



(1)

901criapl966.22

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD**

**901 CRIMINAL APPEAL NO.966 OF 2022  
WITH  
CRIMINAL APPLICATION NO. 3170 OF 2025**

1. Rahul Nilkanth Pawar  
Age-25 Years, Occu- Labour,
2. Satish Raghunath Jadhav,  
Age-24 Years, Occu-Labour
3. Somnath Shivaji Jadhav,  
Age-24 Years, Occu-Labour,

All R/o. Malegaon Tanda, Tq. Aurad  
Dist. Bidar (Karnataka)

**...APPELLANTS**

**VERSUS**

1. The State of Maharashtra

**...RESPONDENT**

Mr. Harshwardhan Akolkar, Advocate i/b Mr. Nikhil D. Sonwane,  
Advocate for the appellants,  
Mrs. U. S. Bhosale, APP for the respondents/State

**CORAM : RAJNISH R. VYAS, J.**

**DATE : 24<sup>th</sup> FEBRUARY, 2026**

**JUDGMENT :**

1. Heard the learned Advocate for the appellants and learned APP.
2. The original accused/ appellants have challenged the conviction awarded in Special Case (NDPS) No. 01/2021 dated 23-11-2022 passed by the Special Judge (NDPS), Udgir convicting the

appellants for commission of offences punishable under Sections 20(b)(ii)(C) of the Narcotic Drugs and Psychotropic Substances Act, 1985 [hereinafter would be referred as 'the Act of 1985' for the sake of brevity] and directed to suffer rigorous imprisonment for a period of ten years. A fine amount of Rs. 1 Lakh each was also imposed upon the appellants. In default of payment of the fine, the accused were directed to suffer imprisonment for one year.

3. In short, it is the case of the prosecution that on 08-10-2020, when the Police Officers were discharging their duty on the highway by checking the vehicles, they found a Bolero jeep coming from village Hali towards Udgir. The persons in the vehicle noticed the Police Officers checking the vehicles and therefore turned the jeep towards Handerguli. PW-1, along with his companion, stopped the jeep near the farm of one Anant . On being enquired, the driver of the vehicle informed that the vehicle was carrying Ganja.

4. This brief discussion of the prosecution case, resulted into filing the report at the instance of the Investigating Agency of recording the information, forwarding to the superior officer, carrying out the panchanama, preparation of inventory, making the proper application before the Magistrate and so also forwarding the

material which was found in the jeep for chemical analysis and ultimately filing of the charge-sheet.

5. The trial court thereafter framed the charge against the present appellants on 04-03-2021 below Exh.8 for commission of offences punishable under Section 20 (b) (ii) (B) of the Act of 1985. At this juncture, it is necessary to mention here that the charge was subsequently altered by the learned Presiding Officer to Section 20(b) (ii)(C) of the Act of 1985 since what was seized was a commercial quantity. To bring home the charge, the prosecution has examined eight witnesses as follows:

| <b>Rank</b> | <b>Name</b>               | <b>Nature of Evidence</b> |
|-------------|---------------------------|---------------------------|
| PW-1        | Ashok Bapurao Malwade     | Police Naik               |
| PW-2        | Hasan Khurshid Pathan     | Panch Witness             |
| PW-3        | Magar Tatyrao Mule        | Panch Witness             |
| PW-4        | Somesh Nagnath Mahajan    | Witness                   |
| PW-5        | Govind Laxmanrao Kharat   | Panch Witness             |
| PW-6        | Samadhan Shankar Narwate  | Photographer              |
| PW-7        | Ganesh Manikrao Sondare   | Investigating Officer     |
| PW-8        | Balasaheb Manohar Narwate | Investigating Officer     |

6. Several documents were proved during the course of the trial. After recording the appellants' evidence statements, they were questioned under Section 313 of the Cr. P. C. In the said statements,

the appellants stated that they were implicated in a false case. The trial court thereafter convicted the appellants as stated above and, in accordance with the mandate of Section 235 of code of criminal procedure , imposed a sentence of 10 years' imprisonment.

7. Mr Akolkar, learned Advocate for the appellants, has raised the following grounds: there is a mention of different registration numbers in various documents relied upon by the prosecution, as PW-1 in his deposition has stated that the vehicle number was AP-25-BH-0108, whereas PW-2-Panch has stated it as AP-20-KV-108, and PW-5 has mentioned the registration number as AP-28-BH-0108.

8. According to him, PW-6-Photographer, when clicking the photograph, did not take the photograph in such a manner that it would show the registration number of the vehicle. He, thus, submitted that this particular lapse goes to the roots of the matter and therefore ought not to have been ignored by the trial court.

9. Mr Akolkar, learned Advocate for the appellants, contended that there is a breach of the mandatory provision of section 42 of the act of 1985, as the information received was not communicated to the senior officer within 72 hours.

10. Finally, he contended that there are several lacunas in the case of the prosecution and benefit of which is required to be extended to the appellants.

11. One more ground which Mr Akolkar, learned Advocate for the appellants, was regarding the difference in the signatures of the witnesses on various documents.

