



2025:CGHC:5345-DB

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRA No. 217 of 2022

1 - Shahbaz Ahmed Seikh S/o Nihal Ahmed Aged About 20 Years Cast Muslim R/o Adarsh Nagar Ward No. 1 Budhar P.S. Dhamtari District Shahdol (M.P.).

... Appellant(s)

versus

1 - State of Chhattisgarh Through Station House Officer Pamgarh District Janjgir Champa Chhattisgarh.

... Respondent(s)

For Appellant(s) : Mr. Rajvardhan Singh, along with Ms. Bulbul Agrawal, Advocate.

For Respondent(s) : Mr. Shaleen Singh Baghel, Dy. Govt. Advocate.

Hon'ble Shri Ramesh Sinha, Chief JusticeHon'ble Shri Ravindra Kumar Agrawal, JudgeOrder on BoardPer Ravindra Kumar Agrawal, J.29/01/2025

1. The present appeal has been filed by the appellant under Section 374(2) of the Code of Criminal Procedure 1973, (*for short the, Cr.P.C.*) against the impugned judgment of conviction and sentence dated 12.11.2021, passed by learned Special Judge (NDPS Act) Janjgir, District- Janjgir-Champa, (C.G.) in NDPS Case No. 04/2020, whereby the appellant is convicted for the offence under Section 20(b)(ii)(C) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (*hereinafter referred to as "the NDPS Act"*) and

sentenced him for R.I. for 20 years with fine of Rs.2,00,000/- in default of payment of fine 2 months additional S.I.

2. Brief facts of the case are that on 05.01.2020 when the ASI H.N. Tamrakar along with the other police staff were checking the vehicles in front of the police station, Pamgarh, the Scorpio vehicle bearing registration No. OD-02BC-7409 came from Shivrinarayan side in high speed and not stopped there. On suspicion, the police party chased the Scorpio vehicle by their motorcycle and catch them in front of State Bank of India, Pamgarh branch. The driver of the vehicle disclosed his name as Shahbaz Ahmad Seikh and other person who was also found vehicle disclosed his name as Ajay Singh Baghel. The odour of cannabis (*Ganja*) was coming out from the vehicle. Therefore, it was found 217 brown packets which was kept under the black blanket.
3. The notice under Section 160 of the Cr.P.C. was given to the witnesses Bhagwat Sahu and Mahabir Khande and request memo was also sent to Executive Magistrate for physical verification of the seized article. The Executive Magistrate Ms. Netraprabha Sidar PW-6 reached on the spot and in her presence the Scorpio vehicle was being searched and 217 packets of cannabis (*Ganja*) was seized, 3 number plates of the vehicle, 1 was having registration No. OD-02BC-7409 and 2 was having number of MP-65J-0714 and 5 mobile phones were also recovered. On being weighted cannabis (*Ganja*) was found 222.800 kg. The accused persons were asked for production of documents of ownership of the cannabis (*Ganja*) but they failed to produce any document. The FIR has been registered and 2 samples of 100 gm each were drawn and seized. The cannabis (*Ganja*), vehicle and sample packets of cannabis (*Ganja*) and the accused persons were taken to police station where FIR has been registered, the accused persons have been arrested. The sample packets of cannabis (*Ganja*) were sent for its chemical examination to FSL. After completion of usual investigation, charge-

sheet was filed against the appellant and co-accused Ajay Singh Baghel for the offence under Section 20(b) of the NDPS Act before the learned trial Court.

4. The learned trial Court has framed charge against the appellant for the offence under Section 20(b)(ii)(C) of the NDPS Act. The appellant abjured his guilt and claimed trial.
5. In order to establish the charge against the appellant the prosecution has examined as many as 12 witnesses. Statement of the appellant Shahbaz Ahmad Seikh under Section 313 of the Cr.P.C. has also been recorded in which he denied the circumstance appears against him, plead innocence and have submitted that he has been falsely implicated in the offence. He is only a driver and working under the instruction of his owner.
6. In the case charge-sheet has been filed against the two accused persons i.e. the present appellant Shahbaz Ahmad Seikh and co-accused Ajay Singh Baghel @ Ashu. The co-accused Ajay Singh Baghel @ Ashu was released on temporary bail by learned Single Judge of this Court vide order dated 26.08.2020 passed in MCRC No. 4243/2020. The period of temporary bail granted to the appellant Ajay Singh Baghel was extended time to time but he could not surrender and ultimately vide order dated 04.12.2020 warrant of arrest was issued against the appellant Ajay Singh Baghel @ Ashu as he failed to surrender after the expiration of period of his temporary bail on 02.11.2020. Vide order dated 02.01.2021, the learned trial Court has separated the trial of the absconding accused Ajay Singh Baghel @ Ashu and issued permanent warrant of arrest against him and proceeded in the case against the present appellant Shahbaz Ahmad Seikh.
7. After appreciation of oral as well as documentary evidence led by the prosecution the learned trial Court has convicted the appellant Shahbaz Ahmad Seikh and sentenced him as mentioned in the earlier part of this judgment. Hence this appeal.

8. Learned counsel for the appellant would submit that the prosecution has failed to prove its case beyond reasonable doubt. There are material omissions and contradictions in the evidence of prosecution witnesses which cannot be made basis to convict the appellant for the alleged offence. There are non-compliance of the mandatory provisions of Section 42, 50, 52, 52-A, 55 and 57 of the NDPS Act. There is absolutely non-compliance of the Standing Order of 1/89 issued by the Central Government with respect to the procedure for drawing of the samples and in absence of any proper procedure for drawing the samples, the entire procedure vitiates. Therefore, the appellant cannot be convicted for the alleged offence. The independent witness have not supported the prosecution case. There are material irregularity in the search and seizure proceedings and there are major discrepancy in the evidence of the I.O. about the number of packets seized from the vehicle. The present appellant was only a driver and was working under the instruction of his owner. Therefore, he may be acquitted from the alleged offence.
9. On the other hand, learned counsel for the State opposes and have submitted that the entire procedure as prescribed under the NDPS Act has been followed in its letter and spirit and after considering the evidence available on record, the learned trial Court has rightly convicted and sentenced the appellant for the alleged offence. The appellant was found in possession of the vehicle and he was driving the same in which the huge quantity of Ganja i.e. 222.800 kg of cannabis (*Ganja*) was being transported by the appellant along with the co-accused person Ajay Singh Baghel @ Ashu (absconding) and there has been no explanation offered by the appellant as to how he came into the possession of such a huge quantity of cannabis (*Ganja*) in their vehicle. All the mandatory provisions have been duly complied with, therefore, there is no irregularity or infirmity in the impugned judgment passed by learned trial Court and the appeal of the

appellant is liable to be dismissed.

