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In the Court of Sri Abhishek Kumar Bhan
A.D.J-I, Banka
District- Banka(Bihar)
Spl. N.D.P.S Case No.-02/2020
State of Bihar vs Ritesh Kumar and ors.

FORM A

IN THE COURT OF ADDITIONAL DISTRICT & SESSIONS JUDGE-I, BANKA Present:- Sri Abhishek Kumar Bhan, Addl. District & Sessions Judge-I, Banka [Date of Judgment:- 16-05-2025] [Spl. N.D.P.S Case No. 02/2020] F.I.R. No.:- 28/2020 Crime:- Under Sections 8(c) and 20(b)(ii) (C) of N.D.P.S. Act Police Station:-Bounsi, Banka	
INFORMANT	Rajesh Kumar Yadav (S.H.O. Bounsi)
REPRESENTED BY	Sri. Raj Kishore Singh, (Ld.A. P.P.)
ACCUSED	1. Ritesh Kumar, S/o- Sri Bidhu Das, Vill-Futkichak, P.S- Gogdi(Jamalpur) Dist- Khagaria, aged about 23 years. 2. Sujeet Kumar, S/o- Sri Devan Yadav,Vill-Araria, P.S-Madhiya, Dist- Khagaria, aged about 34 years.
REPRESENTED BY	Sri Anand Deo Choudhary, (Ld. Adv.)

FORM B

Date of Offence	31.10.2020
Date of F.I.R	31.01.2020
Date of Chargesheet	22.10.2020
Date of Framing of Charges	13.01.2021
Date of commencement of evidence	13.01.2021
Date on which judgment is reserve	02.05.2025
Date of the Judgment	16.05.2025
Date of the Sentencing Order, if any	24.05.2025

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Accused Details

Rank of the Accused	Name of Accused	Date of Arrest	Date of Release on Bail	Offences Charged with	Whether Acquitted or convicted	Sentence Imposed	Period of Detention Undergone during Trial for purpose of section 428 Cr.P.C.
1	Ritesh Kumar			8(c) and 20(b)(ii) (C) of N.D.P.S. Act	convicted	sentenced to undergo Rigorous Imprisonment for 14(Fourteen Years) and are also liable to pay	
2	Sujeet Kumar			8(c) and 20(b)(ii) (C) of N.D.P.S. Act	convicted	fine of Rs. One Lakh each for the offence punishable u/s 20(b)(ii) (C) of N.D.P.S Act, in default to pay fine they shall further undergo R.I. for one year	

FORM C

LIST OF PROSECUTION/DEFENCE/COURT WITNESS
A. Prosecution

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS
PW 1	Arun Kumar	Police witness
PW 2	Kumar Shambhu	Police witness
PW 3	Saroj Kumar Sharma	Police witness
PW 4	Rajesh Kumar Yadav	Informant
PW 5	Sudhir Kumar	Investigating officer
PW 6	Gopinath Mandal	Circle Officer
PW 7	Nandlal Ram	Police witness
PW 8	Amit Kumar Singh	Police witness
PW 9	Niranjan Kumar Yadav	Seizure list witness
PW 10	Md. Sayed Alam	Astt. Director FSL Patna

B. Defene Witness, if any:

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS
Nil	Nil	Nil

C. Court Witness, if any:

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS
Nil	Nil	

LIST OF PROSECUTION/DEFENCE/COURT EXHIBITS

A. Prosecution

Sr. No.	Exhibit Number	Description
1	P-1	Seizure list
2	P-2	Written statement of informant
3	P-3	FSL Report
4	P-4	Signature of Gopinath Mandal on seizure list
5	P-5	Signature of Niranjana Kumar Yadav on seizure list
6	P-6 to P-6/2	Arrest Memo of three accused person
7	P-7	F.S.L report received from Patna FSL.

B. Defence:

Sr. No.	Exhibit Number	Description
1	Nil	Nil

C. Court Exhibits

Sr. No.	Exhibit Number	Description
1	Nil	

D. Material Objects

Sr. No.	Material Object Number	Description
1	M1 to M132 by PW-4	132 packet of Ganja

J U D G M E N T

1. The accused persons namely Ritesh Kumar and Sujeet Kumar, are facing trial u/s 8(c) and 20(b)(ii) (C) of N.D.P.S. Act. In this case the cognizance was taken by Ld. District & Sessions Judge, Banka against the accused persons and one of the accused namely Rahul Kumar was declared juvenile by order dated 16.06.2020 and now in this case only two accused persons are facing trial.

