

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.3662 of 2024**

Arising Out of PS. Case No.-10 Year-2018 Thana- N.C.B (GOVERNMENT
OFFICIAL) District- East Champaran

- =====
1. Leelam Devi Singh @ Leelam Devi wife of Ajay Singh Village-
Manrakatti, Ward no. 6, ps- jankapur, Dist- Mahtari (Nepal)
 2. Laxmi Devi Wife of Ghanshyam Sarraf @ Ravi Sarraf Village- Geeta
mandir Road, Ward no. 08, ps- Birganj, Dist- Bara, Nepal

... ... Appellant/s

Versus

The Union of India Through Director, NCB, Patna Bihar

... ... Respondent/s

=====

Acts/Sections/Rules:

- Sections 20(b) (ii) (c), 23 (c), 50, 52 of the Narcotic Drugs and
Psychotropic Substances Act
- Standing Instruction “No. 1 of 1988” dated 15.03.1988 of
Narcotics Control Bureau

Cases referred:

- Mina Pun Vs. State of Uttar Pradesh, reported in [(2023) SCC
Online 1079]

*Appeal - filed against the judgement whereby the concerned Trial Court
has convicted both above named appellants for the offence punishable
under Section 20(b) (ii) (c) and 23 (c) of the Narcotic Drugs and
Psychotropic Substances Act.*

*Held - Lady appellants were not searched on the place of recovery and
neither signature/thumb impression of appellants were taken on seized
packets. (Para 29)*

No search was carried out at the place of recovery. (Para 30)

*Independent witnesses of entire search were not examined during the
trial, which further makes search and sealing of the recovered contraband
doubtful. (Para 30)*

*Detailed procedure regarding sampling, sealing and despatching the
seized sample to the laboratory for test was not followed. (Para 33)*

*The mandatory provisions regarding Sampling, Seizure And Sealing (SSS)
not appears to be followed by prosecution in terms of the legal provisions
as available under the NDPS Act. - The personal search of appellants
were also not made as per settled law and the seal of the contraband was
also not produced before the court during the trial. There are several
questions qua search, sealing and sampling which appears remain
unanswered by the prosecution, benefit of which must be extended to the
appellants. (Para 34)*

Appeal is allowed. (Para 35)

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District- East Champaran

1.

Leelam Devi Singh @ Leelam Devi wife of Ajay Singh Village- Manrakatti, Ward no. 6, ps- jankapur, Dist- Mahtari (Nepal)
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... .. Appellant/s

Versus

The Union of India Through Director, NCB, Patna Bihar

... .. Respondent/s

Appearance :

For the Appellant/s

:

Mr. Abhishek Kumar, Adv

For the Respondent/s

:

Mr. Mukeshwar Dayal, APP

For the UOI/NCB

:

Mr. Awdhesh Kr. Pandey, Sr. CGC

:

Mr. Arvind Kumar, CGC

:

Mr. Abhishek Kumar, CGC

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 24-01-2025

This appeal has been preferred by the appellants/convicts under Section 374(2) of the Code of Criminal Procedure (hereinafter referred to as ‘the Code’) challenging the judgment of conviction dated 01.03.2024 and order of sentence dated 07.03.2024 passed by learned Exclusive Special Court No.II under NDPS Act, East Champaran, Motihari in NDPS Case No. 13 of 2018 (arising out of NCB/PZU/V/10/2018), whereby the concerned Trial Court has convicted both above named appellants for the offence punishable under Section 20(b) (ii) (c) and 23 (c) of



the Narcotic Drugs and Psychotropic Substances Act (in short 'NDPS') and they have been sentenced to undergo rigorous imprisonment for ten years and fine of Rs. 1,00,000/- for the offence punishable under Section 20(b) (ii) (c) of the NDPS Act and rigorous imprisonment for ten years and fine of Rs. 1,00,000/- for the offence punishable under Section 23 (c) of the NDPS Act. In default of payment of fine, both appellants have to undergo further simple imprisonment for six months. All aforesaid sentences ordered to run concurrently.

2. The case of prosecution in brief as it appears through complaint petition is that on 26.02.2018 at about 15:30 hours Second Commandant Sri Surendra Vikram (PW-3), posted in Battalion Headquarters received information from the Gulzar Hussain (not examined) and Jayant Pandey (not examined) that two women have left for Bettiah with some narcotics and also explained PW-3 about their appearance and look. On the basis of aforesaid information, a QRT (Quick Response Team) was formed under order of Second Commandant/PW-3, comprising of six people including the team commander. QR team left the



