

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1093 of 2023**

Arising Out of PS. Case No.-116 Year-2019 Thana- MOHAMMADPUR District- Gopalganj

1. Amit Kumar @ Amit Kumar Singh @ Amit, Son of Rajveer Singh, Resident of Village -Jauli, P.S.- Gohana, District- Sonipat (Haryana)
2. Vikash Kumar, Son of Aryaveer Singh, Resident of Village- Basaudi, PS-Rai, Distt- Sonipat, (Haryana)

... .. Appellants

Versus

The State of Bihar

... .. Respondent

Appearance :

For the Appellant/s : Mr. Arvind Kumar, Advocate

For the Respondent/s : Mr. Abhimanyu Sharma, Addl.PP

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

and

HONOURABLE MR. JUSTICE ASHOK KUMAR PANDEY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 14-07-2025

Heard learned counsel for the appellants and learned Additional Public Prosecutor for the State.

2. This appeal has been preferred for setting aside the judgment of conviction dated 09.08.2023 (hereinafter referred to as the ‘impugned judgment’) and the order of sentence dated 28.08.2023 (hereinafter referred to as the ‘impugned order’) passed by learned 1st Additional Sessions Judge-cum-Special Judge, NDPS Act, Gopalganj (hereinafter referred to as the ‘learned trial court’) in Sessions Trial No. 15 of 2019 arising out of Mohammadpur P.S. Case No. 116 of 2019. By the impugned judgment of conviction, the appellants have been convicted under



Section 20(b)(ii)(C) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'NDPS Act') and by the impugned order, they have been ordered to undergo rigorous imprisonment for twelve years with a fine of Rs.1,20,000/- under Section 20(b)(ii)(C) of the NDPS Act and in default of payment of fine, they have to further undergo one year imprisonment.

Prosecution Case

3. The prosecution case is based on the self-statement of S.I. Mithilesh Kumar Pandey (PW-7), S.H.O. Mohammadpur Police Station recorded by himself on 04.07.2019. In his written application (Exhibit '3'), the informant has stated that on 04.07.2019 at 15:30 Hrs, he got secret information that a smuggler is bringing *ganja* in a container from Motihari side. After registering *sanha*, the Senior Officer was informed and as per his instructions, a raiding team was formed in which informant was also a member. The informant along with raiding team reached near Sudama Singh's hotel at 15:45 Hrs and started checking the vehicles. During checking, a container coming from Dumariyaghat (Motihari) was asked to stop but the driver and the co-driver stopped the vehicle, got down from the vehicle and started running away. They were caught with the help of the police force. At the same time, the Circle Officer, Sidhwaliyan reached there. Few nearby people also gathered there and amongst them two persons namely (i) Sudama Singh (not examined) and (ii)



Satyendra Manjhi (PW-9) were made independent witnesses. Name of the driver and the co-driver in the presence of two independent witnesses was asked on which the driver told his name as Vikash Kumar (appellant no. 2) and the co-driver told his name as Amit Kumar (appellant no. 1). Thereafter, following the rules of search, the arrested persons and the container were searched in front of independent witnesses and the Circle Officer. During search, Rs. 25,000/- and a mobile were recovered from the pocket of driver Vikash Kumar and a mobile was recovered from the pocket of co-driver Amit Kumar. A total of nineteen bundles packed in plastic were recovered from the box made in the cabin of container bearing no. AS09AC-6571. The bundles were opened in which *ganja* like material was found. Each bundle was weighed and marked as Exhibits 'H-1' to 'H-19', in which a total of 178.160 kg of *ganja* was recovered. Along with this, 900 packs of palm oil of fifteen each were recovered from the seized container. On asking about the documents of the recovered goods, the driver and co-driver could not produce any document. Driver Vikash Kumar told that the above recovered *ganja* belonged to Raju @ Subodh Kumar Mishra of Bettiah and had loaded the said container in Birganj. Thereafter, samples were taken out from the recovered *ganja* and it was sealed. A seizure list of all the recovered items was prepared in front of independent witnesses, Circle Officer and the arrested accused. The



informant, Circle Officer and independent witnesses signed the seizure list and one copy of the seizure list was given to each accused. Accordingly, an FIR was registered against the arrested persons under the NDPS Act.

