

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.626 of 2024**

Arising Out of PS. Case No.-397 Year-2016 Thana- BETTIAH CITY District- West
Champaran

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Ayasa Khatun @ Ayesha Khatoon Wife Of Najir Miya Resident Of Village -
Jeetpur, Police Station - Semra, District - Parsa (Nepal)

... .. Appellant

Versus

The State of Bihar

... .. Respondent

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Appearance :

For the Appellant : Mr. Rajesh Kumar, Advocate
Mr. Prashant Kumar, Advocate
Mr. Manaur Alam, Advocate
For the State : Mr. Abhimanyu Sharma, Addl.PP

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

and

HONOURABLE MR. JUSTICE RITESH KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 12-01-2026

This appeal is arising out of the judgment of conviction dated 07.08.2019 (hereinafter referred to as the ‘impugned judgment’) and the order of sentence dated 16.08.2019 (hereinafter referred to as the ‘impugned order’) passed by learned District and Sessions Judge-cum-Special Judge, NDPS Act, West Champaran, Bettiah (hereinafter referred to as the ‘learned Trial Court’) in NDPS Case No. 20 of 2016, Sessions Trial No. 25 of 2016 arising out of Bettiah Town P.S. Case No. 397 of 2016.

2. By the impugned judgment, the learned trial court has been pleased to convict the appellant for the offences punishable under Sections 20(b)(ii)(C) of the Narcotic Drugs and



Psychotropic Substances Act (in short 'NDPS Act') and ordered to undergo rigorous imprisonment for twelve years and to pay a fine of Rs.1,00,000/- under Section 20(b)(ii)(C) of the NDPS Act. In case of default of payment of fine, she shall have to further undergo imprisonment for two years.

Prosecution Case

3. The prosecution case is based on the written application (Exhibit '2') of Rajesh Kumar (PW-4), Officer-Incharge at Nagar Thana, Bettiah. On 29.07.2016 at 01:00 PM, the informant along with other police personnels, namely, Kiran Shankar, Rajiv Kumar, Chandan Kumar and Chaya Rai left police station for raid. At about 02:00 PM, information was received that a woman was going to pass Station Chowk carrying *charas*. Thereafter, the informant gave this information to senior officials and proceeded to Station Chowk. When the police team reached there, they saw that a woman who was carrying a bag in her hand tried to hide herself. The female officer Chaya Rai apprehended the woman. Seeing the action of police, locals assembled there and from amongst them, (1) Lalan Prasad and (2) Alar Miyan were made witnesses. Officer Chaya Rai searched the woman and found six packets from the bag which she was carrying. She disclosed her name as Ayasa Khatun and told that the recovered packets



contain six kg of *charas*. On demand of papers relating to *charas*, she told that she used to purchase *charas* from Nepal and via train she was going to Delhi to sell the same. Thereafter, in presence of the above-named witnesses, seizure list was prepared and *charas* was seized. On the seizure list, above-named witnesses signed on their own will and one copy of the seizure list was given to Ayasa Khatun on which she put her signature and she was arrested.

4. On the basis of this written application, Bettiah Town P.S. Case No. 397 of 2016 dated 29.07.2016 was registered under Sections 20/22/23/24/27(A)/29 of the NDPS Act against Ayasa Khatun.

5. After investigation, Police submitted chargesheet bearing No. 518 of 2016 dated 31.08.2016 against the appellant under Sections 20, 22, 23, 24, 27(A) and 29 of the NDPS Act. On the basis of the chargesheet, learned trial court *vide* order dated 05.09.2016 took cognizance of the offences punishable under above-mentioned sections against the appellant.

6. Charges were read over and explained to the appellant in Hindi to which she pleaded not guilty and claimed to be tried. Accordingly, *vide* order dated 04.11.2016, charges were framed against the appellant under Sections 20(b)(ii)(c), 22(c) and 23(c) of the NDPS Act.



7. In course of trial, the prosecution examined as many as six witnesses and exhibited several documents to prove it's case. The list of the prosecution witnesses and the list of exhibits are being shown hereunder in tabular form:-

List of Prosecution Witnesses

PW-1	Rajeev Kumar Rajak
PW-2	Kiran Shankar
PW-3	Chhaya Rai
PW-4	Rajesh Kumar
PW-5	Md. Abid Hasan
PW-6	Chandan Kumar

List of Documents exhibited

Exhibit-1	Seizure list
Exhibit-2	Written petition
Exhibit-2/1	Endorsement in written petition
Exhibit-3	Formal FIR
Exhibit-4	FSL Report

8. Thereafter, the statement of the appellant was recorded under Section 313 of the CrPC in which she replied in negative. No oral or documentary evidence has been adduced on behalf of the Defence.