10. We have heard learned counsel for the parties and perused the record of the trial Court with utmost circumspection.
11. PW-10, Harnarayan Tamrakar was the Assistant Sub Inspector at police station, Pamgarh. He stated in his evidence that on 05.01.2020 at about 10:10 a.m. when he was on patrolling and checking the vehicle in front of police station, one Scorpio vehicle bearing RTO number of Orissa came from Shivrinarayan side in a high speed and has not stopped his vehicle. On suspicion, they chased the said vehicle by their motorcycle and near Bharatiya Sate Bank, Pamgarh, they could catch the Scorpio vehicle, the driver of the vehicle disclosed his name as Shahbaz Ahmad Seikh and other person who was sitting in the vehicle has disclosed his name Ajay Singh Baghel. When the odour of cannabis (*Ganja*) was coming from vehicle then the said Scorpio vehicle bearing registration No. OD-02BC-7409 was searched and the multiple number of brown colour plates were found which was covered by a black blanket. He issued a notice under Section 160 of Cr.P.C. and a memo Ex.P/30 to the Executive Magistrate and two witnesses. The constable Shivrai Sagar had served the said notice to Bhagwat Sahu and Mahabir Khande, the independent witnesses. He searched the vehicle and vehicle Talashi panchnama Ex.P/5 was prepared and obtained signature of the accused persons. He recovered the total 217 packets of cannabis (*Ganja*), 3 numbers of number of plate out of which one was bearing No. OD-02BC-7409 and in other two number plates bearing registration No. MP-65J-0714. Total 5 mobile phones have also been seized from the accused persons and recovery panchnama Ex.P/6 was prepared. In presence of the witnesses the seized Ganja was physically identified by rubbing, smelling and burning and found it to be the cannabis (*Ganja*) and physical identification panchnama Ex.P/7 was prepared. All the 217 packets were opened and cannabis (*Ganja*) were homogenized and homogenization

panchnama Ex.P/8 was prepared. He also issued a notice Ex.P/1 for calling of the weighment witnesses and called the witness Kamaljeet Juneja through the constable Shivrai Sagar. He physically verified the electronic weighment apparatus and panchnama Ex.P/2 was prepared and when the seized cannabis (*Ganja*) was weighed through the said electronic weighment apparatus it was found 222.800 kg and weighment panchnama is Ex.P/3. He separated 4 samples of 100gm each from homogenized cannabis (*Ganja*) and it was also weighed and panchnama Ex.P/9 was prepared. The remaining quantity of cannabis (*Ganja*) i.e. 222.400 kg was re-filled in 8 bags and it was again re-filled in plastic bags and marked as 1 to 8 and it was sealed. Specimen seal panchanam Ex.P/10 was prepared. He also issued a notice under Section 91 of Cr.P.C. to the present appellant and asked to submit the original documents of the vehicle and his driving licence which is Ex.P/32 but the appellant failed to produce any document and made a note in the document Ex.P/32. The mobile phones, cannabis (*Ganja*) and its sample packets were seized vide seizure memo Ex.P/11. The Scorpio vehicle No. OD-02BC-7409 and 3 number plates have been seized vide seizure memo Ex.P/12. He has arrested the accused persons vide arrest memo Ex.P/13 and Ex.P/14 and their arrest have been informed to their family members vide intimation Ex.P/33, Ex.P/34, Ex.P/35 and Ex.P/35.

He also deposed that on 05.01.2020 he issued a notice to the Executive Magistrate/Tahsildar, Pamgarh for physical verification of the cannabis (*Ganja*) and sent it through the constable Shivrai Sagar. The Tahsildar has physically verified the seized cannabis (*Ganja*) and physical verification panchnama Ex.P/18 was prepared. The photographer Raja Jaiprakash Ratre has photographed and the said photographs are Article-1. The dehati nalishi was recorded on 05.01.2020 at 17:20 hours which is Ex.P/37.

12. Spot map Ex.P/15 was prepared and taken the vehicle, seized cannabis

(*Ganja*), its sample and the appellants to the police station and the articles were handed over to the Station House Officer Rajkumar Lahre PW-12 for keeping it in safe custody. Thereafter, FIR was registered against the accused persons which is Ex.P/38. Further investigation was carried out by Station House Officer Rajkumar Lahre PW-12.

In cross-examination he stated that he has filed a copy of Rojnamcha with respect to the assignment of his duty of patrolling and physical checking of vehicle at the relevant time. He admitted that at the time of checking of the vehicle he was not having the format of the document relevant for NDPS cases. He also admitted that no secret information was received by him while patrolling. He further stated that when they tried to spot the vehicle, the driver did not spot his vehicle and move forward. He himself along with other constable have chased the vehicle in 3 motorcycles and caught them near the distance of about 300 mtr. from the check post. He has not given any notice under Section 50 of the NDPS Act to the accused persons for their search by Gazetted Officer or any Magistrate. He clarified that since the format and the document was endorsed at police station Pamgarh, therefore, in format the place was mentioned as police station, Pamgarh otherwise the place of incident was near the Bharatiya State Bank and the same place was mentioned in the documents. He admitted that he has not mentioned the timing of calling the independent witnesses in the Rojnamcha. He also explained that in the document Ex.P/5. He mentioned the cannabis (*Ganja*) because the smell of cannabis (*Ganja*) was coming from the vehicle and he suspected that the vehicle was carrying cannabis (*Ganja*). He further admitted that before the preparation of the document Ex.P/6, he has not physically identified the cannabis (*Ganja*).

In further cross-examination he denied the suggestion given by the appellant that in reply to the notice under Section 91 of the Cr.P.C. the appellant Shahbaz Ahmad Seikh have disclosed that the vehicle belongs to

Triveni Prasad and he is only the driver and the material/ cannabis (*Ganja*) found in the vehicle belongs to Triveni Prasad. He admitted that he called the vehicle owner Triveni Prasad and after obtaining the vehicle papers he left him. He further admitted that he has not given any intimation to his Senior Officer. He voluntarily stated that the Station House Officer has sent the intimation and the copy of the document to his Senior Officers. He further admitted that he has not complied with the provisions of Section 42 of the NDPS Act. He voluntarily stated that since he was not acted on the secret information but during patrolling and vehicle search, he found the cannabis (*Ganja*) in the vehicle of the appellant, therefore, he has not complied with Section 42 of the NDPS Act. He also explained that by mistake the weight of cannabis (*Ganja*) has been incorrectly mentioned in the document Ex.P/11. He further admitted that in the document Ex.P/10 and Ex.P/11 the sealing of the remaining quantity of Ganja is not mentioned. From the evidence of this witness it is quite clear that when he was on patrolling and vehicle checking in front of police station, Pamgarh, the alleged Scorpio vehicle came from Shivrinarayan side and did not spot his vehicle and tried to flee in high speed. When this witness along with the other police constables chased by their motorcycle, they caught the Scorpio vehicle near Bharatiya State Bank, Pamgarh branch. On being search, they found it was contained with huge quantity of cannabis (*Ganja*) which has been seized from the possession of the accused persons. The submission of the learned counsel for the appellant that the provisions of Section 42 of the NDPS Act have not been complied with. This witness have explained that since he was not acted on the secret information but during the patrolling and vehicle checking cannabis (*Ganja*) was found in the vehicle of the appellants, therefore, he is not complied with the provisions of Section 42 of the NDPS Act.

13. Section 43 of the NDPS Act provides the powers of seizure and arrest in public place which towards as under:

[43. Power of seizure and arrest in public place- Any officer of any of the departments mentioned in section 42 may:-

(a) seize in any public place or in transit, any narcotic drug or psychotropic substance or controlled substance in respect of which he has reason to believe an offence punishable under this Act has been committed, and, along with such drug or substance, any animal or conveyance or article liable to confiscation under this Act, any document or other article which he has reason to believe may furnish evidence of the commission of an offence punishable under this Act or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act;

(b) detain and search any person whom he has reason to believe to have committed an offence punishable under this Act, and if such person has any narcotic drug or psychotropic substance or controlled substance in his possession and such possession appears to him to be unlawful, arrest him and any other person in his company.

