

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.825 of 2023

Arising Out of PS. Case No.-24 Year-2021 Thana- JANDAHA District- Vaishali

Indrapal Singh @ Indal Singh, S/O Ram Ratan Singh, R/O Vill- Pusaina, P.S.
Jail Chaura, Dist- Mainpuri, State- Uttar Pradesh.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

Appearance :

For the Appellant/s	:	Mr. Manoj Kumar Singh, Advocate Mr. Rishup, Advocate Mr. Saurabh Kumar, Advocate
For the Respondent/s	:	Mr. Ajay Mishra, Addl.PP

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE AJIT KUMAR
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 06-08-2025

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

2. This appeal has been preferred for setting aside the judgment of conviction dated 15.06.2023 (hereinafter referred to as the 'impugned judgment') and the order of sentence dated 17.06.2023 (hereinafter referred to as the 'impugned order') passed by learned Additional Sessions Judge-I-cum-Special Judge (NDPS Act), Vaishali at Hajipur (hereinafter referred to as the 'learned trial court') in NDPS No. 21 of 2021 arising out of Jandaha P.S. Case no. 24 of 2021. By the impugned judgment and order, the appellant has been convicted for the offence punishable under Sections 20(b)



(ii)(c) and 23(c) of the Narcotic Drugs and Psychotropic Substances Act (in short 'NDPS Act') and has been ordered to undergo rigorous imprisonment for 10 years with a fine of Rs.1 lakh under Section 20(b)(ii)(c) of the NDPS Act and in default of payment fine, he shall further undergo rigorous imprisonment for two years. He has also been ordered to undergo 12 years rigorous imprisonment under Section 23(c) of the NDPS Act with a fine of Rs.1 lakh and in default of payment of fine, he shall further undergo rigorous imprisonment for two years. Both the sentences are to run concurrently.

Prosecution Case

3. The prosecution case is based on the self statement of Pradeep Kumar, Dy.SP (P) cum SHO, Jandaha, P.S.+District-Vaishali (PW-2) recorded on 02.02.2021 at about 6.15 AM at Village-Kazri Bujurg, P.S.-Jandaha, District-Vaishali near Amar Nath Rai's Poultry farm. In his self statement, the informant has stated that on 01.02.2021 at about 16.00 hours he received a secret information that near the poultry farm of Amar Nath Rai a container was parked which was loaded with black coloured boxes and one by one the boxes were being unloaded and were being kept in the '*baithaka*' near the poultry farm of Amarnath Rai in which seems to be some suspicious articles were there. After



recording the Sanha and after informing the superior officer, as per the direction of superior officer, a team was constituted consisting of the informant Pradip Kumar, ASI Suresh Kumar, ASI Subodh Kumar Singh, ASI Sivendar Narayan Singh, ASI Manish Kumar Singh and ASI Awadesh Prasad. The team proceeded from the police station along with BMP Hawaldar 143 Sesnath Rai, constable 621 Ramesh Kumar Singh, constable 06 Sanjeet Kumar, dafadar 02 Tripurari Chaudhary and chaukidar 2/14 Satish Kumar with government vehicles at 16:20 hours, for verifying the secret information. At 17:00 hours, they arrived at Village- Kajari Bujurg at the poultry farm of Amarnath Rai. They found that a container was parked there and 4-5 persons were unloading black coloured boxes. As soon as, they saw the police they tried to flee away. They were chased by the police and one of them was caught who disclosed his name as Indrapal Singh, son of Ram Ratan, Village- Pusaina, Post-Jail Chauraha, District- Mainpuri (Uttar Pradesh) and disclosed himself to be the driver of the vehicle. On query, he stated the name of Amarnath Rai among the persons who fled away from the place of occurrence. He failed to disclose the name of other persons. The nearby people assembled and the local chaukidar also identified that Amarnath Rai was one of the persons who fled away from the place of occurrence. On search, from the



boxes loaded on the container smell like ganja was coming. On query regarding the boxes, the apprehended container driver disclosed that there was ganja in the box. The driver of the vehicle was informed by the informant that he has right to be searched before a gazetted officer. The driver of the vehicle namely Indrapal consented to be searched by any officer, however the SDM, Mahua was requested for appointment of a gazetted officer. Circle Officer Sri Nishant Kumar of Jandaha came to the place of occurrence and after taking consent from the apprehended person for search, Notice u/s 50 of NDPS Act was served upon the accused Indrapal. In presence of two independent witnesses namely Shankar Paswan (PW-11), Son of Surendar Paswan and Rakesh Kumar (PW-8), Son of Umakant Singh and the Circle Officer, Jandaha (PW-12), the search was made and from the possession of accused Indrapal Singh one mobile was recovered. Thereafter, the container truck bearing registration no. HR-55-AG-5186 was searched from which several articles as described in the FIR were recovered. It is further alleged that thereafter the poultry farm of Amar Nath Rai was also searched and 8 kgs 100 gms ganja was recovered which was in total 64 packets. 100 grams of Ganja were packed inside four envelopes as sample for testing. Thereafter, seizure list was prepared and a copy of the same was handed over to truck driver.



The apprehended accused Inderpal disclosed that one Pradeep Kumar, owner of Gorakhnath Transport Coporation, Gurgaon, Haryana and his Munshi Ravi Kumar had loaded the goods on to the vehicle for delivery to Amarnath Rai. Earlier, on two occasions also, he had delivered the goods to Amarnath Rai. Thereafter sampling of seized ganja was done which details have been given in the FIR. The informant claimed that Amarnath Rai, Sri Pradeep Kumar, owner of Gorakhnath Transport Coporation, Gurgaon, Haryana, his Munshi Ravi Kumar and driver of container Inderpal were involved in smuggling of contraband articles.