12. He has relied upon the law laid down by the coordinate bench of this court in the case of Aspaq N. Ahmed Vs State of Goa reported in 2005 SCC OnLine Bom 1145. He has also relied upon the decision in Bahadur Singh v. State of Madhya Pradesh and others, reported in AIR 2002 SC 289.

13. Per contra, learned APP has argued the following grounds: (a) just because the different registration numbers are given in the testimony, it will not go to the root of the matter. (b) It is not even the case of the appellants that some other vehicle was involved or the vehicle in question is planted. (c) So far as compliance with Section 42 of the act of 1985 is concerned, she submitted that a distinction has to be drawn between mandatory compliance and compliance that can be done at a later point in time. She relied upon the judgment of the Hon'ble Apex Court in the case of Karnal Singh

*Vs State of Haryana reported in 2009 AIR SCW 5265.* According to her, there is absolutely no difference in the signature and just an interference is drawn by the appellants.

14. Finally, she contended that there are no omissions and contradictions, and the offence is rightly proved by the prosecution.

15. It is in this background that I have gone through the record of the case and have pondered over the arguments raised by the respective counsels. Since the appellants are convicted for the commission of offences punishable under Section 20(b) (ii) (C) of the Act of 1985, it will have to be seen whether the prosecution has proved its ingredients.

16. Section 2 clause-b of the Act of 1985 defines *Ganja-that is, the flowering or fruiting tops of the cannabis plant (excluding the seeds and leaves when not accompanied by the tops), by whatever name they may be known or designated.*

17. The said Act more particularly, in Section 2 (viiia), defines ; *commercial quantity in relation to narcotic drugs and psychotropic substances, means any quantity greater than the quantity specified by the Central Government by notification in the Official Gazette.*

18. The narcotic drug under clause (xiv) of Section 2 means *coca leaf, cannabis (hemp), opium, poppy straw and includes all manufactured drugs*. The aforesaid discussion would reveal that Ganja would fall under the Narcotic Drugs.

19. Section 20 (b)(ii)(C) reads as under:

***20- Punishment for contravention in relation to cannabis plant and cannabis-*** *whoever, in contravention of any provision of this Act or any rule made or condition of licence granted thereunder-*

*(b) Produces, manufactures, possesses, sells, purchases, transports, imports, exports, or uses cannabis,*

*(ii) where such contravention relates to sub-clause (b), — (C) and involves commercial quantity, with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to a fine which shall not be less than one lakh rupees but which may extend to two lakh rupees;*

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

20. Thus, it will have to be seen whether the appellants were transporting the Ganja or not. In this regard, it is necessary to look into the testimony of PW-1. PW-1 Ashok Malwade, in his deposition, has stated that since the year 2017, he was working on the post of driver with the Wadwana Police Station and on 08-10-2020 at about 12 o'clock, he was deputed at Wadwana Pati to Hali village road for

checking motorcycles along with police constable Bembde and 2-3 other Home Guards. While they were checking vehicles on the Sukani to Handarguli village road between about 03.00 and 04.00 pm, one Bolero jeep bearing registration number AP-25-BH-0108 was proceeding from the village Hali towards Udgir.

21. As the PW-1 and other officers were checking the vehicles, the jeep turned towards the village Handerguli; it was therefore chased by the PW-1 and ultimately stopped near the field of Anant Bhonsale, r/o Handerguli. When PW-1 enquired from the jeep driver, he disclosed that Ganja was stored in the jeep; therefore, PW-1 immediately informed API Narwate (PW-8). Thereafter, PW-8 informed the superior officer, who reached the incident spot.

22. PW-8-Narwate, API then called the weigh man at the spot. The Executive Magistrate and Photographer also arrived there. PW-8 then weighed nine sacks containing Ganja, totalling 176.130 Kg. Those sacks were then sealed and seized. PW-1 further deposed that thereafter, he went to the police station and lodged a report against Rahul Pawar and two accomplices with him for transportation and possession of Ganja. The said report/complaint was proved by this witness, below, Exh. 18.



23. The defence then cross-examined PW-1 and he admitted that the Wadwana Police Station duty allotment register is kept and that on 08-10-2020, he attended duty at 09.00 in the morning. He also made the necessary entry in the register regarding his deployment to check the motorcycles. on that day, he, along with others, was standing on the left side of the Udgir-Ahmedpur road, which was within the jurisdiction of Sukani village, and that they had checked 25 vehicles till 04.00 evening. The entries of which were duly taken in the registration. Cases were also initiated against some drivers. He stated that from 300 to 400 feet, one could have noticed that they were standing on the road, and at that time, PW-1, along with one Constable and three Home Guards, were present on the spot.

24. PW-1 then admitted that the Assistant Sub-Inspector of Police is his immediate superior. On that day, his senior ASI, Yedke, was present in the police station. He admitted that the information provided to him by the jeep driver was not written/noted by him, and a personal search of the accused was conducted on that day. Also, the fact that the complaint was filed after two hours of intercepting vehicle.

