

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

105

Reserved on 13.10.2025
Pronounced on: 08.01.2026

1.

CRA-S-2368-SB-2004

KANHIYA LAL & OTHERS

....Appellants

Versus

STATE OF HARYANA

...Respondent
2.

CRA-S-1341-SB-2005

KRISHAN

....Appellant

Versus

STATE OF HARYANA

...Respondent

1.	The date when the judgment is reserved.	13.10.2025
2.	The date when the judgment is pronounced.	08.01.2026
3.	The date when the judgment is uploaded.	08.01.2026
4.	Whether only operative part of the judgment is pronounced or whether the full judgment is pronounced.	‘Full’
5.	The delay, if any of the pronouncement is full judgment and reason thereof.	‘No delay’

CORAM: HON'BLE MR. JUSTICE YASHVIR SINGH RATHOR

Argued by : Mr. RN Lohan, Advocate and
Ms. Manisha Rani, Advocate
for the appellants in CRA-S-2368-SB-2004.

Mr. Jaswinder Singh Rana, Advocate for
Mr. Jitender Dhanda, Advocate
for the appellant in CRA-S-1341-SB-2005.

Mr. R.K. Ambavta, DAG, Haryana.

YASHVIR SINGH RATHOR. J.

1.

This order shall dispose of above noted two appeals, as the same have emanated out of the same occurrence.



2. The present appeals have been filed by the appellants against the judgment dated 20.09.2004, passed by learned Additional Sessions Judge, Fatehabad, whereby the appellants have been held guilty and convicted for the offence under Section 15 (c) of the NDPS Act and have been sentenced to undergo rigorous imprisonment for a period 10 years and to pay fine of Rs. 1 lakh each and in case default of payment of fine, they have been ordered to undergo rigorous imprisonment for a period of 2 years.

3. Brief facts of the prosecution case are that on 11.07.2000, S.I. Azad Singh posted as Incharge of Police Post Daryapur was present at Bus Stop Daryapur in connection with the checking of vehicles. In the meantime, a jeep bearing registration No. HR-39/5247 came from the side of Sirsa City, which was stopped by the police party and on inquiry, the driver of the jeep told his name as Kanihya Lal and the co-passenger disclosed his name as Krishan. On checking the said jeep, three gunny bags were found lying on the back portion of the jeep. Suspecting that the bags contained some intoxicating substance, the Investigating Officer served a joint notice under Section 50 of the NDPS Act (Ex.P11), upon the accused to the effect that he wanted to search the gunny bags and if accused so desire, the search can be conducted in the presence of a Gazetted Officer or a Magistrate. The contents of the notice were read over and explained to the accused, who signed the same in token of its acknowledgment in the presence of C.Surajmal and C. Kashmir Singh. In the joint reply, accused desired that search be conducted in the presence of a Gazetted Officer. Accordingly, DSP Ram Kumar was informed to reach the spot and after some time, DSP Ram Kumar reached at the spot. After appraising him about the facts of the case, as per the directions of the DSP, search of the jeep was conducted and three gunny bags



containing poppy husk were found lying on the middle seat of the jeep. A sample of 100 grams of poppy husk was separated from each of the gunny bags and the remaining quantity on weighment was found to be 39.900 kgs, in each bag. The samples and the remainder were converted into separate parcels and sealed with the seal of AS by the Investigating Officer Azad Singh and RK by the DSP. The seal of AS, after use, was handed over to C. Kashmir Singh, whereas, DSP kept his seal with himself. The sample parcel and residue parcels alongwith the jeep were taken into possession, vide recovery memo Ex. P1. Ruqa Ex P-7 was also sent to the Police Station, on the basis of which formal FIR Ex R-8 was registered. The Investigating Officer also recorded the statements of the witnesses and prepared a rough site plan of the place of occurrence Ex. P-13.

4. On return to the police station, the Investigating Officer produced the accused and the witnesses alongwith the case property and the jeep before Inspector Shingara Singh SHO, who verified the facts and after verification, he affixed his own seal SS on each parcel. The Investigating Officer also submitted a separate report under section 57 of the Act in this regard, which was also endorsed by the SHO. As per the direction of the SHO, Investigating officer handed over the case property and samples to the MHC and confined the accused in police lock-up.