headquarters at 16:00 hours and reached Bettiah bus stand at 18:00, thereafter team was deployed at different places. After some time two women were found coming on a rickshaw, who were asked to stop by women team members. Upon hearing the voice both women came down from rickshaw and started running away, where they have been caught after short chase and searched superficially by female team members. Upon search something appeared wrapped around their waist. On questioning by female team members they disclosed that it is a narcotic substance. They were told about their legal right as available under Section 50 of the NDPS Act, whereafter both women agreed for their search. After that both women were brought to the office of 47th SSB Battalion by the women constables and were searched by Women Commander/SI. Upon a thorough search by women employees, 16 rectangular flat items covered with yellow coloured plastic, wrapped in white cloth were found around the waist of both the women. When the item was checked with a drug detection kit, it was confirmed to be hashish (*charas*) and upon weighing same, it was found total of 7.8



kilograms. During interrogation they told their names as Leelam Devi (appellant no. 1) and Laxmi Devi (appellant no. 2). In front of two independent witnesses namely Manoj Kumar and Pintu Kumar a seizure memo of aforesaid recovered contraband was prepared.

3. On the basis of aforesaid official complaint, the police registered a case as NDPS Case No. 13 of 2018 dated 27.02.2018 for the offence punishable under Sections 20(b)(ii)(c) and 23(c) and 29 of the NDPS Act, where after investigation, police submitted charge-sheet.

4. The learned Sessions Judge-cum-Special Judge, being Court of original jurisdiction after perusal of record and materials collected during the course of investigation, took cognizance for the offences under Sections 20(b)(ii)(c), 23(c) and 29 of the NDPS Act and transferred this case to the Court of Additional District and Sessions Judge 7th-cum-Special Judge, Motihari, East Champaran on 10.09.2018 for trial and disposal.

5. The learned trial court on the basis of materials collected during investigation, framed charges against both



appellants/convict on 18.12.2018 for the offences punishable under Sections 20(b)(ii)(c) and 23(c) of the NDPS Act, which they pleaded “not guilty” and claimed trial.

6. To substantiate its case, the prosecution has examined altogether ten witnesses. They are:-

| Prosecution Witnesses | Name |
|-----------------------|---|
| P.W. 1 | Shanti S., Constable |
| P.W. 2 | Nidhi, Sub-Inspector |
| P.W. 3 | Surendra Vikram, 2 nd Command Officer |
| P.W. 4 | Anjum Ara, Lady Constable |
| P.W. 5 | Sanjeev Kumar Singh, Intelligence Officer, NCB, Patna |
| P.W. 6 | Subhash Chand Mandal, Assistant Sub-Inspector |
| P.W. 7 | Bikash Kumar, Intelligence Officer, NCB, Patna |
| P.W. 8 | K.V. Robinson Gangte, Superintendent of NCB, Patna |
| P.W. 9 | Manoj Kumar Yadav, Head Constable cum Godam Assistant |
| P.W. 10 | Rajan Kumar, Godown Supdt. of NCB, Patna |

7. Apart from the oral evidence, the prosecution has also relied upon following documents/exhibits in order to prove the charges:-

| Exhibit No(s). | List of documents |
|----------------|-------------------|
|----------------|-------------------|



| | |
|------------------------------|--|
| Exhibit-1 | Notice for Search u/s 50 of NDPS Act (with objection) |
| Exhibit-2 | Medical Examination of two female arrested persons. |
| Exhibit-2/1 | Jama Talashi of accused Laxmi Devi |
| Exhibit-2/2 | Jama Talashi of accused Leelam Devi Singh |
| Exhibit-2/3 to Exhibit-2/7 | Signature of Sub Inspector Miss Nidhi on Panchnama cum Search cum Seizure List |
| Exhibit-2/8 and Exhibit-2/9 | Signature of Sub Inspector Miss Nidhi on arrest memo of both ladies accused |
| Exhibit-3 and Exhibit-3/1 | Signature of constable Anjum Ara on statement of both female accused u/s 67 of NDPS Act. |
| Exhibit-4 to Exhibit-4/4 | Signature of constable Anjum Ara on every page of panchnama cum search cum seizure list. |
| Exhibit-4/5 to Exhibit-4/9 | Signature of Subhas Chandra Mandal, ASI G.D. on panchnama cum search cum seizure list. |
| Exhibit-4/10 to Exhibit-4/14 | Signature of Bikash Kumar on panchnama cum search cum seizure list of each and every page. |
| Exhibit-5 | Information application |
| Exhibit-6 | Seizure list prepared by Sanjeev Kr. Singh, Intelligence officer of NCB, Patna. |
| Exhibit-7 and Exhibit-7/1 | Signature of S.K. Singh, Intelligence officer, NCB Patna on carbon copy of notice u/s 67 of NDPS Act and served to both female accused Leelam Devi Singh and Laxmi Devi. |
| Exhibit-8 | Self statement of female accused Leelam Devi Singh and she has put her signature on each and every page. |
| Exhibit-9 | Self statement of female |



