

CRA (DB) 263 of 2023
With
CRAN 2 of 2025
James Kevin Edward
Vs.
Union of India

For the Appellant	:	Mr. Angshuman Chakraborty, Adv., Mr. S.S. Saha, Adv.
For the NCB	:	Mr. Krishnendu Bhattacharyya, Adv. Mr. Uttam Basak, Adv.
CAV On	:	12.11.2025
Judgment On	:	21.11.2025

1. The judgment and order of conviction dated 14.07.2023 passed by the Learned Additional Sessions Judge, 6th Court cum Special Court (NDPS Act), Barasat, North 24 Parganas in connection with special case no. N-07/2018 arising out of the NCB Crime No. 01/NCB/KOL/2018 convicting

the appellant under Section 21(C) of the NDPS Act, 1985 has been assailed in this appeal mainly on two grounds.

2. Learned Counsel of the appellant Mr. Chakraborty has submitted that the provisions under Section 50 of Narcotic and Psychotropic substances Act, 1985 (Act, 1985 in short) have not been complied with since the appellant was given an option to be searched in presence of a gazetted officer who was already in the raiding team.

3. Mr. Chakraborty has further submitted that the provisions of Section 52-A of Act, 1985 were also not complied with by the concerned officers. In support of his contention the learned Counsel of the appellant has relied upon judicial decisions reported in **2024 Supreme (Online) (HC) 2043 Aizul Seikh @ Ajijul Sk. vs. State of West Bengal, 2023 INSC 634 Mangilal vs. State of Madhya Pradesh** and **2024 INSC 158 Mohammed Khalid and Another vs. The State of Telangana**.

4. According to Mr. Chakraborty as the prosecution is unable to show that the provisions under Sections 50 and 52-A of the Act, 1985 were duly complied with, the conviction and sentence of the accused is not sustainable in law.

5. Mr. Bhattacharya appearing for the NCB has submitted that Section 50 of the Act, 1985 will apply only when the contraband article is found from the person of the accused. But if the accused hands over the

contraband article by himself to the Seizing Officer, there is no scope for application of Section 50 of the Act. The learned Counsel has taken us through the evidence of the prosecution witnesses to support his contention. Mr. Bhattacharya has further submitted that in **Ranjan Kr. Chadha vs. State of Himachal Pradesh reported in 2023 AIR (SC) 5164**, at **paragraph 64** the requirements under Section 50 of the Act have been discussed by the Hon'ble Supreme Court and it has been clearly laid down that Section 50 is applicable only in case of search of person of the suspect under the provisions of NDPS Act and would have no application where a search was conducted under any other statute in respect of any offence. Mr. Bhattacharyya has also relied upon a decision of a Coordinate Bench which has been reported in **2023 Lawsuit (Cal) 248 Govender Savithree @ Cindy vs. Union of India** in support of his contention that when an accused voluntarily handed over the contraband article, Section 50 of the Act of 1985 has no manner of application.

6. The facts of this case are reflected in the FIR wherein it was stated as follows:-

“Acting on specific information received from a reliable source that a huge quantity of Cocaine is going to be delivered by a Nigerian national, Male aged about 28 years, in-front of City Center-2, Action Area-IID, New Town, Kolkata, WB-700 136 on 04.01.2018 at around 1400 hrs.

The same information was firstly reduced in writing in the proforma prescribed in NCB-1 and then after intimating the same to the superior officer and having obtained the necessary permission of the competent authority, a team of NCB Officers & Staff led by Superintendent (Gazetted Officer), NCB KZU Kolkata left the NCB office premises at New Town, Kolkata at about 1200 hrs. on 04.01.2018 and reached in front of City Centre-2, Action Area-IID, New Town. Kolkata. WB-700 136 at around 1230 hrs. on 04.01.2018. Then NCB team approached two persons standing there to act as independent witnesses and apprised them about the input available with the team during the search of the suspected person, to which the said two persons gave their consent. The persons introduced themselves as Shri Ratan Mondal, S/o Late Shayan Mondal, 33/04, Ashok Nagar, Chinar Park, Kolkata & Shubham Das, S/o Shri Laltu Das, R/o 72-Rabindra Pally, Keshtopur, Kolkata. Then the team of NCB mounted surveillance in-front of the City Centre-2, Action Area-IID, New Town, Kolkata, WB-700

