

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.349 of 2023

Arising Out of PS. Case No.-22 Year-2017 Thana- D.R.I District- Patna

Ali Ahamad, Son of Late Pir Mohammad, Resident of Village - Balchhat,
P.S.- Jaidpur, District - Barabanki (Uttar Pradesh).

... .. Appellant/s

Versus

The State of Bihar through D.R.I., Patna. Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 979 of 2023

Arising Out of PS. Case No.-17 Year-2017 Thana- D.R.I District- Patna

Sunil Kumar, Son of Late Sri Ram, R/o vill - Malviya Nagar, P.S. - Sidhaur
Gramin, Distt. - Barabanki (UP)

... .. Appellant/s

Versus

1. The State of Bihar through D.R.I., Patna Bihar
2. The Union of India through D.R.I., Patna Patna

... .. Respondent/s

Appearance :

(In CRIMINAL APPEAL (DB) No. 349 of 2023)

For the Appellant/s	:	Mr. Manoj Kumar Singh, Advocate Mr. Rishup, Advocate Mr. Saurabh Kumar, Advocate Mr. Majid Mahboob Khan, Advocate
For the DRI	:	Mr. Anshuman Singh, Sr. Standing Counsel Mr. Ankit Kumar Singh, Jr. Standing Counsel Ms. Aradhna Kumari, Advocate
For the State	:	Mr. Satya Narayan Prasad, APP

(In CRIMINAL APPEAL (DB) No. 979 of 2023)

For the Appellant/s	:	Mr. Manoj Kumar Singh, Advocate Mr. Rishup, Advocate Mr. Saurabh Kumar, Advocate Mr. Majid Mahboob Khan, Advocate
For the DRI	:	Mr. Anshuman Singh, Sr. Standing Counsel Mr. Ankit Kumar Singh, Jr. Standing Counsel Ms. Aradhna Kumari, Advocate
For the State	:	Ms. Km. Shashi Bala Verma, APP

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE SOURENDRA PANDEY
CAV JUDGMENT



(Per: HONOURABLE MR. JUSTICE SOURENDRA PANDEY)

Date : 17-10-2025

We have heard Mr. Manoj Kumar Singh, learned Counsel for the appellants and Mr. Anshuman Singh, learned Senior Standing counsel for the respondent (D.R.I.).

2. The present appeals arise out of the judgment and order of conviction dated 02.02.2023 (hereinafter referred to as the '*impugned judgment*') and the order of sentence dated 10.02.2023 (in short referred to as the '*impugned order*') passed by the learned Additional District & Sessions Judge-XXVI, Patna in Special Case No. 128 of 2017, arising out of DRI Case No. DRI/LZU/PRU/718(II)ENQ222017 dated 30.08.2017 14/2017-18.

3. By the impugned judgment dated 02.02.2023 the appellants namely Sunil Kumar and Ali Ahamad have been convicted for the offences under Section 21(C) of the Narcotic Drugs and Psychotropic Substance Act, 1985 (in short referred to as the '*N.D.P.S. Act*'). Appellant/Sunil Kumar *vide* order dated 06.06.2023 has been sentenced to undergo rigorous imprisonment of 12 years and to pay a fine of Rs. 1,00,000/- and in default of payment of fine to further undergo additional imprisonment of two years whereby appellant/Ali Ahamad *vide* order dated 10.02.2023 has been sentenced to undergo rigorous



imprisonment of 12 years and to pay a fine of Rs. 1,00,000/- and in default of payment of fine to further undergo additional imprisonment of two years for the offence under Section 21(C) of the N.D.P.S. Act.