| | |
|-----------------------------|---|
| | accused Laxmi Devi |
| Exhibit-10 and Exhibit-10/1 | Signature of S.K. Singh, Intelligence officer, NCB Patna on carbon copy of notice u/s 67 of NDPS Act |
| Exhibit-11 | Signature of Pintu Kumar, Independent witness on self statement and signature of SK Singh, Intelligence officer NCB Patna |
| Exhibit-12 and Exhibit-12/1 | Signature of carbon copy of arrest memo by both female accused Laxmi Devi and Leelam Devi Singh |
| Exhibit-13 | Jama talashi of accused Laxmi Devi |
| Exhibit-13/1 | Jama talashi of accused Leelam Devi Singh |
| Exhibit-14 | Godown/Malkhana Receipt of remaining charas after sampling and duplicate sample of 25 gram of substance like charas. |
| Exhibit-15 | Compliance application of NDPS Act Sec. 57 upon which Crime No. 10/2018 is mentioned |
| Exhibit-16 | Receipt of two test memo on which Lab No. 3063/SZD (N)-1268 Dated 06.03.2018 crime no. NCB/PZU/V/10/2018 is mentioned. |
| Exhibit-16/1 | Forwarded copy of Test Memo |
| Exhibit-17 | Official complaint and prayer for both accused persons for taking cognizance of the offences as alleged against them and punish the accused persons in accordance with Law and regarding the confiscation of seized charas. |
| Exhibit-18 | Forwarding letter to Regional Director, NCB, Patna by Subhash Chand Mandal, 47 th BN.S.S.B., Pantoka Raxaul for seized |



| | |
|----------------|---|
| | substance i.e., 7.8. kg. charas and both apprehended persons for advance legal action. |
| Exhibit-18/(A) | Certificate under Section 52A of NDPS |
| Exhibit-19 | Photograph of contraband seized articles on which date of certification is mentioned in connection with NDPS Case No. 13/2018 (NCB Cr. No. 10/2018) on 30.08.2018. |
| Exhibit-20 | Certification of destruction of seized substance and signature of TN Singh, Zonal Director, NCB Patna and Santosh Kr. Deputy Director (in-charge) DRI Patna, Member-1 DDC and signature of SK Jha, IRS Assistant commissioner custom, Patna Member-II DDC |
| Exhibit-21 | Substituted copy entry of godown Register which if godown entry page no. 079 and Sl. No. 77 |

8. On the basis of evidence as surfaced during the trial, the learned trial court has examined the appellants/accused under Section 313 of the Code, where they completely denied their involvement by denying the incriminating evidences as surfaced during the trial and stated that they were implicated with this case falsely and claimed their complete innocence.

9. Neither any witness was examined by



appellants/convicts during the trial in their defence, nor any documents were exhibited.

10. Taking note of the evidence as surfaced during the trial and the arguments as advanced by the parties, the learned Trial Court has convicted both the appellants/convicts for the offences punishable under Sections 20(b)(ii)(c) and 23(c) of the NDPS Act and sentenced them in the manner as stated above.

11. Being aggrieved with the aforesaid judgment of conviction and order of sentence, the appellants/convict has preferred the present appeal.

12. Hence, the present appeal.

Argument on behalf of the appellant/convict:

13. Learned counsel appearing on behalf of appellants/convicts submitted that mandatory legal provisions regarding search, sampling and seizure (SSS) not appears to be followed in the present case. It is submitted that even the personal search was not carried out in the presence of Gazetted Officer. Seized contraband was not produced before the court during the trial. It is also pointed that Standing



Instruction No. 1 of 1988 of Narcotics Control Bureau, Government of India issued under Section 52 of the NDPS Act also not appears to be followed in the present case.

14. While concluding the argument it is pointed out that both independent seizure list witnesses namely Manoj Kumar and Pintu Kumar failed to examine during the trial making entire prosecution doubtful. In this context it is also submitted by learned counsel that learned trial court while recording the judgment of conviction overlooked the major contradictions as surfaced during the trial *qua* recovery of contraband. In support of his submission *qua* personal search under Section 50 of the NDPS Act learned counsel relied upon the legal report of Hon'ble Supreme Court, as available through **Mina Pun Vs. State of Uttar Pradesh**, reported in **[(2023) SCC Online 1079]**.

Argument on behalf of State:

15. Learned counsel appearing on behalf of NCB, while opposing the appeal submitted that minor contradictions are born to surface and further same are not of such nature on the basis of which entire prosecution is said to be vitiated



as to doubt the judgment of conviction. It is submitted that the seized contraband could not produced before the court, as same was destroyed in accordance with law, which is duly supported by P.W. 8, 9 and 10 and therefore the judgment of conviction is not required to be interfered on this ground.