136. At about 1500 hrs a taxi stopped near the exit of the by lane in front of the City Centre-2. A person appears to be Nigerian by look get down from the taxi and stand by the roadside there. The team of NCB surrounded the person and asked his name and nationality. The person intimated his nationality as Nigerian by showing his passport. Then the NCB team members introduced themselves by showing their Govt. Identity Card and also introduced both independent witnesses and apprised him about the input available with the team. On asking the person, he introduced himself as James Kevin Edward, Male-28 years, a Nigerian National by showing his passport.

The team then explained him about the provisions u/s-50 of the NDPS Act 1985 (as amended) and informed him that he has the legal right to tender his personal search before any Magistrate or Gazetted Officer empowered u/s-42 of the NDPS Act 1985 (as amended) and he can also search every team members of NCB as well as both independent witnesses present before him in writing. He was further intimated

that a Gazetted Officer was already present in the team. James Kevin Edward replied in writing that neither he wants to be searched before any Magistrate or Gazetted Officer nor he wants to search the team members of NCB or independent witnesses. Subsequently, he voluntarily handed over the following items and showed his empty pockets.....”

7. The prosecution has examined 5 witnesses in support of its case. PW 1 has specifically deposed that after detention of the appellant and also after serving notice under Section 50 of the Act, 1985, he was informed that he had the right to be searched in presence of the Gazetted Officer but the appellant declined to exercise his right and voluntarily handed over two plastic pouches of contraband articles. We have gone through the cross-examination of the PW 1. No suggestion was given from the side of the defence denying the alleged fact that the accused voluntarily handed over the contraband substances to the PW 1. It also appears from the deposition of PW 4, Santanu Aich that he has also stated that the appellant handed over the contraband to PW 1 and also showed his empty pockets. The statement of the PW 4 was not denied specifically at the time of his cross-examination. PW 5 Aquil Akhtar has also deposed that the contrabands were handed over by the appellant but such deposition was not denied during his cross-examination.

8. Therefore, from the above, there is clear evidence from 3 witnesses that the appellant handed over the contraband articles to PW1 and such statements were not denied by the defence consequently it can be safely concluded that the accused had on his own handed over the alleged substances to PW 1.

9. If we go through the provisions of Section 50 we shall find that the same are applicable when there is a necessity of searching the body of the concerned person who is alleged to have been possessing contraband substances in his or her body. In this case the situation is different since there are unchallenged testimonies of the prosecution witnesses that the appellant himself handed over the contraband articles to the PW 1 being the complainant of this case. The Judicial decision in **State of Rajasthan vs. Parmanand and another (2014) 5 SCC 345** has, time and again, been placed for our consideration by the learned counsel of the appellant but the same does not apply in the factual circumstances of this case.

10. However, it is astonishing that although the prosecution claimed that seizure of contraband articles was done in the presence of two independent witnesses namely Subham Das and Ratan Mondal, the said independent witnesses were not produced before the learned Trial Judge. If the seizure of the contraband articles was done in the presence of independent witnesses there is no justification for non-production of the said witnesses before the learned Trial Court. There is no material on record to show that any attempt was made to produce such witnesses before the Court. If the witnesses did

not turn up in spite of receipt of summons, the learned Special Court has been given sufficient power under the law to secure the presence of such recalcitrant witnesses before it. However, the State has failed to show any material on record that attempt was made to produce such witnesses. There is also an allegation that the provisions of Section 52-A of the Act, 1985 were not complied with by the investigation agency. If we peruse the provisions laid down in the aforesaid section we shall find that it relates to the disposal of the seized narcotic drugs and psychotropic substances within a time frame. Section 52-A (2) reads as follows:-

