

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.137 of 2023

Arising Out of PS. Case No.-6 Year-2019 Thana- GOVERNMENT OFFICIAL COMP.
District- West Champaran

Aslam Ansari, S/O Asim Ansari, R/o- Inerva Bazar, P.S.- Inerva, District-
West Champaran, Bihar.

... .. Appellant

Versus

1. The State of Bihar

2. Union of India through Director, NCB, Regional Unit, Patna

... .. Respondents

Appearance :

For the Appellant	:	Mr. Pratik, Advocate
For the State	:	Mr. Binod Bihari Singh, Addl.PP
For the UOI	:	Mr. Awdhesh Kumar Pandey, Sr.CGC Mr. Arvind Kumar, C.G.C. Mr. Lokesh Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

and

HONOURABLE MR. JUSTICE SOURENDRA PANDEY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 25-08-2025

Heard learned counsel for the petitioner, learned
Additional Public Prosecutor for the State and learned counsel for
the Union of India.

2. This appeal has been preferred for setting aside the
judgment of conviction dated 06.12.2022 (hereinafter referred to
as ‘the impugned judgment’) and the order of sentence dated
07.12.2022 (hereinafter referred to as ‘the impugned order’)
passed by learned District & Sessions Judge, West Champaran,
Bettiah (hereinafter called ‘the learned trial court’) in N.D.P.S.



Case No. 40 of 2019 arising out of NCB Crime No. NCB/PZU/V/06/2019.

3. By the impugned judgment, the learned trial court has convicted the appellant for the charges under Section 20(b)(ii)C of the Narcotic Drugs And Psychotropic Substances, Act, 1985 (in short 'NDPS Act'). By the impugned order, the appellant has been ordered to undergo rigorous imprisonment for 12 years with a fine of Rs.1,00,000/- under Section 20(b)(ii)C of the NDPS Act and in default of payment of fine, he has to further undergo rigorous imprisonment for one year.

Prosecution Case

4. The prosecution case is based on the complaint petition filed by the complainant, namely, Rahul Kumar Purbey, who is an Intelligence Officer of Narcotics Control Bureau, Patna Zonal Unit. The complainant inter alia alleged that pursuant to an information from SSB 44 Bn. that one person having contraband had been intercepted by SSB 44 Bn, Narkatiaganj on specific intelligence, a team comprising Sh. Parmanand Singh, Intelligence officer, Sh. Pawan Kumar, Sepoy and Sh. Sanjiv Kumar Singh, Driver all from NCB Patna was formed on the direction of the Superintendent, NCB Patna. On reaching there Sh. Shailesh Kumar Singh, Dy. Commandant, 44 Bn., SSB, Narkatiaganj



produced the recovered contraband kept in 21 packets along with the person intercepted and also informed about the formalities done so far. NCB team opened and checked all the packets and tested it with DD Kit in presence of the intercepted person and the independent witnesses and the test shown positive for the test of Charas was seized. Test memo in triplicate was also prepared on the spot. All the packets were weighed and the gross weight was found to be 10 kgs. Two samples of 25-25 gms. each were drawn and kept in plastic pouch and was hot sealed. Hot sealed pouches were further kept in paper envelopes and was sealed with departmental seal NCB-02 and marked S1 & S2. The remaining contraband was put in the same black colour bag from where it was recovered and wrapped with white colour markin cloth and sealed with departmental seal. Signature of the owner of goods, two independent witnesses and the seizing officer was obtained on all the sealed envelopes and packet wrapped with markin cloth. Seizure list was also prepared on the spot and signatures of the accused, independent witnesses, Seizing Officer and Sh. Shailesh Kumar Singh, D Commandant SSB, 44 Bn. was also obtained. The seizure formalities was started at about 18:30 hrs on 25.02.2019 and ended peacefully on the same day at about 20:00 hrs.



5. On the basis of this complaint petition, NCB/PZU/V/06/2019 case was registered under Sections 8(c), 20(b)(ii)(c), 23 and 29 of the NDPS Act against this appellant and vide order dated 26.09.2019, learned Sessions Court took cognizance of the offences under above mentioned Sections.

6. Charges were read over and explained to the appellant in Hindi to which he pleaded not guilty and claimed to be tried, accordingly, vide order dated 21.11.2019, charges were framed under Sections 20(b)(ii)(c), 23(c) of the NDPS Act.

