

KADW010026502020



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Decided on : 23-07-2026
Duration : 5 years, 8 months, 12 days

**IN THE COURT OF PRINCIPAL DISTRICT AND
SESSIONS JUDGE, DHARWAD**

Present: Sri. N.V. Vijay, B.A. LL.B. (Hons.),
Prl. District and Sessions Judge,
Dharwad

Dated this the 23rd day of July, 2026.

Special (NDPS) Case No.7/2020

Complainant:

: The State of Karnataka,
By Hubballi Sub Urban Police Station.

(By learned Public Prosecutor)

Vs.

Accused:

1. Maruti s/o. Kallappa Haranashikari
Age: 21 years, Occ: Student,
R/o: Timmapur, Tq. & Dist- Gadag.
2. Chandrappa s/o Siddappa
Haranashikari
Age: 25 years, Occ: Shepherd.
R/o: Timmapur, Tq. & Dist- Gadag.
3. Abdulrazak s/o Mohammadsab Kasbag
Age 42 years, Occ: Business/Driver.
R/o. Shindle Mall, near Douli Circle,
Kabir Sheikh house, Sangli.

4. Chandrakant @ Pappu s/o.
Harishchandra Chavan, Age 34 years,
R/o. Lachchunayak Tanda, Kalagi Post
Tq. & Dist- Kalaburgi.
(By Sri.V.G.Holeyannavar, Advocate)

1. Date of offence : 02.09.2020
2. Date of report of offence : 02.09.2020
3. Date of arrest of the accused persons. : A.1 & 2 on 03.09.2020
A.3 on 16.09.2020
A.4 was in J.C. in Sheshadripuram Police Station, Bengaluru and produced before the Court under body warrant on 09.07.2021.
4. Date of release of accused persons. : A.2 on 24.12.2020
A.1 on 13.01.2021
A.3 on 22.01.2021
A.4 on 20.09.2023.
5. Period of custody of accused persons. : A.1- 04 months,10 days
A.2- 03 months, 21 days
A.3- 04 months, 06 days
6. Name of the complainant : S.K. Holeyannavar, Police Inspector.
7. Date of commencement of recording evidence : 07.12.2021.
8. Date of closing evidence : 10.02.2025.
9. Offences complained of : Sec.20(b)(ii)(B) of N.D.P.S. Act, 1985.

10. Opinion of the Judge : The accused No.1 to 4 are found not guilty of the offence charged.

J U D G M E N T

The P.S.I (Law & Order) Sub Urban Police Station, Hubballi has submitted the charge sheet against the accused No.1 to 4 alleging that they have committed the offence punishable Sec.20(b)(ii)(B) of Narcotic Drugs and Psychotropic Substances Act, 1985.

2. The case of the prosecution is as follows:

That on 02.09.2020 in between 17.50 to 18.00 hours accused No.1 and 2 were found transporting the contraband in a two wheeler bearing Reg. No. KA-26/ED-2911 and on apprehending the accused, accused No.1 and 2 were found in possession of ganja weighing 5 kg 100 grams and on further enquiry, it was revealed that the said ganja was received from accused No.3, for the purpose of sale and for their illegal gain. The said ganja was seized in the presence of CW.1, 2, 3, 8, 9 and 11 to 21. On further enquiry, it was also disclosed that accused No.4 is involved in the present crime and he is judicial custody, in Crime

No. 57/2020 of Sheshadripuram Police Station, Bengaluru for the offence punishable under Section 20(c) of NDPS Act and he is in judicial custody in UTP No.6637/2020.

Subsequently, on the basis of credible information and on the basis of voluntary statement of accused No.1 and 2, accused No.3 was apprehended near Simikeri Kavammana Temple situated near Gaddanakeri Cross, Bagalkot at about 12.45 pm., on 15.09.2020, who was found transporting contraband/ganja weighing about 1 kg 10 grams in a Car bearing No. MH-11/AN-2345. Hence the charge sheet against the accused persons.

