



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPEAL NO.573/2024

Aas Mohd. S/o Mohd. Shakur,
aged about 29 Yrs., Occ. Auto Driver,
R/o Ward No.28, Midhanpur,
Tah. & Distt. Baghpat (U.P.) ... Appellant

- Versus -

State of Maharashtra,
through the Police Inspector,
P.S. Butibori, Nagpur. ... Respondent

Mr. A.R. Rawlani, Advocate for the Appellant.
Mr. U.R. Phasate, A.P.P. for the Respondent/State.

CORAM: NEERAJ P. DHOTE, J.
DATE OF RESERVING THE JUDGMENT: 12.01.2026.
DATE OF PRONOUNCING THE JUDGMENT: 25.02.2026.

JUDGMENT

This is an Appeal under Section 415 of the Bharatiya
Nagarik Suraksha Sanhita, 2023 (for short “BNSS”) against the
judgment and order dated 05.09.2024 passed by the Special
Court NDPS Act, Nagpur in Special (NDPS) Case No.549/2021
convicting the Appellant for the offence punishable under
Section 20(C) read with Section 8(c) of the Narcotic Drugs and
Psychotropic Substances Act, 1985 (for short “the said Act”) and

sentencing him to suffer rigorous imprisonment for 12 (Twelve) years and fine of Rs.1,00,000/-, in default to pay fine, to undergo rigorous imprisonment for 1 (One) year.

2. The prosecution's case, as revealed from the police report, is that, the Informant Policeman attached to the Butibori Police Station, received secret information that, on 03.07.2021 one Toyota Altis Car DL-7-CG-4341 was carrying the contraband (*Ganja*) from Chandrapur to Butibori, Nagpur for selling. After making necessary station diary entry and informing the superiors and arranging the Panchas, the Informant, his superior and the Panchas reached the spot and put the barricades. The aforesaid car came from Chandrapur side and same was stopped. The Appellant was driving the said car. After completing the necessary formalities, the vehicle was checked and below the rear seat 35 packets wrapped in plastic were found. There was pungent smell from the said packets and the same was found to be substance like *Ganja*. All the bundles were opened and put in four (4) plastic bags marked as "ABCD". The substance was weighed and it was found 68 Kilograms 110 Grams. The samples were drawn from the four (4) bags. The samples and the substance came to be sealed. The Appellant was taken in the custody. The report was lodged and Crime No.289/2021 came to be registered against the Appellant. The Appellant came to be produced before the learned Magistrate. Inventory of the substance was conducted and the

samples were drawn. The samples were sent to the Forensic Science Laboratory (FSL). The substance was found to be 'Ganja'. On completion of the investigation, the Appellant came to be chargesheeted.

a. The learned trial Court framed the Charge below Exh.3 for the offence punishable under Section 20(C) for contravention of the provisions of Section 8(c) of the said Act. The Appellant pleaded not guilty and claimed to be tried. To prove the Charge, the prosecution examined in all following ten (10) witnesses.

- i) The Panch witness Mr. Bhagwan Chirkuji Nanhe who was present on the spot when the vehicle was intercepted and checked, as P.W.1,
- ii) The Informant and Member of Raiding Party Ashish Devidas Morkhede, as P.W.2,
- iii) The Photographer Mahendra Sukhchand Pardhi, as P.W.3,
- iv) The Policeman Pradeep Arvind Deshmukh, as P.W.4,
- v) The Policeman Manish Vasantrao Karnake, as P.W.5,
- vi) The Photographer Sushil Pruthav Meshram, as P.W.6,
- vii) The Investigating Officer Omprakash Gangadhar Kokate, as P.W.7,
- viii) The Muddemal Moharir of the Police Station Sastish Dnyaneshwar Sontakke, as P.W.8.
- ix) The witness Ranpal Tajpal Baisoya, as P.W.9 and