25. PW-1 further admitted that at about 05.00 pm, the vehicle was seized, and at about 07.00 to 07.30 pm, the complaint was lodged. From the spot of the incident, all of them reached the police station and lodged the report. In the sacks were moist green leaves and seeds, and after noticing the vehicle, PW-1 realised it was from a different State.

26. PW-1 admitted that when he was working with the Wadwana Police Station, there was no case under the NDPS Act registered, and he showed his ignorance about whether earlier to it under the NDPS Act case was registered . He denied the suggestion that Ganja was not seized from the accused persons.

27. The testimony of the aforesaid witness would reveal that what was tried to be extracted from this PW-1 by the defence is the fact of not noting the information given by the driver of the jeep and the timing of intercepting the jeep and lodging the complaint. The defence also doubted the presence of the PW-1 at the spot of the incident, since, according to it, the allotment register was not produced on record.

28. Since PW-1 has stated that he has immediately informed the API Narwate-PW-8, it is relevant to go through his testimony. PW-

8 Balasaheb Narwate has stated that on 08-10-2020, he was attached to the Wadwana Police Station as In-Charge, and on that day, the Police Constables Bembde and Malawade had gone to check the motorcycle. Since these two persons found a Bolero in suspicious condition, they informed PW-8 about the Ganja found in the vehicle. Accordingly, PW-8 informed his superior officer and took entry in the station diary. PW-8 then reached the spot of the incident, searched the vehicle, and confirmed the information supplied to him. Thereafter, said information was given to the Dy. S. P. Ashwini Patil, and a letter was issued to the Executive Engineer to remain present at the spot. One Constable was sent for calling along with a scaling machine, and in the presence of Dy. S.P. Ashwini and the Executive Magistrate; seizure was made, and a seizure panchanama was prepared, which was at Exh. 26. He identified his signature on the said panchanama. Also, the letter issued, calling upon the weighman to remain present, below Exh. 81. The station diary entry No. 27 dated 08-10-2020, as well as station diary entries Nos 18 to 24 dated 08-10-2020, were also proved by this witness, which was marked Exh. 82 to 89. He, thus, deposed that the accused were arrested.

29. PW-8 was then subjected to cross-examination by the defence, in which he admitted that he did not lodge the first

information report, but read it. He stated that the word 'T' in line 8 of the complaint referred to Malwade. He further admitted that in the station diary entry, the name of persons who have given information is recorded, and station diary entry No.18 does not disclose the name Malwade. He also admitted that the information he received pertained to three persons, and there is no reference in the complaint Exh. 18 or the panchanama Exh. 26 that the suspect ran away from the spot. He admitted that in Exh. On 18 and 26, there is no reference to persons who ran away was apprehended.

30. He admitted that the immediate superior post of an Assistant Police Inspector is that of a Police Inspector. He volunteered that at the relevant time, he was serving as the In-Charge Police Station Officer. His immediate superior was Dy. S. P. Since there was no post of Police Inspector in this Police Station, the investigation was handed to the Police Inspector Sonadare, Jalkot Police Station. He admitted that when he reached the scene of the incident, the sun had not set. But when the panchanama was prepared, it was sunset. He submitted that in the panchanama, where 'T' is referred to, it means PW-8, the pancha, and the officers. He further admitted that he had disclosed to the aforesaid persons that he is a gazetted Officer and that no written order was given to him authorising him to search.

He was referred to the portion marked 'A' in the panchanama below Exh. 26, which he admitted was correct. The other suggestion given to this witness was denied.

31. Thus, it is clear that the defence has first challenged the competence of the officer to carryout the search and the case was made to be built that in fact the persons who ran away from the spot of the incident were never apprehended and therefore, it can be said that only two persons were found in the jeep.

32. Learned counsel for the appellants has contended that since there is absolutely no investigation regarding the person who ran away, the entire story of the prosecution became suspicious.

33. At this stage, it is necessary to mention here that Exh. 81 is the letter issued to the Assistant Engineer, MSEB, Branch Hali, for providing two Government employees to act as Panchas. Exh. 82 is the station diary entry, in which it is categorically mentioned that after complying with the directions given by the Hon'ble Apex Court three persons were arrested under the provisions of the Act of 1985 in Crime No. 148/2020. The information about the arrest was given to their relatives, and the accused were locked up.

34. Exh. 83 is the station diary entry dated 08-10-2020 at 17.16, which shows that the Sub-Inspector has taken the said station diary entry mentioning that Police Constable Batch No. 1745 Bembde has informed on telephone that while those persons were checking the vehicles, one Bolero jeep bearing registration No. AP-28-BH-0108 stopped after noticing that the police were checking the vehicles and found it suspicious. The police constable and others approached the said jeep and began an enquiry, at which time one person alighted from the jeep and ran away. On being questioned by the other two persons, they admitted that the vehicle was carrying Ganja. The vehicle was then inspected, during which sacks containing Ganja were found; therefore, PI Narwate, along with other staff, proceeded towards the spot.