Prosecution Case:

4. The prosecution case is based on a secret information dated 29.08.2017 given by the Intelligence Officer namely Rakesh Ranjan (P.W. 2) to the informant Binod Kumar Mandal (P.W. 3), who is the Intelligence Officer in D.R.I. Office, Patna, a raiding team was constituted under Sri P.R. Srivastava, Dy. Director, D.R.I., Patna, Sri Rakesh Ranjan (Sr. Intelligence Officer), Sri Ashok Kumar (Intelligence Officer), Sri Ramanuj Chaudhary (Intelligence Officer), Somesh Ranjan (Intelligence Officer), J.K. Singh L.D.C. and others. A Tata Truck bearing Registration No. UP-75M-1743 was intercepted by D.R.I. raiding team at Asanpur Kupha Koshi Mahasetu Toll Tax on which the owner Ali Ahamad (the appellant), Sunil Kumar/the appellant (driver) and Sri Ram Kishore (Khalasi) were travelling. The truck was seized but as complete search was not possible there the truck was taken to D.R.I. Office, Patna where the said truck was searched in presence of witnesses and found that the said truck was loaded with rice



bran. After intensive examination a secret box was found which was manufactured in the truck in which three packets of Heroin was recovered which were marked as Sl. No. I to III and on weighing it was found to be total gross weight 6276 grams and net weight of 6075 grams. The sample of the recovered contraband article was examined by the Narcotic Kit and the same was found to be Heroin. Thereafter, samples of 5 grams each of 2 – 2 samples from all three packets were prepared and marked as A1, A2, B1, B2, C1 and C2 respectively. The worth of the seized article was valued at Rs. 18,22,50,000/-. Thereafter, the seizure list was prepared on which all three apprehended accused persons and witnesses were put their signatures.

5. On the basis of the aforesaid written statement of informant Binod Kumar Mandal, DRI Case No. DRI/LZU/PRU/718(II)ENQ222017 dated 30.08.2017 was registered under Sections 21, 23, 25, 29 of N.D.P.S. Act against all the accused persons including the appellants.

6. After production of the prosecution report, the learned Sessions Judge, Patna instituted a case bearing Special Case No. 128 of 2017 and took cognizance against the appellants under Sections 21, 23, 25 and 29 of the N.D.P.S. Act.



7. *Vide* order dated 27.02.2018 cognizance was taken against the appellants Ali Ahamad and Sunil Kumar. Charges were read over and explained to the accused persons in Hindi to which they pleaded not guilty and claimed to be tried *vide* order dated 09.09.2021.

8. The prosecution has examined seven witnesses and defence has examined four witnesses and also exhibited some documentary evidences in course of trial. The description of prosecution witnesses and the exhibits are being mentioned hereunder in tabular form:-

List of Prosecution Witnesses:

P.W. 1	Ashok Kumar
P.W. 2	Rakesh Ranjan
P.W. 3	Binod Kumar Mandal
P.W. 4	Somesh Ranjan
P.W. 5	Ramanand Chaudhary
P.W. 6	Subhash Chandra
P.W. 7	Jagat Narayan

List of Defence Witnesses:

P.W. 1	Md. Anees
P.W. 2	Nazeeran
P.W. 3	Sah Alam
P.W. 4	Ali Ahmad

List of Exhibits on behalf of the Prosecution:

Ext. 1	Signature of witness Rakesh Ranjan exist on self hand written statement
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Ext. 2	Signature of Ali Ahamad on notice under Section 50
Ext. 2/01	Signature of Sunil Kumar on notice under Section 50
Ext. 2/02	Signature of Ramkishore on notice under Section 50
Ext. 3	Seizure-Memo (Computerized)
Ext. 4	Statement of Ali Ahamad under Section 67 of the N.D.P.S. Act
Ext. 5	Statement of Sunil Kumar under Section 67 of the N.D.P.S. Act
Ext. 6	Statement of Ramkishore under Section 67 of the N.D.P.S. Act
Ext. 7	Panchnama
Ext. 8	Forwarding report dated 31.08.2017
Ext. 9	Certification dated 20.09.2017
Ext. 10	Test Memo
Ext. 11	Report of CRCL, New Delhi on back of Test Memo
Ext. 12	Forwarding letter dated 02.09.2017
Ext. 13	Seizure report under Section 57 dated 31.08.2017
Ext. 14	Complaint Petition under Sections 21, 23, 25 & 29 of Narcotic Act
Ext. 15	Written order on which signature of witness Shubhash Chandra, Dy. Director and other members of team
Ext. 16	Inventory on which signature of witness; Md. Nafees and other two witnesses exist
Ext. 17	Self-written statement of Md. Nafees with objection
Ext. 18	Arresting Memo of Md. Nafees
Ext. 19	Inventory Entry No. 01/2017-18(H) with objection
Ext. 20	Inventory Entry No. 01/2017-18(H)

