

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL APPEAL (DB) No.629 of 2023**

Arising Out of PS. Case No.-1 Year-2021 Thana- N.C.B (GOVERNMENT OFFICIAL)  
District- Bhojpur

- =====
1. Shankar Yadav, S/O- Ramesh Prasad Yadav, Resident of Village-Sarbaha PS- Charahi Dist- Hazaribagh, Jharkhand.
  2. Pritam Lakra, son of James Lakda @ Jivan James Lakda, Resident of Village- Taku PS- Kuddu Dist- Lohardaga, Jharkhand,

... .. Appellants

Versus

The Union of India through the Intelligence Officer, Narcotics Control Bureau, Patna

... .. Respondent

with

**CRIMINAL APPEAL (DB) No. 1014 of 2025**

Arising Out of PS. Case No.-1 Year-2021 Thana- N.C.B (GOVERNMENT OFFICIAL)  
District- Bhojpur

=====

Nav Kumar Ojha, son of Amulya Ojha, Resident of Village -Pundru, PS- Pindarajora Distt -Bokaro, Jharkhand.

... .. Appellant

Versus

The Union of India through the Intelligence Officer, Narcotics Control Bureau (NCB), Patna Bihar

... .. Respondent

=====

**Appearance :**

(In CRIMINAL APPEAL (DB) No. 629 of 2023)

For the Appellants : Mr. Ravindra Kumar, Advocate  
Mr. Sandeep Kumar Pandey, Advocate  
Mr. Amish Kumar No. 1, Advocate  
Mr. Ishaan Raj, Advocate

For the UOI : Mr. Bindhyachal Rai, Sr. Panel Counsel

(In CRIMINAL APPEAL (DB) No. 1014 of 2025)

For the Appellant : Mr. Gopal Krishna, Advocate  
For the UOI : Mr. Nilanjan Chatterjee, Advocate  
Mr. Anirvan Choudhari, Advocate  
Mr. Ujjwal Raj, Advocate  
Mr. Jyoti Prakash, Advocate

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**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD**  
**and**  
**HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA**  
**ORAL JUDGMENT**  
**(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)**

**Date : 14-07-2026**



These appeals have been preferred for setting aside the judgment of conviction dated 09.05.2023 (hereinafter referred to as the 'impugned judgment') and order of sentence dated 17.05.2023 (hereinafter referred to as the 'impugned order') passed by learned 8<sup>th</sup> Additional Sessions Judge-cum-Special Judge for NDPS Cases at Bhojpur, Ara (hereinafter referred to as the 'learned trial court') in N.D.P.S. Case No. 06 of 2021 arising out of NCB Case No. 01 of 2021 for the offences punishable under Sections 20(b)(ii)(c) and Section 25 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'NDPS Act') and has been ordered to undergo fifteen years rigorous imprisonment with a fine of Rs.1,00,000/- under Section 20(b)(ii)(c) NDPS Act and in default of payment of fine, they will have to further undergo six months' imprisonment. For the offence punishable under Section 25 read with Section 8 of the NDPS Act, they have been sentenced to undergo fifteen years rigorous imprisonment with a fine of Rs.1,00,000/- and in default of payment of fine, they will have to further undergo six months' imprisonment. Both the sentences are to run concurrently.

### **Prosecution Case**

2. The prosecution is that on 30.01.2021 at around 18:00 Hours one Ram Ayodhya Kumar (Junior Intelligence Officer)



(PW-5) received secret information that heavy quantity of Ganja is being transported from Orissa in Truck No. JH09J4421 and the said truck will pass from Ara-Chapra More on 01.02.2021 and Scorpio Car No. JH09M7100 will escort the said truck till Chapra. As per the secret informant, the Ganja will be delivered to one Bijendra Kumar Rai. This information was reduced in writing and was produced before Superintendent of NCB who formed a Six-Member Team.

On 31.01.2021 at 11:00 Hours, the team went to Aurangabad and reached there at 16:00 Hours on 31.01.2021 and waited there for the whole night but nothing was intercepted after which the team reached Ara-Chapra More on 01.02.2021 at 19:00 hours. On 02.02.2021 at around 04:30 Hours, the aforesaid truck was seen and was signalled in the meantime, two independent witnesses, namely, Prince Kumar and Luv Singh who were crossing thereby were convinced to become witnesses to the entire proceeding. At around 05:30 as soon as two persons sat on the truck to depart, the team reached there and introduced themselves. The two persons disclosed their names as Shankar Yadav and Pritam Lakra. Both of them admitted that the Ganja is loaded in the said truck and Nav Kumar Ojha was escorting the said truck till Aurangabad, thereafter, he went to Chapra. Shankar Yadav also disclosed that



the receiver of the Ganja is one Bijendra Kumar Rai. The said Truck, suspects and witnesses were brought to Koilwar Police Station. On search, 96 packets containing brown coloured substance which looked like Ganja was found in a special cabinet of the said truck. Thereafter, the substance from each packet was tested by Drug Detection Kit, which gave positive result for Ganja. Many people gathered there, the truck along with Ganja, suspects and witnesses were brought to the Koilwar Police Station. It is further alleged that the information was given to the second team after which the second team served a notice to Bijendra Kumar Rai and on disclosure made by Bijendra Kumar Rai another notice was served to Nav Kumar Ojha and the second team brought the aforesaid two persons to Koilwar Police Station after which 96 packets were weighed and found to be weighing 909.2 Kgs. It is further alleged that 96 packets were divided into three lots and were kept in 30 plastic sacks. On each sack, signature of witnesses, seizing officer and suspects were taken. The entire proceeding of search and seizure started about 06:00 Hours on 02.02.2021 and was completed on the same day at around 15:00 Hours.

