

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.178 of 2011**

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1. Md. Manowar, Son of Md. Nazir, resident of village – Jahanpur, P.S.- Palasi, District – Araria.
 2. Md. Arif, son of Sah Nazir @ Majir, resident of village – Jehanpur Dumariya, P.S.-Palasi, District – Araria.
 3. Md. Zafar @ Md. Jafar, son of Md. Shahnul Haque, resident of village – Chakai, P.S.-Zoki, District – Araria.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Atul Dayal, *Amicus Curiae*.

For the Respondent/s : Mr. Abhay Kumr, APP.

**CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT**

Date : 16-03-2026

Heard Mr. Atul Dayal, learned *Amicus Curiae* appearing on behalf of the appellants and Mr. Abhay Kumar, learned APP for the State.

2. The present appeal has been filed under Section 374 (2) and 389(1) of the Code of Criminal Procedure challenging the judgment of conviction dated 15.12.2010 and order of sentence dated 21.12.2010 passed by the Learned Sessions Judge, Katihar (Special Judge) in G.R. Case No. 82/2009, whereby and whereunder the appellants have been convicted for the offence punishable under Sections 328/34, 379/34 and 411/34 of the Indian Penal Code and have been sentenced to undergo Rigorous Imprisonment for 10 years for the offence under Section 328/34 of the Indian penal code,



rigorous imprisonment for 3 years under section 379/34 of the Indian Penal code and Rigorous Imprisonment for 3 years under Section 411/34 of the Indian Penal code. The appellants were further directed to pay fine of Rs.5000/- each for the offence under Section 328/34 I.P.C., Rs. 5000/- each for the offence under section 379/34 I.P.C. and Rs. 5000/- each under Section 411/34 I.P.C. and as such all the three appellants are liable to pay a fine of Rs. 15,000/- and if the fine is not paid, the appellants will undergo Rigorous Imprisonment for one year. All the sentences were ordered to run concurrently. The appellants were also directed to pay compensation of Rs. 25000/- to the victim. The appellants were acquitted from the charges under Section 22 of Narcotic Drugs and Psychotropic Substance Act (NDPS).

3. Being aggrieved and dissatisfied with the aforesaid judgment of conviction and order of sentence, the appellants have preferred the present appeal before this Court. The appellants have assailed the impugned judgment primarily on the ground that the learned trial court failed to appreciate the evidence available on record in its proper perspective and has wrongly recorded the conviction of the appellants despite the existence of serious contradictions and deficiencies in the



prosecution case.

4. The prosecution case arose out of Purnea (Katihar) Rail P.S. Case No. 60 of 2009 instituted on the basis of the fard-beyan of Md. Kalim (P.W.3) recorded by Sub-Inspector Anil Kumar (P.W.8) at Purnea Junction on 24.07.2009. The informant stated that he had travelled from Delhi to Katihar by Saptakranti Express and reached Purnea Junction at about 4:00 A.M., from where he intended to proceed to Banmankhi. While waiting for the train, three to four persons present at the platform told him that the train to Banmankhi would arrive at about 7:00 A.M. and persuaded him to sit with them on a chadar spread on the platform. One of them first offered him biscuits which he declined, and thereafter another person brought two cups of tea and insisted to drink it stating that they were also Mohammadans. After consuming the tea, the informant began to feel giddy within 15–20 minutes and went towards a phone booth to make a call. In the meantime, three of the persons followed him and shortly thereafter one of them snatched his bag and Rs. 3,000/- from his pocket and attempted to flee towards the northern side of the platform. On his raising alarm, the persons present on the platform chased and apprehended the culprits and brought them along with the bags to the R.P.F. post.



The informant thereafter lost his senses and was taken to the hospital for treatment. After his discharge in the evening, he gave the fardbeyan at the police station and identified the apprehended persons namely Arif, Md. Jafar and Md. Manowar, stating that they had jointly administered the intoxicating substance in tea and attempted to steal his belongings, while another associate namely Md. Jamil managed to escape.

