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HIGH COURT OF CHHATTISGARH, BILASPUR

THE DATE WHEN THE JUDGMENT IS RESERVED	THE DATE WHEN THE JUDGMENT IS PRONOUNCED	THE DATE WHEN THE JUDGMENT IS UPLOADED ON THE WEBSITE	
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22/09/2026	15/10/2026	****	15/10/2026

Criminal Appeal No. 193 of 2021

Mohammed Abdul Shakoor S/o Raisudin, Aged About 32 Years, R/o Parihar Ramadih Rahmandih, P.S. Dhourayya, District Banka (Bihar).

… Appellant
In Jail

versus

State Of Chhattisgarh Through P.S. Farasgaon, District Kondagaon (Chhattisgarh).

--- **Respondent**

For Appellant	**:**	Ms. Kiran Jain & Mr. Rajesh Jain, Advocates
For State-Respondent	**:**	Mr. Khulesh Sahu, Panel Lawyer

Hon’ble Shri Justice Naresh Kumar Chandravanshi, J

C A V Judgment

This criminal appeal has been preferred by the appellant under Section 374(2) of the Code of Criminal Procedure, 1973 (for short, “CrPC”), being aggrieved by the judgment of conviction and order of sentence dated 26.12.2020 passed by the Special Judge (NDPS Act, 1985), Kondagaon, District Kondagaon (C.G.) in Special Criminal Case (NDPS Act, 1985) No.20/2018, whereby the appellant stands convicted under Section 20(b)(ii)(C) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, “the NDPS Act”) and sentenced to undergo rigorous imprisonment for 10 years and to pay a fine of Rs.1,00,000/-, in default of payment of fine, to further undergo rigorous imprisonment for one year.

2. Case of the prosecution, in brief, is that on 18.11.2017, the Investigating Officer, namely, Ajay Jha, was posted as Sub-Inspector at Police Station Farsgaon. On the date of the incident, he received information from an informant to the effect that a person travelling in a truck bearing registration No.UP-70-TA-0524, proceeding from Jagdalpur towards Farsgaon, was carrying narcotic substance for the purpose of sale. The said information was recorded in the police diary and notices were issued to the witnesses. The Investigating Officer

apprised them of the information received from the informant, prepared the requisite panchnama thereof and forwarded a copy of the said information along with the report to the SDOP, Farsgaon. Investigating Officer prepared a panchnama in compliance of the provisions of Section 42(2) of the NDPS Act and thereafter proceeded to conduct a blockade along with the police staff, investigation kit and the aforesaid witnesses. In front of Police Station – Farasgaon at NH-30 at about 4:00 p.m., a vehicle bearing the registration number as informed by the informant was seen approaching the spot and was intercepted by the police party. Upon being questioned, the person driving the said vehicle disclosed his name as Mohd. Abdul Shakoor (present appellant). Thereafter, the Investigating Officer served a notice upon the appellant under Section 50 of the NDPS Act, apprising him of his legal right to have himself and the vehicle searched before a Gazetted Officer or a Magistrate. The appellant furnished his consent for search by the Investigating Officer. Initially, the Investigating Officer conducted a search of himself, the police personnel and the witnesses, but no suspicious article or narcotic substance was found in their possession. Thereafter, the appellant as well as the vehicle was searched in the presence of the witnesses. During the course of such search, 122 packets of polythene containing suspected *Ganja*, were recovered from

the vehicle; total weight of seized substance was found to be 374.620 kilograms. The properties seized from the appellant were thereafter deposited with Malkhana In-charge by the Investigating Officer, who obtained the requisite acknowledgment/receipt in that regard. During the course of investigation, a spot map was prepared, statements of the witnesses were recorded and on 25.11.2017 the proceedings relating to inventory and sampling of the seized narcotic substance were conducted by the Tehsildar-cum-Executive Magistrate, Farsgaon. The said proceedings were also duly photographed. The sample packet prepared during the inventory proceedings, marked as Article A-1, was thereafter forwarded to the Forensic Science Laboratory, Raipur, for examination vide Memo dated 10.1.2018. Upon examination, the substance contained in the sample was found to be *Ganja*, as reflected from the FSL report. After completion of the investigation and collection of the requisite material, the Investigating Agency filed the charge-sheet before the jurisdictional Court against the appellant for the offence punishable under Section 20(b)(ii)(C) of the NDPS Act.