Findings of the learned trial court

9. Learned trial court after examining the evidences available on the record found that the prosecution witnesses in their deposition have supported the case of the prosecution on the



point of search, seizure and sealing of the seized *charas* and the defence could not be able to contradict their evidences. Learned trial court found from the FSL report (Exhibit '4') that the recovered substance from the possession of the appellant was *charas*. The learned trial court opined that recovery was made from the *jhola* (bag) of the accused Ayasa Khatoon which was in her hand at the time of raid and not from her body. According to the provision of Section 50 of the NDPS Act, the search of the accused before the Magistrate is not required.

10. After having gone through the materials available on the record, learned trial court found that the prosecution has followed the provisions of the NDPS Act and no illegality was found in the process of search and seizure of six kilogram of illegal *charas* from the *jhola* (bag) of the appellant Ayasa Khatoon. Learned trial court found that the recovery of the said illegal *charas* was in the knowledge of the appellant for which she has to explain but she failed.

11. Accordingly, the learned trial court held the appellant Ayasa Khatoon guilty and sentenced her accordingly.

Submissions on behalf of the Appellant

12. Learned counsel for the appellant has submitted that the prosecution case suffers from material lacunae and gross irregularities



in conducting the investigation as the essential and mandated provisions of NDPS Act have been violated.

13. Learned counsel for the appellant submitted that no independent witness along with seizure list witnesses were examined by the prosecution, as the specific case of the prosecution is that when they started the search of the appellant a crowd was gathered. With respect to the seizure list and its preparation, it is submitted that the Chaya Rai (P.W. 3), who conducted the search of the appellant, stated in her deposition that the seizure list was prepared at the police station whereas other witnesses have stated that it was prepared at the place of occurrence itself which is contrary to the statements of other witnesses. It is submitted that this contradiction renders the seizure proceeding doubtful and affects the credibility of the seizure.

14. It is further submitted that the alleged seized material was neither properly weighed nor properly seized in accordance with provisions mandated under NDPS Act. Prosecution disclosure about the weight 6 kgs of seized article is also doubtful as it was mechanically recorded in the report, the *Kirana* Shop owner who weighed the seized *charas* is neither named nor has been examined to substantiate the weighing procedure which had taken place.

15. Learned counsel has also highlighted serious lapses regarding sampling, as there is no mention that when or how the samples were drawn and in whose presence it was done. It is further submitted that the sampling was not conducted in presence of a



Magistrate which is in violation of the provisions contained under Section 52 of the NDPS Act.

16. Learned counsel for the appellant has further submitted that there is no documentary evidence to establish the chain of custody of seized article and sampling before sending it for forensic examination, though it has been stated that the seized substance was kept in *malkhana*. No document has been exhibited to substantiate the same. Even the seized material was not produced before the learned trial court. It is, therefore, argued that there has been a clear violation of Section 52 of the NDPS Act, which vitiates the prosecution case.

Submission on behalf of the State

17. On the other hand, learned Additional Public Prosecutor for the State has defended the impugned judgment and order. It is submitted that the prosecution has fully established that the recovered article from the appellant is *Charas* as has been proved from the FSL Report (Ext. 4). It is further submitted that the prosecution witnesses have deposed that the *jhola* (bag) which was recovered from the appellant contains *Charas* and the defence failed to bring any contradiction from the evidences of the prosecution witnesses.

18. Learned Additional Public Prosecutor has submitted that the prosecution has been able to prove that the appellant was carrying *charas* at the time of search by bringing cogent and



material evidences in terms of the NDPS Act and the judgments of the Hon'ble Supreme Court, hence, no fault may be found in the impugned judgment and order.

Consideration

19. Having heard learned counsel for the appellant and learned Additional Public Prosecutor for the State as also on perusal of the trial court records, we are of the considered opinion that the impugned judgment and order of the learned trial court suffers from material discrepancies and are liable to be set aside.

