CGHC010286872021 2026:CGHC:45385

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

ACQA No. 227 of 2021

State of Chhattisgarh, Through Police Station Mohannagar, District Durg Chhattisgarh.

... Appellant (s)

versus

1 - Rupesh Kumar Sahu S/o Topu Ram Sahu Aged About 27 Years R/o Aamapara Baghera, Near Patel Stores, Police Station Pulgaon, District Durg Chhattisgarh.

2 - Lokesh Ameshar S/o Ramesh Kumar Ameshar Aged About 22 Years R/o Gaya Nagar, Behind Dewangan Dharamsala, Durg District Durg Chhattisgarh.

3 - Trilok Nirmalkar S/o Devnath Nirmalkar Aged About 21 Years R/o Gond Para, Near Goura Chowra, Near Chandi Temple, Durg, District Durg Chhattisgarh.

... Respondents

For State/Appellant	:	Mr. Vinay Pandey, Dy. Advocate General.
For Respondents	:	Mr. Rishi Sahu, Advocate.

Hon'ble Shri Justice Narendra Kumar Vyas

Order on Board

27/10/2026

1. In pursuance of direction issued by this Court vide judgment dated 24.09.2026, respondent No. 1- Rupesh Kumar Sahu is present before this Court along with his counsel as today the matter is listed before this Court for hearing on sentence.

2. Heard learned counsel for the parties on sentence in compliance of Section 235(2) of the Cr.P.C./Section 254(2) of the Bhartiya Nagrik Suraksha Sanhita (BNSS), 2023.

3. Learned counsel for the State/appellant would submit that the

ARUN KUMAR DEWANGAN
Digitally signed by ARUN KUMAR DEWANGAN
Date: 2026.10.29 17:39:30 +0530

prosecution has proved the offence under the NDPS Act beyond reasonable doubt as the contraband article was seized from possession of respondent No.1-Rupesh Kumar Sahu which was duly corroborated from statement of prosecution witnesses, therefore, maximum sentence as provided in the statute may kindly be awarded to the respondents/accused.

4. Learned counsel for the respondents/accused would submit that if the respondents are sent to the jail, their family may be adversely affected, therefore, a lenient view may kindly be taken against them and would pray for awarding less punishment.

5. I have heard learned counsel for the parties with utmost satisfaction.

6. Considering the fact that the contraband article i.e. 24.390 grams brown sugar was seized from possession of respondent No. 1-Rupesh Kumar Sahu, therefore, respondent No. 1 is liable to be convicted for commission of offence under Section 21(B) of the NDPS Act whereas respondent No. 2- Lokesh Ameshar & respondent No. 3-Trilok Nirmalkar are acquitted from the charges levelled against them.

7. Consequently, respondent No. 1- Rupesh Kumar Sahu is convicted for commission of offence under Section 21(B) of the NDPS Act by sentencing him undergo rigorous imprisonment for four years.

8. It is reported that respondent No. 1- Rupesh Kumar Sahu remained in jail from 12.09.2017 to 13.03.2018, therefore, he shall be entitled to get benefit of Section 428 of Cr.P.C./Section 468 of BNSS, 2023 for the period of detention already undergone during the investigation or trial.

9. Respondent No. 1 is directed to comply with the judgment passed by

this Court on 24.09.2026 and surrender on or before **30th December, 2026** for serving remaining part of the jail sentence, failing which the concerned trial Court is directed to proceed against respondent No. 1 and submit its compliance report to this Court.

10. Accordingly, the instant acquittal appeal is partly allowed to the extent indicated hereinabove.

11. A copy of this order be sent along with the judgment passed by this Court on 24.09.2026 to the concerned trial Court as well as the Jail Superintendent for onward compliance.

Sd/-
(Narendra Kumar Vyas)
Judge

Arun

CGHC010286872021

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

ACQA No. 227 of 2021

Reserved on : 07.07.2026

Delivered on : 24.09.2026

State of Chhattisgarh, Through Police Station Mohannagar, District Durg Chhattisgarh.

... Appellant (s)

versus

1 - Rupesh Kumar Sahu S/o Topu Ram Sahu Aged About 27 Years R/o Aamapara Baghera, Near Patel Stores, Police Station Pulgaon, District Durg Chhattisgarh.

2 - Lokesh Ameshar S/o Ramesh Kumar Ameshar Aged About 22 Years R/o Gaya Nagar, Behind Dewangan Dharamsala, Durg District Durg Chhattisgarh.

3 - Trilok Nirmalkar S/o Devnath Nirmalkar Aged About 21 Years R/o Gond Para, Near Goura Chowra, Near Chandi Temple, Durg, District Durg Chhattisgarh.

... Respondents

For State/Appellant	:	Mr. Khulesh Sahu, Panel Lawyer.
For Respondent No. 1 & 3	:	Ms. Shrishtee Sahu, Advocate.
For Respondent No. 2	:	Ms. Sakshi Kukreja, Advocate appears on behalf of Mr. Hemant Kumar Agrawal, Advocate.