4. On the basis of above written application of the informant, Mohammadpur P.S. Case No. 116 of 2019 dated 04.07.2019 was registered against the appellants under Section 414/34 of the Indian Penal Code (in short 'IPC') and Section 20(b)(ii)(C), 22(c), 23(c), 29(i) of the NDPS Act.

5. After investigation, police submitted charge sheet bearing Chargesheet No. 95 of 2019 dated 30.09.2019 against the appellants under Section 414/34 IPC and Section 20(b)(ii)(C), 22(c), 23(c), 29(i) of the NDPS Act. Thereafter, vide order dated 21.11.2019, learned trial court took cognizance of the offences.

6. The charges were read over to the accused-appellants in Hindi to which they denied and claimed to be tried, accordingly, vide order dated 03.12.2019, charges were framed against the appellants for the offences under Section 414/34 IPC and Sections 20(b)(ii), 22(c), 22(c) of the NDPS Act.

7. In course of trial, the prosecution examined nine witnesses and exhibited several documentary evidences. The description of the prosecution witnesses and the documents are given hereunder in tabular form:-



List of Prosecution witnesses

PW-1	Rajesh Kumar
PW-2	Sanjay Kumar Singh
PW-3	Jitendra Kumar
PW-4	Rampravesh Prasad
PW-5	Awadhesh Kumar
PW-6	Umesh Narayan Parvat
PW-7	Mithilesh Kumar Pandey
PW-8	Manoj Kumar Singh
PW-9	Satyendra Manjhi

List of Exhibits on behalf of the Prosecution

Exhibit '1'	FSL forwarding letter
Exhibit '2'	Signature of Umesh Narayan Parbat and C.O. on seizure list
Exhibit '2/1'	Seizure list
Exhibit '3'	Fardbeyan
Exhibit '4'	Formal FIR
Exhibit '5'	Malkhana Register
Exhibit '6'	FSL Report
Material Exhibits	
Exhibits 'M' to 'M/18'	19 sealed packets of <i>ganja</i> weighing 178.160 kg

8. Thereafter, the statements of the accused/appellants were recorded under Section 313 of the CrPC. The accused took a plea that they are innocent and have been falsely implicated in this case.

Findings of the Learned Trial Court

9. Learned trial court after analysing the entire evidence available on the record found that on 04.07.2019 at 15:30 Hours *ganja* was recovered from the box made inside the container which



was driver by Vikash Kumar and Amit Kumar and they have no valid licence as also the FSL report proves that the seized article was *ganja*.

10 Learned trial court has found that the prosecution has successfully proved that *ganja* was recovered from the box inside Container No. AS09AC-6571 of which Vikash Kumar and Amit Kumar were driver and co-driver respectively. Learned trial court found that the prosecution has also proved that the recovered *ganja* was of commercial quantity.

11. Learned trial court after considering all the facts and circumstances of the case found that the prosecution has been able to prove charges under Section 20(b(ii)(C) of the NDPS Act beyond all reasonable doubts and accordingly, convicted them for the charges under Section 20(b(ii)(C) of the NDPS Act.

Submissions on behalf of the Appellants

12. Learned counsel for the appellants assailed the impugned judgment by submitting that in this case established procedure for making search, seizure and sampling has not been followed.

13. Learned counsel submits that Sudama Singh is one of the witnesses of the seizure list, the place of seizure is said to be near his hotel but he has not been examined by the prosecution in



course of trial. Learned counsel submits that the Circle Officer (PW-6) has stated in his deposition that he signed on the seizure list but has not said that the samples were taken in his presence. PW-4, one of the members of the raiding party, has stated in his deposition that Circle Officer came after preparation of the seizure list.

14. Learned counsel submits that while PW-7 has stated that he had seized 19 bundles packed in white colour plastic, PW-6 states that the seized articles were found tied with clothes. Thus, the description of the seized article provided by PW-6 and PW-7 do not match.

