IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL APPEAL (DB) No.845 of 2025

Arising Out of PS. Case No.-277 Year-2023 Thana- RAMGARHWA District- East Champaran

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Manoj Yadav S/O Chandrika Yadav R/O Gamahariya, P.S.- Palanawa, District- East Champaran, Bihar.

... ... Appellant/s

Versus

The State of Bihar

... ... Respondent/s

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with

CRIMINAL APPEAL (DB) No. 770 of 2025

Arising Out of PS. Case No.-277 Year-2023 Thana- RAMGARHWA District- East Champaran

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Sheikh Amrullah Son of Karim Sheikh @ Sheikh Karim village- Tilokwa, Ps- Shikarpur, Dist- East Champaran

... ... Appellant/s

Versus

The State of Bihar

... ... Respondent/s

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Appearance :

(In CRIMINAL APPEAL (DB) No. 845 of 2025)

For the Appellant/s : Mr. Vinay Ranjan, Advocate
Mr. Utkarsh Ranjan, Advocate

For the Respondent/s : Mr. Dilip Kumar Sinha, Advocate

(In CRIMINAL APPEAL (DB) No. 770 of 2025)

For the Appellant/s : Mr. Bimlesh Kumar Pandey, Advocate
Mr. Satyam Kumar Ojha, Advocate
For the Respondent/s : Mr. Dilip Kumar Sinha,Ad,

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CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
and
HONOURABLE MR. JUSTICE DR. ANSHUMAN

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI)

Date : 11-05-2026

1. The present criminal appeal has been preferred by the appellant against the judgment of conviction dated 14.05.2025 and the order of sentence dated 19.05.2025 passed by the learned Exclusive Special Judge, NDPS Court No. II, East Champaran, Motihari in NDPS Case No. 10 of 2024, arising out of Ramgarhwa P.S. Case No. 277 of 2023.

2. By the impugned judgment, the learned Trial Court has held the appellant along with co-accused persons guilty for the offences punishable under Sections 20(b)(ii)(c), 23 and 25 of the Narcotic Drugs and Psychotropic Substances Act, 1985, and sentenced them to undergo rigorous imprisonment for fourteen years along with fine of Rs. 1,00,000/- each, with a further stipulation of default sentence.

3. The appellant, namely Sheikh Amirullah, who was arrayed as accused no. 2 before the learned Trial Court,

has assailed the aforesaid judgment on the ground that the conviction has been recorded without proper appreciation of the evidence on record and in complete disregard of the mandatory safeguards provided under the NDPS Act.

4. The prosecution case arises out of an alleged recovery of charas of commercial quantity said to have been made from the possession of the accused persons on 05.07.2023, leading to institution of the aforesaid police case and subsequent trial culminating in conviction.

5. Being aggrieved by the findings so recorded and the sentence imposed, the present appeal has been filed seeking interference of this Court.

6. The prosecution case, as it emerges from the written report of the informant and the evidence adduced during trial, is that on 05.07.2023 at about 19:30 hours, the informant, namely Indrajeet Paswan, who was then posted as Officer-in-Charge of Ramgarhwa Police Station, along with other police personnel, proceeded on patrolling duty from the police station.

7. It is stated that while the police party was engaged in routine checking of vehicles near Bela Canal Chowk, two motorcycles were seen approaching from the side

of Ramgarhwa market. One motorcycle was being driven by a single person, while on the other motorcycle, two persons were riding.

8. On noticing the police party, the said persons allegedly turned their motorcycles and attempted to flee towards the market side, which aroused suspicion. The police party immediately chased the said motorcycles and succeeded in intercepting them near Semar Chowk.

9. Upon interception, the persons riding the motorcycles were apprehended and their identities were ascertained. The person on the first motorcycle disclosed his name as Manoj Yadav, whereas the two persons on the second motorcycle disclosed their names as Suresh Prasad Kushwaha and Sheikh Amirullah, the present appellant.

10. It is further the case of the prosecution that upon questioning regarding the articles carried by them, the accused persons allegedly became nervous and gave evasive replies. Thereafter, the police decided to conduct search of their persons as well as the bags allegedly carried by them.

11. According to the prosecution, before conducting the search, the accused persons were informed about their legal right under Section 50 of the NDPS Act, and it is alleged

that they consented to be searched by the police party itself.

12. It is further stated that during the search: -

(i) From the possession of Manoj Yadav, a black coloured bag was recovered, inside which three packets wrapped in yellow plastic were found; and

(ii) From the possession of the present appellant Sheikh Amirullah, another black coloured bag was recovered, inside which five packets of similar nature were found.