3. The learned Special Court framed the charge against the appellant under Section 20(b)(ii)(C) of the NDPS Act. The appellant denied the charge and claimed to be tried. In support of its case,

prosecution examined 12 witnesses and exhibited 48 documents as under :

WITNESSES

PW 1	Purshottam Sonwani	PW 7	Ajay Jha
PW 2	Ramkumar Patel	PW 8	Premlal Nag
PW 3	Shivprasad Thakur	PW 9	Piyush Pathak
PW 4	Rohit Pausharya	PW 10	Dipendra Kumar Nag
PW 5	Bhanu Pratap Yadav	PW 11	Krishna Patle
PW 6	Pitambar Kathar	PW 12	Dhananjay Netam

EXHIBITS

1.	Ex.P-1	Notice to appear as an independent witness	26.	Ex.P-25C	PS Farasgaon Nakal Rojnamcha Sanha dated 18.11.2017
2.	Ex.P-2	Secret Information Panchnama	27.	Ex.P-26C	PS Farasgaon Nakal Rojnamcha Sanha dated 18.11.2017
3.	Ex.P-3	Format for not obtaining a search warrant	28.	Ex.P-27	Duty certificate
4.	Ex.P-4	Report of reasons for search	29.	Ex.P-28C	PS Farasgaon Nakal Rojnamcha Sanha dated 18.11.2017
5.	Ex.P-5	Consent panchnama of accused	30.	Ex.P-29	Notice to appear at the spot

6.	Ex.P-6	Self-search panchnama	31.	Ex.P-30C	PS Farasgaon Nakal Rojnamcha Sanha dated 18.11.2017
7.	Ex.P-7	Search panchnama of force	32.	Ex.P-31C	PS Farasgaon Nakal Rojnamcha Sanha dated 18.11.2017
8.	Ex.P-8	Search panchanama of witness	33.	Ex.P-32	Duty certificate
9.	Ex.P-9	Search Panchnama of accused	34.	Ex.P-33C	PS Farasgaon Nakal Rojnamcha Sanha dated 18.11.2017
10.	Ex.P-10	Vehicle search panchnama	35.	Ex.P-34C	PS Farasgaon Nakal Rojnamcha Sanha dated 18.11.2017
11.	Ex.P-11	Recovery panchnama	36.	Ex.P-35C	PS Farasgaon Nakal Rojnamcha Sanha dated 18.11.2017
12.	Ex.P-12	Drug Identification Panchnama	37.	Ex.P-36	Notice regarding possession of ganja
13.	Ex.P-13	Physical verification of scales	38.	Ex.P-37	Duty certificate
14.	Ex.P-14	Weighing panchnama of intoxicating substance	39.	Ex.P-38	Notice of reasons for arrest
15.	Ex.P-15	Property seizure sheet	40.	Ex.P-39	Acknowledgment of Wintatu Message
16.	Ex.P-16	Property seizure memo	41.	Ex.P-40	Crime Details Form and certificate regarding weighing

					machine.
17.	Ex.P-17	Arrest memo	42.	Ex.P-41	Request letter for inventory of seized narcotics substance
18.	Ex.P-18	Panchnama for taking out the seized Ganja from the Malkhana	43.	Ex.P-42	Request letter for inventory of seized narcotics substance
19.	Ex.P-18	Police statement of Ram Kumar Patel	44.	Ex.P-43	Inventory prepared under Section 52-A(2) of NDPS Act.
20.	Ex.P-19	Receipt for keeping the seized goods in Malkhana	45.	Ex.P-44	Request letter for chemical analysis of seized articles.
21.	Ex.P-20	Supurdnama Receipt of seized sealed article	46.	Ex.P-45	Exhibit receipt
22.	Ex.P-21C	Copy of register of seized article	47.	Ex.P-46	Exhibit return receipt
23.	Ex.P-22	Necessary action on the spot	48.	Ex.P-47	FSL report
24.	Ex.P-23	Dehati Nalsi	49.	Article-A to Article-H	Photographs of weighment, sealing and mixing of Ganja
25.	Ex.P-24	FIR			

4. Statement of the appellant was also recorded under section 313 of Cr.P.C., in which, he denied the incriminating circumstances appearing against him in prosecution case and stated that he is innocent and has falsely been implicated in the case. No witness has been examined by the appellant in his

defence.

