

IN THE COURT OF RAKESH KUMAR-III
ADDITIONAL SESSIONS JUDGE-II
CASE No. :- NDPS-52/2023
C.I.S. No. NDPS 57/2023
State Vs. Avinash Kumar and Anr.

Form A

IN THE COURT OF ADDITIONAL SESSIONS JUDGE-II
DISTT.- SUPAUL, BIHAR

Present:- Rakesh Kumar-III
Additional Sessions Judge-II
Date of Judgement:- 20-05-2026

Complainant/Informant	State of Bihar (through informant Ajay Naithani)
Represented by	Sri Shyam Prasad Yadav, Special P.P. NDPS Act
Accused persons	1. Avinash Kumar, Aged about-35 years, S/o-Ashok Kumar. 2. Tinku Lal Sah, Aged about-22 years, S/o- Jay Prakash Sah. Both R/o-Village Kunauli, P.S.- Kunauli, District- Supaul.
Represented by	Sri Lalan Kumar, Ld. Advocate.

Form B

Date of Offence	03-10-2023
Date of FIR	04-10-2023
Date of Charge-sheet	30-11-2023
Date of Framing of Charges	23-08-2024
Date of Commencement of Evidence	01-02-2025
Date on which judgment is reserved	16-05-2026
Date of Judgment	20-05-2026
Date of the Sentencing Order, if any	27-05-2026

ACCUSED DETAILS

Rank of the Accused	Name of Accused	Date of Arrest / Surrender	Date of Release on Bail	Offences Charge with	Whether Acquitted or convicted	Sentence Imposed	Period of Detention Undergone during Trial for purpose of section 428, Cr.P.C.
A1 A2	Avinash Kumar Tinku Lal Sah	03-10-23	NA	U/s 21(c), 22(c) of NDPS Act.	Convicted	Both convicts are sentenced to undergo R.I. for 10 (ten) years each along with fine of Rs. 1,00,000/- each, for both the offences u/s 21(c) and 22(c) of the NDPS Act and in default of payment of such fine, to undergo R.I. of 6 months each for both sentences. Both the sentences are directed to run concurrently.	2 years 7 months and 23 days

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Form C

LIST OF PROSECUTION/DEFENCE/COURT WITNESSES

A. Prosecution Witnesses

RANK	NAME	NATURE OF EVIDENCE
PW-1	Ajay Naithani, Inspector, SSB	Eye witness
PW-2	Praveen Solanki, Head Constable	Eye witness
PW-3	Santosh Kumar Nirala	First Investigating Officer
PW-4	Dayanand Kumar Mahto	Second Investigating Officer

LIST OF PROSECUTION / DEFENCE / COURT EXHIBITS

Sl. No.	Exhibit Number	Description
1.	Ext-P1/PW-1	Notice u/s 50 of NDPS Act served to the accused Avinash Kumar.
2.	Ext-P1/PW-1	Notice u/s 50 of NDPS Act served to the accused Tinku Lal Sah.
3.	Ext-P2/PW-1	Seizure list.
4.	Ext-P3/PW-1	Panchnama.
5.	Ext-P4/PW-1	Self-statement of accused Avinash Kumar.
6.	Ext-P5/PW-1	Self-statement of accused Tinku Lal Sah.
7.	Ext-P6/PW-1	Apprehension Memo.
8.	Ext-P7/PW-1	Typed application of FIR.
9.	Ext-P8/PW-4	Charge-sheet.
10.	Ext-P9	Report of Forensic Science Laboratory, Patna.
11.	Ext-P10	Report of Forensic Science Laboratory, Kolkata

JUDGMENT

1. The above named accused persons, namely, Avinash Kumar and Tinku Lal Sah are facing trial for the offences punishable u/s 21(c) & 22(c) of Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as the NDPS Act). This case has been arisen from Kunauli P.S. Case No. 111/23, dated 04.10.2023 registered u/s 21(c) & 22(c) of NDPS Act, against above ranked & named accused persons and this case was registered on the basis of an application of the informant Ajay Naithani i.e. the then Inspector of 45th BN SSB, Birpur, Bihar. The aforesaid offence allegedly took place at 18:30 O'clock on dated 03.10.2023, at a distance of one and half kilometer in northern side of Kunauli P.S, (in between India and Nepal), in Bus Stand Road of Kunauli Bazar, Distt- Supaul, where both accused persons above named were involving in possession, selling, purchasing, transportation, possession, sell or use of any manufactured drug or any preparation containing any manufactured drug and Psychotropic Substances, in contravention of provisions of NDPS, Act.