Explanation- For the purposes of this section, the expression public place" includes any public conveyance, hotel, shop, or other place intended for use by, or accessible to, the public.]

14. The facts of the case as well as evidence available in the case makes it clear that the vehicle was being stopped near Bharatiya State Bank, on Shivrinarayan Bilaspur main road. While checking the vehicle, it was found contained with cannabis (*Ganja*). Admittedly it was being checked on the public place i.e. on the main road that too without any prior information and the said cannabis (*Ganja*) was seized /recovered in transit which was being carrying by the accused persons on their vehicle. Therefore, the issue of non-compliance of Section 42 is not applicable in the present case and the police authority have acted under Section 43 of the NDPS Act. Section 43 of the NDPS Act, when the place of occurrence was a public road and accessibility to the public and fell within the ambit of the public place.
15. In view of the provisions of explanation to Section 43, the Section 42 of the NDPS had no application.
16. The contraband were recovered and seized while in transit. As the

contraband were recovered and seized during transit in the Scorpio vehicle, as contemplated in Section 43(a) i.e. "Seize in any public place or in transit". this Court is of the considered opinion that Section 43 of the NDPS Act is applicable and as such, recording for reason for belief and for taking down of information received in writing with regard to the Commission of offence before conducting search and seizure, is not required to be complied with under Section 43 of NDPS Act.

17. In the matter of ***Firdoskhan Khurshidkhan vs. State of Gujarat and Another*** dated 30.04.2024 reported in **2024 SCC OnLine SC 680** has held in para 18 as under:

"18. Section 42 of the NDPS Act deals with search and seizure from a building, conveyance or enclosed place. When the search and seizure is effected from a public place, the provisions of Section 43 of the NDPS Act would apply and hence, there is no merit in the contention of learned counsel for the appellants that non-compliance of the requirement of Section 42(2) vitiates the search and seizure. Hence, the said contention is noted to be rejected."

18. In the matter of ***State of Haryana vs. Jarnail Singh and Others*** reported in **2004 (5) SCC 188** in Para 9 and 10 of its judgment the Hon'ble Supreme Court has held that:

"9. Sections 42 and 43, therefore, contemplate two different situations. Section 42 contemplates entry into and search of any building, conveyance or enclosed place, while Section 43 contemplates a seizure made in any public place or in transit. If seizure is made under Section 42 between sunset and sunrise, the requirement of the proviso thereto has to be complied with. There is no such proviso in Section 43 of the Act and, therefore, it is obvious that if a public conveyance is searched in a public place, the officer making the search is not required to record his satisfaction as contemplated by the proviso to Section 42 of the NDPS Act for searching the vehicle between sunset and the sunrise.

10. In the instant case there is no dispute that the tanker was moving on the public highway when it was stopped and searched. Section 43 therefore clearly applied to the facts of this case. Such being the factual position there was no requirement of the officer conducting the search to record the grounds of his belief as contemplated by the proviso to Section 42. Moreover it cannot be lost sight of that the Superintendent of Police

was also a member of the searching party. It has been held by this Court in *M. Prabhulal vs. Assistant Director, Directorate of Revenue Intelligence* : (2003) 8 SCC 449 that where a search is conducted by a gazetted officer himself acting under Section 41 of the NDPS Act, it was not necessary to comply with the requirement of Section 42. For this reason also, in the facts of this case, it was not necessary to comply with the requirement of the proviso to Section 42 of the NDPS Act."

19. In the matter of ***Kallu Khan vs. State of Rajasthan*** reported in **2021 (19) SCC 197** in Para 12, 13 and 16 of its judgment the Hon'ble Supreme Court has held that:

12. After hearing and on perusal of record and the evidence brought, it is apparent that on apprehending the accused, while making search of the motor cycle, 900 gm of smack was seized to which seizure and sample memos were prepared, as proved by the departmental witnesses. In the facts of the case at hand, where the search and seizure was made from the vehicle used, by way of chance recovery from public road, the provisions of Section 43 of the NDPS Act would apply. In this regard, the guidance may be taken from the judgments of this Court in *S. K. Raju* (supra) and *S.K. Sakkar* (supra). However, the recovery made by Pranveer Singh (PW6) cannot be doubted in the facts of this case.

13. Now reverting to the contention that the motor cycle seized in commission of offence does not belong to accused, however seizure of the contraband from the motor cycle cannot be connected to prove the guilt of accused. The Trial Court on appraisal of the testimony of witnesses, Constable Preetam Singh (PW1), Constable Sardar Singh (PW2), S.I. Pranveer Singh (PW6) and Constable Rajendra Prasad (PW8), who were members of the patrolling team and the witnesses of the seizure, proved beyond reasonable doubt, when they were on patrolling, the appellant came driving the seized vehicle from opposite side. On seeing the police vehicle, he had taken back the motor cycle which he was riding. However, the police team apprehended and intercepted the accused and made the search of vehicle, in which the seized contraband smack was found beneath the seat of the vehicle. However, while making search at public place, the contraband was seized from the motor cycle driven by the accused. Thus, recovery of the contraband from the motor cycle of the appellant was a chance recovery on a public road. As per Section 43 of NDPS Act, any officer of any of the departments, specified in Section 42, is having power of seizure and arrest of the accused from a public place, or in transit of any narcotic drug or psychotropic substance or controlled substance. The said officer may detain in search any person whom he has reason to believe that he has committed an offence punishable under the provisions of the NDPS Act, in case the possession of the narcotic drug or psychotropic substance appears to be unlawful. Learned senior counsel representing the appellant is unable to show any deficiency in following the

procedure or perversity to the findings recorded by the Trial Court, affirmed by the High Court. The seizure of the motor cycle from him is proved beyond reasonable doubt, therefore, the question of ownership of vehicle is not relevant. In the similar set of facts, in the case of Rizwan Khan (supra), this Court observed the ownership of the vehicle is immaterial. Therefore, the argument as advanced by learned senior counsel is of no substance and meritless.

20. The next submission of the learned counsel for the appellant that Section 50 of NDPS Act has also not been complied with as the right to the appellant about their search have not been informed by the police authority as provided under Section 50 of the NDPS Act. The provisions of Section 50 is applicable to the present search of the accused persons whereas in the present case the cannabis (*Ganja*) was recovered from the vehicle belongs to the accused persons which cannot said to be his personal search. The search of a vehicle does not comes under the requirement of Section 50 of the NDPS Act and search of a person is distinguished from search of any vehicle etc.

In the matter of *Kallu Khan* (supra) the Hon'ble Supreme Court has also considered the applicability of Section 50 of NDPS Act in search of the vehicle. In Para 16, the Hon'ble Supreme Court has held that:

"16. Simultaneously, the arguments advanced by the appellant regarding non-compliance of Section 50 of NDPS Act is bereft of any merit because no recovery of contraband from the person of the accused has been made to which compliance of the provision of Section 50 NDPS Act has to follow mandatorily. In the present case, in the search of motor cycle at public place, the seizure of contraband was made, as revealed. Therefore, compliance of Section 50 does not attract in the present case. It is settled in the case of Vijaysinh (supra) that in the case of personal search only, the provisions of Section 50 of the Act is required to be complied with but not in the case of vehicle as in the present case, following the judgments of Surinder Kumar (supra) and Baljinder Singh (supra). Considering the facts of this Court, the argument of non-compliance of Section 50 of NDPS Act advanced by the counsel is hereby repelled."

