



**IN THE COURT OF SPECIAL JUDGE (NDPS ACT, 1985)
GANGTOK, SIKKIM**

PRESENT: JAGAT B. RAI, SPECIAL JUDGE

Decided on 31.07.2026

S.T (NDPS ACT) CASE NO. 03 OF 2023

Filing Number:.. S.T. NDPS/162/2024

CNR No.: SKGT010005992023

*(In connection with Sadar P.S Case No.54 of 2023 dated 28.03.2023 under
Sections 7/9/1(C) of SAD (Amendment) Act, 2017 read with Section 22 (c)/27
NDPS Act, 1985)*

PROSECUTION	State of Sikkim
REPRESENTED BY	Shri Ugen D. Bhutia, Learned Special Public Prosecutor and Ms. Bindu Gurung, Learned Assistant Public Prosecutor.
ACCUSED	Sanjay Pradhan, Resident of Rey Khola, Adampool, Ranipool, Sikkim
REPRESENTED BY:	Ms. Zola Megi, Ld. Counsel

Date of Offence	27.03.2023
Date of FIR	27.03.2023
Date of filing of Charge-sheet	06.06.2023
Date of framing of Charges	06.06.2023
Date of commencement of evidence	25.09.2023
Date on which Judgment is reserved	30.07.2026
Date of the Judgment	31.07.2026
Date of the Sentencing Order, if any	--

DETAILS OF ACCUSED

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 427 Cr.P.C, 1973
1.	Sanjay Pradhan	28.03.2023		21 (b), 22 (c) (two counts) and 22 (a) of NDPS Act, 1985	Acquitted	N/A	N/A

J U D G M E N T

1. The accused named above faced trial for the offence punishable under Section under Sections 21 (b) and 22 (c) (two counts) and 22 (a) of Narcotic Drugs and Psychotropic Substances Act, 1985 (in short, “NDPS Act, 1985”).
2. The prosecution case, in brief, is that on 27.03.2023, acting upon source information received at Sadar Police Station regarding a person suspected to be in possession of controlled substances at Reshithang near Khel Goan, a police team proceeded to Luing Garden Resort below Jhakri Falls, Reshithang. At the spot, the accused, Sanjay Pradhan @ Salman, was found intercepted by police personnel while seated inside a Ford EcoSport bearing registration No. SK-01-PA-5776. Two independent witnesses were secured before commencing the search proceedings. The accused was informed of his legal right to be searched in the presence of a Magistrate or a Gazetted Officer, and he opted to be searched before a Gazetted Officer. Upon the arrival of the Gazetted Officer and after observing the prescribed legal formalities, the personal search of the accused as well as the search of the vehicle were conducted.
3. During the search of the accused and the Ford EcoSport vehicle, the following articles were recovered and seized:

1. Seventy-four (74) bottles of Cofson CD Codeine Phosphate and Chlorpheniramine Maleate Syrup, each containing 100 ml and bearing Batch No. NLA2330.
 2. Forty (40) white plastic pouches containing a total of 3,917 loose blue-coloured “SAMPEX+” capsules.
 3. One black zipper pouch containing 82 small pouches of brown-coloured powder, suspected to be brown sugar, having a total weight of 55.143 grams.
 4. One strip of Nitcor-10 tablets containing ten tablets.
 5. One LAVA keypad mobile phone with SIM card No. 9564196833.
 6. One itel keypad mobile phone with SIM card No. 8159859996.
 7. One Realme Android mobile phone with SIM card No. 9134162943.
4. The recovered contraband articles and mobile phones were photographed at the spot and thereafter packed and sealed in the presence of the independent witnesses. The accused, the seized articles, and the sealed parcels were then taken to Sadar Police Station. A written complaint was lodged, on the basis of which a formal FIR was registered. Thereafter, the accused, the seized contraband, the seized articles, and all connected case records were handed over to the Station House Officer under a proper handing-over memorandum. An intimation regarding the search and seizure was

also submitted to the Station House Officer in compliance with Section 57 of the NDPS Act.