“(2)Where any [narcotic drugs, psychotropic substances, controlled substances or conveyances] has been seized and forwarded to the officer-in-charge of the nearest police station or to the officer empowered under section 53, the officer referred to in sub-section (1) shall prepare an inventory of such [narcotic drugs, psychotropic substances, controlled substances or conveyances] containing such details relating to their description, quality, quantity, mode of packing, marks, numbers or such other identifying particulars of the [narcotic drugs or psychotropic substances] or the packing in which they are packed, country of origin and other particulars as the officer referred to in sub-

section (1) may consider relevant to the identity of the narcotic drugs or psychotropic substances in any proceedings under this Act and make an application, to any Magistrate for the purpose of—

(a) certifying the correctness of the inventory so prepared; or

(b) taking, in the presence of such Magistrate, photographs of such drugs, substances or conveyances and certifying such photographs as true; or

(c) allowing to draw representative samples of such drugs or substances, in the presence of such Magistrate and certifying the correctness of any list of samples so drawn.

(3) Where an application is made under subsection (2), the Magistrate shall, as soon as may be, allow the application.

(4) Notwithstanding anything contained in the Indian Evidence Act, 1872 (1 of 1872) or the Code of Criminal Procedure, 1973 (2 of 1974), every court trying an offence under this Act, shall treat the inventory, the photographs of [narcotic drugs, psychotropic substances,

controlled substances or conveyances] and any list of samples drawn under subsection (2) and certified by the Magistrate, as primary evidence in respect of such offence.”

11. In the case of **Mangilal (supra)** it has been observed that Section 52-A of NDPS Act is a mandatory rule of evidence which requires the physical presence of a Magistrate followed by an order facilitating his approval either for certifying an inventory or for a photograph taken apart from a list of samples drawn. The Hon’ble Supreme Court in the said decision has quoted with approval the observation in the judicial decision reported in **(2016) 3 SCC 379, Union of India vs. Mohanlal** which is reproduced hereinbelow.

“16. Sub-section (3) of Section 52-A requires that the Magistrate shall as soon as may be allow the application. This implies that no sooner the seizure is effected and the contraband forwarded to the officer-in-charge of the police station or the officer empowered, the officer concerned is in law duty-bound to approach the Magistrate for the purposes mentioned above including grant of permission to draw representative samples in his presence, which samples will then be enlisted and the correctness of the list of samples so drawn

certified by the Magistrate. In other words, the process of drawing of samples has to be in the presence and under the supervision of the Magistrate and the entire exercise has to be certified by him to be correct.

17. The question of drawing of samples at the time of seizure which, more often than not, takes place in the absence of the Magistrate does not in the above scheme of things arise. This is so especially when according to Section 52-A(4) of the Act, samples drawn and certified by the Magistrate in compliance with sub-sections (2) and (3) of Section 52-A above constitute primary evidence for the purpose of the trial. Suffice it to say that there is no provision in the Act that mandates taking of samples at the time of seizure. That is perhaps why none of the States claim to be taking samples at the time of seizure.

18. Be that as it may, a conflict between the statutory provision governing taking of samples and the Standing Order issued by the Central Government is evident when the two are placed in juxtaposition. There is no gainsaid that such a

conflict shall have to be resolved in favour of the statute on first principles of interpretation but the continuance of the statutory notification in its present form is bound to create confusion in the minds of the authorities concerned instead of helping them in the discharge of their duties. The Central Government would, therefore, do well, to re-examine the matter and take suitable steps in the above direction."