5. All the samples were sent to the office of Chemical Examiner for analysis. Accordingly, on completion of investigation, a formal charge-sheet was filed against the accused and was submitted in the Court of Area Magistrate and ultimately sent to the Court for trial.

6. Upon appearance, the accused were charge-sheeted for the commission of offence punishable under section 15 of NDPS Act, vide order



dated 01.02.2001 by the Trial Court for having in their possession three gunny bags containing 40 kg. poppy straw in each gunny bag, without any valid permit or licence, in the area of Bus Stand Dariyapur. The said charge was read over and explained to the accused in simple Hindi language to which they pleaded not guilty and claimed trial.

7. The prosecution in order to prove its case has examined PW-1 Ram Kumar, DSP, PW-2 Shingara Singh retired Inspector, PW-3 Foza Singh H.C., PW-4 Gurpiar Constable, PW-5 C. Kashmir Singh, PW-6 Azad Singh, Inspector and PW-7 Krishan son of Harchand. Thereafter, the evidence of the prosecution was closed by learned public prosecutor after tendering the report of the FSL. Ex P-17

8. The entire evidence and the incriminating circumstances brought on record by the prosecution were put to the accused when they were examined under Section 313 Cr.P.C. but the accused denied the same and pleaded false implication.

9. Thereafter, the accused were called upon to enter upon their defence, as desired by them, but they tendered certified copy of statement of Ram Kumar, DSP recorded as PW-5 in FIR No. 274 dated 11.07.2000, Police Station Sadar, Fatehabad titled State Vs. Ram Singh Ex. DA and thereafter, accused closed their evidence in defence.

10. After hearing learned State counsel as well as defence counsel and going through the material on file, the trial Court held the accused-appellants guilty and convicted them for the offence under Section 15(c) of the NDPS Act and sentenced to undergo imprisonment as mentioned in opening paragraph of the judgment. Feeling aggrieved, appeals in hand have been preferred.



11. Learned counsel for the appellants and learned State counsel have been heard and material on file has been perused.

12. Learned counsel for the appellants argued that the impugned judgment whereby they have been held guilty and convicted for the offence under Section 15 of the NDPS Act is based on conjectures and surmises and the same is contrary to law, facts and evidence on the file and the impugned judgment is, thus, not sustainable and is liable to be set aside. Learned counsel contended that there are material contradictions in the statements of the witnesses which make the prosecution case highly doubtful. Testimony of PW-1 Ram Kumar, DSP, who was called at the spot and in whose presence the bags were allegedly searched, is highly unreliable. In relation to the present case, FIR No. 273 dated 11.07.2000, Police Station Sadar, Fatehabad, under Section 15 of the NDPS Act was registered and on the same day and at the same time, two more persons were apprehended in a jeep from whom three gunny bags of poppy husk were also recovered and in that regard, FIR No. 274 dated 11.07.2000, Police Station Sadar, Fatehabad, under Section 15 of the NDPS Act was also registered and in that case also, bags were searched in the presence of Ram Kumar, DSP. The statement of Ram Kumar, DSP, recorded in FIR No. 274/2000 has been tendered in evidence by the accused-appellants as Ex. DA, according to which he had received a wireless message from the Investigating Officer of that case at 9.45 a.m. while he was present in his office. He left his office within 10 minutes and reached at the place of recovery, which was 4-5 kms away from Fatehabad City, at 10.15 a.m. and he remained at the place of recovery up to 11.30 a.m. In the present case, while appearing as PW-1, he has deposed that he received a telephonic call from PW-6 SI Azad Singh at 8.45 a.m. while he was present at his residence, who asked him to reach near