Hon'ble Shri Justice Narendra Kumar Vyas

CAV JUDGMENT

1. The State has preferred this Acquittal Appeal under Section 378 (1) of the Code of Criminal Procedure against the judgment of acquittal dated 26.04.2019 passed by the learned Special Judge (NDPS) District- Durg (C.G.) in NDPS Special Criminal Case No. 19/2017, whereby the respondents/accused have been acquitted from charges

ARUN KUMAR DEWANGAN
Digitally signed by ARUN KUMAR DEWANGAN
Date: 2026.10.29 17:39:31 +0530

under Section 21 (B) and 27 (A) of the Narcotic Drug and Psychotropic Substances Act, 1985 (for short “the NDPS Act”).

2. The record of the case demonstrates that respondent No. 1- Rupesh Kumar Sahu and respondent No. 3- Trilok Nirmalkar remained in incarceration from 12.09.2017 and were released on bail by this Court on 09.03.2018 whereas respondent No. 2- Lokesh Ameshar remained in incarceration from 12.09.2017 and was released on bail by this Court on 08.12.2017.

3. The case of the prosecution, in brief, is that on 12.09.2017 at about 10:10 a.m Dayashankar Pandey (PW-10), Assistant Sub-Inspector, posted at Police Station Mohan Nagar, Durg, received secret information that appellant No. 1 is standing near the gate behind the Circuit House, Station Road, Durg, carrying packets of brown sugar in the front right pocket of his black trousers and is looking for customers for its sale. He recorded the said information in Roznamcha Sanha (Ex.P-30) and issued a duty certificate to Constable Surendra Giri (PW-3) for securing presence of two independent witnesses. In compliance thereof, PW-3 brought witnesses Ravi Kukreja and Mohammad Athar Hussain to the police station. Thereafter notices under Section 160 Cr.P.C. were issued to the witnesses (Ex.P-10) and the memorandum of secret information was prepared as Ex.P-11. Investigating Officer (PW-10) prepared a written intimation/report (Ex.P-1) on 12.09.2017 regarding information of commission of offence under the NDPS Act to the office of the City Superintendent of Police for obtaining necessary directions. The same was sent through Constable Vednath (PW-2). Thereafter, PW-10, accompanied by police staff proceeded towards the spot and on reaching the spot which is behind the Circuit House, Durg the police party surrounded and served notice under Section 50 of the

NDPS Act to apprehend accused Rupesh Sahu and obtained his consent (Ex.P/13) for his own searching by the Investigating Officer after giving option of search by Magistrate or any Gazetted Officer (Ex. P/12).

4. Before conducting the search of the accused, the accused searched Investigating Officer in presence of the witnesses, during which nothing incriminating was found except his wearing apparel. Thereafter the Investigating Officer conducted the personal search of accused Rupesh Sahu in presence of the witnesses. During the personal search of the accused, 30 paper packets containing suspected brown sugar were recovered from the right pocket of his black trousers. The personal search and recovery were recorded vide Ex.P/17 and Ex.P/18. The substance was identified as brown sugar vide Ex.P/19, and after mixing the contents of all packets, Ex.P/20 was prepared. The electronic weighing scale was verified vide Ex.P/8, and the seized substance weighed 24.390 grams, excluding the weight of the packets and paper, weighment panchnama was prepared (Ex.P/9). The accused was arrested vide (Ex.P/24) and intimation of his arrest was given to his relatives vide (Ex.P/36). Notice under Section 91 Cr.P.C. (Ex.P/37) was issued to the accused on which the accused stated that he had no document authorizing possession of the substance. The seized contraband article was deposited in the malkhana vide (Ex.P/42 & P/42C). After completion of investigation, the charge-sheet was submitted before the trial Court.

5. In order to bring home the guilt of accused/respondents the prosecution has examined as many as 10 witnesses namely Prakash Das (PW-1), Vednath Nirmalkar (PW-2), Surendra Giri (PW-3), Neman Sahu (PW-4), Phallesh Nishad (PW-5), Md. Athar Hussain (PW-6),

Manju Tiwari (PW-7), Kamal Narayan Thakur (PW-8), Ravi Kukreja (PW-9), Dayashankar Pandey (PW-10) and exhibited documents Ex. P/1 to P/49.

6. Prakash Das (PW-1) has stated that on 12.09.2017 he had received the daak i.e. copy of Rojnamcha sanha along with mukhbir panchnama suchna which was brought by one Constable- Vednath in the name of office of City Superintendent of Police and this information was given to the City Superintendent of Police over phone. Vednath Nirmalkar (PW-2) has stated that on 12.09.2019 ASI- D.S. Pandey had given a daak and duty certificate whereas he gave the daak to the reader posted in the office of City Superintendent of Police, Durg and the acknowledgment was given to ASI D.S. Pandey and brought one weighman Phallesh Nishad along with balance (Taraju).