4. On the basis of this written application, Jandaha P.S. Case No. 24 of 2021 dated 02.02.2021 was registered under Sections 8, 20(b)(ii)(c), 24, 25, 29 of the NDPS Act against four accused persons, namely, (1) Amarnath Rai, (2) Owner of Gorakhnath Transport Corporation, (3) Munshi Ravi Kumar and (4) Indrapal Singh (this appellant). After investigation police submitted chargesheet being Chargesheet No. 75 of 2021 dated 28.04.2021 against this appellant keeping investigation pending against other accused persons under Sections 8, 20(b)(ii)(c), 24, 25, 29 of the NDPS Act. Learned Sessions Judge, Vaishali at Hajipur vide order dated 09.06.2021 took cognizance of the offences under above mentioned Sections and also directed to open



supplementary record of the remaining accused persons, namely, (1) Amarnath Rai, (2) Owner of Gorakhnath Transport Corporation and (3) Munshi Ravi Kumar. Later on, Amarnath Rai was separately chargesheeted. Both the records were amalgamated vide order dated 29.09.2022 passed by learned Special Court, NDPS.

5. Charges were read over and explained to the accused in Hindi to which they pleaded not guilty and claimed to be tried, accordingly, vide order dated 02.03.2022, charges were framed under Sections 20(b)(ii)(c), 23(c) of the NDPS Act.

6. In course of trial, the prosecution has examined altogether thirteen witnesses and exhibited several documentary evidences. The description of prosecution witnesses and the exhibits are given hereunder in tabular form:-

List of Prosecution Witnesses

P.W.-1	Shivendra Narayan Singh
P.W.-2	Pradip Kumar
P.W.-3	Suresh Kumar
P.W.-4	Subodh Kumar Singh
P.W.-5	Awdhesh Prasad
P.W.-6	Manish Kumar Singh
P.W.-7	Satish Kumar
P.W.-8	Rakesh Kumar
P.W.-9	Md. Sayeed Alam
P.W.-10	Ajay Kumar
P.W.-11	Sankar Paswan
P.W.-12	Nishant Kumar
P.W.-13	Om Prashad Kushwaha



List of Exhibits on behalf of the Prosecution

Exhibit-1	Carbon copy of notice u/s 50 of NDPS Act.
Exhibit-2	Seizure list
Exhibit-3	Arrest memo
Exhibit-4	fard-e-bayan (Self Statement)
Exhibit-5	registration of FIR
Exhibit-6	Formal FIR
Exhibit-7	Confessional statement of Indrapal Singh
Exhibit-8	Signature of Rakesh Kumar on the seizure list
Exhibit-9	Signature of Rakesh Kumar on the arrest memo
Exhibit-10	FSL report
Exhibit-11	Report of FSL by name of Dist. & Sessions Judge
Exhibit-12	Carbon copy of petition for sample test
Exhibit-13	Order of learned District and Sessions Judge on sample test petition
Exhibit-13/1	charge sheet number 75/2021, dated 28.04.2021
Exhibit-14	Confessional statement of Amarnath Rai
Exhibit-15	Charge sheet no. 273/2021, dated 14.12.2021
Exhibit-16	Signature of Sankar Paswan on seizure list
Exhibit-17	signature of Sankar Paswan on arrest memo
Exhibit-18	Signature of Nishant Kumar on consent form
Exhibit-19	Signature of Nishant Kumar on search list
Exhibit-19/1	Signature of Om Prashad Kushwaha on malkhana
Exhibit- 20	malkhana register no. 6/2021
Exhibit-21	Certificate of destruction
Exhibit-22	certificate of Judicial Magistrate First Class Mukesh Kumar



7. Thereafter, the statement of the accused were recorded under Section 313 of the CrPC. They denied all the allegations and took a plea that they are innocent.

8. The defence exhibited several documentary evidences on behalf of Amarnath Rai.

List of Exhibits on behalf of Amarnath Rai

Exhibit-A	Aadhar card of Amarnath Rai.
Exhibit-B	Voter list
Exhibit-B/1	Voter list
Exhibit-C	SLC of Amarnath Rai,
Exhibit-D	Admit card of Amarnath Rai.
Exhibit-E	Mark sheet of matriculation of Amarnath Rai.
Exhibit-F	Provisional certificate of Amarnath Rai(Matric),
Exhibit-G	Graduation mark sheet of Amarnath Rai,
Exhibit-H	Admit cart of graduation of Amarnath Rai,
Exhibit-I	Caste certificate of Amarnath Rai
Exhibit-J	Genealogical table of Amarnath Rai

Findings of the Learned Trial Court

9. After analysing the evidences available on the record, the learned trial court held that accused Amarnath Rai was named by co-accused Indrapal Singh. Apart from that statement, nothing more has been produced by the prosecution. No investigation has been done on the possession of the poultry farm and ‘*baithka*’. No person from the village has been made seizure list witness. The Station House Officer (in short ‘SHO’) (PW-2) of Jandaha P.S.



deposed that after inquiry, he speculated that the house of Amarnath Rai was in the village of occurrence but in cross-examination, he has stated in paragraph '14' that Amarnath Rai has no house in that village. The seizure list witnesses have declined to know anything about Amarnath Rai. PW-4 has stated that people were telling that '*baithka*' belonged to one Bali Rai. I.O. (PW-10) has stated that he did not inquire from the villagers to ascertain that the poultry farm belonged to Amarnath Rai. He had not recorded statement of the villagers adjacent to the place of occurrence. Amarnath has stated in his Section 313 CrPC statement that he had no poultry farm. The trial court held that possession of the poultry farm and '*baithka*' regarding accused Amarnath was doubtful. The prosecution failed to prove the fundamental aspect of possession as enshrined under Section 54 of the NDPS Act. Thus, Amarnath Rai has been acquitted of the charges giving him benefit of doubt.