**3.** On the basis of the above self-statement, a formal FIR being Narcotics Control Bureau Case No. 01 of 2021 dated 02.02.2021 was registered for the offences punishable under



Sections 8(c), 20(b)(ii)(c), 25 and 29 of the NDPS Act against four accused persons, namely, (1) Shankar Yadav, (2) Pritam Lakda, (3) Bijendra Kumar Rai and (4) Nav Kumar Ojha.

4. Learned trial court vide order dated 10.01.2022 took cognizance of the offences under Sections 20(b)(ii)(c), 25 and 29 of the NDPS Act against four FIR named accused persons.

5. Charges were read over and explained to the accused persons in Hindi to which they pleaded not guilty and claimed to be tried. Accordingly, vide order dated 20.01.2022, charges were framed against (1) Shankar Yadav, (2) Pritam Lakda, (3) Bijendra Kumar Rai and (4) Nav Kumar Ojha under Sections 20(b)(ii)(c), 25 and 29 of the NDPS Act.

6. In course of trial, the prosecution examined as many as seven witnesses and exhibited several documentary evidences. The names of the prosecution witnesses and the exhibits are being shown hereunder in a tabular form:-

List of Prosecution witnesses

| Prosecution Witness No. | Name of Witness | Description                 |
|-------------------------|-----------------|-----------------------------|
| PW-1                    | Paramhans Kumar | Junior Information Officer  |
| PW-2                    | Prince Kumar    | Panch Witness               |
| PW-3                    | Luv Singh       | Panch Witness               |
| PW-4                    | Vinod Kumar     | Intelligence Officer        |
| PW-5                    | Ram Ayodhya     | Junior Intelligence Officer |
| PW-6                    | Anil Kumar      | Intelligence Officer        |
| PW-7                    | Rajan Kumar     | Superintendent, NCB, Patna  |



List of Exhibits on behalf of the Prosecution

| Exhibit No. | Description of the Exhibit                                                           | Proved by/Attested by |
|-------------|--------------------------------------------------------------------------------------|-----------------------|
| ‘1’         | Typed statement of Pritam Lakda                                                      | PW-1                  |
| ‘1/1’       | Signature of Investigating Officer Anil Kumar on the typed statement of Pritam Lakda | PW-1                  |
| ‘1/2’       | Signature of witness Prince Kumar on seizure list                                    | PW-2                  |
| ‘1/3’       | Signature of witness Luv Singh on seizure list                                       | PW-3                  |
| ‘5’         | Carbon copy of notice u/s 67 of NDPS Act (Bijendra Kr. Roy)                          | PW-4                  |
| ‘6’         | Search cum Seizure list                                                              | PW-4                  |
| ‘7’         | Carbon copy of u/s 67 of NDPS Act of Nab Kr. Ojha.                                   | PW-4                  |
| ‘8’         | Beyan of Shankar Yadav                                                               | PW-4                  |
| ‘9’         | Note sheet                                                                           | PW-5                  |
| ‘10’        | Signature of Kumar Manish on note sheet                                              | PW-5                  |
| ‘11’        | Seizure list                                                                         | PW-5                  |
| ‘12’        | Notice u/s 67 of Shankar Yadav dated 02.02.2021                                      | PW-5                  |
| ‘13’        | Notice u/s 67 of Pritam Lakda                                                        | PW-5                  |
| ‘14’        | Certification by D.J. Bhojpur, Ara dated 05.02.2021                                  | PW-5                  |
| ‘15’        | Petition                                                                             | PW-5                  |
| ‘16’        | Receiving dated 03.02.2021                                                           | PW-5                  |
| ‘17’        | Seizure report dated 04.02.2021 under NDPS Act                                       | PW-5                  |
| ‘18’        | Beyan of Shankar Yadav, Pritam Lakda, Nav Kumar Ojha and Vijendra Kumar Roy          | PW-6                  |
| ‘19’        | Arresting memo of Nav Kumar Ojha                                                     | PW-6                  |
| ‘20’        | Statement of Bijendra Kumar Roy                                                      | PW-6                  |
| ‘21’        | Arresting memo of Bijendra Kumar Roy dated 02.02.2021                                | PW-6                  |
| ‘22’        | Arresting Memo of Shankar Yadav dated 02.02.2021                                     | PW-6                  |
| ‘23’        | Arresting memo of Pritam Lakda dated 02.02.2021                                      | PW-6                  |
| ‘24’        | Jama Talashi of Shankar Yadav dated 02.02.2021                                       | PW-6                  |
| ‘25’        | Jama Talashi of Pritam Lakda dated 02.02.2021                                        | PW-6                  |