5. On the basis of the statement of the informant, the F.I.R being Katihar (Purnea P.F.) Rail P.S. Case No. 60/2009 was registered for the offences under sections 328, 379 and 411/34 of the Indian Penal Code and Section 22 of the N.D.P.S. Act. After institution of the FIR, the police proceeded with the investigation and after completion of the investigation, charge-sheet was submitted. Thereafter, the trial court took cognizance against the appellants and the case was committed to the Court of Sessions for trial.

ARGUMENT OF THE PARTIES

6. Learned *Amicus Curiae* submitted that there is no involvement of the appellants in the alleged occurrence and they have falsely been implicated in the case. The confessional statement of the accused before the police cannot be treated as an evidence in the eye of law. The R.P.F. personnel who brought



the victim to the hospital has not been examined as an witness and his non-examination creates serious doubt about the genuinity of the case. He further submitted that there is neither any evidence that any poison was administered to the victim nor any tablet recovered could be scientifically said to have contained poison. He further submitted that there is no evidence that the appellants mixed something with tea except the oral evidence of the prosecutrix. No T.I. parade was conducted nor the seized bags / items were produced before the court. According to the doctor, no psychological chemical examination of the victim was done. In such circumstances, it was argued that the prosecution has failed to prove the charges beyond all reasonable doubts and the trial court has miserably failed to appreciate the evidence, leading to failure of justice and therefore the conviction of the appellant under Sections 328/34, 379/34 and 411/34 of the Indian Penal Code is liable to be set aside.

ARGUMENT ON BEHALF OF THE STATE

7. Per contra, learned APP appearing for the State while opposing the appeal submitted that the learned District court, after considering all the evidences on record and exhibits submitted on behalf of the parties during the course of trial, has



rightly convicted the appellants for said offences as the offences alleged against the appellants appears to be serious in nature and also constitutes cognizable offence.

ANALYSIS AND CONCLUSION

8. Heard the parties.

9. I have perused the lower court records and proceedings and also taken note of the arguments canvassed by learned counsel appearing on behalf of the parties.

10. The learned trial court, on the basis of materials as collected during the course of investigation, passed the Judgment of conviction dated 15.12.2010 and order of sentence dated 21.12.2010 for the offences under Sections 328/34, 379/34 and 411/34 of the Indian Penal Code.

11. During the trial, the prosecution has examined altogether ten witnesses, namely:

- (i) (P.W.-1)- Salyad Ahsan Ali
- (ii) (P.W.-2)- Niraj Prasad Dhusiya
- (iii) (P.W.-3)- Md. Kalim (Informant)
- (iv) (P.W.-4) - Najir Parwej
- (v) (P.W.-5)- Dr. Bishnu Prasad Agrawal (M.O.)
- (vi) (P.W.-6)- Rajiv Ranjan Kumar
- vii) (P.W.-7).- Shiv Kumar Marandi



viii) (P.W.-8)- Anil Kumar

ix) (P.W.9)- Md. Mustakim

x) (P.W. 10)- Md. Samsul

12. The prosecution has also relied upon following documents exhibited during the course of trial:-

(i) Signature of Salyad Ahsan Ali on seizure list
(Exhibit-1),

(ii) Signature of informant Md. Kalim on
fardbeyan (Exhibit-2),

(iii) Letter addressed to G.R.P., Purnea (Exhibit-3),

(iv) Discharge Slip (Exhibit – 4)

(v) Outdoor Ticket (Exhibit – 5)

(vi) Fardbeyan of informant Md. Kalim (Exhibit – 6)

(vii) Three Seizure lists (Exhibit – 7, 8 & 9).