5. Upon appreciation of the oral and documentary evidence available on record, the learned Special Judge, by the impugned judgment dated 26.12.2020 convicted and sentenced the appellant as indicated in the opening paragraph of this judgment. Hence this appeal.

6. Learned counsel for appellant would submit that the impugned judgment is per se illegal and contrary to the material available on record. There are material discrepancies in prosecution case. The alleged 122 packets, total weight 374.620 kilograms, containing ganja were seized from the appellant vide seizure memo Ex.P-15. It has not been mentioned in seizure memo that said 122 packets were kept in any sack of jute or plastic, but in Malkhana register Ex.P-21(C), it is mentioned that said 122 packets were deposited in Malkhana of Police Station-Farasgaon in 14 plastic sacks (*bori*). He would further submit that as per inventory (Ex.P-42 and 43) and Panchnama (Ex.P-18), said *Ganja* deposited in Malkhana was taken out from Malkhana on 25.11.2017 for preparation of inventory and sampling. But as per Panchnama (Ex.P-18), said *Ganja* was

taken out from Malkhana were in 14 jute sacks (*bori*), i.e., A1 to A14, but as per order of the Executive Magistrate/Tahsildar, Farasgaon, District Kondagaon (Ex.P-42), said *Ganja* seized before him was in 40 jute sacks (*bori*), which contained 122 packets, however, in same para, it has further been noted that said 122 packets were kept in 30 jute sacks in sealed condition, which was opened for sampling and two samples namely A1 & A2 were prepared on 25.11.2017. He would further submit that as per Supurdnama Acknowledgment of seized articles (Ex.P-20), after preparing two sealed samples A1 & A2, the same were sent to FSL on 25.11.2017, but as per memo of Superintendent of Police, Kondagaon (Ex.P-44), only sample A1 weighing 100 gram was sent to FSL, Raipur on 10.01.2018. Ex.P-45 is the receipt given by FSL, Raipur which shows that sample A-1 sent with Memo dated 10.1.2018 of SP, Kondagaon, was deposited through Constable No.699 Chaitram Netam on 16.1.2018. Thus, there is not only serious discrepancy whether after seizure of said *Ganja* in 122 packets, the same were kept and deposited in Malkhana in plastic sack or jute sack and what was the number of those sacks but also there is serious contradictions in this regard in inventory prepared by Executive Magistrate –

Dhananjay Netam (PW-12) and Malkhana register Ex.P-21(C). Likewise, Investigating Officer- Krishna Patle (PW-11) or other prosecution witnesses have not clarified in their deposition that when the sample was prepared on 25.11.2017, then where it was kept till 10.01.2018. Learned counsel for the appellant further contends that when sample A-1 was sent to FSL vide Memo of Superintendent of Police (Ex.P-44) dated 10.01.2018, then why it was deposited after six days in FSL, Raipur on 16.1.2018. Constable- Chetram Netam is said to have deposited said sample A-1 at FSL, Raipur, but he has not been examined by prosecution. He would further submit that since fairness in the procedure of sampling till its depositing in Malkhana has not been proved beyond reasonable doubt, therefore, only on the basis of such suspicious and unexplained fact, conviction cannot be based on it, but learned Special Judge without considering the aforesaid grave lacuna has convicted appellant. In view of these submissions, he prays that the impugned judgment of conviction and order of sentence may be set aside and the appellant be acquitted of the charge leveled against him.

7. Per contra, learned State counsel would submit that the

said discrepancies have been considered by learned Special Judge in Para-21 of impugned judgment and it has been observed that despite variation in number of sacks in documents, total weight of seized contraband substance has not been changed. Therefore, the discrepancies pointed out by the learned counsel for the appellant are not material to discard the otherwise cogent and reliable evidence adduced by the prosecution. He would further submit that prosecution witnesses have proved that appellant was caught red handed while transporting huge quantity of *Ganja*, i.e., 374.620 kilograms in truck and sample was prepared by the Executive Magistrate and sample A-1 was sent to FSL for examination, which reported it to be *Ganja*. The impugned judgment being based on proper appreciation of oral and documentary evidence on record, does not call for any interference by this Court. Therefore, the instant appeal being without any substance is liable to be dismissed.