35. Exh. 84 is the station diary entry dated 08-10-2020 at 17:36, which states that the Sub-Inspector Narwate informed that, for preparing the panchanama, the Tahasildar was summoned, and so also the weighman along with the machine. Exh. 85 is a station diary dated 08-10-2020 at 17.40, records that the Sub-Inspector instructed Police Constable Murudkar (671) to bring the investigation kit to the incident site.

36. Exh. 86 station diary entry discloses that Sub-Inspector Narwate had informed the Police Naik Yemle (1252) regarding securing Panchas.

37. Exh. 88 is a station diary entry dated 08-10-2020 at 22.07, in which it is mentioned that the Sub-Inspector Narwate took the entry after reaching the incident spot. At this place, the Sub-Divisional Police Officer, Ahmedpur, the Executive Magistrate, Kharat, Udgir, and the panchas, along with the Photographer, were present, in whose presence the Ganja was weighed. It was 176 kg 13 g, which was worth Rs. 17,61,300/-. Ganja was kept in white nine sacks and from which sacks sample of 250 gram was collected, so also to produce before the court and further from each sacks 100 gram was collected and also for depositing it in the Muddemal 100 gram was collected and thus total 4 kg and 5 gram sample was taken and seized on which the signature of panchas as well as Officers were taken which was further sealed. Likewise, the station diary entry shows that panchas were asked to take a personal search of the officers. The accused persons were then taken into custody and finally taken to the police station.

38. Aforesaid entries would clearly reveal that entry in the station diary was taken regarding the procedure that was adopted.

39. As already stated, this witness, PW-8, has categorically stated about the procedure followed, and the General Diary entries are taken. Just because station diary entries show that one person ran away and was not apprehended, that will not go to the root of the matter. Further, it is not even the case of the appellants that they were not persons on the spot. PW 8 at the relevant time, was working as In-Charge of the Police Station, and his immediate superior was Dy. S.P, which officer was also present when the procedure was carried out. Coming to the portion marked A in Exh. 26, it is necessary to mention that Exh. 26 is the seizure panchanama dated 08-10-2020. The portion mark is at last page of the panchanama which states that 'आमच्या व पंचाच्या सहीच्या चिठ्या लावून पो.स्टे. चे लाख सिल मोहर केली व इतर गांजाचे पोत्यावर आमच्या व पंचाच्या सहीच्या चिठ्या लावून पो.स्टे. ला जमा केले'. The said panchanama would reveal that it is signed by the PW-8, PW-5, panchas, and other accused persons.

40. From the testimony of PW-8, it has come on record that the investigation was handed over to PW-7 Ganesh Sondare, and therefore, it is necessary to go through his testimony. PW-7, in his testimony, states that on 08-10-2020, he was working as a Police Inspector at Jalkot Police Station, and that the Police Stations of Jalkot and Wadwana fell under the jurisdiction of the Sub-Divisional



Police Officer, Ahmedpur. On 08-10-2020 Mrs. Patil Sub-Divisional Police Officer, handed over the investigation of crime No. 148/2020 to PW-7 by oral order. The necessary documents were handed over to him by the PW-8, including the first information report, complaint, seizure panchanama, etc. During the course of the investigation, he seized the accused's mobile phones and prepared the panchanama below, Exh. 32 to 34.

41. PW-7 stated that on 09-10-2020, he submitted an application to the court of Judicial Magistrate First Class, Udgir, for the preparation of an inventory of seized Muddemal property. The application/ letter to that effect was below Exh.54. The Judicial Magistrate First Class, Udgir then conducted the inventory and issued certificate below Exh.55. He deposed that during the course of the investigation, he recorded the statement of the witnesses, accused Nos. 1 to 3 and prepared the panchanama.

42. In the cross-examination, he has admitted that Muddemal Clerk used to give a receipt for whatever Muddemal was given to them. He had not recorded the statement of Muddemal Clerk of Wadwana Police Station. He admitted that there was no mention of Muddemal sample packets in the Muddemal receipt. He admitted that a personal search of the accused was conducted, and mobile

phones were found, and he was aware that the case was registered under the NDPS Act. He admitted that the search of the said persons was conducted in compliance with the provisions of the NDPS Act, and that the location of the mobile phone can be obtained from the SDR of the mobile phone tower. He did not obtain the CDR and SDR of the mobile phones.

43. PW-7, in his cross-examination, admitted that there is a special Gazette and notification of Maharashtra State regarding declaring the posts and ranks of gazetted officers for cases under the NDPS Act, and under the Gazette notification, officers of ranks above Police Inspector are gazetted officers for the NDPS Act in the State of Maharashtra. He submitted that he had not investigated this case with Shahid Sharif. The PW-7 denied other suggestions.

44. PW-7's testimony regarding the submission of the application to the Magistrate for conducting the inventory and preparation of the inventory under the supervision of the Magistrate, and proving those documents is not at all subject to cross-examination by all the accused. It, thus, logically follows that the prosecution does not seriously dispute the aforesaid aspect.