13. The recovered substance, on visual inspection, was suspected to be charas, and the same was weighed at the place of occurrence with the help of a weighing machine allegedly arranged locally.

14. As per the prosecution version, the total weight of the contraband recovered from both the bags was found to be approximately 3 kilograms 782 grams, which falls within the category of commercial quantity under the NDPS Act.

15. The prosecution further asserts that the accused persons disclosed that they had brought the said contraband from Nepal and were carrying it for the purpose of sale at Delhi.

16. It is also stated that though several persons had

gathered at the place of occurrence, none of them agreed to become witnesses to the search and seizure, whereafter two chowkidars accompanying the police party were made witnesses to the seizure.

17. Thereafter, the contraband articles were seized, seizure list was prepared at the place of occurrence, and the accused persons were taken into custody.

18. On the basis of the written report of the informant, Ramgarhwa P.S. Case No. 277 of 2023 was registered under the relevant provisions of the NDPS Act, and investigation was taken up.

19. Upon completion of investigation, charge-sheet was submitted against the accused persons, whereafter cognizance was taken and the case was committed for trial.

20. Upon completion of investigation, charge-sheet was submitted against the accused persons, whereafter cognizance of the offences under Sections 20(b)(ii)(c), 23 and 25 of the NDPS Act was taken and the case was committed to the Court of Exclusive Special Judge, NDPS, where it came to be registered as NDPS Case No. 10 of 2024. Charges were framed on 19.06.2024 against all the accused persons. The contents of the charges were read over and explained to them

in vernacular, to which they pleaded not guilty and claimed to be tried.

21. In order to bring home the charges, the prosecution examined altogether six witnesses, namely PW-1 Dayakant Yadav, PW-2 Ajit Kumar, PW-3 Amit Kumar Paswan, PW-4 Indrajeet Paswan (informant), PW-5 Vivek Kumar and PW-6 Ram Narayan Ojha (Investigating Officer). It is significant to note that all the witnesses examined on behalf of the prosecution are police personnel and no independent witness has been brought on record, despite the consistent assertion in the prosecution case that a number of persons had assembled at the place of occurrence.

22. The evidence of PW-1, PW-2 and PW-3, who were members of the raiding party, is substantially on similar lines. They have deposed that on the relevant date, while they were on patrolling duty along with the informant, two motorcycles were intercepted after a brief chase and three persons were apprehended. They have further stated that upon search of the bags carried by the accused Manoj Yadav and the present appellant Sheikh Amirullah, packets containing a substance suspected to be charas were recovered. These witnesses have also stated that the recovered substance was

weighed at the place of occurrence and seizure list was prepared there itself.

23. However, upon a careful reading of their cross-examination, it appears that these witnesses have not been able to furnish clear and consistent details regarding the manner in which the seized articles were handled after recovery. There is no definite evidence regarding sealing of the contraband at the place of occurrence, nor is there any clarity as to the procedure adopted for sampling. It has also come on record that although public persons were present, none were made witnesses to the seizure and no explanation, except a general statement of refusal, has been substantiated.

24. PW-4, the informant and Officer-in-Charge of the police station, has reiterated the prosecution story and has deposed regarding the interception of the motorcycles, apprehension of the accused persons and recovery of contraband from their possession. He has also stated that notices under Section 50 of the NDPS Act were served upon the accused persons prior to search and that seizure list was prepared at the place of occurrence. However, in his cross-examination, he has admitted that the place of occurrence was a public place and several persons had gathered there, yet no

independent person was made a witness. He has also not given a clear account of compliance of all procedural safeguards, particularly in relation to preparation of documents and handling of the seized material after recovery.

25. PW-5 has supported the prosecution case in general terms, but his evidence also does not materially improve the prosecution case insofar as compliance of statutory safeguards is concerned. His testimony remains broadly corroborative of the version given by other police witnesses.

26. PW-6, the Investigating Officer, has stated that he took up investigation after registration of the FIR, recorded statements of witnesses and submitted charge-sheet upon completion of investigation. He has also referred to the forwarding of seized articles for forensic examination. However, his evidence does not satisfactorily establish the chain of custody of the seized contraband. There is no clear and cogent evidence regarding the manner in which the seized articles were sealed, stored and transmitted to the forensic laboratory, which assumes significance in a case under the NDPS Act.

27. The prosecution has brought on record

documentary evidence including the seizure list, written report, notices purportedly issued under Section 50 of the NDPS Act, arrest memos and the report of the forensic science laboratory confirming that the seized substance was Charas. However, these documents have been prepared by the police authorities themselves and in absence of independent corroboration, their evidentiary value requires careful scrutiny.