7. Surendra Giri (PW-3) has stated that on 12.09.2017 ASI- D.S. Pandey had given duty certificate and notice under Section 160 Cr.P.C. for calling witnesses namely Ravi Kukreja and Md. Athar. Phallesh Nishad (PW-5) who was taul witness was examined before the trial Court and turned hostile and did not support the case of the prosecution. Md. Athar Hussain (PW-6) & Ravi Kukreja (PW-9) who were the independent witnesses have been examined before the trial Court but they turned hostile and did not support the case of the prosecution. Kamal Narayan Thakur (PW-8) has stated that on 14.09.2017 as per direction issued by ASI Dayashankar Pandey, he had gone to FSL Raipur for depositing the seized articles.

8. Investigating Officer-Dayashankar Pandey (PW-10) has been examined before the trial Court who in his examination-in-chief has reiterated the procedure and proceedings conducted by him and in the cross-examination he has admitted that there is no mention in the

sanha regarding sending of constable- Kamal Narayan Thakur to FSL Raipur and his return back. He has also admitted that packet of Article-A was given to constable- Kamal Narayan Thakur. He has also admitted that Article-A was not deposited in the malkhana. He has further admitted that the article which was seized from possession of respondent No. 1 was not deposited in the form which was seized from respondent No. 1. He has also admitted that as per seizure register Ex. P/5 in the white plastic bag carrying 30 packet brown sugar total 36.140 grams was mentioned. He has further admitted that there is overwriting in the sanha Ex. P/29 & 30 and he has denied that prior in Ex. P/30 there was written something which was overwritten by applying carbon. He has admitted that he had not produced the seized article before the Thana Incharge and also admitted that he had not sent the information to his superior officer in compliance of Section 57 of the NDPS Act. He has also admitted that since there was no space in the sanha register, therefore, the information received from informer and bringing the witness was mentioned in Ex. P/30.

9. Statements of accused/respondents have been recorded under Section 313 Cr.P.C., in which they denied the allegations leveled against them and pleaded innocence and false implication.

10. Learned Special Judge after appreciating the evidence and material available on record, vide its judgment dated 26.04.2019 has held that the prosecution failed to prove case against accused/respondent beyond reasonable doubt and thereby acquitted them for the offences for which they were charged. Being aggrieved and dissatisfied with the aforesaid judgment of acquittal, the State has preferred this Acquittal Appeal before this Court.

11. Learned State counsel would submit that the learned trial court has

failed to appreciate the evidence regarding commission of offence by the appellants which cannot be disbelieved. He would further submit that merely because the independent witnesses have not supported the prosecution, the testimony of the official witnesses cannot be discarded if it is otherwise reliable and would refer to the judgment rendered by Hon'ble the Supreme Court in case of **Sumit Tomar Vs. State of Punjab [(2013) 1 SCC 395]**. He would further submit that the during inspection of the bag, the contraband article was found and after following due procedure like smelling and tasting, identification panchnama was also prepared and the contraband article was seized from conscious possession of the appellants, therefore, once the possession is established, the person who claims that it was not conscious possession has to establish the same and would refer to the judgment rendered by Hon'ble the Supreme Court in case of **Madan Lal & another Vs. State of H.P [(2003) 7 SCC 465]**.

12. He would further submit that the prosecution has proved that the offence under the NDPS Act beyond reasonable doubt and the contraband article seized from possession of respondent No. 1 and the same was duly corroborated from the records, as such the trial Court has committed illegality in acquitting the accused persons without appreciating the evidence as such the order of acquittal is liable to be set aside by this Court. To substantiate the submissions, he has referred to the judgment rendered by Hon'ble the Supreme Court in case of **State of Punjab Vs. Baldev Singh [(1999) 6 SCC 4172]**, Constitution Bench of Hon'ble the Supreme Court in case of **Bhaskar Ramappa Madar & others Vs. State of Karnataka [(2009) 11 SCC 690]**, **Surender Alias Kala Vs. State of Haryana [(2016) 4 SCC 617]**, **State represented by Inspector of Police, Vigilance & Anti**

Corruption, Tiruchirapally, Tamil Nadu Vs. V. Jayapaul [(2004) 5 SCC 223]. He would further submit that the evidence of witnesses are reliable trustworthy and the prosecution has proved its case beyond reasonable doubt as the search of the accused persons was conducted in presence of other witnesses, therefore, the impugned judgment of acquittal is illegal, arbitrary and against the law which has been passed without considering the evidence led by the prosecution. He would further submit that the trial Court emphasized that having regard to the severity of the penalties prescribed under the NDPS Act, the questions as to how and where the samples were stored and when they were dispatched and received at the laboratory assume considerable significance and the prosecution has proved beyond reasonable doubt regarding safe custody of seized contraband article and sending the same to the FSL in a safe condition which has been casually not believed by the trial Court which is illegality, therefore, the impugned order may kindly be set aside.