15. Learned counsel submits that from the evidence of PW-5, it is clear that the statement of the Circle Officer (PW-6) that 19 bundles were tied with clothes and those were sealed in 19 cloth bags are not supported by PW-5, though he has stated about taking over the charge of the seized *ganja* but has not stated that he had also taken over the charge of the samples which the informant (PW-7) claimed to have prepared at the spot. Learned counsel submits that about the sealed *ganja* also, PW-5 had not found signature of the seizure list witnesses and the signature of the accused persons.



16. Learned counsel submits that the prosecution witnesses materially differ in their versions with regard to the description of the seized article, preparation of the seizure list and sealing of the seized articles as also the sampling of the same. Learned counsel submits that the prosecution has failed to prove and establish the reasons and delay in sending the samples. Accordingly, the impugned judgment of conviction and order of sentence are bad in the eye of law which are fit to be set aside.

Submissions on behalf of the State

17. On the other hand, learned Additional Public Prosecutor for the State has defended the impugned judgment and order by submitting that the prosecution witnesses have consistently supported the factum of seizure of *ganja* like substance from the vehicle and on the seizure list the Circle Officer (PW-6) put his signature which has been marked as Exhibit '2'. This witness has also supported the factum of sampling at the place of occurrence and this witness further deposed about putting his signature on the 19 sealed bundles, therefore, it is clearly established that on the date of occurrence, *ganja* was seized from the possession of the appellants.

18. Learned Additional Public Prosecutor for the State has submitted that the learned trial court after proper



appreciation of the evidences available on the record rightly held the accused persons guilty of the charges levelled against them. The impugned judgment and order do not require any interference by this Court.

Consideration

19. Having heard learned counsel for the appellants and learned Additional Public Prosecutor for the State as also on perusal of the trial court's record, it appears as per the prosecution case that Mithilesh Kumar Pandey (PW-7), who is the informant of this case, was the Officer Incharge of Mohammadpur Police Station on 04.07.2019 and on receiving information over telephone, he had constituted a raiding team. PW-7 intercepted a container which was coming from the side of Dumariyaghat Pool (Motihari). According to him, he had arrested the appellants who were trying to flee away, in the meantime, the Circle Officer (PW-6) had also arrived at the place of occurrence and some local persons had assembled. He had seized 19 packets of white colour which were in plastic and on opening, those were found *ganja* like substance. He seized the 19 bundles and according to his deposition, he had sealed the bundles and also prepared samples from each of the bundles. He has stated in his deposition that at the place of occurrence, he had sealed the 19 bundles which were



seized and had obtained signature of the Circle Officer, the witnesses, the driver and the co-driver on the same. In his cross-examination, he has stated that he had received secret information but from which mobile number he had received the information is not in his memory. He did not remember the *sanha* number. PW-7 has stated that Sudama Singh Hotel is near the place of occurrence and Sudama Singh is one of the witnesses of the seizure list. This Court, however, finds that Sudama Singh has not been examined by the prosecution in course of trial. PW-7 has stated that he had taken the *ganja* to the *Malkhana* where it was kept at 20:45 hours.

20. On going through the evidence of the Circle Officer (PW-6), it is found that at about 03:30 PM, he received information from the Officer Incharge of Mohammadpur Police Station about the information with regard to the arrival of some narcotics from the side of Dumariya. He has stated that when he reached near Sudama Singh Hotel, he found that police team had already arrived there and they had stopped the container, they had caught hold of the driver and the co-driver. It is, thus, evident from the deposition of PW-6 that he reached at the place of occurrence i.e. near the Sudama Singh Hotel after the driver and co-driver were already apprehended and the container was intercepted.



21. PW-6 has stated that in course of search in the cabin of the vehicle, 19 bundles tied with clothes were found. On opening of the same, the substance which was found in the '*puriyas*' was ganja like substance. As regards the description of the seized article, this Court finds that while PW-7 has stated that he had seized 19 bundles packed in white colour plastic, PW-6 states that the seized articles were found tied with clothes and there were '*puriyas*' in the bundles. Thus, the description of the seized article provided by PW-6 and PW-7 do not match.