2. The FIR is based upon the written statement by filed by Rajesh Kumar Yadav, S.H.O. Bounsi, who in his statement has stated that on 31.01.2020 at 09:00 O'clock he received confidential tip that Sumo Gold bearing no. BR10PA 7815 is going from Dumka to Khagaria and loaded with the ganja. After that he registered sanha no. 976/2020 and constituted police party which also included local Magistrate Gopinath Mandal and reached at 10:00 O'clock at Maharana Chauk and they started waiting for the Sumo Gold, at 12:30 O'clock the Sumo Gold in question reached there and when they tried to stop that car the driver tried to fled away, but with the help of raiding party member the vehicle was stopped. When the vehicle was stopped some passerby reached over there out of them two persons namely Pankaj Marandi and Niranjana Kumar Yadav was made seizure list witness and before them the vehicle was searched. The seizure list witnesses were searched over and in the presence of them three persons which include driver Sujeet Kumar, Ritesh Kumar and Rahul Kumar were taken from the vehicle and they were again searched and they were told that we have information that ganja was loaded on Sumo Gold and after that they were told about their rights and the notice was handed over to them. After that in the presence of two independent witnesses and in the presence of Local Magistrate the said vehicle was searched and the ganja was found to be kept in the system box of the body of Sumo Gold. Total 132 packets of big, medium and small size were seized. There were 25 big packets, 23 medium packets and 84 small packets were there. All the packets were weighed separately and the total weight was found to be 120.6 Kg. After that driver Sujeet Kumar was searched and from his body one mobile with two sim and Rs.2000/- was seized. Ritesh

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Kumar was also search and from his body one mobile with two sim was also seized. From possession of Rahul Kumar one mobile with two sim was seized. Inside the Sumo gold another number plate was also seized. All the seized articles were enumerated in the seizure list and the material were sealed at the place of occurrence and seizure list was prepared. On enquiry the driver told that the ganja originally belongs to Tufani Yadav and Jitesh Yadav and when the paper was demanded they failed to produce any relevant paper regarding ganja. The copy of the seizure list was handed over to the accused and FIR was registered.

3. After investigation, Investigating Officer submitted the charge-sheet under section 20(b)(2)(c)/22/23 N.D.P.S Act and subsequently cognizance of the offence was taken on 04.11.2020. Accordingly, on 13.01.2021 the charges were framed against them u/s 8(c) and 22(c) of N.D.P.S. Act, to which they pleaded not guilty and claimed to be tried.

4. On 02.05.2025 statement of accused persons has been recorded under section 313 of Cr.P.C in which they denied the case of the prosecution and claimed to be innocent.

5. Defence case in brief is denial of the entire occurrence and innocence of the accused person.

6. Now, The point for determination arises as to whether prosecution has been able to bring home the guilt of the accused person beyond the shadow of reasonable doubts?

FINDINGS

7. In order to prove its case, the prosecution has examined ten witnesses in this case namely:-

PW-1 Arun Kumar,
PW-2 Kumar Shambhu,
PW-3 Saroj Kumar Sharma,
PW-4 Rajesh Kumar Yadav,
PW-5 Sudhir Kumar,
PW-6 Gopinath Mandal,
PW-7 Nandlal Ram,

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PW-8 Amit Kumar Singh,
PW-9 Niranjan Kumar Yadav,
PW-10 Md. Sayed Alam.

Beside these oral evidences prosecution has also proved certain documents which are as follows:-

P-1	Seizure list
P-2	Written statement of informant
P-3	FSL Report
P-4	Signature of Gopinath Mandal on seizure list
P-5	Signature of Niranjan Kumar Yadav on seizure list
P-6 to P-6/2	Arrest Memo of three accused person
P-7	F.S.L report received from Patna FSL.