28. After closure of the prosecution evidence, the statements of the accused persons were recorded under Section 313 of the Code of Criminal Procedure, wherein they denied the allegations and claimed false implication. No evidence was adduced on behalf of the defence.

29. Thus, the entire case of the prosecution rests upon the testimony of police witnesses and the documents prepared during investigation, without any independent corroboration with respect to the alleged recovery, search and subsequent handling of the seized contraband.

30. Learned counsel for the appellant has assailed the impugned judgment on the ground that the prosecution has failed to establish its case beyond reasonable doubt and that the conviction recorded by the learned Trial Court suffers

from serious legal and factual infirmities.

31. It has been contended that the prosecution has failed to examine the seizure list witnesses, namely the chowkidars who were allegedly present at the place of occurrence, and no plausible explanation has been furnished for their non-examination. It is submitted that such omission creates serious doubt with regard to the alleged recovery.

32. Learned counsel has further submitted that there is complete non-compliance of the mandatory provisions of Section 42 of the NDPS Act, inasmuch as neither in the FIR nor in the evidence of the prosecution witnesses, including the informant, is there any material to show that information was reduced into writing or communicated to the superior officer. In support of this contention, reliance has been placed upon the decisions in ***Karnail Singh vs. State of Haryana***, reported in ***(2009) 8 SCC 539*** and ***State of Rajasthan vs. Jag Raj Singh @ Hansa***, reported in ***(2016) 11 SCC 687*** to contend that compliance of Section 42 is mandatory and failure thereof vitiates the prosecution case.

33. In paragraph 35 of the judgement delivered in the case of ***Karnail Singh (supra)***, the Hon'ble Supreme Court held as hereunder:

*"**35.** In conclusion, what is to be noticed is that Abdul Rashid [(2000) 2 SCC 513 : 2000 SCC (Cri) 496] did not require literal compliance with the requirements of Sections 42(1) and 42(2) nor did Sajan Abraham [(2001) 6 SCC 692 : 2001 SCC (Cri) 1217] hold that the requirements of Sections 42(1) and 42(2) need not be fulfilled at all. The effect of the two decisions was as follows:*

(a) The officer on receiving the information [of the nature referred to in sub-section (1) of Section 42] from any person had to record it in writing in the register concerned and forthwith send a copy to his immediate official superior, before proceeding to take action in terms of clauses (a) to (d) of Section 42(1).

(b) But if the information was received when the officer was not in the police station, but while he was on the move either on patrol duty or otherwise, either by mobile phone, or other means, and the information calls for immediate action and any delay would have resulted in the goods or evidence being removed or destroyed, it would not be feasible or practical to take down in writing the information given to him, in such a

situation, he could take action as per clauses (a) to (d) of Section 42(1) and thereafter, as soon as it is practical, record the information in writing and forthwith inform the same to the official superior.

(c) In other words, the compliance with the requirements of Sections 42(1) and 42(2) in regard to writing down the information received and sending a copy thereof to the superior officer, should normally precede the entry, search and seizure by the officer. But in special circumstances involving emergent situations, the recording of the information in writing and sending a copy thereof to the official superior may get postponed by a reasonable period, that is, after the search, entry and seizure. The question is one of urgency and expediency.

(d) While total non-compliance with requirements of sub-sections (1) and (2) of Section 42 is impermissible, delayed compliance with satisfactory explanation about the delay will be acceptable compliance with Section 42. To illustrate, if any delay may result in the

accused escaping or the goods or evidence being destroyed or removed, not recording in writing the information received, before initiating action, or non-sending of a copy of such information to the official superior forthwith, may not be treated as violation of Section 42. But if the information was received when the police officer was in the police station with sufficient time to take action, and if the police officer fails to record in writing the information received, or fails to send a copy thereof, to the official superior, then it will be a suspicious circumstance being a clear violation of Section 42 of the Act. Similarly, where the police officer does not record the information at all, and does not inform the official superior at all, then also it will be a clear violation of Section 42 of the Act. Whether there is adequate or substantial compliance with Section 42 or not is a question of fact to be decided in each case. The above position got strengthened with the amendment to Section 42 by Act 9 of 2001."