16. I have perused the trial court records carefully and gone through the evidences available on record and also considered the rival submissions as canvassed by learned counsel appearing on behalf of the parties.

17. As to re-appreciate the evidences, while disposing the present appeal, it would be apposite to discuss the evidences available on record, which are as under:-

18. **P.W.-1 Shanti S.,** who is one of the member of the Quick Response Team (hereinafter referred as 'raiding team'). She deposed that occurrence is of 26.02.2018 and on that day she was posted as constable in 47th Battalion Pantoka Camp, where an information was received at 3:30 PM that two ladies are entering Indian territory with contraband from Nepal, whereafter raiding team was constituted with P.W. 4 Anjum Ara constable, P.W. 6 Subhash Chand Mandal, Bablu



Kumar, Rana Kumar and Pawan Kumar. Thereafter they all proceeded for Bettiah at about 4:00 PM. They arrived Bettiah Bus Stand at about 6:00 PM, where after half an hour they found two ladies were coming together. She and Anjum Ara (P.W. 4) was ordered by ASI Subhash Chand Mandal to arrest the said ladies. They asked to stop them but they started running away after stepping down from rickshaw. After short chase both of them were apprehended and were brought near to Bettiah Bus Stand, where upon inquiry they admitted to carrying contraband. Out of incident, crowd gathered over there from which the commander called two independent witnesses namely Pintu Kumar and Manoj Kumar and thereafter they alongwith entire team returned to the camp. It was deposed that after returning to camp Nidhi (P.W. 2) asked both apprehended ladies to give their search before them or before any Gazetted Officer, on which both ladies gave their consent to search by them. Upon search they found with total of 16 packets of contraband, wrapped in a yellow colour polythene, which was further covered by white cloth. Upon preliminary detection test it was found as “*charas*”



which on weighing found total of 7.8 kilograms. Further action was carried out by commander Subhash Chand Mandal. She identified both the appellants during the trial and stated that “*charas*” was recovered from them.

18.1. Upon cross-examination, she stated that “*charas*” was not seized by her. It appears from her statement that the search was carried out in the camp. She did not put her signature anywhere during the entire incident. It was stated that from each of the ladies 8 (eight) packets of contrabands were recovered. She failed to disclose the weight of individual packets. It was stated that entire document was prepared by Office Assistant, Rana Kumar. Ladies (appellants) were kept in camp for a single day.

19. **P.W. 2 Nidhi,** was also one of the member of raiding team. It was deposed by her that notice under Section 50 of the NDPS Act was served upon appellants and was in writing of Office Assistant, Rana Kumar which was bearing her signature also which upon her identification, exhibited as **Exhibit No. 1**, with objection. It was deposed that search upon appellants, were carried by lady members of the raiding



team, where during search 8 (eight) packets of contraband were found tied in the waist of each lady, which was further covered under white cloth. It was weighed and also tested preliminary by detection kit upon which it was found as *charas*, whereafter the matter was reported to NCB, who came on next day, thereafter entire proceeding was carried out. It was deposed that seized packets were of *charas* weighing total about 7.8 kilograms. She identified her signature on personal search and seizure list, which upon her identification was exhibited as **Exhibit No. 2/3 to 2/7** respectively. It was also deposed by her that seizure list bears signature of two independent witnesses also, namely Pintu Kumar and Manoj Kumar. She also put her signature on arrest memo of both the appellants, which upon her identification was exhibited as **Exhibit No. 2/8 and 2/9**. She identified appellants during the trial.

19.1. Upon cross-examination, she stated that on the date of occurrence she was SI rank officer. She did not put seal on the seized 16 packets. The name of appellants or their signature, thumb impression was also not obtained on



said seized packets of contraband. It was stated that on said day Gazetted Officer was posted in her camp, who was Surendra Vikram (PW-3). She handed over seized packets to P.W. 6 and thereafter, where it was kept was not in her knowledge. She failed to disclose the name of person who tested contraband by detection kit but stated that testing was done under direction of Subhash Chand Mandal (P.W. 6).

20. **P.W. 3 is Surendra Vikram,** who appears to be Excise Officer and from his testimony it appears that he was informed by ASI Subhash Chand Mandal that upon search total of 7.8 kilograms of *charas* was recovered from both the ladies. He categorically stated during his cross-examination that he was not present at the time of search of appellants. It was stated that the search was carried out by Nidhi (P.W. 2) and Anjum Ara (P.W. 4), and he came to know about the recovery from these two witnesses only.