(viii) FSL Report (Exhibit-10)

13. From the perusal of the records, the statement of prosecution witnesses are as follows:

(i) P.W.1 – Salyad Ahsan Ali: This witness, an R.P.F. personnel, deposed that while he was on duty at the platform along with other R.P.F. staff, he saw a person staggering and crying that someone had fled away with his belongings. He stated that a person running towards the north was chased and



apprehended and brought to the R.P.F. office. Upon search, some articles including medicine tablets were recovered and the apprehended person allegedly disclosed that such tablets were administered to passengers to sedate them and thereafter their luggage was stolen. He further stated that three persons were caught while one managed to escape and he identified accused Md. Jafar in court. He proved his signatures on the seizure lists (Ext.1, 1/1 and 1/2). In cross-examination he admitted that he was not a gazetted officer and that the seizure list was prepared by the Officer-in-Charge of G.R.P.

(ii) P.W.2 – Niraj Prasad Dhusiya: This witness, also an R.P.F. personnel, supported the prosecution case and stated that he along with other R.P.F. staff chased and apprehended three persons on the platform. He identified the accused Jafar, Arif and Manowar in court. In cross-examination he admitted that he was not present at the time when the bags were opened.

(iii) P.W.3 – Md. Kalim (Informant/Victim): This witness fully supported the prosecution case and described the occurrence in detail. He stated that after consuming tea offered to him, he started feeling giddy and attempted to make a phone call to his home. He further stated that he was not completely sedated at that time but later felt unconscious on the platform.



He identified the accused persons in court and proved his signature on the fard-beyan (Ext.2). In cross-examination, no material contradiction could be elicited from his statement.

(iv) P.W.4 – Najir Parwej: This witness, an R.P.F. personnel, stated that he heard a person crying that his bag had been snatched and that the culprit was fleeing away. He along with other R.P.F. personnel chased and apprehended three persons and informed the G.R.P. officials. He further stated that the victim Kalim was in a precarious condition and was taken to hospital. He identified the accused persons in court. In cross-examination he stated that the seizure was not made in his presence.

(v) P.W.5 – Dr. Bishnu Prasad Agrawal: This witness, the Medical Officer at Sadar Hospital, Purnea, stated that on 24.07.2009 the victim Kalim was brought to the hospital in an intoxicated condition and was admitted for treatment. He proved the medical documents including the letter to G.R.P. (Ext.3), discharge slip (Ext.4) and the outdoor ticket (Exhibit-5). He deposed that the patient was treated with saline and injections. In cross-examination he admitted that no pathological test was conducted to ascertain poisoning.

(vi) P.W.6 – Rajiv Ranjan Kumar: This witness, an



R.P.F. official, stated that he received information that three persons involved in a case of “Jaharkhuri” had been apprehended by R.P.F. constables. Upon reaching the R.P.F. post, he found the accused persons along with five bags and the victim lying in an intoxicated condition. The victim was immediately sent to hospital. He further stated that seizure lists were prepared by the G.R.P. officer regarding the articles recovered from the accused persons and he proved his signatures on the seizure lists (Ext.1/3, 1/4 and 1/5). He identified the accused persons in court. His cross-examination remained superficial.

(vii) P.W.7 – Shiv Kumar Marandi: This witness, another R.P.F. constable, corroborated the prosecution case and stated that three persons were apprehended on the platform after a chase and that one person was found lying in an intoxicated state and was brought to the R.P.F. post. He identified the accused persons in court. In cross-examination, no material contradiction was brought out.

(viii) P.W.8 – Anil Kumar (Officer-in-Charge, G.R.P.): This witness stated that on receiving information about a case of “Jaharkhuri” at Purnea Junction, he reached the R.P.F. post and found the victim unconscious. The victim was sent to hospital



and after treatment his fardbeyan was recorded. He further stated that articles recovered from the accused persons were seized and the medicines recovered were sent to the Forensic Science Laboratory, Patna. He proved the fardbeyan (Ext.6), seizure lists (Ext.7, 8 and 9) and medical certificate (Ext.3). In cross-examination, nothing material was elicited.

(ix) P.W.9 – Md. Mustakim: This witness stated that he came to know about the incident through telephone and that the occurrence was narrated to him by the police as well as the victim Kalim. He admitted that he had not witnessed the occurrence and that he was the elder brother-in-law of the victim. His evidence is, therefore, hearsay in nature.