34. In ***Jag Raj Singh @ Hansa (supra***), the Hon'ble Supreme Court in paragraph no. 28 and 29, observed as hereunder:

28. *It is also relevant to note another Constitution Bench judgment of this Court in Karnail Singh v. State of Haryana [Karnail Singh v. State of Haryana, (2009) 8 SCC 539 : (2009) 3 SCC (Cri) 887] wherein this Court had again occasion to consider the provisions of Sections 42 and 50. The Constitution Bench noted the divergence of opinion in two earlier cases which has resulted in placing the matter before the larger Bench. The question was noticed in paras 1 to 3 of the judgment which are to the following effect : (SCC p. 543)*

"1. In Abdul Rashid Ibrahim Mansuri v. State of Gujarat [Abdul Rashid Ibrahim Mansuri v. State of Gujarat, (2000) 2 SCC 513 : 2000 SCC (Cri) 496] , a three-Judge Bench of this Court held that compliance with Section 42 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as "the NDPS Act") is mandatory and failure to take down the information in writing and forthwith send a report to his immediate official superior would cause prejudice to the accused. In Sajan Abraham v. State of Kerala [Sajan Abraham v. State of Kerala, (2001) 6 SCC 692 : 2001 SCC

(Cri) 1217] , which was also decided by a three-Judge Bench, it was held that Section 42 was not mandatory and substantial compliance was sufficient.

2. In view of the conflicting opinions regarding the scope and applicability of Section 42 of the Act in the matter of conducting search, seizure and arrest without warrant or authorisation, these appeals were placed before the Constitution Bench to resolve the issue.

3. The Statement of Objects and Reasons of the NDPS Act makes it clear that to make the scheme of penalties sufficiently deterrent to meet the challenge of well-organised gangs of smugglers, and to provide the officers of a number of important Central enforcement agencies like Narcotics, Customs, Central Excise, etc. with the power of investigation of offences with regard to new drugs of addiction which have come to be known as psychotropic substances posing serious problems to national Governments, this comprehensive law was enacted by Parliament enabling exercise of control over.…"

> *29. After referring to the earlier judgments, the Constitution Bench came to the conclusion that non-compliance with requirement of Sections 42 and 50 is impermissible whereas delayed compliance with satisfactory explanation will be acceptable compliance with Section 42. The Constitution Bench noted the effect of the aforesaid two decisions in para 5. The present is not a case where insofar as compliance with Section 42(1) proviso even an argument based on substantial compliance is raised there is total non-compliance with Section 42(1) proviso. As observed above, Section 43 being not attracted, search was to be conducted after complying with the provisions of Section 42. We thus, conclude that the High Court has rightly held that non-compliance with Section 42(1) and Section 42(2) were proved on the record and the High Court has not committed any error in setting aside the conviction order.*

35. It has next been contended that the prosecution has failed to follow the prescribed procedure with regard to sampling and seizure, as neither the samples were drawn at the place of occurrence nor before a Gazetted Officer or

Magistrate. It is submitted that the samples were not drawn in presence of the appellant and the entire procedure is doubtful.

36. Learned counsel has further submitted that the prosecution has failed to prepare any inventory in accordance with law, thereby violating the provisions of Section 52A of the NDPS Act.

37. It is also argued that the prosecution witnesses have given stereotyped and identical depositions, which appear to be in the nature of a copied version, thereby casting serious doubt on their credibility.

38. Learned counsel has further contended that the prosecution witnesses have not stated anything regarding sealing of the seized articles at the place of occurrence, nor have they stated about drawing of samples at the spot or compliance of statutory provisions.

39. It is submitted that even the informant (PW-4), who was the Station House Officer, has not stated anything regarding compliance of Sections 42, 52A, 55 and 57 of the NDPS Act, nor has he stated that the seized articles were kept under his seal or in safe custody as required under law.

40. Learned counsel has further drawn attention to

the evidence of the Investigating Officer (PW-6), who has admitted that the samples were not drawn at the place of occurrence and that he was not aware as to when and where the seized articles were sealed. It is submitted that the sample was drawn much later, i.e., on 15.10.2023, after considerable delay, which renders the prosecution case doubtful.

41. It has also been contended that the prosecution has failed to establish safe custody of the seized articles, inasmuch as neither the Malkhana register has been produced nor has the Malkhana in-charge been examined.

42. Learned counsel has further submitted that there are material contradictions in the evidence of the Investigating Officer with regard to the date of sampling and forwarding of the sample to the Forensic Science Laboratory, thereby creating doubt regarding the identity of the sample examined.

43. It is also contended that the prosecution has failed to examine the expert who prepared the FSL report, thereby causing serious prejudice to the defence.

44. Learned counsel has further submitted that the prosecution has failed to produce the seized contraband before the Court and the same has not been proved as material exhibit, which casts serious doubt on the alleged recovery. In

this regard, reliance has been placed on ***Vijay Jain vs. State of Madhya Pradesh*** to contend that non-production of seized contraband is fatal to the prosecution case.