21. In the matter of *State of Punjab vs. Baldev Singh* reported in **1999 (6) SCC 172** in Para 12 of its judgment the Hon'ble Supreme Court has held:

"12. On its plain reading, Section 50 would come into play only in the case of a search of a person as distinguished from search of any premises etc. However, if the empowered officer, without any prior information as

contemplated by Section 42 of the Act makes a search or causes arrest of person during the normal course of investigation into an offence or suspected offence and on completion of that search, a contraband under the NDPS Act is also recovered, the requirements of Section 50 of the Act are not attracted."

22. In the matter of ***Kulwinder Singh and Another vs. State of Punjab*** reported in **2015 (6) SCC 674** in Para 18 and 21 of its judgment the Hon'ble Supreme Court has held that:

18. In *Dharampal Singh v. State of Punjab*, it has been ruled that the expression "possession" is not capable of precise and complete logical definition of universal application in the context of all the statutes. Recently, in *Mohan Lal v. State of Rajasthan*¹¹, after referring to certain authorities, this Court has held as follows:-

"21. From the aforesaid exposition of law it is quite vivid that the term "possession" for the purpose of Section 18 of the NDPS Act could mean physical possession with animus, custody or dominion over the prohibited substance with animus or even exercise of dominion and control as a result of concealment. The animus and the mental intent which is the primary and significant element to show and establish possession. Further, personal knowledge as to the existence of the "chattel" i.e. the illegal substance at a particular location or site, at a relevant time and the intention based upon the knowledge, would constitute the unique relationship and manifest possession. In such a situation, presence and existence of possession could be justified, for the intention is to exercise right over the substance or the chattel and to act as the owner to the exclusion of others.

22. In the case at hand, the appellant, we hold, had the requisite degree of control when, even if the said narcotic substance was not within his physical control at that moment. To give an example, a person can conceal prohibited narcotic substance in a property and move out thereafter. The said person because of necessary animus would be in possession of the said substance even if he is not, at the moment, in physical control. The situation cannot be viewed differently when a person conceals and hides the prohibited narcotic substance in a public space. In the second category of cases, the person would be in possession because he has the necessary animus and the intention to retain control and dominion."

21. In *State of H.P. v. Pawan Kumar*, it has been held that:

"10. We are not concerned here with the wide definition of the word "person", which in the legal world includes corporations, associations or body of individuals as factually in these type of cases search of their premises can be done and not of their

person. Having regard to the scheme of the Act and the context in which it has been used in the section it naturally means a human being or a living individual unit and not an artificial person. The word has to be understood in a broad common-sense manner and, therefore, not a naked or nude body of a human being but the manner in which a normal human being will move about in a civilised society. Therefore, the most appropriate meaning of the word "person" appears to be — "the body of a human being as presented to public view usually with its appropriate coverings and clothing". In a civilised society appropriate coverings and clothings are considered absolutely essential and no sane human being comes in the gaze of others without appropriate coverings and clothings. The appropriate coverings will include footwear also as normally it is considered an essential article to be worn while moving outside one's home. Such appropriate coverings or clothings or footwear, after being worn, move along with the human body without any appreciable or extra effort. Once worn, they would not normally get detached from the body of the human being unless some specific effort in that direction is made. For interpreting the provision, rare cases of some religious monks and sages, who, according to the tenets of their religious belief do not cover their body with clothings, are not to be taken notice of. Therefore, the work 'person' would mean a human being with appropriate coverings and clothings and also footwear.

11. A bag, briefcase or any such article or container, etc. can, under no circumstances, be treated as body of a human being. They are given a separate name and are identifiable as such. They cannot even remotely be treated to be part of the body of a human being. Depending upon the physical capacity of a person, he may carry any number of items like a bag, a briefcase, a suitcase, a tin box, a thaila, a jhola, a gathri, a holdall, a carton, etc. of varying size, dimension or weight. However, while carrying or moving along with them, some extra effort or energy would be required. They would have to be carried either by the hand or hung on the shoulder or back or placed on the head. In common parlance it would be said that a person is carrying a particular article, specifying the manner in which it was carried like hand, shoulder, back or head, etc. Therefore, it is not possible to include these articles within the ambit of the word "person" occurring in Section 50 of the Act."

23. The next submission made by learned counsel for the appellant is the Section 52 of the NDPS Act as well as Circular of 1/89 issued by Central Government have not been complied with in the case for drawing of the

samples from the seized articles. Therefore, there is substantial non-compliance of the mandatory provisions of the NDPS Act and the appellant is entitled for acquittal.

24. From the evidence of PW-10 Harnarayan Tamrakar, it comes on record that when he detained the vehicle near Bharatiya State Bank, Pamgarh branch. He issued a duty certificate to Constable 335 Shivsai Sagar for service of notice upon the Executive Magistrate for verification of the seizure of cannabis (*Ganja*).
25. On being served the notice upon her, Nayab Tahsildar Ms. Netraprabha Sidar PW-6 came to the spot and conducted the vehicle verification of the cannabis (*Ganja*) and prepared inventory. PW-6 Netraprabha Sidar have stated in her evidence that on 05.01.2020 she received the request letter from the Assistant Sub Inspector H.N. Tamrakar for weighment and physical verification of the cannabis (*Ganja*) which is Ex.P/25. She appeared near Bharatiya State Bank, Pamgarh branch and conducted the weighment of the seized cannabis (*Ganja*) physically verified it and prepared a panahnama Ex.P/18. Four samples of 100gm each were separated and separately sealed by her. The total quantity of cannabis (*Ganja*) was found 222.800kg. The photographer Jai Prakash Ratre has done the photography and the photograph is Article-A. She also issued a certificate Ex.P/26 with respect to the correctness of the proceedings of photography and sampling done in her presence.

In cross-examination she remained firm in saying that when she received notice for physical verification of cannabis (*Ganja*) she went on the spot and conducted the physical verification process of cannabis (*Ganja*) and drawing of sample. Nothing could be elicited from the evidence of this witness to disbelieve the search and seizure proceedings and drawing of samples by this witness. From the evidence of this witness we found substantial compliance of Section 52 and 52-A of the NDPS Act that the

inventory has been prepared by the Executive Magistrate and sample were also drawn by her.

26. PW-1, Kamaljeet Juneja is the weighment witness who stated that he was running his hardware shop beside the State Bank, Pamgarh. On the date of incident police persons came to his shop. He was served with a notice Ex.-P/1 for weighment of the seized article. He weighed the seized article and again re-filled in bags. Before weighing the said article, his electronic weighment apparatus was physically verified and panchnama Ex.-P/2 was prepared the weighment panchnama of the seized cannabis (*Ganja*) was also prepared which is Ex.-P/3. When the leading question was being asked from this witness he stated that after the weighment, seized cannabis (*Ganja*) was found 222.800kg and 4 samples of 100 gm each were separated from the weighed cannabis (*Ganja*). But in cross-examination he stated that his weighment apparatus was physically verified in presence of the Executive Magistrate/Nayab Tahsildar. He denied that the weighment was not done in his presence. He admitted that when the police came to him, he was not informed that all the articles was to be weighed, he voluntarily stated only the packets are to be weighed has been informed by the police. This witness too remain firm of his part of weighment of the seized cannabis (*Ganja*).
27. PW-2, Bhagwat Prasad Sahu is the independent witness have stated in his evidence that on 05.01.2020 at about 09:30 a.m. he was standing near the Bus stand, Pamgarh and at that time police persons came there and took him near Pamgarh State Bank. The Scorpio vehicle came from Shivrinarayan side. The police persons stopped the vehicle and found two persons in it. Both the persons have disclosed their names and they have searched the vehicle as well as accused persons when the Scorpio vehicle was being checked, it was found contained with cannabis (*Ganja*) in numerous packets. When they taken out the packets from the vehicle, Tahsildar Madam was also reached there. The electronic weighment apparatus was being called