(x) P.W.10 – Md. Samsul: This witness is the father of the victim. He stated that he did not witness the occurrence and learnt about the incident from his son Kalim. In cross-examination, nothing significant was elicited and he stated that the case was instituted on the following morning.

14. It appears from the record that the seizure list was prepared subsequent to the search of the appellants, indicating that the recovery was duly documented after completion of the search proceedings. The officer who conducted the seizure had reasonable grounds to believe that all three appellants should be



searched. During the search, a quantity exceeding the prescribed small limit of the psychotropic substance **Lorazepam** was recovered from their conscious possession. This substance is listed at Serial No. 210 of Schedule 'H' in the Central Government's notification.

15. On the basis of materials surfaced during the trial, the appellants/accused was examined under Section 313 of the Cr.PC by putting incriminating circumstances/evidences surfaced against them, which they denied and shows their complete innocence.

16. The trial court, however, proceeded on the premise that the case was one of chance recovery, thereby diluting the evidentiary value of the seizure. On such assumption, the court further held that the mandatory procedural safeguards as contemplated under Sections 50 and 52 of the NDPS Act had not been complied with. Relying on this reasoning, the trial court refrained from recording a finding of guilt against the appellants under Sections 20 and 22 of the NDPS Act.

17. In respect of the finding of the trial court, I find it apt to reproduce observation made by the Apex Court in Paragraph Nos. 53 to 60 in the case of **State of Punjab Vs. Baldev Singh, reported in (1999) 6 SCC 172:**



“53. The Constitution Bench in Sanjay Dutt case [(1994) 6 SCC 569 : 1995 SCC (Cri) 32] thus clearly held that once the prosecution has proved unauthorised conscious possession of any of the specified arms and ammunition etc. in a notified area by the accused, the offence is complete and the conviction must follow on the strength of the statutory presumption, unless the accused proves the non-existence of a fact essential to constitute any of the ingredients of that offence. Indeed, the presumption, even though statutory in nature, was held to be rebuttable.

54. Thus, even if it be assumed for the sake of argument that all the material seized during an illegal search may be admissible as relevant evidence in other proceedings, the illicit drug or psychotropic substance seized in an illegal search cannot by itself be used as proof of unlawful conscious possession of the contraband by the accused. An illegal search cannot also entitle the prosecution to raise a presumption under Section 54 of the Act because presumption is an inference of fact drawn from the facts which are known as proved. A presumption under Section 54 of the Act can only be raised after the prosecution has established that the accused was found to be in possession of the contraband in a search conducted in accordance with the mandate of Section 50.

55. We, therefore, hold that an illicit article seized from the person of an accused, during search conducted in violation of the safeguards provided in Section 50 of the Act, cannot by itself be used as admissible evidence of proof of unlawful possession of the contraband on the accused. Any other material/article recovered during that search may, however, be relied upon by the prosecution in other/independent proceedings against an accused notwithstanding the recovery of that material during an illegal search and its admissibility would depend upon the relevancy of that material and the facts and circumstances of that case.

56. Thus, considered we are of the opinion that the judgment in Ali Mustaffa case [(1994) 6 SCC 569 : 1995 SCC (Cri) 32] correctly interprets and distinguishes the judgment in Pooran Mal case [(1974) 1 SCC 345 : 1974 SCC (Tax) 114] and the broad observations made in Pirthi Chand case [(1996) 2 SCC 37 : 1996 SCC (Cri) 210] and Jasbir Singh case [(1996) 1 SCC 288 : 1996 SCC (Cri) 1] are not in tune with the correct exposition of law, as laid down in Pooran Mal case [(1974) 1 SCC 345 : 1974 SCC (Tax) 114].

57. On the basis of the reasoning and discussion above, the following conclusions arise:

(1) That when an empowered officer or a duly authorised officer acting on prior information is about to search a person, it is imperative for him to inform the person concerned of his right under sub-section (1) of Section 50 of being taken to the nearest gazetted officer or the nearest Magistrate for making the search. However, such information may not necessarily be in writing.