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

List of Prosecution Witnesses

PW-1	Rahul Kumar Purbey
PW-2	Shailesh Kumar Singh
PW-3	Parmanand Singh
PW-4	Krishna Mahto
PW-5	Rajan Kumar

List of Exhibits on behalf of Prosecution

Exhibit '1'	Report of CRCL
Exhibit '2'	Notice under Section 67 of NDPS Act
Exhibit '2/1'	Statement of Trabunihsa Khaton
Exhibit '3'	Signature of witness Sri R.K. Purbey on statement of accused Aslam Ansari dated 13.08.2019
Mark-X	CAF (Customer Application Form) of Aslam



	Ansari (Photocopy)
Mark-X/1	CAF (Customer Application Form) of Tarabunisha Khatoon (photocopy)
Exhibit '4'	Complaint Petition (11 sheets)
Exhibit '5'	Notice under Section 50 of NDPS Act
Exhibit '6'	Proforma for seizer
Exhibit '7'	Proforma for interception
Exhibit '8'	Original application of NCB, Patna
Exhibit '9'	Search-cum-seizer list
Exhibit '10' and '10/1'	Test Memo
Exhibit '11'	Confessional statement of accused Aslam Ansari
Exhibit '12'	Arrest Memo
Exhibit '13'	Jama Talashi Memo
Exhibit '14'	Document of deposit of seized material in Malkhana
Exhibit '15'	Report under Section 57 of NDPS Act
Exhibit '16'	Forwarding of sample of CRCL, Kolkata
Exhibit '2/4' and '2/5'	Notice under Section 67 of NDPS Act against independent witness
Exhibit '17'	Statement of both witnesses
Exhibit '18'	Information of arrest
Exhibit '19' to '19/6'	Signature of witness Krishna Mahto on notice under section 50 NDPS Act, Proforma for seizure list, proforma for apprehension seizer list, jama talasi, notice under section 67 NDPS Act & Statement of Independent witnesses
Exhibit '20'	Malkhana Register (Substituted)
Exhibit '21'	Certification Report
Exhibit '22'	Photograph
Exhibit '23'	Distribution report

8. Thereafter, the statement of the appellant was recorded under Section 313 of the CrPC. He took a plea that he is innocent.

9. The defence has not adduced any oral or documentary evidence.



Findings of the Learned Trial Court

10. Learned trial court after considering all the facts and circumstances of the case found that the substance recovered from the black colour bag of the appellant was charas weighed 10 Kilograms. Learned trial court found that the prosecution has rightly followed the procedure mandated under NDPS Act for search, seizure and arrest.

11. Learned trial court after properly appreciating the evidences available on the record held that the prosecution has been able to prove beyond all reasonable doubts that 10 kgs of *charas* has been recovered from black colour bag of the appellant, hence, convicted the appellant for the offence punishable under Section 20(v)(ii)C of the NDPS Act.

Submissions on behalf of the Appellant

12. Learned counsel for the appellant submits that the learned trial court erred in appreciating the evidences, the impugned judgment suffers from infirmity and overreach. The case of prosecution suffers from procedural irregularities and contradictions. A team was constituted for the operation, however, only one member was examined during trial, though several officials were involved, creating significant evidentiary gaps regarding the events at the scene. PW-2 is the seizing officer of



Narkatiaganj whereas PW-3 is the Investigating Officer who came from Patna Office of the NCB. There are inherent contradictions in the deposition of PW-2 and PW-3. Reason being, they both claim to carry on the procedure under NDPS Act including search, seizure, sampling and sealing the contraband. It is further submitted that from Exhibit '8', it appears that PW-2 is the one who has framed the present appellant in the instant occurrence. He has completed all the formalities in a very haphazard manner at the spot but has not disclosed regarding the name of any other members of his raiding team in the exhibit or application which he has furnished to the NCB officials, which was later on marked as Exhibit '8'. Moreover, from Exhibit '6', which is seizure memo, it also only bears the name of the members of the raiding team. Exhibit '8', the initial application to the NCB, revealing a lack of transparency and procedural irregularity in the documentation of the operation. Exhibit '6' (Proforma of Seizure) contains only some team members' names and does not bear the signatures of all raiding team members. During trial, PW-2 disclosed additional team members not previously mentioned, raising doubts about the formal process followed.