10. As regards this appellant, the learned trial court after scrutinizing the evidences available on the record found that he admittedly, was the custodian of the container truck from which contraband was recovered. Learned trial court found that the appellant has admitted in his statement under Section 313 CrPC that he was the driver of the truck bearing no. HR-55-AG-5186.



11. Learned trial court observed that the appellant cannot escape from his criminal liability regarding the possession of the contraband, moreover, no evidence has been adduced by him for rebuttal of the presumption under Section 54 of the NDPS Act.

12. Learned trial court further found that the appellant has been arrested on the spot along with the contraband. Learned trial court observed that the appellant had opportunity to explain the circumstances under Section 313 CrPC but he has answered the question by saying that “he does not know” or “it is not true”. Apparently, the answer given by him is not sufficient to rebut the reverse presumption or to explain the incriminating circumstances. Accordingly, learned trial court held the appellant guilty of the offences punishable under Sections 20(b)(ii)(c) and 23(c) of the NDPS Act.

Submissions on behalf of the appellant

13. Learned counsel for the appellant submits that the findings of the learned trial court as regards the present appellant are perverted, erroneous and against the weight of the evidences available on the record. The seized articles were not produced before the learned trial court and as per the written report and seizure list, the search was conducted on 01.02.2021 at about 17:15 Hrs to 02.02.2021, 06:15 AM but the case was registered on



02.02.2021 at 9:30 Hrs. The accused (appellant) was sent to judicial custody on 03.02.2021.

14. It is submitted that as per the written report and seizure list, from fifteen tin boxes and four plastic crates, total sixty four bundle *ganja* was recovered which weighed eight (8) quintals and 100 grams out of which the informant collected samples of 25-25 grams in four envelopes. The said collected samples were produced before the learned Magistrate, 1st Class and samples were marked 'L-1/1', 'L-2/1' in which 25-25 grams each in two packets were there.

15. It is submitted that as per the Forensic Science Laboratory (in short 'FSL') report *vide* letter dated 18.11.2021, the FSL received two tin *dabba* (box) previously marked as 'L-1/1' and 'L-2/1' said to contain sample of *ganjas* received through messenger on 12.03.2021. In this regard, Memo No. 260 dated 09.02.2021 and the deposition of PW-9 have been placed before this Court. It is pointed out that the samples were sent to the FSL after about one month and ten days. It is also not known that how the samples were sealed in two tin *dabba* when the written report says that samples were kept in four envelopes.

16. It is also submitted that the samples were not collected in accordance with the Standing Instruction No. 1/88



dated 15.03.1988. This would create huge doubt about the genuineness/authenticity of the samples.

17. Learned counsel submits that the two seizure list witnesses, who are PW-8 and PW-11, have not supported the prosecution story. Both have been declared hostile. It is submitted that the prosecution has not been able to prove that where were the samples kept for one month ten days. The certificate of destruction (Exhibit '21') would show that the gross weight of the drug seized was 800 kg and 100 gram but after taking sample, the net weight of the narcotic destroyed was 760 kg 400 gram. It is pointed out that only 760.500 kg of net weight of narcotic was received in the dedicated godown. The huge deficit of about 40 kg of the *ganja* only shows that it was not duly seized and sealed.

18. It is further submitted that from Exhibit '22' it would appear that it has been signed by the SHO, Jandaha on 25.09.2022, Inspector, Jandaha on 28.09.2022 and dedicated godown In-charge on 28.09.2022 but it has been signed by a learned Judicial Magistrate 1st Class on 14.11.2022. A perusal of Exhibit '22' would show that there is an endorsement of certification that the entries made are correct and samples were drawn in my presence. A perusal of this would show that the total weight on the date of seizure was 800.100 kg, weight of load/bunch wise has been



shown as Lot A – 240.300 kg, Lot B – 559.800 kg. Number of samples drawn are 25-25 grams each from two lots (total $2 \times 2 = 4$ samples). The remaining quantity after doing all the formalities have been shown as 760.500 kg. It is evident that as per this document, the sampling was done in presence of the Magistrate, the Magistrate has signed this document on 14.11.2022 whereas the FSL report as contained in Letter No. 859 is dated 19.11.2021 and it refers Letter No. 260 dated 09.02.2021 of the District and Sessions Judge, Hajipur (Vaishali). The FSL report (Exhibit '10') clearly proves that the District and Sessions Judge, Hajipur, Vaisali directed *vide* Memo No. 260 dated 09.02.2021 advising dispatch of one parcel which was received through *Chowkidar* 02/17 Santosh Kumar Jha in the Office of FSL on 12.03.2021. Learned counsel submits that apparently no certification of inventory or sampling was done in presence of the Magistrate, therefore, the search, seizure and sampling in this case which are required to be proved for laying down the foundational facts are highly doubtful.