(2) That failure to inform the person concerned about the existence of his right to be searched before a gazetted officer or a Magistrate would cause prejudice to an accused.



(3) That a search made by an empowered officer, on prior information, without informing the person of his right that if he so requires, he shall be taken before a gazetted officer or a Magistrate for search and in case he so opts, failure to conduct his search before a gazetted officer or a Magistrate, may not vitiate the trial but would render the recovery of the illicit article suspect and vitiate the conviction and sentence of an accused, where the conviction has been recorded only on the basis of the possession of the illicit article, recovered from his person, during a search conducted in violation of the provisions of Section 50 of the Act.

(4) That there is indeed need to protect society from criminals. The societal intent in safety will suffer if persons who commit crimes are let off because the evidence against them is to be treated as if it does not exist. The answer, therefore, is that the investigating agency must follow the procedure as envisaged by the statute scrupulously and the failure to do so must be viewed by the higher authorities seriously inviting action against the official concerned so that the laxity on the part of the investigating authority is curbed. In every case the end result is important but the means to achieve it must remain above board. The remedy cannot be worse than the disease itself. The legitimacy of the judicial process may come under a cloud if the court is seen to condone acts of lawlessness conducted by the investigating agency during search operations and may also undermine respect for the law and may have the effect of unconscionably compromising the administration of justice. That cannot be permitted. An accused is entitled to a fair trial. A conviction resulting from an unfair trial is contrary to our concept of justice. The use of evidence collected in breach of the safeguards provided by Section 50 at the trial, would render the trial unfair.

(5) That whether or not the safeguards provided in Section 50 have been duly observed would have to be determined by the court on the basis of the evidence led at the trial. Finding on that issue, one way or the other, would be relevant for recording an order of conviction or acquittal. Without giving an opportunity to the prosecution to establish, at the trial, that the provisions of Section 50 and, particularly, the safeguards provided therein were duly complied with, it would not be permissible to cut short a criminal trial.

(6) That in the context in which the protection has been incorporated in Section 50 for the benefit of the person intended to be searched, we do not express any opinion whether the provisions of Section 50 are mandatory or directory, but hold that failure to inform the person concerned of his right as emanating from sub-section (1) of Section 50, may render the recovery of the contraband suspect and the conviction and sentence of an accused bad and unsustainable in law.

(7) That an illicit article seized from the



person of an accused during search conducted in violation of the safeguards provided in Section 50 of the Act cannot be used as evidence of proof of unlawful possession of the contraband on the accused though any other material recovered during that search may be relied upon by the prosecution, in other proceedings, against an accused, notwithstanding the recovery of that material during an illegal search.

(8) A presumption under Section 54 of the Act can only be raised after the prosecution has established that the accused was found to be in possession of the contraband in a search conducted in accordance with the mandate of Section 50. An illegal search cannot entitle the prosecution to raise a presumption under Section 54 of the Act.

9) That the judgment in Pooran Mal case [(1974) 1 SCC 345 : 1974 SCC (Tax) 114] cannot be understood to have laid down that an illicit article seized during a search of a person, on prior information, conducted in violation of the provisions of Section 50 of the Act, can by itself be used as evidence of unlawful possession of the illicit article on the person from whom the contraband has been seized during the illegal search.

(10) That the judgment in Ali Mustaffa case [(1994) 6 SCC 569 : 1995 SCC (Cri) 32] correctly interprets and distinguishes the judgment in Pooran Mal case [(1974) 1 SCC 345 : 1974 SCC (Tax) 114] and the broad observations made in Pirthi Chand case [(1996) 2 SCC 37 : 1996 SCC (Cri) 210] and Jasbir Singh case [(1996) 1 SCC 288 : 1996 SCC (Cri) 1] are not in tune with the correct exposition of law as laid down in Pooran Mal case [(1974) 1 SCC 345 : 1974 SCC (Tax) 114] .