45. It is further contended that the prosecution has failed to prove the allegation under Section 23 of the NDPS Act, as there is no evidence to establish that the accused persons had transported the contraband from Nepal. In support of this contention, reliance has been placed on ***Boota Singh vs. State of Haryana***, reported in ***(2021) 19 SCC 606***. In ***Boota Singh (supra)***, the Hon'ble Supreme Court in paragraph no. 14, 15, 16 and 17 observed as hereunder:

> *"14. The evidence in the present case clearly shows that the vehicle was not a public conveyance but was a vehicle belonging to accused Gurdeep Singh. The registration certificate of the vehicle, which has been placed on record also does not indicate it to be a public transport vehicle. The Explanation to Section 43 shows that a private vehicle would not come within the expression "public place" as explained in Section 43 of the NDPS Act. On the strength of the decision of this Court in Jagraj Singh [State of Rajasthan v. Jagraj Singh, (2016) 11 SCC*

687 : (2017) 1 SCC (Cri) 348] , the relevant provision would not be Section 43 of the NDPS Act but the case would come under Section 42 of the NDPS Act.

15. It is an admitted position that there was total non-compliance of the requirements of Section 42 of the NDPS Act.

16. The decision of this Court in Karnail Singh [Karnail Singh v. State of Haryana, (2009) 8 SCC 539 : (2009) 3 SCC (Cri) 887] as followed in Jagraj Singh [State of Rajasthan v. Jagraj Singh, (2016) 11 SCC 687 : (2017) 1 SCC (Cri) 348] , is absolutely clear. Total non-compliance of Section 42 is impermissible. The rigor of Section 42 may get lessened in situations dealt with in the conclusion drawn by this Court in Karnail Singh [Karnail Singh v. State of Haryana, (2009) 8 SCC 539 : (2009) 3 SCC (Cri) 887] but in no case, total non-compliance of Section 42 can be accepted.

17. In the circumstances, the courts below fell in error in rejecting the submissions advanced on behalf of the appellants. We, therefore, allow this appeal, set aside the view taken by the

High Court and acquit the appellants of the charge levelled against them. The appellants be released forthwith unless their custody is required in connection with any other offence."

46. Learned counsel has also placed reliance upon the decision of this Court in ***Vinod Das v. State of Bihar [(2024) 6 BLJ 360]*** and ***Pintu Bhagat v. State of Bihar [2016 (1) PLJR 771]*** to contend that non-compliance of mandatory provisions relating to seizure, custody and sampling renders the prosecution case unsustainable.

47. It has lastly been submitted that, in view of the aforesaid infirmities, the possibility of tampering with the seized articles cannot be ruled out, and the prosecution has failed to prove its case beyond reasonable doubt.

48. On the aforesaid grounds, it has been prayed that the appellant be acquitted of all the charges.

49. Learned counsel appearing on behalf of the State has supported the judgment of conviction and order of sentence passed by the learned Trial Court and has submitted that the prosecution has been able to prove its case beyond reasonable doubt on the basis of cogent and reliable evidence.

50. It has been contended that the evidence of the

prosecution witnesses, particularly the members of the raiding party and the informant, clearly establishes that the accused persons were apprehended at the spot after a chase and that contraband substance was recovered from the bags carried by them. It is submitted that the recovery of commercial quantity of charas from the possession of the accused persons stands duly proved.

51. Learned counsel for the State has further submitted that merely because all the witnesses examined are police personnel, their testimonies cannot be discarded, particularly when there is no material on record to show any enmity or motive for false implication. It is argued that the evidence of official witnesses is entitled to equal weight as that of any other witness, and if found reliable, can form the basis of conviction.

52. It has also been submitted that the prosecution has duly complied with the provisions of Section 50 of the NDPS Act, inasmuch as the accused persons were informed of their right and had consented to be searched in presence of the police party. It is contended that the notices issued under Section 50 and the consent of the accused have been duly proved during trial.

53. Learned counsel for the State has further argued that the alleged non-compliance of Section 42 of the NDPS Act is not attracted in the facts of the present case, as the recovery was effected during routine patrolling and vehicle checking, and not on the basis of any prior secret information. It is submitted that in such circumstances, strict compliance of Section 42 is not required.

54. With regard to the alleged lapses in sampling and seizure, it has been contended that the prosecution has proved that the seized contraband was duly sent for forensic examination and the report of the Forensic Science Laboratory confirms that the substance recovered was charas. It is submitted that minor irregularities, if any, in the procedure would not vitiate the trial when the recovery itself stands proved.