List of Exhibits on behalf of the Defence:



Ext. A	Certified Copy of sale deed dated 26.11.2013
Ext. A/1	Certified Copy of sale deed dated 22.08.2016
Ext. A/2	Certified Copy of sale deed dated 18.05.2016
Ext. B	Purchasing receipt of old vehicle by Md. Nafees
Ext. C	Sell letter of mango orchard

9. Thereafter, the statement of the appellants were recorded under Section 313 of the Cr. P.C. The appellants denied all the allegations and took a plea that they are innocent.

Findings of the Learned Trial Court:

10. The learned Trial Court after examining all the evidences available on the record found that on 29.08.2017 D.R.I., Patna, on secret information, intercepted a Tata Truck bearing Registration No. UP-75M-1743 at Asanpur Kupha Koshi Mahasetu Toll Tax on which the owner Ali Ahamad (the appellant), Sunil Kumar/the appellant (driver) and Sri Ram Kishore (Khalasi) were travelling. The learned Trial Court has found that after completion of all the legal formalities and also serving notices under Section 50 the seized goods was weighed and the total gross weight of the seized contraband was 6276 grams and net weight of 6075 grams. The sample of the recovered contraband article was examined by the Narcotic Kit and the same was found to be Heroin. Statements of accused



were taken under Section 67 of the N.D.P.S. Act. The arrested accused did not produce any valid paper regarding the seized article. The seized article was sent to C.R.C.L., New Delhi for its examination and it was found to be “*Diacetyl Morphine Heroin*”. Sections 42 and 50 of the N.D.P.S. Act were fully implemented during seizure. The prosecution has successfully proved the case under Section 21(C) of the N.D.P.S. Act against the appellants. Md. Nafees, another accused, he was not arrested at the place of occurrence and it was found that prosecution has failed to prove the charge against him. Therefore, Md. Nafees was acquitted under Section 21(C) of the N.D.P.S. Act giving benefit of doubt.

Submissions on behalf of the appellants:

11. Learned counsel for the appellants submits that the prosecution witnesses are all members of the raiding team and there is contradictory statement of all the witnesses and their statements are not consistent with each other. It has been submitted that though the seizure has been made at Asanpur Kupha Koshi Mahasetu Toll Tax, however, the seizure list was prepared in the D.R.I. Office and two persons were brought to the said place to be made witness. However, conspicuously the said witnesses were not examined and even the prosecution



witnesses have not disclosed the name of the said seizure list witnesses. Learned counsel for the appellants submits that the appellants were not apprised of their right for being searched before a Gazetted Officer or a Magistrate nor they were brought before the Gazetted Officer or a learned Magistrate for search and therefore the provisions of Section 50 of the N.D.P.S. Act was not followed. The learned counsel for the appellants has further stated that sample of the seized goods was sent for chemical examination to the Central Revenue Control Laboratory, New Delhi but the chemical analyst has not been examined in this case and thereby the case of the defence has been seriously prejudiced.

12. The learned counsel for the appellants has further submitted that the mandatory provisions of Sections 41, 42, 52 and 57 of the N.D.P.S. Act have not been complied with. It has been submitted that the statement of the appellants recorded at D.R.I., Patna has not been read over and explained to them rather the appellants were forced to put their signatures on blank paper as has been submitted by the appellant, Ali Ahamad in his deposition as D.W. 4.

13. The learned counsel for the appellants submits that nothing has been recovered from the actual physical



possession of the appellants and the recovered contraband Heroin does not belong to the appellants. The learned counsel for the appellants has drawn the attention of this Court towards the fact that the case under Sections 23, 25 and 29 of the N.D.P.S. Act was not proved by the prosecution and hence the appellants were acquitted under the aforesaid Sections. Thus, drawing an inference that the present prosecution is false and concocted, it has been stated by the learned counsel for the appellants that the learned Trial Court has failed to appreciate and consider that the evidence which is on record suffers from serious infirmities and legal credibility in order to inspire confidence and therefore no reliance could be placed on the same in convicting the appellants.