from shop of Jain and it was weighed which was found 222.800kg. On the spot the police proceedings have been drawn, various panchnamas have been prepared which are Ex.-P/4 to Ex.-P/18 in which he also signed those panchnamas. In his cross-examination this witness too remain firm in search and seizure proceedings made by the police on the vehicle of the accused persons. He specifically stated that the physical verification of the seized cannabis (*Ganja*) was done by the Tahsildar Madam and not by police which further approves the inventory proceedings drawn by the Tahsildar. Nothing could be elicited from this witnesses which makes his evidence doubtful. He supported the prosecution case being an independent witness.

28. PW-3, Triveni Prasad Kenwat is the vehicle owner. He stated in his evidence that he has given his Scorpio vehicle bearing registration No. MP-65T-0714 on rent. The appellant Shahbaz Ahmad Seikh is his neighbour at village Budhar and he has given the vehicle on rent to Shahbaz Ahmad Seikh. He has appointed Shahbaz Ahmad Seikh as the driver of the vehicle and sent the vehicle where ever it was booked on rent. On 04.01.2020 he sent his vehicle to Raipur on booking and subsequently came to know that his vehicle was being detained by the police in an offence. He is the witness to the effect that the appellant Shahbaz Ahmad Seikh is driving the vehicle at the relevant point of time who was appointed by the PW-3. From his cross-examination, the defence could not extracted any material that he did not owned the said vehicle.
29. PW-4, Saroj Kumar Patle is the Head Constable and Malkhana Moharir at police station, Pamgarh. In his evidence, he stated that on 05.01.2020 he received 222.800kg of cannabis (*Ganja*), including 4 samples packets of 100gm each to kept it in safe custody of Malkhana from Assistant Sub Inspector Harnarayan Tamrakar. He made relevant entries in Rojnamcha Sanha No. 29 and kept it in the safe custody. He also kept the vehicle 3 number plates, the blanket and packing material in one bag which has also

been endorsed in Ex.-P/24. He executed the acknowledgment also which is Ex.-P/22 and the original Malkhana register Ex.-P/23 and its attested true copy is Ex.-P/22-C. He admitted that in the document Ex.-P/22, it is not mentioned that the seized cannabis (*Ganja*) was in sealed condition but the sample packets were found in sealed condition.

30. PW-5, Dildar Nirala and PW-8, Chandrahas Lahre were constables have stated in their evidence that in their presence the RTO papers of the vehicle have been seized from its owner Triveni Prasad Kenwat and seizure memo Ex.-P/21 prepared in which they have signed.
31. PW-7, Arun Kumar Kaushik is another constable has taken the sample packets of cannabis (*Ganja*) marked with A, B, C and D to the FSL, Bilaspur along with the police memo Ex.-P/27. After depositing it in the FSL, Bilaspur he obtained its acknowledgment Ex.-P/28. His departure was endorsed in Rojnamcha No.8 and incoming was also endorsed at Rojnamcha Sanha No. 52 his duty certificate is Ex.-P/29. Nothing could be extracted from this witness also to hold that sample packets were tempered or it was not deposited at FSL, Bilaspur in its original condition.
32. PW-9, Shivrai Sagar is another constable who has taken the notice to the Tahsildar, Pamgarh for physical verification of seized cannabis (*Ganja*) and called the independent witnesses, he proved the duty certificate Ex.-P/30, summons under Section 160 of Cr.P.C. to the independent witnesses Ex.-P/4. The notice to the Tahsildar Ex.-P/25. He also proved the document Ex.-P/3, notice to Kamaljeet Juneja Ex.-P/1. In his cross-examination he too have remained firm in his part of the proceeding that he served the notice to respective persons.
33. PW-11, Padamlochan Sidar is the Patwari who prepared the spot map Ex.-P/16 and panchnama Ex.-P/17. He also submitted a report to the Station House Officer, Pamgarh which is Ex.-P/40.
34. PW-12, Rajkumar Lahre has done the subsequent investigation in the case

after receiving the case diary as well as seized cannabis (*Ganja*) from the Assistant Sub Inspector Harnarayan and proved the document Ex.-P/41, Ex.-P/42 and Ex.-P/43 by which he informed the incident and proceedings to his senior Superior Officers. He also proved various Sanha Ex.-P/45 to Ex.-P/50. He also stuck in his cross-examination in the proceedings drawn by him during the investigation and proved the process of investigation which he has done on his part.

35. The another submission made by learned counsel for the appellant is the procedure prescribed in the Circular 1/89 issued by the Central Government has not been followed and the samples have been drawn in a defective manner. The public authorities should have drawn sample from each of the packets before homogenization or they should have drawn the sample from the packets seized from the vehicle randomly but the procedure drawn by the police that first they have homogenized the entire quantity of cannabis (*Ganja*), therefore, drawing of 4 samples of 100gm each is the defective procedure which vitiates the entire search proceedings. Though it reflect from the evidence available on record that when the police stopped the vehicle they found the cannabis (*Ganja*) kept in 217 brown colour packets. On the spot it was homogenized and then 4 samples of 100 gm each were drawn. Though the procedure is laid down in the Standing order 1/89 for drawing of the sample but merely non-compliance of the procedure for drawing of the sample does not vitiates the entire search and seizure proceedings when other evidences have duly supported the prosecution case that the cannabis (*Ganja*) was seized from the possession of the appellant. The Standing Order 1/89 is guideline for drawing of the sample.
36. Recently in the matter of ***Bharat Aambale vs. The State of Chhattisgarh*** in ***CRA No. 250 of 2025***, order dated 06.01.2025, the Hon'ble Supreme Court has held that irrespective of any failure to follow the procedure laid under Section 52-A of the NDPS Act if the other material on record adduced by the

prosecution inspires confidence and satisfies the Court regarding both recovery and possession of the contraband and from the accused, then even in such cases the Courts can without hesitation proceed for conviction notwithstanding any procedural difficulty in terms of Section 52-A of the NDPS Act.

37. In the matter of **Bharat Aambale** (supra) the Hon'ble Supreme Court in Para 25 to 37 has held as under:

25. In **Noor Aga** (supra) the order of conviction had been set-aside not just on the ground of violation of Section 52A but due to several other discrepancies in the physical evidence as to the colour and weight, and due to the lack of any independent witnesses. In fact, this Court despite being conscious of the procedural deficiencies in the said case in terms of Section 52A observed that the matter may have been entirely different if there were no other discrepancies or if the other material on record were found to be convincing or supported by independent witnesses. The relevant observations read as under: -

“107. The seal was not even deposited in the malkhana. As no explanation whatsoever has been offered in this behalf, it is difficult to hold that sanctity of the recovery was ensured. Even the malkhana register was not produced.