PROSECUTION'S CASE

2. Factual Matrix, leading to the instant case, is that the informant Ajay Naithani, Inspector

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(General Duty), 45th Battalion of SSB Birpur, filed a type application before the SHO Kunauli P.S., alleging therein, inter-alia, is that on dated 03.10.2023, at around 15:45 hours, he received a secret information that after sometime, smuggling of Intoxicated Substances is likely to be held at the road which is going from village Kamalpur to Indo-Nepal border through Kunauli *Bajar*. After verifying the said information, the informant apprised his coy in-charge Assistant Commandant Sri Ayush Sharma, and then, who formed a raiding party under the command of informant, which was consisting of one officer and three constables apart from the informant. The raiding party left for the informed place at about 17:30 hours and reached there. After sometimes, at about 18:30 hours, the raiding party observed that two persons were transacting one *gunny bag* at Big Bridge near Sheetal Chowk. It is further alleged that the raiding party tried to chase and out of both, one person tried to flee away from there but any how after some distance, he was also are apprehended. It is further alleged that after surrounding them informant inquired their name then both disclosed their names and addresses as Avinash Kumar and Tinku Lal Sah. Both the accused persons were informed that the raiding party has got secret information that both of you were possessing intoxicating articles and you have right to get searched in presence of a Gazetted Officer or a Magistrate. Whereupon, both the accused persons consented for getting searched in presence of the Gazetted Officer and thereafter, the Assistant Commandant Ayush Sharma was called at the place of occurrence, through phone. After reaching the place of occurrence, the said Assistant Commandant and the raiding party gave their *jama-talashi*, in presence of two independent witnesses namely Dukhan Jha and Anil Kumar Jha, and thereafter, both the accused persons and the said *gunny bag* were searched in presence of these independent witnesses, wherein, 15 bottles of DIALEX-DC(Batch No.-DX3008), 30 bottles of WINCEREX-T(Batch No.-WINT-006), and 83 bottles of ONEREX(Batch No- ONTS-1073), were recovered. Also, one Bicycle of Hero Company, one Mobile Phone of Vivo Company, and one Mobile Phone of Techno Spark Company were also recovered from the possession of accused persons. It is further alleged that both the accused persons confessed their guilt and stated that they will not repeat the same in future. Thereafter, seizure list were prepared before the said two independent witnesses and concerned documents are prepared and read over to both accused persons, at around 20:00 hours, and their signature was taken and thereafter, the seized articles and both the apprehended accused persons were handed over to Kunauli P.S.

3. On the basis of aforesaid typed application of the informant, the SHO of Kunauli P.S. drew up a Formal First Information Report and registered a case being Kunauli P.S. Case No. 111/23, dated 04-10-2023, for the offences u/s 21(c) and 22(c) of NDPS Act, and proceeded with the investigation. The investigating Officer after completion of the investigation, submitted charge-sheet, bearing charge-sheet No. 117/2023, dated 30.11.2023, against both accused persons, namely, Avinash Kumar and Tinku Lal Sah, for offences u/s 21(c) and 22(c) of the NDPS Act, in the Court of Ld. Sessions Judge-cum-Special Judge NDPS Act. The record reflects that on the basis of charge-sheet the Ld. Sessions Judge took cognizance of offences u/s 21(c), 22(c) of NDPS Act, against the both the

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accused persons vide order dated 06.12.2023 of the Ld. Sessions Judge-Cum-Special Judge NDPS Act. The instant case record ultimately came to my file for trial and disposal.

4. After appearance of accused persons before this Court, the charges u/s 21(c) and 22(c) of the NDPS Act, were framed against both the accused persons, vide order dated 23.08.2024, of this Court and explained to the accused persons in *hindi* to which both pleaded not guilty and claimed to be tried.

5. It is the defence of the accused persons that they are innocent and falsely implicated in this case by the raiding party.

6. After recording of prosecution evidence the statement of accused persons, recorded u/s 313 of CrPC, in which they denied the alleged occurrence and claimed to be innocent.

7. Now, the point of determination before this Court is that whether the prosecution has been able to bring home the charges against both accused persons beyond all shadow of reasonable doubts?

Finding

8. In this case, prosecution has produced altogether, four witnesses in support of this, case, these are namely, (1) P.W.-1, Ajay Nathani (informant himself), (2) P.W-2, Praveen Solanki, (3) P.W.-3, Santosh Kumar Nirala, and (4) P.W-4, Dayanand Kumar Mahto respectively.

