

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.4942 of 2023

In

CRIMINAL APPEAL (DB) No.635 of 2022

Arising Out of PS. Case No.-23 Year-2018 Thana- N.C.B (GOVERNMENT OFFICIAL)
District- West Champaran

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Sanjay Mahto Kewat Son Of Mishri Mahto R/O Vill - Gopalika, P.O. -Chiparmari,
Distt. - Parsa (Nepal)

... ... Appellant/s

Versus

1. The State Of Bihar
2. Narcotics Control Bureau, Bihar

... ... Respondent/s

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Narcotic Drugs and Psychotropic Substances Act, 1985—Sections 20(b)(ii)C and 23c—more than commercial quantity of CHARAS was recovered from possession of appellant—informant got secret information that two persons were coming from Nepal carrying CHARAS—upon getting information, a team was constituted—appellant was apprehended and another person fled away back to Nepal—no signature on seized materials by appellant—sampling was done in absence of Magistrate—statement of independent witnesses stated that nothing was recovered in their presence and they signed the dotted lines coupled with the fact that neither the seized materials were produced before the Court nor any certificate produced that it (CHARAS) has been destroyed in accordance with law—prosecution has completely faltered in their duty—prosecution has failed to prove its case beyond reasonable doubt—appellant acquitted of all the charges—conviction and sentence set aside.

(Paras 36, 37, 40, 41)

(2016) 3 SCC 379—Relied Upon.

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Appearance :
For the Appellant/s : Mr. Vishal Prasad Srivastava, Advocate
For the State : Mrs. Anita Kumari Singh, Spl. PP
For the UOI (NCB) : Mr. Ram Anurag Singh, CGC

CORAM: HONOURABLE MR. JUSTICE RAJIV ROY
ORAL JUDGMENT
Date : 25-03-2025

Heard the parties.

2. The present appeal has been preferred against the **judgment and order dated 06.06.2022** passed by the **learned District and Sessions Judge, West Champaran, Bettiah** in **N.D.P.S. Case No. 152 of 2018, NCB Case No. 23 of 2018 and Special Case No. 18 of 2018** by which the appellant has been convicted under section **20(b)(ii)C and 23c** of the **Narcotic Drugs and Psychotropic Substances Act, 1985** (henceforth for short ‘the NDPS Act’) and sentenced to **undergo rigorous imprisonment for ten years and a fine of Rs. One Lakh (Rs.1,00,000/-)** on each count and in default of payment of fine, further to undergo **rigorous imprisonment for one year**. Both



the sentences have been ordered to run concurrently.

3. The prosecution story which led to the initiation/conclusion of the trial and the conviction of the appellant is that on 02.05.2018, the SSB 47 Battalion, Inerwa Head, **Raj Kumar Kumawat** got information that a person with 'Charas' is going to cross pillar no. 413 to enter India from Nepal. Accordingly, a team was formed which reached the Inerwa near pillar no. 413 of India-Nepal Border. Two persons were seen coming, when they were asked to stop, tried to escape. While one managed to escape towards Nepal, the other one (**appellant**) was caught in the presence of two independent persons, **Prem Kumar Yadav** and **Sushil Yadav**, a search was conducted, nine packets in brown polythene was seized.

4. The man gave his name as Sanjay Mahto Kewat (**appellant**). It weighed 4.5 Kilogram and upon checking from the detection kit, it was prima facie found 'Charas' like substance. It was opened and two samples of 25 gram each from the all nine packets were taken out. All the nine packets were **marked A** while the samples were **marked AS1** and **AS2**. After the sealing, 'Charas' was again weighed. It came to 4.450 Kilogram.

5. The accused upon query informed that for



Rs.1,000/-, he was carrying the material given to him by one **Saheb Yadav** of Nepal which was to be handed over to one **Lakhsman Sharma** at Raxaul. The accused was arrested and handed over to the NCB, Patna which came from Patna. The seized material was sent to the Malkhana and on the order of the court, the samples were sent to the Central Revenues Control Laboratory, Kolkata for its examination.

6. The Police thereafter submitted **charge-sheet** on **26.10.2018**, the **charges** were **framed** on **05.11.2018** under section **20(b)(ii)(C) 23c and 29** of 'the NDPS Act'. As the appellant claimed himself to be he claimed innocent, the trial.