13. Per contra, learned counsel appearing for the respondents supports the judgment of acquittal and would submit that the view taken by the learned trial Court is a possible and reasonable view based upon the material contradictions and deficiencies in the prosecution case. He would further submit that the prosecution has failed to establish an unimpeachable chain of custody of the alleged contraband article, therefore, the benefit of doubt has rightly been extended to the accused and would pray for dismissal of the acquittal appeal.

14. I have heard learned counsel for the parties and perused the material available on record.

15. From submissions made by the parties, the **Point** emerges for determination of this Court is:-

> "Whether the finding of the learned trial Court that Sections 50, 56, 57 of the NDPS Act have not been complied with and there is broken of chain of removal of sample from malkhana and sending the same to FSL for chemical examination which creates doubt over the case of the prosecution, as such the impugned judgment is legal, justified and it needs no interference in the present acquittal appeal."

16. To appreciate the Point, it is expedient for this Court to extract the relevant Sections of the NDPS Act which are as under:-

> "**Section 50. Conditions under which search of persons shall be conducted**.— (1) When any officer duly authorised under section 42 is about to search any person under the provisions of section 41, section 42 or section 43, he shall, if such person so requires, take such person without unnecessary delay to the nearest Gazette Officer of any of the departments mentioned in section 42 or to the nearest Magistrate.
>
> (2) If such requisition is made, the officer may detain the person until he can bring him before the Gazetted Officer or the Magistrate referred to in subsection (1).
>
> (3) The Gazette Officer or the Magistrate before whom any such person is brought shall, if he sees no reasonable ground for search, forthwith discharge the person but otherwise shall direct that search be made.
>
> (4) No female shall be searched by anyone excepting a female.
>
> (5) When an officer duly authorised under section 42 has reason to believe that it is not possible to take the person to be searched to the nearest Gazetted Officer or Magistrate without the possibility of the person to be searched parting with possession of any narcotic drug or psychotropic substance, or controlled substance or article or document, he may, instead of taking such person to the nearest Gazette Officer or Magistrate, proceed to search the person as provided under section 100 of the Code of Criminal Procedure, 1973 (2 of 1974).
>
> (6) After a search is conducted under sub-section (5), the officer shall record the reasons for such belief which necessitated such search and within seventy-two hours send a copy thereof to his immediate official superior.
>
> **Section 55. Police to take charge of articles seized and delivered.—** An officer-in-charge of a police station shall take charge of and keep in safe custody, pending the orders of the Magistrate, all articles seized under this Act within the local area of that police station and which may be delivered to him, and shall allow any officer who may accompany such articles to the

police station or who may be deputed for the purpose, to affix his seal to such articles or to take samples of and from them and all samples so taken shall also be sealed with a seal of the officer-in-charge of the police station.

Section 57. Report of arrest and seizure.— Whenever any person makes any arrest or seizure, under this Act, he shall, within forty-eight hours next after such arrest or seizure, make a full report of all the particulars of such arrest or seizure to his immediate official superior."

17. Learned trial Court while recording the finding of non-compliance of Section 50 of the NDPS Act has recorded its finding that the search and seizure has not been conducted before the Magistrate or Gazetted Officer as Investigating Officer (PW-10) is not a Gazetted Officer and finding that the Investigating Officer apart from granting option of search and seizure by Investigating Officer has not given option of search and seizure by the Magistrate or Gazetted Officer which is violation of Section 50 of the NDPS Act and it is illegal. This finding is contrary to the notice (Ex. P/12) issued to respondent No. 1 under Section 50 of the NDPS Act wherein it has been categorically mentioned that since the personal search of the accused is necessary and he can be searched by the Magistrate or any Gazetted Officer which is the statutory right of the accused and it has also been informed to the accused that if the accused intends to be searched by the Investigating Officer, the Investigating Officer may also search the accused. This notice was read out and explained and thereafter he has signed by observing in the notice that "आप पर मुझे पूरा भरोसा है तलाशी आप से ही करवाउंगा". Thereafter, the accused has given his written consent vide Ex. P/13 for personal search by Investigating Officer. Even respondent No. 1 in his evidence examined under Section 313 of the Cr.P.C. has not given any explanation in question No. 15 & 16 regarding the procedure explained by the Investigating Officer vide notice (Ex. P/12) and consent given by him (Ex. P/13).

18. Learned trial Court while dealing with regard to the alleged non-compliance of Section 50 of the NDPS Act has taken into consideration the judgment rendered by Constitutional Bench of Hon'ble the Supreme Court in case of **Vijaysinh Chandubha Jadeja Vs. State of Gujarat [(2011) 1 SCC 609]** without appreciating the facts and evidence brought on record by the prosecution as the Investigating Officer (PW-10) in his evidence in paragraph 7 has categorically stated about right of the accused and the consent given by the accused for conducting search by the Investigating Officer vide Ex. P/12 & 13 after granting all the option of search by Magistrate or Gazetted Officer. The defence has extensively cross-examined the witness but there is no cross-examination regarding Ex. P/12 & 13 to dislodge the compliance of Section 50 of the NDPS Act by the prosecution.