In addition to aforesaid oral evidence, the prosecution has also produced documentary evidences, which have been marked as exhibits. These are as follows:-

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1.	Ext-P1/PW-1	Notice u/s 50 of NDPS Act served to the accused Avinash Kumar.
2.	Ext-P1/PW-1	Notice u/s 50 of NDPS Act served to the accused Tinku Lal Sah.
3.	Ext-P2/PW-1	Seizure list.
4.	Ext-P3/PW-1	Panchnama.
5.	Ext-P4/PW-1	Self-statement of accused Avinash Kumar.
6.	Ext-P5/PW-1	Self-statement of accused Tinku Lal Sah.
7.	Ext-P6/PW-1	Apprehension Memo.
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9. The defence has not produced any evidence.

10. For the sake of justice and appreciation of evidence, I would like to discuss the evidence produced by the prosecution as follows.-

P.W.-1 Ajay Nathani, he is the informant of this case. He supported the prosecution case in examination-in-chief and deposed that on dated 03.10.2023 he was posted in E-Company, Kunauli,

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and on that day at 15.45 O'clock, he received an information about smuggling of intoxicating substances from India to Nepal, upon which he gave this information to company commander Sri Ayush Sharma (Assistant Commandant) and thereafter, a raiding party was constituted and Assistant Commandant Ayush Sharma made him the commander of that party. He further deposed that at around 7.30 O'clock the raiding party proceeded towards, *Barapul* near Sheetal Chowk, on the basis of received information and reached there at around 18.30 O'clock and sat there in ambush position. He further deposed that, after sometimes, he saw that two persons were exchanging one bag whereafter raiding party proceeded towards them to catch, then, one person was apprehended with bag and one bicycle and another person tried to flee away but he was chased and also apprehended after some distance. He further deposed that thereafter, both the apprehended persons were enquired who revealed their names, as Avinash Kumar and Tinku Lal Sah respectively. He further deposed that on asking about what is inside the bag, then, both told intoxicating substances COREX is kept therein. He further deposed that both apprehended accused persons were informed that they are free to get search before any senior officers or Magistrate, whereupon, both of them gave their consent for getting search before a Gazetted Officer. He further deposed that, then, he informed the Assistant Commandant Ayush Sharma and requested to come at the place of occurrence. He further deposed that after 45 minutes, Assistant Commandant Ayush Sharma came there and both the apprehended persons were separately served notice u/s 50 of NDPS Act in presence of two independent witnesses, namely, Dukhan Jha and Anil Kumar Jha. He identified that the said notice which contains the signature of independent witnesses and the Assistant Commandant Ayush Sharma. Upon identification notices u/s 50 of NDPS Act, has been marked as exhibit- P1/P.W.-1 and P1/1/P.W.-1 respectively. He further deposed that both the accused persons and the bag seized from them were searched in presence of independent witnesses and during the course of search 128 bottles of cough syrup CODEINE each of 100 ml, were recovered from their bag. He further deposed that, a seizure list was prepared with respect recovered articles in presence of both independent witnesses namely, Dukhan Jha and Anil Jha. He identified the said seizure list which was containing his signature as well as signature of independent witnesses and on identification the seizure list has been marked as Exhibit-P-2/PW-1. He further deposed that a *panchnama* was prepared in presence of aforesaid two independent witnesses which contained signature of informant and two independent witnesses, which he identified, which has been marked as Exhibit-P-3/P.W.-1. He further deposed that confessional statement of both apprehended persons which has been recorded by him, and bears the signature of both apprehended accused persons, which have been marked as exhibit-P-4/P.W.-1, and P-5/P.W.-1 respectively. He further deposed that he prepared the arrest memo of both apprehended accused persons in presence of aforesaid two independent witnesses and bears his signature and also signature of aforesaid two independent witnesses, which has been marked as Exhibit-P-6/P.W.-1. He further deposed that, all proceeding has been completed in his presence at the place of occurrence. At para 8, he further deposed that he handed over recovered articles, apprehended both accused persons and all relevant documents to the SHO Kunauli P.S., and he also gave a typed application to SHO, Kunauli

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P.S. He identified his typed application which contains his signature which has been identified by him, and marked as Exhibit-P.7/P.W.-1.