7. The prosecution side produced the following witnesses to prove its case:

PW-1- Raj Kumar Kumawat

PW-2,- Anil Kumar Prasad (Informant)

PW-3, Prem Kumar Yadav (Independent witness)

PW-4- Sushil Yadav (Independent witness)

PW-5- Ashok Kumar Rai

PW-6- Rajan Kumar

8. The exhibits that were produced before the court is/are as follows:

प्रदर्श 1 — संदिग्ध संजय महतो केवट को एन.डी.पी.एस एक्ट की धारा 50 के अन्तर्गत नोटिस



प्रदर्श 2 – संदिग्ध संजय महतो केवट का व्यक्तिगत तलाशी
मेमो

प्रदर्श 3 – जब्ती का प्रोफार्मा

प्रदर्श 4 – अवरुद्ध वस्तु का प्रोफार्मा

प्रदर्श 5 – अवरोध मेमो

प्रदर्श 6 – जप्ती प्रक्रिया में सम्मिलित एस.एस.बी. कर्मियों की
सूची

प्रदर्श 7 से 10 – सेनानायक राजकुमार कुमावत, एस.एस.बी.
ईनरवा द्वारा एन.सी.बी. पटना को घटना की लिखित सूचना

प्रदर्श 8 – संजय महतो केवट का चिकित्सकीय जॉच रिपोर्ट

प्रदर्श 9 – एन.सी.बी. द्वारा तलाशी-सह जप्ती सूची एवं
रिपोर्ट

प्रदर्श 10 – अभियुक्त संजय महतो केवट को एन.डी.
पी.एस. एक्ट की धारा 67 के अंतर्गत नोटिस

प्रदर्श 10/1 साक्षी प्रेम कुमार यादव को एन.डी.पी.एस. एक्ट
की धारा 67 के अंतर्गत नोटिस

प्रदर्श 10/2 साक्षी सुशील कुमार यादव को एन.डी.पी.एस. एक्ट
की धारा 67 के अंतर्गत नोटिस

प्रदर्श 10/3 to 10/4 अभियुक्त लक्ष्मण भार्मा को एन.डी.
पी.एस. एक्ट की धारा 67 के अंतर्गत नोटिस

प्रदर्श 11 अभियुक्त संजय महतो केवट को एन.डी.पी.एस. एक्ट
की धारा 67 के अंतर्गत नोटिस

प्रदर्श 11/1 गवाह प्रेम कुमार यादव और सुशील यादव का
बयान

प्रदर्श 12 – संजय महतो केवट की जमा तलाशी

प्रदर्श 13 – संजय महतो केवट की गिरफ्तारी मेमो

प्रदर्श 14 – मालखाना रसीद

प्रदर्श 15 – नमूने के रासायनिक परीक्षण के लिए भेजा गया
पत्र

प्रदर्श 16 – टेस्ट मेमो

प्रदर्श 17 – सी.आर.सी.एल. कोलकाता की जांच रिपोर्ट

प्रदर्श 18 – एन.डी.पी.एस. एक्ट की धारा 57 के अंतर्गत
अनुपालन प्रतिवेदन



प्रदर्श 19 – भासकीय परिवार

प्रदर्श 20 – सर्व मेमो पर गवाह प्रेम कुमार यादव का हस्ताक्षर

प्रदर्श 20/1 – गवाह प्रेम कुमार यादव को एन.डी.पी.एस. एक्ट की धारा 50 के अन्तर्गत नोटिस पर उसका हस्ताक्षर

प्रदर्श 20/2 – अवरोधन मेमो पर गवाह प्रेम कुमार यादव का हस्ताक्षर

प्रदर्श 20/3 – एन.सी.बी. द्वारा संजय महतो केवट को एन.डी.पी.एस. एक्ट की धारा 50 के अन्तर्गत नोटिस पर गवाह प्रेम कुमार का हस्ताक्षर

प्रदर्श 20/4 – जांच-सह-जप्ती सूची पर गवाह प्रेम कुमार यादव का हस्ताक्षर

प्रदर्श 20/5 – एन.डी.पी.एस. एक्ट की धारा 67 के अन्तर्गत गवाह प्रेम कुमार यादव को नोटिस पर उसका हस्ताक्षर

प्रदर्श 20/6 – एन.डी.पी.एस. एक्ट की धारा 67 के अन्तर्गत बयान पर गवाह प्रेम कुमार यादव का हस्ताक्षर

प्रदर्श 20/7 – अभियुक्त संजय महतो केवट के गिरफ्तारी ज्ञाप पर गवाह प्रेम कुमार यादव का हस्ताक्षर