Material Exhibits:- M1 to M132 Packets of Ganja

8. The defence has not produced any oral or documentary evidence in this case.

9. Now, coming to the evidence of the prosecution witness:-

PW-1 is Arun Kumar, who is the member of the police party and in his chief has stated that the date of occurrence is 31.01.2020 and at 12:30 O’clock Tata Sumo vehicle bearing number BR10PA 7815 reached at the spot. The S.H.O. was informed that there is ganja in that vehicle and when the vehicle was stopped the driver tried to fled away, but with the help of armed guards the vehicle was stopped and there was a box made under the vehicle from which 132 packet of ganja in three sizes was seized. The ganja was weighed before the Magistrate with the electronic weighing scale and the weight was found to be 120.6 Kg. After that three mobile and Rs.2000/- was also seized. The seizure list was prepared by S.H.O. and after seizure the ganja was taken to the police station.

During his cross-examination in para 03 he has stated that on the date of occurrence his duty was from 08:00 AM to 08:00 PM and during that period he is not able to recall with how many

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people he interact. In para 05 he has stated that he was not aware whether the senior officer was informed in writing or not. In para 06 he has stated that on 31.01.2020 he gave statement to the police at 05:00 PM till that time the police party did not search any vehicle. In para 07 he has stated that they remained at the place of occurrence for seven hours, but they searched only one vehicle. In para 08 he has stated that 132 packets was seized before the police and all packets were weighed separately. He is not able to answer about the weight of these pockets. He is also not able to answer the weight of the sample. In para 09 he has stated that total ganja weighing 120.6 Kg in 132 Packets was brought to the police station and the ganja was kept in the malkhana. In para 11 He has stated that the seized ganja is not before the court today and he is not personally acquainted with seizure list witnesses and not aware about the persons who signed on the seizure list. In para 12 He has stated that whatever he is stating is on voluntary basis. He is also not acquainted with the accused persons.

PW-2 is Kumar Shambhu, who is the raiding party member and in his chief has stated that the occurrence dates back to two years and three months and the timing was 12:00 O'clock and at that time he was at Maharana mor and from one Sumo gold vehicle 120.6 Kg ganja in 132 packets were seized. Three accused persons were arrested and they were searched by the S.H.O.. From the possession of the driver Sujeet Kumar one mobile and Rs.2000/- was seized and from the possession of other two accused persons one mobile from both of them was recovered. One number plate was also seized. The seizure list was prepared which was signed by the public, all the seized articles were taken to the police station.

During his cross-examination in para 03 he has stated that he did not remember the date of the occurrence and with him S.H.O., 04 constables, Magistrate Saheb and driver was present. He has further stated that from the police station total nine persons were proceeded for the spot. In para 04 he has stated that he did not remember how many vehicles he checked on that date. He has stated that when they tried to stopped the vehicle the vehicle stopped. There were three persons in that vehicle. In para 05 he has stated that the packets of ganja was taken by Bara Babu himself and there was 132 packets. The seizure list was prepared

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at Maharana Chauk itself. The ganja was weighed by Bara Babu himself. However, in the next line he states that he does not know who weighed the ganja.

PW-3 is Saroj Kumar Sharma, who is also member of the raiding party, who in his chief has stated that at the time of occurrence he was at Maharana Chauk and Bara Babu told them that the ganja is about to reach. The Bara Babu tried to stop Safari gold vehicle but the vehicle fled away which was stopped and from the search of that vehicle 132 packets of the ganja was seized which was weighed and the weight was found to be 120.6 Kg. Total three accused persons were arrested. Mobile and Rs.2000/- was seized from the possession of the driver and one mobile was also seized from both accused persons. One number plate was also seized. The inventory was also prepared on which Magistrate saheb signed. They took seized articles and the accused to the police station.

During his cross-examination he is not able to tell the exact date of the occurrence. He has further stated that there were three persons in that vehicle and he does not know them personally. On that day they check other two-three vehicle whose number he does not know. In para 04 he states that he does not know the number of the vehicle on which the police party reached at the spot. In para 05 he has stated that there were three persons on that vehicle and he does not know where they were seated. The vehicle was searched by Bara Babu and at that time Rajesh Yadav Bara Babu, constable and driver was present there. In para 06 it is stated that there were told 08 persons involved in checking and seizing the Tata Sumo Gold vehicle. The C.O. Saheb came after checking of the vehicle. He has further stated that when the ganja along with the vehicle was taken to the thana then Saheb came at the P.S. In para 07 he has stated that the ganja was off loaded at the police station and the seizure list was prepared at the P.S. itself and he has also signed on the seizure list.