|      |                                                                                             |      |
|------|---------------------------------------------------------------------------------------------|------|
| ‘26’ | Jama Talashi of Nov Kumar Ojha dated 02.02.2021                                             | PW-6 |
| ‘27’ | Jama Talashi of Bijendra Kumar Roy dated 02.02.2021                                         | PW-6 |
| ‘28’ | Petition dated 03.02.2021 of SHO Koelwar (Carbon copy)                                      | PW-6 |
| ‘29’ | Notice u/s 67 of Bijendra Kumar Roy dated 04.02.2021                                        | PW-6 |
| ‘30’ | Notice u/s 67 of Bijendra Kumar Roy dated 04.02.2021                                        | PW-6 |
| ‘31’ | Second time beyan of Bijendra Kumar Roy dated 04.02.2021                                    | PW-6 |
| ‘32’ | Second time beyan of Nav Kumar Ojha dated 04.02.2021                                        | PW-6 |
| ‘33’ | Report of arrest of all the four accused dated 04.02.2021                                   | PW-6 |
| ‘34’ | Notice to Lav Singh u/s 67 of NDPS Act dated 05.02.2021                                     | PW-6 |
| ‘35’ | Notice of Prince Kumar u/s 67 of NDPS Act dated 05.02.2021                                  | PW-6 |
| ‘36’ | Statement of two independent witnesses, namely, Prince Kumar and Lav Kumar dated 02.02.2021 | PW-6 |
| ‘37’ | Notice to Babalu Mahto and Vijay Chandra                                                    | PW-6 |
| ‘38’ | Notice u/s 67 of NDPS ACT                                                                   | PW-6 |
| ‘39’ | Note Sheet of NCB-1                                                                         | PW-6 |
| ‘40’ | Receipt of Malkhana after submitting seized article                                         | PW-6 |
| ‘41’ | Typed inventory of seized vehicle u/s 5 of NDPS Act                                         | PW-6 |
| ‘42’ | Photographs of inventory of certification                                                   | PW-6 |
| ‘43’ | Typed test memo dated 10.03.2021                                                            | PW-6 |
| ‘44’ | Letter dated 18.03.2021 Certificate u/s 65B of Evidence Act                                 | PW-6 |
| ‘45’ | Letter dated 18.03.2021 Certificate u/s 65B of Evidence Act                                 | PW-6 |
| ‘46’ | Letter dated 18.03.2021 Certificate u/s 65B of Evidence Act                                 | PW-6 |
| ‘47’ | Notice u/s 67 of NDPS Act dated 12.03.2021 of Mr. Duryodhan Nayak                           | PW-6 |
| ‘48’ | Notice u/s 67 of NDPS Act of Dhanpati Bihari                                                | PW-6 |
| ‘49’ | Notice u/s 67 of NDPS Act of Rabindra Kumar Seth                                            | PW-6 |



|      |                                                                    |      |
|------|--------------------------------------------------------------------|------|
| ‘50’ | Notice u/s 67 of NDPS Act of Kanti Devi                            | PW-6 |
| ‘51’ | Notice u/s 67 of NDPS Act of Poonam Lakda                          | PW-6 |
| ‘52’ | Complaint petition dated 28.07.2021 with annexures                 | PW-6 |
| ‘53’ | Carbon copy of page no. 154 of Malkhana registered                 | PW-7 |
| ‘54’ | Note sheet NCB-1                                                   | PW-7 |
| ‘55’ | Malkhana Godown receipt dated 03.02.2021                           | PW-7 |
| ‘56’ | Compliance order u/s 57 of NDPS Act (signature of Suptd.)          | PW-7 |
| ‘57’ | Compliance order u/s 57 of NDPS Act (signature of Suptd.)          | PW-7 |
| ‘58’ | House search letter of Suptd. NCB Sub zone Ranchi dated 28.02.2021 | PW-7 |
| ‘59’ | Report of Chemical Examination from CRCL                           |      |

7. Thereafter, the statements of the accused persons were recorded under Section 313 of the CrPC in which they denied the allegations and pleaded innocence.

8. The defence examined two witnesses which are mentioned hereunder in tabular form:-

List of Defence Witnesses

| Defence Witness No. | Name of Witness | Description                     |
|---------------------|-----------------|---------------------------------|
| DW-1                | Dinesh Rai      | Neighbour of Bijendra Kumar Rai |
| DW-2                | Ranjit Kumar    | Neighbour of Bijendra Kumar Rai |

**Findings of the Learned Trial Court**

9. Learned trial court after examining the evidences available on the record found that Shankar Yadav and Pritam Lakra were apprehended with the truck in which altogether 909.2 Kgs of Ganja was seized. Learned trial court found that the



prosecution has followed the established procedure of search, seizure and sampling of the seized ganja.