प्रदर्श 20/8 – अभियुक्त संजय महतो केवट के जमा तलाशी पर गवाह प्रेम कुमार यादव के हस्ताक्षर

प्रदर्श 20/9 – व्यक्तिगत जांच मेमो पर गवाह सुशील यादव का हस्ताक्षर

प्रदर्श 20/10 – जांच के लिए नोटिस पर गवाह सुशील यादव का हस्ताक्षर

प्रदर्श 20/11 – अवरोधन मेमो पर गवाह सुशील यादव का हस्ताक्षर

प्रदर्श 20/12 – एन.सी.बी. द्वारा संजय महतो केवट को एन.डी.पी.एस. एक्ट की धारा 50 के अन्तर्गत नोटिस पर गवाह गवाह सुशील यादव का हस्ताक्षर

प्रदर्श 20/13 – तलाशी-सह-जप्ती सूची पर गवाह सुशील यादव का हस्ताक्षर

प्रदर्श 20/14 – एन.डी.पी.एस. एक्ट की धारा 67 के अन्तर्गत गवाह सुशील यादव को नोटिस पर उसका हस्ताक्षर

प्रदर्श 20/15 – एन.डी.पी.एस. एक्ट की धारा 67 के अन्तर्गत



बयान पर गवाह सुशील यादव को नोटिश पर उसका हस्ताक्षर

प्रदर्श 20/16 – गिरफ्तारी ज्ञापक पर गवाह सुशील यादव का हस्ताक्षर

प्रदर्श 20/17 – जमा तलाशी पर गवाह सुशील यादव का हस्ताक्षर

प्रदर्श 20/18 – तलाशी-सह-जप्ती सूची पर गवाह अशोक कुमार राय का हस्ताक्षर

प्रदर्श 20/19 – अभियुक्त संजय महतो केवट के बयान पर ए 0 के 0 राय का हस्ताक्षर

प्रदर्श 21 – मालखाना रजिस्टर

प्रदर्श 22 – मादक पदार्थ का फोटो एवं प्रमाणीकरण

9. **PW-1 is the Assistant Commandant, SSB, Raj Kumar Kumawat.** According to him, he was posted at Inerwa as Company Commander when he got information that near pillar no.413, Narcotic materials are to be smuggled from Nepal to India. Accordingly, a team was created and stationed near pillar no. 413. Two persons were found coming towards India. When they were asked to stop, one escaped to Nepal while the appellant was apprehended. In the presence of two independent witnesses Prem Kumar Yadav and Sushil Yadav of Babhnauli Village, a search took place and 4.5 Kilogram ‘Charas’ recovered/seized. The samples were taken out, the seizure list were signed by the independent witnesses and accordingly, the process was completed.

10. In his cross-examination, the **PW-1** informed that



he got an information about the movement on his mobile no. **70914XXXXX**. He however, failed to inform who and by which mobile number, he got the said information. He further during the cross-examination accepted that signature of the accused was not taken on the seized material.

11. PW-2 is Anil Kumar Prasad, the Official posted with the N.C.B., Patna Zone and informant of the case. He has also narrated the same story and in the cross-examination further informed that the charge-sheet was submitted on 26.10.2018. Further, during cross examination, he conceded that when the seized materials were handed over to him, it was not sealed. He also informed the court that the seized materials has not been brought to the court nor there has been any certification of the seized material by him.

12. PW-3 is Prem Kumar Yadav, an **independent witness**. He identified his signature on the document but during his cross-examination informed that nothing was recovered in his presence. He was called at Inerwa SSB Camp and asked to put in his signature. He never came to know what has been incorporated in the said document.

13. PW-4 is Sushil Yadav is the second independent witness. He though narrated the same story but stated in cross-



examination that he was called at Inerwa SSB Camp to put in his signature. He neither knew the content nor there was any recovery in his presence.

14. **PW-5 is Ashok Kumar Rai**, who is the Information Officer posted at NCB, Patna. According to him, he got an information about arrest of a person with Narcotic materials whereafter a team was created and it reached Inerwa where in the presence of two independent witnesses from nine packets sampling were done and rest of the materials were sealed.

15. In his cross-examination, he gave different names to the two independent witnesses. He also conceded that when the SSB Officers handed over the Narcotic Drugs packets, it was not sealed.

16. **PW-6 is Rajan Kumar** posted as **Superintendent** with the **N.C.B., Patna** and custodian of 'Malkhana'. He appeared with the Malkhana Register and produced the entry of the 4.450 Kilogram 'Charas' in the Register. During the cross-examination, he informed that the seized materials were destroyed.