PW-4 is Rajesh Kumar Yadav, who is the informant himself, who in his chief has stated that the date of occurrence is 31.01.2020 and the time was 09:00 AM and at that time he was posted as S.H.O. of Bounsi P.S. He received confidential tip of that smuggler of ganja is taking ganja from Dumka to Khagaria in Sumo

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Gold vehicle bearing number BR10PA 7815. After that he registered sanha no 976/2020 and informed his senior officer and as per direction he constituted a police team comprising of himself, ASI Arun Kumar, ASI Nand Lal Ram, Constable Saroj Kumar Sharma, Amit Kumar, Kumar Shambhu, Laxmi Narayan Singh and C.O. Sri Gopi Nath Mandal. After that they proceeded from the police station at 09:40 AM and reached at the spot called Maharana Chauk at 10:00 AM and started waiting for the vehicle in question. At 12:30 O'clock one white colored Sumo Gold bearing number BR10PA 7815 was spotted coming from Dumka side. They waived to the driver to stop the vehicle, but the driver tried to fled away, but with the help of police party the vehicle was stopped. In the meantime the passerby also gathered at the spot. They enquired about the driver who told his name as Sujeet Yadav and the persons who are sitting behind the driver as Ritesh Kumar and Rahul Kumar. After that the men in question were given options to be searched by police or Magistrate, to whom they replied that they will preferred to be searched by the Magistrate. Out of crowd gathered over there two independent persons were identified as witnesses namely Pankaj Marandi and Niranjan Kumar Yadav and they were searched also. Before independent witnesses all three persons and the vehicle was seized. From the system box of the vehicle 132 packet in small, medium and big size of ganja was seized, which were weighed on the electronic scale and the weight was found to be 120.6 Kg. There were 25 packets of big size, 23 packets of medium size and 84 packets of small size. From the possession of Sujeet Kumar one mobile with two Sim and Rs.2000/- was seized, from the possession of Ritesh Kumar one mobile with two sim was seized, and also from possession of Rahul kumar one mobile with one sim seized,.Seizure list was prepared before the Magistrate and the copy of which was given to the accused persons. The informant has identified the seizure list exhibited as P-1, written statement at P-2. In para 11 he has stated that he has prepared samples out of the seized articles and that was sealed and handed over to the I.O. In para 12 he has stated that the sealed exhibit in five bags is being produced on 14.09.2022 before the court, which contains 132 packets which stands exhibited as Ext-M-1 to Ext.-M-132. All three accused were arrested and they told that the ganja basically belongs to Tufani Yadav and Jitesh Yadav. They did not produced any documents regarding possession

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of ganja.

During his cross-examination he has stated that he has registered sanha no. 976/20. In para 18 he has stated that the C.O. started from the police station itself and he informed him on the mobile, but as of now he does not know his mobile number. In para 19 he has stated that he remained at the place of occurrence from 10:00 O'clock to 16:00 O'Clock and during that time several vehicle crossed and he does not have the description of all vehicles. In para 21 he has stated that they collected electronic weighing scale from local shopkeeper, but he does not know the name of the shopkeeper. In para 22 he has stated that all packets have different weights, the smallest packets weight around 500 gm, medium around 1 Kg and big around 2 kg. He does not know whether Magistrate signed on the sealed packet or not. In para 24 he has stated that the seized articles has been produced before the court today on which the case no. is written and all packet were sealed but there is no signature on that.

PW-5 is Sujeet Kumar, who is the I.O. of this case, who in his chief has supported his part of investigation, and in para 03 has given the description of the place of occurrence where 132 packet of ganja is said to be seized from Sumo Gold vehicle. In para 04 he has stated that all the witnesses supported the prosecution case and in para 05 he has stated about preparing 03 packets of samples weighing 30 gm each. In para 08 he has identified the F.S.L. report received from F.S.L. Kolkata exhibited as P-3.

During his cross-examination in para 10 he has stated that he received the documents related to the case at the police station itself. In para 12 he has stated that there was no signature on the seized bundle. In para 13 he has stated that the seized articles were weighed at the police station and the seizure list was prepared at the police station itself and in next line he states that the seizure list was prepared at place of occurrence. In para 15 he has stated that he has no interaction with independent persons at the place of occurrence. In para 17 he has stated that he has not recorded the statement of any independent witnesses.