8. I have heard learned counsel appearing for the parties and perused the record with utmost circumspection.

9. PW-1 Purshottam Sonwani, Head Constable, a member of the raiding party, states that he along with the investigating

officer Ajay Jha and other police personnel, went to the indicated place where the vehicle in question was intercepted and from the backside of the vehicle (Dala), 122 packets containing *Ganja* were recovered. He states that upon weighment, the *Ganja* was found to be 374.620 kg.

10. PW-2 Ramkumar Patel, independent witness to Ex.P/1 to P/18, has turned hostile and even denied his signature on these documents. Likewise, PW-9 Piyush Pathak, an independent witness, has not supported the prosecution case and denied his signature on Ex.P/2 to 18 & 29.

11. PW-3 Shivprasad Thakur, Head Constable, states that in November, 2017 he was In-charge Malkhana, PS-Farasgaon. On 18.11.2017, 14 plastic sacks containing 374.620 kgms of narcotic drugs, one mobile and cash of Rs.2000/- seized by Sub Inspector Ajay Jha in Crime No.109/17, were given to him for depositing the same in Malkhana, which was recorded at page No.225 at S.No.76 in the Malkhana Register and its acknowledgment is Ex.P/19. He states that on 25.11.2017 Inspector Krishna Patle took away the said 14 sealed sacks from Malkhana for mixing and sampling proceedings vide Ex.P/18 and

after conducting such proceedings, the sealed sample packets A-1 and A-2, each of 100 gms, prepared by the Executive Magistrate along with rest of the narcotic drugs kept in 15 sacks, were deposited back in the Malkhana vide Ex.P/20. He states that seized sealed sample A-1 was sent to FSL for examination on the direction of the Superintendent of Police and after examination, the said sample was received back by PS-Farasgaon, which was kept in safe custody in Malkhana. However, in cross-examination this witness admits that he has not mentioned in Ex.P/21 (Malkhana Register) that the seized article produced before him was in sealed condition. He admits that he also did not mention in Ex.P/21 that while depositing the seized article in the strong room, the same was in sealed condition. He further admits that withdrawal of the seized article on 25.11.2017 from Malkhana for sampling and thereafter its deposit in the Malkhana, are not mentioned in Ex.P/21.

12. PW-4 Rohit Pousharya, Constable, submitted the Secret Information Panchanama in the office of SDOP, Farasgaon on 18.11.2017 vide Ex.P/22. PW-5 Bhanupratap Yadav, Sub Inspector, a member of the raiding party, states that on the date

of incident, the vehicle driven by the accused/appellant was intercepted and upon search, 122 packets kept in the backside of the vehicle (Dala) which were wrapped in white polythene, were recovered and identified to be *Ganja*. Upon weighment, it was found to be total 374.620 kg. PW-6 Pitambar Kathar, Assistant Sub Inspector, registered FIR (Ex.P/24) on the basis of Dehati Nalishi, and forwarded a copy thereof to Judicial Magistrate First Class, Kondagaon on 19.11.2017.

13. PW-7 Ajay Jha, Sub Inspector, is the investigating officer in this case. He has deposed as to the manner in which upon receipt of secret information, the same was recorded in Rojnamcha Sanha, the independent witnesses were summoned, the secret information was forwarded to SDOP, the raiding party was constituted and proceeded for the indicated place where the vehicle Truck bearing registration No.UP 17-TA-0524 was intercepted and after obtaining consent of the appellant, search was made whereupon 122 packets kept in the backside of the vehicle (Dala), which were wrapped in white plastic, were seized. He states that upon weighment being done, it was found to be total 374.620 kgs vide Ex.P/15. During search, one mobile,

driving licence, vehicle permit, insurance policy, RC book and four currency notes of 500 denomination, were seized from the accused/appellant vide Ex.P/16. In para 13 he states that after registration of the offence, the seized articles including 374.620 kgms of *Ganja* sealed in 14 white plastic sacks, the said truck, mobile and cash were handed over to Malkhana Muharrir Head Constable 331 Shivprasad Thakur on 18.11.2017 for depositing in Malkhana and acknowledgment thereof was obtained vide Ex.P/19. In para 20 of his cross-examination, he admits that no specimen seal was affixed on the seizure memos Ex.P/15 & P/16. He also admits that he did not even mention about preparation of specimen seal in this case.

