized from the bicycle.

11.iv. He further submitted that neither the



substance allegedly seized nor the bicycle on which it was allegedly kept at the time of seizure has been produced in Court. The report of the chemical analysis done on the alleged *Ganja* does not show that it was received in sealed condition. The report of the chemical analysis has not been proved by its maker or any person in the know of it. The author of the report has not been examined. As such there is no conclusive proof of fact that the substance examined was actually the same substance that was seized from the bicycle in this case and that it was *Ganja*.

11.v. Learned counsel further pointed out that there are material inconsistencies in the testimonies of the prosecution witnesses whereas PW-7 in his testimony has stated that the appellant was apprehended in the presence of the seizure witnesses, the said version has not been supported by the seizure witnesses. PW-7 in the written report which is the basis of the FIR as well as in his testimony has stated that the substance kept on the carrier of the bicycle, allegedly *Ganja*, was weighed at the place of occurrence itself by procuring weighing balance from nearby shop. However, PW-1 who is a seizure witness has categorically stated that the measurement of the alleged *Ganja* was done at the police station. Moreover, there is no evidence to show as to from which shop the



weighing balance was procured.

11.vi. In the seizure list, which admittedly was prepared prior to the preparation of the written report, it has been mentioned that the appellant was riding the bicycle at the time of seizure. This fact stands negated by the testimonies of PW-1, PW-2 and PW-6 none of whom have stated to have seen the appellant either riding the bicycle or being in close proximity of it at the time of seizure. There are violation of mandatory provisions of the Narcotic Drugs and Psychotropic Substance Act, 1985. As per the provisions of Section 42 of the Act, as it existed prior to its amendment in 2001 and the Notification of the Government of Bihar dated 05.09.1988, investigation, search and seizure for alleged offences under the Act could have only been done by officers above the rank of Inspector of police. However in the instant case search, seizure and arrest has been made by a police officer of the rank of Sub-Inspector and even the investigation has been done by and officer below the rank of Inspector. As such, as the search, seizure arrest investigation in the instant case has been done by an officer below the rank of Inspector, the whole trial was vitiated on this account.

11.vii. As per Section 52[2] every person arrested



and article seized under Section 41[2], Section 42, Section 43 or Section 44 shall be forwarded without unnecessary delay to either the officer in charge of the nearest police station or the Officer empowered under Section 53. As per Section 52 A (2), where any narcotic drug has been seized and forwarded to the officer-in-charge of the nearest police station or to the Officer empowered, the Officer referred to above shall prepare an inventory of such narcotic drugs etc. containing search details relating to their description, quality quantity, mode of packaging etc. and make an application to the concerned Magistrate forthwith. Nothing of the above has been done in the instant case.

11.viii. As per the provisions of Section 55, an Officer-in-Charge of the police station shall take charge of and keep in safe custody, pending the orders of the Magistrate all articles seized under this act within the local area of that police station and which may be delivered to him, and shall allow any officer who may accompany search articles to the police station or who may be deputed for the purpose, to affix his seal to such articles or to take samples off and from them and also samples, where taken should also be sealed with the seal of the officer in charge of the police station. There is no evidence at all to show



that any of the above was done especially there is no evidence to show that any sample of the alleged *Ganja* seized was taken and the *Ganja* was kept under seal and signature of the Officer-in-Charge of the concerned Police Station. PW-7 has admitted in his evidence that the seized *Ganja* was straight away kept in the Malkhana of the outpost and no informal information of the same was sent to the Magistrate. Moreover, the unsealed *Ganja* was allegedly sent to the Forensic Science Laboratory for chemical analysis after one year of its seizure by a person who had newly taken over the investigation and was not the person who had seized the *Ganja* in the instant case. Thus, there are serious discrepancies of the prosecution case in following the mandatory provision of the Act that vitiate the trial and the benefit of which will accrue to the appellant.

11.ix. Learned counsel for the appellant lastly contended that in view of the aforesaid facts and circumstances, the prosecution has failed to prove beyond all reasonable doubts that contraband was recovered from the possession of the appellant. Hence, the prosecution case against the appellant fails on this ground alone. So, the appellant should have been acquitted from the conviction as sentenced against him.

12. However, learned APP for the State has



vehemently defended the impugned judgment of conviction and order of sentence, submitting that there is no illegality or infirmity in them. 8 ½ Kg *Ganja* has been recovered from the conscious possession of the appellant and hence, culpable mental state of the appellant is presumed under Section 35 of the NDPS Act and presumption of commission of the offence of illegal possession of the contraband stands raised under Section 54 of the NDPS Act and it was for the appellant to rebut the presumption of legally admissible evidence. But no evidence has been adduced by the appellant to rebut the presumption of their *mens rea* and the illegal possession of the contraband. He also submits that search, seizure and sampling of the contraband has been done as per law and there is no illegality involved in it.