21. **P.W. is 4 Anjum Ara,** who narrated the occurrence of recovery in the same manner as it was deposed by P.W. 1 and P.W. 2. It was deposed by her that during search sixteen packets of contraband were recovered, which



were wrapped in brown colour paper which found further covered under white cloth. She recorded the statement of appellant Laxmi Devi which runs in five pages and also obtained her thumb impression on all five pages. She also identified her signature on these pages and also the signature of NCB Officer, which upon her identification were exhibited as **Exhibit No. 3 and 3/1**. She also identified her signature on five pages, which upon her identification was exhibited as **Exhibit No. 4 to 4/4**. She identified both appellants Laxmi Devi and Leelam Devi before the court during the trial and deposed that from their possession only *charas* was recovered.

21.1. Upon cross-examination, it was stated by her that she did not search any appellant/accused at the place of recovery. It was stated that the search was carried out in Pantoka Camp. It was stated that during the search P.W. 2 and P.W. 1 were present with her. It was further stated that total recovery of 16 packets were made which was wrapped in white cloth. They did not mentioned on individual packet that from which lady it was recovered. It was also stated that



recovered packets were not numbered. Even the signature of appellants or their thumb impressions were not obtained on packets. She was not aware about the seizure of white cloth. It was stated that seizure was carried out in camp. It was also stated by her that P.W. 2 was deputed as lady Gazetted Officer on the date of occurrence. It was stated that the statement of both the ladies were recorded, where statement of Leelam Devi was recorded self whereas statement of Laxmi Devi was recorded by her. It was stated that the seized material was handed over to P.W. 2 by her immediately after seizure. She even failed to collect out of her memory that which appellants were arrested by her.

22. **P.W. 5 is Sanjeev Kumar Singh,** who received information at about 7:00 PM on 26.02.2018 from SSB Pantoka that two appellants were apprehended with 7.8 kilograms of *charas*. Aforesaid information was reduced in writing by him and was shared with Zonal Director, NCB Patna, who approved the raiding team. He identified his signature on aforesaid approval which upon his identification was exhibited as **Exhibit No. 5**. On 27.02.2018 at about



2:00 PM he arrived alongwith raiding team. He proceeded for Pantoka and arrived there by 8:00 PM, where he met ASI Subhash Chand Mandal (P.W. 6). It was stated that there were 16 rectangular packets and from each packet some quantity was taken out and was tested by detection kit, which upon testing was found “*charas*” weighing total of 7.8 kilograms. Sample was taken from each packets and it was 25 grams, which later on divided in two parts and was marked as “S1” and “S2”. Thereafter, rest of the contraband after putting in plastic bag covered by white cloth on which departmental seal “OP” was put. After seizure the signature of two independent witnesses namely Pintu Kumar and Manoj Kumar, lady constables Anjum Ara (P.W. 4) and P.W. 6, were obtained on it. He identified the seizure list during the course of trial, which upon his identification was exhibited as **Exhibit No. 6**. He also issued notice on 27.02.2018 under Section 67 of the NDPS Act, which upon his identification was exhibited as **Exhibit No. 7 and 7/1**. On 27-28.02.2018 the statement of accused Leelam Devi was recorded in view of Section 67 of the NDPS Act, whereas statement of Laxmi



Devi was recorded by lady constable, P.W. 4 Anjum Ara before him, where she confessed their involvement in crime in issue. He further identified said statements during the trial, which upon his identification was exhibited as **Exhibit No. 9**. It was deposed that both appellants were arrested on 28.02.2018 by him. The arrest memo was signed by lady SI P.W. 2 Nidhi, which upon her identification was exhibited as **Exhibit No. 12 and 12/1**. On 28.02.2018 as per the direction of the court “S2” sample and contraband ‘P’ were sent to NCB Malkhana under his signature, which he identified during the trial, which upon his identification was exhibited as **Exhibit No. 14** and sent “S1” sample to Calcutta for forensic examination, which upon lab test affirmed seized material sample as *charas*. FSL Report of Calcutta was exhibited as **Exhibit No. 16 and 16/1**.

22.1. Upon cross-examination, it was stated by him that he did not mention in official complaint, whether lady constable of SSB were searched upon before searching the appellants. He did not recorded any statement of P.W. 2 Nidhi. It was stated that contraband was handed over to him



by ASI Subhash Chand Mandal (P.W.6). He did not mention in the complaint that from which body part said contraband was recovered from the appellants. Contraband was produced before court on 28.02.2018, whereas on 27.02.2018 it was handed over to him, where neither any seal, nor any thumb impression or signature were found on the packets. It was stated that the statement of appellants were recorded after seven hours of their custody. He disclosed that on **Exhibit No. 13**, the name of accused shown as Laxmi Devi, whereas on **Exhibit No. 13/1** name of Leelam Devi appears shown, which was obtained through carbon copy process. He did not mention in his official complaint that at what time both appellants were arrested by lady constables of SSB. It was stated that he did not produce contraband today before the court.