- x) The Muddemal Moharir of the Police Station Bhimaji Hindurao Patil, as P.W.10.
 - b. The relevant documents such as Report, Station Diary Entries, Panchanamas, the Inventory Memo, the Report of Chemical Analyzer (C.A. Report) etc. were brought on record in the evidence of the above referred witnesses. After prosecution closed its evidence, the statement of the Appellant came to be recorded under Section 351 of the BNSS. The Appellant denied the prosecution's case and claimed false implication. Considering the evidence available on record, the learned trial Court passed the impugned judgment and order convicting and sentencing the Appellant as above.
3. Heard the learned Advocate for the Appellant and the learned A.P.P. for the State. Scrutinized the evidence available on record.
4. It is submitted by the learned Advocate for the Appellant that, there was non-compliance of the provisions of Section 42 of the said Act. The information was not given by the Informant to the superior in writing. The documents of information were prepared subsequently. It is submitted by the learned A.P.P. that, the evidence on record shows that, there was compliance of the provisions of Section 42 of the said Act. The testimony of the

Informant and the Policeman is corroborated by the contemporary documents.

5. Section 42 of the said Act is in respect of “*power of entry, search, seizure and arrest without warrant or authorization*”. Sub-section (1) of Section 42 requires that, any officer empowered by the Government in that regard, if has reason to believe from personal knowledge or information given by any person and taken down in writing that any narcotic drug or psychotropic substance, or controlled substance in respect of which an offence punishable under the said Act has been committed, he may take the necessary action as provided in the said section. Sub-Section (2) of the said Section provides that, the said information which the officer takes down in writing under Sub-Section(1) or records grounds for his belief under the proviso thereto, he shall within seventy-two hours send a copy thereof to his immediate official superior.

6. The testimony P.W.2 Ashish D. Morkhede shows that, in the year 2021 he was attached to the Butibori Police Station as the Police Sub-Inspector. On 03.07.2021 when he was on Detection Duty, he received information that, the blue coloured Toyota Alits DL 7 CG 4341 was carrying the contraband from Chandrapur to Butibori via Nagpur. He made the station diary in that regard. He informed about the same to P.W.7 Omprakash

G. Kokate, the Police Inspector of the said Police Station. He informed the Superintendent of Police and the Sub-Divisional Police Officer (SDPO) about the said information (Exh.26) and also made the station diary entry in that regard (Exh.25). He sent the information to the SDPO in that regard in writing (Exh.27). His evidence shows that, Exh.25, the copy of station diary entry about the secret information of contraband in the said vehicle, was having the signature of P.W.7 Omprakash G. Kokate. The copies of station diary entries corroborate his testimony. His cross-examination shows that, the said evidence of this witness in respect of above referred aspects remained unshaken. Nothing material has come in the cross-examination so as to create any dent in his above discussed testimony.

7. Further, the evidence of P.W. 7 Omprakash G. Kokate shows that, on 03.07.2021 while he was on duty, P.W.2 Ashish D. Morkhede informed him of the secret information in respect of contraband being transported in the above referred vehicle from Chandrapur. His evidence shows that, he asked him to take the permission from the senior and P.W.2 Ashish D. Morkhede accordingly took the permission. Even the cross-examination of this witness remained unshaken. This evidence of the two prosecution witnesses (P.W.2 and P.W.7) clearly shows that, there was compliance of the provisions of Section 42 of the said Act as

the information was taken down in writing and the same was having signature of P.W.7 Omprakash G. Kokate showing that, the copy of the information was supplied to him. Further the written information was given to the superior officers and the superior officers gave permission in writing.

8. The evidence of P.W.2 Ashish D. Morkhede, the Policeman who received the secret information, shows that, he arranged the Panch witnesses, the Photographer and the person having weighing machine. Exhibits 32 and 33 copies of the station diary entry in that regard are brought on record in his evidence. He deposed that two Panchas came to the Police Station and he gave information to the Panchas, issued intimation communication as per Section 160 of the Code of Criminal Procedure. Before leaving for spot, the Panchas took personal search of the police party and did not find any contraband in their possession. Pre-trap Panchanama below Exh.12 was prepared and they left for the spot of incident with P.W.7 Omprakash G. Kokate. His evidence shows that, the car which was being driven by the Appellant was intercepted. The Appellant was issued the intimation letter below Exh.13 pursuant to the provisions of Section 50(1) of the NDPS Act. His evidence shows that, 35 square packets were found in the backside of the rear seat and same was smelling like *Ganja*. The contents of the said packets