14. Learned counsel for the appellants submitted that at the time of sampling six packets were prepared while three packets were kept with P.W. 3, Binod Kumar Mandal and the samples which were sent for chemical examination was sent after three days which itself raises doubt over the veracity of the prosecution case. It has been pointed out that the provisions of Section 52(3) of the N.D.P.S. Act has not been followed which provides that every person arrested and article seized under sub-Section 2 of Section 41, 42, 43 or 44 shall be forwarded without



unnecessary delay to the officer empowered under Section 53 or the Officer-in-Charge of the nearest police station. It has been argued that the sampling was not done at the spot but at the office of the D.R.I. and admittedly not in the presence of a Magistrate. It has been submitted that the Dy. Director who received the secret information had not been examined and so are the Panch witnesses, who also have been left out.

15. Learned counsel for the appellants citing the judgment of *Bharat Aambale vs. the State of Chhattisgarh (2025) SCC Online 110* has submitted that considering the facts of the case non-compliance of Section 52(A) has rendered the conviction as bad and thus cannot be sustained.

16. The learned counsel for the appellants has also relied upon a non-reportable judgment passed in the case of *Yusuf @ Asif* in Criminal Appeal No. 3191 of 2023 (arising out of SLP (Crl.) No. 3010 of 2023), wherein the Hon'ble Supreme Court has observed that in absence of any material on record that the samples of seized contraband were drawn in the presence of the Magistrate and that the inventory duly certified by the Magistrate, it is apparent that the seized contraband would not be a valid piece of primary evidence in the trial and therefore the trial as a whole would vitiate.



17. The learned counsel for the appellants has submitted that in view of the non-observance of the mandatory provisions of the N.D.P.S. Act as also non-examination of important witnesses of the seizure-memo the present conviction of the appellants cannot be sustained and therefore they may be acquitted of the charges.

Submissions on behalf of the D.R.I. :

18. Mr. Anshuman Singh, learned Senior Standing counsel for the respondent (D.R.I.) submits that the seizure of the contraband goods from the Truck from which the two appellants were apprehended is not disputed. It has been submitted that in the statements recorded under Section 67 of the N.D.P.S. Act the appellant, Ali Ahamad has admitted that the recovered Heroin (Narcotic Substance) was loaded in his Truck at Nallapada in Guwahati (Assam) and the same was to be delivered to Md. Nafees at Lucknow, Uttar Pradesh. The apprehended persons have admitted that the three packets of Heroin were loaded in his Truck on the direction of Md. Nafees. The learned counsel for the D.R.I. has further submitted that in follow-up action, the D.R.I., Zonal Unit, Lucknow conducted a raid at the address of the accused Md. Nafees who in his statement recorded under Section 67 of the N.D.P.S. Act has



admitted his involvement in smuggling of 3 packets at Rs. 18,22,50,000/- which was seized by the D.R.I., Patna.

19. It has further been submitted that the witnesses who have been examined on behalf of the prosecution have been consistent and there is no material contradictions in their statements. It has been submitted that all the officers involved in the operation and who were present at the time of seizure had been examined as prosecution witnesses and therefore, there was no shortcoming as far as evidence with regard to search and seizure is concerned. It has been submitted by the counsel for the D.R.I. that the ground taken by the appellants of non-preparation of seizure list at the spot is not tenable as the Truck was intercepted at around 02:00 hours and 1200 Kgs. of rice bran was loaded on the Truck and it was not humanly possible to search the Truck at the night and hence the same was brought along with the apprehended persons to the office of D.R.I., Patna and the examination, recovery and seizure were made in presence of the three accused and independent witnesses.

20. It has been submitted that the accused persons have admitted their involvement in the concealment of the three packets of Heroin in a secret cavity in the Truck and the appellant, Ali Ahamad being the owner of the said Truck and



driver by profession cannot deny his involvement in the present case.

21. The learned counsel for the D.R.I. has further pointed out that the details of the independent witnesses were part of the *Panchnama* and the same has been placed on record. It has also been submitted that the signatures of the independent witnesses were there on the seizure-memo along with the signatures of the accused and seizing officer and therefore the contention of the appellants that name of the independent witnesses were not disclosed is not correct and thus such plea is not tenable in law. It has been stated that the appellants had consented in writing about their willingness to be searched before the departmental Gazetted Officer as mandated under Section 50 of the N.D.P.S. Act and hence the contention of the appellants that provisions of Section 50 of the N.D.P.S. Act has not been followed is far-fetched.