55. It has also been submitted that the absence of independent witnesses is not fatal to the prosecution case, particularly when the evidence of the police witnesses is consistent and trustworthy. It is argued that it is a matter of common experience that public persons are often reluctant to associate themselves with police proceedings.

56. Learned counsel for the State has further

contended that the learned Trial Court has properly appreciated the evidence on record and has rightly recorded a finding of guilt against the accused persons. It is submitted that no perversity or illegality has been pointed out in the impugned judgment warranting interference by this Court.

57. On the aforesaid grounds, it has been prayed that the appeal be dismissed and the conviction and sentence of the appellant be affirmed.

58. Having heard learned counsel appearing on behalf of the parties and upon consideration of the materials available on record, the following questions arise for determination in the present appeal:

(i) Whether the prosecution has been able to prove beyond reasonable doubt that the alleged contraband was recovered from conscious and exclusive possession of the appellant in the manner alleged?

(ii) Whether the prosecution has complied with the mandatory requirements of Sections 42, 52A, 55 and 57 of the NDPS Act in course of search, seizure, sampling and subsequent handling of the seized articles?

(iii) Whether the prosecution has been able to

establish a complete and reliable chain of custody with respect to the alleged seized contraband from the stage of seizure till forensic examination?

(iv) Whether non-examination of seizure witnesses, non-production of seized contraband before the Court and the contradictions appearing in the evidence of prosecution witnesses create reasonable doubt in the prosecution case?

(v) Whether the conviction and sentence recorded by the learned Trial Court can be sustained in the facts and circumstances of the present case?

59. Since the present case arises out of prosecution under the provisions of the NDPS Act involving alleged recovery of commercial quantity of charas, this Court is required to examine the evidence on record with greater degree of caution, particularly in view of the stringent punishment prescribed under the statute and the mandatory procedural safeguards incorporated therein.

60. The prosecution case rests entirely upon the testimony of official witnesses. Admittedly, no independent witness has been examined in the present case, although the prosecution itself asserts that several persons had assembled at the place of occurrence. The prosecution has sought to explain

such non-examination by stating that public persons declined to become witnesses. However, except such bald assertion, no material has been brought on record to show that any sincere effort was made to secure participation of independent persons.

61. It further appears from the record that even the chowkidars, namely Nawal Kishore Rai and Raushan Kumar Patel, who according to the prosecution were present during the alleged search and seizure, have not been examined during trial. No satisfactory explanation has been furnished regarding their non-examination. In a case resting solely upon police witnesses, non-examination of such material witnesses assumes significance and creates doubt regarding fairness of the alleged recovery proceedings.

62. One of the principal contentions advanced on behalf of the appellant relates to non-compliance of Section 42 of the NDPS Act. Upon careful examination of the FIR as well as the evidence of the prosecution witnesses, this Court finds that there is no material to indicate that any information was reduced into writing or communicated to superior officers before conducting the alleged search and seizure.

63. The informant (PW-4), who was himself the

Station House Officer, has nowhere stated in his evidence that any written information was prepared or transmitted to superior authorities. Similarly, none of the prosecution witnesses have stated regarding compliance of the statutory requirement contemplated under Section 42 of the NDPS Act.

64. In ***Karnail Singh (supra)*** the Constitution Bench of the Hon'ble Supreme Court held that total non-compliance of Section 42 is impermissible and delayed compliance may only be accepted where satisfactory explanation is furnished. Similar principles have also been noticed in ***State of Rajasthan vs. Jag Raj Singh @ Hansa, (supra).***

65. In the present case, there is complete absence of evidence regarding recording of information or communication thereof to superior officers. The prosecution has also failed to furnish any explanation for such omission. Consequently, this Court finds substance in the submission advanced on behalf of the appellant regarding non-compliance of Section 42 of the NDPS Act.

66. The evidence on record further reveals serious infirmities with regard to seizure, sampling and preservation of the alleged contraband. PW-1, PW-2 and PW-3, though

members of the raiding party, have not stated anything regarding sealing of the seized articles at the place of occurrence or drawing of samples at the spot. Their evidence is conspicuously silent regarding the manner in which the seized contraband was preserved after seizure.

67. The evidence of PW-6, the Investigating Officer, assumes considerable importance in this regard. In paragraph 40 of his evidence, he has admitted that samples were not drawn at the place of occurrence. In paragraph 42, he has stated that he was not aware as to when and where the seized articles were sealed. He has further stated that samples were drawn on 15.10.2023, i.e., more than three months after the alleged seizure dated 05.07.2023.