Police Post Daryapur, which was 10 kms away from Fatehabad City. Thereafter, he started from his home in 10 minutes and reached at the place of the alleged recovery at 9.15 a.m. and stayed there up to 10.45 a.m. As per the version of PW-6 SI Azad Singh, DSP had stayed at the spot up to 11.00 a.m. Learned counsel for the appellants argued that Ram Kumar, DSP, could not have been present at the same time at two different places, which shows that no such search was conducted and no recovery was effected in the manner as alleged and all the facts have been manipulated to falsely implicate the appellants. Learned counsel further contended that the prosecution case rests upon the testimony of official witnesses, namely PW-1 Ram Kumar, DSP, PW-5 Constable Kashmir Singh and PW-6 SI Azad Singh and all of them are also in material contradiction with each other on important aspects of the case which go to the root of the case and make the prosecution case doubtful, particularly because no independent witness from the public was joined, despite the fact that the place of occurrence was a busy place where shops were situated and people were passing by, as admitted by the Investigating Officer. Learned counsel contended that since the material witnesses examined by the prosecution are in material contradiction with each other, their testimony should not be relied upon in the absence of corroboration by public witnesses. Learned counsel further contended that the said Ram Kumar, DSP, has been disbelieved by the Court of the learned Additional Sessions Judge, Fatehabad, in FIR No. 274 dated 11.07.2000, Police Station Sadar, Fatehabad, under Section 15 of the NDPS Act and the accused in that case have been acquitted vide judgment dated 12.06.2002, which has been annexed alongwith the grounds of appeal.

13. Learned counsel next contended that the testimony of PW-1 Ram Kumar, DSP, PW-5 Constable Kashmir Singh and PW-6 SI Azad Singh is silent



with regard to the preparation of the sample seals with which the samples and the residue parcels were sealed, which was to be sent to the FSL alongwith the sample parcels for comparison with the seal impressions affixed on the sample parcels. Though in the recovery memo Ex. P-1 and in the affidavits of PW-3 Fauja Singh MHC and PW-4 Constable Gurpiar Singh, it is mentioned that the sample seal was also deposited in the malkhana and subsequently at the FSL, but the silence of all the material witnesses regarding preparation of the sample seal at the spot raises doubt about the preparation of the sample seals at the spot.

14. Learned counsel next contended that after the samples were drawn and sealed and the case property alongwith the sample parcels was taken into possession, ruqa was sent to the police station for registration of the FIR, but in the recovery memo Ex. P-1, the FIR number and all other details, including the offence under Section 15(c) of the NDPS Act, have been mentioned, which could not have been mentioned unless and until the FIR had been registered and all this shows that the entire writing work was done later on and not at the spot, which renders the prosecution case doubtful. Learned counsel further contended that the learned Trial Court has also erred in not considering the missing link of evidence in the present case. Learned counsel contended that the provisions contained in the NDPS Act are penal in nature and all the requirements laid down therein must be complied with strictly. However, in the present case, the mandatory requirements which were required to be complied with have not been followed and the prosecution case against the accused is, thus, not proved beyond reasonable doubt. Learned counsel prayed that the impugned judgment be set aside, the appeal in hand be allowed and the appellants be acquitted of the charge under Section 15 of the NDPS Act.



15. On the other hand, learned State counsel argued that impugned judgment is well reasoned and justified. The material on file and evidence have been appreciated in the correct perspective and accused have rightly been held guilty and convicted for the offence under Section 15 of NDPS Act. No interference in the impugned judgment is called for and appeal in hand be dismissed.

16. In order to prove its case, prosecution has examined the material witnesses namely PW1 Ram Kumar, DSP, PW5 C. Kashmiri Lal and PW6 Azad Singh, Inspector. PW6 Azad Singh, Inspector, deposed that on 11.07.2000, he alongwith other police officials was present at Bus Stop Daryapur in connection with the checking of vehicles, when a jeep bearing registration No.HR-39/5247 came from the side of Sirsa City, which was stopped. On inquiry, the driver of the jeep told his name as Kanihya Lal and the co-passenger told his name as Krishan. On checking the jeep, three gunny bags were found lying on the backside of the jeep. He served notice under Section 50 of the Act Ex.P-11 upon the accused persons to the effect that he wanted to search gunny bags and if the accused, so desire, the search can be conducted in the presence of a Magistrate or a Gazetted Officer. The contents of the notice were read over and explained to the accused, who signed the same in token of its acknowledgment. In the joint reply, Ex R12, accused desired the search to be conducted in the presence of a Gazetted Officer. Thereafter, DSP Ram Kumar (PW-1) was called at the spot through telephone, who reached the spot after some time and after appraising him about the facts of the case, he conducted the search of the bags, which were lying inside the jeep on the directions of DSP and poppy straw was found in the same. A sample of 100 grams of poppy husk was separated from each of the gunny bag and the