22. The learned counsel for the D.R.I. has pointed out that the chemical report of the C.R.C.L., New Delhi was brought on record and the findings were clearly documented and the same had been considered by the learned Trial Court and therefore non-examination of the Chemical Analyst would not prove fatal to the prosecution case.



23. The learned counsel for the D.R.I. has relied upon the following judgments rendered by the Hon'ble Supreme Court of India:

(1) AIR 2023 SC 4684

(2) (2019) 10 SCC 649

(3) (2021) 10 SCC 100

(4) (2025) 5 SCC 155

24. The learned counsel for the D.R.I. has thus summarized his submissions that the statutory provisions of the N.D.P.S. Act has been directly complied with. It has been submitted that the confessions were made voluntarily and corroborated with forensic evidence, confirming the identity of the seized contraband. The chain of evidence remains consistent and undisputed and there is no possibility that the narcotics substance could have been planted in order to implicate the appellants. It has been pointed out that the certification of the inventory was made by the Magistrate and sampling was done and the said certificate has been exhibited without any objection by the defence. It has lastly been submitted that the entire complaint has been exhibited which contains all the relevant documents and therefore, the claim of the appellants of non-observance of the provisions of the N.D.P.S. Act does not have



any legs to stand and therefore, the conviction and sentence of the appellants deserves to be upheld, as there is no illegality in the finding arrived at by the learned Trial Court.

Consideration:

25. We have consider the rival submissions canvassed by the learned counsel for the parties and have also gone through the evidence produced by the parties before the learned Trial Court.

26. From the perusal of the records, it would appear that the present case initiated on the basis of a secret information dated 29.08.2017 given by the Intelligence Officer namely Rakesh Ranjan (P.W. 2) to the informant Binod Kumar Mandal (P.W. 3), who is the Intelligence Officer in D.R.I. Office, Patna, a raiding team was constituted under Sri P.R. Srivastava, Dy. Director, D.R.I., Patna, Sri Rakesh Ranjan (Sr. Intelligence Officer), Sri Ashok Kumar (Intelligence Officer), Sri Ramanuj Chaudhary (Intelligence Officer), Somesh Ranjan (Intelligence Officer), Rajesh Kumar (Intelligence Officer), J.K. Singh L.D.C. and others, a Tata Truck bearing Registration No. UP-75M-1743 was intercepted by D.R.I. raiding team at Asanpur Kupha Koshi Mahasetu Toll Tax on which the owner Ali Ahamad (the appellant), Sunil Kumar/the appellant (driver)



and Sri Ram Kishore (Khalasi) were travelling. The truck was seized but as complete search was not possible there the truck was taken to D.R.I. Office, Patna where the said truck was searched in presence of witnesses and found that the said truck was loaded with rice bran. After intensive search, a secret cavity was found which was manufactured in the truck in which three packets of Heroin was recovered which were marked as Sl. No. I to III and on weighing it was found to be total gross weight 6276 grams and net weight of 6075 grams. The sample of the recovered contraband article was examined by the Narcotic Kit and found to be Heroin. Thereafter, the sample of 5 grams each of 2 – 2 samples from all three packets were prepared and marked as A1, A2, B1, B2, C1 and C2 respectively. The worth of the seized article was valued at Rs. 18,22,50,000/-. Thereafter, the seizure list was prepared on which all three apprehended accused persons and witnesses were put their signatures.