58. The above conclusions are not a summary of our judgment and have to be read and considered in the light of the entire discussion contained in the earlier part.

59. We, accordingly, answer the reference in the manner aforesaid.

60. Let the criminal appeals and special leave petitions be now placed for disposal before an appropriate Bench.

18. In view of the provisions contained in Chapter IV of the NDPS Act, mere unlawful possession of a contraband substance constitutes an offence. Such offence is punishable with rigorous imprisonment for a term not less than ten years, which may extend to twenty or even thirty years, depending on the nature and quantity of the substance involved. It also carries



a monetary penalty, with a fine not less than one lakh rupees, which may extend to two lakhs or three lakhs of rupees. Accordingly, possession of a dangerous drug or psychotropic substance attracts stringent penal consequences under the Act.

19. The approach of the trial court on the face of the record appears to be legally unsustainable and contrary to settled principles governing search and seizure under the NDPS Act. The mere characterization of the recovery as a chance recovery does not, by itself, absolve the court from examining whether substantial compliance with statutory safeguards had been made. Furthermore, the evidence on record required a deeper scrutiny to determine whether procedural lapses, if any, were sufficient to vitiate the prosecution case in its entirety. By adopting a hyper-technical view and extending the benefit of doubt without proper appreciation of the material evidence, the trial court failed to exercise its jurisdiction judiciously. Consequently, the acquittal of the appellants under Sections 20 and 22 of the NDPS Act is vitiated by serious legal infirmities. The findings recorded by the trial court, therefore, suffer from manifest error and warrant interference.

20. It would be appropriate to reproduce the provisions of Sections 20, 22 and 42 to 52 of the NDPS Act for



the sake of convenience and better understanding of the facts,
which is as under:-

“20. Punishment for contravention in relation to cannabis plant and cannabis.—

Whoever, in contravention of any provisions of this Act or any rule or order made or condition of licence granted thereunder,--

(a) cultivates any cannabis plant; or

(b) produces, manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses cannabis, shall be punishable--(i)where such contravention relates to clause (a) with rigorous imprisonment for a term which may extend to ten years and shall also be liable to fine which may extend to one lakh rupees;(ii)where such contravention relates to sub-clause (b),—

(A) and involves small quantity, with rigorous imprisonment for a term which may extend to one year, or with fine, which may extend to ten thousand rupees, or with both;

(B) and involves quantity lesser than commercial quantity but greater than small quantity, with rigorous imprisonment for a term which may extend to ten years and with fine which may extend to one lakh rupees;

(C) and involves commercial quantity, with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees:

Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees.

22. Punishment for contravention in relation to psychotropic substances.—

Whoever, in contravention of any provision of this Act or any rule or order made or condition of licence granted thereunder, manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses any psychotropic substance shall be punishable,--



(a) where the contravention involves small quantity, with rigorous imprisonment for a term which may extend to one year; or with fine which may extend to ten thousand rupees or with both;

(b) where the contravention involves quantity lesser than commercial quantity but greater than small quantity, with rigorous imprisonment for a term which may extend to ten years and with fine which may extend to one lakh rupees;

(c) where the contravention involves commercial quantity, with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees:

Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees.

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 paramilitary 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 persons 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:

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 authorization 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.

43. Power of seizure and arrest in public place.

—
Any officer of any of the departments mentioned in section 42 may —

(a) seize in any public place or in transit, any narcotic drug or psychotropic substance or controlled substance in respect of which he has reason to believe an offence punishable under this Act has been committed, and, along with such drug or substance, any animal or



conveyance or article liable to confiscation under this Act, any document or other article which he has reason to believe may furnish evidence of the commission of an offence punishable under this Act 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;

(b) detain and search any person whom he has reason to believe to have committed an offence punishable under this Act, and if such person has any narcotic drug or psychotropic substance or controlled substance in his possession and such possession appears to him to be unlawful, arrest him and any other person in his company.

