

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.2 of 2014**

Arising Out of PS. Case No.-136 Year-2009 Thana- SONBERSA District- Sitamarhi

Yogendra Sah Son Of Kishori Singh Resident Of Village-Purandaha, Rajbara,
P.S.-Sonbarsa, District-Sitamarhi.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr.Ashok Kumar Jha, Advocate
For the Respondent/s : Mr.Abhay Kumar, App

**CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
CAV JUDGMENT**

Date : 20-04-2026

Heard learned counsel appearing on behalf of the appellant and, learned APP for the State.

2. The present appeal has been filed under Section 374 (2) of the Code of Criminal Procedure challenging the judgment of conviction dated 12-09-2013 and order of sentence dated 16-09-2013 passed by the learned 1st. Additional Sessions Judge-cum-Special Judge, Sitamarhi in GR No. 3297 of 2009 / TR No. 07 of 2013, arising out of Sonbarsa P.S. Case No. 136 of 2009, whereby and whereunder the appellant has been convicted for the offence punishable under Section 20(b)(ii)(B) of the Narcotic Drugs and Psychotropic Substance Act and has been sentenced to undergo Rigorous Imprisonment for 4 (four) years along with a fine of Rs.20,000/- and in default of payment



of fine to further undergo Rigorous Imprisonment for one year more.

BRIEF FACTS

3. The prosecution case, in brief, is that on 30.11.1998 at about 10:30 A.M., the informant, along with other S.S.B. jawans, while were on patrolling duty near Pillar Nos. 325 to 326/11 at Mangwa Bazar, under Sonbarsa Police Station, near the Nepal border, they had noticed a person carrying a black bag, who had attempted to escape by running away towards Pillar No. 326/32, he was chased and apprehended near Hanuman Temple. The accused on interrogation, had disclosed his name as Yogendra Sah (the appellant hereof). In the presence of two independent witnesses, a search of his bag was conducted, which contained ganja and the S.S.B. camp doctor was called at the spot, who examined the substance with the aid of a narcotics testing kit and opined that it was ganja. The recovered contraband weighed 8 kilograms and 500 grams. The accused appellant failed to produce any valid paper in respect of the said contraband, the same was seized and a seizure list was prepared.

4. On the basis of the statement of the informant, the F.I.R being Sonbarsa P.S. Case No. 136 of 2009 was registered



for the offences under sections 20(b)(ii)(B) of the NDPS Act. After institution of the FIR, the police proceeded with the investigation and after completion of investigation, charge-sheet was submitted. Thereafter, the trial court took cognizance against the appellants and the case was committed to the Court of Sessions for trial.

ARGUMENT ON BEHALF OF THE APPELLANTS

5. Learned counsel appearing on behalf of the appellant submitted that the impugned judgment of conviction and order of sentence passed by the learned trial court is wholly unsustainable in the eyes of law as the prosecution has failed to establish its case beyond reasonable doubt. It is contended that there are material contradictions and inconsistencies in the evidence of the prosecution witnesses, particularly between PW-1 (informant) and PW-6 (camp incharge) regarding the place and manner of seizure. While the informant stated that the seizure was made at the place of occurrence in presence of independent witnesses, PW-6 categorically deposed that the seized contraband was weighed and sealed at the police station, thereby creating serious doubt about the authenticity of the alleged recovery. Further, the independent seizure witnesses (PW-8 and PW-10) have not supported the prosecution case and



have stated that their signatures were taken on blank papers, which vitiates the prosecution version of lawful seizure.

6. Learned counsel further submitted that mandatory provisions of the NDPS Act relating to search and seizure have not been complied with, and the prosecution has also failed to produce any chemical examination report to establish that the seized substance was indeed Ganja. The Investigating Officer himself admitted that the FSL report had not been received, yet the learned trial court proceeded to convict the appellant, which is a grave illegality. Additionally, the Malkhana incharge (PW-11) stated that the seized contraband had already been destroyed, thereby depriving the defence of any opportunity of verification. In absence of evidence, coupled with procedural lapses and contradictions in prosecution evidence, the conviction of the appellant is not sustainable, and the appellant is entitled to benefit of doubt and consequent acquittal. In such circumstances, it was argued that the prosecution failed to prove the charges beyond reasonable doubt and the trial court has miserably failed to appreciate the evidence, leading to failure of justice and therefore the conviction of the appellant under section 20(b)(ii)(B) of the Narcotic Drugs and Psychotropic Substance Act is liable to be set aside.