In Cross-examination, he continuously and consistently supported the prosecution case, and deposed that, he received secret information about the intoxicating substances and he cannot reveal the name of spy, who had given the said information. He further stated that the spy had given him information that at about 7:00 to 7:30 P.M. in the evening two persons are about to smuggle psychotropic substances and he forwarded that information to his senior officers. He further deposed that he had seized the psychotropic substances and also deposed that as the seized substances were containing CODEINE, on the basis of that he stated that the seized substance is psychotropic. He further stated that in the contents of medicine marked on the seized bottles, CODEINE was also mentioned and at that time he had got not examined by any expert of that medicine. He stated that at this time the seized article which containing CODEINE is not present before him. He further deposed that accused Avinash kumar was searched before the Assistant Commandant Ayush Sharma. He also stated that he is member of which force, that is command by a Senior Assistant Commandant who is a Gazetted Officer, he knows it. He deposed that he had seen papers in this regard. He had given information regarding the occurrence to the SHO Kunuali. He further stated that the investigating officer has not informed him regarding the completion of the investigation. He deposed that he had not written anything with respect to latitude and longitude of the location of the accused persons. He further deposed that he denied the suggestion of defence that the Spy had given false information and no such occurrence had taken place.

In further Cross-Examination on behalf of **accused Tinku Lal Sah**, he stated that after receiving the secret information five persons including himself reached to the place of occurrence and all of them had given *Jamatalashi* before arresting the accused persons and also related documents were prepared and the documents related to *Jamatalashi* were prepared by his senior officer Ayush Sharma. He further deposed that he did not got opportunity to see the documents of *Jamatalashi* and he is not aware as to whether, the said documents was given to the apprehended persons or not. He further deposed that he was not aware about the directions of the place of occurrence. He further deposed that he had apprehended the accused persons but he did not search them. He further deposed that after bringing the apprehended persons to Kunauli P.S., then, he returned to his camp and he has not knowledge about the further action with the apprehended persons at Kunauli P.S.. He further denied the suggestion of defence that he had given wrong evidence. Save and except this, he said nothing else.

P.W.-2, Praveen Solanki, who has also supported the prosecution case in examination – in-chief as well as in cross-examination. He deposed that this occurrence took place on 03.10.2023. He further deposed that on that day, they got information that a smuggler will pass with intoxicating substances then, he along with others reached near Sheetal Chowk and at about 6.30 O'clock, two persons were transacting goods near Sheetal Chowk, then, our team reached there in the nick of time and one persons was apprehended there, while the second person, who was fleeing, was also apprehended by us, then, the senior officer Ayush Sharma was informed about the occurrence, who

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arrived at the place of occurrence and enquired the matter. He further deposed that during the course of search 128 Bottles of **COREX** were recovered which are the drugs of three different companies. He further deposed that, thereafter, the goods were seized and paper works were done. He further deposed that, later on, the seized goods and apprehended persons were brought to police station and handed over to the police. He also deposed that the accused persons who were apprehended by us are Avinash Kumar and Tinku Lal Sah, who are present in the court dock-yard and he identified, then, he also deposed that, he had given the same statement before the police.

In cross-examination, he has continuously and consistently supported the prosecution case, and deposed that he was giving his evidence for the first time in this case. He further deposed that his Inspector had informed him regarding the presence of intoxicating substances and on that basis, he had given his evidence. Save and except this, he said nothing else.

P.W.-3, Santosh Kumar Nirala, who is the first investigating Officer of this Case. In examination-in-chief, he deposed that he took charge of investigation of Kunauli P.S. Case No. 111/2023, instituted u/s 21(c) and 22(c) of NDPS Act on 04.10.2023. He further deposed that, thereafter, he recorded the FIR in the case diary and also recorded the statement of informant Ajay Naithani. He further deposed that, he also entered the seizure list and two notices u/s 50 of NDPS Act, in the case diary and reached at the place of occurrence, which is the *Bara pul* situated over Jita river near Sheetal Chowk in Kunauli Bazar, from where it has been alleged that the FIR named accused persons were arrested red handed with seized materials. He further deposed that, he described *Chauhaddi* of the place of occurrence as North-RCC road towards Kunauli Bazar, South-RCC road towards Bathnaha *Dhaala*, East-Jita river and Pucca house of Sonu Pradhan on its bank and West-Jita river and the tin house of Dinesh Ram adjacent to it. He further deposed that he recorded statements of witnesses Rameshwar Singh, Praveen Solanki, Manish Kumar and entered those statement in the case diary. He further deposed that, thereafter, he obtained defence statement of arrested accused persons and kept them in the Haazat. He further deposed that, then, he produced the accused persons in the court. He further deposed that, after obtaining the supervision note, he entered the same in the case diary. He further deposed that he entered the criminal history of accused Avinash Kumar in the case diary, who had a criminal history, bearing Kunauli P.S. Case No. 54/21 dated 05.09.2021, u/s 341, 323, 354, 379, 504, 506/34 of IPC. He also deposed that, he obtained order from the court after due sampling and sealing of the seized article for the examination of samples at the Regional Forensic Science Laboratory, Patna and the Central Forensic Science Laboratory, Kolkata. He further deposed that, thereafter, he got transferred due to which he handed over the charge of investigation to the new SHO Dayanand Mahto. He identified both the accused persons who were present in the Court.