PW-6 is the C.O. Gopinath Mandal, who was with the police party at the time of the raid has stated that he was informed by the bada babu at 09:10 O'clock on 31.10.2020 and he along

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with other police party reached at the Maharana chauk and there they waited for the Sumo Gold vehicle from which 120.6 Kg Ganja was seized, which was kept in the body of the vehicle. The Ganja was kept in 132 packets. The seizure list was prepared by Bara Babu and the copy of which was given to the accused persons. He has identified his signature on the seizure list duly exhibited at P-4.

During his cross-examination in para 07 he has stated that he received information on his phone, however he does not remember the phone number. He has further stated that the seized articles is not before him. In para 08 he has stated that he does not remember whether the bag was sealed or not and whether he signed or not. He has also failed to give the details of the bundle. In para 11 he has stated that the seized articles were weighed at the Maharana Chauk. In para 12 he failed to recall the name of the persons who was sitting in the seized vehicle. In para 13 he has stated that the seized articles were taken to the police station where all writings were done. In para 14 he has stated that he signed voluntarily on the documents not on insistence of the Bada Babu. In para 16 he stated that when the seized articles were taken over there he was present there.

PW-7 Nandlal Ram, who is the member of raiding party, who in his chief has stated that the date of occurrence was 31.01.2020 and on that date the S.H.O. Bounsi received confidential information and he asked him to proceed with the raiding party and after informing the S.P., he reached at the Maharan Hat at 09:40 O'clock along with police party, where they waited for 02 and half hour and then one white coloured tata sumo gold vehicle came and when the S.H.O. tried to stopped him, the driver fled away who was stopped by the police party and before the C.O. Saheb the vehicle was searched and from the body inside the vehicle 132 packet of ganja was seized, which was kept in three sizes of the packets i.e. 01 Kg, 02 Kg and 500 Gm. Total 01 quintal 20 Kg, 600 gm ganja was seized. Three mobiles and Rs.2000/- was also seized. The writing part was done at the place of occurrence and sample was taken.

During his cross-examination in para 06 he has stated that he went there on the official vehicle and there were total 07 persons. In para 08 he is not in a position to say that how many documents were prepared at the spot and further stated that all

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documents were prepared by Rajesh Kumar Yadav. In para 11 he has stated that total 132 packets were seized, but all are in different colour and type.

PW-8 is Amit Kumar Singh, who is also member of the raiding party and in his chief has stated that on the order of Bada Babu he reached at Maharana Hat at 09:30 O'clock and after 02-2 ½ hours the sumo gold reached and from the box made in the Sumo Gold ganja was seized.

During his cross-examination in para 05 he has stated that all the witnesses reached at the place of occurrence on official vehicle which was driven by private driver Niranjan Kumar. In para 07 he has stated that he checked 60-70 vehicles but nothing was seized.

PW-9 is Niranjan Kumar yadav, who is seizure list witness, who in his chief has stated that on 31.01.2020 the vehicle was seized by Bounsi S.H.O. and the articles which was seized from the vehicle. One seizure list was prepared on which he identified his signature duly exhibited as P-5. He has also identified the arrest memo of the accused.

During his cross-examination in para 03 he has stated that he signed near the Maharana and he was going towards hatiya then he was called and made to sign. In para 04 he has stated that he did not remember what was written on that paper.

PW-10 is Md. Sayed Alam, Asst. Director of FSL Patna, who in his chief has stated that he has conducted the test on the samples received in Bounsi P.S case no. 28/20 and identified the report marked as P-7. He has further stated that the sample was found The dry, pressed, greenish brown flowering & fruiting like vegetables substances contained in the yellow paper envelope as described above was found to GANJA containing Tetra Hydro Cannabinol (THC) as their chief intoxicating ingredients. Ganja is the flowering & fruiting tops of the female plant of cannabis sativa.

During his cross-examination in para 04 he has stated that the chemical examination was conducted by his team.

The prosecution has produced the chemical laboratory report received from Office of Joint Director Chemical Laboratory,

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custom House 15/1, Strand road, Kolkata which has been exhibited as P-3 in which the report states that the sample is in the form of fruity and flowering tops along with cut pieces of twigs & seeds. On the basis of microscopic, chemical and chromatography examination, the sample answers positive test for Ganja.