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108. There exist discrepancies also in regard to the time of recovery. The recovery memo, Exhibit PB, shows that the time of seizure was 11.20 p.m. PW 1 Kulwant Singh and PW 2 K.K. Gupta, however, stated that the time of seizure was 8.30 p.m. The appellant's defence was that some carton left by some passenger was passed upon him, being a crew member in this regard assumes importance (see Jitendra para 6). The panchnama was said to have been drawn at 10 p.m. as per PW 1 whereas PW 2 stated that panchnama was drawn at 8.30 p.m. Exhibit PA, containing the purported option to conduct personal search under Section 50 of the Act, only mentioned the time when the flight landed at the airport.

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111. In a case of this nature, where there are a large number of discrepancies, the appellant has been gravely prejudiced by their non-examination. It is true that what matters is the quality of the evidence and not the quantity thereof but in a case of this nature where procedural safeguards were required to be strictly complied

with, it is for the prosecution to explain why the material witnesses had not been examined. The matter might have been different if the evidence of the investigating officer who recovered the material objects was found to be convincing. The statement of the investigating officer is wholly unsubstantiated. There is nothing on record to show that the said witnesses had turned hostile. Examination of the independent witnesses was all the more necessary inasmuch as there exist a large number of discrepancies in the statement of official witnesses in regard to search and seizure of which we may now take note.

(Emphasis supplied)

26. Non-compliance or delayed compliance with the procedure prescribed under Section 52A of the NDPS Act or the Rules / Standing Order(s) thereunder may lead the court to draw 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. Such delay or deviation from Section 52A of the NDPS Act or the Standing Order(s) / Rules thereunder will not, by itself, be fatal to the case of the prosecution, unless there are discrepancies in the physical evidence which may not have been there had such compliance been done. What is required is that the courts take a holistic and cumulative view of the discrepancies that exist in the physical evidence adduced by the prosecution and correlate or link the same with any procedural lapses or deviations. Thus, whenever, there is any deviation or non-compliance of the procedure envisaged under Section 52A, the courts are required to appreciate the same keeping in mind the discrepancies that exist in the prosecution's case. In such instances of procedural error or deficiency, the courts ought to be extra-careful and must not overlook or brush aside the discrepancies lightly and rather should scrutinize the material on record even more stringently to satisfy itself of the aspects of possession, seizure or recovery of such material in the first place.

27. In such circumstances, particularly 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 adequately proving compliance of the same, it would not be appropriate for the courts 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. Similarly, irrespective of any failure to follow the procedure laid under Section 52A of the NDPS Act, if the other material on record adduced by the prosecution inspires confidence and satisfies the court regarding both the recovery and possession of the contraband from the accused, then even in such cases, the courts can without hesitation proceed for conviction notwithstanding

any procedural defect in terms of Section 52A of the NDPS Act.

28. In *Khet Singh v. Union of India* reported in (2002) 4 SCC 380 this Court held that the Standing Order(s) issued by the NCB and the procedure envisaged therein is only intended to guide the officers and to see that a fair procedure is adopted by the officer-in-charge of the investigation. It further observed that there may, however, be circumstances in which it would not be possible to follow these guidelines to the letter, particularly in cases of chance recovery or lack of proper facility being available at the spot. In such circumstances of procedural illegality, the evidence collected thereby will not become inadmissible and rather the courts would only be required to consider all the circumstances and find out whether any serious prejudice had been caused to the accused or not. Further it directed, that in such cases of procedural lapses or delays, the officer would be duty bound to indicate and explain the reason behind such delay or deficiency whilst preparing the memo. The relevant observations read as under: -

“5. It is true that the search and seizure of contraband article is a serious aspect in the matter of investigation related to offences under the NDPS Act. The NDPS Act and the Rules framed thereunder have laid down a detailed procedure and guidelines as to the manner in which search and seizure are to be effected. If there is any violation of these guidelines, the courts would take a serious view and the benefit would be extended to the accused. The offences under the NDPS Act are grave in nature and minimum punishment prescribed under the statute is incarceration for a long period. As the possession of any narcotic drug or psychotropic substance by itself is made punishable under the Act, the seizure of the article from the appellant is of vital importance.

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10. The instructions issued by the Narcotics Control Bureau, New Delhi are to be followed by the officer-in-charge of the investigation of the crimes coming within the purview of the NDPS Act, even though these instructions do not have the force of law. They are intended to guide the officers and to see that a fair procedure is adopted by the officer-in-charge of the investigation. It is true that when a contraband article is seized during investigation or search, a seizure mahazar should be prepared at the spot in accordance with law. There may, however, be circumstances in which it would not have been possible for the officer to prepare the mahazar at the spot, as it may be a chance recovery and the officer may not have the facility to prepare a seizure mahazar at the spot itself. If the seizure is effected at the place where there are no witnesses and there is no facility for weighing the contraband article or other requisite facilities are lacking, the officer can prepare the seizure

mahazar at a later stage as and when the facilities are available, provided there are justifiable and reasonable grounds to do so. In that event, where the seizure mahazar is prepared at a later stage, the officer should indicate his reasons as to why he had not prepared the mahazar at the spot of recovery. If there is any inordinate delay in preparing the seizure mahazar, that may give an opportunity to tamper with the contraband article allegedly seized from the accused. There may also be allegations that the article seized was by itself substituted and some other items were planted to falsely implicate the accused. To avoid these suspicious circumstances and to have a fair procedure in respect of search and seizure, it is always desirable to prepare the seizure mahazar at the spot itself from where the contraband articles were taken into custody.

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16. Law on the point is very clear that even if there is any sort of procedural illegality in conducting the search and seizure, the evidence collected thereby will not become inadmissible and the court would consider all the circumstances and find out whether any serious prejudice had been caused to the accused. If the search and seizure was in complete defiance of the law and procedure and there was any possibility of the evidence collected likely to have been tampered with or interpolated during the course of such search or seizure, then, it could be said that the evidence is not liable to be admissible in evidence." (Emphasis supplied)

29. A similar view as above was reiterated in the decision of **State of Punjab v. Makhan Chand** reported in **(2004) 3 SCC 453** wherein this Court after examining the purport of Section 52A of the NDPS Act and the Standing Order(s) issued thereunder, held that the procedure prescribed under the said order is merely intended to guide the officers to see that a fair procedure is adopted by the officer in charge of the investigation and they were not inexorable rules. The relevant observations read as under: -

"10. This contention too has no substance for two reasons. Firstly, Section 52-A, as the marginal note indicates, deals with "disposal of seized narcotic drugs and psychotropic substances". Under sub-section (1), the Central Government, by a notification in the Official Gazette, is empowered to specify certain narcotic drugs or psychotropic substances, having regard to the hazardous nature, vulnerability to theft, substitution, constraints of proper storage space and such other relevant considerations, so that even if they are material objects seized in a criminal case, they could be disposed of after following the procedure prescribed in sub-sections (2) and (3). If the procedure prescribed in sub-sections (2) and (3) of *Bharat Aambale vs The State Of Chhattisgarh* on 6 January,

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Section 52-A is complied with and upon an application, the Magistrate issues the certificate contemplated by sub-section (2), then sub-section (4) provides that, notwithstanding anything to the contrary contained in the Indian Evidence Act, 1872 or the Code of Criminal Procedure, 1973, such inventory, photographs of narcotic drugs or substances and any list of samples drawn under sub-section (2) of Section 52-A as certified by the Magistrate, would be treated as primary evidence in respect of the offence. Therefore, Section 52-A(1) does not empower the Central Government to lay down the procedure for search of an accused, but only deals with the disposal of seized narcotic drugs and psychotropic substances.