27. The informant, Binod Kumar Mandal was examined as P.W. 3 and he has stated in his deposition that he got an information from his Senior Intelligence Officer that a consignment of Heroin was coming from Assam and was being taken to Lucknow and on such information a team was



constituted and the Truck was intercepted at Asanpur Kupha Koshi Mahasetu Toll Tax at around 02:00 A.M. on 30.08.2017. He has stated that three persons were apprehended who disclosed their names as Sunil Kumar (driver)/appellant, Ramkishore – co-driver and Ali Ahamad (owner)/appellant. He has stated that said Ali Ahamad informed that there was rice bran loaded in the Truck. Thereafter, this witness giving notice under Section 50 of the N.D.P.S. Act to all the apprehended persons searched them physically however nothing was recovered from their physical possession. He has deposed that when the plan to search the vehicle was made, the appellants admitted that there was Heroin loaded on the Truck which they were carrying from Guwahati to Lucknow. He has categorically stated that as it was too late in the night they took the vehicle along with the apprehended accused persons to the D.R.I. Office, Patna where they reached at around 08:00 A.M. and thereafter the vehicle was thoroughly searched and one secret cavity was found on the hood of the Truck which was fastened with nut-bolts. On opening, three brown packets were recovered to which all the apprehended persons admitted the same to be Heroin and the same were weighed and two samples each of 5 grams was prepared from the three packets which was seized



from the Truck. It has further been stated that a seizure list was prepared which was signed by all the apprehended accused persons as well as the *Panch* which was identified by P.W. 3 and the same was admitted as exhibit. P.W. 3 in his further examination has stated that he had made an application for certification of the seized contraband goods and by the orders of the Court the certification was done in presence of Sri Manish Kumar Singh, Judicial Magistrate, 1st Class and during such certification two samples each were prepared from every packet and the same was marked and he has also identified the certification which was marked as Ext. 9. He has further deposed that the said samples S1, S3 and S5 were sent to C.R.C.L., New Delhi for test. He has identified the seizure report, the letters and the complaint petition which have all been marked as exhibits.

28. P.W. 1/Ashok Kumar was an Intelligence Officer posted at the relevant time at D.R.I., Patna. He in his deposition has also supported the prosecution case reiterating the facts as stated in the FIR as well as P.W. 3 in his examination-in-chief. The defence during the cross-examination has not been able to bring out something which would doubt the credibility of his evidence as well as any



fact contrary to what had been stated in the FIR or by the other witnesses.

29. P.W. 2/Rakesh Ranjan is a Senior Intelligence Officer, D.R.I., Patna who too in his examination-in-chief has given a detailed description as to how the Truck was seized and thereafter the same was brought back to the office of D.R.I. and the seizure were made in presence of independent witnesses and sampling was done. During his cross-examination he has proved the fact that the signature of the accused was on the notice under Section 50 of the N.D.P.S. Act.

30. P.W. 4/Somesh Ranja was also an Intelligence Officer posted at D.R.I., Patna at the relevant time and he has also reiterated the entire facts verbatim as stated in the FIR and there is no contradiction whatsoever with regard to the search and seizure. Even during the cross-examination nothing has come in order to disbelieve the veracity of his statements.

31. P.W. 5/Ramanand Chaudhary has stated that he was part of the team who had conducted the raid at Kupaha Toll Plaza and the intercepted Truck was brought to



the office of the D.R.I., Patna where it was searched extensively and on the statements of Ali Ahamad and Sunil Kumar a secret cavity was found on the hood of the vehicle and three packets containing the contraband was recovered. The defence could not bring out any discrepancy in the mode and manner of search and seizure from the said witness.

32. P.W. 7/Jagat Narayan happens to be the godown in-charge, Custom Headquarter, Patna, who in his deposition has stated that the seized goods were kept in the godown after making of an inventory upon which his signature was there along with that of Binod Mandal. During his cross-examination he has stated that whatsoever seized goods is deposited in the godown and entry is made in the register which he had not brought to the court.

33. The defence has also examined four witnesses. However, the same is not relevant for the present appellants.

34. On the point of search and seizure and non-compliance of Sections 42 and 50 of N.D.P.S. Act, it has been noted that P.W. 3, Binod Kumar Mandal was consistent in his



testimony and the said fact was supported by P.W. 2, Rakesh Ranjan, who had also given the exact description of the search and seizure after due compliance like notice under Section 50 of the N.D.P.S. Act and therefore it could not be inferred that there was any false implication being made.