10. During the defence evidence the defence has not produced any oral or documentary evidence.

ARGUMENTS

11. Learned defence counsel Sri. Anand Deo Choudhary argued that in case of Ritesh Kumar it is a false implication as he has taken lift on the seized vehicle. The stand of Sujeet Kumar is he has been falsely implicated by Tufani. It is further argued that all the witnesses are police witness and despite the fact that the ganja was seized from a crowded place, but not even a single independent witness has turned to support the prosecution case. The seizure list witness who has turned has not supported the prosecution case. Even the prosecution witnesses has stated that the seizure list was prepared at the police station and the seized articles was weighed at the police station itself. The sampling and sealing of the seized contraband has not been done as per law. The accused persons were not given the necessary safeguard as mandated under the law.

12. The prosecution on the other hand headed by Sri. RajKishore Singh Ld. A.P.P., argued that the prosecution has successfully proved the case by producing all charge-sheet witnesses and getting all necessary documents exhibited as per law. The informant while seizing the articles has meticulously followed the law laid down in the N.D.P.S. Act. The defence has not brought any evidence which may support their plea of false implication or chance implication as pleaded under their statement. The F.S.L. Report do support the prosecution case.

DISCUSSIONS

13. The charges has been framed u/s 8(c) and 20(b)(ii) (C) of N.D.P.S. Act, it is pertinent to deal with the essential ingredients required for proving of charged sections beyond all shadow of reasonable doubts.

Section 8(c) of the N.D.P.S, Act deals with Prohibition of certain operations wherein it is stated that no person shall produce, manufacture, possess, sell, purchase, transport, warehouse, use, consume, import inter-state, export inter-state, import into India, export from India or transship any narcotic drug or psychotropic substance, except for medical or scientific purposes and in the manner and to the extent provided by the provisions of this Act or the rules or orders made thereunder and in a case where any such provisions, imposes any requirement by way of license, permit or authorization also in accordance with the terms and condition of such license, permit or authorization.

Provided that, and subject to the other provisions of this Act and the rules made thereunder, the prohibition against the cultivation of the cannabis plant for the production of ganja or the production, possession, use consumption, purchase, sale, transport, warehousing import inter-state and export inter-state of ganja for any purpose other than medical and scientific purpose shall take effect only from the date which the Central Government may, by notification in the Official Gazette, specify in this behalf.

The punishment of which mentioned in section 20 of the Act, which provides as follows:- Whoever, in contravention of any provision of this Act or any rule or order made or condition of licence granted thereunder,

(b) produces, manufactures, possesses, sells, purchases, transports, imports inter-state, exports inter-state or uses cannabis shall be punishable.

(ii) where such contravention relates to (b)

(C) and involves commercial quantity, with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years, and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees. Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees.

Before dwelling upon the evidences it is important to discuss the quantity of the seized articles which has to be decided as per table in which the seized articles ganja find its place at serial no. 55 and the commercial quantity mentioned is 20 Kg. In this case as per the prosecution case the seized ganja is 120.6 Kg, which comes under commercial quantity.

Section 35 of the N.D.P.S. Act creates a presumption about culpable mental state of the accused, wherein the court shall presume the existence of such mental state, but it shall be a defence for the accused to prove the fact that he had no such mental state.

Section 54 of the said Act states that in trials under this Act it may be presumed unless and until contrary is proved, that the accused has committed an offence. Meaning thereby unlike the general principle of criminal jurisprudence that an accused is presumed innocent unless proved guilty, the N.D.P.S. Act carries a reverse burden of proof under section 35 and 54, but the presumption is rebuttable. However, the stringent provisions of the N.D.P.S. Act do not dispense with the requirement of the prosecution to prove a prima facie case beyond reasonable doubt after investigation, only after which the burden of prove shall shift to the accused. In Noor Aga case it was held that (an initial burden exist upon the prosecution and only when it stands satisfied, would be legal burden shift). In 2011(11) SCC 653 it was held that element of possession of the contraband was essential so as to shift the burden on the accused. The provisions being exceptions to the general rule.