13. At this stage, I would like to appreciate the relevant extract of entire evidence led by the prosecution and defence before the Trial Court

14. On deeply studied and scrutinized all evidences, it is evident to note here that the contention raised by the learned counsel for the appellant that there is non-compliance of Section 52A of the NDPS Act. On this regard it is important to point out that the said Section 52A of the NDPS, Act came enforce in the year 2011 but the present case is of the



year 1994. So the said Section would not apply in the present case. This court on critical examination of the entire evidence on record and after considering the submissions advanced by the rival parties reiterates its view that there is serious doubt with regard to the seizure effected by the informant. It is not proved beyond shadow of all reasonable doubt that the samples so collected and sent for chemical examination and found to be contraband/article was, in fact, drawn from the bags which was carried by the appellant. There is contradictory evidence on record with regard to the actual manner and weight of the sample which was drawn. PW-7 in the written report which is the basis of the FIR as well as in his testimony has stated that the substance kept on the carrier of the bicycle, allegedly *Ganja*, was weighed at the place of occurrence itself by procuring weighing balance from nearby shop. However, PW-1 who is a seizure witness has categorically stated that the measurement of the alleged *Ganja* was done at the Police Station. Moreover, there is no evidence to show as to from which shop the weighing balance was procured.

15. Whereas PW-7 in his testimony has stated that the appellant was apprehended in the presence of the seizure witnesses, the said version has not been supported but



the seizure witnesses. There is no evidence to show that any sample of the alleged *Ganja* seized was taken and the *Ganja* was kept under seal and signature of the Officer-in-Charge of the concerned Police Station. Further, PW-7 has admitted in his evidence that the seized *Ganja* was straight away kept in the Malkhana of the outpost and no formal information of the same was sent to the Magistrate. Moreover, the unsealed *Ganja* was allegedly sent to the Forensic Science Laboratory for chemical analysis after one year of its seizure by a person who had newly taken over the investigation and was not the person who had seized the ganja in the instant case.

16. Thus, there are serious discrepancies of the prosecution case and in the opinion of this Court, on the basis of materials /evidence available on record the charges cannot be said to have been proved beyond shadow of all reasonable doubts. The doubts which have crept into the mind of the Court definitely entitles the appellant to get benefit of doubt and this Court grants the same.

17. Further, there are many contradictions in the deposition made by the prosecution witnesses as the informant (PW-7) in his testimony has stated that he had caught the appellant in the presence of the seizure witnesses PW-1 and PW-



6, neither of the seizure witnesses have supported the said statement and there is not even a whisper in their statements about PW-7 having caught the appellant in their presence. Rather, PW-1 in his testimony has stated that when he reached the place of occurrence he saw the bicycle parked on its stand and all the information that he received about the incident was from the informant. He has denied having any information about the owner of the bicycle from before. He has not stated anything about the presence of the appellant at the place of occurrence when he reached there. Similarly, PW-6 who is the other seizure witness has not stated anything about the appellant having been caught by the police party while attempting to flee from the place of occurrence leaving the bicycle behind. He has only proved with signature on the seizure list and contrary to the statement of PW-7 has stated that he does not know the owner of the bicycle or that of the *Ganja* recovered. He has gone on to state that the appellant has got nothing to do with the seized item and that he was having breakfast at a nearby shop. Even PW-2 who claims to be the owner of a the cement shop on the same road and has been examined by the prosecution, has stated that when he reached the place of occurrences saw the bicycle parked on its stand and has not mentioned anything about the



appellant having been apprehended by the police party while trying to flee away or that he was the owner of the bicycle.

18. After incorporating the aforesaid facts, this Court safely holds that the learned trial Court failed to scrutinize the evidence brought on record regarding deficiencies, drawbacks and infirmities crept during course of trial and passed the impugned judgment in complete ignorance of criminal jurisprudence and passed this judgment. Moreover, there are discrepancies regarding the sequence of events and the presence of individuals at the place of occurrence. Considering this fact, prosecution has failed to establish this case beyond shadow of all reasonable doubts, therefore, in such circumstances, it may not be proper to convict the appellant/accused on the materials available on record. Hence, the judgment of conviction and order of sentence in this present matter is fit to be set aside.

19. Hence, the judgment and order of sentence dated 30.11.2007 passed by the learned Additional Sessions Judge-I-cum-Special Judge (NDPS), Bhojpur at Ara in NDPS Case No. 01 of 1994 arising out of Ara Mufassil P.S. Case No. 03 of 1994 is set aside and the accused/appellant is acquitted from the charges leveled against him. As the appellant is on bail,



he is discharged from the liability of his bail bonds.

20. Accordingly, this appeal stands allowed.

21. Office is directed to send back the trial Court records and proceedings along with a copy of this judgment to the trial Court, forthwith, for necessary compliance, if any.

(Ramesh Chand Malviya, J)

Anand Kr.

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	26.06.2025
Transmission Date	26.06.2025

