

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.950 of 2024

Arising Out of PS. Case No.-2 Year-2017 Thana- D.R.I District- Muzaffarpur

Tutu Ali son of Mr. Abdul Manaf Village- Balaaon Ps- Rangia Dist- Kamrup Assam

... .. Appellant

Versus

The Union of India, through Intelligence Officer, DRI, RU Muzaffarpur Bihar

... .. Respondent

with

CRIMINAL APPEAL (DB) No. 1230 of 2024

Arising Out of PS. Case No.-2 Year-2017 Thana- D.R.I District- Muzaffarpur

Bagicha Singh Son of Thakur Singh Resident of Village- Bangla Rai, P.S.0 Patti, District- Tarn Taran, State- Punjab

... .. Appellant

Versus

- 1. The State of Bihar
- 2. The Directorate of Revenue Intelligence (DRI) Bihar

... .. Respondents

Appearance :

(In CRIMINAL APPEAL (DB) No. 950 of 2024)

For the Appellant/s : Mr.Ajay Kumar Thakur, Advocate
Ms. Kiran Kumari, Advocate
Mr. Md. Imteyaz Ahmad, Advocate
Mr. Ritwaj Raman, Advocate
Mr. Purushottam Kumar, Advocate
Mr. Mudit Meet, Advocate

For the DRI : Mr.Anshuman Singh, Sr. Standing Counsel

(In CRIMINAL APPEAL (DB) No. 1230 of 2024)

For the Appellant/s : Mr. Radheyshyam Sharma, Advocate
Ms.Smiti Bharti, Advocate

For the DRI : Mr. Amit Pandey, Sr. Standing Counsel
Mr. Ankit Kumar Singh, Advocate
Mr. Rakesh Kumar, Advocate



**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE KUMAR MANISH
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)**

Date : 17-07-2026

Both the appeals have been preferred for setting aside the judgment of conviction dated 28.05.2024 (hereinafter referred to as the 'impugned judgment') and order of sentence dated 30.05.2024 (hereinafter referred to as the 'impugned order') passed by learned Exclusive Special Court-II (N.D.P.S.) Muzaffarpur in N.D.P.S case No.02/2017 arising out of DRI Case No.02/2017.

2. By the impugned Judgment, both the appellants have been convicted for the offences punishable under Sections 20(b) (ii)c of the Narcotic Drug and Psychotropic Substances Act (in short 'N.D.P.S. Act'). By the impugned order, they have been sentenced to undergo rigorous imprisonment for Fifteen years with a fine of Rs. 1,50,000/- (One Lakh Fifteen Thousand) each and in default of payment of fine, they shall further undergo additional simple imprisonment for one year.

Prosecution Case

3. The prosecution case based on the *Panchnama* prepared by the informant (PW-2) is that on 02.08.2017, the informant got secret information that two persons are going to



Gorakhpur with a consignment of Ganja through a Truck bearing a registration No-HR55K- 1508 via Muzaffarpur. On getting this information, two officers of the Regional Units Muzaffarpur went to Mathi Toll plaza where at 17:30 hours the said truck was seen coming from the site of Darbhanga in which one driver and one another person was found sitting. On query, driver disclosed his name as Baghicha Singh and the another person disclosed himself as *khalasi*, namely, Tutu Ali. The officers disclosed their identity and informed them that they have information regarding Ganja loaded in the vehicle which was denied by them. Both the persons became ready to get the vehicle searched in presence of gazetted officer. Thereafter both the persons were searched by the senior intelligence officer in which no incriminating article was found from them. The Driver Bagicha Singh produced the document showing the vehicle loaded with plastic granules. On further query, the driver disclosed about the packets of Ganja concealed beneath the plastic granules in the Driver's cabin. The packets were recovered and on opening the same, it was found to be Ganja. The truck loaded with ganja was brought in the campus of DRI office Muzaffarpur where the truck and both the apprehended persons were searched. From the Driver's cabin 17 packets and 6 packets from beneath the Plastic granules were found. All the packets