14. Before appreciating the evidences it is important to deal with the forceful argument of the learned defence lawyer that the police witnesses only are not sufficient to warrant the conviction and the prosecution case is totally based upon the police witnesses who have deposed in mechanical manner. In this regard the law laid down in **(Govt. of NCT of Delhi) v/s Sunil (2001) 1 SCC 652** which reads as follows:-

“We feel that it is an archaic notion that actions of the police officer should be approached with initial distrust. We are aware that such a notion was lavishly entertained during the British period and policemen also knew about it. Its hangover persisted during post-independent years but it is time now to start placing at least initial trust on the actions and the documents made by the police. At any rate, the court cannot start with the presumption that the police

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records are untrustworthy. As a proposition of law the presumption should be the other way around. That official acts of the police have been regularly performed is a wise principle of presumption and recognised even by the legislature. Hence when a police officer gives evidence in court that a certain article was recovered by him on the strength of the statement made by the accused it is open to the court to believe the version to be correct if it is not otherwise shown to be unreliable. It is for the accused, through cross-examination of witnesses or through any other materials, to show that the evidence of the police officer is either unreliable or at least unsafe to be acted upon in a particular case. If the court has any good reason to suspect the truthfulness of such records of the police the court could certainly take into account the fact that no other independent person was present at the time of recovery. But it is not a legally approvable procedure to presume the police action as unreliable to start with, nor to jettison such action merely for the reason that police did not collect signatures of independent persons in the documents made contemporaneous with such actions."

In **Tahir V/s State (Delhi)[(1996)3 SCC 338]**, dealing with a similar question, the Supreme Court held as under :

"In our opinion no infirmity attaches to the testimony of the police officials, merely because they belong to the police force and there is no rule of law or evidence which lays down that conviction cannot be recorded on the evidence of the police officials, if found reliable, only requires a more careful scrutiny of their evidence, since they can be said to be interested in the result of the case projected by them. Where the evidence of the police officials, after careful scrutiny, inspires confidence and is found to be trustworthy and reliable, it can form basis of conviction and the absence of some independent witness of the locality to lend corroboration to their evidence, does not in any way affect the creditworthiness of the prosecution case. The obvious result of the above discussion is that the statement of a police officer can be relied upon and even form the basis of conviction when it is reliable, trustworthy and preferably corroborated by other evidence on record." Crux of the matter is the witnesses has to be reliable enough to warrant the conviction of the accused.

15. Considering the above said legal requirement to establish the charge coupled with reverse burden of proof, the court will now first examine the issue regarding possession of contraband seized article. As per the prosecution case the informant who happens to be S.H.O. of Bounsi P.S. received confidential tip off that a consignment having ganja is going to cross through place of occurrence. After informing the senior officials he along with his police party which also includes the Circle Officer reached at the Maharana chauk and waited for some time. Then they spotted white sumo gold vehicle which was stopped after some chase and from the vehicle 120.6 kg of the ganja was seized. Here comes section 50 of the N.D.P.S. Act and as per PW-4 they informed the accused persons before searching the vehicle that the accused has right to be searched either before the police or the Magistrate on which they stated that they will prefer to be searched before Magistrate. Thereafter they took independent witness from the people gathered over there and thereafter they searched the vehicle and seized the contraband. Accordingly seizure list was prepared and exhibited as P-1. From the perusal of seizure list it is clear that total 132 packets of the contraband ganja weighing 120.6 kg was seized along with mobile and cash. The Ld. Magistrate has also identified his signature on the seizure list so is one of the seizure list witness. It is also evident that the copy of seizure list has been handed over to the accused person and on the first page of the seizure list the C.O. has given his certificate. PW-1 is raiding party member who in his chief has supported the prosecution case and recovery of the contraband as per the FIR, during his cross-examination in para 08, 09 he has supported the factum of recovery. PW-2 in his chief has also supported the seizure of the contraband ganja and stated that total 120.6 kg ganja was seized in 132 packet was seized along with mobile and cash. In para 05 he has stated that the seizure list was prepared at Maharana Chauk. PW-3 is also raiding party member who in his chief also has also supported recovery of 120.6 Kg ganja in 132 packets along with mobile and cash from the vehicle and conscious possession of the accused. In para 07 of his cross-examination he has stated that seizure list was prepared at the police station which is not in consonance with the prosecution case. PW-4 has supported the prosecution case on the point of seizure of contraband articles from the vehicle and mobile and cash from the accused. During his cross-examination in para 23, 24 he has stated that he does not remember whether the Ld. Magistrate signed on