45. At this stage, testimony of PW-2, 3 and 5 who acted as a panch is also required to be taken into consideration.

46. PW-2 is Hasan Pathan, stated that at the relevant time, he was serving as a technician in MSEB. On that day, he and one Magar went to Wadwana Police Station as per the direction issued by the superior officer, reached the Police Station at about 04.00 to 04.30, where they met PW-8, who took them to the vicinity of the village Sukane. At that place, one Bolero registration No. AP-20-KV-108 was on the spot, and three people were in the jeep. Also, nine sacks containing Ganja were in the dicky. After some time, the Tahasildar & SDPO arrived at the spot, and the photographer and the weighman were called there. The person with the electronic weighing machine weighed nine bags separately, and the total was 176.31 kilograms. He has given the weight of Ganja and other bags. The Tahasildar & SDPO Ashwini, PW-8, checked the bags containing Ganja. Those bags were seized, and a panchanama was prepared. He identified the Panchanama shown to him. He admitted that the contents were correct, and his signature at Sr. No. 1 & signature at Sr. No. 2 were of Mr. Magar. Panchanama was proved below Exh. 26. He identified the Muddemal, which was shown to him. He stated that the envelope does not bear his signature.

47. In the cross-examination, he has admitted that on one occasion he has deposed before the court as a panch, which was the case of the Wadwana Police Station. There were eleven technicians, apart from him, in the Hali Section, and at about 04.00 pm, Raju called him over the phone and said Raju had received a call from the Police about an hour earlier, i.e., 03.00 pm. At the relevant time, PW-2 was at village Kini, and Rajiv told him to reach at Wadwana Police Station. Accordingly, he reached there between 04.15 to 04.30 pm. He was at the police station for an hour, and the distance between Wadwana Police Station and the village of Sukani was 6-7 km.

48. He admitted that he went to the spot on his motorcycle, and the police reached him by jeep. Magar was a resident of the village Sukani, but he did not go to Wadwana Police Station; he went directly to the spot. When they reached on the spot, the police were checking the vehicles on the road. He stated that he went directly to his village and reached his house at 10.00 pm, and he had left the spot at 09.30 pm. He also admitted that he did not sign any paper after reaching the house, and that the next day he did not visit the spot. The suggestion that panchanama was not prepared was denied. He admitted that the case of the electricity theft is registered, and Hali was within the jurisdiction of Wadwani Police Station. He

further stated that during his tenure, 4-5 cases of electricity theft were registered with the Wadwana Police Station, and in those cases, they needed police help. He then denied that, at the police's instance, he had signed a false panchanama.

49. Challenging the testimony of the aforesaid witness, learned counsel for the appellants submitted that PW-2 is the stock witness. He has deposed as a panch on the earlier occasion and witness is also interested. According to the learned Advocate for the appellants, various cases of electricity theft were registered at the Wadwana Police Station, for which the assistance of the police was required and since this witness was working with MSEB, his interest is apparent. The learned Advocate for the appellants thus stated that the testimony of this witness cannot be relied upon, as he has also admitted that the envelope does not bear his signature.

50. The learned APP contended that this witness is reliable and thus, he has deposed what he has seen, which is clear from the holistic reading of the testimony of witness.

51. It is necessary to mention here PW-2 is an independent witness. He has admitted that various complaints of thefts were registered with the Wadwana Police Station, and they need the help

of the police in those matter. It is pertinent to mention here that the cases registered regarding the theft of electricity were not personal cases of the PW-2; therefore, it cannot be said that PW-2 is an interested witness. Just because PW-2 stated that the envelope does not bear his signature does not mean that said testimony must be ignored.

52. Only on the ground that witness is working with the MSEB, which has lodged cases of theft of electricity, in which help of Police is required, it can not be concluded that he will depose falsely. Deposing as a panch in a single case, on earlier occasion, cannot brand this witness as a habitual panch. Thus, this witness's testimony cannot be ignored.

53. Coming to the testimony of PW-3-Magar, he is also a witness who has stated about the seizure of the mobile phones from the accused. At this stage, the testimony of PW-3 need not be discussed in detail, as the seizure of the mobile phone is also not relied upon by the prosecution, since neither the CDR nor the location of this witness has been collected. But one issue raised by the learned Advocate for the appellants requires discussion. This witness has admitted that the signature on the summons report adjacent to the panchnama Exh. 26 & 16 appears to be different. The

appellants submitted that the possibility cannot be ruled out that Exh 26, which is the seizure panchanama, and Exh. 32, which is the seizure of mobile phones, is also Exh. 33 and 34, are planted documents.

54. The said contention of the learned counsel for the appellants cannot be taken into consideration, since in his cross-examination, PW-3 has categorically admitted that it is due to the ink of the pen that the signatures could not be imprinted. He also showed his willingness to put his signature before the court. Testimony, thus, will have to be seen in the aforesaid background. There is nothing to show that the aforesaid documents are planted.

55. PW-4 is one Somesh, who has deposed that he runs a grocery shop and that there was an electric weighing machine in his shop. On 08-10-2020, Police Constable asked whether PW-4 has an electric weighing machine, to which he replied in the affirmative. He then took the machine to the incident site, where 5-7 police personnel and other people were present. The police caught Ganja and weighed it on an electric scale. There were 8-9 bags of Ganja, and the total weight was approximately 80-90 kilograms.