were marked '1' to '23' having similar weight the packets '1' to '18' were marked 'L1' and packets '19' to '23' were marked 'L2' after weighing all the packets were prepared on which all have put their signatures and the gross weight of the packets was 198.500kg and net weight was found 190.500 kg worth Rs. 9,52,500/-. From 'L1' two samples of 24 gram each were taken out and from 'L2' two samples were taken out which were marked 'B1' and 'B2'. The samples were sealed in presence of the independent witness on which both the apprehended persons, independent witness and officers put their signatures and the rest Ganja was sealed there. The apprehended persons were arrested and DRI Case No. 02 of 2017 dated 03.08.2017 under Sections 20/22 of N.D.P.S. Act was registered. After investigation, the investigating officer submitted charge-sheet/complaint No. DRI.F-NO-DRI/718(II)02-Seizure/MRU/2017/ Dated 24.01.2018 under Section 20 of the N.D.P.S. Act. , Learned Special Judge, N.D.P.S. Act Muzaffarpur took cognizance against both the appellants *vide* order dated 12.06.20218.

4. Charges were read over and explained to the accused persons (appellants) in Hindi to which they denied the charges and claimed to be tried. Accordingly, charges were framed *vide* order



dated 09.08.2018 for the offences punishable under Sections 20/25 of the N.D.P.S. Act.

5. In course of trial, the prosecution examined as many as four witnesses and got exhibited several documents. The list of prosecution witnesses and the documents are given hereunder in tabular form:-

List of Prosecution witnesses

Prosecution Witness No.	Name of the Witness	Description of the Witness
PW-1	Ashok Kumar Jha	Senior Intelligence officer Present with the informant at the time of apprehending the truck
PW-2	Ashutosh Kumar	informant
PW-3	Pawan Kumar	Inspector custom charge Godown
PW-4	Ajay Kumar	Superintendent CGST and companion of the informant

List of Exhibits on behalf of Prosecution

Exhibit No.	Description of the Exhibit	Proved by/ Attested by
'1'	Notice Under Section 50 N.D.P.S. Act given to Bagicha Singh	PW-1
'1/A'	Notice Under Section 50 N.D.P.S. Act given to Tutu Ali	PW-1
'1/B'	Signature of witness Ashutosh Kumar on the Notice Under Section 50 N.D.P.S. Act given to Bagicha Singh	PW-2
'1/C'	Signature of witness Ashutosh Kumar on the Notice Under Section 50 N.D.P.S. Act	PW-2



	given to Tutu Ali.	
'2'	Seizure list	PW-1
'2/A'	Inventory of Ganja	PW-1
'2/B'	Signature of witness Ashutosh Kumar on seizure list	PW-2
'2/C'	Signature of witness Ashutosh Kumar on inventory of Ganja	PW-2
'3'	Panchanama	PW-1
'3/A'	Signature of witness Ashutosh Kumar on Panchanama	PW-2
'4'	Beyan of Bagicha Singh recorded under Section 67 of N.D.P.S. Act.	PW-1
'4/A'	Beyan of Tutu Ali recorded under Section 67 of N.D.P.S. Act.	PW-1
'4/B'	Signature of witness Ashutosh Kumar on the Beyan of Bagicha Singh recorded under Section 67 of N.D.P.S. Act.	PW-2
'4/C'	Signature of witness Ashutosh Kumar on the Beyan of Tutu Ali recorded under Section 67 of N.D.P.S. Act.	PW-2
'5'	Report produced by witness Ashutosh Kumar under Section 57 N.D.P.S. Act.	PW-2
'6'	Paper of secret information	PW-2
'7'	Complaint petition	PW-2
'8'	Entry of seized articles made on the godown register	PW-3
'9'	Destruction report of seized ganja	PW-3
'10'	Certification paper of seized articles by Shri Nayan Kumar J.M. Ist class Muzaffurpur	PW-3
'C/1'	Report of sample received from the laboratory	under Section 293 Cr.P.C.