19. The evidence of Investigation Officer further demonstrates that immediately after search he has informed to the higher authority on 12.09.2017 (Ex. P/41) in compliance of Section 57 of the NDPS Act. As such there is perversity, illegality in finding a recording of the learned trial Court with regard to compliance of Section 50 of the NDPS. As such the finding with regard to alleged non-compliance of Section 50 of the NDPS Act by the learned trial Court, deserves to be quashed and accordingly, it is quashed.

20. The Constitutional Bench of Hon'ble the Supreme Court with regard to compliance of Section 50 of the NDPS Act in case of **Mukesh Singh Vs. State (Narcotic Branch of Delhi) [(2020) 10 SCC 120]** has held in paragraph 10.3.5 as under:-

> "10.3.5 There are inbuilt safeguards provided under the NDPS Act itself, such as, Sections 50 and 52. Section 50 of the NDPS Act provides that when any officer duly authorised under section 42 is about to search any person under the provisions of section 41, 42 or 43, he shall inform the person to be searched in the

presence of a Gazetted Officer of any of the departments mentioned in Section 42 or to the nearest Magistrate and if such person so desires, he shall take such person without unnecessary delay to the nearest Gazetted Officer as mentioned in sub-section 1 of Section 50. As per sub-section 5 of Section 50, when an officer duly authorised under section 42 has reason to believe that it is not possible to take the person to be searched to the nearest Gazetted Officer or Magistrate without the possibility of the person to be searched parting with possession of any narcotic drug or psychotropic substance, or controlled substance or article or document, he may, instead of taking such person to the nearest Gazetted Officer or Magistrate, proceed to search the person as provided under Section 100 of the Code of Criminal Procedure, 1973. Sub-section 6 of Section 50 provides that after a search is conducted under sub- section (5), the officer shall record the reasons for such belief which necessitated such search and within seventy-two hours send a copy thereof to his immediate official superior."

21. Further finding of the learned trial Court regarding non-compliance of Sections 55 & 57 of the NDPS Act that the Investigating Officer in his cross-examination at paragraph 66 has admitted that he has not submitted the seized articles and accused before the Police Station incharge and also admitted in paragraph 33 that he was not posted as Police Station Incharge at Mohan Nagar, as such the submission regarding non-compliance of Section 55 of the NDPS, is being considered by this Court.

22. From perusal of Section 55 of the NDPS Act, it is quite vivid that an officer-in-charge of Police Station shall take charge of articles seized and keep in a safe custody pending the order of the Magistrate and all articles seized within the local area of police station which may be delivered to him and shall allow any officer who may accompany such article to the police station or who may be deputed for the purpose to affix the seal to such articles or to take samples of and from all samples so taken shall also be sealed with a seal of the officer in charge of the police station. Learned trial Court while dealing with non-

compliance of Section 55 of the NDPS Act, has not taken into consideration that the Investigating Officer in his evidence has stated that after proceedings, he has given the seized article to Malkhan Moharrir which has been entered in sanha No. 88 (Ex. P/42) and after keeping that seize article in the malkhana a certificate was given by the Malkhana Moharrir (Ex. P/6) but admitted that he has not submitted the seized article and accused before the Police Station incharge, therefore, compliance of Section 55 of the NDPS is not there, as such the finding of the learned trial Court that the accused are entitled to be acquitted, is misconceived. It is well settled position of law that compliance of Section 55 of the NDPS Act, is not mandatory but directory in nature and alleged non-compliance does not vitiate the prosecution case as if the prosecution is able to prove the compliance of mandatory provisions of law provided under the NDPS Act. Hon'ble the Supreme Court in case of **Babubhai Odhavji Patel & others Vs. State of Gujarat [2005 INSC 535]** has examined Section 55 of the NDPS Act and has held as under:-

> "The learned counsel further contended that the seized articles were not kept in proper custody and that there was violation of Sections 52, 55 and 57 of the NDPS Act. He placed reliance on Valsala v. State of Kerala (1993) 3 Supp. 665. We do not think that there is much force in this contention. This Court in Gurbax Singh v. State of Haryana (2001) 3 SCC 28 held that these provisions are not mandatory provisions and they are only directory. In the present case, we do not find any serious violation of these provisions. The prosecution adduced evidence to prove that these provisions have been substantially complied with and the Sessions Judge discussed these matters in detail and accepted the prosecution case."