**10.** Learned trial court further found that the escorting vehicle i.e. Scorpio and the said Truck both were registered in the name of Nav Kumar Ojha

**11.** Learned trial court after considering all the facts and circumstances of the case held that the prosecution has been able to prove the charges under Sections 20(b)(ii)c, 25 and 29 of the NDPS Act against these three appellants, namely, Shankar Kumar, Pritam Lakra and Nav Kumar Ojha beyond all reasonable doubts. However, prosecution has failed to prove the charges against Bijendra Kumar Rai.

**Submissions on behalf of the Appellants**

**12.** Learned counsel for the appellants submit that the prosecution case suffers from serious infirmities in the matter of the alleged search and seizure. According to the prosecution, the Scorpio vehicle was intercepted by the second raiding team at Chhapra, however, the seizure list records that it was prepared at Koilwar Police Station. Thus, it is submitted that if the vehicle had in fact been intercepted at Chhapra, there was no justification for preparing the seizure memo at Koilwar Police Station. The unexplained discrepancy regarding the place of seizure creates



serious doubt about the genuineness of the alleged recovery and clearly suggests that the seizure list was prepared subsequently after due deliberation.

**13.** It is submitted that although the prosecution claims that the officers had prior information, that the Scorpio vehicle was escorting the truck carrying the alleged contraband, the seizure memo was not prepared at the place of interception as such, this conduct is wholly inconsistent with a fair and transparent investigation and renders the prosecution story doubtful.

**14.** Learned counsel further submits that the seizure list mentions only the date of preparation and does not disclose the time at which it was prepared. In a prosecution under the NDPS Act, where strict procedural safeguards are mandatory, the omission to mention the time of seizure assumes considerable significance. The absence of such an essential detail makes the entire search and seizure process highly doubtful.

**15.** It is submitted that the alleged seizure was conducted only by PW-6 Ram Ayodhya Kumar. The Investigating Officer admittedly reached the place only after the seizure had already been completed and the seizure list was prepared. Consequently, the Investigating Officer neither witnessed nor supervised the actual search and seizure, thereby creating serious



doubt regarding the authenticity of the alleged recovery. It is further submitted that both independent seizure witnesses have been declared hostile and have not supported the prosecution case. The remaining prosecution witnesses are official witnesses alone. In the absence of support from independent witnesses, particularly where there are serious discrepancies in the search and seizure process, the testimony of official witnesses require strict scrutiny and cannot, by itself, be treated as sufficient to establish the recovery of the alleged contraband beyond reasonable doubt.

**16.** Learned counsel further submits that the prosecution has failed to produce the seized ganja and has furnished no explanation whatsoever for such non-production. The seized contraband constitutes the primary material evidence in an NDPS prosecution and failure to produce the seized substance raises serious doubt regarding its identity, safe custody, and integrity, therefore, the appellant is entitled to the benefit of doubt.

**17.** It is further submitted that the Forensic Science Laboratory report itself records that the samples were not drawn at the place of recovery. The possibility of interpolation, tampering, or substitution of the samples cannot, therefore, be ruled out. Learned counsel further submits that the prosecution has failed to prove compliance with the mandatory provisions of Sections 42,



50 and 67 of the NDPS Act. The statutory safeguards incorporated under these provisions are intended to ensure fairness and transparency in the investigation. Non-compliance with these mandatory provisions vitiates the prosecution case.

**18.** It is further submitted that the prosecution evidence suffers from material contradictions on vital aspects of the case, including the place of seizure, preparation of the seizure memo, sampling procedure and the manner in which the investigation was conducted. These contradictions strike at the very root of the prosecution case and render the alleged recovery wholly unreliable. It is submitted that the Investigating Officer has admitted that he did not record the statements of the officers who allegedly participated in the raid. Such omission reflects a defective investigation, thereby depriving the prosecution case of necessary corroboration.

**19.** Learned counsel lastly submits that, according to the prosecution, the interception took place at about 4:30 PM whereas the Investigating Officer arrived only after the seizure had already been completed and the seizure list was prepared. The distance between the NCB Office and Koilwar is only about 40 to 45 kilometres, yet no explanation has been furnished for such delay. The unexplained delay creates serious doubt regarding the



prosecution's version of events. Thus, the prosecution has failed to prove the guilt of the appellant beyond all reasonable doubt and the appellants are entitled to the benefit of doubt and deserves to be acquitted of all the charges.

**Submissions on behalf of the Respondent**

**20.** On the other hand, learned Senior Standing Counsel for the DRI submits that in this case, the prosecution has been able to prove beyond all reasonable doubts that the entire procedures relating to search, seizure and sampling of the narcotics have been fully complied with. It is submitted that the signatures of seizing officer, the independent witnesses and the accused persons were obtained on all sealed items.