14. PW-8 Premlal Nag, Head Constable, states that on 18.11.2017 he was working as Assistant Reader in the office of SDOP, Farasgaon and received a closed envelope from Rohit Pousharya, Constable No.458, which contained information regarding transportation of *Ganja* and secret information panchanama in two copies. He states that 1-1 copy of the said documents were retained by him and acknowledgment was given in remaining 1-1 copy to the said constable.

15. PW-10 Deependra Kumar Nag, an independent witness, who is said to have conducted weighment of the seized ganja, has not supported the prosecution case and has turned hostile. In cross-examination he admits that he signed the documents Ex.P/14 to P/40 at the instance of police and he was not read over the contents of these documents by the police.

16. PW-11 Krishna Patle, Inspector, states that on 25.11.2017, the *Ganja* seized in Crime No. 109/17 under Section 20(b) of the NDPS Act, Police Station Farasgaon, was taken out from the police Malkhana in the presence of witnesses Piyush Pathak and Ramkumar Patel. The 14 sealed jute sacks marked A-1 to A-14 were found intact and bore identical sample seals. Accordingly, Panchnama Ex. P/18 was prepared which bears his signature. Further he states that on 25.11.2017, 40 jute sacks containing *Ganja*, bearing the seal of Police Station Farasgaon, were taken out from the Malkhana and found intact. In para 5 he states that the Executive Magistrate, Farasgaon in his presence got the 40 jute sacks opened through Constable Satish Chidda, which contained total 122 packets and the same were marked as A-1 to A-122 and weighed separately. In para 6 he states that

Constable Satish Chidda opened all the packets, thoroughly mixed the contents to ensure homogeneity, and prepared two separate samples of 100 grams each for chemical examination, marked A-1 and A-2. The remaining *Ganja* was packed into 11 plastic sacks and 4 jute sacks and sealed. In cross-examination he admitted that he was present at the Tehsil Office, Farasgaon, during the inventory proceedings. Inventory Report Ex. P/42 records the production of 40 jute sacks containing *Ganja* and mentions opening 30 sacks to remove the packets. He clarified that mentioning 30 sacks was a typographical error, as all 40 sacks were opened and their contents homogenised. He admitted that Ex. P/44 records that the material sent for examination was obtained from 122 packets contained in 30 jute sacks.

17. PW-12 Dhananjay Netam, the then Tehsildar, states that he prepared inventory of the seized narcotic drugs stuffed in 40 jute sacks on 25.11.2017. He admitted that in the order sheet of the inventory proceedings (Ex. P/42), he recorded that Police Station Farasgaon had produced *Ganja* in 40 jute sacks before the Court and that 30 jute sacks were opened. He clarified that

mentioning 30 instead of 40 was a clerical error. He further admitted that the police had not produced the *Ganja* in 11 plastic sacks and 4 jute sacks, totalling 15 bags, before him. The witness admitted that Inventory Report Ex. P/42 records that the seized *Ganja* was packed in 11 plastic sacks and 4 jute sacks. He further admitted that no photographs showing the plastic sacks were produced in the case.

18. The principal question that arises for consideration in the present appeal is whether the prosecution has established beyond reasonable doubt that the sample of *Ganja* examined by the Forensic Science Laboratory (FSL) was drawn from the very contraband allegedly seized from the possession of the appellant and that the said sample remained in safe custody, duly sealed and untampered with, throughout the period commencing from its seizure until its receipt at the laboratory. Upon a careful examination of the oral and documentary evidence available on record, this Court finds that the prosecution has failed to satisfactorily establish the aforesaid essential link in the chain of custody.