12. In **Aizul Seikh @ Ajijul Sk. (supra)** a coordinate bench of this Court has laid down that in the judicial decision in **Mohanlal (supra)** the Apex Court held that compliance of Section 52-A of the Act, 1985 is mandatory. Samples are to be drawn in the presence of the Magistrate and duly certified by him. Certified samples are to be sent for chemical examination. No samples shall be drawn at the spot. In the said case law the Apex Court's decision in **Simranjit Singh vs. State of Punjab, (2024) 14 SCC 222** has also been discussed. According to the Coordinate Bench, sub-section 3 of Section 52-A requires that the Magistrate shall, as soon as may be, allow the application. This implies that no sooner the seizure is effected and the contraband forwarded to the Officer-in-charge of the Police station or the Officer empowered, the officer concerned is in law duty bound to approach the Magistrate for the purposes mentioned above including the grant of permission to draw representative samples in his presence, which samples will then be enlisted and the correctness of the list of samples so drawn

certified by the Magistrate. In other words, the process of drawing of samples has to be in the presence and under the supervision of the Magistrate and the entire exercise has to be certified by him to be correct. It is also held by the Co-ordinate Bench that the question of drawing of samples at the time of seizure which, more often than not, takes place in the absence of the Magistrate does not in the above scheme of things arise. This is so especially when according to Section 52-A(4) of the Act, samples drawn and certified by the Magistrate in compliance with Sub-Section (2) and (3) of Section 52-A above constitute primary evidence for the purpose of the trial. It is also laid down that there is no provision in the Act that mandates taking of samples at the time of seizure. In the case in hand, it appears from the exhibit list that although the offence was alleged to have been committed on 04.01.2018, Exhibit 17 (collectively) shows that compliance under Section 52-A took place on 26.03.2019. The record further shows that samples were sent to the Central Forensic Science Laboratory on 08.01.2018. It goes to show that the samples sent to the CFSL on 08.01.2018 were not drawn in the presence of the concerned Judicial Magistrate as per Section 52-A of the Act. Therefore, it transpires that the above actions on the part of the concerned NCB officers are not in accordance with law.

13. Therefore, after considering the materials on record the conviction and sentence of the appellant cannot be sustained mainly on two scores, namely, that the independent witnesses were not called on to face the cross-

examination of the appellant and further there is a gross violation of the provisions under Section 52-A of the Act, 1985.

14. It is true that recently in a case reported in **(2025) 8 SCC 452 Bharat Aamble vs. the State of Chhattisgarh**, the Hon'ble Supreme Court has been pleased to lay down certain guidelines for considering the issue whether there was violation of provisions of Section 52-A of the Act, 1985 or not. Para 50 of the said decision is quoted herein below for proper understanding of the issue of violation of Section 52(A) as aforesaid:-

“50. We summarize our final conclusion as under:-

(I) Although Section 52A is primarily for the disposal and destruction of seized contraband in a safe manner yet it extends beyond the immediate context of drug disposal, as it serves a broader purpose of also introducing procedural safeguards in the treatment of narcotics substance after seizure inasmuch as it provides for the preparation of inventories, taking of photographs of the seized substances and drawing samples therefrom in the presence and with the certification of a magistrate. Mere drawing of samples in presence of a gazetted officer would not constitute sufficient compliance

of the mandate under Section 52A sub-section (2) of the NDPS Act.

(II) Although, there is no mandate that the drawing of samples from the seized substance must take place at the time of seizure as held in Mohanlal (supra), yet we are of the opinion that the process of inventorying, photographing and drawing samples of the seized substance shall as far as possible, take place in the presence of the accused, though the same may not be done at the very spot of seizure.

(III) Any inventory, photographs or samples of seized substance prepared in substantial compliance of the procedure prescribed under Section 52A of the NDPS Act and the Rules / Standing Order(s) thereunder would have to be mandatorily treated as primary evidence as per Section 52A sub-section (4) of the NDPS Act, irrespective of whether the substance in original is actually produced before the court or not.

(IV) The procedure prescribed by the Standing Order(s) / Rules in terms of Section 52A of the NDPS Act is only intended to guide the officers and to see that a fair procedure is

adopted by the officer in-charge of the investigation, and as such what is required is substantial compliance of the procedure laid therein.

(V) Mere non-compliance of the procedure under Section 52A or the Standing Order(s) / Rules thereunder will not be fatal to the trial unless there are discrepancies in the physical evidence rendering the prosecution's case doubtful, which may not have been there had such compliance been done. Courts should take a holistic and cumulative view of the discrepancies that may exist in the evidence adduced by the prosecution and appreciate the same more carefully keeping in mind the procedural lapses.