68. The prosecution has not been able to explain as to in whose custody the seized articles remained during the aforesaid intervening period. No Malkhana register has been produced. The Malkhana in-charge has also not been examined. There is no evidence regarding safe custody of the seized articles or maintenance of seal integrity during the relevant period.

69. The evidence of PW-6 further shows material contradictions regarding forwarding of samples to the

Forensic Science Laboratory. In one part of his deposition, he has referred to a forwarding letter dated 02.08.2023, whereas elsewhere he has stated that samples were drawn only on 15.10.2023. Such contradictions strike at the root of the prosecution case and render the chain of custody doubtful.

70. Another important aspect which cannot be ignored is that the prosecution has failed to prove preparation of inventory in accordance with Section 52A of the NDPS Act. There is no evidence to show that samples were drawn before a Magistrate or that any inventory was certified as required under law.

71. The Hon'ble Supreme Court as well as this Court, in the judgments relied upon by the appellant, have repeatedly emphasized the importance of strict compliance with procedural safeguards relating to seizure, custody and sampling of narcotic substances.

72. This Court also finds substance in the submission advanced regarding non-production of the seized contraband before the Court. The alleged seized article has not been produced and marked as material exhibit during trial. In ***Vijay Jain vs. State of Madhya Pradesh,*** reported in ***(2013) 14 SCC 527*** it has been held that failure to produce the seized

contraband before the Court creates serious doubt regarding the prosecution case. In paragraphs 9 and 10 of ***Vijay Jain (supra)***, the Hon'ble Supreme Court observed as hereunder:

> ***"9.*** *Para 96 of the judgment of this Court in Noor Aga case [(2008) 16 SCC 417 : (2010) 3 SCC (Cri) 748] on which the learned counsel for the State very strongly relies is quoted hereinbelow: (SCC p. 464)*
>
> *"96. Last but not the least, physical evidence relating to three samples taken from the bulk amount of heroin was also not produced. Even if it is accepted for the sake of argument that the bulk quantity was destroyed, the samples were essential to be produced and proved as primary evidence for the purpose of establishing the fact of recovery of heroin as envisaged under Section 52-A of the Act."*
>
> *Thus in para 96 of the judgment in Noor Aga case [(2008) 16 SCC 417 : (2010) 3 SCC (Cri) 748] this Court has held that the prosecution must in any case produce the samples even where the bulk quantity is said to have been destroyed. The observations of this Court in the aforesaid paragraph of the judgment do*

not say anything about the consequence of non-production of the contraband goods before the court in a prosecution under the NDPS Act.

10. On the other hand, on a reading of this Court's judgment in Jitendra case [Jitendra v. State of M.P., (2004) 10 SCC 562 : 2004 SCC (Cri) 2028] , we find that this Court has taken a view that in the trial for an offence under the NDPS Act, it was necessary for the prosecution to establish by cogent evidence that the alleged quantities of the contraband goods were seized from the possession of the accused and the best evidence to prove this fact is to produce during the trial, the seized materials as material objects and where the contraband materials alleged to have been seized are not produced and there is no explanation for the failure to produce the contraband materials by the prosecution, mere oral evidence that the materials were seized from the accused would not be sufficient to make out an offence under the NDPS Act particularly when the panch witnesses have turned hostile. Again, in Ashok [Ashok v. State of M.P., (2011) 5 SCC 123 : (2011) 2 SCC (Cri) 547] this Court found that the

alleged narcotic powder seized from the possession of the accused was not produced before the trial court as material exhibit and there was no explanation for its non-production and this Court held that there was therefore no evidence to connect the forensic report with the substance that was seized from the possession of the appellant."

73. The prosecution has also failed to establish the allegation under Section 23 of the NDPS Act. Though the prosecution story alleges that the accused persons had brought the contraband from Nepal, no evidence whatsoever has been adduced to substantiate such allegation. PW-6 himself has admitted in his evidence that he had not verified whether the accused persons had come from Nepal to India. Thus, the allegation relating to cross-border transportation remains wholly unsubstantiated.

74. This Court further notices that the depositions of PW-1, PW-2 and PW-3 are substantially identical in nature. Their evidence appears stereotyped and lacking in material particulars relating to seizure, sealing and sampling. Such mechanical reproduction of evidence, particularly in a prosecution under the NDPS Act, requires cautious scrutiny.

75. The cumulative effect of the aforesaid infirmities creates serious doubt regarding the fairness and authenticity of the prosecution case. The possibility of tampering with the seized articles cannot be ruled out in absence of evidence regarding sealing, safe custody and proper chain of possession.