5. During the course of investigation, the Registration Certificate, Token Tax Receipt and Insurance Certificate pertaining to the Ford EcoSport bearing registration No. SK-01-PA-5776 were also seized under a separate seizure memorandum.
6. The accused had failed to produce any prescription or licence for possession of the above contraband substances. Thereafter Sadar P.S Case No.54 of 2023 dated 28.03.2023 was registered. After investigation, the charge-sheet was subsequently filed.
7. After the case was taken up for trial, Learned Special Public Prosecutor and Learned Counsel for the accused were heard on charge. After hearing the submission of Learned Counsel for the parties and on perusal of all documents on record, *prima facie*, sufficient materials was found for proceeding against the accused. Charges was accordingly framed against accused under Sections 21 (b) and 22 (c) (two counts) and 22 (a) of NDPS Act, 1985 and explained to accused in Nepali (*the language he was conversant with*). The accused pleaded “*not guilty*” and claimed trial. Accordingly, the trial commenced.
8. In order to establish the charges, the prosecution examined 12 witnesses, including the Investigating Officer, and proved several documentary exhibits and material objects. After the prosecution closed its evidence, the statement of the accused was recorded under

Section 313 of the Cr.P.C, 1973 wherein all the incriminating circumstances appearing against him in the prosecution evidence were put to him. The accused denied the allegations and claimed to be innocent. He did not choose to lead any evidence in defence. Thereafter, final arguments were heard from the learned Special Public Prosecutor for the State and the learned Counsel for the accused.

9. Learned Special PP submitted that the prosecution has successfully established the charges against the accused beyond reasonable doubt through cogent oral, documentary and scientific evidence. It was contended that the evidence led by the prosecution, when appreciated in its entirety, clearly establishes the recovery of narcotic drugs and psychotropic substances from the Ford EcoSport bearing registration No. SK-01-PA-5776 while the accused was found inside the said vehicle.
10. It was argued that the prosecution has proved due compliance with the mandatory procedural safeguards prescribed under the NDPS Act. According to the prosecution, immediately upon receipt of reliable source information, the information was reduced into writing, superior officers were informed, the accused was apprised of his legal right to be searched before a Magistrate or a Gazetted Officer, and, upon the accused opting for the presence of a Gazetted Officer, the search and seizure were conducted in accordance with law.
11. Learned Special PP further submitted that the evidence of PW-5, the Seizing Officer, and PW-6, the Gazetted Officer, consistently

establishes the manner in which the search was conducted and the contraband articles were recovered, packed, sealed and seized. It was contended that their testimony is duly corroborated by the contemporaneous documents prepared at the spot, including the search memorandum, seizure memo, inventory and other official records.

12. It was further argued that the evidence of the independent witnesses substantially supports the prosecution case regarding the search and seizure proceedings. According to the prosecution, any minor inconsistencies or omissions in their testimony are natural and do not affect the core prosecution case, particularly when the evidence of official witnesses remains consistent and trustworthy.
13. Learned Special PP submitted that the prosecution has established the conscious possession of the accused over the contraband recovered from the vehicle. It was argued that the accused was found inside the vehicle at the relevant time and no satisfactory explanation has been offered by him regarding the presence of the contraband articles recovered therefrom.
14. It was further contended that the documentary evidence relating to the seizure proceedings, inventory prepared under Section 52A of the NDPS Act, malkhana records and forwarding documents collectively establish an unbroken chain of custody of the seized articles from the time of seizure until their examination by the Regional Forensic Science Laboratory.

15. Learned Special PP also relied upon the evidence of the Scientific Officer and the RFSL report to submit that the samples examined tested positive for heroin, codeine phosphate, tramadol hydrochloride and nitrazepam. It was argued that the forensic report fully corroborates the prosecution case regarding the nature of the seized substances.
16. It was argued that the minor discrepancies highlighted during cross-examination are not of such a nature as to demolish an otherwise reliable prosecution case. According to the prosecution, such discrepancies are natural in the testimony of witnesses deposing after lapse of time and do not affect the substantive evidence regarding the recovery and seizure of the contraband.
17. Learned Special PP further contended that the prosecution has proved all the foundational facts necessary for invocation of the statutory presumptions under Sections 35 and 54 of the NDPS Act. It was argued that once recovery and possession stand established, the burden shifts upon the accused to satisfactorily explain such possession, which he has failed to do.
18. On the aforesaid submissions, Learned Special PP prayed that the prosecution having established the charges against the accused beyond reasonable doubt, the accused is liable to be convicted for the offences alleged under the NDPS Act.
19. Ld. Counsel for the accused, on the other hand, argued that the prosecution has failed to establish the guilt of the accused beyond

reasonable doubt, which is the settled standard of proof required in a criminal trial, particularly under the stringent provisions of the NDPS Act.