23. Again Hon'ble the Supreme Court in case of **Gurbax Singh Vs. State of Haryana [(2001) 3 SCC 28]** has held as under:-

> "9. The learned counsel for the appellant next contended that from the evidence it is apparent that the I. O. has not followed the procedure prescribed under Sections 52, 55 and 57 of the

> N.D.P.S. Act. May be that the I.O. had no knowledge about the operation of the N.D.P.S. Act on the date of the incident as he recorded the FIR under Section 9/1/78 of the Opium Act. In our view, there is much substance in this submission. It is true that provisions of Sections 52 and 57 are directory. Violation of these provisions would not ipso facto violate the trial or conviction. However, I.O. cannot totally ignore these provisions and such failure will have a bearing on appreciation of evidence regarding arrest of the accused or seizure of the article. In the present case, I.O. has admitted that the seal which was affixed on the muddamal article was handed over to the witness P.W.1 and was kept with him for 10 days. He has also admitted that the muddamal parcels were not sealed by the officer in charge of the police station as required under Section 55 of the N.D.P.S. Act. The prosecution has not led any evidence whether the Chemical Analyser received the sample with proper intact seals. It creates a doubt whether the same sample was sent to the Chemical Analyser. Further, it is apparent that the I.O. has not followed the procedure prescribed under Section 57 of the N.D.P.S. Act of making full report of all particulars of arrest and seizure to his immediate superior officer. The conduct of panch witness is unusual as he offered himself to be a witness for search and seizure despite being not asked by the I.O., particularly when he did not know that the substance was poppy husk., but came to know about it only after being informed by the police. Further, it is the say of the Panch witness that Muddamal seal used by the PSI was a wooden seal. As against this, it is the say of PW2 SI/IO that it was a brass seal. On the basis of the aforesaid evidence and faulty investigation by the prosecution, in our view, it would not be safe to convict the appellant for a serious offence of possessing poppy-husk."

24. Considering the law that compliance of Section 55 of the NDPS Act is not mandatory but directory as such the accused should have proved that due to non-compliance of Section 55 of the NDPS Act, prejudice has been caused to the respondents which is necessary to record a finding of acquittal. The accused/ respondents while examining under Section 313 of the Cr.P.C. on the issue of Investigation Officer (PW-10), have nowhere stated that any prejudice has been caused to them while conducting investigation by the Investigating Officer (PW-10). Thus, the finding of the learned trial Court with regard to alleged non-compliance of Section 55 of the NDPS Act, suffers from perversity and

illegality and liable to be quashed by this Court and accordingly, it is quashed.

25. So far as compliance of Section 57 of the NDPS Act is concerned, the trial Court has recorded its finding that since in the report as per Section 57 of the NDPS Act, which was sent to the Superintendent of Police, Durg vide Ex. P41, there is no mentioning about the date when receipt was given and even there is no signature of the constable or date of receipt which creates doubt over existence of report (Ex. P/41) accordingly, it is held that there is non-compliance of Section 57 of the NDPS Act. This finding is not only contrary to the evidence as in the evidence of Investigating Officer (PW-10), nothing was brought on record by the defence regarding raising doubt over the report (Ex. P/41). The reliance placed upon by the learned trial Court on paragraph 66 of the cross-examination by the trial Court, is also illegal as it has ignored the Ex. P/41 which is information given by Investigating Officer under Section 57 of the NDPS Act to the higher authorities i.e. Superintendent of Police, Durg on 12.09.2017. Thus, the finding of the learned trial Court that Section 57 of the NDPS Act has not been complied with is illegal and accordingly, it is quashed.

26. The finding regarding the break in chain with regard to seal, as such acquittal of the accused is justified, is being considered by this Court. Learned counsel for the appellant would submit that the trial Court has recorded its finding that the prosecution is unable to prove that the property which was seized, was sent to the FSL though it has been observed that the seal which was found in Ex. P/22 & P/23, are the same seal has also been found in Ex. P/49 of the packet but the said sample packet was seized from possession of respondent No. 1, has not been proved by the prosecution. This finding is not only perverse

but contrary to the Ex. P/22 & P/23 as in Ex. P/22 which is property seizure memo wherein it has been clearly mentioned that contraband article has been seized from possession of respondent No. 1 and in sample seal panchnama (Ex. P/23) wherein the same seal was utilized for sealing the contraband article and thereafter the Investigating Officer has sent the substance to the Superintendent of Police who in turn vide memo dated 13.09.2017 (Ex. P/47) has sent the seized articles to the FSL for chemical analysis and a receipt (Ex. P/48) was also submitted. Thereafter, the Incharge Forensic Science Laboratory gave its report (Ex. P/49) wherein the seal was mentioned which is similar to the seal mentioned in Ex. P/23. Thus, there is no evidence which is available on record to dislodge the fact that the samples which have been analyzed by the FSL were seized from possession of respondent No. 1. The duty certificate (Ex. P/29) would reflect that on 14.09.2017, the contraband article was given to Kamal Narayan Thakur (PW-8) for depositing the same to the FLS for analysis which was deposited by him on 14.09.2017 itself as evident from receipt (Ex. P/48). Thereafter a report (Ex. P/49) was given on 29.09.2017 confirming the substance as contraband brown sugar, as such there is no doubt with regard to the analysis of the substance which has been seized from respondent No. 1.