23. P.W. 6 is Subhash Chand Mandal, who received information about movement of appellants on 26.02.2018 at about 3:30 PM, whereafter he constituted the raiding team as already discussed in the depositions of P.W. 1 & P.W. 2 and thereafter both appellants were apprehended



from whom 7.8 kilograms of *charas* was recovered. It was deposed that the notice was given to the appellants under Section 50 of the NDPS Act and thereafter P.W. 2 Nidhi made search upon appellant ladies. They were searched in two different rooms. Two lady constables, P.W. 1 Shanti S and P.W. 4 Anjum Ara searched upon both the appellants and they recovered eight packets from each of the appellants total of 16 packets, which was wrapped in yellow colour plastic. Thereafter it was tested by narcotic kit by P.W. 2 Nidhi, where it was confirmed that seized material was *charas*, which upon weighing found 7.8 kilograms, whereafter he reported occurrence to NCB team. He identified his signature on the said letter, which upon his identification was exhibited as **Exhibit No. 18.**

23.1. Upon cross-examination, it appears that search was not made before him. He seized the materials which was provided to him by lady constables Shanti S. (PW-1) and Anjum Ara (PW-4). Name of Shanti S. or Leelam Devi was not written on any packets, which alleged to be recovered. It was stated that test by narcotic kit was done by



P.W. 3 namely Surendra Vikram. These packets were not weighed independently. It was stated that further procedural work was carried out on 27.02.2018 by NCB.

24. **P.W. 7 is Bikash Kumar,** who supported the occurrence of 26.02.2018 and recovery of 16 packets wrapped in yellow polythene and further wrapped in white cloth from both the appellants, which looked like *charas*, whereafter it was tested through drug detection kit and was confirmed to be *charas*. Upon weighing it was found about 7.8 kilograms. He also supported the preparation of two samples each of 25 grams and thereafter the rest of contraband was kept in godown under departmental seal. It was stated that entire sealing work completed on 27.02.2018 between 9:00 AM to 3:00 PM.

24.1. Upon cross-examination, it was stated that contraband was produced before them by P.W. 6 Subhash Chand Mandal, ASI posted with SSB, Pantoka. It was stated that he was not present, when search was carried out and also failed to disclose, whether seized contraband was produced before the court. It was stated that he cannot say, whether



seized contraband was sealed, when it was produced before him. He failed to produce the seized contraband before the court on the date of his deposition.

25. P.W. 8 is K.V. Robinson Gangte, he also supported the recovery of contraband. He was posted as Superintendent of NCB, Patna. He brought contraband alongwith him and team members to Patna office in the evening of 28.02.2018 and deposited seized contraband with Malkhana of NCB, Patna. He produced godown receipt during the trial and identified his signature on it, which upon his identification was exhibited as **Exhibit No. 14**. He also identified his signature on the compliance report of Section 57 of the NDPS Act, which upon his identification was exhibited as **Exhibit No. 15**. Certificate which bears signature of learned Judicial Magistrate and Sri Prakash Ram I.O. was also approved by him during the trial as he also identified his signature on it, which upon his identification was exhibited as **Exhibit No. 18**. He also identified the photographs of seized items, produced before learned Judicial Magistrate. He also signed on photographs. He identified his signature on



photographs, which upon his identification was exhibited as **Exhibit No. 19.**

25.1. Upon cross-examination, he denied to implicate appellants falsely.

26. P.W. 9 is Manoj Kumar Yadav, who deposed that seized *charas* was destroyed as per rule. He produced the destruction list before the court, which was signed by P.W. 8 and Zonal Director T.N. Singh, Santosh Singh, Deputy Director DRI and SK Jha Additional Commissioner, which upon his identification was exhibited as **Exhibit No. 20.**

26.1. Upon cross-examination, it was stated by him that all aforesaid papers were signed before him. He denied the suggestion of false implications.

27. P.W. 10 is Rajan Kumar, who is godown incharge and brought godown register, where recovery of the present case is mentioned on page no. 079 as godown entry no. 77. He identified his writing in register during trial, which upon his identification was exhibited as **Exhibit No. 21.** He also deposed specifically that the seized contraband was already destroyed as per rule. Upon cross-examination, he



stated that he was not present at the time of destruction.

28. Learned counsel further submitted that compliance of Section 50 of the NDPS Act not appears to be followed in the present case. It would be apposite to reproduce provision of Section 50 of the NDPS Act for better understanding of fact, which is as:-

50. Conditions under which search of persons shall be conducted.—(1) When

any officer duly authorised under section 42 is about to search any person under the provisions of section 41, section 42 or section 43, he shall, if such person so requires, take such person without unnecessary delay to nearest Gazetted Officer of any of the departments mentioned in section 42 or to the nearest Magistrate.