In Cross-Examination, he deposed that he had made copy paste of the seizure list in para 3 of the case diary. He further deposed that the facts as to notices mentioned in para 4 and 5 of the case diary do not contain the names of the accused persons to whom these notices were meant to be served. He also deposed that it is not clear from seeing these notices that whether the informant had

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given notice for search of the accused persons or not. He further deposed that, he had not drawn any map of the place of occurrence and he did not inspect the place of occurrence according to scientific method. He further deposed that he had not recorded the statement of any person surrounding the place of occurrence. At para 6, he deposed that he had lodged the FIR on the basis of typed application of the informant and after obtaining the said written application, seizure list, material exhibits and receiving the accused persons, then, he lodged this FIR. He further deposed that, at para 7, he had seen the material exhibits in course of investigation and he did not write in the case diary whether that material exhibit was sealed or not, but the same was in sealed condition. He further deposed that material exhibit was tied in the sack and also contained seal and signatures of the officer and the witnesses. He further deposed that, it was total in five packets, and each packet was tied in separate sack. He further deposed that, during the course of investigation, he had not open the material exhibits rather these material exhibits were opened in the court. At para 8, he also deposed that no date and time is mentioned in the para 3 of the case diary. He further deposed that in column 1 of para 14 of the case diary, date and time is not mentioned. He further deposed that he had brought the material exhibits in the court on dated 04.10.2023, but it is not mentioned in column 1 of para 14 of the case diary. He also deposed that material exhibit was in his custody before producing to the court. He further deposed that there is a *mal-khana* in his police station, but he has not mentioned regarding the depositing of material exhibit in the *mal-khana*. He further deposed that he had recorded statement of the informant, and informant had not extracted any sample at the place of occurrence before him. He further deposed that he had got the sampling of material exhibits conducted in the court and duplicate sampling was also conducted. He further deposed that videography was also done, but he has not mentioned in the case diary. At para 12 of his cross-examination, he further deposed that he did not received any certificate from the Magistrate, after sampling. He further deposed that on dated 22.11.2023, he had sent the sample for examination, which has been mentioned in para 31 of the case diary. He further deposed that he had brought the material exhibit for sampling in the court on dated 11.10.2023, and in the meanwhile, the material exhibits and sample were kept in *mal-khana*, He further deposed that, there is no any record of storage in the *mal-khana*, as no paper was prepared because he himself was the in-charge of *mal-khana*. At para 14 of the cross-examination, he deposed that in para 31 of the case diary it is mentioned that the Chowkidar Md. Filal, took away the sample for examination, and he gave receiving receipt, which is mentioned in para 35 of the case diary. At para 15 of the cross-examination, he deposed that it is not correct to say that he had not sent the material exhibits of this case for examination, and he had sent other materials for examination, and he annexed the report of that examination. At para 16, of the cross-examination, he also denied the suggestion of defence that he conducted the defect full investigation against the rule of law.

P.W-4, Danaynand Kumar Mahto, who is the second investigating officer of this case . In examination-in-chief, he deposed that on dated 24.11.2023, he assumed the charge of further investigation of Kunauli P.S. Case No. 111/2023, and thereafter he perused the previous case diary and after obtaining the progress report 2, he entered the same in the case diary and in light of

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directions of his superior officers and evidences and after investigation, he submitted the charge-sheet bearing charge-sheet No. 117/23, dated 30.11.2023 u/s 21(c) and 22(c) of NDPS Act against FIR named accused persons Avinash Kumar and Tinku Lal Sah, he identified the charge-sheet, which is in his hand-writing and his signature, which has been marked as exhibit-P8/PW-4. He further deposed that for obtaining FSL, report he continued supplementary investigation and after obtaining the FSL reports, he submitted the FSL Reports in the court, and closed the investigation of this case.

In cross-examination, he deposed that he had conducted the part investigation of this case and he has submitted the charge-sheet in anticipation of orders of his superior officers. He identified the accused persons Avinash Kumar and Tinku Lal Sah, who are present in the court. He further deposed that he had not conducted investigation regarding seized material exhibits of this case. He further deposed that he has knowledge about the sections of NDPS Act. At para 8, he deposed that he had perused the previous case diary. At para 9, he deposed that he had not gone to the place of occurrence and he could not see the material exhibits, as it were sealed. He further deposed that he did not mention in the case diary as to where the material exhibits of the case have been kept and by whom the same have been kept. He further deposed that he had seen the written application given by the informant but he was not clear from perusing the said application as to whether the informant had given information to his superior officers or not regarding the seized material exhibits and accused persons. At para 12, of his cross-examination, he deposed that today, material exhibits are not before him. At para 13, he deposed that he submitted the charge-sheet on the basis of investigation conducted by previous investigating officer. He denied the suggestion of defence that he conducted defectful investigation and submitted incorrect charge-sheet.