19. It is further submitted that in this case the Seizing Officer Pradeep Kumar (PW-2) has stated that he had received a secret information at 4:00 PM on 01.02.2021 that in the poultry farm and *baithka* of Amarnath Rai in village Kajri Bujurg one black colour box is being unloaded from a container truck. PW-2



had recorded this secret information in the Station Diary and gave information to the senior police officer. It is submitted that in such circumstance the prosecution was obliged to bring on record the station diary entry. Reliance has been placed upon Section 42 of the NDPS Act and it is submitted that the same is mandatory hence non-observance of the safeguards provided to the accused under Section 42 of the NDPS Act would prove fatal to the prosecution case. Learned counsel has relied upon the judgments of the Hon'ble Supreme Court in the case of **Dharamveer Prasad vs. State of Bihar and Another** reported in (2020) 12 SCC 492 and **Darshan Singh vs. State of Haryana** reported in (2016) 14 SCC 358.

20. It is lastly submitted that while acquitting the accused Amarnath Rai, the learned trial court has disbelieved the prosecution case with regard to the possession of the poultry farm and *baithka* regarding accused Amarnath Rai. It has come in the finding of the learned trial court that no evidence has been adduced by the prosecution for the rebuttal of the presumption under Section 54 of the NDPS Act. The learned trial court has failed to appreciate that the statement of an accused recorded under Section 313 CrPC cannot be used as an evidence against him. In this case, the attention of the appellant was drawn towards



the evidence of the prosecution witnesses. The learned trial court has taken a view that the appellant being the custodian of the container truck from which the contraband was recovered and that as per his own admission in statement under Section 313 CrPC, he was driver of the truck, therefore, he cannot escape from the criminal liability regarding the possession of the contraband is an erroneous consideration.

Submissions on behalf of the State

21. Mr. Ajay Kumar Mishra, learned Additional Public Prosecutor for the State, has contested the appeal. This Court called upon learned Additional Public Prosecutor to demonstrate from the records that there was any certification of the inventory after the seizure of the contraband by a learned Magistrate and that this sampling was done in presence of the Magistrate. Learned Additional Public Prosecutor has clearly stated that after going through the records of the learned trial court, he did not find certification of inventory. He has further submitted that in this case, no sampling was done in the presence of the Magistrate.

Analysis of Evidences – Consideration and Opinion

22. Having regard to the submissions recorded hereinabove and upon perusal of the records, this Court finds that according to the self-statement of Pradeep Kumar (PW-2), he had



received a secret information on 01.02.2021 at 16:00 Hrs. that a container truck is standing near poultry farm/*baithka* of Amarnath Rai and in the said truck black colour boxes are loaded which are being unloaded in the poultry farm/*baithka* of Amarnath Rai. The information was that there seems to be some suspicious article. PW-2 recorded a '*sanha*', gave information to his senior police officers, constituted a team and reached the poultry farm/*baithka* of Amarnath Rai at 17:00 Hrs. They found that one container vehicle was standing and 4-5 persons were unloading black colour tin boxes. When they saw the police party, they started fleeing away. They were chased and one person was caught, he was taken into custody and on interrogation he disclosed his name as Indrapal Singh (the appellant). On seeing the police action, the people from the neighbours and some passersby assembled there. Those assembled persons and local *Chowkidar* identified one person who had fled away as Amarnath Rai, son of late Muneshwar Rai of Village-Kutubpur, P.S.-Bidupur, District-Vaishali, at present, father-in-law Balli Rai, Village-Kajri Bujurg, P.S.-Jandaha, District-Vaishali.

23. It is evident from the self-written statement of PW-2 that he had recorded '*sanha*' of the secret information. In this regard, Section 42 of the NDPS Act reads as under:-



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

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

- (a) enter into and search any such building, conveyance or place;
- (b) in case of resistance, break open any door and remove any obstacle to such entry;
- (c) seize such drug or substance and all materials used in the manufacture thereof and any other article and any animal or conveyance which he has



reason to believe to be liable to confiscation under this Act and any document or other article which he has reason to believe may furnish evidence of the commission of any offence punishable under this Act or furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act; and

(d) detain and search, and, if he thinks proper, arrest any person whom he has reason to believe to have committed any offence punishable under this Act:

¹[Provided that in respect of holder of a licence for manufacture of manufactured drugs or psychotropic substances or controlled substances granted under this Act or any rule or order made thereunder, such power shall be exercised by an officer not below the rank of sub-inspector:

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

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

1. Subs. by Act 16 of 2014, s. 16, for “Provided that” (w.e.f. 1-5-2014).



24. It is evident from a bare reading of Section 42 and its subsections that the information received from any person or reason to believe from personal knowledge are required to be taken down in writing. According to subsection (2), where an officer takes down any information in writing under subsection (1) or records grounds for his belief under the proviso thereto, he shall within 72 hours send a copy thereof to his immediate official superior. In the case of **Dharamveer Prasad** (*supra*), the Hon'ble Supreme Court had occasion to consider Section 42(1) and 42(2) of the NDPS Act. Paragraph '3' and '4' of the said judgment are being reproduced hereunder for a ready reference:-

3. The matter lies within a short compass in view of the precise argument that has been made. This is with regard to the violation of Section 42 of the Act, the purport and effect of which has been laid down by the Constitution Bench of this Court in *Karnail Singh v. State of Haryana*¹. Para 35 of the judgment is extracted below: (SCC pp. 554-55)

“35. In conclusion, what is to be noticed is that *Abdul Rashid*² did not require literal compliance with the requirements of Sections 42(1) and 42(2) nor did *Sajan Abraham*³ hold that the requirements of Sections 42(1) and 42(2) need not be fulfilled at all. The effect of the two decisions was as follows:

(a) The officer on receiving the information [of the nature referred to in sub-section (1) of Section 42] from any person had to record it in writing in the register concerned and forthwith send a copy to his immediate official superior, before proceeding to take action in terms of clauses (a) to (d) of Section 42(1).