27. Further finding of learned trial Court that there is no witness who can prove that in Article – A, the Investigating Officer had kept the contraband which have been seized from respondent No. 1 and the seal which has been affixed in the packet D.S.P. means Daya Shankar Pandey, is contrary to the evidence as the witness in paragraph 32 has admitted that the seal which has been affixed in the packet, '*Ashok Stambh*' was imposed and he has used his ring as seal, therefore, the

finding recorded by the learned trial Court that there is break in chain is contrary to the sample seal panchnama (Ex. P/23) wherein it has been clearly stated that one gold's square ring in which '*Ashok Stambh*' and DSP have been mentioned, the same seal is reflected in the Ex. P/49 which is report given by the FSL, therefore, there is no break of chain in the samples which have been removed from malkhana to FSL for analysis and on analysis it has been found that the seized article is brown sugar.

28. The issue with regard to effect of change of number/seal of the samples has come up for consideration before Hon'ble the Supreme Court in case of **Rizwan Khan Vs. State of Chhattisgarh [(2020) 9 SCC 627]** wherein it has been held in paragraph 15.2 as under:-

> "15.2. It has been established and proved that the samples which were seized and sealed were sent to the FSL. From the record, it establishes that the recovery from Rizwan Khan was marked as 'B1' and 'B2' and the treasury record also that the narcotic substances recovered from Rizwan Khan were shown as 'B1' and 'B2'. <u>There seems to be some clerical error in numbering of sample in memorandum of Superintendent of Police and the same was mentioned as 'A1'. However, it has been established and proved that the samples which were seized and sealed from Rizwan were sent to the FSL</u>. The aforesaid aspect has been dealt with by the learned Special Court in its judgment in paragraphs 25 and 26."

29. Thus, the submission regarding doubt over the analysis of the contraband article which has been seized from respondent No. 1 and there is break in chain regarding removal of substance from malkhana to FSL, deserves to be rejected and accordingly, it is rejected.

30. The finding of learned trial Court with regard to respondents No. 2 & 3 that accused- Lokesh Ameshar and Trilok Nirmalkar is legal and justified and does not warrant any interference by this Court as memorandum statement of respondent No. 1 was not found proved as the witnesses of memorandum statement were turned hostile and have

not supported the case of the prosecution no other incrementing material against respondent No. 2 & 3 have been placed on record by the prosecution regarding their involvement in the crime in question, therefore, the learned trial Court has not committed any illegality in acquitting respondents No. 2 & 3. Thus, the acquittal of respondents No. 2 & 3 is justified and does not warrant any interference by this Court in this appeal.

31. This Court in foregoing paragraphs has analyzed that there is compliance of Sections 55, 55 & 57 of the NDPS Act and all the safeguards which are required in case of NDPS Act has been followed in its letter and spirit. Though the independent witnesses have been turned hostile and did not support the prosecution case, the prosecution case can be proved on the basis of other prosecution witnesses who are the police officers. It is well settled position of law that the testimony of official witnesses cannot be discarded merely on the ground that they belong to police department, where such evidence is found trustworthy and reliable, conviction can safely be based thereon. In the present case, the evidence of Investigating Officer (PW-10) is cogent, consistent and inspires confidence. Nothing substantial has been elicited in cross-examination to render his testimony unreliable merely on the ground that independent witnesses who turned hostile do not render the prosecution case doubtful. From appreciation of evidence brought on record by the prosecution, particularly Investigating Officer (PW-10), it is quite vivid that the Investigating Officer has followed the procedure and proved its case which has not been rebutted by the defence. As such, the submission made by learned counsel for the appellant that the independent witnesses did not support the prosecution case which may vitiate the

trial, deserves to be rejected and accordingly, it is rejected.

32. Hon'ble the Supreme Court in case of **Surinder Kumar Vs. State of Punjab [(2020) 2 SCC 563]** has held that evidence of official witness cannot be distrusted and disbelieved merely on account of their official status and has held in paragraphs 14 to 16 as under:-

> "14. Further, it is contended by learned senior counsel appearing for the appellant that no independent witness was examined, despite the fact they were available. In this regard, it is to be noticed from the depositions of Devi Lal, Head Constable (PW-1), during the course of cross- examination, has stated that efforts were made to join independent witnesses, but none were available. The mere fact that the case of the prosecution is based on the evidence of official witnesses, does not mean that same should not be believed.
> 15. The judgment in the case of Jarnail Singh v. State of Punjab4, relied on by the counsel for the respondent-State also supports the case of the prosecution. In the aforesaid judgment, this Court has held that merely because prosecution did not examine any independent witness, would not necessarily lead to conclusion that accused was falsely implicated. The evidence of official witnesses cannot be distrusted and disbelieved, merely on account of their official status.
> 16. In State, Govt. of NCT of Delhi v. Sunil & Anr. it was held as under:
> "It is an archaic notion that actions of the Police Officer, should be approached with initial distrust. It is time now to start placing at least initial trust on the actions and the documents made by the Police. At any rate, the Courts cannot start with the presumption that the police records are untrustworthy. AS a presumption of law, the presumption would be the other way 6 (2001)1 SCC 652 round. The official acts of the Police have been regularly performed is a wise principle of presumption and recognized even by the Legislature"."