19. It is well settled that in a prosecution under the NDPS Act,

the prosecution must establish not only the recovery of the alleged contraband but also the identity and integrity of the sample subjected to chemical examination. The mere production of an FSL report identifying the sample as *Ganja* would not, by itself, be sufficient to sustain a conviction if the prosecution fails to establish a reliable and unbroken link between the substance allegedly seized from the accused and the sample examined by the laboratory. The requirement assumes particular significance in view of the stringent penal consequences prescribed under the NDPS Act.

20. In ***Abdul Rajik v. State of Madhya Pradesh*** **(Criminal Appeal No.1561/2014) and** ***Govind v. State of Madhya Pradesh (Criminal Appeal No.1562/2014)*****, 2026 INSC 1001, judgment dated 16th September, 2026**, the Hon'ble Supreme Court reiterated that the prosecution must establish, through credible oral and documentary evidence, the complete chain of custody of the samples to ensure their integrity and sanctity. The Court further observed that an unexplained gap in the custody of samples, coupled with the failure to examine the person who carried them to the FSL, may seriously undermine the

prosecution case. The Court ultimately held that where the link evidence is completely breached, the FSL report cannot safely be relied upon to establish the identity of the alleged contraband. The principles laid down therein are directly relevant to the controversy involved in the present appeal.

21. In the present case, the first material discrepancy relates to the description and packaging of the alleged contraband at the time of its seizure and its subsequent deposit in the Malkhana. Admittedly, seizure memo Ex. P/15 does not mention that the 122 packets allegedly recovered from the vehicle were packed or kept in either jute sacks or plastic sacks. However, according to PW-3 Shivprasad Thakur, the Malkhana In-charge, the said 122 packets, weighing 374.620 kilograms, were deposited in the Malkhana on 18.11.2017 in 14 plastic sacks. The corresponding entry in the Malkhana register, Ex. P/21C, also records the deposit of the contraband in 14 plastic sacks. Contrary to the aforesaid evidence, Panchnama Ex.P/18, prepared on 25.11.2017 when the contraband was taken out from the Malkhana for inventory and sampling, records that the seized *Ganja* was kept in 14 jute sacks marked A-1 to A-14. PW-11

Krishna Patle, the Investigating Officer who took out the alleged contraband from the Malkhana, has also referred to the sacks as jute sacks in his deposition. Thus, the description of the packaging in which the contraband was allegedly seized and subsequently stored is not consistent across the relevant documents and the oral testimony of the prosecution witnesses. Significantly, the seizure memo, which is the foundational document relating to the alleged recovery, does not contain any description of the bags in which the 122 packets were allegedly kept. Although a discrepancy in the description of packaging, considered in isolation, may not necessarily be fatal to the prosecution, its significance must be assessed in the context of the subsequent discrepancies concerning the number and nature of the bags/sacks, the inventory proceedings and the movement of the samples.

22. The aforesaid discrepancies become more significant when the evidence relating to the inventory proceedings conducted by PW-12 Dhananjay Netam, the then Tehsildar-cum-Executive Magistrate, is examined. According to PW-11, on 25.11.2017, 40 jute sacks containing the seized *Ganja* were

taken out from the Malkhana and produced before the Executive Magistrate for inventory and sampling. PW-12 has also stated that 40 jute sacks containing *Ganja* were produced before him. However, the order sheet of the inventory proceedings, Ex. P/42, contains an apparent inconsistency. While it records the production of *Ganja* in 40 jute sacks, it subsequently mentions that the 122 packets were kept in 30 jute sacks, which were opened for the purpose of sampling. PW-11 has sought to explain the reference to 30 sacks as a typographical error, stating that all 40 sacks were actually opened and their contents homogenised. This explanation, however, does not resolve the entire discrepancy appearing in the prosecution evidence. The clarification offered by PW-11 is confined to the difference between the figures of 30 and 40. It does not explain why the Malkhana register records the deposit of the contraband in 14 plastic sacks, Panchnama Ex. P/18 refers to 14 jute sacks, and the inventory proceedings refer to 40 jute sacks. Nor does it satisfactorily explain the subsequent description of the remaining contraband as having been packed in 11 plastic sacks and 4 jute sacks, totalling 15 sacks, after the sampling proceedings. The evidence of PW-12 further assumes significance in this regard.