22. This Court further finds that according to PW-6, seizure list was prepared from 05:00 PM to 07:30 PM. In this regard, PW-7 has stated that the seizure list was prepared from 16:45 hours but he cannot say that till what time, it continued. In paragraph '19' of his deposition, the Circle Officer (PW-6) has stated that the *ganja* was not sealed by him, police had sealed the *ganja* in his presence and the *ganja* was sealed in a cloth bag. In 19 cloth bags, *ganja* was sealed, on the sealed bundles, his signature was taken but this witness has clearly stated that the signature of the witnesses and the signature of the accused were not taken on the sealed articles. This Court, therefore, finds that while PW-7 claimed in his evidence that he had obtained the signature of the witnesses, the driver and the co-driver on the



sealed bundles, on this point also, the Circle Officer (PW-6) has not supported his version.

23. On going through the evidence of the I.O. (PW-5), it is noticed that he claims his presence at the place of occurrence when the seizure was made. He has stated that he was present near the Sudama Singh Shop. He has, however, not given the description of the seized articles in his deposition. He had not signed on the seizure list. PW-5 has stated that in course of investigation, at the time of taking charge of the investigation, he had taken possession of the FIR and the seizure list, thereafter he had taken charge of the seized *ganja*, vehicle, mobile and money but he had not mentioned in the case diary that he had taken the charge of *ganja*. PW-5 has stated that *ganja* was kept in a godown of the police station but he had not recorded that when the *ganja* was kept in Thawe godown and at what time, the same was kept there. He could not say the register number of the godown and the same has not been mentioned in the case diary. It is important to note that in paragraph '16' of his deposition, PW-5 has stated that he had not sealed the *ganja* but he had seen the seal on which there was signature of the Anchala Adhikari (PW-6) and Mithilesh, Officer Incharge (PW-7). According to him, the sealed *ganja* was in a plastic *panni* which was of white colour. From the evidence of



PW-5, therefore, it is clear that the statement of the Circle Officer (PW-6) that 19 bundles were tied with clothes and those were sealed in 19 cloth bags are not supported by PW-5. He has stated about taking over the charge of the seized *ganja* but has not stated that he had also taken over the charge of the samples which the informant (PW-7) claimed to have prepared on the spot. On the sealed *ganja* also, PW-5 had not found signature of the seizure list witnesses and the signature of the accused persons.

24. At this stage, this Court finds that PW-1, PW-2, PW-3 and PW-4 are either the Sub-Inspector of Police (Probation or Sepoys) who were members of the raiding party. PW-1 has stated that in this presence, the 19 bundles kept in white colour polythenes were seized. In paragraph '12' of his deposition, he has stated that for examination, samples were taken out from the 19 bundles and the remaining *ganja* were sealed. PW-1 has not stated that the signature of the accused and the witnesses were obtained on the samples or on the sealed *ganja*. He has stated that he has stated in paragraph '27' that for examination, samples were prepared in two '*dibbas*' which were sealed. This witness has stated that on the samples, the signature of the witnesses and accused were taken but he has not stated that the signature of PW-7 and the Circle Officer (PW-6) were also taken on the sealed



'*dabba*'. While PW-6 has stated about the preparation of samples from 19 bags, PW-1 has stated about the preparation of only two samples.

25. PW-2 has stated that 19 bundles of *ganja* were seized but he cannot give the description of the bundles. He had taken the seized bundles on truck to the police station but in the police station, what kind of documents were made cannot be said. PW-2 has not stated about the preparation of samples in presence of the witnesses and the accused. He has not stated that on the samples, signature of the accused were taken.

26. Jitendra Kumar (PW-3), who is another Sepoy, was also a member of the raiding party. He has stated that the *ganja* was weighed in his presence and two samples were taken out in his presence which were sealed. He has stated about taking signature of the Circle Officer, seizure list witnesses and the accused on the seizure list but has not stated that the signature of the seizure list witnesses and the accused were taken on the sealed articles. He has stated that after weighing, the *ganja* was kept in a '*bora*' (jute bag) in the godown of the police station but nothing was written on the said '*bora*' and he cannot say that by which thing the '*bora*' was sealed.