13. It is further submitted that the prosecution has failed to establish the place from which the contraband was allegedly



recovered, neglecting the foundational fact as to ownership or connection with the accused. On other part signatures of independent witnesses on the seizure list are present, the actual examination and corroborative evidence regarding their participation is absent. Additionally, PW-4 admitted in his deposition that he did not witness the essential sampling procedure, he had only signed documents presented to him, which renders his testimony ineffective to support the prosecution case. There are material contradictions regarding sampling as PW-3 stated that he prepared samples labelled L-1 and L-2, whereas the sample received at CRCL, Kolkata was marked S-1. It is submitted that PW-2 only admitted to drawing a single sample, leading to procedural confusion and non-conformity whereas PW-4 categorically admitted that he did not witness any recovery or sampling procedures and had merely signed documents presented to him, diluting the strength of his testimony as an independent witness.

14. Learned counsel further submits that the whole prosecution case is based on the confession of the accused recorded under Section 61 of the NDPS Act. Such confession cannot be made ground for conviction under Section 67 of the NDPS act, as held by the Hon'ble Supreme Court in the case of



Tofan Singh vs. State of T.N. reported in **(2021) 4 SCC 1**, where it was held that the confession recorded under section 67 of the NDPS Act cannot be taken into account in order to convict the appellant as reason being that the officers who are invested with the power under section 53 of NDPS Act are police officers within the meaning of section 25 of NDPS Act. As a result of which, any confessional statement made to them would be barred by the provision of section 25 of the NDPS Act and cannot be taken into account in order to convict an accused under NDPS Act, which was subsequently followed in **Bothilal vs. Narcotics Control Bureau** reported in **2023 SCC OnLine SC 498** and in the case of **Mohammed Khalid vs. State of Telangana** reported in **(2024) 5 SCC 393**. The confessional statement cannot be relied upon for conviction, since officers under Section 53 NDPS Act are deemed to be “police officers”.

15. The learned counsel further relied that Material Exhibits, particularly the seized contraband, were not produced during trial, contravening the settled law in the case of **Ashok @ Dangra Jaiswal vs. State of Madhya Pradesh** reported in **(2011) 5 SCC 123**. Oral testimony and panchanama do not suffice absent production of the physical contraband and chain of custody evidence, failure to relate the seized sample to the actual seized



contraband renders the case defective, as laid down in the case of **Vijay Jain vs. State of M.P.** reported in (2013) 14 SCC 527 and **Vijay Pandey vs. State of Uttar Pradesh** reported in (2019) 18 SCC 215.

16. It is further submitted that there was complete non-compliance with Section 42 NDPS Act, which mandates both prompt recording and forwarding of information received regarding the offense. As held in **Karnail Singh vs. State of Haryana** reported in (2009) 8 SCC 539 and reiterated in **Darshan Singh vs. State of Haryana** reported in (2016) 14 SCC 358 and **Dharamveer Prasad vs. State of Bihar** reported in (2020) 12 SCC 492 delayed compliance may be explained, but total non-compliance is impermissible and fatal to the prosecution's case, there is lapses in sampling and inventory procedures as no material on record establishes that samples of seized contraband were drawn in the presence of a Magistrate or that the inventory was certified by the Magistrate. Legal principle in **Yusuf @ Asif vs. State** reported in 2023 SCC OnLine SC 1328 and **Nadeem Ahamed vs. State of West Bengal** reported in 2025 INSC 993 is categorical in holding that such deficiency vitiates the trial and renders the primary evidence inadmissible.



17. It is further submitted that the Section 52A NDPS Act requires drawing of representative samples in the presence of a Magistrate and preparation of a certified inventory. In this case, there is complete non-compliance with these requirements, as observed in **Nadeem Ahamed** (*supra*). Thus, it undermines the integrity and probative value of the prosecution's evidence; mere laboratory reports cannot compensate for procedural lapses. Non-Compliance with Section 50 NDPS Act as the foundational fact supporting Section 50—seizure from the black bag—was not proved, nor was the bag itself produced in trial. In such circumstances, compliance with Section 50 is mandatory, as held in **Arif Khan @ Agha Khan vs. State of Uttarakhand** reported in (2018) 18 SCC 380. Non-production of requisite physical exhibits destroys the foundation for mandatory procedural safeguards under NDPS Act.

Submissions on behalf of Respondents

18. Mr. Awdhesh Kumar Pandey, learned Senior Central Government Counsel, has made submissions in support of the impugned judgment and order. It is submitted that the learned trial court has considered the entire evidences on the record. In paragraph '17.2' of the impugned judgment it is recorded that PW-3 Parmanand Singh had reached Narkatiaganj at 6:30 PM



where he met Shailesh Kumar Singh, Assistant Commandant (PW-2) and obtained the entire information. He requested PW-2 to hand over the seized narcotic drug and psychotropic substance whereafter PW-3 had taken out some quantity of the narcotic and had examined the same with DD Kit, he found that those were *charas*. He had prepared the search-cum-seizure list in presence of the witnesses (Exhibit '9'). This witness had given notice under Section 67 to the accused in presence of the witnesses namely Krishna Mahato (PW-4) and Golu Mahato (not examined). It is submitted that PW-3 had prepared the samples in duplicate from all the 21 packets and had done the certification of the samples.