11. Secondly, when the very same Standing Orders came up for consideration in Khet Singh v. Union of India this Court took the view that they are merely intended to guide the officers to see that a fair procedure is adopted by the officer in charge of the investigation. It was also held that they were not inexorable rules as there could be circumstances in which it may not be possible for the seizing officer to prepare the mahazar at the spot, if it is a chance recovery, where the officer may not have the facility to prepare the seizure mahazar at the spot itself. Hence, we do not find any substance in this contention.” (Emphasis supplied)

30. Thus, from above it is clear that 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 ensure 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. We say so because, due to varying circumstances, there may be situations wherein it may not always be possible to forward the seized contraband immediately for the purpose of sampling. This could be due to various factors, such as the sheer volume of the contraband, the peculiar nature of the place of seizure, or owing to the volatility of the substance so seized that may warrant slow and safe handling. There could be situations where such contraband after being sampled cannot be preserved due to its hazardous nature and must be destroyed forthwith or vice-verse where the nature of the case demands that they are preserved and remain untouched. Due to such multitude of possibilities or situations, neither can the police be realistically expected to rigidly adhere to the procedure laid down in Section 52A or its allied Rules / Orders, nor can a strait-jacket formula be applied for insisting compliance of each procedure in a specified timeline to the letter, due to varying situations or requirements of each case. Thus, what is actually required is only a substantial compliance of the procedure laid down under Section 52A of the NDPS Act and the Standing Order(s) / Rules framed thereunder, and any discrepancy or deviation in the same may lead the court to draw an adverse inference against the police as per the facts of each and every case. When it comes to the outcome of trial, it is only after taking a

cumulative view of the entire material on record including such discrepancies, that the court should proceed either to convict or acquit the accused. Non-compliance of the procedure envisaged under Section 52A may be fatal only in cases where such non-compliance goes to the heart or root of the matter. In other words, the discrepancy should be such that it renders the entire case of the prosecution doubtful, such as instances where there are significant discrepancies in the colour or description of the substance seized from that indicated in the FSL report as was the case in **Noor Aga** (supra), or where the contraband was mixed in and stored with some other commodity like vegetables and there is no credible indication of whether the *Bharat Aambale vs The State Of Chhattisgarh* on 6 January, 2025 Indian Kanoon - <http://indiankanoon.org/doc/94312390/> 28 narcotic substance was separated and then weighed as required under the Standing Order(s) or Rules, thereby raising doubts over the actual quantity seized as was the case in **Mohammed Khalid** (supra), or where the recovery itself is suspicious and uncorroborated by any witnesses such as in **Mangilal** (supra), or where the bulk material seized in contravention of Section 52A was not produced before the court despite being directed to be preserved etc. These illustrations are only for the purposes of brining clarity on what may constitute as a significant discrepancy in a given case, and by no means is either exhaustive in nature or supposed to be applied mechanically in any proceeding under the NDPS Act. It is for the courts to see what constitutes as a significant discrepancy, keeping in mind the peculiar facts, the materials on record and the evidence adduced. At the same time, we may caution the courts, not to be hyper-technical whilst looking into the discrepancies that may exist, like slight differences in the weight, colour or numbering of the sample etc. The Court may not discard the entire prosecution case looking into such discrepancies as more often than not an ordinarily an officer in a public place would not be carrying a good scale with him, as held in **Noor Aga** (supra). It is only those discrepancies which particularly have the propensity to create a doubt or false impression of illegal possession or recovery, or to overstate or inflate the potency, quality or weight of the substance seized that may be pertinent and not mere clerical mistakes, provided they are explained properly. Whether, a particular discrepancy is critical to the prosecution's case would depend on the facts of each case, the nature of substance seized, the quality of evidence on record etc.

31. At the same time, one must be mindful of the fact that Section 52A of the NDPS Act is only a procedural provision dealing with seizure, inventory, and disposal of narcotic drugs and psychotropic substances and does not exhaustively lay down the evidentiary rules for proving seizure or recovery, nor does it dictate the manner in which evidence is to be led during trial. It in no manner prescribes how the seizure or recovery of narcotic substances is to be proved or what can be led as evidence to prove the same. Rather, it is the general principles of evidence, as enshrined in the Evidence Act that governs how seizure or recovery may be proved.

32. Thus, the prosecution sans the compliance of the procedure under Section 52A of the NDPS Act will not render itself helpless but can still prove the seizure or recovery of contraband by leading cogent evidence in this regard such as by examining the seizing officer, producing independent witnesses to the recovery, or presenting the original quantity of seized substances before the court. The evidentiary value of these materials is ultimately to be assessed and looked into by the court. The court should consider whether the evidence inspires confidence. The court should look into the totality of circumstances and the credibility of the witnesses, being mindful to be more cautious in their scrutiny where such procedure has been flouted. The cumulative effect of all evidence must be considered to determine whether the prosecution has successfully established the case beyond reasonable doubt as held in **Noor Aga** (supra).

33. Even in cases where there is non-compliance with the procedural requirements of Section 52A, it does not necessarily vitiate the trial or warrant an automatic acquittal. Courts have consistently held that procedural lapses must be viewed in the context of the overall evidence. If the prosecution can otherwise establish the chain of custody, corroborate the seizure with credible testimony, and prove its case beyond reasonable doubt, the mere non-compliance with Section 52A may not be fatal. The *Bharat Aambale vs The State Of Chhattisgarh* on 6 January, 2025 Indian Kanoon - <http://indiankanoon.org/doc/94312390/> 29 emphasis must be on substantive justice rather than procedural technicalities, and keeping in mind that the salutary objective of the NDPS Act is to curb the menace of drug trafficking.

34. At this stage we may clarify the scope and purport of Section 52A sub-section (4) with a view to obviate any confusion. Sub-section (4) of Section 52A provides that every court trying an offence under the NDPS Act, shall treat the inventory, photographs and samples of the seized substance that have been certified by the magistrate as primary evidence.

35. What this provision entails is that, where the seized substance after being forwarded to the officer empowered is inventoried, photographed and thereafter samples are drawn therefrom as per the procedure prescribed under the said provision and the Rules / Standing Order(s), and the same is also duly certified by a magistrate, then such certified inventory, photographs and samples has to mandatorily be treated as primary evidence. The use of the word “shall” indicates that it would be mandatory for the court to treat the same as primary evidence if twin conditions are fulfilled being (i) that the inventory, photographs and samples drawn are certified by the magistrate AND (ii) that the court is satisfied that the entire process was done in consonance and substantial compliance with the procedure prescribed under the provision and its Rules / Standing Order(s).

36. Even where the bulk quantity of the seized material is not produced before the court or happens to be destroyed or disposed in contravention of

Section 52A of the NDPS Act, the same would be immaterial and have no bearing on the evidentiary value of any inventory, photographs or samples of such substance that is duly certified by a magistrate and prepared in terms of the said provision. We say so, because sub-section (4) of Section 52A was inserted to mitigate the issue of degradation, pilferage or theft of seized substances affecting the very trial. It was often seen that, due to prolonged trials, the substance that was seized would deteriorate in quality or completely disappear even before the trial could proceed, by the time the trial would commence, the unavailability of such material would result in a crucial piece of evidence to establish possession becoming missing and the outcome of the trial becoming a foregone conclusion. The legislature being alive to this fact, thought fit to introduce an element of preservation of such evidence of possession of contraband in the form of inventory, photographs and samples and imbued certain procedural safeguards and supervision through the requirement of certification by a magistrate, which is now contained in sub-section (4) of Section 52A. In other words, any inventory, photographs or samples of seized substance that was prepared in substantial compliance of the procedure under Section 52A of the NDPS Act and the Rules / Standing Order(s) thereunder would have to mandatorily be treated as primary evidence, irrespective of the fact that the bulk quantity has not been produced and allegedly destroyed without any lawful order.