He admitted that the police had not produced the contraband before him in the form of 11 plastic sacks and 4 jute sacks. He also admitted that no photographs depicting the plastic sacks were produced in the case. Consequently, the documentary evidence and the testimony of the material witnesses do not present a consistent account of the packaging and movement of the alleged contraband from its initial seizure until the completion of the inventory and sampling proceedings. The explanation of a typographical error concerning the number of sacks cannot, by itself, reconcile the other material inconsistencies.

23. Another material circumstance is that the prosecution has failed to establish through the relevant Malkhana records the movement and custody of the samples after their preparation on 25.11.2017. PW-3 Shivprasad Thakur has stated that the sealed sample packets A-1 and A-2, each weighing 100 grams, together with the remaining contraband packed in 15 sacks, were deposited back in the Malkhana after completion of the inventory and sampling proceedings. However, in his cross-examination, PW-3 admitted that the Malkhana register, Ex. P/21C, does not record the withdrawal of the seized articles on 25.11.2017 for

sampling or their subsequent redeposit in the Malkhana. He also admitted that the register does not specifically record that the articles deposited in the Malkhana were in a sealed condition. The absence of an entry regarding the withdrawal and subsequent redeposit of the seized articles is material because the prosecution relies upon the Malkhana as the place where the contraband and the samples remained in safe custody. In the absence of contemporaneous entries recording the movement of the seized property, the prosecution has not satisfactorily established the manner in which the samples were kept and secured after their preparation. It is true that an omission in a Malkhana register does not invariably establish that the samples were tampered with. Nevertheless, where the identity of the packaging itself is disputed and the prosecution has also failed to maintain a consistent documentary account of the movement of the seized property, the absence of such entries assumes considerable significance in assessing the reliability of the chain of custody.

24. The most significant circumstance, however, relates to the dispatch and receipt of sample A-1 at the FSL, Raipur. According

to the prosecution, the samples A-1 and A-2 were prepared on 25.11.2017 during the inventory proceedings conducted by the Executive Magistrate. PW-3 has stated that the sample A-1 was subsequently sent to the FSL for examination on the direction of the Superintendent of Police. However, the prosecution has not produced any document showing the date on which sample A-1 was taken out from the Malkhana for dispatch to the laboratory. The forwarding memo issued by the Superintendent of Police, Kondagaon, marked as Ex. P/44, shows that sample A-1, weighing 100 grams, was sent to the FSL, Raipur, on 10.01.2018. The receipt issued by the FSL, Ex. P/45, and the FSL report, Ex. P/47, establish that the sample was received at the laboratory on 16.01.2018. Thus, there is a gap of six days between the date of dispatch mentioned in the forwarding memo and the date of receipt recorded by the laboratory. The prosecution has not offered any explanation for this interval. It has neither established where the sample remained during these six days nor produced any evidence explaining the circumstances in which it was transported and delivered to the laboratory.

25. It is also borne out from the prosecution evidence that the sample was allegedly carried to the FSL by Constable No. 699, Chaitram Netam. However, the prosecution has not examined the said constable. His examination was material, as he was the person who could have explained when the sample was actually received by him, from whom and in what condition it was handed over to him, and how and when it was delivered to the FSL. His testimony could also have assisted the Court in determining the circumstances surrounding the interval between the date of dispatch and the date of receipt. In the absence of his testimony, and in the absence of any contemporaneous record explaining the movement and custody of the sample during the aforesaid period, the prosecution has left a material link in the chain of custody unexplained.

26. In ***Abdul Rajik*** (supra), the Hon'ble Supreme Court considered a similar circumstance in which the forwarding letter issued by the Superintendent of Police bore a date different from the date on which the samples were received at the FSL. The prosecution had failed to explain where and in whose custody the samples remained during the intervening period, and the

constable who had carried the samples to the laboratory had not been examined. In those circumstances, the Court held that the unexplained gap, coupled with the failure to establish the custody and movement of the samples, resulted in a breach of the chain of custody and undermined the evidentiary value of the FSL report. The principle laid down by the Hon'ble Supreme Court is that the prosecution must establish, by reliable oral and documentary evidence, that the samples extracted from the seized contraband were properly secured and remained in safe custody from the time of seizure until their receipt at the laboratory.