Material Exhibit

Exhibit No.	Description of the Exhibit	Proved by/ Attested by
'1'	Sealed envelop of sample having signature	PW-3



6. Thereafter, the statements of the accused persons, namely, Bagicha Singh and Tutu Ali were recorded under Section 313 of the Cr.P.C. in which they stated that they are innocent.

Findings of the Learned Trial Court

7. Learned trial court after analysing the evidences available on the record found that PW-2 (informant-cum-investigating officer) has supported the prosecution case which has been corroborated by PW-1 and PW-4. Learned Trial Court found that PW-1 in his evidence has proved the documents relating to notice under Section 50 of N.D.P.S. Act having notice of gazetted officer, seizure list, inventory of seized articles and *Panchnama* which were duly executed. On these documents, PW-2 has proved his signature which were also exhibited. Learned trial Court found that PW-2 has proved the information given to senior officials and after completion of investigation submitted the complaint petition. This witness has proved the process of sampling of seized articles and deposit of seized ganja in custom godown.

8. Learned trial Court further found that PW-3 has proved the entry made in the register of godown, destruction report of seized ganja and certification paper of seized articles inventory. Learned trial Court found that sampling done before learned Judicial Magistrate has been proved by the prosecution. The report



received from the FSL has been brought on the record which proved the sample to be ganja.

9. After analysing the evidence, learned trial court found that the truck loaded with ganja was intercepted on secret information at toll plaza and on interrogation, the driver and *khalasi* accepted regarding ganja loaded on the vehicle which was shown by them and on preliminary investigation, it was found to be ganja and with the consent of the accused persons and the witness, the truck was brought to the campus of DRI Muzaffarpur where detailed search was done and 32 packets of ganja were recovered. Accordingly, learned trial Court found that all the provisions of N.D.P.S. Act were complied with by the informant. Learned trial Court opined that the accused Bagicha Singh who is the owner of the truck and the *khalasi* appointed by him committed the offence.

10. Learned trial court further found that the prosecution has not been able to prove the offence under Section 25 of the N.D.P.S. Act against the appellants, hence, they are acquitted of the charge under Section 25 of the NDPS Act.

11. Learned trial Court after taking into account all the facts and circumstances of the case and the materials present on



the record held guilty and convicted the accused the appellants under Section 20(b)(ii)c of the N.D.P.S. Act.

Submissions on behalf of the appellant

12. Learned counsel for the appellant has submitted that there are several lapses in the case of the prosecution. There is total non-compliance with Section 42 and 50 of the NDPS Act. It is further submitted that the Investigating Officer (P.W.-2), being a part of the raiding party, has caused prejudice to the case and it was also observed that the panch witnesses have not been examined. The learned counsel also submitted that two independent witnesses were brought by the team to the place of occurrence. It is submitted that these two independent witnesses are biased as they stayed in vicinity of the police station.

13. Learned counsel has submitted that P.W. 1 has stated that the incident happened on 02/08/2017, when the police intercepted a truck which carried plastic granules containing 23 packets weighing 190.500 kg of contraband Ganja. In para 30 of his deposition, he has stated that the seizure list was prepared on 03/08/2017. The learned counsel submitted that it is doubtful whether the seizure list was prepared on 03/08/2017 and that the seizure list not being prepared at the place of occurrence raises serious doubt in the prosecution case. It is further pointed out that



P.W. 2, in para 22, has stated that on 02/08/2017, when the party returned, they began working on the seizure procedure, and that he does not recall when the seizure list was prepared, or whether or not it was prepared in the presence of a magistrate.