3. In the course of investigation, the Investigating Officer had recorded the statements of witnesses and produced the accused persons before this Court with remand application and the accused were remanded to Judicial Custody. The accused No.1 to 4 were subsequently enlarged on bail by this Court. The investigating Officer after completion of investigation had submitted charge sheet against the accused Nos.1 to 4 before this court.

4. After hearing the learned Public Prosecutor and the learned counsel for the accused regarding charge,

charge was framed against the accused Nos.1 to 4 for the offence punishable under Section 20(b)(ii)(B) of N.D.P.S. Act. The accused Nos.1 to 4 pleaded not guilty and claimed to be tried by this Court. Hence, the case was taken up for trial.

5. The prosecution in order to establish the guilt of the accused has examined in all 13 witnesses as P.W.1 to P.W.13 and got marked 120 documents as Ex.P.1 to Ex.P.120 and material objects as M.O.1 to M.O.10.

6. Thereafter the statements of the accused under Section 313 of Code of Criminal Procedure, 1973 were recorded. The accused denied the incriminating evidence and have not lead any defence evidence.

7. Heard the arguments of both sides and perused the records.

8. The points that arise for my consideration are as under:

1. Whether the prosecution proves beyond all reasonable doubt that on 02.09.2020 at 6 pm., in Deshpande Nagar, Hubballi, the accused No.1 and 2 in contravention of provisions of Narcotic Drugs and Psychotropic Substances Act, 1985 were found in

possession of 5 kg 100 grams of ganja carrying in their bags and caught red handed by the Sub Urban Police, Hubballi and accused No.1 and 2 discloses that they have purchased the ganja from accused No.3 and on 15.09.2020 accused No.3 was found transporting 1 kg 10 grams of ganja in a Car bearing No. MH-11/AN 2345 near Gaddanakeri Cross, Bagalkot and on enquiry accused No.3 disclosed that he has purchased the ganja from accused No.4 and thereby accused No.1 to 4 have committed the offence punishable under S.20(b)(ii)(B) of Narcotic Drugs and Psychotropic Substances Act, 1985?

2. What order ?

9. My answer to the above points are as under:

Point No.1: In the negative,

Point No.2: As per final order, for the following:

REASONS

10. **Point No.1:-** The prosecution in order to prove the case against the accused, in all has examined 13 witnesses as P.W.1 to P.W.13.

11. PW-1- Lohit is the panch witness to Ex.P.3 seizure panchanama and he has supported the case of prosecution. In his testimony he has deposed that, he is working in Tahasildar Office in different divisions. On 02.09.2020 while he was working in Tahasildar Office, Hubballi at about 3.30 pm., he received a written order from the Tahasildar to visit Sub Urban Police Station, Hubballi and to act as a panch in a raid panchanama. Accordingly, on that day himself and CW.3 had visited Sub Urban Police Station, Hubballi at about 4 pm., and reported before CW.1/P.I. At that time, they were informed about the credible information and requested them to act as panchas in a raid proceeding, for which they had agreed. The notice issued to himself and CW.3 are marked at Ex.P.1 and 2. The investigation officer had also summoned Gazetted Officer and a person for weighing the seized items.

12. PW.1 further deposed that, subsequently CW.1, his staff, Gazetted Officer, weighing person and CW.3 visited Desai Cross, Hubballi and at that time they noticed two persons coming on motorcycle and when the police

officials tried to stop the said persons, they tried to escape, but police officials had managed to caught hold the said persons. Subsequently, when they went near the accused persons, they noticed that the said persons were holding two bags i.e. one black colour and another yellow colour. When black colour bag was searched, it contained two packets. On opening the packets, it contained dry ganja leaves and seeds. Subsequently, another yellow colour bag was also checked, which also contained ganja. Thereafter body search was conducted by the Gazetted Officer and the ganja seized from the possession of accused persons was weighed in their presence and the two packets found in the black colour bag were weighing 2 kg 31 grams and 2 kg 20 grams respectively. From the said packets, 30 grams each of sample ganja was collected and marked as S1 and S2. In the said bag, cash of Rs.1,000/- was also found. The packets which contained ganja, bag and cash was seized by the raiding officer.