17. The defence took the plea that the due process of law has not been followed in the seizure of the materials as



incorporated in 'the NDPS Act'. The entire process of search, seizure as also arrest are faulty and as such, the benefit of doubt should be extended to the accused.

18. The Trial Court looked into the matter and having recorded that the two witnesses have accepted their signatures on the documents, Central Revenues Control Laboratory, Kolkata has proved it to be a 'Charas', proper sampling has been done, the seized materials were sent to the 'Malkhana' and the Malkhana Register shows entry, the accused has accepted his guilt that he was doing so for Rs.1,000/-, in that background, the process has been fully followed by the prosecution. It has thus proved the case against the accused.

19. Accordingly, the appellant, Sanjay Mahto Kewat was convicted vide an order dated 06.06.2022 under sections **20(b)(ii)C and 23c of 'the NDPS Act'** and sentenced to undergo **ten years of rigorous imprisonment** and a fine of Rs. One Lakh (Rs.1,00,000/-) on each count. In default of payment of fine, he has been ordered to undergo rigorous imprisonment for one year.

20. Aggrieved, the present appeal.

21. Learned counsel for the appellant submits that a perusal of the entire Trial Court order would show that lots of



loop holes were virtually ignored by the Court while concluding that the case has been proved. Neither the PW-1 could give the name/number of the person who informed him about the movement of Drugs nor the signature of appellant/accused was taken on the seized material.

22. The further submission is that the successive witnesses accepted that when the bags were handed over by the N.C.B. Officer, it was not sealed. The sampling was not done before the learned Magistrate. The independent witnesses did not supported the prosecution story. In that background, the Trial Court should have acquitted the appellant of all charges as the prosecution failed to prove the case beyond doubt.

23. Learned counsel representing the NCB on the other hand submits that the due process of law was followed inasmuch as the accused upon being intercepted was asked whether he want to be searched in front of a Gazetted Officer or by them, he allowed them to search. Further, upon weighing 4.5 Kilogram 'Charas' like material was seized and the detection kit clearly proved it to be 'Charas'. Even the Central Revenues Control Laboratory, Kolkata gave the report that the samples sent to it is 'Charas'.

24. He submits that the learned Trial Court thus



rightly came to the conclusion that though the independent witness did not accepted that content in the papers were made known to them, they did not deny their signatures on the respective documents. The entry of 4.450 Kilogram 'Charas' in the Malkhana Register which was produced before the court clearly shows that the due process was followed and after samples of 25 grams each were taken, the seized materials were kept in the 'Malkhana'. He further submits that minor loop holes cannot be the reason for acquittal when there is huge recovery of 4.5 Kilogram 'Charas'.

25. Mrs. Anita Kumari Singh, representing the State also echoed the submissions put forward by the learned counsel representing the Narcotics Control Bureau. According to her, the information came, the Officers waited at pillar no. 413, two persons were asked to stop, one escaped to Nepal while the appellant was nabbed. Further, from the bag, 4.5 Kilogram 'Charas' recovered/seized, the sampling was done from all the bags and the report of the Central Revenues Control Laboratory, Kolkata proved it to be 'Charas'. Though minor discrepancies are there, that cannot be the reason for acquittal.

26. Having gone through the facts of the case and the materials available on record, the findings of the learned Trial



Court as also the submissions put forward by the parties, the following facts emerges.

27. The admitted case is that an information came which led to creation of team, the Officers reached near pillar no. 413 of Indo-Nepal Border. Two persons were found coming towards India, called to stop. While one escaped to Nepal, the appellant was nabbed. Upon search, it is alleged that 4.5 Kilogram 'Charas' was recovered from his possession, two sets of 25 gram each samples were taken from all the nine bags (marked AS1 and AS2) while all the bags was marked 'A'.

28. At this juncture, this Court pauses for a while and looks into section 52-A of 'the NDPS Act' which read as follows:

52A- Disposal of seized narcotic drugs and psychotropic substances.

(1) The Central Government may, having regard to the hazardous nature, vulnerability to theft, substitution, constraint of proper storage space or any other relevant consideration, in respect of any narcotic drugs, psychotropic substances, controlled substances or conveyances, by notification in the Official Gazette, specify such narcotic drugs, psychotropic substances, controlled substances or conveyance or class of narcotic drugs, class



of psychotropic substances, class of controlled substances or conveyances, which shall, as soon as may be after their seizure, be disposed of by such officer and in such manner as that Government may, from time to time, determine after following the procedure hereinafter specified.