27. Ram Parvesh Prasad (PW-4) is the another witness who has stated that at the place of occurrence, three papers were prepared. He remembered that the seizure list was prepared but he did not remember that what other papers were prepared. The seizure list was in three pages. This witness has stated in paragraph '20' of his deposition that after the seizure list had been prepared, CO Sahab reached there, he immediately amended his statement and said that CO reached earlier. As regards the sampling of *ganja*, this witness has stated that he had seen the seized *ganja* kept in 'dabba' and on the said sample, the signature of Bada Babu and CO Sahab were present. In paragraph '27', he has stated that the *ganja* was kept in a room in police station and it was spread in the room.

28. From the close scrutiny of the evidence of the prosecution witnesses, this Court finds that the prosecution witnesses materially differ in their version with regard to the description of the seized article, preparation of the seizure list, sealing of the seized articles, sampling of the same and custody of the *ganja*.

29. This Court has perused the trial court's records and finds that after seizure of the articles, the I.O. sent the First Information Report, seizure list, arrest memo, checklist and



forwarding memo to the learned Special Judge on 05.07.2019. The order dated 05.07.2019 would not show that the seized articles were produced before the court for certification of inventory. The I.O. neither produced the samples which were said to have been prepared at the place of occurrence nor sought certification of the samples by the court.

30. The ordersheet further discloses that on 10.07.2019, one application was filed in the court in which permission was sought to send the sample of *ganja* to the Forensic Science Laboratory, Kolkata. The learned court ordered for sending the sample but even in this order of the said court, there is no talk of certification of inventory, production of the seized *ganja* and in fact, no inventory of the seized *ganja* was ever produced in the court.

31. It is also evident from the entire materials on the record that the sampling was not done in presence of a Magistrate and even though the samples were prepared as claimed by PW-7 on the spot, the witnesses are at material variance with regard to the manner and number of samples prepared on the spot. Most of the witnesses have stated that the signature of the seizure list witnesses and the accused were not obtained on the sealed bags and the samples.



32. As regards seizure of the *ganja*, the only seizure list witness who deposed is Satyendra Manjhi (PW-9). He has stated that seizure list was prepared in his presence and he had put his thumb impression but in cross-examination, PW-9 has stated that *ganja* was not seized in his presence, he is an illiterate person and he had put his thumb impression on asking of *Darogaji*. The hotel owner Sudama Singh has not been examined in course of trial.

33. At this stage, this Court reproduces Section 52A of the NDPS Act as under:-

“¹[52A. Disposal of seized narcotic drugs and psychotropic substances.—²(1) The Central Government may, having regard to the hazardous nature, vulnerability to theft, substitution, constraint of proper storage space or any other relevant consideration, in respect of any narcotic drugs, psychotropic substances, controlled substances or conveyances, by notification in the Official Gazette, specify such narcotic drugs, psychotropic substances, controlled substances or conveyance or class of narcotic drugs, class of psychotropic substances, class of controlled substances or conveyances, which shall, as soon as may be after their seizure, be disposed of by such officer and in such manner as that Government may, from time to time, determine after following the procedure hereinafter specified.]

(2) Where any ³[narcotic drugs, psychotropic substances, controlled substances or conveyances] has been seized and forwarded to the officer-in-charge of the nearest police station or to the officer empowered under Section 53, the officer referred to in sub-section (1) shall prepare an inventory of such ⁴[narcotic drugs, psychotropic substances, controlled substances or conveyances] containing such details relating to their

1. Ins. by Act 2 of 1989, s. 14 (w.e.f. 29-5-1989).

2. Subs. by Act 16 of 2014, s. 17, for sub-section (1) (w.e.f. 1-5-2014).

3. Subs. by Act 16 of 2014, s.17, for “narcotic drug and psychotropic substance” (w.e.f. 1-5-2014).

4. Subs. by Act 16 of 2014, s. 17, for “narcotic drug and psychotropic substances” (w.e.f. 1-5-2014)



description, quality, quantity, mode of packing, marks, numbers or such other identifying particulars of the ⁴[narcotic drugs, psychotropic substances, controlled substances or conveyances] or the packing in which they are packed, country of origin and other particulars as the officer referred to in sub-section (1) may consider relevant to the identity of the ⁴[narcotic drugs, psychotropic substances, controlled substances or conveyances] in any proceedings under this Act and make an application, to any Magistrate for the purpose of—