14. Learned counsel has also submitted that P.W. 2, who is the informant in this case, is also the Investigating Officer and a member of the raiding team. It was pointed out that in para 10, P.W. 2 has stated that within 72 hours of receiving the information, it was forwarded to the senior, which is marked as Exhibit 5. In para 20, it was pointed out that P.W. 2 has said that the driver did not try to run away, that the formalities were not completed at the spot, thereby totally neglecting the procedure under the NDPS Act, and that he did not ask any independent witness at the place of occurrence. The learned counsel submitted that these major lapses create doubt in the case of the prosecution and in their manner of search, seizure and sampling.

15. Learned counsel for the appellant submitted that P.W. 2, not even once in his examination-in-chief, has mentioned as to when he sent the sample for FSL examination. It was further submitted that no seizure list was prepared at the place of occurrence, which raises even more doubt in the prosecution case,



and that there has been a delay in the certification of the seized articles, which took place on 13/11/2017.

16. The learned counsel for the appellant also submitted that the seizure list was prepared on 03/08 and the seized articles were submitted in the godown on 09/08. It was pointed out that there has been no explanation on the part of the prosecution as to where the seized contraband was kept during the intervening period, from 03/08 to 09/08, which raises doubt. It was also submitted that P.W. 3's deposition states that when the articles were submitted in the godown, a sample was drawn and no exhibit was made of it; however, the same was made in front of the magistrate and was presented in court as it is.

Submissions on behalf of the DRI

17. 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.

18. Learned Senior Standing Counsel submits that the two samples of 25-25 grams each were drawn from each lot of the seized substance and were sealed with departmental seal and were marked as 'A1', 'A2', 'B1' and 'B2'. Signatures of seizing officer,



both the independent witnesses and two accused persons were obtained on all sealed items.

19. 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. The non-examination of two witnesses of the seizure list would not prove fatal as the defence has not questioned P.W.-2 on the point of making of seizure list and the signature of the accused, the witnesses and that of PW-2.

20. 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

21. We have heard learned counsel for the appellants and learned Senior Standing Counsel for the Directorate of Revenue Intelligence as also perused the trial court records.



22. In the present case, the prosecution case is based on the Panchnama (Exhibit-3) prepared by the informant-cum-complainant Ashutosh Kumar, Intelligence Officer, Revenue Intelligence Directorate, Regional Unit, Muzaffarpur. According to the Panchnama, he had received a secret information that two persons were coming with a load of ganja on a truck bearing Reg. No.HR-55K 1508 via Muzaffarpur. The informant prepared a note of the secret information (Exhibit-6) and placed it before his senior officer who constituted a team led by the informant (PW-1). Learned counsel for the appellant has questioned Exhibit-6 on the ground that the Revenue Intelligence Officer (PW-1) has mentioned that he had received secret information from his senior officer to whom he was placing the note. We are, however, of the considered opinion that by placing Exhibit-6 on the record in course of trial, the prosecution has shown compliance with the requirement of Section 42 of the N.D.P.S. Act.

23. As per the Panchnama (Exhibit-3), the team led by PW-1 informed two persons, namely, Md. Jalil and Md. Shailesh Kumar who were standing at the Imlichati chowk, Muzaffarpur that they are the Intelligence Officers and they have got information that one Tata truck bearing Reg. No.HR-55K 1508 loaded with ganja is going to Gorakhpur via Muzaffarpur. They



requested those two persons to be an independent witness of the entire procedure of search and the subsequent action. Both of them agreed to become independent witnesses. On 02.08.2017 at 5.30 PM, the said truck was intercepted, two persons were found sitting in the truck who were told about the information and both the persons denied that ganja was loaded on the truck.

24. It is also evident from the materials available on the record such as Exhibit-1, 1/A, 1/B and 1/C that both the persons were served with the notices under Section 50 of the N.D.P.S. Act. They were informed that they have an option to get themselves searched in presence of a Magistrate or gazetted officer. Both the persons agreed to get searched in presence of a gazetted officer. Both the persons were searched in presence of Senior Intelligence Officer, Muzaffarpur. No prohibited substance was found in their possession. In course of interrogation, the driver Bagicha Singh disclosed that in the secret cabin under the driver seat and beneath the plastic granules ganja were concealed. The driver showed the packets of ganja concealed inside the secret cabin inside the roof of the driver's cabin. Some of the packets were taken out and were opened. It was found that there was ganja in the packets.