remaining, on weighment, was found to be 39.900 kgs in each bag. The samples as well as the residue were converted into separate parcels and sealed with the seals of AS by him and R.K. by DSP Ram Kumar. Samples and case property were taken into possession, vide recovery memo Ex. P1. Ruqa Ex. P7 was sent to the police station by him on the basis of which formal FIR Ex.P8 was recorded by PW3 MHC Fauja Singh. PW6 also proved the site plan of the place of recovery as Ex. P13. To the same effect is the testimony of PW5 Constable Kashmir Singh, who was present at the spot.

17. PW 1 Ram Kumar, DSP, in whose presence the bags were searched, deposed that on 11.07.2000, he received a telephonic message from SI Azad Singh (PW-6), Incharge of Police Post Daryapur, that he has apprehended one jeep alongwith two persons, in which three bags are lying and he suspected that the bags contained some narcotic substance and the accused have desired that the search of the bags be conducted in the presence of a Gazetted Officer. He further deposed that he reached the spot alongwith his staff, where a jeep bearing registration No. HR-39-5247 was parked and both the accused were standing and three gunny bags were lying in the rear portion of the jeep. On his direction, SI Azad Singh searched the gunny bags, which were found to be containing poppy husk. 100 grams of poppy husk was taken out from each of the gunny bags for sample and on weighment, the residue was found to be 39.900 kgs in each gunny bag. The sample parcels and the residue were converted into separate parcels and sealed with seal “RK” by him and with seal “AS” by Azad Singh. He retained his seal with himself and Azad Singh handed over the seal “AS” to Constable Kashmir Singh (PW-5). He further deposed that all the sealed parcels alongwith the jeep were taken into possession by SI Azad Singh vide seizure memo Ex. P-1,



which has been attested by him and Constable Kashmir Singh. He tendered the residue bags Ex. P-2 (MO) to Ex. P-4 (MO) and stated that the bags are the same which had been recovered from the possession of the accused present in the Court. He further deposed that thereafter, the report under Section 57 of the NDPS Act, Ex. P-5, was received by him in his office on 12.07.2000 from Inspector Shingara Singh, SHO, Police Station Sadar, Fatehabad and after going through the contents of the report, he had signed the same at point 'A'.

18. PW2; Shingara Singh, Retired Inspector, the then SHO, stated that on 11.07.2000, PW6 Azad Singh, Inspector, produced before him the accused, case property and the witnesses. After verifying the facts from the accused, witnesses and Investigating Officer, he affixed his own seal SS on all the parcels and also endorsed the report Ex.P5 with his own endorsement Ex.P6 and forwarded the same to DSP, Fatehabad. He further stated that he had also prepared the report under Section 173 Cr.P.C. after completion of investigation.

19. PW3 H.C. Fauja Singh by way of his affidavit Ex. P9 has deposed that on 11.7.2000, while he was posted as MHC Police Station Sadar, Fatehabad, he had registered formal FIR Ex. P8. On the same day, PW6 Azad Singh, Inspector, deposited the case property of this case, samples parcels and the sample seal with him. On 19.7.2000, he handed over the sample parcels and sample seals to Constable Gurpiar Singh, who deposited the same at FSL and returned the receipt to him. Similarly, PW4 Constable Gurpiar Singh also tendered his affidavit Ex.P10 and deposed that on 19.07.2000, while he was posted in Police Station, Sadar, Fatehabad, he had deposited the sample parcels of this case at the FSL alongwith the sample seal and handed over the receipt of the FSL to MHC. Both these witnesses also deposed that till the samples and the case property remained



in their custody, neither they tampered with its contents nor allowed anybody else to do so.