(2) If such requisition is made, the officer may detain the person until he can bring him before the Gazetted Officer or the Magistrate referred to in sub-section (1).

(3) The Gazetted Officer or the Magistrate before whom any such person is brought shall, if he sees no reasonable ground for search, forthwith discharge the person but otherwise shall direct that search be made.(4) No female shall be searched by anyone



excepting a female.

[(5) When an officer duly authorised under section 42 has reason to believe that it is not possible to take the person to be searched to the nearest Gazetted Officer or Magistrate without the possibility of the person to be searched parting with possession of any narcotic drug or psychotropic substance, or controlled substance or article or document, he may, instead of taking such person to the nearest Gazetted Officer or Magistrate, proceed to search the person as provided under section 100 of the Code of Criminal Procedure, 1973 (2 of 1974).

(6) After a search is conducted under sub-section (5), the officer shall record the reasons for such belief which necessitated such search and within seventy-two hours send a copy thereof to his immediate official superior.]

Discussion & Conclusion

29. From the perusal of deposition of prosecution witnesses, particularly P.W. 1, 2, 3 and 4, who are members of raiding team, it appears that both appellants, who are ladies were apprehended with contraband, somewhere near to Bettiah Bus Stand, when they started running away by seeing



police personnel who asked them to stop while chasing. Both appellants were brought first to bus stand, thereafter Pantoka camp. Admittedly no search and seizure was made at the place of recovery. Though it transpires from their deposition that notice under Section 50 of the NDPS Act was given to appellants but its compliance appears doubtful on its face. It appears out of deposition of P.W. 3, who was Gazetted Officer that he was not present, when search was carried upon both the appellants by P.W. 2 & P.W. 4. whereas P.W. 2 Nidhi S.I., categorically stated that she did not put any seal on seized packets, the name of appellants was also not mentioned over there. It was stated by her that on said day in her camp P.W. 3 namely Surendra Vikram was posted as Gazetted Officer. It transpires from her testimony that the seized packets were handed over to P.W. 6 without any sealing and marking, and it was also not in her knowledge that where it was kept thereafter. Similarly, P.W. 4 deposed that she did not search either of the lady appellants on the place of recovery and neither signature/thumb impression of appellants were taken on seized packets.



30. The depositions of these two witnesses further clarified the scenario of search and marking of the seized contraband, where admittedly no search was carried out at the place of recovery. In this connection, it would be apposite to refer the testimony of P.W. 5, which suggest that entire seizure was carried out on 27.02.2018 starting from 9:00AM which concluded by 3:00 PM. It transpires from his examination-in-chief that entire search was carried out by him and his team who arrived from Patna but in his cross-examination, it appears that contraband was handed over to him by P.W. 6 ASI of the SSB. He also categorically stated that the contraband was sealed by departmental seal but said seal was not produced before the court. Moreover the independent witnesses of entire search namely Pintu Kumar and Manoj Kumar were not examined during the trial, which further makes search and sealing of the recovered contraband doubtful.

31. The most disturbing aspect which transpires out of testimony of P.W. 1, P.W. 2 and P.W. 4, who were part of the raiding team is that P.W. 1 stated that contraband was



wrapped in yellow colour plastic bag and was covered with white cloth, P.W. 2 only testified about the white cloth, whereas P.W. 4 testified that contraband was inside brown paper and was covered with white cloth. Though the white cloth, which was not seized appears common from the testimony of all these three witnesses, who were part of the raiding team but first covering of contraband, appears completely different as P.W. 1 disclosed it as yellow polythene, whereas P.W. 2 kept silent, whereas P.W. 4 disclosed and testified it as brown paper makes entire recovery doubtful on its face.

32. It would be apposite to reproduce the para nos. 24 and 29 of the **Mina Pun Case (supra)**, in aforesaid context which reads as under:-

8. In view of the law laid down by a Constitution bench of this Court in *Vijaysinh Jadeja v. State of Gujarat*¹, it is crystal clear that there was a violation of the safeguard provided by Section 50 of the NDPS Act. In paragraphs 24 and 29 of its decision, the Constitution Bench held thus:

“24. Although the Constitution Bench in *Baldev Singh case* [(1999) 6 SCC 172 : 1999



SCC (Cri) 1080] did not decide in absolute terms the question whether or not Section 50 of the NDPS Act was directory or mandatory yet it was held that provisions of sub-section (1) of Section 50 make it imperative for the empowered officer to “inform” the person concerned (suspect) about the existence of his right that if he so requires, he shall be searched before a gazetted officer or a Magistrate; failure to “inform” the suspect about the existence of his said right would cause prejudice to him, and in case he so opts, failure to conduct his search before a gazetted officer or a Magistrate, may not vitiate the trial but would render the recovery of the illicit article suspect and vitiate the conviction and sentence of an accused, where the conviction has been recorded only on the basis of the possession of the illicit article, recovered from the person during a search conducted in violation of the provisions of Section 50 of the NDPS Act. The Court also noted that it was not necessary that the information required to be given under Section 50 should be in a prescribed form or in writing but it was mandatory that the suspect was made aware of the existence of his right to be searched before a gazetted officer or a Magistrate, if so required by him.