20. It was argued that the prosecution has not adduced any evidence to substantiate the allegation that the accused had purchased the alleged contraband substances from dealers at Siliguri for a sum of ₹ 5,00,000, as alleged during the investigation.
21. The defence further submitted that the testimony of the independent seizure witnesses does not support the prosecution case. It was contended that PW-1, PW-3, PW-4 and PW-8 made material admissions during cross-examination to the effect that they had not witnessed the seizure of the alleged contraband from the vehicle or from the possession of the accused. According to the defence, PW-3 also failed to identify the accused as the person present at the spot and stated that the person standing in the dock was not the same person whom he had seen with the police. It was further argued that the independent witnesses either signed documents at the police station or were unaware of the contents of the seizure documents and could not identify the material objects produced before the Court.
22. It is argued that none of the independent witnesses identified the accused as the person who was in possession of, or driving, the Ford EcoSport bearing registration No. SK-01-PA-5776 at the relevant time. It was further argued that no independent witness had seen the alleged contraband being recovered from the accused or from the said vehicle.

- 23.Ld. Counsel for the accused further contended that the prosecution failed to establish conscious possession of the alleged contraband. It was pointed out that the Investigating Officer admitted during cross-examination that no contraband was recovered from the personal possession or body of the accused. It was also argued that neither the complaint nor the search memorandum specifies the exact place within the vehicle from which the alleged contraband was recovered, thereby creating serious doubt regarding the alleged recovery.
- 24.It was further submitted that the seizure of the Ford EcoSport itself is doubtful. The defence highlighted that the independent witnesses stated that the vehicle was not seized in their presence, while the Seizing Officer admitted that he had not seized the vehicle on 28.03.2023 and that the vehicle was subsequently seized by the Investigating Officer on 03.04.2023. According to the defence, these inconsistencies create a material contradiction regarding the seizure of the vehicle.
- 25.Learned defence counsel also argued that there are material discrepancies regarding the custody and movement of the seized articles. It was submitted that the testimony of the Investigating Officer regarding the dates on which the seized articles were taken from the malkhana is inconsistent with the evidence of the Malkhana In-charge, thereby affecting the sanctity of the chain of custody.
- 26.Lastly, it was contended that the mandatory provisions of Section 42 of the NDPS Act were not complied with. In support of the said contention, reliance was placed upon *Yusuf @ Asif v. State and*

*Yasihey Yobin and Another v. Department of Customs, Shillong*¹ to submit that strict compliance with the procedural safeguards under the NDPS Act is mandatory and that non-compliance vitiates the prosecution case.

27. On the aforesaid grounds, learned defence counsel prayed that the prosecution having failed to prove the charges beyond reasonable doubt, the accused is entitled to be acquitted of all the charges.

28. I have heard arguments at bar by the Learned Counsel appearing for both sides and also perused documents and the evidence on record carefully.

29. Upon the pleadings of the parties, the evidence adduced during trial and the arguments advanced by the Ld. Addl.PP and the learned defence counsel, the following points arise for determination:

1. Whether the prosecution has proved beyond reasonable doubt that on 28.03.2023 at about 0030 hours, at Reshithang near Luing Garden Resort, within the jurisdiction of Sadar Police Station, the accused Sanjay Pradhan @ Salman was in conscious and exclusive possession of 82 pouches containing heroin (brown sugar) weighing 55.143 grams, constituting an intermediate quantity, and thereby committed an offence punishable under Section 21(b) of the Narcotic Drugs and Psychotropic Substances Act, 1985?

2. Whether the prosecution has proved beyond reasonable doubt that, at the same date, time and place, the accused was in conscious and exclusive possession of 74 bottles of Cofson CD Codeine Phosphate and Chlorpheniramine

Maleate Syrup, constituting a commercial quantity, and thereby committed an offence punishable under Section 22(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985?