**21.** Learned Senior Standing Counsel has relied upon the judgments of the Hon'ble Supreme Court in the case of **Narcotics Control Bureau vs. Kashif** reported in **(2024) 11 SCC 372** and **Bharat Aambale vs. State of Maharashtra** reported in **(2025) 8 SCC 452**. It is submitted that in this case, there is a compliance with Section 42 of the NDPS Act, the primary document such as seizure list, inventory and sampling have been duly proved in course of trial.

**22.** It is submitted that on the face of the evidences present on the record, the learned trial court has rightly held that



the guilt of the accused have been duly proved. No interference with the impugned judgment and order is warranted.

**Consideration**

**23.** We have heard learned counsel for the appellants and learned Senior Standing Counsel for the DRI as also perused the trial court's records.

**24.** The prosecution case is based on the *panchnama* and the seizure list (Exhibit 'P-6/PW-4'). Vinod Kumar (PW-4) is the Intelligence Officer posted in the office of NCB at Patna. In his testimony, he has stated that on 02.02.2021 he had received information from Shri Ram Ayodhya Kumar over telephone at 6:30 AM that one truck bearing number JH09J4421 has been intercepted with loaded ganja. Thereafter, he alongwith his team comprising Dhiraj Kumar, Intelligence Officer, Sipahi Sanjeev Kumar, Harikutan, all of NCB Patna proceeded towards the Town P.S. A team was already present at Chhapra to collect information. PW-4 met SHO-cum-Police Inspector Bimal Singh at Chhapra and requested him for providing a team of police officers. He provided one team and the SPO Seema Kumari was also in the said team. Thereafter, this witness reached village Dahiyawa and from amongst the persons present there, he requested Ranjit Kumar and



Dinesh Kumar to become independent witnesses, which they accepted.

**25.** PW-4 had conducted the search in the house of Bijendra Kumar Rai, from where one laptop and some other documents were seized. This witness has stated that in the preliminary interrogation Bijendra Kumar Rai confessed that the ganja was to be delivered to him. This witness prepared panchnama and reached Town Police Station with Bijendra Kumar Rai. Bijendra Kumar Rai was interrogated at the police station where he disclosed the name of Nab Kumar Jha as his associate. The defence has raised objection on this statement of PW-4 in paragraph '2' of his deposition. According to PW-4, he had conducted the raid in Hotel Lalita where Nab Kumar Jha was staying in room number 204. Nab Kumar Jha accepted and became ready to accompany PW-4. PW-4 handed over Bijendra Kumar Rai and Nab Kumar Jha to the seizing officer Shri Ram Ayodhya Kumar (PW-5). This witness had recorded the statement of Shankar Yadav under Section 67 of the NDPS Act. At the instance of this witness, the prosecution has proved the carbon copy of the notice under Section 67 served on Bijendra Kumar Rai (Exhibit '5') and the search and seizure list (Exhibit '6'). He also proved the notice under Section 67 served on Nab Kumar Jha



(Exhibit '7') and the statement of Nab Kumar Jha recorded in his pen and signature as Exhibit '8'.

**26.** It has come in evidence of Paramhans Kumar (PW-1) that a team of intelligence officers was constituted by Shri Rajan Kumar, Superintendent. PW-1 himself and Ram Ayodhya, the Junior Intelligence Officer, were seizing officer. Ravi Ranjan was the Vigilance Assistant, Sikandar Kumar and Rakesh Kumar both Sipahis together with Dinesh Kumar driver were other members. The NCB team had proceeded towards Aurangabad on 31.01.2021 at 11:00 AM and reached there at 4:00 PM.

**27.** It has come in evidence that on 02.02.2021 at about 4:30 AM, the vehicle in question was seen. Two persons who were passers-by, namely Prince Kumar (PW-2) and Luv Singh (PW-3), were requested to become independent witnesses. They became ready. The vehicle was asked to stop and in presence of the two independent witnesses when the vehicle was intercepted and stopped, the NCB team informed the driver and the persons sitting beside the driver who disclosed their name as Shankar Yadav and Pritam Lakra, that they are the intelligence officers. Shankar Yadav disclosed that the contraband ganja was concealed in the truck. Since crowd started assembling at that place (Ara-Chhapra Mor), the vehicle was taken to Koilwar Police Station where



search and seizure procedure were started. During this period it came to notice that Nab Kumar Jha had been on Scorpio vehicle bearing number JH09M7100, he was escorting and had gone to meet the receiver Bijendra Kumar Rai. This information was passed on to Rajendra Kumar, Superintendent. Thereafter a second team left for Chhapra. As the search and seizure was still going on in Koilwar Police Station, the second team arrived there with Nab Kumar Jha and Bijendra Kumar Rai.