25. According to the prosecution case, keeping in view the security aspect both the driver and khalasi of the truck together



with two independent witnesses and the loaded truck were brought to DRI office, Muzaffarpur for purpose of search and seizure at 7.30 PM. Search was conducted in presence of both the independent witnesses. In course of search, 17 packets of ganja were recovered from the secret cabin meant in the driver cabin and six packets were found concealed beneath the plastic which were loaded in the truck. All the 23 packets were serially numbered from 1 to 23 and they were divided into two lots. Two packets containing identical weight were 18 packets which were numbered 1 to 18 in Lot L-1 and the rest from serial no.19 to 23 were kept in Lot L-2. The ganja packets were weighed in presence of the driver and khalasi as also in presence of the two independent witnesses. All of them signed on the seizure memo. The prosecution has brought on record the seizure/detention memo (Exhibit-2) on the record.

26. A perusal of the seizure memo would show that both the accused-appellants, the two independent seizure list witnesses and the Revenue Intelligence Officer (PW-1) have put their thumb impression/signature. One of the accused Md. Tutu Ali has signed in English. In course of trial, the seizure memo (Exhibit-2) has been proved by Ashok Kumar Jha, the Sr. Intelligence Officer in DRI, Muzaffarpur (PW-1). He has stated the prosecution case in



his examination-in-chief. In paragraph '16' of his examination-in-chief, this witness has stated that the seizure list bears the thumb impression of accused Bagicha Singh, signature of Tutu Ali, thumb impression of one of the Panch witnesses, signature of the another panch witness and signature of Ashutosh Kumar, Intelligence Officer. PW-1 also proved a chart on which the weight of each of the packets were noted, on the said chart also all the above persons have put their signature. The seizure list and the chart (Annexure-A) have been duly proved as Exhibit-2 and 2/1 respectively.

27. To this Court, Exhibit-2 and Exhibit-2/1 seems to be a credible piece of evidence. Although, it has been submitted on behalf of the appellants that the independent seizure list witnesses have not deposed in course of trial but no serious prejudice to the defence has been shown to this Court. This Court is of the considered opinion that the seizure list having been duly signed by the accused persons in presence of the independent witnesses and the Revenue Intelligence Officer Ashutosh Kumar cannot be doubted. The evidences collected during search of the vehicle in question cannot be thrown away on this ground alone.

28. It is further evident from the materials available on the record that in presence of the accused persons two samples of 25 gram each were prepared from both the lots. The samples



prepared from L-1 were marked A1 and A2. The samples prepared from L-2 were marked B1 and B2. All the samples were kept in a yellow colour envelope and the same was sealed. The signature of both the accused persons, the independent witnesses and the officers were put on the said envelope. Finding that the accused persons had violated Section 8(c) of the N.D.P.S. Act, they were arrested on 03.08.2017 at 5.00 PM and 5.10 PM respectively under Section 43 of N.D.P.S. Act. The arrest memo was signed by the arrested persons, the independent witnesses and the officers. A perusal of the order-sheet of the learned trial court would show that the accused persons together with the Panchanama, seizure memo, arrest memo, Section 50 compliance form, information recorded and the statement of Bagicha Singh and Tutu Ali as also sample of seized narcotics in four sealed envelopes were submitted in the court of learned Special Judge, Muzaffarpur on 03.08.2017 itself. The accused persons were taken into judicial custody and were sent to Central Jail, Muzaffarpur. To this Court, therefore, there is no iota of doubt that the search, seizure and sampling procedure were duly complied with in accordance with the Standing Order No.01/89 and there is no reason to disbelieve these documents.