13. PW.1 further deposed that, subsequently another packet in the yellow colour bag which was in the possession of accused No.2 was also weighed and it was

about 1 kg 49 grams. Out of the said packet, 50 grams of ganja was collected for the purpose of sample and marked as S3 and remaining ganja was marked as R3 and was also sealed in their presence under the panchanama marked as Ex.P.3. The photographs taken at the time of panchanama are marked as Ex.P.4 to 37. The sample ganja seized at the time of panchanama is marked as MO.1 to 3, the bags seized under the panchanama are marked as MO.4 and 5 and the seized cash is marked as MO.6.

14. PW-2 Manjur Mishrikoti is a panch witness to mobile seizure panchanama Ex.P.43 and he has supported the case of prosecution. In his testimony he has deposed that, on 11.09.2020 the police officials of Sub Urban Police Station, Hubballi had summoned him to visit police station at about 4.30 pm. At that time, accused Maruti Kallappa Haranashikari was present in the police station. Subsequently, accused had informed them that if he is taken to Pinto Circle, Hubballi he would produce the mobile phone which he was used for conversation and accordingly the accused had taken them near Desai Cross, Hubballi and had produced the mobile phone which was

kept in an open place. The said mobile phone was seized in his presence under the panchanama marked as Ex.P.43. The photographs taken at the time of panchanama are marked as Ex.P.44 and 45. The mobile phone is marked as MO.7.

15. PW-3 Sundaresh Holeyannavar, Police Inspector of Sub Urban Police Station, Hubballi is the raiding officer. In his testimony he has deposed that, on 2.9.2020 at about 3.15 pm., while he was the Station House Officer, he received a credible information that two unknown accused persons were transporting ganja on a motorcycle and were passing towards Desai Circle and on the basis of said credible information, after intimating his superiors and obtaining permission as per Ex.P.46 and 47, he issued written requisition to the Tahasildar to send two panchas as per Ex.P.48 and accordingly the Tahasildar had sent one Lohit and Mahesh from their office to act as panch witnesses to the raid. The panch witnesses had also agreed to act as panchas to the raid and give their written consent. Similarly he had also secured the Gazetted Officer and the weighing person by issuing notice to them and had also obtained their consent.

16. PW.3 further deposed that, thereafter along with panchas, Gazetted Officer, his staff proceeded in the official vehicles bearing Reg. No. KA-25/G-409 and KA-25/G-652 to Desai Circle at about 5 pm., and kept a watch at the spot. At about 5.50 pm., they noticed two persons coming on a two wheeler from Pinto Circle side with black colour air bag and yellow colour hand bag. On suspicion, when they had tried to caught hold the said persons, but the said persons tried to fled away from the spot. Hence the said persons were surrounded and apprehended. Thereafter, in the presence of Gazetted Officer, panchas and his staff, the said accused persons were enquired and they were informed their name as Maruti Kallappa Haranashikari and Chandappa Siddappa Haranashikari. They enquired the accused by issuing notice whether body search has to be conducted in the presence of Gazetted Officer. The accused persons had insisted for search in the presence of Gazetted Officer. Accordingly, in the presence of Gazetted Officer, the bag which was in the possession of accused No.1 was inspected and noticed two packets and on opening the said packets, it contained ganja weighing

2 kg 31 grams and 2 kg 20 grams respectively. The accused No.1 was also in possession of Rs.1,000/- cash. The carry bag and the motorcycle were also seized. Subsequently, yellow colour hand bag which was in the possession of accused No.2 was inspected and noticed one ganja bundle weighing 1 kg 49 grams.