56. During cross-examination, he admitted that no written intimation letter was given to him. Signature was also not obtained. He admitted that on 08-10-2020 he returned to the shop around 09.00 to 09.30 pm. Thereafter he went to home. Other suggestions were denied.

57. Learned Advocate for the appellants submitted that the entire prosecution story falls on the ground, since PW-4 has categorically stated that the total weight of the bags was approximately 80-90 kilograms. In contrast, the prosecution claims that the weight of Ganja was 176.130 Kilograms. He therefore contended that the story of the prosecution cannot be believed, and it is clear that the police authority had planted Ganja to falsely implicate the accused persons.

58. Per contra, Mrs Bhosale, learned APP submitted that those witnesses have given an approximate weight of Ganja and even otherwise, it will not affect the case of the prosecution.

59. The learned APP is right in advancing her arguments that the weight given by the aforesaid witness is approximate, and that just because this witness has given approximate weight, it does not mean that his testimony is to be ignored. Neither suggestion was



given to this witness nor any other witness that weight of Ganja was not properly done. Even otherwise, 80 KG of Ganja is commercial quantity and therefore, the testimony will not create dent in the case of prosecution. In that view of the matter, I do not find any merit in the argument advanced by the learned Advocate for the appellants.

60. PW-5- Govind Kharat, who at the relevant time was working as a Nayab Tahasildar, Revenue, Udgir. He deposed that on 08-10-2020, he was informed by the Tahasildar, in writing, to visit the spot of the incident. A jeep carrying Ganja was intercepted. He then identified the written order and proved below Exh. 37. In pursuance of the order, he reached the spot of the incident at about 06.45 pm, which was near the agriculture field of Bhosale-a Bolero jeep bearing registration No.AP-28-BH-0108 was parked at the spot. API Narwate, along with police personnel, weigh-man, panchas, and three accused were sitting in the jeep. When questioned, accused Pawar said there was Ganja in the car. Thereafter, PW-5 checked the car, in which there were nine sacks containing cannabis leaves and mixed cannabis, and the weight was 176.83 Kg.

61. PW-5 deposed that 250 kg was taken from each bag of Ganja. Sample of 200 grams to send to the court. Sample packets and pockets to send to the court. In total, eighteen pockets were sealed,

and the signatures of API Narwate and two witnesses were obtained on the labels, which were pasted on eighteen packets. Panchanama was prepared. He, along with API and two panch, signed on it. So, three other accused also signed the panchanama before PW-5. The seizure panchanama below Exh. 26 was shown to this witness, who identified it and stated that it bears his signature, the signature of API, and the panch witnesses. He deposed that the contents of the panchanama were correct.

62. PW-5 was subjected to cross-examination in which he admitted that he received a written order of the Tahasildar at 05.45 pm, to which the police papers were not attached. In Exh. 37, the written order of the Tahasildar did not mention that the car was caught in the village. He stated that he did not read a letter from the Wadwana Police addressed to the Tahasildar, and that the Police Station Wadwana had a radius of approximately 40 km. He had no occasion to speak to the police until he reached the spot. The distance from the police station to the place of occurrence was approximately 18 to 20 kilometers. He stated that the logbook was maintained, showing the vehicle's movement, but showed ignorance as to whether he made a note in the logbook. He admitted that the police did not record his statement during the procedure and did not call a copy of

the government vehicle's logbook. He reached the scene of the incident at 06.30 pm and remained for 1.5 hours. Then, left the spot of occurrence at about 08.00 to 08.15 pm and reached home at 09.30 pm. Thereafter, he did not visit the spot. At the spot, six police personnel were present. He reached the car before the panch witnesses.

63. He admitted that revenue officers do not have police powers. He had read the panchanama that day. Panchanama Exh. 26 was shown to the witness. The contents of the panchanama, "*We affixed our and the panch witnesses' signatures and affixed the lac seal of the and affixed our and the signatures of panch witnesses on the other ganja bags and deposited them in the police station,*" are true. He told the contents of the panchanama to the police, who wrote it down, a process that took half an hour. He admitted that he signed the panchanama before leaving the spot of occurrence. He admitted that no goods were removed from the bag during weighing. He admitted that the bags contained greenish-brown leaves and seeds. He admitted that he knew each part of the plant, and that the samples preserved for the court are not before the court. He denied other suggestions.

64. The testimony of this witness clearly shows that the procedure was duly followed, and thereafter, the seizure was carried out. Nothing has been brought on record by the defence to show that the testimony of this witness was suspicious. In fact, the defence has also not seriously disputed the testimony of PW-5.

65. According to the learned APP testimony of this witness, more particularly, cross-examination would show that approximately six persons were present at the spot of the incident, which clearly shows that there was compliance with Section 42 of the Act of 1985. The question whether there is proper compliance or not will be addressed in later part of judgment.