were removed in four (4) white sacks. The substance weighed 68 Kg. 110 Grams. Thereafter 25 grams of substance was removed from each sack. Samples were sealed and labelled. Post-trap Panchanama was prepared. The Form for sending the samples to the Chemical Analyzer was filled therein which was at Exh.35. His evidence shows that, there was scratching on the date in Exh.14, Seizure Panchanama, however, he explained that due to typographical mistake the date '07/03' came to be typed and so he corrected it as '03/07'. He further explained that, the date '07/03/21' below his signature was also typing mistake and since it was not noticed by him, the same remained incorrect. Though he was cross-examined by the defence, nothing material has come on record so as to discard his testimony. His cross-examination shows that, the Tollplaza is 50 to 60 meters away from the spot of incident and, therefore, the car was not captured in the CCTV Footage of the said Tollplaza.

9. The evidence of P.W.1 Bhagwan C. Nanhe shows that, he was one of the Panch in the said process deposed by P.W.2. His evidence corroborates the testimony of P.W.2. His evidence shows that, the packets of samples taken out of the four sacks were sealed. Nothing has come in his cross-examination so as to discard his testimony in respect of seizure of the substance from the vehicle which was being driven by the Appellant. In the

cross-examination it is clarified that the date '07/03/2021' was incorrect. The evidence of Panch witness gets corroborated by the documents which were prepared at the relevant point of time.

10. The evidence of P.W.6 Sushil P. Meshram shows that, he reached on the spot and clicked photographs on the spot where the vehicle driven by the Appellant was stopped and the contraband was seized. As regards to his evidence in the cross-examination that, he reached after the vehicle was stopped, it is clear from his further cross-examination that, as the Photographer Pardhi was not available, therefore, he was called. The learned A.P.P. has rightly submitted that, this aspect is clear from the Post-trap Panchanama below Exh.12.

11. The evidence of P.W.7 Omprakash G. Kokate shows that, he accompanied the Raiding Party in the capacity of Gazetted Officer. His testimony corroborates the testimony of P.W.2 Mr. Ashish D. Morkhede. Though in his cross-examination it has come on record that, he has not given permission in writing to P.W.2, it will not be sufficient to create any dent in the prosecution's case as it is already discussed that, the SDPO had granted permission to P.W.2 for doing the needful after receipt of the secret information. Not signing the Pre-trap Panchanama and Post-trap Panchanama below Exh.12 by this witness is not at all

fatal for the prosecution as he had gone with the Raiding Team as a Gazetted Officer.

12. From the above discussed evidence on record, the prosecution has established that, on receipt of secret information, P.W.2 along with Panch witnesses, Photographer and P.W.7 Omprakash G. Kokate, reached the spot, intercepted the vehicle which was being driven by the Appellant and substance in 35 bags came to be seized from the vehicle.

13. It is submitted by the learned Advocate for the Appellant that, the evidence on record shows that, no separate samples were drawn from each packets, which the prosecution witnesses claimed to have been seized from the car which was being driven by the Appellant. He submitted that, the contents of all the 35 packets were mixed and thereafter the samples were drawn, which was not permissible in view of the Narcotic Drugs and Psychotropic Substances (Seizure, Storage, Sampling and Disposal) Rules, 2022. On this point, he relied on the judgment in *Union of India V/s. Bal Mukund and others*, (2009) 12 SCC 161 and in *Shiv Sa Jaat V/s. State of Chhattisgarh through Police Station Bemetara*, 2023 SCC OnLine Chh 4300. It is submitted by the learned A.P.P. that, no illegality was committed by mixing the contents of all the packets of the substance and drawing

samples from the said substance. It is submitted that, the extracting of the samples will not vitiate the seizure. He relied on the decision in *Bharat Aambale V/s. State of Chhattisgarh*, (2025) 8 SCC 452.