17. PW.3 further deposed that, sample ganja was also collected for the purpose of FSL examination from all the three packets, which are marked as S1, S2 and S3 and the remaining ganja was marked as R1, R2 and R3. The said ganja was sealed with GMF A2 seal. Thereafter, the accused persons were arrested and panchanama was drawn in the presence of panch witnesses and Gazetted Officer as per Ex.P.3. The photographs of the motorcycle are marked as Ex.P.38 to 40. The sample ganja seized under the panchanama is marked as MO.1 to 3, the bags seized from the possession of accused are marked as MO.4 and 5 and cash is marked as MO.6. Subsequently, along with the accused, panchanama and the seized items, he returned to the police station and lodged the written complaint as per Ex.P.56 and thereafter he had submitted

the special report to his superiors as per Ex.P.57. He can identify the accused persons.

18. PW-4 is the Gazetted Officer who had assisted the raiding officer and his evidence is similar to the evidence of PW.3.

19. PW-5 Mohammadali who is the panch witness to Ex.P.58 seizure panchanama, but has not supported the case of prosecution. In his testimony he has deposed that in his presence the police officials had not drawn any panchanama and no items were seized. The police officials have not recorded his statement and the police officials had not handed over any seal to him.

20. PW-6 Siddappa Pujar is the Inspector working in APMC Yard, Hubballi. His evidence is similar to the evidence of raiding officer PW.3.

21. PW-7 Nagappa Beerannavar is the Police Constable. His evidence is also similar to the evidence of raiding officer/PW.3. He has further deposed that, on 11.09.2020 the Police Inspector had further recorded the statement of accused No.1 and had recovered his mobile

phone in the presence of panch witnesses used for conversation under the panchanama marked as Ex.P.43. Subsequently, on 15.09.2020 on the basis of voluntary statement of accused No.1, they had visited near Gaddanakeri cross along with panchas and apprehended accused No.3 who was found traveling in the Car bearing Reg. No. MH-11/AA 2345 and he was in possession of ganja weighing about 1 kg 10 grams. In the presence of panch witnesses, sample ganja was collected from the said ganja and seized under the panchanama as per Ex.P.59. The said panchanama is also written by him. The photographs taken at that time are marked as Ex.P.60 to 73. The photograph of the car seized is marked as Ex.P.60. The mobile phone seized under the panchanama is marked as MO.9 and the cash seized from accused No.3 is marked as MO.10.

22. PW-8 Chandrakant Kiresur and PW.9 Ramesh Amminabhavi are the panch witnesses to the seizure panchanama Ex.P.59, but they have not supported the case of prosecution. In their testimony, they have deposed that about 5-6 years back, the Police Inspector had

summoned them to the Sub Urban Police Station, Hubballi and subsequently along with the police officials, they have proceeded towards Gaddanakeri Cross, where a white Car was parked with 2 to 3 inmates. They do not know whether accused No.1 and 2 were present at the spot. Subsequently police officials had taken photographs by taking some items which were kept in the dicky of the car and they do not know what items were kept in the dicky. The photographs taken during that time are marked as Ex.P.60 to 73 and they are visible in the said photographs, but the inmates of the car are not visible in the said photographs. The police officials except for seizure of the bags, no other items were seized in their presence.

23. PW.10 Ranganath who is the panch witness to Ex.P.75, but has not supported the case of prosecution. In his testimony he has deposed that, about two years back the police officials had taken photographs as per Ex.P.76 and 77, but he does not know for what reason the photographs were taken. He cannot identify the persons who are present in the photographs and he cannot identify accused No.1 and 2.

24. PW.11 Manjunath Doddamani is the Asst. Engineer in HESCOM, Hubballi and in his testimony he has deposed that, as per the requisition of the police officials of Hubballi Sub Urban Police Station, on 13.11.2021 he has issued a letter as per Ex.P.78 stating that on 2.9.2020 there was power supply in Deshpande Nagar, Hubballi between 6 pm to 8 pm.