19. It is further submitted that the learned trial court has though relied upon the confessional statement of the accused but even after discarding the statements (Exhibit '11'), the prosecution has been able to prove that there is no illegality or infirmity in the matter of search and seizure. Learned Senior Counsel, however, does not controvert the submissions made on behalf of the appellant that in this case Parmanand Singh (PW-3) had not prepared the search and seizure at the place of occurrence and the sampling was not done in presence of a Magistrate as required under subsection (2) of Section 52 of the NDPS Act.



Consideration

20. Having heard learned counsel for the appellant and learned counsel for the NCB as also on perusal of the records, it is evident that Shailesh Kumar Singh (PW-2) was posted as a Deputy Commandant in the 44th Regiment of the SSB Narkatiyaganj. On 25.02.2019 at 03:30 AM, he received an information that one person is sitting in a hut with a consignment of narcotics on the left side of the road going to Narkatiyaganj. In paragraph '3' of his deposition, PW-2 has stated that on receipt of this information, he informed his senior officers, constituted a team and asked them to assemble near the transport shakha field. PW-2 along with the other members of the raiding party posted towards Narkatiyaganj, on way, they stopped two passers-by who were going on motorcycle and requested them to become witnesses to the seizure. PW-2 has disclosed their names as Krishna Mahto and Kallu Mahto. Out of these two seizure list witnesses only Krishna Mahto has been examined as PW-4 who identified his signature but has stated in paragraph '10' that his signature was obtained near the SSB Camp. He has also stated that except for taking his signature, no other action had taken place in his presence. His house is situated at a distance of 20 kilometers from Narkatiyaganj. Papers were brought before him and he was made to put his signature.



21. It is further evident from the deposition of PW-2 that he found the appellant sitting near the place with a black colour bag, he was apprehended. Regarding compliance with Section 50 of the NDPS notice, this witness has stated that he apprised the accused-appellant of his right to have himself searched in presence of a Magistrate or any Gazetted Officer but he dispensed with the said requirement and allowed PW-2 to conduct search of his person. From his person, nothing incriminating was recovered but from the black colour bag, 21 packets of black color candle like substance were found and on examination by D.D. Kit, those were found to be narcotics and psychotropic substance. In paragraph '14' of his deposition, PW-2 has stated that from all the 21 packets, he had taken out some substance and made one sample of 25 gms. Thereafter, he weighed all the 21 packets and found that 21 packets weighed about 10 kgs. PW-2 prepared a seizure list. He has proved the performa seizure list of one page which has been marked Exhibit '6'. He has stated that the seizure list bears the signature and thumb impression of Krishna Mahto and Kallu Mahto respectively who are the two independent witnesses. However, signature and thumb impression of the seizure list witnesses have not been marked exhibits. In paragraph '17', PW-2 has stated that he informed about the whole developments to his



senior officers and he sealed the seized articles and samples at the place of occurrence itself. He has proved the original performa for interception which is in one page (Exhibit '7'). PW-2 has further stated that in his self-written statement/application, the name of the members of his team have not been mentioned. Regarding the black colour bag which was seized from the accused, PW-2 has stated that the said bag was 2 ft. high and 9-10 inch in width. The bag was opening by chain. He has stated that he had produced the packets before the NCB Officers and before handing over the same to the NCB Officers, he had pasted the packets in the same manner as those were there prior to opening. He has further stated that after pasting the packets, he had put them in a marking cloth, sealed them and delivered to NCB Officers.

22. It is evident from the deposition of PW-2 that though he had received information on 25.02.2019 at 03:30 AM and claims to have informed his senior officers and constituted the same but this information has not been reduced in writing as mandated by Section 42 of the NDPS Act. Learned counsel for the appellant has relied upon the judgment of the Hon'ble Supreme Court in the case of **Karnail Singh** (supra) and on the judgment in the case of **Darshan Singh** (supra) to submit that the delay in compliance with Section 42 mandate may be explained by the



prosecution but a total non-compliance is likely to prove fatal to the prosecution in this case. We find that in paragraph '35' of the judgment in the case of **Karnail Singh** (supra) has observed as under:-

“35. In conclusion, what is to be noticed is that *Abdul Rashid*¹ did not require literal compliance with the requirements of Sections 42(1) and 42(2) nor did *Sajan Abraham*² 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

1. Abdul Rashid Ibrahim Mansuri v. State of Gujarat, (2000) 2 SCC 513 : 2000 SCC (Cri) 496
2. Sajan Abraham v. State of Kerala, (2001) 6 SCC 692 : 2001 SCC (Cri) 1217



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.”