(2) Where any [narcotic drugs, psychotropic substances, controlled substances or conveyances] has been seized and forwarded to the officer-in-charge of the nearest police station or to the officer empowered under section 53, the officer referred to in sub-section (1) shall prepare an inventory of such [narcotic drugs, psychotropic substances, controlled substances or conveyances] containing such details relating to their description, quality, quantity, mode of packing, marks, numbers or such other identifying particulars of the [narcotic drugs, psychotropic substances, controlled substances or conveyances] or the packing in which they are packed, country of origin and other particulars as the officer referred to in sub-section (1) may consider relevant to the identity of the [narcotic drugs, psychotropic substances, controlled substances or conveyances] in any proceedings under this Act and make an application, to any Magistrate for the purpose of-

(a) certifying the correctness of the inventory so prepared; or



(b) taking, in the presence of such magistrate, photographs of [such drugs, substances or conveyances] and certifying such photographs as true; or

(c) allowing to draw representative samples of such drugs or substances, in the presence of such magistrate and certifying the correctness of any list of samples so drawn.

(3) Where an application is made under sub-section (2), the Magistrate shall, as soon as may be, allow the application.

(4) Notwithstanding anything contained in the Indian Evidence Act, 1872 (1 of 1972) or the Code of Criminal Procedure, 1973 (2 of 1974), every court trying an offence under this Act, shall treat the inventory, the photographs of [narcotic drugs, psychotropic substances, controlled substances or conveyances] and any list of samples drawn under sub-section (2) and certified by the Magistrate, as primary evidence in respect of such offence.

29. Section 52-A(2)(c) of 'the NDPS Act' clearly shows that representative samples of the seized materials has to be drawn in the presence of such Magistrate.

30. Here is a case where the aforesaid 52A of 'the NDPS Act' was given a go by. The admitted case of the prosecution is that after seizure and checking of the materials



through detection kit having found prima facie it to be 'Charas', all the nine packets were opened, 25 grams each of samples were drawn, the packets were marked as A while the two samples were marked as AS1 and AS2. The entire process was conducted in the absence of the Magistrate.

31. **PW-1 Raj Kumar Kumawat** who was the Commander of the SSB, Inerwa failed to provide the details of the person/mobile number from whom he got the information. He has also acknowledged that the signature of the appellant was not taken on the seized material.

32. The deposition **PW-2 Anil Kumar Prasad** (who is the informant) reveals that the SSB Officers did not handed over him the bags in sealed condition.

33. This Court has already recorded the statement of the **PW-3 Prem Kumar Yadav** and **PW-4 Sushil Yadav** who are the independent witnesses and both of them have stated that they were called in the Inerwa Camp and asked to sign on the documents without letting them know the content. They further clarified that nothing was recovered/seized in their presence.

34. **PW-5 Ashok Kumar Rai** also acknowledged during cross-examination that the seized materials were not sealed when it was handed over to the N.C.B. Officers. Further,



he failed to correctly name the two independent witnesses.

35. The last witness **PW-6 Rajan Kumar** who is/was custodian of the Malkhana though produced the Register to show the entry of the 'Charas' did not presented the seized material. He however, informed that the seized materials have been destroyed. There is nothing on record in the order to show that a certificate was produced before the learned Trial Court to show that the seized materials were destroyed in accordance with law.

36. The aforesaid facts that have emerged clearly show that the entire prosecution story is faulty. The absence of signature of the accused/appellant on the seized materials, the handing over of the seized materials by the SSB Officers in open condition, sampling being done in the absence of the Magistrate as mandated in 'the NDPS Act' clearly show tht the prosecution has completely faltered in their duty.

37. The statement of the independent witnesses is/are that nothing was recovered in their presence and signed the dotted lines coupled with the fact that neither the seized materials were produced before the court nor any certificate produced that it has been destroyed in accordance with law has made the entire prosecution story fatal.



38. **The Hon'ble Supreme Court** in the case of **Union of India Vs. Mohanlal & Another reported in (2016) 3 SCC 379** held that in the absence of prosecution having followed **section 52 (A) of 'the NDPS Act'**, the accused is/are entitled for relief.