ARGUMENT ON BEHALF OF THE STATE

7. *Per Contra*, learned APP appearing for the State while opposing the appeal submitted that the learned District court, after considering all the evidences on record and exhibits submitted on behalf of the parties during the course of trial, has rightly convicted the appellants for said offences.

ANALYSIS AND CONCLUSION

8. Heard the parties.

9. I have perused the lower court records and proceedings and also taken note of the arguments canvassed by learned counsel appearing on behalf of the parties.

10. The learned trial court, on the basis of materials as collected during the course of investigation, passed the Judgment of conviction dated 12-09-2013 and order of sentence dated 16-09-2013 for the offences under Section 20(b)(ii)(B) of the NDPS Act.

11. During the trial, the prosecution has examined altogether 11 witnesses, namely:

- (i) (P.W.-1),- Purandar Das (informant)
- (ii) (P.W.-2),- Manoj Kumar Mandal
- (iii) (P.W.-3),- Kulbindar Singh



- (iv) (P.W.-4),- Kamal Moran
- (v) (P.W.-5),- Constable G.D. Prakash
- (vi) (P.W.-6),- Damodar Barua
- (vii) (P.W.-7),- Thakur Devendra Nath Singh
- (viii) (P.W.-8),- Ahiraj Shailendra Bhushan
- (ix) (P.W.-9),- Jitendra Jha
- (x) (P.W.-10),- Ram Nagina Mahto
- (xi) (P.W. -11) – Dharmpal Kaithal

12. The prosecution has also relied upon following document exhibited during the course of trial:-

- (i) Initial of witness on Narcotic report (Exhibit-1),
- (ii) Signature of Yogendra Sah on recovery memo (Exhibit-2),
- (iii) Signature of Yogendra Sah on seizure memo (Exhibit-3)
- (iv) Signature on apprehension memo (Exhibit-5)
- (v) Signature on apprehension memo (Exhibit-6),
- (vi) Formal F.I.R. (Exhibit-7)
- (vI) Signature of witness on seizure list (Exhibit 4/1)
- (vii) F.S.L. (Forensic Science Laboratory) report. (Exhibit-8)
- (viii) Self-written report of NK/GD Purendra Das.



(Exhibit-9)

(ix) Signature on seizure memo (Exhibit 4/2)

(ix) Signature of O/C (Officer-in-Charge) on Malkhana register (Exhibit-10)

(x) S.D. Entry No. 221 dated 14-11-11 (Exhibit-11)

13. Upon a meticulous examination of the record, the evidence of the prosecution witnesses (PWs) can be summarised as follows:

P.W. 1 – Purendra Das (Informant): This witness has deposed that on the date of occurrence, while he was on patrolling duty near Pillar No. 226/32 along the Indo-Nepal border with his companion, he noticed one person coming from the Nepal side in a suspicious manner. On being challenged, the said person attempted to flee but was apprehended. Upon search, 5 kg of Ganja wrapped in a polythene was recovered from his bag and 3½ kg of Ganja was recovered from his jacket. Thereafter, the Company Commander was informed, who arrived at the spot and necessary documents were prepared. The accused along with the seized contraband was taken to the company office and subsequently handed over to Sonbarsa Police Station. This witness has identified the accused in Court. Nothing material has been elicited in his cross-examination to



discredit his testimony.

P.W. 2 – Manoj Kumar Mandal: This witness is a member of the patrolling party. He has supported the version of P.W. 1 and stated that the accused was apprehended while coming from the Nepal side and Ganja was recovered from his possession. His testimony corroborates the seizure and apprehension. Nothing contrary has been found in his cross-examination.