35. We are reminded of the judicial pronouncements made by the Hon'ble Supreme Court in State of Punjab vs. Balbir Singh (1994) 3 SCC 299 wherein the Hon'ble Supreme Court in paragraph -18 has observed:

“18. Under the Act wide powers are conferred on the officers and deterrent sentences are also provided for the offences under the Act. It is obvious that the legislature while keeping in view the menace of illicit drug trafficking deemed it fit to provide for corresponding safeguards to check the misuse of power thus conferred so that any harm to innocent persons is avoided and to minimise the allegations of planting or fabricating by the prosecution, Section 50 is enacted.”

36. In the present case, the records confirms that witnesses, who had accompanied the search (P.Ws. 2 and 3) were consistent in their statements with regard to search and seizure. We have also noticed that there were independent witnesses who were taken along by the officers however they were not examined during the course of trial but the seizure-memos and *Panchnama* contained their signatures and that of



the appellants. No evidence of tampering and procedural irregularity has been found.

37. However, in the present case we have seen that not only notice under Section 50 of the N.D.P.S. Act was served, the recovery was made from the Truck and for the search of the same there was no application of Section 50 of the Act.

38. Thus, in view of above, there is no ambiguity or illegality as far as search and seizure is concerned.

39. We shall now go on to analyze the factum of possession and the knowledge of the presence of narcotics substance on the Truck by the appellants during the search and seizure made by the D.R.I. We have seen that P.W. 2 and P.W. 3, who were the officers who had conducted the search, they have deposed that nothing was recovered from the personal physical possession of the appellants rather on their disclosure the narcotics substance was recovered from the secret cavity of the Truck. The other prosecution witnesses have supported the said fact and therefore as far as the possession and knowledge of the narcotics substance being carried on the Truck is concerned, the same was well within the knowledge of the appellants and as we are aware by the various judicial pronouncements that constructive possession under N.D.P.S. Act exists to control of



the place or vehicle containing the narcotics and such possession is sufficient under the N.D.P.S. Act as it includes control over the container where the contraband was found, even if the accused was not physically holding the substance. The appellants' signature on judicial documents and persons at the place of interception, has testified by P.W. 2 and P.W. 3 establishes constructive possession beyond reasonable doubt.

40. At this juncture, we take note of the observation made by the Hon'ble Supreme Court in the case of ***Union of India vs. Md. Nawaj Khan***, reported in (2021) 10 SCC 100, as contained in paragraph- 25 and 26 :

“25. We shall deal with each of these circumstances in turn. The respondent has been accused of an offence under Section 8 of the NDPS Act, which is punishable under Sections 21, 27-A, 29, 60(3) of the said Act. Section 8 of the Act prohibits a person from possessing any narcotic drug or psychotropic substance. The concept of possession recurs in Sections 20 to 22, which provide for punishment for offences under the Act. In Madan Lal v. State of H.P. [Madan Lal v. State of H.P., (2003) 7 SCC 465 : 2003 SCC (Cri) 1664] this Court held that : (SCC p. 472, paras 19-23 & 26)

“19. Whether there was conscious possession has to be determined with reference to the factual backdrop. The facts which can be culled out from the evidence on record are that all the accused persons were travelling in a vehicle and as noted by the trial court they were known to each other and it has not been explained or shown as to how they travelled together from the same destination in a vehicle which was not a public vehicle.



20. Section 20(b) makes possession of contraband articles an offence. Section 20 appears in Chapter IV of the Act which relates to offences for possession of such articles. It is submitted that in order to make the possession illicit, there must be a conscious possession.

21. It is highlighted that unless the possession was coupled with the requisite mental element i.e. conscious possession and not mere custody without awareness of the nature of such possession, Section 20 is not attracted.

22. The expression “possession” is a polymorphous term which assumes different colours in different contexts. It may carry different meanings in contextually different backgrounds. It is impossible, as was observed in *Supt. & Remembrancer of Legal Affairs, W.B. v. Anil Kumar Bhunja* [*Supt. & Remembrancer of Legal Affairs, W.B. v. Anil Kumar Bhunja*, (1979) 4 SCC 274 : 1979 SCC (Cri) 1038] to work out a completely logical and precise definition of “possession” uniform[ly] applicable to all situations in the context of all statutes.