20. PW-7 deposed that he is the registered owner of the jeep bearing registration No. HR-39-5247, whose registration certificate is Ex. P-15 (MO). He stated that he had sold this vehicle to one Krishan son of Neki Ram, resident of Village Landheri, prior to this case and had handed over the documents to him. Said Krishan had further sold the vehicle to one Inderpal, resident of Village Kharkheri. He stated that he never moved any application for obtaining the jeep on superdari and rather, the jeep was taken on superdari by Inderpal by fraud. When the police came to him, he had disclosed this fact to the police and the jeep was recovered by the police from the possession of said Inderpal alongwith its RC. He stated that he has no concern with this vehicle.

21. However, after going through the evidence brought on record and after hearing the contentions raised by the learned counsel for the parties, I am of the considered opinion that the prosecution case against the accused has not been proved beyond reasonable doubt and the impugned judgment is liable to be set aside and the accused are entitled to be acquitted of the charge for the reasons discussed hereinafter.

22. As already mentioned above, the prosecution case rests upon the testimony of PW-1 Ram Kumar, DSP, PW-5 Kashmir Singh, Constable and PW-6 Azad Singh, Inspector. Though they have stated material facts of the prosecution case on oath as well, yet they are in material contradiction with each other on important aspects of the case, which makes the prosecution story and their testimony doubtful. PW-1 Ram Kumar, DSP stated that he received the telephonic call from PW-6 Azad Singh, Inspector at 8.45 a.m. when he was present at his



residence. He started from his residence alongwith his staff within 10 minutes and reached the spot at 9.15 a.m. He stayed at the spot for about one and a half hours, i.e., upto around 10.45 a.m. However, the accused, in their defence, have led in evidence a certified copy of the statement of the said Ram Kumar, DSP recorded in FIR No. 274/2000, Police Station Sadar, Fatehabad, which was also registered on the same day and two persons were apprehended in that case alongwith poppy husk. In that case also, notice under Section 50 of the NDPS Act was served upon the accused in the case titled State Vs. Ram Kumar and search was allegedly conducted in the presence of Ram Kumar, DSP, who has been examined in the present case as PW-1 and was examined as PW-5 in the aforesaid case arising out of FIR No. 274/2000, Police Station Sadar, Fatehabad. During his cross-examination in that case, in his statement as Ex. DA, he stated that he had received a wireless message from ASI Harnam Singh in that case at 9.45 a.m. while he was present in his office. Thereafter, he left the office alongwith his staff and reached the place of recovery at 10.15 a.m. and stayed there upto 11.30 a.m. He also stated that the place of recovery in that case was 4–5 kms away from Fatehabad City. In the present case, while appearing as PW-1, he has deposed that he received the message from PW-6 Azad Singh, Inspector at 8.45 a.m. while he was present at his residence and thereafter reached the spot at 9.15 a.m. and stayed there upto 10.45 a.m. and the place of recovery was 10 kms away from Fatehabad City. As per the version of PW-6 Azad Singh, Inspector, PW-1 Ram Kumar, DSP had stayed at the spot upto 11.00 a.m. However, Ram Kumar, DSP could not have been present at both the places at the same time, which shows that he was never summoned at the spot and he has been wrongly cited as a prosecution witness in whose presence the vehicle was allegedly searched. This part of his testimony shatters the entire