**28.** It has come in evidence that during the search and seizure in presence of the independent witnesses, 96 rectangular slabs were seized. All the packets were opened by tearing of and some quantity were taken out from them, which were examined by DD kit, they were found to be ganja. PW-1 has stated that all the packets were weighed, they were total 909.2 kg. They were divided into three lots i.e. Lot 'A', Lot 'B' and Lot 'C', they were put in 30 sacks and were sealed with the seal of NCB-1. On this, both the independent witnesses and the four suspected persons put their signature. The seizing officer had also put his signature. The search and seizure procedure came to an end on 02.02.2021 at 15 Hrs. Thereafter notice under Section 67 of the NDPS Act was served on Shankar Yadav and Pritam Lakra and on their request, in presence of Anil Kumar, Intelligence Officer-cum-I.O. of this



case, this witness recorded their statement. The statement has been marked Exhibit '1' and the signature of Anil Kumar, Intelligence Officer has been marked Exhibit '1/1'.

**29.** In course of his cross-examination, PW-1 has stated that first information was received by the Superintendent Rajan Kumar. This witness has stated that he had recorded the confessional statement of Pritam Lakra. It appears from the pattern of cross-examination of PW-1 that the defence has not questioned this witness as regards the sanctity of the search and seizure procedure. It is not the case of the defence that the ganja was not concealed in the truck or it was not seized after interception of the truck at Ara-Chhapra Mor and further it is not the case of the defence that the search, seizure and sealing were not done in their presence.

**30.** The defence has raised questions on the deposition of the seizure list witnesses, namely Prince Kumar (PW-2) and Luv Singh (PW-3). PW-2 has stated that he was playing in the high school field where police came, took him to the police station and made him to put his signature on blank sheet of paper. He has identified his signature on the seizure list, which has been marked Exhibit '1/2'. He has stated that police had recorded his statement but he had no information about the seizure action. Luv Singh



(PW-3) has stated that he was not aware of the period during which the occurrence had taken place but he has identified his signature on all the three pages of the seizure list. At his instance, his signature has been marked Exhibit '1/3'. In his cross-examination, this witness has stated that seizure had not taken place in his presence.

**31.** We have noticed that PW-1, who was one of the members of the raiding team, has stated that the search and seizure procedure were conducted in the Koilwar Police Station. The independent witnesses and all the four suspects had put their signature on the sealed sacks. Further, this Court finds that Vinod Kumar (PW-4) is the another Intelligence Officer who was a member of the raiding party who had apprehended Bijendra Kumar Rai and Nab Kumar Ojha.

**32.** Another prosecution witness, namely Ram Ayodhya Kumar (PW-5), was the member of the team who had received secret information on 30.01.2021 at 18:00 Hrs. that the loaded truck is likely to pass through Chhapra *via* Ranchi, Daltonganj and Aurangabad on 01.02.2021. This witness had also received information that by Scorpio vehicle bearing number JH09M7100, Nab Kumar Ojha, who is a resident of Bokaro, Jharkhand, would be escorting the truck. This witness had noted down the



information and produced the notesheet to Shri Rajan Kumar, Superintendent, NCB. Shri Rajan Kumar, Superintendent constituted a team in which this witness was a member. Shri Rajan Kumar had placed this information before Shri Kumar Manish, Regional Director. This witness has proved the notesheet, which was signed by him as Exhibit 'P-9/PW-5'. He has proved the signature of the Superintendent Rajan Kumar and the signature of the Regional Director Kumar Manish, which have been marked Exhibit 'P-10/PW-5'. PW-5 has fully supported the prosecution case and corroborated the statement of Paramhans Kumar (PW-1). This witness has proved the seizure list and the enclosures thereto in four pages on which he identified his signature. He had typed the seizure list and has stated that the enclosures were in his handwriting, which are in total six pages. At the instance of this witness, the seizure list of ganja has been marked Exhibit 'P-11/PW-5'.

**33.** PW-5 had also filed an application before the court of learned District and Sessions Judge, Ara for certification of the inventory. He has proved his signature on the application submitted before the learned District and Sessions Judge, Ara which has been marked Exhibit 'P-14/PW-5'. He had also submitted another application in the court of learned District and



Sessions Judge, Ara for sending the sample to CRCL, Kolkata and to keep the seized contraband and the seized vehicle in Koilwar Police Station. This witness has proved his signature on the application, which has been marked Exhibit 'P-15'. PW-5 has further proved the copy of the letter showing that the seized contraband was deposited in the departmental *malkhana* at Patna on 03.02.2021, he has proved his signature thereon as Exhibit 'P-16/PW-5'. This witness has deposed as the seizure list witness in this case. In course of his cross-examination, the defence has not elicited any material discrepancy. No contradiction has been noticed by this Court in the examination-in-chief and the cross-examination of this witness. He has fully supported the prosecution case. He is a wholly reliable witness in this case.