11. In addition to aforesaid oral evidences the prosecution has produced several documents, in support of his case. Exhibit-P-1/PW-1 is notice given u/s 50 of NDPS Act, to the to accused Avinash Kumar. Exhibit-P-1/1/ P.W.-1 is notice given u/s 50 of NDPS Act, to accused Tinku Lal Sah. Exhibit-P2/P1 is seizure list. Exhibit-P3/P.W.1 is Panchnama. Exhibit-P4/P.W.1 is confessional statement of accused Avinash Kumar. Exhibit-P5/ P.W.1. is confessional statement of accused Tinku Lal Sah. Exhibit-P6/P.W.1- is arrest memo. Exhibit-P7/P.W.1 typed application of FIR of this case. Exhibit-P8/ P.W.4 is charge-sheet of this case. Exhibit-P9 u/s 293 of CrPC is the report of Forensic Science Laboratory, Patna. Exhibit-P10 u/s 293 of CrPC is the report of Forensic Science Laboratory, Kolkata.

12. The defence has not produced any defence evidence.

13. The Ld. Special P.P. has submitted during the course of the argument that prosecution through a well-orchestrated chain of evidence, both ocular and documentary, has succeeded in establishing the guilt of the accused persons A-1 and A-2, beyond all reasonable doubts in this case of illegal possession and transportation of contraband psychotropic substances under the NDPS, Act. The Ld. Special PP further submitted that informant P.W.-1 Ajay Naithani, has clearly narrated the sequence of events leading to the illegal import and export of the inter-State of psychotropic substances at the Indo-Nepal Border. He further submitted that raiding member of this case i.e. PW-2

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and the investigating officers PW-3 & PW-4 have also corroborated the versions of PW-1 with respect to search, seizure and arrest of the accused persons, who were involved in the illegal smuggling of the psychotropic at the place of occurrence. He further submitted that the testimonies of witnesses establish procedural compliance and real time presence of accused persons during the occurrence. He further submitted that the first investigating officer PW-3 has outlined the meticulous steps taken post seizure, including arrests, recording of statements and deposition of seized contraband. He also submitted that the evidences of informant, raiding member and investigating officers tie all threads together, from receiving of secret information to the filing of charge-sheet against accused persons. The learned Special PP further submitted that accused persons have not given any satisfactory explanation with respect to the recovery of the contraband drug from their possession, which clearly shows the presumption of offence against the accused persons u/s 54 of the NDPS Act. He further submitted that when an illicit drug or psychotropic substance is found in possession of a person, the onus is placed on the accused to explain satisfactorily as to the possession of the drug which is recovered from him. So, mere possession of drug is itself an offence under the provisions of NDPS Act. Accordingly, the learned Special PP has sought for the harsh punishment for the violation of provisions of the NDPS Act.

14. Per contra, the learned Defence Counsel for both the accused persons has submitted that the prosecution has failed to discharge its burden of proof beyond reasonable doubts as required under the stringent provisions of the NDPS Act. He further submitted that mere recovery is insufficient unless accompanied by unimpeachable procedural compliance and proof of conscious possession. He further submitted that the prosecution has failed to prove conscious possession. He also submitted that the accused persons A-1 & A-2 were allegedly found near the seized bicycle, as allegedly they were trying to escape, but the prosecution has not demonstrated exclusive control or knowledge of the contraband. No personal recovery was made from the accused persons and the link between them and the ownership of the seized bicycle remains tenuous. He further submitted that notices u/s 50 of the NDPS Act are questionable, as there is no proper service to the accused persons. He further submitted that the confessional statements recorded u/s 67 of the NDPS Act is inadmissible as per the ratio laid down in the case of **Tofan Singh v. State of Tamil Nadu**, especially, if not recorded before a Magistrate. He also submitted that the prosecution has also not produced independent witnesses to prove the search and seizure of the accused persons. Due to non-production of independent witnesses and only reliance on the evidences of the official witnesses, it would be travesty of justice with respect to the accused persons. He further submitted that the prosecution has also not produced the contraband before the Court. The non-production of contraband before the Court also creates doubts about the recovery of the psychotropic substance from the possession of the accused persons. The learned Defence Counsel further submitted that the report of the Chemical Analyst doesn't show the particulars as to the proportion in which its components were found, therefore, he submitted that the quantity of CODEINE is not mentioned in the report of the Chemical Analyst and accordingly, he submitted that the prosecution has failed to prove its case beyond reasonable doubts. Thus, he has sought for acquittal of the accused persons.