27. Applying the aforesaid principle to the facts of the present case, this Court finds that the prosecution has failed to explain the six-day interval between the date of dispatch and the date of receipt of sample A-1. More importantly, this lapse does not stand in isolation. It is accompanied by the absence of a Malkhana entry recording the withdrawal of the sample for dispatch, the failure to establish its movement from the Malkhana, and the non-examination of the constable who allegedly carried it to the FSL. The fact that the FSL report

identifies the sample received by it as *Ganja* establishes the nature of the substance examined in the laboratory. It does not, by itself, resolve the anterior question whether the sample so examined was the very sample drawn from the contraband allegedly seized from the appellant and whether its identity and integrity remained intact throughout the intervening period.

28. The facts of the present case must, therefore, be assessed cumulatively. The discrepancy regarding the number and nature of the sacks, the absence of a description of the packaging in the seizure memo, the inconsistent entries concerning the seized property, the absence of Malkhana entries recording its withdrawal and redeposit, the unexplained interval between dispatch and receipt of the sample at the FSL, and the non-examination of the carrier constable, collectively raise a serious doubt regarding the integrity of the sample examined by the laboratory. These circumstances cannot be dismissed as inconsequential merely because the total weight of the alleged contraband has not been shown to have changed. The issue is not confined to the weight of the seized substance; it concerns the identity of the material seized, the continuity of its custody,

and the reliability of the sample relied upon to establish its nature.

29. This Court is conscious of the fact that the prosecution witnesses have supported the case regarding the interception of the truck and the alleged recovery of 122 packets from its rear portion. The evidence of the police witnesses, therefore, cannot be discarded merely because the independent witnesses have not supported the prosecution case. However, proof of the initial recovery and proof that the substance recovered was the contraband alleged in the charge are distinct matters. Where the prosecution relies upon chemical examination to establish the nature of the seized substance, it must establish a reliable link between the substance recovered at the spot and the sample examined by the laboratory. In the present case, the FSL report cannot be treated as conclusive proof of the nature of the substance allegedly seized from the appellant when the prosecution has failed to satisfactorily establish the identity and integrity of the sample throughout its custody. The discrepancies discussed hereinabove, particularly those concerning the packaging of the contraband and the unexplained movement of

the sample before its receipt at the FSL, render the prosecution's chain of custody doubtful. Once the evidentiary link between the alleged recovery and the sample examined by the FSL becomes doubtful, the prosecution case suffers from a fundamental deficiency in proving the nature of the substance forming the basis of the charge under Section 20(b)(ii)(C) of the NDPS Act. The evidence on record, when assessed as a whole, does not inspire the degree of confidence required to sustain the conviction under the said provision. The learned Special Judge, in the considered opinion of this Court, failed to appreciate the cumulative effect of the aforesaid material discrepancies and the absence of reliable link evidence. The impugned judgment of conviction and order of sentence, therefore, cannot be sustained.

30. On the basis of aforesaid discussions, this Court is of the opinion that the prosecution has failed to prove its case against the appellant beyond reasonable doubt and as such, he is entitled to be acquitted of the charge under Section 20(b)(ii)(C) of the NDPS Act by extending him the benefit of reasonable doubt.

31. In the result, the appeal is allowed. The impugned

judgment of conviction and order of sentence dated 26.12.2020 passed by the Special Judge (NDPS Act, 1985), Kondagaon, District Kondagaon, in Special Criminal Case (NDPS Act, 1985) No. 20/2018, convicting and sentencing the appellant under Section 20(b)(ii)(C) of the NDPS Act, are hereby set aside. The appellant is acquitted of the said charge by extending him the benefit of reasonable doubt. He shall be released forthwith, if not required in any other case. The fine amount, if deposited, shall be refunded to him.

32. The appellant is reported to be on bail, therefore, his bail bonds shall remain in operation for a period of six months from today in view of provisions of Section 481 of BNSS, 2023.

33. The record of the trial Court along with copy of this judgment be sent back immediately to the trial Court concerned for compliance and necessary action. A copy of this judgment be also forwarded to the concerned Jail Superintendent for information and necessary action.

Sd/
(Naresh Kumar Chandravanshi)
Judge

MOHD AKHTAR KHAN
Digitally signed by MOHD AKHTAR KHAN
Date: 2026.10.15 14:07:37 +0530

Khan