23. The judgment rendered in the case of **Karnail Singh** (supra) has been discussed and followed in the case of **Darshan Singh** (supra). In this regard, paragraph ‘13’ and ‘15’ of the judgment is being reproduced hereunder for a ready reference:-



“13. Having given our thoughtful consideration to the submission advanced at the hands of the learned counsel for the respondent, we are of the view that the mandate contained in Section 42(1) of the NDPS Act, requiring the recording in writing, the details pertaining to the receipt of secret information, as also, the communication of the same to the superior officer are separate and distinct from the procedure stipulated under the provisions of the Criminal Procedure Code. Sub-section (1) of Section 41 of the NDPS Act provides that a Metropolitan Magistrate or a Magistrate of the First Class or any Magistrate of Second Class specially empowered by the State Government may issue a warrant for the arrest of any person whom he has reason to believe to have committed any offence punishable under Chapter IV. Sub-section (2) of Section 41 refers to issuance of authorisation for similar purposes by the officers of the Departments of Central Excise, Narcotics, Customs, Revenue Intelligence, etc. Sub-section (1) of Section 42 of the NDPS Act lays down that the empowered officer if he has a prior information given by any person, should necessarily take it down in writing, and where he has reason to believe from his personal knowledge, that offences under Chapter IV have been committed or that materials which may furnish evidence of commission of such



offences are concealed in any building, etc. he may carry out the arrest or search, without warrant between sunrise and sunset and he may do so without recording his reasons of belief. The two separate procedures noticed above are exclusive of one another. Compliance with one, would not infer compliance with the other. In the circumstances contemplated under Section 42 of the NDPS Act the mandate of the procedure contemplated therein will have to be followed separately, in the manner interpreted by this Court in *Karnail Singh case*² and the same will not be assumed, merely because the Station House Officer concerned had registered a first information report, which was also dispatched to the Superintendent of Police, in compliance with the provisions of the Criminal Procedure Code.

15. In the aforesaid view of the matter, we are satisfied that Section 42 of the NDPS Act was not complied with at all, insofar as the present controversy is concerned. Thus viewed, Conclusion (d) recorded in para 35 of the judgment rendered in *Karnail Singh case*² would fully apply to the facts and circumstances of the present case, and we are left with no other option, but to set aside the conviction and the sentence of imprisonment of the appellant-accused Darshan Singh. Ordered accordingly. The appeal stands allowed.”

2 *Karnail Singh v. State of Haryana*, (2009) 8 SCC 539 : (2009) 2 SCC (Cri) 887



24. We have further noticed that PW-2 handed over the seized packets to the SSB Officers in a 'marking' cloth which was sealed. The black colour bag which finds mention in the search-cum-seizure (Exhibit '9') has not been handed over to the Officers of SSB. This has given rise to another contention on behalf of the appellant that the non-production of the black colour bag before the learned court as a material exhibit/object would go a long way to prove that the very foundation of the application of Section 50 of the NDPS Act stands destroyed. We find substance in the submissions of learned counsel for the appellant.

25. On going through the evidence of Parmanand Singh (PW-3) who is the Officer of SSB, it is evident that a three-member team had left the NCB Office at Patna at 10 O'Clock after getting information from 44th Battalion Narkatiyaganj that one person with a consignment of *charas* has been apprehended at Narkatiyaganj. PW-3 has stated that Shailesh Kumar Singh (PW-2) had produced the apprehended person with narcotic substance before him and both the independent witnesses were present in whose presence further action towards seizure were done. In paragraph '9', PW-3 has stated that in presence of the appellant, he opened the seized black colour bag, however, this witness does not talk of the fact that the seized packets were produced before him in