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

(b) taking, in the presence of such Magistrate, photographs of ⁵[such drugs, substances or conveyances] and certifying such photographs as true; or

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

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

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

34. The aforesaid provision of the NDPS Act has come up for consideration recently before the Hon’ble Supreme Court in the case of **Bharat Aambale versus State of Chhattisgarh** reported in **2025 SCC OnLine SC 110**, the Hon’ble Supreme Court having reviewed the entire case laws on the subject summarised the law on the subject in the following words:-

4. Subs. by Act 16 of 2014, s. 17, for “narcotic drug and psychotropic substances” (w.e.f. 1-5-2014)

5. Subs. by Act 16 of 2014, s. 17, for “such drugs or substances” (w.e.f. 1-5-2014).



“50. We summarize our final conclusion as under:—

(I) Although Section 52A 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 presence of a gazetted officer would not constitute sufficient compliance of the mandate under Section 52A sub-section (2) of the NDPS Act.

(II) 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* (supra), 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.

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

(IV) The procedure prescribed by the Standing Order(s)/Rules in terms of Section 52A 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.

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

(VI) 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 52A of the NDPS Act.

(VII) 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.

(VIII) Where there has been lapse on the part of the police in either following the procedure laid down in Section 52A 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.

(IX) The initial burden will lie on the accused to first lay the foundational facts to show that there was non-compliance of Section 52A, 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.

(X) Once the foundational facts laid indicate non-compliance of Section 52A 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 52A 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.”

35. In yet another recent judgment in the case of **Surepally Srinivas versus The State of Andhra Pradesh (Now State of Telangana)** reported in **2025 SCC OnLine SC 683**, the Hon’ble Supreme Court has once again allowed the appeal after holding that there has been clearly non-compliance with the provision contained under Section 52A of the NDPS Act. The Hon’ble Apex Court has refused to accept the plea of the prosecution that even though the seized contraband was not properly sealed and there may not have been strict compliance of the Standing Order No. 1/89, the prosecution case would succeed. The Hon’ble Supreme Court found in the said case that the seized contraband was not properly sealed and the seized contraband was not produced before the trial court for about 15 days. The Hon’ble



Apex Court was of the view that the possibility of tampering during this 15 days' period cannot be totally ruled out. It has been held that there has been no substantial compliance of the standing order.

36. When we apply the facts of the present case, it is found that in the present case also, the prosecution has not substantially complied with the mandate of Section 52A of the NDPS Act. Sub-Section (4) of Section 52A provides that the inventory, the photographs of narcotic drugs, psychotropic substances, controlled substances or conveyances and any list of samples drawn under Sub-Section (2) certified by the Magistrate shall be primary evidence in respect of such offence. In this case, there is neither the inventory, the photographs, nor the list of samples certified by the Magistrate. The most important seizure list witness Sudama Singh who could have proved the place of seizure and the preparation of seizure list has not been examined by the prosecution for no plausible reason. We have already pointed out the vital discrepancies/ differences in the deposition of the prosecution witnesses, therefore, to this Court, there is no iota of doubt that the prosecution has failed to place on record the primary evidences.



37. In the opinion of this Court, the learned trial court has not been able to properly appreciate the evidences on the record keeping in view the law on the subject. We, therefore, set aside the impugned judgment and order of the trial court.

38. The appellants are acquitted of the charges under Section 20(b)(ii)(C) of the NDPS Act giving them benefit of doubt. They are said to be in jail, they shall be released forthwith, if not wanted in any other case.

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

(Rajeev Ranjan Prasad, J)

(Ashok Kumar Pandey, J)

SUSHMA2/-

AFR/NAFR	
CAV DATE	
Uploading Date	16.07.2025
Transmission Date	16.07.2025