1 (2009) 8 SCC 539 : (2009) 3 SCC (Cri) 887

2 Abdul Rashid Ibrahim Mansuri vs. State of Gujarat, (2000) 2 SCC 513 : (2000) SCC (Cri) 496

3 Sajan Abraham v. State of Kerala, (2001) 6 SCC 692 : 2001 SCC (Cri) 1217



(b) But if the information was received when the officer was not in the police station, but while he was on the move either on patrol duty or otherwise, either by mobile phone, or other means, and the information calls for immediate action and any delay would have resulted in the goods or evidence being removed or destroyed, it would not be feasible or practical to take down in writing the information given to him, in such a situation, he could take action as per clauses (a) to (d) of Section 42(1) and thereafter, as soon as it is practical, record the information in writing and forthwith inform the same to the official superior.

(c) In other words, the compliance with the requirements of Sections 42(1) and 42(2) in regard to writing down the information received and sending a copy thereof to the superior officer, should normally *precede* the entry, search and seizure by the officer. But in special circumstances involving emergent situations, the recording of the information in writing and sending a copy thereof to the official superior may get postponed by a reasonable period, that is, after the search, entry and seizure. The question is one of urgency and expediency.

(d) While total non-compliance with requirements of sub-sections (1) and (2) of Section 42 is impermissible, delayed compliance with satisfactory explanation about the delay will be acceptable compliance with Section 42. To illustrate, if any delay may result in the accused escaping or the goods or evidence being destroyed or removed, not recording in writing the information received, before initiating action, or non-sending of a copy of such information to



the official superior forthwith, may not be treated as violation of Section 42. But if the information was received when the police officer was in the police station with sufficient time to take action, and if the police officer fails to record in writing the information received, or fails to send a copy thereof, to the official superior, then it will be a suspicious circumstance being a clear violation of Section 42 of the Act. Similarly, where the police officer does not record the information at all, and does not inform the official superior at all, then also it will be a clear violation of Section 42 of the Act. Whether there is adequate or substantial compliance with Section 42 or not is a question of fact to be decided in each case. The above position got strengthened with the amendment to Section 42 by Act 9 of 2001.”

(emphasis in original)

4. From a reading of the judgment of the Constitution Bench it would appear that the law laid down in this regard is that the requirements of Sections 42(1) and 42(2) of the Act should normally precede the entry, search and seizure by the Officer but in special circumstances the recording of information in writing and sending and copy thereof to the superior officer may be postponed by a reasonable period and may be effected after the search, entry and seizure. Such an exception illustratively has been laid down by the Constitution Bench to be in a case where the accused may escape or the goods or evidence may get destroyed or removed.



25. In the said case, the Investigating Officer had received information that the contraband was being carried from Indo-Nepal border, he had formed a team and moved to Raxaul from Patna. The vehicle in question had been apprehended and the contraband was seized at about 6:00 AM on 03.07.2007. No explanation was offered why the statement had not been recorded at any anterior point of time and the same was so done after the seizure was made. The Hon'ble Supreme Court held that there were other suspicious circumstances affecting the credibility of the prosecution case. The Investigating Officer had moved to Raxaul along with a team and two independent witnesses, the said independent witnesses were not examined and no explanation was forthcoming on this ground. No memo including the seizure memo was prepared at the spot and all the papers were prepared on reaching the Police Station at Patna. In such circumstance, the Hon'ble Supreme Court held that the prosecution case suffers with the vice of non-compliance of Section 42 of the Act and the law laid down by the Constitution Bench in **Karnail Singh vs. State of Haryana** reported in **(2009) 8 SCC 539**. In the present case, it is evident that the entry made under Section 42 of the NDPS Act has not been brought on record. There is a non-compliance with the requirement of Section 42 of the NDPS Act.



26. In the light of the aforementioned judicial pronouncements, we would further examine the prosecution case firstly as per the self-written report. According to this, informant had contacted the Sub-Divisional Officer, Mahua for appointment of a Magistrate for purpose of search and on request, the Anchaladhikari Shri Nishant Kumar (PW-12) had arrived at the place of occurrence whereafter the search of the appellant was done after serving a notice under Section 50 of the NDPS Act. The informant claimed that from amongst the persons present at the place of occurrence, he took two independent witnesses namely Shankar Paswan and Rakesh Kumar of village Bishanpur and Bhagwatipur respectively. He has recorded the description of the seized articles from the container truck which are of the household items. He has stated that eight black coloured tin boxes and four plastic crates and from the seven black coloured boxes found in course of search of the poultry farm/*baithka* altogether fifteen black coloured boxes of tin and four plastic crates in which sixty four (64) plastic bundles of brown colour were kept, had been seized. At the place of occurrence itself he had taken weight of the seized *ganja*, in presence of the witnesses and the Magistrate. The total weight was eight quintal 100 grams. He packed 100 grams in four envelopes from the bundle of *ganjas*, as sample, thereafter he



prepared seizure list of the seized *ganja* in presence of both the witnesses and the PW-12. The PW-12 had signed on the seizure list, a copy of the seizure list was handed over to the driver of the container truck. He has further stated that the seized sixty four (64) packet *ganja* total weight eight (8) quintals were sealed in thirty three (33) plastic sacks which were marked and sealed. He put a mark of 'P-1' to 'P-26' to the seized *ganja* which were kept in the seven boxes in the poultry farm/*baithka* of Amarnath Rai. He marked 'P-27' to 'P-64' to the seized *ganja* of 559.800 kg which was found in the eight black coloured tin boxes and four plastic crates from the container truck.