a marking cloth in a sealed condition. This witness has further stated that from all the packets, some quantity of substance were taken out which were tested by D.D. Kit and those were found to be *charas*. In paragraph '13' of his deposition, PW-3 has stated that thereafter from all the packets, he took out some portion of substance and made two samples of 25-25 gms each and he kept in a plastic pouch and hot sealed them, thereafter, he kept both the pouches in two different envelopes and sealed them with department seal and marked them 'L1' and 'L2'. He has further stated that the remaining substances were again kept in a black colour bag folded in marking cloth and sealed with the departmental seal. PW-2 has not stated that black colour bag was also folded in the marking cloth. PW-3 prepared three copies of test memo and seizure list on which he obtained signature of the accused, two independent witnesses and the signature of Shailesh Kumar Singh (PW-2) and their thumb impressions respectively. PW-3 has exhibited the three-page search-cum-seizure list (Exhibit '9') and the test memos which he had prepared as Exhibit '10' and '10/1'. In paragraph '23' of his deposition, PW-3 has stated that on 26.02.2019, the accused Aslam Ansari, both the samples and the seized substances were produced in the court and by the order of the court, the accused was sent to judicial custody and the original



sample was sent to the CRCL, Kolkata whereas the second sample was sent to the NCB, Patna for keeping in the Malkhana. He has proved the documents (Exhibit '14') in this regard on which he has handed over the signature of the then Superintendent of Malkhana. He has further proved the requisition sent to CRCL, Kolkata (Exhibit '16') and the copy of the notices issued under Section 67. It is evident from the paragraph '35' of the deposition of PW-3 that he had received the seized substances in the black colour bag, therefore, the claim of PW-2 that he had sealed the 21 packets of substances in a marking cloth and sealed the same seems to be incorrect and contrary to the statement of PW-3 in paragraph '35' of his deposition. It is evident that the sampling was not done in presence of a Magistrate as required under Section 52(1) of the NDPS Act.

26. This Court has also gone through the ordersheets of the trial court. On perusal of the order dated 26.02.2019, it appears that on that day, the forwarding of the accused together with a copy of search-cum-seizure, performa for interception, performa for seizure, notice of Section 50, notice under Section 67 both of NDPS Act, voluntary statement of accused, arrest memo, Jama Talashi, thumb impression, hand impression of accused, Medical of accused and test memo in triplicate were produced. There was



no production of the seized substances or the inventory of the seized substances before the learned court on 26.02.2019. There was no request by the I.O. to depute a Magistrate for preparation of sample in his presence. The I.O. of the case made a request only to give him sample forwarding and permission to keep the seized material and duplicate sample in NCB Malkhana at Patna. This was ordered by the learned court. It is evident from the order dated 26.02.2019 that the seized articles/substances were not produced in the court. The learned Advocate for the appellant has shown that the application for certification was made only on 17.07.2019 i.e. after about five months and though one Manoj Kumar, Judicial Magistrate, 1st Class, Bettiah was deputed for certification but neither the said Manoj Kumar has been examined in this case nor the certification of inventory has been proved in this case.

27. In the case of **Nadeem Ahamed** (*supra*), the Hon'ble Supreme Court was considering a case in which the seizing officer had prepared one sample each weighing ten grams from the individual packets recovered from the detenues. He had packed, sealed and labelled the drug packets as Mark 'A' and Mark 'B'. The samples collected from both the sealed packets were marked as 'S-1' and 'S-2'. The Hon'ble Supreme Court found that it was in direct contravention of Clause 2.2 of the Standing Order



No. 1 of 1989 dated 13th June, 1989, issued by the Anti-Smuggling Unit, Department of Revenue, Ministry of Finance. The said clause reads as under:-

“2.2 All the packages/containers shall be serially numbered and kept in lots for sampling. Samples from the narcotic drugs and psychotropic substances seized, shall be drawn on the spot of recovery, in duplicate, in the presence of search witnesses (Panchas) and the person from whose possession the drug is recovered, and a mention to this effect should invariably be made in the panchnama drawn on the spot.”

The said Standing Order came up for consideration before the Hon'ble Supreme Court in the case of **Noor Aga vs. State of Punjab** reported in (2008) 16 SCC 417 wherein it was held that the guidelines mentioned in the said Standing Order should not only be substantively complied with, but in a case involving penal proceedings, the rigours of such guidelines may be insisted upon. In the said case, the Hon'ble Supreme Court found that from the testimony of the seizure officer (PW-2), the Gazetted officer (PW-4), the independent witnesses and the detenues, including the accused-appellant that on the opening of the sample packets before the trial court during evidence of the seizure officer (PW-2), that the labels contained only the signature of the witnesses, seizure officer and the panch witness. The signatures of the accused were conspicuously absent from the packets, as per the observations recorded in the deposition.