3. Whether the prosecution has proved beyond reasonable doubt that, at the same date, time and place, the accused was in conscious and exclusive possession of 3,917 loose blue capsules of SAMPEX+ containing Tramadol, constituting a commercial quantity, and thereby committed an offence punishable under Section 22(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985?

4. Whether the prosecution has proved beyond reasonable doubt that, at the same date, time and place, the accused was in conscious and exclusive possession of one strip containing 10 Nitcor-10 tablets containing Nitrazepam, constituting a small quantity, and thereby committed an offence punishable under Section 22(a) of the Narcotic Drugs and Psychotropic Substances Act, 1985?

30. The prosecution case substantially rests upon the evidence of PW-5 Shekar Basnett, the Seizing Officer, PW-6 Naresh Chettri, the Gazetted Officer, and PW-3 Manoj Subba and PW-8 Abhisek Ghimirey, the independent witnesses to the search and seizure. Since the prosecution is under the NDPS Act, where stringent punishment is prescribed and strict adherence to the statutory safeguards is indispensable, their evidence requires careful scrutiny.

31. PW-5 Shekar Basnett deposed that on receipt of reliable source information, he proceeded to Luing Garden, Reshithang, where the accused had already been intercepted by the police patrolling party

while seated inside the Ford EcoSport bearing registration No. SK-01-PA-5776. He stated that after securing the presence of two independent witnesses, the accused was apprised of his legal right to be searched before a Magistrate or a Gazetted Officer and, on his opting for the latter, PW-6 Naresh Chettri was summoned. According to PW-5, after observing all legal formalities, the search of the accused and the vehicle led to the recovery of 74 bottles of Cofson CD cough syrup, 3,917 SAMPEX+ capsules, 82 packets of suspected brown sugar weighing 55.143 grams, one strip of Nitcor-10 tablets and three mobile phones. He further deposed that the recovered articles were photographed, packed, sealed and seized in the presence of witnesses, whereafter he lodged the FIR, submitted the report under Section 57 of the NDPS Act, handed over the case property to the SHO and deposited the seized articles in the malkhana.

32. However, the cross-examination of PW-5 discloses several material admissions. He admitted that no contraband substance was recovered from the body or personal possession of the accused. He further admitted that neither the FIR nor the written complaint specifies the exact place inside the vehicle from where the alleged contraband was recovered. Although he explained during cross-examination that the capsules were recovered from the dashboard, the cough syrup bottles from the bonnet and the brown sugar from the dickey, these particulars are absent from the contemporaneous records and amount to a material improvement. He also admitted that the photographs relied upon by the prosecution do not depict the alleged recovery of the cough syrup bottles from the bonnet, that the Ford EcoSport was

not seized by him on the date of occurrence but only subsequently by the Investigating Officer, and that no certificate under Section 65B of the Evidence Act accompanied the photographs. These admissions materially affect the reliability of the prosecution version.

33.PW-6 Naresh Chettri, the Gazetted Officer, deposed that on being called to the place of occurrence he informed the accused of his legal rights and thereafter witnessed the search conducted by PW-5. He supported the prosecution regarding the alleged recovery of the cough syrup bottles, capsules, brown sugar, Nitcor tablets and mobile phones from the vehicle and stated that the recovered articles were seized, sealed and photographed in his presence.

34.During cross-examination, however, PW-6 admitted that no contraband substance was recovered from the body of the accused. He further admitted that the seizure memo does not record seizure of the vehicle itself and that the vehicle was not seized in his presence. These admissions assume significance since the prosecution case rests entirely upon recovery from the vehicle.

35.PW-3 Manoj Subba, one of the independent witnesses, deposed that upon being requested by the police he proceeded to the spot, where he saw the Ford EcoSport detained on the roadside. According to him, the police recovered cough syrup bottles from inside the bonnet of the vehicle, photographed the recovered articles and thereafter packed and sealed them. He also identified the seized articles before the Court.