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15. From perusal of case record, it appears that in the instant case, the prosecution has produced the informant, i.e. PW-1, who has supported the prosecution case in examination-in-chief as well as in his cross-examination. PW-1 has also proved the notices served u/s 50 of the NDPS Act to both the accused persons as Exhibit P-1/PW-1 and P-1/1/PW-1, Seizure list as Exhibit-P2/PW-1, *Panchnama* as Exhibit-P3/PW-1, Self Confessional Statements of both the accused persons as Exhibit-P4/PW-1 and Exhibit-P5/PW-1, Arrest Memo as Exhibit-P6/PW-1 and Typed Application of FIR as Exhibit-P7/PW-1 respectively. The oral evidences of the PW-1 are also corroborated by the documentary evidences. PW-2, who is the member of raiding party, also corroborates the alleged occurrence and his evidence is in consonance with the evidence of PW-1 and establishes the genuineness of the occurrence. PW-3 and PW-4 are the investigating officers of this case. In their testimonies, they have supported the prosecution case and proved the place of occurrence, the manner of occurrence and the time of occurrence and also proved the charge-sheet, which has been marked as Exhibit-P8/PW-4. Exhibits P9 and P10 show that the recovered material was CODEINE as the samples taken out there from, were found as CODEINE.

The learned defence counsel during the course of argument contended that the notices u/s 50 of NDPS were not properly served to the accused persons. On this point, I would like to answer the question raised by the learned Defence Counsel by citing the ratio laid down in the case of ***Jarnail Singh vs. State of Punjab reported in AIR 2011 SC 964*** wherein, it was observed by the Hon'ble Apex Court that "Section 50 of the NDPS Act can be invoked only in cases where the drugs/ narcotic/ NDPS material is recovered as a consequence of the body search of the accused. In case, the recovery of the narcotics / psychotropic substance is made from a container being carried by the individual, the provisions of section 50 of NDPS Act would not be attracted."

In this case, the contraband drug / psychotropic substance was recovered from the gunny bag/sack which were carried by the accused persons. Hence, the concern of compliance of section 50 of the NDPS Act has no application in this case, because, the contraband NDPS material was not recovered from the personal body search of the accused persons.

The learned defence counsel further raised the question during the course of argument that all the prosecution witnesses are officials and none of the independent persons, before whom search and seizure were made, was examined during the course of trial by the prosecution. The further contention raised on behalf of accused persons that in absence of independent witnesses and the seizure list witnesses, the prosecution case must not be accepted.

On this point, I would like to refer the judgment of the Hon'ble Supreme Court passed in the case of ***M. Prabhulal vs. The Assistant Director, Directorate of Revenue Intelligence 2003 (3) SCC 1331*** wherein, it was contended on behalf of the Defence Counsel that such non-examination of independent witnesses cast a doubt on the recovery. Repelling this argument, the Hon'ble Supreme Court observed on the facts of the case before it that the evidence of the police witnesses could not be doubted and, therefore, the recovery was not doubtful for want of non-examination of independent witnesses. The Hon'ble Apex Court, in the said decision, also held that if a confessional statement

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made by the accused is voluntary, then, the same can be made the basis of conviction, if that confessional statement is not retracted.

The learned defence counsel further submitted that the seized contraband was not produced by the prosecution before the trial court and therefore, the recovery of the contraband becomes doubtful.

On this point, there is the landmark judgment of the *Hon'ble Supreme Court in Kailash vs. The State of Maharashtra* in which, the Hon'ble Apex Court referred the section 52 of NDPS Act, which enables that the preparation of inventory of seized contraband, drawing of Samples therefrom, taking of photographs, etc. as well as its disposal, the every Court shall treat the inventory, the phonographs of contraband and any list of samples drawn under sub-section 2 and certified by the Magistrate, as primary evidence, in respect of such offence and therefore, mere non-production of seized contraband during trial may not be fatal, if there is reliable evidence in respect of its seizure, drawing of samples therefrom and FSL report relating to the samples drawn from the seized materials, if the case is otherwise proved.

The Learned Defence Counsel, during his arguments, further submitted that in report submitted by the chemical analyst, it has not been given particulars as to the proportion of CODEINE and accordingly, the seized articles don't come under the purview of prohibited psychotropic substance.