**34.** Anil Kumar (PW-6) is the I.O. of this case. He had reached Koilwar Police Station in the afternoon on 02.02.2021 at 3:00 PM. He had received information that ganja has been seized after intercepting a truck along with driver. This witness has stated that the search and seizure procedure was going on in the police station. PW-6 was appointed as Investigating Officer in this case. Ram Ayodhya Kumar (PW-5) had handed over the documents relating to the seizure and had also handed over the four accused persons, whereafter this witness requested Shri Vinod Kumar



(PW-4) to record statement of Shankar Yadav and he also requested Shri Paramhans Kumar (PW-1) to record statement of Pritam Lakra. This witness had recorded the statement of Nab Kumar Ojha, which he had typed. This witness has put his signature on every page thereon. He has stated that the signature of Nab Kumar Ojha is also present on those pages. At his instance, this document has been marked Exhibit 'P-18/PW-6'. Shankar Yadav was arrested on 02.02.2021 at 6 PM. Pritam Lakra was arrested on 02.02.2021 at 6:30 PM. The arrest memo of Shankar Yadav and Pritam Lakra has been exhibited as Exhibit 'P-22/PW-6', Exhibit 'P-23/PW-6' respectively.

**35.** It further appears from the evidence of PW-6 that he had conducted the search on the person of Shankar, Pritam Lakra and Nab Kumar Ojha. He has proved his signature on the search document, which have been marked Exhibit '24', Exhibit '25' and Exhibit '26' respectively. He has stated that all the accused persons were produced before the learned court, whereafter they were sent to jail. He had handed over the key of the Scorpio vehicle to the Officer-in-Charge of Koilwar Police Station for custody, by order of the court. This witness has stated that certification of the seized ganja and vehicles were done and samples were taken out by Ms. Ranjita Kumari, Judicial



Magistrate, First Class, Ara. Altogether, nine samples were taken out. The photographs of the sample and vehicle were also done. He has proved Exhibits 'P-39', 'P-40', 'P-41', 'P-42', 'P-43', 'P-44', 'P-45' and 'P-46'. This witness has stated that vide letter dated 02.06.2021 of the BSNL, letter dated 08.06.2021 of the Airtel and letter dated 15.06.2021 and 02.07.2021 of the Reliance Jio, he had received the CAF of the mobile of the accused, CDR and a certificate under Section 65B of the Evidence Act. He had conducted the investigation of the case and filed the complaint petition, which were running into 26 pages together with its enclosures running into 6 pages. He has proved his signature on every page thereon and has also proved the signature of Shri Rana Pratap Singh, Special P.P. of NCB, Patna. This complaint petition dated 28.07.2021 together with the annexures has been marked as Exhibit '52'.

**36.** Rajan Kumar (PW-7) was posted as Superintendent, NCB, Patna. He has proved his signature on the notesheet, which was produced before him by Ram Ayodhya Kumar (PW-5). He has also proved his signature on the receipt showing deposit of ganja in the malkhana on 03.02.2021 at 11:40 PM. This witness has proved his signature marked Exhibits 'P-54', 'P-55', 'P-56', 'P-57', and 'P-58'. This witness has proved the godown entry no.



152 dated 03.02.2021 in the malkhana register. He had brought the malkhana register in the court and had identified that the entry was made in his presence by the Assistant, Head Sipahi Manoj Kumar Yadav and he himself. He identified the document and the signature, which were marked as Exhibit 'P-53'.

37. Dinesh Rai (DW-1) has stated that no search was conducted by the NCB officers in his presence in the house of Bijendra Kumar Rai. He has stated that he was brought from a tea shop by threatening and his signature was taken on a blank sheet of paper. In his cross-examination, he has stated that he was brought to depose by Vicky Kumar, who is brother of Bijendra Kumar Rai. His house is situated at a distance of 06-07 *baans* from the house of Bijendra Kumar Rai. Ranjeet Kumar (DW2) has deposed on the same line. He was also brought by Vicky, who is the brother of accused Bijendra Kumar Rai. It is evident from the deposition of DW-1 and DW-2 that they are the neighbors of Bijendra Kumar Rai, they admit to have put their signature on Exhibit 'P-6' but they have gone in collusion with the accused, therefore, they were brought by brother of Bijendra Kumar Rai to depose as defence witness. The testimony of DW-1 and DW-2 would not inspire confidence of this Court.



**38.** We have discussed the entire materials present on the record. To this Court, it is crystal clear that the prosecution in this case has been able to demonstrate with all impunity that fair procedure were adopted during search, seizure and sampling. The primary documents such as seizure list, inventory and sampling have been duly proved in course of trial and sanctity of these documents have not been doubted and no question has been raised against them.

**39.** In the present case, the informant-complainant had conducted the search, seizure and sampling procedure in accordance with law. Inventory, photographs and sampling have been done in presence of a Judicial Magistrate and there is full compliance with the requirement of Section 52A of the NDPS Act. In the kind of the materials available on the record, we would extract relevant part of the judgment of the Hon'ble Supreme Court in the case of **Kashif** (supra) in which the Hon'ble Supreme Court has taken note of the views expressed by the Supreme Court in case of **Yusuf @ Asif vs. State** reported in **(2024) 14 SCC 217** and **Mohd. Khalid and Anr. vs. State of Telangana** reported in **(2024) 5 SCC 393**. It has been held in paragraph '46' of the judgment in **Kashif** (supra) as under:-

**46.** At this stage, we must deal with the recent judgments in *Simarnjit Singh v. State of Punjab*<sup>12</sup>, in

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12. [(2024) 14 SCC 222 : 2023 SCC OnLine SC 906]



Yusuf v. State<sup>13</sup>, and in Mohd. Khalid v. State of Telangana<sup>14</sup> in which the convictions have been set aside by this Court on finding non-compliance with Section 52-A and relying upon the observations made in Mohanlal<sup>11</sup>. Apart from the fact that the said cases have been decided on the facts of each case, none of the judgments has proposed to lay down any law either with regard to Section 52-A or on the issue of admissibility of any other evidence collected during the course of trial under the NDPS Act.