20. We have noticed from the records that the informant of this case is Rajesh Kumar (PW-4) who was posted as Police Sub-Inspector in Nagar Thana, Bettiah on 29.07.2016. In his written report submitted in the police station, he has stated that he left the police station on 29.07.2016 at about 1 o'clock during day time together with Sub-Inspector of Police Kiran Shankar, the present Officer-in-Charge of Sirsia O.P. Chanpatia, Police Sub-Inspector Rajeev Kumar Rajak, Sepoy Chandan Kumar and lady Homeguard No. 33 namely Chhaya Rai to conduct a raid. At about 2:00 PM, he got a secret information that a lady is likely to arrive near Station Chowk carrying *charas*. The informant claimed that he sent this information to his senior officer and proceeded towards Station Chowk. When he reached Station Chowk, he



found that one lady who was holding a bag in her hand was trying to conceal herself on seeing the police, then the lady Homeguard Chhaya Rai caught hold of her. On seeing the police action, the persons from the nearby had assembled and from amongst them he took (1) Lalan Prasad Gupta aged 42 years, Son of Late Ramji Prasad of Village-Purani Gudri, Ward No. 10 and (2) Akhtar Miyan aged 45 years, Son of Late Latifur Rahman, Resident of Ganj No.2, Nazni Chowk, P.S. Bettiah Nagar, District-East Champaran. The informant has further stated that on search of the said lady by the lady Homeguard Chhaya Rai, from the bag which was in the hand of the accused, six packets of yellow colour were seized. On asking, she disclosed her name as Ayasa Khatun, aged 58 years wife of Nazir, Resident of Village-Jeetpur, P.S. Semra, Nepal. She disclosed that in the seized packets there were six kg of *charas*. The informant Rajesh Kumar (PW-4) claimed that he seized the packets in presence of the witnesses and prepared a seizure list. He had also got signature thereon from the witnesses and handed over one copy of the seizure list to the accused on which she put her signature.

21. We have noticed from the written information furnished by Rajesh Kumar (PW-4) that he claims to have taken two seizure list witnesses from amongst the persons who had



assembled at the place of occurrence but in complete contradiction to what is stated in the written statement, in course of trial, he has stated in paragraph '3' of his cross-examination that at the time of seizure of *charas* no Magistrate was present there. In paragraph '12' he has stated that at the place of occurrence itself he had taken weight of the seized article but he cannot say the name of the shop owner who had done the weight. In course of trial, he has stated that he had sealed the seized *charas* at the place of occurrence but in paragraph '12' he has stated that in his application he had not mentioned the fact regarding the sealing. According to this witness, the place of occurrence is at a distance of 200-300 metre south from the Station. The bag of Ayasa Khatun was in open condition, he had checked the same and this witness has further stated that it is he who had opened the packets when all the police personnel were standing there and they had seen it. It is evident from the deposition of PW-4 that even as he claims at this stage that the weighing of the seized article had taken place and he had sealed it, this statement has come at a much belated stage and the same does not find corroboration from the evidence of the police personnel who were member of the raiding party. In this connection, it would appear from the deposition of Rajeev Kumar Rajak (PW-1) that there was no weighing machine at the place



where seizure had taken place. PW-1 has clearly stated that it was not weighed by the weighing machine.

22. Another witness Kiran Shankar (PW-2) has also stated in his examination-in-chief that the seized *charas* was not weighed. PW-2 has also stated that there was no Magistrate present at that time. This witness expressed his unawareness as to whether the shop owner from whom weighing machine was taken to weigh the *charas* was made a seizure list witness or not. He has later stated that Rajesh Kumar weighed the *charas*. This witness has though claimed that the seized articles and the seizure list were produced in the court, we have found from the trial court's order that the copy of the FIR drawn in this case was received in the court on 30.07.2016 and later on the accused was produced. Seizure list has been brought on record as Exhibit '1' on which the two seizure list witnesses have put their signature but it is an admitted position that none of the seizure list witness has been examined in course of trial. Prosecution has not offered any explanation for their absence. In fact, the presence of the seizure list witnesses on the spot becomes highly doubtful on going through the evidence of the I.O. (PW-5). In paragraph '15' of his deposition, PW-5 has stated that he had recorded the statement of the seizure list witnesses on 29.07.2016 itself at the place of



occurrence, but he has clearly stated that they were called over telephone, he had noted their number in the diary but he did not remember it. He has stated that the witnesses had come on motorcycle and he had recorded their statement at 7:00 PM.