P.W. 3 – Kulbindar Singh: This witness has also deposed as a member of the patrolling party and has fully supported the prosecution case. He has stated that the accused was apprehended near the border and contraband Ganja was recovered from his possession. His cross-examination does not reveal any material contradiction.

P.W. 4 – Kamal Moran: This witness, being another member of the patrolling party, has corroborated the evidence of P.W. 1. He has stated that the accused was intercepted while entering from Nepal side and Ganja was recovered from his possession. His evidence remained intact during cross-examination.

P.W. 5 – Constable G.D. Prakash: This witness has also supported the prosecution case and stated that he was



present during the patrolling and seizure. He has corroborated the recovery of Ganja from the possession of the accused. Nothing adverse has been brought out in his cross-examination.

P.W. 6 – Company Commander (S.S.B.): This witness has deposed that on the date of occurrence, he was posted as Company Commander In-charge at Sonbarsa. Upon receiving information, he reached the spot and found that one suspicious person had been apprehended. Upon inquiry, the accused initially disclosed different names but later revealed his name as Yogendra Sah. The seized Ganja was brought to the camp and necessary documents were prepared. He has proved his signatures on various documents, including:

- Certificate of Narcotics Expert (Ext. 1)
- Recovery Memo (Ext. 2)
- Application for institution of case (Ext. 3)
- Seizure Memo (Ext. 4)
- Apprehension Memo (Ext. 5)
- Signature on relevant pages (Ext. 6)

He has also identified the accused in Court. In cross-examination, he stated that the Ganja was weighed at the Police Station and sealed in his presence and that it was examined by an expert prior to sealing.

P.W. 7 – Investigating Officer (S.I., Sonbarsa P.S.): This witness has deposed that after registration of the case on 25.12.2009, investigation was entrusted to him. He inspected the



place of occurrence and described the same as situated near Indo-Nepal border between Malangwa (Nepal) and Sonbarsa, near Pillar Nos. 325 to 326/11. He recorded statements of witnesses and S.S.B. personnel. He further stated that the seized Ganja was produced before the learned Special Judge and sent to Forensic Science Laboratory (F.S.L.) for examination. After completion of investigation, he submitted charge-sheet. In cross-examination, he admitted that the seized Ganja was initially in open condition and was sealed later after being produced before the Court.

P.W. 8 – Ahiraj Shailendra Bhushan (Seizure List Witness): This witness has proved his signature on the seizure list. However, he has stated that no recovery was made in his presence, thereby not fully supporting the prosecution case.

P.W. 9 – Formal Witness (Clerk): This witness has proved the handwriting and signature of the informant on the written application, which has been marked as Ext. 9. However, in cross-examination, he stated that he had signed on plain paper on the instruction of the police.

P.W. 10 – Seizure List Witness: This witness has stated that S.S.B. personnel obtained his signatures on the seizure memo and apprehension memo, which have been



marked as Ext. 4/2 and Ext. 5/1 respectively. In cross-examination, he admitted that he was not aware of the contents of the documents.

P.W. 11 – Dharampal Kaithal (Malkhana In-charge):
This witness has deposed that he was posted as Malkhana In-charge at Sonbarsa Police Station. He has proved the Malkhana Register entry (Ext. 11) relating to Sonbarsa P.S. Case No. 136/09, showing deposit of 8.5 kg of Ganja. He has also proved the relevant entries and signatures of the concerned officials.

14. The record further reveals that P.W.-8 and P.W.-10, who were cited as seizure list witnesses, have also not supported the prosecution case during the trial. P.W.-10 has merely stated that his signatures were obtained on the seizure memo and apprehension memo (Ext. 4/2 and Ext. 5/1), and in his cross-examination, he admitted that he had no knowledge of the contents of those documents. Similarly, P.W.-8 (Ahiraj Shailendra Bhushan) has only proved his signature on the seizure list but has categorically stated that no recovery was effected in his presence. Therefore, their testimonies do not inspire confidence and are not relevant for the purpose of establishing the guilt of the accused/appellant.