66. PW-6-Samadhan is the photographer who has deposed that on 08.10.2020 at 06.00 pm, Police Constable had been to his shop and asked him to take a photograph of the vehicle containing Ganja, which was caught near the farm of Anantrao. He then went to the spot where a Bolero jeep was parked on the side of the road, with an Andhra Pradesh registration and passing. PW-6 snapped off the vehicle and also took photographs of sacks removed from the vehicle. He could identify, if the photograph shown to him. Photographs were marked as Articles D, E, F & G, respectively. He also stated that he issued a consent letter stating that he was ready to snap photographs.

He could identify the consent form if shown. He identified his signature and said the letter was marked at Exh. 42. The contents he admitted to be correct. He stated that he took the photograph with a digital camera, and a certificate was issued. He stated that he could identify the said certificate if shown to him. The certificate was then shown to him, which was signed and stated that the contents were true. The said certificate was at Exh. 43. In cross-examination, this witness admitted that there were many photographers' shops in Wadwana, and he went to the spot with Police Constable Murudkar. On 08-10-2020 or 09-10-2020, he went to the police station to have the photographs taken. He did not take a photograph of the accused in the police station. He stated that on 09.10.2020, he went to the police at around 10.00 am. As he wanted to go to Udgir with the Police, he went to the Wadwana Police station. He stated that on 08-10-2020, he was at the spot for approximately 2-3 hours, reached the spot at 06.00 pm, left the place at 08.00 pm, and came home at 08.30 to 08.45. A photograph of the vehicle's number plate was taken at the spot, and the entire number plate was visible in the photo. He snapped approximately 20-25 photos.

67. He admitted that the car's number plate is not visible in the photos taken before the court. He denied the suggestion that the

photographs in Articles D & E were taken on police station premises. Still, he admitted that Articles D & E are not the photographs of the place of occurrence. He admitted that photographs in Articles D to G are not of the place of occurrence of weighing. He admitted that he gave 20-25 snaps to the police, which were not returned to him. He admitted that the photograph has both delete and edit options, and that it can be used to modify the original photos. He admitted that the camera he used to snap the photos had a memory card. He admitted that he connected the memory card to the computer system and took the photos on the desktop. He admitted that he had not given the memory card to the police. He was unaware of the crime number, the nature of the crime, and that the certificate must be given under the Indian Evidence Act.

68. PW-6 in the cross-examination has admitted that the certificate at Exh.43 prepared by police, and thereafter, he signed it. He denied the suggestion that Exh. 42 and 43 were signed at the police's behest. He admitted that the police did not issue any receipt for the photos he took.

69. Learned Advocate for the appellants submitted that this witness has admitted that police issued Exh 43, and thereafter, he signed it. Exh.43 is issued under Section 65(B)(4) of Indian evidence

act . It is necessary to mention here that, though this witness admits that the certificate was prepared and that he thereafter signed it, the said sentence cannot be read in isolation. He has categorically denied that he signed 43 and 42 at the police's behest. Thus, the prosecution rightly proves 43. Exh. 42, which is a consent letter.

70. As already stated this photographer has deposed about taking of photographs, issuance of certificate under Section 65(B)(4) of the Evidence Act and therefore, testimony of this person cannot be disbelieved.

71. Learned Advocate for the appellants has relied upon the law laid down by the coordinate bench of this court in Aspaq N. Ahmed (supra), stated more particularly para 13, to buttress his contention that different signatures go to the roots of the matter, entitling the accused to acquittal. Aforesaid judgment was cited relying upon para 11, wherein the court has observed that PW-3, Gangadhar, stated that he acted as a panch witness and then he acted as a panch in two other cases also. Relying upon the said judgment the learned Advocate stated that even PW 2, in the case in hand has earlier acted as Panch and therefore, his testimony is required to be brushed aside in the light of as already stated. since in earlier part of judgment, I have already discussed the testimony of PW2 and in the

background it can be said that the judgment cited of the coordinate bench of this court was totally different in the facts of the case.

72. To counter the arguments by the appellants that the case was not proved beyond a reasonable doubt, the learned APP has relied upon the observations made by the Hon'ble Apex Court in the case of Ramakant Rai Vs Madan Rai and others reported in 2003 (12) SCC 395.

*“24. Doubts would be called reasonable if they are free from a zest for abstract speculation. Law cannot afford any favourite other than truth. To constitute reasonable doubt, it must be free from an over emotional response. Doubts must be actual and substantial doubts as to the guilt of the accused persons arising from the evidence, or from the lack of it, as opposed to mere vague apprehensions. A reasonable doubt is not an imaginary, trivial or a merely possible doubt; but a fair doubt based upon reason and common-sense.”*

73. She has thus submitted that nothing has been brought on record to show that there was really 'reasonable doubt' in the case of the prosecution. She is right in saying so, as the defence has not brought anything on the record to show there was something suspicious, which goes to the root of the matter and therefore, it cannot be said that there was a reasonable doubt in a case of prosecution. It needs to be appreciated that the simple rules of Arithmetic and Multiplication cannot be applied when separate pieces



of evidence are dependent. Different pieces of evidence in a criminal trial must be considered holistically. Then the opinion has to be formed on whether the prosecution's case has a ring of truth. Testimony of witnesses in present case would clearly reveal a ring of truth in a case of prosecution.