39. **Paragraph nos. 14 to 17** of the **Mohanlal** (supra) case read as follows:-

14. Section 52-A as amended by Act 16 of 2014, deals with disposal of seized drugs and psychotropic substances. It reads:

"52-A. Disposal of seized narcotic drugs and psychotropic substances. (1) The Central Government may, having regard to the hazardous nature of any narcotic drugs or psychotropic substances, their vulnerability to theft, substitution, constraints of proper storage space or any other relevant considerations, by notification published in the Official Gazette. specify such narcotic drugs or psychotropic substances or class of narcotic drugs or class of psychotropic substances which shall, as soon as may be after their seizure, be disposed of by such officer and in such manner as that Government may, from time to time, determine after following the procedure hereinafter specified

(2) Where any narcotic drug or psychotropic substance has been seized and forwarded to the



officer in charge of the nearest police station or to the officer empowered under Section 53, the officer referred to in sub-section (1) shall prepare an inventory of such narcotic drugs or psychotropic substances containing such details relating to their description, quality, quantity, mode of packing, marks, numbers or such other identifying particulars of the narcotic drugs or psychotropic substances or the packing in which they are packed, country of origin and other particulars as the officer referred to in sub-section (1) may consider relevant to the identity of the narcotic drugs or psychotropic substances in any proceedings under this Act and make an application, to any Magistrate for the purpose of-

(a) certifying the correctness of the Inventory so prepared; or (b) taking, in the presence of such Magistrate, photographs of such drugs or substances and certifying such photographs as true; or

(c) allowing to draw representative samples of such drugs or substances, in the presence of such Magistrate and certifying the correctness of any list of samples so drawn. (3) When an application is made under sub-section (2), the Magistrate shall, as soon as may be allow the application.

(4) Notwithstanding anything contained in



the Indian Evidence Act, 1872 (1 of 1872) or the Code of Criminal Procedure, 1973 (2 of 1974), every court trying an offence under this Act, shall treat the

inventory, the photographs of narcotic drugs. psychotropic substances, controlled substances or conveyances and any list of samples drawn under sub-section (2) and certified by the Magistrate, as primary evidence in respect of such offence"

15. *It is manifest from Section 52-A(2)(c) (supra) that upon seizure of the contraband the same has to be forwarded either to the officer-in-charge of the nearest police station or to the officer empowered under Section 53 who shall prepare an inventory as stipulated in the said provision and make an application to the Magistrate for purposes of (a) certifying the correctness of the inventory (b) certifying photographs of such drugs or substances taken before the Magistrate as true, and (c) to draw representative samples in the presence of the Magistrate and certifying the correctness of the list of samples so drawn.*

16. *Sub-section (3) of Section 52-A requires that the Magistrate shall as soon as may be allow the application. This implies that no sooner the seizure is effected and the contraband forwarded to the officer-in-charge of the police*



station or the officer empowered, the officer concerned is in law duty-bound to approach the Magistrate for the purposes mentioned above including grant of permission to draw representative samples in his presence which samples will then be enlisted and the correctness of the list of samples so drawn certified by the Magistrate. In other words, the process of drawing of samples has to be in the presence and under the supervision of the Magistrate and the entire exercise has to be certified by him to be correct.

17. The question of drawing of samples at the time of seizure which, more often than not, takes place in the absence of the Magistrate does not in the above scheme of things arise. This is so especially when according to Section 52-4(4) of the Act, samples drawn and certified by the Magistrate in compliance with sub-sections (2) and (3) of Section 32-A above constitute primary evidence for the purpose of the trial. Suffice it to say that there is no provision in the Act that mandates taking of samples at the time of seizure. That is perhaps why none of the States claim to be taking samples at the time of seizure.

40. The aforesaid facts takes this Court to only one conclusion, the prosecution has failed to prove its case beyond reasonable doubt. In that circumstance, the appellant is entitled



for relief.

41. Accordingly, the impugned order and judgment dated **06.06.2022** passed by the learned District and Sessions Judge, West Champaran, Bettiah in **N.D.P.S. Case No. 152 of 2018**, (NCB Case No. 23 of 2018 and Special Case No. 18 of 2018) as also the order of sentence dated **16.06.2022** by which the appellant stands convicted under **section 20(b)(ii)C and 23c** of **‘the NDPS Act** is set aside. The appellant is acquitted of all the charges.

42. It has been informed that the appellant is in custody since **03.05.2018**. He be let free if not required in any other case.

43. **Cr. Appeal (SJ) 4942 of 2023** is allowed.

(Rajiv Roy, J)

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AFR/NAFR	AFR
CAV DATE	NA
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