28. So far as the present case is concerned, we have noticed that PW-2 has stated in paragraph '14' of his deposition that he had prepared one sample packet of 25 gram by taking out some psychotropic substance from all the 21 packets. It is, therefore, evident that the mandate of Clause 2.2 of the Standing Order that samples from the narcotic drugs and psychotropic substances seized shall be drawn on the spot of recovery, in duplicate, has not been complied with.

29. We have also noticed from the deposition of PW-2 that he has not stated in his deposition that any *panchnama* was drawn on the spot. It is further found that the seizure officer (PW-2) did not prepare any separate seizure list for the samples drawn and no "test memo" or "weightment chart" was prepared at the spot. He has also not proved any specimen sealed memo.

30. This Court has found that like the case of **Nadeem Ahamed** (*supra*), in this case also two independent witnesses were associated with the investigation/seizure but only one has been examined by the prosecution, without any explanation for the omission to examine the other. PW-2 did not mention the name of the members of the raiding party who had gone with him for conducting the raid. In paragraph '36' of his deposition, PW-2 has stated that when he had apprehended the appellant, people from the nearby places had not come. It is on record that behind the place occurrence, there is a dense population.



31. This Court further finds that the “test memo” (Exhibit ‘10’), has been shown prepared by the seizing officer on 25.02.2019. It shows the date and place of seizure as “25/02/2019 SSB 44 BN, Narkatiaganj”. The date of drawl and dispatch of samples have been shown as 25.02.2019 and 28.02.2019, however, it reached the laboratory on 05.03.2019. It is evident from this document (Exhibit ‘10’), that the samples were not drawn in presence of a Magistrate. In this regard, it would be apt to quote the requirements of subsection (2) of Section 52A of the NDPS Act, which have been taken note of by the Hon’ble Supreme Court in the case of **Nadeem Ahamed** (*supra*), which reads as under:-

“(e) Most significantly, there has been a complete failure by the prosecution to comply with the important procedural requirement, as provided under sub-section (2) of Section 52A of the NDPS Act.¹⁵ A perusal of the record makes it clear that there was no effort whatsoever, either by the seizure officer (PW-2), or the officer-in-charge, to undertake the procedure of sampling and inventory in presence of a Magistrate, in light of the aforesaid provision. The trial Court also noted that the seizure officer (PW-2) has even failed to state as to whether any inventory list had been prepared at the time of the raid.

15 “Where any [narcotic drugs, psychotropic substances, controlled substances or conveyances] has been seized and forwarded to the officer- in-charge of the nearest police station or to the officer empowered under Section 53, the officer referred to in sub- ection (1) shall prepare an inventory of such [narcotic drugs, psychotropic substances, controlled substances or conveyances] containing such details relating to their description, quality, quantity, mode of packing, marks, numbers or such other identifying particulars of the [narcotic drugs, psychotropic substances, controlled substances or conveyances] or the packing in which they are packed, country of origin and other particulars as the officer referred to in sub-section (1) may consider relevant to the identity of the [narcotic drugs, psychotropic substances, controlled substances or conveyances] in any proceedings under this Act and make an application, to any Magistrate for the purpose of— (a) certifying the correctness of the inventory so prepared; or (b) taking, in the presence of such Magistrate, photographs of [such drugs, substances or conveyances] and certifying such photographs as true; or (c) allowing to draw representative samples of such drugs or substances, in the presence of such Magistrate and certifying the correctness of any list of samples so drawn.”



29. In view of the above discussion, this Court is compelled to hold that there has been a complete and unexplained failure to adhere to the requirements of Section 52A. Neither representative samples were drawn in the presence of a Magistrate, nor was the inventory list prepared and certified, as required by law. These lapses strike at the very root of the prosecution case, rendering the integrity of the seizure and sampling process wholly doubtful.

30. We may hasten to add that the procedure under Section 52A of the NDPS Act has not been considered to be mandatory by this Court, but the facts taken cumulatively, i.e., the non-drawing of the samples in light of the Standing Order no. 1 of 1989, and the complete non-compliance of Section 52A of the NDPS Act, makes the entire procedure of seizure and sampling a total farce, and thereby, unworthy of credence.

31. In this view of the matter, we are of the firm opinion that the FSL report loses significance on account of the flawed sampling procedure undertaken by the seizure officer (PW-2), coupled with the fact that there has been a total failure by the officer-in-charge to comply with the procedure provided under Section 52A of the NDPS Act.