37. Section 52A sub-section (4) should not be conflated as a rule of evidence in the traditional sense, i.e., it should not be construed to have laid down that only the certified inventory, photographs and samples of seized substance will be primary evidence and nothing else. The rule of 'Primary Evidence' or 'Best Evidence' is now well settled. In order to prove a fact, only the best evidence to establish such fact must be led and adduced which often happens to be the original evidence itself. The primary evidence for proving possession will always be the seized substance itself. However, in order to mitigate the challenges in preservation of such substance till the duration of trial, due to *Bharat Aambale vs The State Of Chhattisgarh* on 6 January, 2025 Indian Kanoon - <http://indiankanoon.org/doc/94312390/> 30 pilferage, theft, degradation or any other related circumstances, the legislature consciously incorporated sub-section (4) in Section 52A to bring even the inventory, photographs or samples of such seized substance on the same pedestal as the original substance, and by a deeming fiction has provided that the same be treated as primary evidence, provided they have been certified by a magistrate in substantial compliance of the procedure prescribed. This, however, does not mean that where Section 52A has not been complied, the prosecution would be helpless, and cannot prove the factum of possession by adducing other primary evidence in this regard such as by either producing the bulk quantity itself, or examining the witnesses to the recovery etc. What Section 52A sub-section (4) of the NDPS Act does is it creates a new form of primary evidence by way of a deeming fiction which would be on par with

the original seized substance as long as the same was done in substantial compliance of the procedure prescribed thereunder, however, the said provision by no means renders the other evidence in original to be excluded as primary evidence, it neither confines nor restricts the manner of proving possession to only one mode i.e., through such certified inventory, photographs or samples such that all other material are said to be excluded from the ambit of 'evidence', rather it can be said that the provision instead provides one additional limb of evidentiary rule in proving such possession. Thus, even in the absence of compliance of Section 52A of the NDPS Act, the courts cannot simply overlook the other cogent evidence in the form of the seized substance itself or the testimony of the witnesses examined, all that the courts would be required in the absence of any such compliance is to be more careful while appreciating the evidence.

38. Further in Para 41 and 42 of the said judgment of **Bharat Aambale** (supra) held that:

41. As per Clause 2.5 of the Standing Order No. 1 of 89 i.e., the relevant standing order in force at the time of seizure, where multiple packages or packets are seized, they first have to be subjected to an identification test by way of a colour test to ascertain which packets are of the same sized, weigh and contents. Thereafter, all packets which are identical to each other in all respects will be bunched in lots, in the case of ganja, they may be bunched in lots of 40 packets each. Thereafter from each lot, one sample and one in duplicate has to be drawn. The relevant clause reads as under: -

"2.5 However, when the packages/containers seized together are of identical size and weight, bearing identical markings, and the contents of each package given identical results on colour test by the drug identification kit, conclusively indicating that the packages are identical in all respects, the packages/containers may be carefully bunched in lots of ten packages/containers except in the case of ganja and hashish (charas), where it may be bunched in lots of 40 such packages/containers. For each such lot of packages/containers, one sample (in duplicate) may be drawn."

42. As per Clause 2.8 of the Standing Order No. 1 of 89, while drawing a sample from a particular lot, representative samples are to be drawn, in other words, equal quantity has to be taken from each packet in a particular lot, that then has to be mixed to make one composite sample. The relevant clause reads as under: -

"2.8 While drawing one sample (in duplicate) from a particular lot, it must be ensured that representative samples in equal quantity are taken from each package/container of that lot and mixed together to make a composite whole from which the samples are drawn for that lot."

39. In the present case the entire search and seizure proceedings have found genuine and the correct procedure have been drawn by the police persons. The independent witnesses have duly supported the prosecution case that when the vehicle was being stopped two persons were found sitting, they disclosed their names, on being checked the vehicle was contained with 217 packets in which cannabis (*Ganja*) was found which was found in their possession. The seizure of cannabis (*Ganja*) and its weight and sampling were proved by the Tahsildar/Executive Magistrate and nothing adverse could be found to disbelieve their evidences which further proves that the appellant was found in possession of such a huge quantity of cannabis (*Ganja*) in his vehicle. The appellant did not able to impute any palpable to make good his case that there has been non-compliance of any mandatory provisions of the NDPS Act.
40. There is no material available on record so as to arrived at finding that the accused persons have been falsely implicated in this case. Section 20 of the NDPS Act provides that whichever in contravention of any provisions of this Act or any rule made therein possess cannabis (*Ganja*) shall be punished in accordance with the said provisions. Section 20 (b) uses the "possess". In the present case the appellant was found in possession of 222.800 kg of cannabis (*Ganja*) in his Scorpio vehicle which he was carrying at the relevant time. The judgment passed by learned trial Court is quite detailed judgment which has dealt with every aspect of the matter and the analysis made therein clearly proves the appellant has committed the offence in question and was transporting cannabis (*Ganja*) weighing 222.800 kg. He could not given any suggestion as to how that huge quantity of cannabis (*Ganja*) came to be found in the vehicle in which he along with the other co-accused Ajay Singh Baghel were travelling.
41. The FSL report Ex.-P/27 further proves that the sample packets of cannabis (*Ganja*) which were drawn from the total quantity of cannabis (*Ganja*) were

found to be contained with cannabis (*Ganja*) contents and further corroborates the allegation against the appellant.

42. In view of the above discussion, this Court is of the considered opinion that the judgment passed by learned trial Court is based on proper appreciation of evidence which is neither perverse nor contrary to the record as well as law laid down by the Hon'ble Supreme Court and the same needs no interference as such the judgment of conviction and order of sentence awarded to the appellant is hereby affirmed.
43. In the result, the appeal filed by the appellant is hereby **dismissed**. The appellant is reported to be in jail. He shall serve the remaining period of jail sentence as has been awarded to him by the learned trial Court.
44. Registry is directed to send a copy of this judgment to the concerned Superintendent of Jail where the appellant is undergoing his jail sentence to serve the same on the appellant informing him that he is at liberty to assail the present judgment passed by this Court by preferring an appeal before the Hon'ble Supreme Court with the assistance of High Court Legal Services Committee or the Supreme Court Legal Services Committee.
45. Let a copy of this judgment and the original records be transmitted to the trial Court concerned forthwith for necessary information and compliance.

Sd/-

(Ravindra Kumar Agrawal)
Judge

Sd/-

(Ramesh Sinha)
Chief Justice

Alok

ALOK SHARMA	Digitally signed by ALOK SHARMA Date: 2025.02.14 14:34:44 +0530
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Headnote

The non-compliance of Rule 10 and 11 of the NDPS Rules/Standing Order No. 1/89 issued by the Central Government and delay or deviation from Section 52-A of the NDPS Act, will not by itself fatal to the case of prosecution if recovery and seizure of the contraband from the possession of the accused is clearly established from other evidence in its cumulative effect.