**40.** In paragraph ‘**50**’ of its judgment in **Kashif** (*supra*), the Hon’ble Supreme Court has summarised the discussions which we reproduce hereunder for a ready reference:-

**50.** The upshot of the above discussion may be summarised as under:

**50.1** The provisions of the NDPS Act are required to be interpreted keeping in mind the scheme, object and purpose of the Act; as also the impact on the society as a whole. It has to be interpreted literally and not liberally, which may ultimately frustrate the object, purpose and Preamble of the Act.

**50.2** While considering the application for bail, the court must bear in mind the provisions of Section 37 of the NDPS Act which are mandatory in nature. Recording of findings as mandated in Section 37 is sine qua non is known for granting bail to the accused involved in the offences under the NDPS Act.

**50.3** The purpose of insertion of Section 52-A laying down the procedure for disposal of seized narcotic drugs and psychotropic substances, was to ensure the early disposal of the seized contraband drugs and substances. It was inserted in 1989 as one of the measures to implement and to give effect to the International Conventions on the narcotic drugs and psychotropic substances.

**50.4** Sub-section (2) of Section 52-A lays down the procedure as contemplated in sub-section (1)

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13. [(2024) 14 SCC 217 : 2023 SCC OnLine SC 1328]

14. [(2024) 5 SCC 393 : (2024) 2 SCC (Cri) 650]

11. [Union of India v. Mohanlal, (2016) 3 SCC 379 : (2016) 1 SCC (Cri) 864]



thereof, and any lapse or delayed compliance thereof would be merely a procedural irregularity which would neither entitle the accused to be released on bail nor would vitiate the trial on that ground alone.

**50.5** Any procedural irregularity or illegality found to have been committed in conducting the search and seizure during the course of investigation or thereafter, would by itself not make the entire evidence collected during the course of investigation, inadmissible. The court would have to consider all the circumstances and find out whether any serious prejudice has been caused to the accused.

**50.6** Any lapse or delay in compliance with Section 52-A by itself would neither vitiate the trial nor would entitle the accused to be released on bail. The court will have to consider other circumstances and the other primary evidence collected during the course of investigation, as also the statutory presumption permissible under Section 54 of the NDPS Act.

**41.** In yet another judgment, in case of **Bharat Aambale** (supra), the Hon'ble Supreme Court has been pleased to summarise the law relating to search, seizure and sampling of Narcotic Drugs and Psychotropic Substances in the following words:-

**“56.** We summarise our final conclusion as under:

**56.1.** Although Section 52-A 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 the presence of a



gazetted officer would not constitute sufficient compliance of the mandate under Section 52-A sub-section (2) of the NDPS Act.

**56.2.** 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*<sup>2</sup>, 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.

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

**56.4.** The procedure prescribed by the Standing Order(s)/Rules in terms of Section 52-A 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.

**56.5.** Mere non-compliance of the procedure under Section 52-A 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.

**56.6.** 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

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2. *Union of India v. Mohanlal*, (2016) 3 SCC 379 : (2016) 1 SCC (Cri) 864



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

**56.7.** 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.

**56.8.** Where there has been lapse on the part of the police in either following the procedure laid down in Section 52-A 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.

**56.9.** The initial burden will lie on the accused to first lay the foundational facts to show that there was non-compliance of Section 52-A, 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.

**56.10.** Once the foundational facts laid indicate non-compliance of Section 52-A 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 52-A 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.”

**42.** Keeping in view the materials present on the record, we find that the learned trial court has rightly appreciated the evidences available on the record and recorded conviction of the appellants under Sections 20(b)(ii)c, 25 and 29 of the NDPS Act of the NDPS Act.



43. So far as the order of sentence is concerned, before this Court, it has been pleaded that Shankar Yadav and Pritam Lakra are aged about 21 years and 18 years respectively. Nav Kumar Ojha is aged about 49 years and he is also having a lot of family responsibilities. It is submitted that this Court may consider modifying the sentence. Learned Additional Public Prosecutor submits that an appropriate view may be taken.

44. We are persuaded to take a view that the impugned order of sentence be modified by reducing the period of sentence to 11 years instead of 15 years. Accordingly, the appellants are directed to undergo rigorous imprisonment for a period of 11 years.

45. The rest of the order of sentence passed by the learned trial court needs no interference.

46. This appeal is partly allowed.

47. Let a copy of this judgment together with the trial court's records be sent down to learned trial court.

(Rajeev Ranjan Prasad, J)

(Sunil Dutta Mishra, J)

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