Explanation:— For the purposes of this section, the expression "public place" includes any public conveyance, hotel, shop, or other place intended for use by, or accessible to, the public.

44. Power of entry, search, seizure and arrest in offences relating to coca plant, opium poppy and cannabis plant.

The provisions of sections 41, 42 and 43, shall so far as may be, apply in relation to the offences punishable under Chapter IV and relating to coca plant, the opium poppy or cannabis plant and for this purpose references in those sections to narcotic drugs, or psychotropic substance, or controlled substance, shall be construed as including references to coca plant, the opium poppy and cannabis plant.

45. Procedure where seizure of goods liable to confiscation not practicable.—

Where it is not practicable to seize any goods (including standing crop) which are liable to confiscation under this Act, any officer duly authorised under section 42 may serve on the owner or person in possession of the goods, an order that he shall not remove, part with or otherwise deal with the goods except with the previous permission of such officer.

46. Duty of land holder to give information of illegal cultivation.—

Every holder of land shall give immediate information to any officer of the police or of any of the departments mentioned in section 42 of all the opium poppy, cannabis plant or coca plant which may be



illegally cultivated within his land and every such holder of land who knowingly neglects to give such information, shall be liable to punishment.

47. Duty of certain officers to give information of illegal cultivation.—

Every officer of the Government and every panch, sarpanch and other village officer of whatever description shall give immediate information to any officer of the Police or of any of the departments mentioned in section 42 when it may come to his knowledge that any land has been illegally cultivated with the opium poppy, cannabis plant or coca plant, and every such officer of the Government, panch, sarpanch and other village officer who neglects to give such information, shall be liable to punishment.

48. Power of attachment of crop illegally cultivated.—

Any Metropolitan Magistrate, Judicial Magistrate of the first class or any Magistrate specially empowered in this behalf by the State Government or any officer of a gazetted rank empowered under section 42 may order attachment of any opium poppy, cannabis plant or coca plant which he has reason to believe to have been illegally cultivated and while doing so may pass such order (including an order to destroy the crop) as he thinks fit.

49. Power to stop and search conveyance.—

Any officer authorised under section 42, may, if he has reason to suspect that any animal or conveyance is, or is about to be, used for the transport of any narcotic drug or psychotropic substance or controlled substance, in respect of which he suspects that any provision of this Act has been, or is being, or is about to be, contravened at any time, stop such animal or conveyance, or, in the case of an aircraft, compel it to land and —

(a) rummage and search the conveyance or part thereof;

(b) examine and search any goods on the animal or in the conveyance;

(c) if it becomes necessary to stop the animal or the conveyance, he may use all lawful means for stopping it, and where such means fail, the animal or the



conveyance may be fired upon.

50. Conditions under which search of persons shall be conducted.—

(1) When any officer duly authorised under section 42 is about to search any person under the provisions of section 41, section 42 or section 43, he shall, if such person so requires, take such person without unnecessary delay to the nearest Gazette Officer of any of the departments mentioned in section 42 or to the nearest Magistrate.

(2) If such requisition is made, the officer may detain the person until he can bring him before the Gazetted Officer or the Magistrate referred to in subsection (1).

(3) The Gazette Officer or the Magistrate before whom any such person is brought shall, if he sees no reasonable ground for search, forthwith discharge the person but otherwise shall direct that search be made.

(4) No female shall be searched by anyone excepting a female.

(5) When an officer duly authorised under section 42 has reason to believe that it is not possible to take the person to be searched to the nearest Gazetted Officer or Magistrate without the possibility of the person to be searched parting with possession of any narcotic drug or psychotropic substance, or controlled substance or article or document, he may, instead of taking such person to the nearest Gazette Officer or Magistrate, proceed to search the person as provided under section 100 of the Code of Criminal Procedure, 1973 (2 of 1974).

(6) After a search is conducted under sub-section (5), the officer shall record the reasons for such belief which necessitated such search and within seventy-two hours send a copy thereof to his immediate official superior.