27. In course of trial, Shivendra Narayan Singh (PW-1) has stated that he was Sub-Inspector in Jandaha Police Station. He had gone to Kajri Bujurg at 5:00 PM in the team constituted by Pradeep Kumar (PW-2). He found that the truck was standing and many suspicious articles were being unloaded by 4-5 persons. He has stated that the *ganja* was weighed, sampled and sealed at the place of seizure. In paragraph '5' of his examination-in-chief, he has stated that the apprehended accused was brought to Jandaha Police Station with the articles on 02.02.2021 at 6:00 AM. All the seized articles were kept in the *Malkhana*. Container and scooty were kept in the *thana* premises. The Investigating Officer had



interrogated PW-1. He identified Indrapal Singh but refused to identify Amarnath Rai as according to him, he had fled away from the place of occurrence.

In his cross-examination, he has stated that the search had taken place in his presence but he had not put his signature on the same. He denied the suggestion that because he was not present at the place of occurrence so his signature is not there on the seizure list.

28. Pradeep Kumar (PW-2) is the Seizing Officer who has reiterated his statement as per the self-statement recorded by him giving rise to the present case. This witness has stated that the container was searched in presence of two independent witnesses and the C.O. Both the seizure list witnesses had put their signature on the seizure list and C.O. had also put his signature. This witness identified the appellant but refused to identify Amarnath Rai as according to him, Amarnath Rai had already fled away from the place of occurrence.

In his cross-examination, he has stated that he had inquired about Amarnath Rai, it is true that Amarnath Rai has no home in Kajri Bujurg. He did not know that the village of Amarnath Rai is Bidupur which is fifteen kilometers away from the place of occurrence. This witness did not know the name of father-in-law of



Amarnath Rai. He has stated that the seizure list was prepared at the place of occurrence but the case was registered thereafter, the case number has been written on the seizure list after registration of the case. From this part of his deposition, it appears that after recording the '*sanha*', he constituted a team, intercepted the container truck from which he claimed to have seized the contraband but till this time the FIR was not registered.

29. PW-2 has further admitted in paragraph '22' that in the seizure list, no one from the said village where seizure had taken place was made a seizure list witness. It is not his statement that nobody from the said village was present at the place of occurrence or that any person from the said village had refused to become a seizure list witness. It has come in the self-statement itself that the seizure list witnesses are from two different villages. The learned trial court has recorded in its finding that the independent witnesses who are the seizure list witnesses have declined to know anything about Amarnath Rai. In this regard, when the evidence of Rakesh Kumar (PW-8), as seizure list witness is taken into consideration, it would be found that he has identified his signature on the seizure list. He has stated that Darogaji had not seized any article in his presence from the *baithka* of Amarnath Rai. He refused to identify Amarnath Rai and



Indrapal Singh. This witness has been declared hostile. In his cross-examination on behalf of accused Amarnath Rai, he has stated that when he was closing his shop, then his signature was obtained at the shop by Darogaji saying that nothing would happen with this, so he had put his signature. His shop was at a distance of 7-8 kilometers from Kajri Bujurg. Shankar Paswan (PW-11) who is another seizure list witness, has deposed on similar lines. He has also been declared hostile. He has not identified any of the accused.

30. PW-2 was suggested by the defence that after the case was registered at the police station itself he had prepared the seizure list and got signature of the police station witnesses, which PW-2 denied. It is evident from the deposition of PW-2 that in paragraph '5' of his deposition, he has stated that he got the self-written statement prepared at the place of occurrence itself through one Suresh Kumar, who has been examined as PW-3. In his examination-in-chief, PW-3 has stated that on the direction of the Officer-in-Charge, he had prepared the seizure list, on which both the independent witnesses, C.O. and the Officer-in-Charge had put their signature. A copy of the same was made available to Indrapal Singh. On the direction of the Officer-in-Charge, he had prepared arrest memo also, on which both the independent witnesses and



accused Indrapal had put their signature. PW-3 has not stated in his examination-in-chief that he had prepared the self-statement of PW-2 at the place of seizure itself. He has, rather stated in paragraph '5' that he had come to the police station with the apprehended accused and the seized articles. The vehicle was placed in the premises of the police station and the seized articles were kept in the *malkhana*. This witness had recorded the confessional statement of the accused which has been marked Exhibit '7' by the learned trial court. Thus, PW-3 does not corroborate PW-2 on the point of preparation of self-statement (Exhibit '4') at the place of occurrence, this Court would, therefore, take a view that the self-statement (Exhibit '4') was prepared at the police station only. According to the self-statement of PW-2, it was recorded on 02.02.2021 at 6:15 AM at Kajri Bujurg but the FIR has been lodged at 9:30 AM, it was not sent to the jurisdictional court on the same day. In fact, it was sent to the jurisdictional court on 03.02.2021. It is evident that the FIR was lodged subsequent to the preparation of the seizure list but the case number was put on the seizure list (Exhibit '2') it would give rise to the manner of seizing of the contraband, if any, at the place of occurrence. PW-3 has in fact stated in paragraph '14' of his deposition that he had not signed on the seizure list, the seizure list



was prepared at the place of occurrence but the case number was not filled up there, he has further stated that case number was not filled up in his presence. This Court further finds that the confessional statement of the appellant which is an inadmissible document has been admitted and marked Exhibit '7' by the learned trial court.