29. It would be further evident on perusal of the evidences that in course of cross-examination of the prosecution witnesses, the defence has not questioned the search, seizure and sampling procedure. They have not denied their signature on the seizure memo (Exhibit-2) and the inventory prepared after weighing all the packets (Exhibit-P/1). The defence has not suggested to the prosecution witnesses that they were not present in the vehicle in question or that the 23 packets of ganja were not seized from the truck. From the pattern of cross-examination of the prosecution witnesses particularly that of Ashutosh Kumar (PW-2) who has prepared the Panchnama, it is evident that no suggestion was given to this witness that Panchnama (Exhibit-3) was not prepared by him in presence of the accused persons. PW-2 is the I.O. of the case. He has proved his signature on the seizure memo which has been marked Exhibit-2/b. PW-2 has also identified the signature of the accused Tutu Ali and thumb impression of the witness Md. Jalil and the thumb impression of the accused Bagicha Singh. PW-2 also identified his signature on the inventory (Exhibit-2/a), his signature has been marked Exhibit-2/c. In course of his cross-examination, the defence suggested that nothing has been recovered from the accused persons and they have been falsely implicated. There is no suggestion to this witness that



nothing was recovered from the truck in question in which both the accused persons were present as driver and khalasi respectively. There is also no suggestion to this witness that there was no secret cabin in the truck.

30. This Court further finds that in this case the learned trial court had deputed Sri Nayan Kumar, a Judicial Magistrate, First Class for preparation of inventory and sampling of the seized ganja which were lying the custom down. The learned Judicial Magistrate had prepared the samples and issued a certificate of inventory in terms of Section 52A of the N.D.P.S. Act. He had taken out two samples of 25-25 gram each. The learned trial court has recorded a finding that on perusal of the material exhibit-1 (the sealed and signed envelope), it appears that the said sample was prepared and sealed on 13.11.2017 in presence of Sri Nayan Kumar, Judicial Magistrate, First Class. There was a short signature of the Judicial Magistrate.

31. The prosecution has produced the godown register entry of the seized ganja (Exhibit-8) through Pawan Kumar (PW-3). PW-3 has proved godown entry No.2/NDPS/17-18 dated 09.08.2017. He has also stated that entries relating to destruction of ganja is also there in the godown register which is written in the hand of the then inspector, godown which he identified. On his



identification, this document was marked Exhibit-5. He has also brought the sample in the court which was marked material exhibit no.1. PW-3 further proved the destruction report and the certificate of inventory prepared under the signature of Sri Nayan Kumar, Judicial Magistrate, First Class.

32. It has been contended on behalf of the appellants that the prosecution has not explained the period between 03.08.2017 and 09.08.2017 and nothing is stated as to where the packets of ganja were kept during this period. This Court has considered this aspect of the matter but having noticed that no illegality or infirmity has been found in the search, seizure and sampling procedure and then the certification of inventory as well as the preparation of samples in terms of Section 52A of the N.D.P.S. Act having been proved by the prosecution, this unexplained delay in depositing the ganja in the custom godown would not prove fatal to the prosecution. The evidences brought by the prosecution in this case are inspiring confidence and there is no iota of doubt to this Court that the truck in question was found transporting net 190.400 kg of ganja (gross 198.500 kg). The trial court has recorded that Bagicha Singh who was driving the truck was also the owner of the truck in question. He had got loaded the ganja and had kept the same in the secret cabins inside the truck. It has come



in evidence that so far as Tutu Ali is concerned, he was not present at the time of loading of ganja in the truck and he met Bagicha Singh only on the line hotel near Rangia which is at a distance of 6-7 km from his village and as he was in search of a work, Bagicha Singh offered him to work as khalasi on his truck. Tutu Ali boarded on the truck at Rangia on 02.08.2017 itself. He was informed of the fact that ganja were loaded in the truck. He was given Rs. 2500/- by Bagiacha Singh as his remuneration and was offered another Rs.2500/- if he works in the second trip.