74. Learned APP has relied upon the judgment in the case of Jyothi @ Nagajothi Vs The State in Criminal Appeal No.259 of 2025 dated 11-12-2025, particularly para 30, which reads as under:

*“30. This Court, in Noor Aga v. State of Punjab & Anr. ((2008) 16 SCC 417), has similarly observed in paragraph 98 that a slight difference in the weight of the sample is not so material as to undermine the prosecution's case, and cannot by itself justify discarding otherwise reliable evidence.”*

75. She by relying on the observations made by the Hon'ble Apex Court has stated that just because there is a difference in the weight of the sample it does not undermine the prosecution's case, and it cannot justify discarding the other reliable evidence. She is right in relying upon the said judgment; what is required to be seen is the entire case and not a single piece of evidence only.

76. Coming to the contention that there was absolutely no compliance with section 42 the act of 1985, , guidance can be taken from law laid down by the the Hon'ble Apex Court in the case of

Karnal Singh Vs State of Haryana reported in 2009 AIR SCW 5265 ,

more, particularly following observations:

17. In conclusion, what is to be noticed is Abdul Rashid did not require literal compliance with the requirement of the section 41(1) and Section 42(2) nor did Sajan Abraham hold that requirement of Section 42(1) and Section 42(2) need to be fulfill at all. The effect of the two decisions was as follows:

*(a) The officer on receiving the information (of the nature referred to in Sub-section (1) of section*

*42) from any person had to record it in writing in the concerned Register and forthwith send a copy to his immediate official superior, before proceeding to take action in terms of clauses (a) to (d) of [section 42\(1\)](#).*

*(b) But if the information was received when the officer was not in the police station, but while he was on the move either on patrol duty or otherwise, either by mobile phone, or other means, and the information calls for immediate action and any delay would have resulted in the goods or evidence being removed or destroyed, it would not be feasible or practical to take down in writing the information given to him, in such a situation, he could take action as per clauses (a) to (d) of [section 42\(1\)](#) and thereafter, as soon as it is practical, record the information in writing and forthwith inform the same to the official superior .*

*(c) In other words, the compliance with the requirements of [Sections 42 \(1\)](#) and [42\(2\)](#) in regard to writing down the information received and sending a copy thereof to the superior officer, should normally precede the entry, search and seizure by the officer. But in special circumstances involving emergent situations, the recording of the information in writing and sending a copy thereof*

*to the official superior may get postponed by a reasonable period, that is after the search, entry and seizure. The question is one of urgency and expediency.*

*(d) While total non-compliance of requirements of sub-sections (1) and (2) of [section 42](#) is impermissible, delayed compliance with satisfactory explanation about the delay will be acceptable compliance of [section 42](#). To illustrate, if any delay may result in the accused escaping or the goods or evidence being destroyed or removed, not recording in writing the information received, before initiating action, or non-sending a copy of such information to the official superior forthwith, may not be treated as violation of [section 42](#). But if the information was received when the police officer was in the police station with sufficient time to take action, and if the police officer fails to record in writing the information received, or fails to send a copy thereof, to the official superior, then it will be a suspicious circumstance being a clear violation of [section 42](#) of the Act. Similarly, where the police officer does not record the information at all, and does not inform the official superior at all, then also it will be a clear violation of [section 42](#) of the Act. Whether there is adequate or substantial compliance with [section 42](#) or not is a question of fact to be decided in each case. The above position got strengthened with the amendment to [section 42](#) by Act 9 of 2001.*

77. In the aforesaid background and considering the testimony of PW-1 and PW-8, as well as station diary entries, stated above, it would clearly reveal that the mandate of section 42 of the act of 1985, was duly complied with. It is already observed by the Hon'ble Apex Court that it is not every breach that will go to the root of the matter, but the question is whether there is substantial

compliance or not. The question is one of urgency and expediency. The fact cannot be ignored that it was a chance recovery. It further required to be taken into consideration that the accused had turned the direction of the vehicle when they saw the police party and vehicle was required to be chased.

78. The prosecution has also proved possession /recovery of Ganja from the accused persons and therefore presumption under section 54 of the act of 1985 also triggers. The accused could have rebutted the presumption either by cross examining the witnesses or leading the evidence, but same has not been done. Reading of answers given to the questions framed under section 313 of code of criminal procedure shows that except denial and stating that case was false, no explanation is given by the accused person. This fact also goes in favour of the prosecution.

79. In that view of the matter and considering the testimony of witnesses, the fact that the CA report, more particularly Exh. 65, clearly shows that what was seized was found to be Ganja, I am of the opinion that the trial court correctly appreciated the evidence on record prosecution has rightly proved ingredients of the offence for which the appellants are convicted. In that view of the matter, the prosecution has proved the case beyond a reasonable doubt. Hence,

the following order :

**ORDER**

- a] The appeal stand dismissed.
- b] In view of dismissal of the appeal, pending applications, if any stand disposed off.

**[RAJNISH R. VYAS, J. ]**

VishalK/901criapl966.22