23. The word “conscious” means awareness about a particular fact. It is a state of mind which is deliberate or intended.

26. Once possession is established, the person who claims that it was not a conscious possession has to establish it, because how he came to be in possession is within his special knowledge. Section 35 of the Act gives a statutory recognition of this position because of the presumption available in law. Similar is the position in terms of Section 54 where also presumption is available to be drawn from possession of illicit articles.”

“26. What amounts to “conscious possession” was also considered in *Dharampal Singh v. State of Punjab* [*Dharampal Singh v. State of Punjab*, (2010) 9 SCC 608 : (2010) 3 SCC (Cri) 1431], where it was held that the knowledge of possession of contraband has to be gleaned from the facts and circumstances of



a case. The standard of conscious possession would be different in case of a public transport vehicle with several persons as opposed to a private vehicle with a few persons known to one another. In Mohan Lal v. State of Rajasthan [Mohan Lal v. State of Rajasthan, (2015) 6 SCC 222 : (2015) 3 SCC (Cri) 881] , this Court also observed that the term “possession” could mean physical possession with animus; custody over the prohibited substances with animus; exercise of dominion and control as a result of concealment; or personal knowledge as to the existence of the contraband and the intention based on this knowledge.”

41. Another contention raised by the learned counsel for the appellants with regard to the non-adherence to the provisions of Section 52(A) of the N.D.P.S. Act. As far as the preparation of an inventory of such narcotics substance and certifying the correctness of the inventory by a Magistrate is concerned, it would be relevant to refer to Ext.-9 wherein the inventory of the seized goods as well as the detail of the sampling being done was made by a 1st Class, Judicial Magistrate namely Sri Manish Kumar and a certificate under Section 52(A)(3) was issued to that effect. From perusal of such certificate it would be evident that the detail description of the goods under Sl. No. 1 has been given and so are the details of the two samples prepared from the 3 packets which was seized from the Truck. The entire inventory of the seized goods including the vehicle in question as well as the rice bran packets and the samples were recorded with their origin, quantity and



value. This certificate goes on to show that as far as the certification of the inventory as contained under Section 52(A) of the N.D.P.S. Act is concerned, the same was done in a proper manner and the defence cannot question the same only on account of the fact that the Magistrate who had prepared the certificate has not been examined.

42. It has been argued on behalf of the appellants that the chemical analyst has not been examined. However, the F.S.L. report received from C.R.C.L., New Delhi which forms part of the complaint categorically concludes that the sample under reference answers positive test for Morphine, which as per the schedule of the N.D.P.S. Act, is a narcotic goods.

43. The defence has not been able to prove anything contrary to show that the forensic report was tampered with or the chain of custody of seized narcotics and forensic evidence report had no co-relation with each other and therefore the chain of custody remain intact without any dispute.

44. It is a settled law that once the prosecution establishes *prima facie* case in a narcotic offence, the burden shifts to the accused to prove their innocence and failure to do so will draw conviction against them.

45. The point raised by the learned counsel for the



appellants with regard to the conditions under Section 67 of the N.D.P.S. Act being presumptive in nature and cannot be taken against the appellant though has some force *prima facie* however, if the confessional statement is corroborated with other evidence the same can be taken against the accused/appellants.

46. We have already observed that it was on the disclosure made by the apprehended appellants in their statements made under Section 67 of the N.D.P.S. Act that the narcotic substance were recovered from a secret cavity closed with the help of nut-bolts.

47. Thus, from the facts and circumstances discussed hereinabove and considering the various judicial pronouncements, we are of the considered opinion that the prosecution has proved the case beyond reasonable doubt against the appellants and there is no illegality in the finding arrived at by the learned Trial Court holding the appellants guilty of the offences as alleged.

48. We find that the Trial Court relying on the testimony of the prosecution witnesses and also taking into account the documentary evidence which adequately goes on to prove the guilt of the appellants has rightly convicted the



appellants.

49. In ultimate analysis, we find no plausible reason to interfere with the judgments of the learned Trial Court. Both the appeals would fail, they are dismissed accordingly.

50. Let a copy of this judgment with the complete Trial Court records be sent to the concerned Trial Court through a special messenger immediately to ensure the availability of the records in the Trial Court at the earliest.

(Sourendra Pandey, J)

Rajeev Ranjan Prasad, J:

krishna/-

(Rajeev Ranjan Prasad, J)

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