33. At this stage, this Court would take glance over the judgments of the Hon'ble Supreme Court in the case of **Kashif** (supra) in which the Hon'ble Supreme Court has considered all the previous cases laws, discussed Section 52A of the N.D.P.S. Act and held that notwithstanding anything contained in the Indian Evidence Act or the Code of Criminal Procedure, every court trying an offence under this Act, shall treat the inventory, the photographs of narcotic drugs and psychotropic substances and list of samples drawn under sub-section (2) and certified by the Magistrate, as primary evidence in respect of such offence. The Hon'ble Supreme Court has referred the Constitution Bench judgment in case of **Pooran Mal vs. Director of Inspection (Investigation) New Delhi (1974) 1 SCC 345** wherein it has been



observed that in India, the law of evidence is modelled on the rules of evidence which prevailed in English Law and courts in India and in England have consistently refused to exclude relevant evidence merely on the ground that it is obtained by illegal search or seizure. In the case of **State of Punjab vs. Baldev Singh** reported in **(1999) 6 SCC 172**, the Hon'ble Supreme Court has explained that the judgment in **Pooran Mal** (*supra*) case cannot be understood to have laid down the law 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. It has been further held that the question of admissibility of evidence, which may be relevant to the question in issue, has to be decided in the context and the manner in which the evidence was collected and is sought to be used.

34. In the present case, we have held that the informant-complainant had conducted the search, seizure and sampling procedure in accordance with law. 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 case of **Kashif** (*supra*), 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 Punjab¹², in Yusuf v. State¹³, and in Mohd. Khalid v. State of Telangana¹⁴ 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 Mohanlal¹¹. 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.

35. 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

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

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]



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) 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.

36. 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*², 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

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



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 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.”

37. Applying the aforesaid views of the Hon'ble Supreme Court when we examine the evidences available on the record, in the present case it is found that the prosecution has placed every mandatory evidence on the record which are showing substantial compliance with the procedure prescribed under Section 52A of the N.D.P.S. Act. In our considered opinion, a fair procedure has been adopted by the seizing officer and the investigating officer. They have fully complied with the procedure.

38. In result, we find no reason to interfere with the judgment of the conviction of the appellants.



39. These appeals against the judgment of conviction fail.

40. So far as the sentencing part is concerned, this Court has noticed that the appellant Bagicha Singh and Tutu Ali both have been awarded rigorous imprisonment of 15 years under Section 20(b)(ii) and (c) of N.D.P.S. Act and they have been ordered to pay a fine of Rs.1,00,000/- each. In case of their failure to pay the fine amount, they will undergo a further simple imprisonment of one year.

41. So far as the sentence awarded to Bagicha Singh who is the appellant in Cr. Appeal (DB) No.1230 of 2024 is concerned, we would not interfere with the sentence awarded to him but in the matter of Tutu Ali, who is appellant in Cr. Appeal (DB) No.950 of 2024, this Court has noticed that he was not a regular khalasi on the truck. This appellant was not engaged at the time of loading of the truck, he was in search of a job and when the truck was standing at a line hotel where Bagicha Singh was taking his meal, this appellant approached him for engagement. From his statement recorded under Section 67 of the N.D.P.S. Act, it is further evident that he has a very poor financial condition and had the responsibility of his wife and two children. In such circumstance, his sentence is required to be modified.



42. We are of the opinion that the sentence of 15 years rigorous imprisonment awarded to the appellant Tutu Ali be reduced to 10 years of the rigorous imprisonment. We do so accordingly. The appellant Tutu Ali shall also be liable to pay a fine which is the minimum amount prescribed under the provision of Section 20(b)(ii)(c) of the N.D.P.S. Act i.e. Rs.1,00,000/-. In case of his failure to pay the fine amount, the appellant Tutu Ali shall undergo an additional six months simple imprisonment.

43. This appeal against the order of sentence is partly allowed in respect of the appellant Tutu Ali.

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

(Rajeev Ranjan Prasad, J)

(Kumar Manish, J)

Sushma2/Arvind-

AFR/NAFR	
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