15. On the basis of materials surfaced during the



trial, the appellants/accused was examined under Section 313 of the Cr.PC by putting incriminating circumstances/evidences surfaced against them, which they denied and shows their complete innocence.

16. It would be appropriate to reproduce the provision of Section 20 of NDPS Act for the sake of convenience and better understanding of the facts, which is as under:-

“20. Punishment for contravention in relation to cannabis plant and cannabis.—Whoever, in

contravention of any provision of this Act or any rule or order made or condition of licence granted

thereunder;—

(a) cultivates any cannabis plant; or

(b) produces, manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses cannabis, shall be punishable,—

[(i) where such contravention relates to clause (a) with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine which may extend to one lakh rupees; and

(ii) where such contravention relates to sub-clause (b),—

(A) and involves small quantity, with rigorous imprisonment for a term which may extend to 2[one year], or with fine which may extend to ten thousand rupees, or with both;

(B) and involves quantity lesser than commercial quantity but greater than small quantity, with rigorous imprisonment for a term which may extend to ten years, and with fine which may extend to one lakh rupees;

(C) and involves commercial quantity, with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees:

Provided that the court may, for reasons to be



recorded in the judgment, impose a fine exceeding two lakh rupees..”

17. It is well settled law that although the NDPS Act envisages a reverse burden of proof, it is well settled that the prosecution must, in the first instance, establish the foundational facts by leading cogent and reliable evidence in strict compliance with the mandatory statutory provisions governing search, seizure and recovery. It is only upon such initial burden being duly discharged that the onus shifts upon the accused. Mere registration of a case under the Act does not *ipso facto* operate to shift the burden at the threshold. Having regard to the stringent nature of the statute, the evidence on record warrants strict scrutiny, and where the prosecution fails to prove its case beyond reasonable doubt, the benefit of such doubt must enure to the accused/appellant."

18. It appears that, all the prosecution witnesses examined in the present case are official witnesses belonging to the S.S.B., and there is a complete absence of reliable independent evidence with regard to the alleged recovery. It would, therefore, be unsafe to base a conviction solely on their testimony, especially in the absence of corroboration. Significantly, the alleged contraband (*ganja*) was neither produced before the Trial Court nor marked as a material



exhibit, and no plausible explanation has been furnished for such non-production. Consequently, there is no cogent material on record to establish a nexus between the substance allegedly seized and the samples sent for forensic examination. In such circumstances, question arises whether the prosecution has failed to prove its case beyond reasonable doubt, entitling the appellant to the benefit of doubt.

19. The Apex Court in the judgment of ***Gorakh Nath Prasad vs. State of Bihar*** reported in ***(2018) 2 SCC 305***, in para nos. 6 and 7 has observed that the non-production of the seized material is therefore considered fatal to the prosecution case which is reproduced hereinafter:

“6. In the facts of the present case, the independent witnesses with regard to the search and seizure, PW 2 and PW 3, having turned hostile deposing that their signatures were obtained on blank paper at the police station, the mere fact of a FSL Report (Ext. 8), being available is no confirmation either of the seizure or that what was seized was ganja, in the absence of the production of the seized item in court as an exhibit. The non-production of the seized material is therefore considered fatal to the prosecution case. The issue whether there has been compliance with Sections 42 and 50 of the NDPS Act loses its relevance in the facts of the case.

*7. The remaining prosecution witnesses being police officers only, it will not be safe to rely upon their testimony alone, which in any event cannot be sufficient evidence by itself either with regard to recovery or the seized material being ganja. No explanation has also been furnished by the prosecution for non-production of the ganja as an exhibit in the trial. The benefit of doubt will, therefore, have to be given to the appellant and in support of which learned Senior Counsel Shri Rai has relied upon *Jitendra v. State of M.P.* [*Jitendra v. State of M.P.*, (2004) 10 SCC 562 : 2004 SCC (Cri) 2028] and reiterated in *Ashok v. State of M.P.**



[Ashok v. State of M.P., (2011) 5 SCC 123 : (2011) 2 SCC (Cri) 547] as follows: (SCC pp. 126-27, paras 12-13)

“12. Last but not the least, the alleged narcotic powder seized from the possession of the accused, including the appellant was never produced before the trial court as a material exhibit and once again there is no explanation for its non-production. There is, thus, no evidence to connect the forensic report with the substance that was seized from the possession of the appellant or the other accused.