14. In *Union of India (supra)* P.W.7 therein had taken samples of 25 gram each from all the bags and then mixed them and sent to the Laboratory. It was observed that, there was nothing to show that, an adequate quantity from each bag had been taken and it was requirement in law. The said decision was primarily on the aspect of confessions made by the accused therein. In *Shiv Sa Jaat (supra)* the contraband weighing 285.600 Kgms. was seized which was kept in 12 bags and mixed entirely and two samples packets each containing 50 grams were prepared. It was observed that, while preparing the sample packets, the Standing Orders dated 15.03.1988 and 13.06.1989 were not complied with and the samples packets were prepared contrary to those Standing Orders. There were also several lacunae in the said case as can be seen from para 17 of the said judgment. There is a reference of judgment in *Basant Rai V/s. State*, (2012) 130 DRJ 471 wherein it is observed that, if 8 packets were allegedly recovered and only 2 packets were having contraband substance and rest six packets did not have any contraband, though all may be of the same colour, when we mix substances of all 8 packets into one or

two, then definitely, the result would be of the total quantity and not of the two pieces. It was observed that, therefore, process adopted by the prosecution created suspicion. In *Bharat Aambale (supra)* the issue was that, whether the conviction stood vitiated due to non-compliance of Section 52-A of the NDPS Act. The final conclusion is summarized in para 56 of the said judgment.

15. Coming to the case at hand the evidence of P.W.1 Bhagwan C. Nanhe, evidence of P.W.2 Ashish D. Morkhede and P.W.7 Omprakash G. Kokate shows that, the substance in 35 packets were mixed and distributed in four (4) separate sacks and samples from each sack were drawn. According to the evidence of P.W.10 Bhimaji H. Patil, who was the Police Inspector of the Butobori Police Station, he certified the extract from the Muddemal Register under his signature which was at Exh.100. According to him, the seized Muddemal was deposited in the Muddemal Room on 03.07.2021 as per the entry in the said extract. His evidence shows that, the Muddemal In-Charge A.S.I. Wadme retired. Further, according to P.W.8 Satish D. Sontakke investigation of the crime came to him on 04.07.2021 and the samples were sent to the Chemical Laboratory through Police Constable pursuant to Duty Pass below Exh.69. The evidence of P.W.4 Pradeep A. Deshmukh, Police Constable, shows that, when he was on duty on 06.07.2021, P.W.8 Satish D. Sontakke directed him to deposit

the samples to the Chemical Laboratory and he took the samples from the Muddemal Room and deposited the same with the Laboratory on the same day. The evidence of P.W.2 Ashish D. Morkhede, the Informant and the Officer who was the Member of the Raiding Party shows that, the C.A. Form below Exh.35 bears the date 05.07.2021. He volunteered that, the said Exh. 35 was made outward on 5th. Exhibit 100, which is the extract of the Muddemal Register, has the entry of the said Exh.35, however, it nowhere shows that, the samples were handed over to P.W.4 Pradeep A. Deshmukh, Bakkal No.84 on 06.07.2021 as claimed by him. On the contrary, the entry in respect of the said Exh.35 dated 05.07.2021 shows that, the packets were handed over to N.P.C. Mandhare, Bakkal No.682. This is the material discrepancy in the prosecution's evidence. Undisputedly, Policeman having Bakkal No.682 whose name is mentioned in the Exh.100 Muddemal Register as the one to whom the samples were handed over is not examined by the prosecution. The suggestion is given in the cross-examination of P.W.8 Satish D. Sontakke that, no samples were sent to the Laboratory at the hands of P.W.4 Pradeep A. Deshmukh. So the evidence to show that, the samples drawn on 03.07.2021 were sent to the Chemical Analyser is missing.