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sealed packet and when it was produced before the court there was no signature on it. PW-6 is Ld. Magistrate, who in his chief has stated that he was with the police party when the search and seizure took place and supported the seizure of 120.6 Kg ganja in 132 Packets and also identified his signature and authenticity of seizure list. However, during his cross-examination there is certain contradictions regarding the number of bags in which the seized articles were packed and the descriptions of the packets. PW-7 is raiding party member who in his chief has supported the seizure of contraband articles in 132 packets weighing 120.6 Kg and also seizure of mobile and cash. PW-8 is the raiding party member who has also supported the seizure of ganja from the vehicle. PW-9 is the independent witness who in his chief has identified his signature on seizure list and arrest memo, but during cross-examination has not supported the prosecution case. PW-5 is the I.O. who in his chief has supported his part of investigation and stated that the sampling was done in three packets and the samples was sent to Kalkata and Patna. He has further identified one of the FSL report. During his cross-examination in para 12 he has stated that there was no signature on seized exhibits and the seized material was weighed at the police station. The seized ganja was produced before the court and duly marked as M1 to M132. Though, the seizure list witness during his cross-examination has not supported the seizure, but the prosecution by proving all essential documents and also by producing other prosecution witness as discussed above has been able to prove that the ganja was seized from the conscious possession of the accused persons.

So, From the above said discussions it can be concluded that despite minor contradictions the prosecution has been able to prove that the seized material which is Ganja as per FSL report received from two FSL Lab marked as P-3 and P-7. It stands proved that the seized Ganja was 120.6 Kg which is as per schedule the amount is of commercial quantity. The defence has completely failed to rebut the presumption as mandated in this Act regarding culpable state of mind. The prosecution has been able to prove that the accused persons in contravention of section 8(c) of N.D.P.S Act they are found in possession of 120.6 of ganja i.e narcotic drugs and in contravention of that the prosecution has been able to prove the charge u/s section 20(b)(ii) (C) of the N.D.P.S. Act.

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So, in the light of above said legal ratio and discussions, it can be concluded that the prosecution has been able to prove the charges u/s 20(b)(ii) (C) of N.D.P.S. Act beyond all shadow of reasonable doubt.

ORDER

In the light of above said discussion the accused persons namely **Ritesh Kumar and Sujeet Kumar**, are found and held guilty for the charges under sections u/s 20(b)(ii) (C) of N.D.P.S. Act. They are already in custody. Put up on 24.05.2025 for hearing on the point of sentence.

Dictated and corrected by me.

(Abhishek Kumar Bhan)
Dist. & Addl. Sessions. Judge-I
Banka.
Dated-16.05.2024

HEARING ON THE POINT OF SENTENCE

24.05.2025 Heard Ld. APP, convict and his Ld. Counsel on the point of sentence.

1. The above named convict has been held guilty for the offences punishable u/s 20(b)(ii) (C) of N.D.P.S Act. Sri Anand Deo Choudhary, Ld. Advocate appearing for the convict prayed for mercy. On his behalf, it is stated that the convict is not habitual offender and he has family to look after. It is also stated that they are of very young age and they have their future ahead and they deserves to be reformed.

2. Sri. Raj Kishore Singh, Ld. Addl. P.P. appearing for state has fairly conceded that the convicts are of young age but this is a crime against society at large and they don't deserves mercy of court. However, there is nothing on the record to show that they are previously convicted.

3. It is well settled, that both aspects namely aggravating and mitigating circumstances have to be given their respective weightage and that the Court must strike a balance between the two and see towards which side the scale/balance of justice tilts.

4. Accordingly, the convicts namely **Ritesh Kumar and Sujeet Kumar**, are hereby sentenced to undergo Rigorous Imprisonment for 14(Fourteen Years) and are also liable to pay fine of Rs. One Lakh each for the offence punishable u/s 20(b)(ii) (C) of N.D.P.S Act, in default to pay fine they shall further undergo R.I. for one year.

5. Convict shall be entitled to the benefit of period already undergone, if any u/s 428 Cr.P.C.

6. The convicts be sent to Banka Jail where the sentence imposed shall be executed as per rules.

(Dictated to the Stenographer, Transcript, computerized and print out taken by him and after correction signed and then pronounced by me in the open court on this 24th May, 2025)

(Abhishek Kumar Bhan)
Addl. Dist. & Sess. Judge-I
Banka.
Dated-24.05.2025

(Abhishek Kumar Bhan)
Addl. Dist. & Sess. Judge-I
Banka.
Dated-24.05.2025