36. The evidentiary value of PW-3's testimony, however, stands considerably weakened by his cross-examination. He admitted that he did not know the accused and specifically stated that the accused standing in the dock was not the person whom he had seen with the police on the relevant night. He further admitted that three other vehicles were present at the place of occurrence, that the police personnel did not offer themselves for search before him, that he had not signed several seizure documents or the sealed carton, could not identify the material objects produced before the Court and was unaware of the contents of the search and seizure documents. These admissions substantially dilute his role as an independent witness to the alleged recovery.

37. PW-8 Abhisek Ghimirey also supported the prosecution in his examination-in-chief by stating that he witnessed the recovery of suspected brown sugar and blue capsules from the vehicle, thereafter the articles were photographed, packed and sealed in his presence.

38. Nevertheless, during cross-examination PW-8 admitted that he had never seen the accused before and, owing to darkness, could not identify the person inside the vehicle. He further admitted that the person whom he referred to as the suspect could even have been a police personnel. He also admitted that the vehicle was not seized in his presence and that he did not personally see the contraband inside the vehicle but came to know of its presence only from what the police told him. These admissions substantially reduce the corroborative value of his testimony.

39. Thus, the evidence of PW-3, PW-5, PW-6 and PW-8 does not present a consistent or wholly reliable account of the search and seizure. While the prosecution alleges recovery from the vehicle, there is no recovery from the person of the accused. The contemporaneous documents are silent regarding the precise place of recovery inside the vehicle, the seizure of the vehicle itself is not consistently proved, the independent witnesses fail to identify either the accused or the seized articles with certainty, and the electronic evidence remains unsupported by the certificate required under Section 65B of the Evidence Act. These are material infirmities which go to the root of the prosecution case.

40. PW-1 Phur Tshering Lepcha was examined as an attesting witness to the seizure of the vehicle documents. In his examination-in-chief, he merely identified his signature on Exhibit P-1 but stated that he did not know the purpose for which he had signed the document, the date on which it was prepared, the place where it was prepared or the person who prepared it.

41. During cross-examination, PW-1 further admitted that he did not even know the nature of Exhibit P-1. His testimony, therefore, proves only his signature and not the execution or contents of the document, and consequently offers no meaningful corroboration to the prosecution case.

42. PW-2 Karan Subba, the registered owner of the Ford EcoSport, deposed that he had entered into an agreement to sell the vehicle to Jyoti Chettri and that, after execution of the agreement, he handed

over the vehicle to the accused. He further stated that after learning about the present case, he visited the police station where the vehicle documents were seized from him.

43. However, during cross-examination, PW-2 admitted that he continues to be the registered owner of the vehicle, that Exhibit P-2 is an unregistered agreement, that the accused is not a party to the agreement and that the agreement neither records delivery of possession nor transfer of the keys or vehicle documents. He further admitted that no sale consideration had been paid and that the sale transaction had never been completed. These admissions substantially weaken the prosecution case that the accused was in lawful or exclusive possession of the vehicle.

44. PW-4 Uzzwal Poudyal initially supported the prosecution by stating that he witnessed the search of the vehicle, recovery of the contraband articles, preparation of the seizure documents and sealing of the recovered articles.

45. His cross-examination, however, materially contradicts his examination-in-chief. He admitted that he was not a witness to the seizure of the contraband, that he signed Exhibit P-1 at the police station only in relation to seizure of the vehicle documents, that he first saw the alleged contraband at the police station and that he could not identify the material objects produced before the Court. He also admitted that he did not know the accused and that Karan Subba continues to be the registered owner of the vehicle. These admissions considerably diminish the evidentiary value of his testimony.

46. The evidence of PW-1, PW-2 and PW-4, when read together, does not furnish reliable corroboration regarding either the seizure of the vehicle documents or the accused's alleged possession of the vehicle. On the contrary, their evidence introduces doubt regarding the authenticity of the documentary evidence and the prosecution's assertion that the accused exercised conscious and exclusive control over the Ford EcoSport.
47. PW-7 HC Wangyal Bhutia deposed that, while on patrolling duty, he along with other police personnel intercepted the Ford EcoSport bearing registration No. SK-01-PA-5776 at Luing Garden, Reshithang. According to him, the accused was found inside the vehicle, thereafter PW-5, the Seizing Officer, was informed and the accused along with the vehicle was handed over to him for further proceedings.
48. In his cross-examination, PW-7 admitted that he never spoke to the driver of the vehicle and had no personal knowledge regarding the alleged recovery of contraband. He further admitted that he did not know whether any contraband substance was present inside the vehicle. His evidence, therefore, establishes only the interception of the vehicle and does not advance the prosecution case regarding the search, recovery or conscious possession of the alleged contraband.
49. PW-9 Mingyur T. Nadik, the then SHO of Sadar Police Station, deposed regarding the receipt of information, registration of the FIR, preparation of the inventory under Section 52A of the NDPS Act, receipt of the seized articles, and maintenance of the official records,