25. PW.12 is H.Kotresh is the Asst. Chemical Examiner, RFSL, Dharwad. In his testimony he has deposed that, on 10.09.2020 he has examined S1, S2 and S3 packets said to be contain ganja sent by the police officials of Sub Urban Police Station, Hubballi and on microscopic examination he has found the characteristic of Ganja and accordingly he has issued the report as per Ex.P.79. He further deposed that, on 18.09.2020 he has examined one more sealed packet said to be contain ganja sent by the Hubballi Sub Urban Police and on microscopic examination he has found the characteristic of Ganja and accordingly he has issued the report as per Ex.P.80.

26. PW.13 Ashok, PSI is the investigation officer who received the complaint and registered the FIR as per

Ex.P.56 and 81 and having carried out investigation in the said case. He is also the subsequent raiding officer. In his testimony he has deposed that, on 15.09.2020 he received a credible information about the whereabouts of accused No.3 and accordingly after obtaining permission from his superiors he secured panchas and weighing person and proceeded near Simikeri Kavamma Temple near Gaddanakeri Cross at 10.10 am., and kept a watch on the road and at about 12.40 pm., a vehicle bearing No. MH-11/AM-2314 came from Gaddanakeri Cross side and when they gave signal to stop the vehicle, the driver of the said vehicle tried to fled away from the spot, but they managed to stop the said vehicle. On enquiry, the driver had informed his name as Mohammad Abdul Razak and on inspecting the vehicle, they found a bundle which was kept in the dicky, which contain leaves and seeds of dry ganja and the same was weighing 1 kg 10 grams. Subsequently, in the presence of panchas, 100 grams of ganja was collected for sample from the seized ganja under the panchanama, which was marked as S1 and the remaining ganja was marked as R1. The panchanama is marked as

Ex.P.59 and the photographs taken at the time of panchanama are marked as Ex.P.60 to 73. He has further deposed about carrying further investigation and also submitting charge sheet against the accused persons.

Rival contention of parties:

27. The learned Public Prosecutor submits that, on the basis of credible information, the raiding officer/PW.3 after following requisite procedure contemplated under NDPS Act reduced the same into writing and proceeded for raid along with panch witnesses, Gazetted Officer and his staff and noticed two suspicious persons near Desai Circle, Hubballi proceeding on a two wheeler and when they tried to stop the said persons, the said persons i.e. accused No.1 and 2 tried to fled away from the spot, but they were apprehended. Thereafter on inspection, the said accused No.1 and 2 were found in possession of ganja totally weighing 5 kg 100 grams and in the presence of panch witnesses sample was collected for FSL examination and marked as S1 to S3 and subsequently panchanama was drawn as per Ex.P.3 and thereafter he had lodged the complaint against the accused persons as per Ex.P.56 and

also submitted the special report to his higher officers as per Ex.P.57

28. PW.3 being the raiding officer, PW.1 being the panch witness, PW.4 being the Gazetted Officer and PW.7 being the member of raiding party have supported the case of prosecution and they have clearly deposed about the credible information, apprehending accused No.1 and 2 and seizure of ganja from the possession of accused No.1 and 2 under the panchanama. Thus the evidence of PW.1, 3, 4 and 7 clearly discloses that the procedure stipulated under Section 41(1) and 41(2) of NDPS Act is clearly followed by the raiding officer.