50A. Power to undertake controlled delivery.

The Director General of Narcotics Control Bureau constituted under sub-section (3) of section 4 or any other officer authorised by him in this behalf, may, notwithstanding anything contained in this Act, undertake controlled delivery of any consignment to—



(a) any destination in India;

(b) a foreign country, in consultation with the competent authority of such foreign country to which such consignment is destined, in such manner as may be prescribed.

51. Provisions of the Code of Criminal Procedure, 1973 to apply to warrants, arrests, searches and seizures.

The provisions of the Code of Criminal Procedure, 1973 (2 of 1974) shall apply, in so far as they are not inconsistent with the provisions of this Act, to all warrants issued and arrests, searches and seizures made under this Act.

52. Disposal of persons arrested and articles seized.—

(1) Any officer arresting a person under section 41, section 42 section 43 or section 44 shall, as soon as may be, inform him of the grounds for such arrest.

(2) Every person arrested and article seized under warrant issued under sub-section (1) of section 41 shall be forwarded without unnecessary delay to the Magistrate by whom the warrant was issued.

(3) Every person arrested and article seized under sub-section (2) of section 41, section 42, section 43 or section 44 shall be forwarded without unnecessary delay to--

(a) the officer-in-charge of the nearest police station, or

(b) the officer empowered under section 53.

(4) The authority or officer to whom any person or article is forwarded under sub-section (2) or sub-section (3) shall, with all convenient dispatch, take such measures as may be necessary for the disposal according to law of such person or article.

52A. Disposal of seized narcotic drugs and psychotropic substances.

(1) The Central Government may, having regard to the hazardous nature, vulnerability to theft, substitution, constraint of proper storage space or any other relevant consideration, in respect of any narcotic drugs, psychotropic substances, controlled substances or conveyances, by notification in the Official Gazette,



specify such narcotic drugs, psychotropic substances, controlled substances or conveyance or class of narcotic drugs, class of psychotropic substances, class of controlled substances or conveyances, which shall, as soon as may be after their seizure, be disposed of by such officer and in such manner as that Government may, from time to time, determine after following the procedure hereinafter specified.

(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 or psychotropic substances 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 sub-section (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.”

21. I have already recorded, on the basis of the evidence available on record, that all three appellants were in unlawful possession of the contraband, which constitutes the *sine qua non* for recording a conviction under the NDPS Act and forms the most essential ingredient of the offence thereunder. The substance in question is a notified drug falling within Schedule ‘H’ of the relevant Government Notification, thereby attracting the rigours of the Act.

22. In light of the aforesaid discussion, the evidence adduced during the course of trial, and the law laid down by the Apex Court, this Court finds the appellants guilty of the offence punishable under Section 22 of the NDPS Act and the judgment and order of the trial court is modified to the above extent. Accordingly, they are hereby convicted and sentenced to undergo rigorous imprisonment for a term of ten years each, along with a fine of Rs. 1,00,000/- each. However, it is noted that appellant no. 1, Md. Manowar, has already undergone custody for a period of 3 years and 3 months, appellant no. 2, Md. Arif, has undergone custody for 2 years and 6 months, and appellant no. 3, Md. Zafar, has undergone custody for 4 years and 3 months. The period of detention already undergone by the appellants during investigation and trial shall be set off against



the substantive sentence of imprisonment imposed upon them,
in accordance with law.

23. The appellants are directed to be taken into
custody forthwith.

24. Accordingly, the present appeal stands dismissed.

25. The Patna High Court, Legal Services Committee
is, hereby, directed to pay a sum of Rs. 5,000/- (Rupees Five
Thousand) to Mr. Atul Dayal, learned *Amicus Curiae*, as
consolidated fee, for rendering his valuable professional service
for disposal of the present appeal.

26. Office is directed to send back the lower court
records along with a copy of the judgment to the learned District
Court forthwith.

(Purnendu Singh, J)

mantreshwar/-

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	24.03.2026
Transmission Date	24.03.2026