including the handing-over and taking-over memos and the malkhana register extract.

50. During cross-examination, PW-9 admitted that neither the handing-over memo nor the taking-over memo records the time at which the seized articles were transferred. He further admitted that he did not know when the Investigating Officer deposited the seized articles in the malkhana and that Exhibit P-17 does not contain the cover note or head note of the police station. These omissions assume significance while considering whether the prosecution has established an unbroken chain of custody.

51. PW-10 T.B. Gurung, Assistant Police Inspector-cum-Malkhana In-charge of Sadar Police Station, deposed that on 28.03.2023 he received the case exhibits in packed and sealed condition from the Investigating Officer and kept them in safe custody in the malkhana. He further stated that on 03.04.2023 the Investigating Officer took the sealed case property from the malkhana for production before the learned Court for segregation of samples and, after the samples were drawn, returned the remaining sealed exhibits to the malkhana on the same day. Thereafter, on 21.04.2023, the remaining case property was forwarded to the malkhana of the Prosecution Branch. He proved the relevant entries in the malkhana register (Exhibit P-17).

52. During cross-examination, PW-10 admitted that he never opened the sealed box to verify its contents and that the description of the property entered in the malkhana register was copied from the seizure memo supplied by the Investigating Officer. He further admitted that

after the Investigating Officer removed the sealed box from the malkhana on 03.04.2023 and returned it on the same day, it was never again taken from the malkhana. He also admitted that the malkhana was damp and that Exhibit P-17 does not contain the cover note or head note of the police station. These admissions assume importance while examining the integrity of the chain of custody.

53.PW-11, the Scientific Officer of the Regional Forensic Science Laboratory Ms. Tshering Lhamu Bhutia deposed that he received sealed samples for chemical examination and, upon analysis, found them positive for heroin, tramadol hydrochloride, codeine phosphate and nitrazepam. She proved the RFSL report and further deposed that the blood sample of the accused tested negative for any narcotic or psychotropic substance.

54.The testimony of PW-11 establishes only the nature of the samples received and analysed by the laboratory. She admittedly had no personal knowledge regarding the search, seizure, sealing or custody of the case property prior to its receipt. Consequently, the evidentiary value of the forensic report necessarily depends upon the prosecution establishing an unimpeachable chain of custody.

55.PW-12 S.I. Suman Pokhrel, the Investigating Officer, deposed that upon receipt of the case from the Officer-in-Charge, he took up the investigation, visited the place of occurrence, prepared the rough sketch map, examined the witnesses acquainted with the facts of the case and recorded their statements under Section 161 Cr.P.C. He further deposed that he arrested the accused in connection with the

case, prepared the arrest memo, produced the seized articles before the learned Chief Judicial Magistrate for certification of inventory, photography and drawing of representative samples under Section 52A of the NDPS Act and thereafter forwarded the sealed samples to the Regional Forensic Science Laboratory for chemical examination. According to him, during the course of investigation he seized the documents relating to the Ford EcoSport bearing registration No. SK-01-PA-5776, collected the RFSL report, obtained the relevant reports and records, and, upon completion of investigation, submitted the charge-sheet against the accused for the offences alleged. He proved the various documents prepared during investigation, including the arrest memo, forwarding memo, inventory proceedings, seizure of vehicle documents and other connected exhibits.