31. Subodh Kumar Singh (PW-4) was posted as Police Sub-Inspector in Jandaha Police Station on 01.02.2021. Regarding search and seizure, he has also stated that the search was conducted in presence of two independent witnesses. In his cross-examination, this witness has stated that the weighing balance had not come from the police station, it was obtained from the market but from where it was obtained, it is not known. The weighing balance was electronic and it was brought by *Chowkidar*. He has stated that in preparation of seizure lists and completion of all the formalities, it took time till 8:00 AM of the next day. He had stated before the police that Amarnath Rai is son-in-law of Bali Rai but he was not sure whether I.O. had written the same or not. He did not remember that at what time the seizure list witnesses had come to the place of occurrence. This witness has not stated about preparation of sample out of the seized *ganjas* at the place of occurrence.



32. Awdhesh Prasad (PW-5) is another Assistant Sub-Inspector of Police of Jandaha Police Station. He deposed on similar line with regard to the search and seizure. He has stated that at the police station he could not know about the truck number. Nearby the place of occurrence, *Mukhiya Sarpanch* were there but no one became ready. About 100 people had assembled at the place of occurrence. Two persons were taken as seizure list witnesses, one witness is of Jandaha P.S. whereas the second witness is of Desri P.S. He has stated that the case number of the present case was entered by the Officer-in-Charge in his presence in the morning.

33. Manish Kumar Singh (PW-6) has stated about the search and seizure in presence of two independent witnesses. This witness has also not stated about preparation of self-statement by PW-2 at the place of occurrence.

34. Satish Kumar (PW-7) is the *Chowkidar* of Jandaha Police Station. He has stated in his examination-in-chief that the apprehended person had disclosed his name as Indrapal whereas the person who fled away was identified by him as Amarnath Rai. In his cross-examination, this witness has stated that his house is at a distance of 15-16 kilometers from the place of occurrence. There are 53 *Chowkidars* in Jandaha Police Station, he is *Chowkidar* in



Bishunpatti village. He was not the local *Chowkidar* of the place of occurrence. He was acquainted with the independent witnesses Shankar and Rakesh. He had not put any signature at the place of occurrence. He has also stated that his statements were not recorded before the Investigating Officer. From his evidence, it is evident that both the seizure list witnesses who are of another village were acquainted with this witness. Why instead of taking independent witnesses, the known persons of PW-7 were made seizure list witnesses would be a question mark.

35. Md. Sayeed Alam (PW-9) is the Assistant Director of the Forensic Science Laboratory, Patna. He has stated that *vide* Memo No. 260 dated 09.02.2021, *Chowkidar* 2/17 Santosh Kumar Jha (not examined) had brought sealed parcel in a cloth for examination. He had examined the sample seal with the seal present on the parcel which were found intact. On opening, two tin *dabba* which were marked as 'L1/1' and 'L2/1', were found. In paragraph '2' he has stated that on opening of the two *dabba* there were two separate polythene bags which were opened and in those packet dry greenish brown colored dried and pressed vegetable substances were there which weighed 22.91 gram and 22.20 gram. After examination, the greenish brown colored dried and pressed vegetable substances along with seeds kept in two tin *dabba* were



found to be ganja. He has proved the FSL report (Exhibit '10'). He had got prepared the report through the writer Arvind Kumar addressed to the learned District and Sessions Judge, Vaishali at the instance of Majid Khan on 19.11.2021. He has also proved the short signature of Majid Khan as Exhibit '11'. In his cross-examination, he has stated that the tin *dabba* was of *jarda*, he did not remember whether there was any signature on that. There was no detailed description of the examination of 'L1/1' and 'L2/1' in the report. It is evident from the deposition of PW-9 that what was received in the FSL was a sealed cloth parcel. In whose presence the sealing was done is not evident from the records.

PW-2 has stated about preparation of samples of 25 gram each and according to him, he had put it in the envelope. The order dated 03.02.2021 recorded by the learned Special Court, NDPS would not show that the samples which were kept in the envelopes were produced before the learned court on 03.02.2021. It appears that on 05.02.2021, an application was filed by the I.O. with a prayer that FSL test of seized ganja is essential so permission for FSL test may kindly be given. The learned court has recorded *inter alia* ".... seen. Section 52A of NDPS Act has not been complied as yet. Hence, application of I.O. is hereby forwarded to Mrs. Vandana, Judicial Magistrate 1st Class, Hajipur, for compliance of



Section 52A of NDPS Act...”. The application was sent as per the endorsement made in the margin portion of the ordersheet. In the order dated 09.02.2021 it is recorded as under:-

“After compliance of Section 52A of the NDPS Act, forwarding letter of sample of seized *ganja* has been filed by I.O. Forwarding letter signed by me and handed over to I.O. The I.O. is also permitted to send the sample of *ganja* to FSL, Muzaffarpur for test and report.”

36. It is evident from the order dated 05.02.2021 and 09.02.2021 that on none of the occasions, the I.O. produced the seized *ganja* or samples kept in the envelops in the court for verification of inventory or preparation of sample in presence of the Magistrate. On record, there is no exhibit of the prosecution showing that either certification of inventory was done or the sampling was done in presence of the Magistrate. The prosecution has brought on record four pages of the *Malkhana* Register. This has been marked Exhibit ‘19’. It only shows that the seized *ganja* was kept in the Central *Malkhana* of Town P.S., Hajipur on 02.02.2021, however, the prosecution witnesses have stated that they had brought the seized *ganja* to Jandaha Police Station where it was kept in the *Malkhana*. The certificate of destruction (Exhibit ‘21’) shows that 760 kg 400 gram of *ganja* were destroyed, however, it refers godown entry no. 30 and date of seizure 01.02.2021. Nothing has been brought on record to prove that the



eight quintal 100gm *ganja* seized in connection with the present case was deposited in the dedicated godown of NDPS *vide* entry number 30. In Exhibit '22', nothing is stated about how these were shifted from Jandaha Malkhana to Hajipur dedicated Godown and what led to loss of around 40 kgs of *ganja*. There is a short signature of Judicial Magistrate on 14.11.2022 on Exhibit '22' but nothing is stated as to who was the Magistrate who signed on the said exhibit in the order dated 14.11.2022 of the learned Special Court, NDPS. There is no mention of any such fact of signing of destruction form by a Judicial Magistrate.