prosecution case regarding interception of both the accused by PW-6 and the consequent search and recovery of poppy husk from the jeep. The matter does not rest here. The testimony of these witnesses suffers from other material contradictions as well. PW-1 Ram Kumar, DSP and PW-6 Azad Singh, Inspector stated that the gunny bags were lying in the back portion of the jeep. To the contrary, PW-5 Kashmir Singh, Constable stated that the bags were lying on the middle seat of the jeep. PW-6 Azad Singh, Inspector stated that he handed over his seal “RK” to PW-5 Kashmir Singh, Constable after sealing the case property and the parcels and the same was returned to him by PW-5 Kashmir Singh, Constable after 20–25 days. To the contrary, PW-5 Kashmir Singh, Constable stated that he had returned the seal to PW-6 Azad Singh, Inspector on the very next day. PW-1 Ram Kumar, DSP stated that the seal with which the parcels were sealed was square. To the contrary, PW-6 Azad Singh, Constable stated that the seals were of ring shape. PW-5 Kashmir Singh, Constable stated that the weights and scale were brought from a shop by Constable Suraj, which was a conventional scale and the weights were of 20 kgs, 10 kgs, 5 kgs, 500 grams, 100 grams and 50 grams. To the contrary, PW-6 Azad Singh, Constable stated that the crushed poppy straw was weighed by him with the help of a spring balance and the samples were weighed with the help of a conventional small scale and the weights were brought by Constable Suraj from a nearby shop and the weight was only of 100 grams, which again is a material contradiction. It is also pertinent to mention here that three gunny bags containing about 40 kgs of poppy husk each were recovered and the same could not have been measured with a weight of 100 grams as stated by PW-6 Azad Singh, Constable. All the aforesaid contradictions are material in nature and go to the root of the case and make the testimony of the official



witnesses doubtful and no reliance can be placed upon the same in the absence of corroboration by independent witnesses. Admittedly, independent witnesses were available, as admitted by PW-1 Ram Kumar, DSP; PW-5 Kashmir Singh, Constable as well as PW-6 Azad Singh, Constable and there was a shop situated nearby and public persons were passing by. Though the prosecution witnesses have stated that efforts were made to join public witnesses and no one was prepared, yet PW-1 Ram Kumar, DSP has admitted that no legal action was taken against those persons who refused to join the investigation. However, the version of the official witnesses that efforts were made and public persons had refused to join the investigation cannot be accepted as a gospel truth and the fact remains that no serious efforts were made to join public witnesses despite availability. In these circumstances, the contradictory and discrepant testimony of the official witnesses cannot be relied upon to warrant conviction in the absence of corroboration by public witnesses.

23. As per the testimony of PW-5 Kashmir Singh, Constable, the ruqa was sent to the police station at 10.15 a.m. for registration of FIR and the Constable who had gone to get the FIR registered returned at 12.45 p.m. As per the version of PW-6 Azad Singh, Constable, the Constable had returned at about 12.00 p.m. However, in all the documents prepared at the spot, i.e. recovery memo Ex. P-1, notice under Section 57 of the NDPS Act Ex. P-5, rough site plan of the place of recovery Ex. P-13 and arrest memo Ex. P-14, the FIR number has been specifically mentioned. In 2010(3) RCR (Criminal) 337 ***“Didar Singh @ Dara Vs. State of Punjab”***, FIR had not been registered when such documents were prepared and no explanation had been given as to how FIR number came to be mentioned on the said documents and it was held that this circumstance raises



doubt about the prosecution story. In 2009 (3) RCR (Criminal) 649 titled “**Ajay Malik and others Vs. State of U.T. Chandigarh**” also, several documents such as search memo, recovery memo and rough site plan were prepared at the spot and FIR was registered later on but FIR number was found mentioned in all the said documents. It was held that it seriously reflects upon the integrity of the prosecution version and if the documents prepared at the spot contain FIR number, there is a serious doubt to the prosecution story. In 2018 (4) RCR (Criminal) 580 titled “**Kewal Singh Vs. State of Punjab**” also, it was held that when the FIR number finds mention on the documents prepared at the spot, which were prepared prior to registration of the FIR and if the prosecution fails to explain the circumstances, it raises a suspicion about the investigation. In the present case also, the FIR number finds mention on all the documents prepared prior to registration of the FIR and, thus, it raises doubt about the fairness of the investigation and renders the prosecution case doubtful and it can be inferred that all these documents were prepared much after the search and seizure while sitting in the police station.