23. On going through the evidence of the I.O. (PW-5), the prosecution story that the seizure of *charas* was done on 29.07.2016 at 2:40 PM in presence of two independent witnesses becomes highly doubtful. In this case, the I.O. Md. Abid Hasan, has stated in his examination-in-chief that he had received the charge of investigation of this case on 29.07.2016 and in course of investigation, he had visited the place of occurrence but in paragraph '10' of his deposition, he has stated that he had not recorded statement of any independent witness. When he went to the place of occurrence, nobody from the neighborhood assembled there, only police officers were present. In paragraph '11' of his deposition, he has stated that the material exhibit was produced before him in sealed condition and the informant Rajesh Kumar (PW-4) had told him that there were *charas* in the bag. From the deposition of PW-5, it is evident that he was not present at the time of seizure of the *charas*. PW-4, who is the informant of the case, has not taken name of PW-5 as one of the police personnel present with him in the raiding party. The prosecution case, as established



from the evidence on the record, is that the informant had brought the seized *charas* and the accused to the police station, there is no evidence of sealing of the seized *charas* at the place of occurrence. It is not the case of the prosecution that the seizing officer (PW-4) had prepared any sample from the seized *charas* at the place of occurrence in presence of the accused. When we come to the evidence of Chhaya Rai (PW-3), who is one of the members of the raiding party and had conducted the search of the accused, it would appear that in paragraph '3' of her deposition, she has stated that the seizure document was prepared at the police station.

24. We have perused the trial court's orders. We find that in the order dated 30.07.2016, the seizure list and the seized *charas* were produced along with accused, but there is no order of the trial court to the I.O. to keep the seized *charas* in the *Malkhana* of the police station. It is not known as to where the seized *charas* were kept after seizure. The *Malkhana* register of the police station has not been produced and the Incharge of the *Malkhana* has not been brought as a witness. What appears from the records is that after exactly one month, i.e. 29.08.2016, the I.O. filed an application in the court with a request to allow sending of the seized exhibit to the Forensic Science Laboratory (FSL), Bihar, Patna. On 29.08.2016, Shri Nagesh Pratap Singh, Judicial



Magistrate, First Class, Bettiah, was deputed to seal the seized exhibit in his presence and submit a report in this regard. What happened thereafter is not known. The prosecution has not brought in evidence the certification of inventory and sampling, if any, done in presence of the Magistrate. The learned Magistrate, Shri Nagesh Pratap Singh, has not been examined and it is not known whether he had submitted any report.

25. This Court further finds that even as the court permitted sending of the seized exhibit to the Forensic Science Laboratory, Bihar, Patna on 29.08.2016, within six days thereafter i.e. on 05.09.2016, the I.O. submitted a charge-sheet against the accused alleging that there were sufficient materials to proceed against the accused for the offences punishable under Sections 20/22/23/24/27(A)/29 of the NDPS Act. It is evident that the I.O. (PW-5) was in haste in the matter of filing of the charge-sheet and he did not await receipt of the FSL report. The FSL report was received only at a much belated stage, i.e. on 25.02.2019, and this has been marked exhibit on the request of the prosecution. This was the day when prosecution evidence was closed. A perusal of the FSL report would show that the seized exhibit was sent to the FSL vide Memo No. 2366 dated 30.08.2016 through special messenger S.I. Abid Hasan but it was received in the Office of the



FSL on 12.09.2016. It is, thus, not known that from 30.08.2016 till the date of handing over of the sample to the FSL, where were these samples lying. No photograph of the seized article has been taken and as stated above, there is nothing on the record to show that sampling was done in presence of the Magistrate.

26. This Court finds that in this case the prosecution has not duly proved the seizure in presence of independent witnesses even though the place of seizure is a public place nearby the station and further, the prosecution has miserably failed to prove that the seized articles were sealed and samples were also prepared in accordance with law. Seizing and sampling both are highly doubtful and not duly proved. There is nothing to show certification of the inventory and compliance with the mandate of sub-section (3) of Section 52A of the NDPS Act.

27. At this stage, we quote the relevant paragraph of the judgment of the Hon'ble Supreme Court in the case of **Bharat Aambale vs. State of Maharashtra** reported in **(2025) 8 SCC 452** hereunder for a ready reference:-

"56. We summarise our final conclusion as under:

"56.1. Although Section 52-A is primarily for the disposal and destruction of seized contraband in a safe manner yet it extends beyond the immediate context of drug disposal, as it serves a broader purpose of also introducing procedural safeguards in the



treatment of narcotics substance after seizure inasmuch as it provides for the preparation of inventories, taking of photographs of the seized substances and drawing samples therefrom in the presence and with the certification of a Magistrate. Mere drawing of samples in the presence of a gazetted officer would not constitute sufficient compliance of the mandate under Section 52-A sub-section (2) of the NDPS Act.