On this point, I would like to refer the judgment of the Hon'ble Supreme Court passed in *Ravindran vs. Superintendent of Customs AIR 2007 SC 2040* in which, the Hon'ble Apex Court has held that there is no merit in the contention of the defence that when the chemical analyst had not given particulars as to the proportions in which its components were found, the same cannot have any bearing on the sentence.

In view of above evidence and discussion made here-in-above, it shows that the prosecution has established its case beyond the reasonable doubts against the accused persons as to the recovery of 128 bottles of Contraband containing CODEINE from the joint possession of the accused persons, which falls under commercial quantity without any lawful authority's licence, permit or authorization.

17. Accordingly, both accused persons, namely Avinash Kumar and Tinku Lal Sah, have been found guilty for the offences punishable u/s 21(c) & 22(c) of the NDPS Act.

This judgment is pronounced in open court today and given under my hand and seal of this Court.

Put up on 27/05/26 for hearing on the point of sentence.

(Dictated & corrected by me)

(Rakesh Kumar-III)
Additional Sessions Judge-II
Supaul

(Rakesh Kumar-III)
Additional Sessions Judge-II
Supaul

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Hearing on the point of Sentence

27/05/26:- Heard the learned Special PP, under NDPS Act as well as the learned Defence Counsel on the point of quantum of sentence.

The learned Defence Counsel appearing on behalf of both the accused persons submits that they are first offenders having no any criminal antecedent and considering their age, they may be leniently dealt with and lesser punishment may be awarded.

On the other hand, the learned Special PP, under NDPS Act submits that the convicts have committed heinous crime and violated the stringent provisions of the NDPS Act. So, they deserve harsher punishment, as they were involved in the possession, carriage and transportation of commercial quantity of CODEINE across Indo-Nepal Border.

Perused the case record. From perusal of the case record, it transpires that the nature of offence committed by the convicts is a menace for the society. The impact of these crimes on the society are immensely dangerous. The quantity of recovered contraband is commercial quantity, which significantly impact the severity of the offence. The convicts were involved in transporting CODEINE from one country to another, which shows intention that the same was not for personal use, rather, the same was for distribution or commercial purposes. These are the aggravating factors.

On the other hand, it transpires from the case record that there is nothing on the record regarding previous conviction of any of the convicts and the convicts have been in the judicial custody for a considerable period of time during investigation and trial, which are mitigating circumstances. From the perusal of record, it shows that age of the convict Avinash Kumar is 35 years whereas the convict Tinku Lal Sah is aged 22 years, which shows that they are in the age of youthfulness, which are also mitigating circumstances.

Taking into consideration to draw a balance by considering all the aggravating factors as well as the mitigating factors of the present case, the gravity of the offence committed and its effect over the whole society, especially, minors, as well as by considering the degree of offence; but, at the same time, also considering the fact that there is no previous conviction against them, their reformation cannot be ruled out.

Therefore, in the totality of facts and circumstances, as well as relevant legal positions, I am of the opinion that minimum sentence would meet the ends of justice. Hence, it is;

Ordered

That, both convicts, namely Avinash Kumar and Tinku Lal Sah, are sentenced to undergo Rigorous Imprisonment for 10 (Ten) years along with fine of Rs. 1,00,000/- (Rs. One Lakh Only) for the offence u/s 21(c) of the NDPS Act and in default of payment of such fine, to suffer Rigorous Imprisonment of 6 months.

That, both convicts are also sentenced to undergo Rigorous Imprisonment for 10 (Ten) years along with fine of Rs. 1,00,000/- (Rs. One Lakh Only) for the offence u/s 22(c) of the NDPS Act and
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in default of payment of such fine, to suffer Rigorous Imprisonment of 6 months.

All the sentences will run concurrently. The period already undergone in custody during investigation, inquiry and trial by the convicts shall be set-off as per the provisions of section 428 of CrPC and other Rules and Provisions.

The convicts are made aware of their legal rights to prefer an appeal against the judgment and order of conviction before the Hon'ble High Court.

Let conviction warrants be prepared and the convicts be sent to the jail custody to suffer aforesaid sentence.

Let the certified copy of this judgment be provided to the convicts free of cost forthwith, upon completion of entire transcription, as per the provisions of section 363(1) of CrPC.

Office is directed to send a copy of this judgment to the District Magistrate, Supaul, Bihar, in compliance of provisions of section 365 of CrPC. A copy of the judgment also be sent to the Jail Superintendent, Supaul.

(Dictated & corrected by me)

(Rakesh Kumar-III)
Additional Sessions Judge-II
Supaul
Dated:- 27/05/26

(Rakesh Kumar-III)
Additional Sessions Judge-II
Supaul
Dated:- 27/05/26