24. Section 52A of the NDPS Act provides for drawing representative samples before the Magistrate, but in the present case, there is no evidence that the accused, alongwith the case property and the samples, was produced before the Magistrate for certification of the inventory. Had the case property been produced, the concerned Magistrate would have also affixed his own seal on the samples and the case property and initialled the same before the sample parcels were sent to the FSL for analysis. A Coordinate Bench of this Court in Law Finder Doc Id # 2506152 titled “**Jasvir Singh @ Vicky Vs. State of Punjab**” while relying upon pronouncements of Hon’ble Supreme Court has observed as under:-



*“9. Having heard learned counsel for the parties and perused the paper-book with their able assistance, it transpires that the prosecution has made a gross omission in the investigation of the case by not complying with Section 52-A of the NDPS Act. It is a well settled proposition that the representative samples must be drawn before the Magistrate. In the instant case, the samples were not drawn before the learned Sub Divisional Judicial Magistrate. Only the Inventory Report with the two bulk parcels and two sample parcels was tallied. Further, vide order dated 30.08.2012, the Magistrate directed only the bulk parcels to be deposited in the NDPS Godown, Bathinda and no directions were issued with respect to the sample parcels drawn at the site of the occurrence. Thus, the samples sent to the FSL were those drawn on the spot, at the time of seizure and not the ones drawn by the Magistrate. The safeguard provided under Section 52-A is in furtherance of Article 21 of the Constitution of India which guarantees fair and impartial investigation. The entire purpose behind Section 52- A is defeated if the representative samples are not drawn by the Magistrate or even when they are drawn, they are sent for safekeeping to the Malkhana/NDPS Godown instead of chemical examination. This lapse on the part of the investigation team makes the prosecution case untenable. A two Judge Bench of the Hon'ble Supreme Court in **Mangilal v. The State of M.P., 2023(3)R.C.R(Criminal) 703**, while acquitting the accused, has observed that the mandate of Section 52-A of the Act has to be duly complied with. Speaking through Justice M.M. Sundresh, the following was observed:-*

"8. Before any proposed disposal/destruction mandate of Section 52A of the NPDS Act requires to be duly complied with starting with an application to that effect. A Court should be satisfied with such compliance while deciding the case. The onus is entirely on the prosecution in a given case to satisfy the Court when such an issue arises for consideration. Production of seized material is a factor to establish seizure followed by



recovery. One has to remember that the provisions of the NDPS Act are both stringent and rigorous and therefore the burden heavily lies on the prosecution. Non production of a physical evidence would lead to a negative inference within the meaning of section 114(g) of the Indian Evidence Act, 1872 (hereinafter referred to as the Evidence Act). The procedure contemplated through the notification has an element of fair play such as the deposit of the seal, numbering the containers in seriatim wise and keeping them in lots preceded by compliance of the procedure for drawing samples."

25. In the present case, the case property, sample parcels and the accused were never produced before the Magistrate and no order under Section 52A of the NDPS Act has been passed. There is, thus, non-compliance of the aforesaid provision, which again renders the prosecution case doubtful. A three-Judge Bench of the Hon'ble Supreme Court in 2018 (4) RCR (Criminal) 62 titled "***Mohinder Singh v. State of Punjab***", has also held that for proving an offence under the NDPS Act, it is necessary for the prosecution to establish the quantity of contraband goods allegedly seized from the possession of the accused and the best evidence would be the Court records showing production of the contraband before the Magistrate and its deposit in the Malkhana, or documents showing destruction of the contraband. In the absence of any order of the Magistrate showing that the contraband seized was produced before him, oral evidence adduced to the effect that the contraband was produced before the Magistrate cannot form the basis for recording conviction. In the present case, neither any oral nor documentary evidence has been led to establish that the contraband was ever produced before the Magistrate and, therefore, there is total non-compliance of the provisions contained in Section 52A of the NDPS Act and its benefit has to go to the accused.



26. In the present case, the contraband was allegedly seized on 11.07.2000, whereas the sample was sent to the FSL on 20.07.2000, as mentioned in the FSL report Ex. P-17 and there is, thus, a delay of 9 days in sending the sample. As per Standing Order No. 1 of 1988 dated 15.03.1988, the representative sample of any contraband, after seizure and deposit in the Malkhana, is required to be sent to the FSL within 72 hours. The sanctity of the instructions contained in Standing Order No. 1 of 1988 came up for consideration before the Hon'ble Supreme Court in 2008 (16) SCC 417 titled "**Noor Aga v. State of Punjab**", wherein it was held that these statutory instructions are mandatory in nature and the following observations were made:-