56. During cross-examination, PW-12 admitted that neither the FIR nor the search and seizure memorandum mentions the exact place inside the vehicle from where the alleged contraband was recovered. He further admitted that no contraband substance was recovered from the body or personal possession of the accused and that the accused was not the registered owner of the vehicle. He also admitted that Exhibit P-2 neither bears the signature of the accused nor makes him a party to the alleged agreement relating to the vehicle. Significantly, he admitted that the police personnel who had accompanied the Seizing Officer during the search and seizure were neither cited nor examined as prosecution witnesses.

57. PW-12 further admitted that while the seizure proceedings refer to 72 packets forming part of MO-4, 82 packets were ultimately produced before the learned Chief Judicial Magistrate and forwarded to the Regional Forensic Science Laboratory for examination. No satisfactory explanation has been offered by the prosecution for this material discrepancy. He also deposed that he had taken the case property from the malkhana on 28.03.2023 and again on 04.04.2023, whereas PW-10 categorically stated that after the sealed box was taken from the malkhana on 03.04.2023 and returned on the same day, it was never again removed. These inconsistencies remain unexplained and materially affect the prosecution case regarding the identity and continuity of the seized articles.

58. The evidence of PW-12 undoubtedly establishes the steps undertaken during the course of investigation. However, the admissions elicited during his cross-examination expose material omissions and inconsistencies relating to the place of recovery, the ownership and possession of the vehicle, the non-examination of material police witnesses, the discrepancy in the number of seized packets and the movement of the case property. These deficiencies assume considerable significance while examining whether the prosecution has succeeded in proving the foundational facts necessary to sustain a conviction under the NDPS Act.

59. Upon a careful and cumulative appreciation of the entire evidence on record, this Court is of the considered view that the prosecution has failed to establish the foundational facts necessary for sustaining the

charges against the accused beyond reasonable doubt. The evidence suffers from material inconsistencies regarding the manner and place of recovery, the conscious possession of the accused, the ownership and control of the vehicle, the continuity and integrity of the chain of custody and the identity of the seized articles. The unexplained discrepancy in the number of seized packets, the contradictions relating to the movement of the case property, the omission to examine material members of the police party and the admissions elicited from the Investigating Officer collectively create serious doubt about the prosecution version. Although the forensic report establishes that the samples examined contained narcotic drugs and psychotropic substances, scientific evidence by itself cannot cure the deficiencies in proving the legality of the recovery or the continuity of the seized articles from the time of seizure till forensic examination. The prosecution has, therefore, failed to establish beyond reasonable doubt that the contraband allegedly recovered was in the conscious possession of the accused or that the mandatory safeguards contemplated under the NDPS Act were complied with in a manner inspiring confidence.

60. Upon an overall appreciation of the evidence and the circumstances emerging from the record, and for the reasons discussed hereinabove, this Court now proceeds to determine the points framed for consideration. The findings on each point are recorded as follows:

61. In view of the foregoing discussion, this Court holds that the prosecution has failed to establish beyond reasonable doubt that the

heroin allegedly recovered was in the conscious and exclusive possession of the accused. The foundational facts regarding lawful recovery and conscious possession remain unproved. Accordingly, Point No. 1 is answered in the Negative.

62.The prosecution has failed to establish beyond reasonable doubt the conscious possession and lawful recovery of the said contraband from the accused. Consequently, Point No. 2 is answered in the Negative.

63.The evidence led by the prosecution suffers from material inconsistencies and does not satisfactorily establish the foundational facts necessary for conviction. Accordingly, Point No. 3 is answered in the Negative.

64.In view of the serious deficiencies in the prosecution evidence regarding recovery, conscious possession and chain of custody, the prosecution has failed to prove this charge beyond reasonable doubt. Accordingly, Point No. 4 is answered in the Negative.

65.In view of the findings recorded on the foregoing points, this Court holds that the prosecution has failed to prove the charges against the accused beyond reasonable doubt. The accused is, therefore, entitled to the benefit of doubt and is liable to be acquitted of all the charges framed against him.

ORDER

66. The accused, Sanjay Pradhan @ Salman, is hereby acquitted of the offences punishable under Sections 21(b), 22(c) (*two counts*) and 22(a) of the Narcotic Drugs and Psychotropic Substances Act, 1985, by extending to him the benefit of doubt.
67. His bail bonds shall stand discharged after expiry of the statutory period for filing an appeal, if not required in any other case.
68. The seized contraband and other case property shall be dealt with in accordance with law after expiry of the period of appeal or subject to any order passed by the appellate court.
69. Let a copy of this judgment be furnished to the accused free of cost.