16. The evidence of P.W.8 Satish D. Sontakke, the Investigating Officer, shows that, he wrote the letter dated 09.07.2021 to the learned Magistrate for Inventory, of the seized substance and 17.07.2021 was the date given by the Magistrate for Inventory of the seized substance and the Inventory was done on 17.07.2021. The evidence of P.W.10 Bhimaji H. Patil further shows that, if the Muddemal is removed out of Muddemal Room, the entry in the register is to be made and there was no entry in the Muddemal Register that, the Muddemal was sent on 17.07.2021 to the Court. The Inventory Certificate is brought on record at Exh.89 in the evidence of P.W.8 Satish D. Sontakke. In the cross-examination he admitted that, in the said Inventory Certificate number of Muddemal is mentioned as '22/2021', which was wrong. His evidence shows that, Muddemal number of the substance in this case was '30/2021'. He admitted that, in para 9 of the Inventory Certificate the Muddemal Number '30/2021' was not mentioned. He further admitted that, in Exh.86 which was the letter addressed to the Magistrate for Inventory, there was no mention of the Muddemal Number. Suggestion is given that, the Muddemal produced before the Court for Inventory and the photographs were of different case. Suggestion is given that incorrect documents were sent and the C.A. Reports were false. Further, the learned Advocate for the Appellant has rightly stated that, the Inventory Certificate below Exh.89 shows that, the

samples were taken only from the 4th sack marked 'D' and not from the sacks marked as 'ABC'. With this evidence on record the evidence of P.W.5 Manish V. Karnake that, on 03.08.2021 he deposited two sealed packets to the Chemical Laboratory is of no help to the prosecution. True it is that the Exh.100 shows the entry of 03.08.2021 regarding samples for the Inventory, it becomes inconsequential in view of the above evidence which do not establish that, the substance was taken for Inventory.

17. P.W.3 Mahendra S. Pardhi deposed that, he was the Photographer having Nikon D 7000 Camera and the Butibori police called him to click the photos of the Inventory on 17.07.2021 and he went to the Butibori Police Station and from there went to the Court of Magistrate where the Inventory was prepared and he clicked the photographs. However, Inventory Certificate below Exh.89 shows that, Photographer by name Mahendra Sukhchand Sontakke was present. Para 7 of the Inventory Certificate shows that, all the necessary photographs were taken by photographer Mayur Sureshrao Gawande. There is no explanation from the prosecution as to why different names of the Photographers in the Inventory Certificate are shown, though first page of Exh.89 shows the name of P.W.3 Mahendra S. Pardhi as the Photographer.

18. The above discussed evidence shows that, the prosecution utterly failed to establish that, the samples submitted to the Chemical Laboratory which issued the C.A. Reports at Exhs.90, 91 and 92 showing the substance as '*Ganja*' were from the substance seized from the Appellant. There is no evidence to establish that, the samples of the substance seized from the Appellant were sent to the Laboratory for examination. This being so, the said C.A. Reports will not be incriminating in nature. Unless it is established that, the seized substance was the contraband covered by the NDPS Act, the conviction cannot be sustained. Considering the above referred serious infirmities in the prosecution's case, the benefit goes to the Appellant. The lacunae or the discrepancies as discussed above leads to the only conclusion that, the Appellant is entitled for acquittal. Hence, the following order:-

ORDER

- i) The Appeal is allowed.
- ii) The conviction and sentence imposed by the learned trial Court convicting the Appellant for the offence punishable under Section 20(C) read with Section 8(c) of the NDPS Act, 1985 sentencing him to suffer rigorous imprisonment for 12 (Twelve) years and fine of Rs.1,00,000/-, in default to pay fine, to undergo rigorous imprisonment for 1 (One) year vide judgment and order dated 05.09.2024 passed by the Special Court NDPS Act,

Nagpur in Special (NDPS) Case No.549/2021 is quashed and set aside.

iii) The Appellant is acquitted of the offence punishable under Section 20(C) read with Section 8(c) of the said Act.

iv) The fine amount, if any, paid by the Appellant be refunded to him.

v) Rest of the operative part in relation to seized Articles remains intact.

vi) Record and proceedings be sent back to the learned trial Court.

(NEERAJ P. DHOTE, J.)