56.2. Although, there is no mandate that the drawing of samples from the seized substance must take place at the time of seizure as held in *Mohanlal*², yet we are of the opinion that the process of inventorying, photographing and drawing samples of the seized substance shall as far as possible, take place in the presence of the accused, though the same may not be done at the very spot of seizure.

56.3. Any inventory, photographs or samples of seized substance prepared in substantial compliance of the procedure prescribed under Section 52-A of the NDPS Act and the Rules/Standing Order(s) thereunder would have to be mandatorily treated as primary evidence as per Section 52-A sub-section (4) of the NDPS Act, irrespective of whether the substance in original is actually produced before the court or not.

56.4. The procedure prescribed by the Standing Order(s)/Rules in terms of Section 52-A of the NDPS Act is only intended to guide the officers and to see that a fair procedure is adopted by the officer in charge of the investigation, and as such what is required is substantial compliance of the procedure laid therein.

56.5. Mere non-compliance of the procedure under Section 52-A or the Standing Order(s)/Rules thereunder will not be fatal to the trial unless there are discrepancies in the

2. Union of India v. Mohanlal, (2016) 3 SCC 379 : (2016) 1 SCC (Cri) 864



physical evidence rendering the prosecution's case doubtful, which may not have been there had such compliance been done. Courts should take a holistic and cumulative view of the discrepancies that may exist in the evidence adduced by the prosecution and appreciate the same more carefully keeping in mind the procedural lapses.

56.6. If the other material on record adduced by the prosecution, oral or documentary inspires confidence and satisfies the court as regards the recovery as well as conscious possession of the contraband from the accused persons, then even in such cases, the courts can without hesitation proceed to hold the accused guilty notwithstanding any procedural defect in terms of Section 52-A of the NDPS Act.

56.7. Non-compliance or delayed compliance of the said provision or rules thereunder may lead the court to drawing an adverse inference against the prosecution, however no hard-and-fast rule can be laid down as to when such inference may be drawn, and it would all depend on the peculiar facts and circumstances of each case.

56.8. Where there has been lapse on the part of the police in either following the procedure laid down in Section 52-A of the NDPS Act or the prosecution in proving the same, it will not be appropriate for the court to resort to the statutory presumption of commission of an offence from the possession of illicit material under Section 54 of the NDPS Act, unless the court is otherwise satisfied as regards the seizure or recovery of such material from the accused persons from the other material on record.

56.9. The initial burden will lie on the accused to first lay the foundational facts to show that there was non-compliance of Section 52-A, either by leading evidence of its own or by relying upon the evidence of the prosecution, and the standard required would only be preponderance of probabilities.



56.10. Once the foundational facts laid indicate non-compliance of Section 52-A of the NDPS Act, the onus would thereafter be on the prosecution to prove by cogent evidence that either: (i) there was substantial compliance with the mandate of Section 52-A of the NDPS Act, OR (ii) satisfy the court that such non-compliance does not affect its case against the accused, and the standard of proof required would be beyond a reasonable doubt.””

28. Since the primary documents which would have laid down the foundation of the case are missing and the facts are not duly proved, we are of the considered opinion that the impugned judgment and order of the learned trial court are liable to be set aside and the appellant is required to be acquitted of the charges giving her benefit of doubt.

29. In result, this appeal is allowed. The impugned judgment of conviction dated 07.08.2019 and the order of sentence dated 16.08.2019 passed by learned District and Sessions Judge-cum-Special Judge, NDPS Act, West Champaran, Bettiah in NDPS Case No. 20 of 2016, Sessions Trial No. 25 of 2016 arising out of Bettiah Town P.S. Case No. 397 of 2016 are set aside. The appellant is acquitted of the charges under Section 20(b)(ii)(C) of the NDPS Act giving her benefit of doubt. She shall be released forthwith if not wanted in any other case.



30. Let a copy of the judgment together with the trial court's records be sent down to the learned trial court.

(Rajeev Ranjan Prasad, J)

(Ritesh Kumar, J)

Rishi/-

AFR/NAFR	
CAV DATE	
Uploading Date	17.01.2026
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