Dictated to the short-hand writer, transcribed by her, corrected and pronounced by me, this the 31st day of July 2026.

(JAGAT B. RAI)
SPECIAL JUDGE, (NDPS ACT, 1985)
GANGTOK

LIST OF PROSECUTION/DEFENCE/COURT WITNESSES**A. Prosecution:**

RANK	NAME	NATURE OF EVIDENCE
PW-1	Phur Tshering Lepcha	To prove the statement recorded by the police
PW-2	Karan Subba	To prove the statement recorded by the police
PW-3	Manoj Subba	To prove the search and seizure
PW-4	Uzzwal Poudyal	To prove the search and seizure
PW-5	Shekar Basnett	To prove the search, seizure and FIR
PW-6	Naresh Chettri	To prove the search and seizure as G.O
PW-7	Wongyal Bhutia	To prove the statement recorded by the police
PW-8	Abhisek Ghimirey	To prove the statement recorded by the police
PW-9	Mingyur T. Nadik	To prove the registration of the case
PW-10	T.B Gurung	To prove the <i>malkhana</i> extract
PW-11	Tshering Lhamu Bhutia	To prove the RFSL Report
PW-12	Suman Pokhrel	To prove the investigation

B. Defence Witnesses: NIL**C. Court Witnesses, if any: NIL**

LIST OF PROSECUTION/DEFENCE/COURT EXHIBITS**A. Documents exhibited by Prosecution:**

Sr. No.	Exhibit Number	Description
1	Exhibit- P1/PW-1	Seizure memo
2	Exhibit- P2/PW-2	Agreement deed
3	Exhibit- P3/PW-3	Search memorandum
4.	Exhibit-P4/PW-3	Search memorandum
5.	Exhibit-P5/PW-3	Seizure memo
6	Exhibit-P6/PW-3	Rough sketch map
7.	Exhibit-P7/PW-5	Appraisal memo
8.	Exhibit-P8/PW-5	FIR
9.	Exhibit-P9/PW-45	Formal FIR
10.	Exhibit-P10/PW-5	Handing taking memo
11.	Exhibit-P11/PW-5	Intimation report
12.	Exhibit-P12/PW-5	Registration certificate, token tax receipt and insurance of the vehicle
13	Exhibit-P13/PW-9	Handing and taking
14	Exhibit -P14/PW-9	Intimation report
15.	Exhibit -P15/PW-9	Inventory list
16.	Exhibit- P16/PW-9	Requisition
17.	Exhibit-P17/PW-9	Extract/certified to be true copy of the <i>malkhana</i> register
18.	Exhibit-P18/PW-12	Arrest memo
19.	Exhibit-P18/PW-12	Forwarding documents to RFSL

20.	Exhibit- P20/PW-12	Documents pertaining to the vehicle
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B. Documents exhibited by Defence: NIL

C. Documents exhibited by Court: NIL

D. Material Objects exhibited by Prosecution:

Sr. No.	MATERIAL OBJECTS	Description
1	MO-1	39 white plastic pouches containing loose blue coloured capsules of SAMPEX +
2	MO-2	cough syrup bottles
3	MO-3	Two carton boxes
4	MO-4	72 plastic packets containing brown powdery substances/heroin
5	MO-5	10 plastic packets containing brown powdery substances/heroin
6.	MO-6	strip of Nitrosun-10 tablets which were segregated as samples.
7.	MO-7	60 loose coloured capsules of SAMPEX +
8.	MO-8	10 loose blue coloured capsules of SAMPEX +
9.	MO-9	4 other bottles of Cofson-CD

		cough syrup
10.	MO-10	Cloth covered carton box
11.	MO-11	Yellow coloured envelope
12.	MO-12	brown coloured envelopee
13.	MO-13	green coloured envelope

E. Material Objects Exhibited by Court- NIL

F. Material Objects exhibited by Defence: NIL

(JAGAT B. RAI)
SPECIAL JUDGE, (NDPS ACT, 1985)
GANGTOK