(VI) If the other material on record adduced by the prosecution, oral or documentary inspires confidence and satisfies the court as regards the recovery as-well as conscious possession of the contraband from the accused persons, then even in such cases, the courts can without hesitation proceed to hold the accused guilty

notwithstanding any procedural defect in terms of Section 52A of the NDPS Act.

(VII) Non-compliance or delayed compliance of the said provision or rules thereunder may lead the court to drawing an adverse inference against the prosecution, however no hard and fast rule can be laid down as to when such inference may be drawn, and it would all depend on the peculiar facts and circumstances of each case.

(VIII) Where there has been lapse on the part of the police in either following the procedure laid down in Section 52A of the NDPS Act or the prosecution in proving the same, it will not be appropriate for the court to resort to the statutory presumption of commission of an offence from the possession of illicit material under Section 54 of the NDPS Act, unless the court is otherwise satisfied as regards the seizure or recovery of such material from the accused persons from the other material on record.

(IX) The initial burden will lie on the accused to first lay the foundational facts to show that

there was non-compliance of Section 52A, either by leading evidence of its own or by relying upon the evidence of the prosecution, and the standard required would only be preponderance of probabilities.

(X) Once the foundational facts laid indicate non-compliance of Section 52A of the NDPS Act, the onus would thereafter be on the prosecution to prove by cogent evidence that either (i) there was substantial compliance with the mandate of Section 52A of the NDPS Act OR (ii) satisfy the court that such non-compliance does not affect its case against the accused, and the standard of proof required would be beyond a reasonable doubt.”

15. From the above it is revealed that Hon'ble Apex Court has mentioned that mere non-compliance of the procedure under the above Section or standing order(s) or rules will not be fatal to the trial unless there are discrepancies in the physical evidence rendering the prosecution's case doubtful, which may not have been there had such compliance been done. It is also held in the said case law that the Court should take a holistic and cumulative view of the discrepancies that may exist in the evidence adduced by the prosecution and appreciate the same more carefully keeping in mind the procedural lapses.

16. In the case at hand it appears that two independent witnesses were not brought on dock by the prosecution and further the representative samples as required under Section 52-A of NDPS Act were not sent to the chemical examiner and further such representative samples and relevant certificates were issued by the concerned Judicial Magistrate more than one year and two months after the actual seizure of the contraband articles.

17. The learned trial Judge did not consider the non-production of independent witnesses during trial and also the issue of drawing representative samples much beyond the actual date of seizure.

18. Needless to say, when a statute prescribes an act to be done in a particular manner, the same has to be done in that manner and not in another manner not prescribed under the law.

19. In view of the above, we are not in the agreement with the learned trial judge in convicting the appellant on the grounds already discussed above.

20. The judgment and order passed by the Learned Additional Sessions Judge, 6th Court cum Special Court (NDPS Act), Barasat, North 24 Parganas in connection with special case no. N-07/2018 arising out of the NCB Crime No. 01/NCB/KOL/2018 convicting the appellant under Section 21(C) of the NDPS Act, 1985 is hereby set aside. The appellant James Kevin Edward be set at liberty at once and be released from the custody if not wanted in any

other case. Seized passport be returned to the appellant in accordance with relevant rules after the expiry of the period of appeal. In the event no appeal is preferred against this judgment and order, after expiry of the period prescribed for preferring appeal, the Ministry of External Affairs shall take all necessary steps for repatriation of the appellant to his country of origin. Let the Registry forward a copy of this order to the relevant officer in the Ministry of External Affairs, Government of India.

21. **CRA (DB) 263 of 2023 with CRAN 2 of 2025** is accordingly disposed of.

22. Urgent photostat certified copies of this Judgment, if applied for, be supplied to the parties on compliance of all necessary formalities.

I Agree.

(APURBA SINHA RAY, J.)

(ARIJIT BANERJEE, J.)