76. It is a settled principle of criminal jurisprudence that where serious doubt arises regarding compliance of mandatory safeguards and integrity of seized contraband, the accused is entitled to benefit of doubt.

77. In the considered opinion of this Court, the learned Trial Court failed to properly appreciate these material inconsistencies and statutory lapses and proceeded to record conviction without adequately scrutinizing whether the prosecution had established foundational facts beyond reasonable doubt.

78. Upon overall appreciation of the evidence available on record, this Court finds that the prosecution has failed to establish compliance of the mandatory statutory safeguards prescribed under the NDPS Act.

79. The evidence adduced by the prosecution does not satisfactorily establish compliance of Section 42 of the

NDPS Act. Neither the FIR nor the evidence of the informant and other prosecution witnesses disclose that any information was reduced into writing or communicated to superior authorities prior to the alleged search and seizure. In absence of any explanation regarding such omission, the prosecution case stands seriously affected.

80. This Court further finds that the prosecution has also failed to establish proper compliance of the provisions relating to seizure, sampling and preservation of the seized contraband. The evidence of prosecution witnesses is silent regarding sealing of the seized articles at the place of occurrence and the Investigating Officer himself has admitted that the samples were not drawn at the place of occurrence.

81. The admitted position that the samples were allegedly drawn on 15.10.2023, i.e., after more than three months from the date of seizure, assumes great significance, particularly when the prosecution has failed to prove where and in whose custody the seized articles remained during the intervening period.

82. The prosecution has neither produced the Malkhana register nor examined the Malkhana in-charge. There is also no evidence regarding maintenance of seal

integrity during the period between seizure and sampling. Consequently, the prosecution has failed to establish a complete and reliable chain of custody of the alleged contraband.

83. This Court also finds that the prosecution has failed to prove preparation of inventory in accordance with Section 52A of the NDPS Act. No evidence has been brought on record to show that the procedure contemplated under law was followed while drawing samples or preserving the seized articles.

84. Another important circumstance which creates doubt regarding the prosecution case is non-production of the seized contraband before the Court. The alleged seized articles were never produced and marked as material exhibits during trial.

85. The evidence of the prosecution witnesses, particularly PW-1, PW-2 and PW-3, appears stereotyped in nature and lacks material particulars regarding sealing, sampling and preservation of the seized articles. The non-examination of seizure witnesses and independent witnesses further weakens the prosecution case.

86. The prosecution has also failed to establish the

allegation under Section 23 of the NDPS Act regarding transportation of contraband from Nepal, inasmuch as no evidence whatsoever has been adduced in support thereof.

87. It is well settled that in prosecutions under the NDPS Act, strict compliance of statutory safeguards is of utmost importance, particularly in view of the stringent punishment prescribed under the statute. Where serious doubt arises regarding seizure, custody and identity of the seized contraband, the accused is entitled to benefit of doubt.

88. In the facts and circumstances of the present case, the cumulative effect of the aforesaid infirmities creates serious doubt regarding the authenticity of the alleged recovery and the integrity of the seized contraband.

89. Consequently, this Court is of the considered opinion that the prosecution has failed to prove its case against the appellant beyond reasonable doubt and the appellant is entitled to benefit of doubt.

90. Accordingly, the present appeal is allowed.

91. The judgment of conviction, dated 14.05.2025 and the order of sentence, dated 19.05.2025, passed by the learned Exclusive Special Judge, NDPS Court No. II, East

Champaran, Motihari in NDPS Case No. 10 of 2024, arising out of Ramgarhwa P.S. Case No. 277 of 2023, so far as it relates to the present appellant Sheikh Amirullah, are hereby set aside.

92. The appellant is acquitted of the charges levelled against him by extending benefit of doubt.

93. The appellant is directed to be released forthwith, if not required in connection with any other case.

94. Let the lower court records be transmitted back to the court concerned forthwith along with a copy of this judgment.

95. Interlocutory application(s), if any, shall stand disposed of.

96. Before parting with the records, this Court deems it appropriate to observe that cases arising under the NDPS Act require strict adherence to the statutory safeguards prescribed under the Act. The investigating agency is expected to ensure scrupulous compliance of the mandatory procedural requirements relating to search, seizure, sampling and preservation of seized narcotic substances so as to maintain the sanctity and credibility of the prosecution case.

97. The appeal stands disposed of, accordingly.

(Bibek Chaudhuri, J)

Dr. Anshuman, J: I agree.

(Dr. Anshuman, J)

skm/-

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