*"32. Recently, this Court in **State of Kerala & Ors v. Kurian Abraham (P) Ltd. & amp; Anr. [(2008) 3 SCC 582]**, following the earlier decision of this Court in **Union of India Vs. Azadi Bachao Andolan [(2004) 10 SCC 1]** held that statutory instructions are mandatory in nature.*

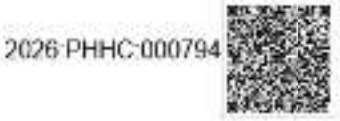
Logical corollary of these discussions is that the guidelines such those present Standing Order cannot be blatantly outed and substantial compliance therewith must be insisted upon for so that sanctity of physical evidence in such cases remains intact. Clearly, there has been no substantial compliance of these guidelines by the investigating authority which leads to drawing of an adverse inference against them to the effect that had such evidence been produced, the same would have gone against the prosecution."

27. As already mentioned above, the sample was sent after a delay of 9 days from the date of the alleged recovery, which has not been explained and this fact further weakens the prosecution case. It is also pertinent to mention that after the samples were drawn, the seal with which the residue parcels and the samples



were sealed by PW-6 Azad Singh, SI, was handed over by him to PW-5 Kashmir Singh, Constable. PW-6 Azad Singh, SI, stated that PW-5 Kashmir Singh, Constable, returned the seal to him after about 20–25 days, whereas PW-5 Kashmir Singh, Constable, stated that he had returned the seal to PW-6 Azad Singh, SI, on the very next day. This is a material contradiction and an inference can be drawn that the seal “AS,” with which PW-6 Azad Singh, had sealed the case property, was infact never handed over by him to PW-5 Kashmir Singh, Constable and that he retained the same with himself. In these circumstances, the possibility of the sample parcels having been tampered with and the contraband having been replaced cannot be ruled out, which again causes a serious dent in the prosecution case.

28. It is also pertinent to mention that all the prosecution witnesses, namely PW-1 Ram Kumar, DSP, PW-5 Constable Kashmir Singh and PW-6 SI Azad Singh, have nowhere stated that sample seals with which the sample parcels and the residue parcels were sealed were also prepared at the spot. Though in the recovery memo Ex. P-1, it is mentioned that the case property and sample parcels were deposited in the Malkhana alongwith the sample seals and the same were also sent to the FSL alongwith the sample parcels but the silence of all the aforesaid witnesses regarding preparation of sample seal at the spot while gives deposing rise to the inference that no such sample seals were prepared at the spot. Infact, all these formalities seem to have been completed in the police station, as the FIR number also finds mention in all the documents allegedly prepared at the spot. The case property and sample seals were also not produced before the Magistrate as required under Section 52A of the NDPS Act, which again gives rise to the inference that the sample seals with which the case property and sample



parcels were sealed were not prepared at the spot. This is a serious omission on the part of the Investigating Officer and it causes a serious dent in the prosecution case and its benefit has to go to the accused.

29. It is well settled that the offences under the NDPS Act are penal in nature and the same provide for harsh punishments and, in these circumstances, the Investigating Officers are required to comply with all the statutory requirements meticulously. However, the present case suffers from material discrepancies and inconsistencies, which render the prosecution case doubtful. The learned Trial Court has not appreciated the facts of the case and the material on file in the correct perspective while convicting the appellants and the impugned judgment is, thus, not sustainable. Accordingly, the judgment dated 20.09.2004 passed by the learned Additional Sessions Judge, Fatehabad, is set aside the appeals are accepted and the accused are acquitted of the charge under Section 15(c) of the NDPS Act. The accused-appellants, alongwith their sureties, are discharged from the bonds of appearance. The case property be confiscated and destroyed as per the rules. The jeep in question, alongwith its registration certificate, be returned to the registered owner as per the rules.

30. A photocopy of this order be placed on the file of the connected case.

(YASHVIR SINGH RATHOR)
JUDGE

08.01.2026
Ali/ Amandeep

Whether speaking/reasoned. : Yes/No
Whether Reportable. : Yes/No