37. On a complete analysis of the evidences on the record, while this Court finds that the learned Advocate for the appellant has not cross-examined some of the prosecution witnesses, in fact, in the cross-examination of PW-2, who is the Seizing Officer, this witness has set up a case that the seizure list witnesses were not from the village of the place of occurrence. We have noticed that both the seizure list witnesses have not supported the prosecution case. PW-2 claimed in paragraph '23' that the local *Chowkidar* was present with him but we find from the evidence on the record that the local *Chowkidar* has not been examined in this case. PW-7, who is the *Chowkidar*, has stated that he is not *Chowkidar* of the local village, he is *Chowkidar* of Vishunpatti village and he had not been examined by the I.O.



38. We find from the evidence of the C.O. Jandaha (PW-12) that when he reached the place of occurrence, the police team was present there with local *Chowkidar* and villagers, the container truck was standing there and one person had been kept in the police custody. He has stated that the seizure was done in presence of two independent witnesses and he had also put his short signature on the seizure list which has been marked Exhibit '19'. From the deposition of PW-12 as well it does not appear that the self-statement of PW-2 was recorded at the place of occurrence. He did not remember the name of the independent witnesses and agreed with the suggestion of the defence that Shankar Paswan (PW-11) may be a resident of a place at a distance of fifteen kilometers in Vishunpur village. He denied his awareness that Rakesh Kumar, who is the another witness, was a resident of village situated at a distance of twelve kilometers from the place of occurrence.

39. Om Prakash Kuswaha (PW-13) was the In-charge *Malkhana* in Jandaha Police Station. He has proved the entries in the *Malkhana* Register in connection with Jandaha P.S. Case No. 24 of 2021. He has stated that the entries are in the handwriting of Ajay Kumar (PW-10), he has identified the short signature of Ajay Kumar which has been marked Exhibit '19' and '19/1' respectively. The *Malkhana* Register MR 06/2021 has been marked Exhibit '20'. In paragraph '2' of his examination-in-chief, this witness has stated that



the seized material exhibits were deposited in the Central *MalKhana*, Town P.S., Hajipur and the other articles are in the container which have perished/decayed, details of the same was not available.

In his cross-examination, PW-13 has stated that he had never worked with Ajay Kumar at any place. He has not seen him reading and writing in any other case. This witness has further stated that the articles seized from the container had perished and decayed but those have not been destroyed. In his cross-examination, he has stated that he had no seized article in his possession except the *Malkhana* Register. It is evident from the deposition of PW-13 that the material exhibit was never produced in court. While PW-2 has stated in paragraph '6' of his deposition that he had got the seized articles kept in the *Malkhana* of the police station, there is no witness to say that when the seized articles were taken out of the *Malkhana* of Jandaha Police Station and were deposited in the Central *Malkhana* at Town P.S. Hajipur.

10. From the entire evidence on the record, this Court finds that in this case the prosecution has not followed Section 42 of the NDPS Act. Not only that, neither the seized contraband nor the sample which were taken out of from the seized contraband by PW-2 were ever produced before the learned Special Court. The learned Magistrate to whom the application of the I.O. (Exhibit '12') was sent for sample test has not been examined. The learned Additional



Public Prosecutor has after going through the records confirmed that in this case there is no certification of the inventory and the sampling has not been done in presence of the Magistrate.

41. To this Court, it is also evident that the self-written statement (Exhibit '4') has been prepared after conduct of seizure. There is no evidence showing sampling in presence of a Magistrate and the accused. From the seizure list (Exhibit '2'), it appears that the seizure continued from 01.02.2021 at 7:15 hours to 02.02.2021 at 6:00 AM whereas the self statement of PW-2 has been recorded at 6:15 AM and FIR has been registered at 9:30 AM but on the seizure list the case number with the sections under which case has been registered has been recorded at the top. None of the prosecution witnesses has stated that the self statement of PW-2 was recorded at the place of seizure. The learned trial court has committed gross error in admitting the confessional statement of the appellant in evidence as Exhibit '7'. This Exhibit '7' is clearly hit by Section 25 of the Indian Evidence Act.

42. In the light of the aforementioned discussions, this Court is of the considered opinion that the prosecution has not been able to lay down the foundational facts, the primary documents which are required to prove the search, seizure and sampling of the contraband article are not free from doubt. For all these reasons, the judgment of the learned trial court would not sustain. The same is



liable to be set aside. We, accordingly set aside the impugned judgment and order of the learned trial court.

43. The appellant is acquitted of the charges giving him the benefit of doubt. He is in incarceration since the date of his arrest, therefore, he would be released forthwith if not wanted in any other case.

44. This application is allowed.

45. Let a copy of the judgment together with the trial court records be sent down to the learned trial court.

(Rajeev Ranjan Prasad, J)

(Ajit Kumar, J)

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CAV DATE	
Uploading Date	18.08.2025
Transmission Date	18.08.2025