We respectfully concur with these conclusions. Any other interpretation of the provision would make the valuable right conferred on the suspect illusory and a farce.

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29. In view of the foregoing discussion, we are of the firm opinion that the object with which the right under Section 50(1) of the NDPS Act, by way of a safeguard, has been conferred on the suspect viz. to check the misuse of power, to avoid harm to innocent persons and to minimise the allegations of planting or foisting of false cases by the law enforcement agencies, it would be imperative on the part of the empowered officer to apprise the person intended to be searched of his right to be searched before a gazetted officer or a Magistrate. We have no hesitation in holding that insofar as the obligation of the authorised officer under sub-section (1) of Section 50 of the NDPS Act is concerned, it is mandatory and requires strict compliance. Failure to comply with the provision would render the recovery of the illicit article suspect and vitiate the conviction if the same



is recorded only on the basis of the recovery of the illicit article from the person of the accused during such search. Thereafter, the suspect may or may not choose to exercise the right provided to him under the said provision.”

33. It also appears from the deposition of prosecution witnesses that Standing Instruction “No. 1 of 1988” dated 15.03.1988 of Narcotics Control Bureau, Government of India issued under Section 52 of the N.D.P.S. Act which prescribes the detailed procedure regarding sampling, sealing and despatching the seized sample to the laboratory for test was not followed in the present case. Clauses 1.4, 1.5, 1.6 and 1.9 of the Standing Instruction No. 1 of 1988 dated 15.03.1998, which are relevant to this fact may be read as under for reference:

“1.4 If the drugs seized are found in packages/containers, the same should be serially numbered for purposes of identification. In case the drugs are found in loose form, the same should be arranged to be packed in unit containers of uniform size and serial numbers should be assigned to each package/ container. Besides the serial



numbers, the gross and net weight, particular of the drug and the date of seizure should invariably be indicated on the packages. In case sufficient space is not available for recording the above information on the package, a Card Board label, should be affixed with a seal of the seizing officer and on this Card Board label, the above details should be recorded.

1.5 Place and time of drawal of sample

Samples from the Narcotic Drugs and Psychotropic Substances seized must be drawn on the spot of recovery, in duplicate, in the presence of search (Panch) witnesses and the person from whose possession the drug has been recovered, and mention to this effect should invariably be made in the panch nama drawn on the spot.

1.6 Quantity of different drugs required in the sample

The Quantity to be drawn in each sample for chemical test should be 5 grams in respect of all narcotic drugs and psychotropic substances except in the cases of Opium, Ganja and Charas/Hashish where a quantity of 24 grams in each case is required for chemical test. The same quantities should be taken for the duplicate sample also. The seized drugs in the packages/containers



should be well mixed to make it homogeneous and representative before the sample in duplicate is drawn.

1.9 It needs no emphasis that all samples must be drawn and sealed; in the presence of the accused, Panchnama witnesses and seizing officer and all of them shall be required to put their signatures on each sample. The official seal of the seizing officer should also be affixed. If the person, from whose custody the drugs have been recovered, wants to put his own seal on the sample, the same may be allowed on both the original and the duplicate of each of the samples.”

34. Hence, from the discussion of aforesaid legal and factual aspects in this case, it appears that the mandatory provisions regarding Sampling, Seizure And Sealing (SSS) not appears to be followed by prosecution in terms of the legal provisions as available under the NDPS Act. It also appears that the personal search of appellants were also not made as per settled law and the seal of the contraband also not appears to produced before the court during the trial. There are several questions *qua* search, sealing and sampling which appears remain unanswered by the prosecution, benefit of



which must be extended to the appellants.

35. Accordingly, the appeal stands allowed.

36. The impugned judgment of conviction dated 01.03.2024 and order of sentence dated 07.03.2024 passed by learned Exclusive Special Court No. 11 under NDPS Act, East Champaran, Motihari in NDPS Case No. 13 of 2018 (arising out of NCB/PZU/V/10/2018) is, hereby, set aside. Both above named appellants are acquitted from the charges levelled against them, by giving them benefit of doubt.

37. Since the appellants are in custody in connection with this case, they are directed to be released forthwith, if not required in any other case. Fine, if any deposited by appellants, be returned to them henceforth.

38. Office is directed to send back the trial court records along with a copy of this judgment to the learned trial court forthwith.

(Chandra Shekhar Jha, J.)

S.Tripathi/-

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