32. In the wake of discussion made hereinabove, we are of the firm opinion that the FSL report cannot be read in evidence and consequently, there is no acceptable evidence on record to prove that the article recovered from the accused-appellant was the narcotic drug heroin, as defined under the Schedule to the NDPS Act.”

32. In this case, some other witnesses have also been examined. Rahul Kumar Purbey (PW-1) is the I.O. who was handed over the investigation after posting of Parmanand Singh (PW-3) to his original cadre CISF. He assumed the charge of



investigation on 12.04.2019. He has stated about the receipt of the CRCL report from Calcutta, which has been marked as 'Public Document' (Exhibit '1'). After investigation, he had prepared the complaint in eleven pages and at his instance, this complaint has been marked Exhibit '4'. It is evident that PW-1 is not a material witness in this case.

33. As regards Krishna Mahato (PW-4), we have already taken note of the fact that he is one of the seizure list witnesses who has stated that his signature was obtained near SSB Camp. From the Test Memo, (Exhibit '10') also we have found that the samples were drawn in the SSB Camp Narkatiaganj. This witness is a resident of a place which is at a distance of twenty kilometer from Narkatiaganj and he has stated that he did not know Golu Mahato, who is another seizure list witness but has not been produced by the prosecution. This witness has admitted his signature on Exhibit '19' to '19/6'. Exhibit '19' is a proforma of notice under Section 50 of the NDPS Act. Exhibit '19/3' is the search-cum-seizure list on which the place of seizure has been shown as SSB 44th Battalion Headquarter Narkatiaganj. Exhibit '19/4' is *Jama Talashi* which has been prepared consequent upon arrest of Aslam Ansari. It shows the articles which were recovered from his possession. This *Jama Talasi* has been prepared at 22:10



Hrs. on 25.02.2019 whereas the search-cum-seizure list (Exhibit '19/3') has been shown prepared at 6:30-8:00 PM in the Headquarter. The proforma for interception (Exhibit '19/2') has been prepared on 25.02.2019 at 4:35 Hrs. at Narkatia-BTH Road, near flyover. The proforma for seizure (Exhibit '19/1') has been prepared on 25.02.2019 at 4:35 Hrs. at Narkatiaganj-Bettiah Road near flyover and in this proforma for seizure in answer to the question in paragraph '6' - Was cooperation of any other police forces/government agencies sought in whole process – the answer has been given as 'No'. In Column No. '9' - To whom the seized items were handed over, it is written "NCB Patna" and in answer to Column No. 10 – whether any criminal case has been registered, if yes by which agency and under what section, the answer is given as "Yes, NCB Case No. 06/19 dt. 25/02/19 under Sections 8, 20 and 29 of NDPS Act, 1985".

34. From all these exhibits it is crystal clear that the proforma for seizure (Exhibit '19/1') has been filled up/prepared only after registration of the case and upon arrival of PW-3, an officer of NCB, Patna. The sequence of the documents proved in course of trial do not inspire confidence as it appears that these documents were not prepared at the spot. The seizure proforma shows that it was prepared at 4:30 Hrs. in the morning. PW-2 has



stated that he had submitted a written information (Exhibit '8'). A perusal of Exhibit '8' would show that this is a written application addressed to the Regional Director, Narcotic Control Bureau, Patna, however, no FIR was lodged on the basis of this information. From the order dated 26.02.2019 of the learned Session Judge, it appears that the accused was forwarded along with search-cum-seizure list, proforma for interception, proforma for seizure, notice of section 50, notice under section 67, both of NDPS Act, voluntary statement of accused, arrest memo, *Jama Talashi*, thumb impression, hand impression of accused, medical of accused, test memo in triplicate. No FIR was sent to the learned Session Judge. If the seizing officer did not lodge any FIR and still he recorded in the seizure proforma (Exhibit '19') "NCB Case No. 6 of 2019 dated 25.02.2019", it would not inspire confidence in his statement. The ordersheet of the trial court of 26.02.2019 does not mention any case number.

35. In the kind of discussions recorded hereinabove, we are of the considered opinion that the trial court judgment is liable to be set aside. We, accordingly set aside the impugned judgment and order.



36. The appellant is acquitted of the charges giving him the benefit of doubt. He is in incarceration, he shall be released forthwith, if not wanted in any other case.

37. This appeal is allowed.

38. A copy of this judgment together with the trial court's records shall be sent down to the learned trial court.

(Rajeev Ranjan Prasad, J)

(Sourendra Pandey, J)

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CAV DATE	
Uploading Date	03.09.2025
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