33. Again Hon'ble the Supreme Court in case of **Bharat Aambale Vs. State of Chhattisgarh [(2025) 8 SCC 452]** has examined this issue and has held in paragraphs 37 & 38 as under:-

> "37. Thus, the prosecution sans the compliance of the procedure under Section 52A of the NDPS Act will not render itself helpless but can still prove the seizure or recovery of contraband by leading cogent evidence in this regard such as by examining the seizing officer, producing independent witnesses to the recovery,

> or presenting the original quantity of seized substances before the court. The evidentiary value of these materials is ultimately to be assessed and looked into by the court. The court should consider whether the evidence inspires confidence. The court should look into the totality of circumstances and the credibility of the witnesses, being mindful to be more cautious in their scrutiny where such procedure has been flouted. The cumulative effect of all evidence must be considered to determine whether the prosecution has successfully established the case beyond reasonable doubt as held in Noor Aga (supra).
>
> 38. Even in cases where there is non-compliance with the procedural requirements of Section 52A, it does not necessarily vitiate the trial or warrant an automatic acquittal. Courts have consistently held that procedural lapses must be viewed in the context of the overall evidence. If the prosecution can otherwise establish the chain of custody, corroborate the seizure with credible testimony, and prove its case beyond reasonable doubt, the mere non-compliance with Section 52A may not be fatal. The emphasis must be on substantive justice rather than procedural technicalities, and keeping in mind that the salutary objective of the NDPS Act is to curb the menace of drug trafficking."

34. Further submission of the learned counsel for the respondent/accused that in case of acquittal, the power of interference of appellate Court is very limited as provided under Section 386 of the Cr.P.C./Section 427 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), is being considered by this Court.

35. It is well settled position of law that in a case of acquittal, the power of Appellate Court is very limited and also that if two views are available then the view which is favourable to the accused has to be taken into consideration by the appellate Court but if there is only one view for conviction then only the appellate court can interfere with the findings of the trial Court acquitting the accused and can reverse the same. Thus, submission made by the learned counsel for the appellant that if two views can be taken then view which is more favourable to the accused should be considered by the Court and should not interfere in the finding of the acquittal deserves to be rejected and accordingly it is

rejected. Hon'ble the Supreme Court in case of **Babu Sahebagouda Rudragoudar and others v. State of Karnataka [2024 (8) SCC 149]** has examined in which circumstances the findings can be reversed and observed in paragraphs 41 and 42 as under:-

> "41. Thus, it is beyond the pale of doubt that the scope of interference by an appellate Court for reversing the judgment of acquittal recorded by the trial Court in favour of the accused has to be exercised within the four corners of the following principles:-
> 41.1 That the judgment of acquittal suffers from patent perversity;
> 41.2 That the same is based on a misreading/omission to consider material evidence on record;
> 41.3 That no two reasonable views are possible and only the view consistent with the guilt of the accused is possible from the evidence available on record.
> 42. The appellate Court, in order to interfere with the judgment of acquittal would have to record pertinent findings on the above factors if it is inclined to reverse the judgment of acquittal rendered by the trial Court."

36. Thus, this Court in exercise of power conferred under Section 386 of Cr.P.C. (Section 427 in the Bharatiya Nagarik Suraksha Sanhita (BNSS) can interfere in the findings recorded by the trial Court when it suffers from perversity, illegality and can also reverse such finding by convicting respondent No. 1 only for commission of offence as aforestated. As such, the **Point** determined by this Court is **answered against appellant No. 1 and in favour of respondent No. 2 & 3**.

37. Consequently, the acquittal appeal deserves to be allowed in part by convicting respondent No. 1-Rupesh Kumar Sahu only for commission of offence under Section 21 (B) of the NDPS Act and by affirming the acquittal of respondents No. 2- Lokesh Ameshar & respondent No. 3- Trilok Nirmalkar for commission of offence under Sections 21(B) & 27(A) of the NDPS Act.

38. Since this Court is reversing the order of acquittal, therefore, in compliance of Section 235 (2) of the Cr.P.C./Section 254(2) of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, this Court has to

hear respondent No. 1 or his counsel on the question of sentence. Accordingly, the matter be listed on **5th October, 2026** for hearing them on sentence and on that date, the respondent No. 1 or his counsel is directed to remain present before this Court for hearing on sentence.

39. Registry is directed to list this case on **5th October, 2026** for hearing on sentence.

Sd/-
(Narendra Kumar Vyas)
Judge

Arun