13. It may be noted here that in Jitendra v. State of M.P. [Jitendra v. State of M.P., (2004) 10 SCC 562 : 2004 SCC (Cri) 2028] , on similar facts this Court held that the material placed on record by the prosecution did not bring home the charge against the accused beyond reasonable doubt and it would be unsafe to maintain their conviction on that basis. In Jitendra [Jitendra v. State of M.P., (2004) 10 SCC 562 : 2004 SCC (Cri) 2028] , the Court observed and held as under: (SCC pp. 564-65, paras 5-6)

‘5. The evidence to prove that charas and ganja were recovered from the possession of the accused consisted of the evidence of the police officers and the panch witnesses. The panch witnesses turned hostile. Thus, we find that apart from the testimony of Rajendra Pathak (PW 7), Angad Singh (PW 8) and Sub-Inspector D.J. Rai (PW 6), there is no independent witness as to the recovery of the drugs from the possession of the accused. The charas and ganja alleged to have been seized from the possession of the accused were not even produced before the trial court, so as to connect them with the samples sent to the forensic science laboratory. There is no material produced in the trial, apart from the interested testimony of the police officers, to show that the charas and ganja were seized from the possession of the accused or that the samples sent to the forensic science laboratory were taken from the drugs seized from the possession of the accused. ...

6. ... The best evidence would have been the seized materials which ought to have been produced during the trial and marked as material objects. There is no explanation for this failure to produce them. Mere oral evidence as to their features and production of panchnama does not discharge the heavy burden which lies on the prosecution, particularly where the offence is punishable with a stringent sentence as under the NDPS Act. In this case, we notice that panchas have turned hostile so the panchnama is nothing but a document written by the police officer concerned.””

20. In the facts and circumstances of the present case, it is evident that the independent witnesses, P.W.-8 and



P.W.-10, to the alleged search and seizure have not supported the prosecution version, and material inconsistencies emerge from the record, particularly as the said seizure list witnesses have deposed that they were unaware of the contents of the documents and that their signatures were obtained on plain papers by the S.S.B. personnel. The prosecution case thus rests predominantly on the testimony of official witnesses without any credible independent corroboration, and the non-production of the alleged seized contraband as a material exhibit further creates a serious lacuna in the chain of evidence. In such circumstances, the mere availability of the F.S.L. Report cannot be treated as conclusive proof either of the recovery or of the nature of the substance allegedly seized, and in the absence of reliable evidence establishing the factum of recovery, its evidentiary value stands considerably diminished, thereby creating a serious doubt in the prosecution case, as a result of which this Court is of the considered view that the prosecution has failed to prove the charge against the appellant beyond reasonable doubt, entitling the appellant to the benefit of doubt.

21. Accordingly, the present appeal is allowed.

22. The impugned judgment of conviction dated 12-09-2013 and order of sentence dated 16-09-2013 passed by the



learned 1st. Additional Sessions Judge-cum-Special Judge, Sitamarhi in GR No. 3297 of 2009 / TR No. 07 of 2013, arising out of Sonbarsa P.S. Case No. 136 of 2009 is hereby set aside. Consequently, the above-named appellant is acquitted from all the charges levelled against him. Since the appellant is on bail, he is discharged from the liability of his bail bond. The fine deposited by the appellant, if any, shall be refunded to him.

23. Office is directed to send back the lower court records along with a copy of the judgment to the learned District Court forthwith.

(Purnendu Singh, J)

Sanjay/-

AFR/NAFR	AFR
CAV DATE	03.04.2026
Uploading Date	20.04.2026
Transmission Date	20.04.2026