29. In so far as accused No.3 is concerned, PW.13 being the investigation officer and the raiding officer has deposed about recording the voluntary statement of accused No.1 about purchase of ganja from accused No.3. On the basis of said voluntary statement, during the course of investigation he received a credible information about accused No.3 visiting Gaddanakeri Cross and after reducing the same into writing he proceeded along with raiding team to Gaddanakeri Cross and apprehended

accused No.3. On enquiry and on inspection, accused No.3 was also found in possession of ganja weighing about 1 kg 10 grams which came to be seized under the panchanama. Though in so far as accused No.3 is concerned, the panch witnesses to the panchanama-Ex.P.59 have not supported the case of prosecution, but the testimony of PW.13 discloses that the ganja was seized from the possession of accused No.3, who was supplying ganja to accused No.1 and 2. The evidence on record also discloses that accused No.4 who is involved in other case pertaining to same offence was the main king pin who supplied ganja to accused No.3 and in turn accused No.3 was supplied ganja to accused No.1 and 2. The bank statement of accused No.4 marked as Ex.P.117 discloses that there was monetary transaction between accused No.3 and 4, which only implies that accused No.4 is one of the main person in the said crime. The evidence on record both oral and documentary clearly establishes to the fact that the accused have committed the offence punishable under Section 20(b)(ii)(B) of NDPS Act. Hence, prays to convict the accused persons.

30. On the contrary, the learned counsel for the accused persons submits that the procedure as stipulated under Section 42(1) and (2) of the NDPS Act is not followed by the raiding officer. As per the very prosecution case and evidence on record, no sample ganja is collected from the seized ganja in the presence of Magistrate and the sample ganja, which was sent for chemical examination is the ganja alleged to have been seized at the time of raid. Therefore, the ganja which was sent for chemical examination cannot be termed as sample ganja in accordance with Section 52-A of the NDPS Act. Further as per the very prosecution case, the ganja came to be seized on 02.09.2020 and on 15.09.2020, but the inventory was conducted on 20.10.2020. Therefore there is a delay of more than one month in carrying out the inventory before the Magistrate, but no sample ganja has been collected from the seized ganja in the presence of Magistrate. The investigation officer has also not produced the chain of custody pertaining to seized ganja or Malkhana Register to disclose where actually the ganja was stored prior to inventory. Therefore, there is total non-compliance of

procedures by the I.O in respect of seized contraband/ganja. Further, the prosecution has also failed to prove that the alleged contraband seized from accused No.1 to 3 is established as ganja, as the Chemical Analyst Report does not disclose the presence of tetrahydrocannabinol in any manner in the sample contraband alleged to be sent for FSL examination. Thus the prosecution has failed to prove that the accused persons were found transporting ganja. Hence, prays to acquit the accused persons.

Analysis and evaluation of evidence

31. At the outset, it is relevant to note that NDPS Act prescribes stringent punishment, hence the act has been enacted in such a manner to balance the law and enforcement of such law on one hand and the protection of citizens from oppression & injustice on the other. Section 42 of the N.D.P.S. Act deals with power of entry, search and arrest or authorization. The Section 42 of the Act reads as follows:

42. Power of entry, search, seizure and arrest without warrant or authorization.

(1) Any such officer (being an officer superior in rank to a peon, sepoy or constable) of the departments of central excise, narcotics, customs, revenue intelligence or any other department of the Central Government including para-military forces or armed forces as is empowered in this behalf by general or special order by the Central Government, or any such officer (being an officer superior in rank to a peon, sepoy or constable) of the revenue, drugs control, excise, police or any other department of a State Government as is empowered in this behalf by general or special order of the State Government, if he has reason to believe from persons knowledge or information given by any person and taken down in writing that any narcotic drug, or psychotropic substance, or controlled substance in respect of which an offence punishable under this Act has been committed or any document or other article which may furnish evidence of the commission of such offence or any illegally acquired property or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act is kept or concealed in any building, conveyance or enclosed place, may between sunrise and sunset,

(a) enter into and search any such building, conveyance or place;

(b) in case of resistance, break open any door and remove any obstacle to such entry;

(c) seize such drug or substance and all materials used in the manufacture thereof and any other article and any animal or conveyance which he has reason to believe to be liable to confiscation under this Act and any document or other article which he has reason to believe may furnish evidence of the

commission of any offence punishable under this Act or furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act; and

(d) detain and search, and, if he thinks proper, arrest any person whom he has reason to believe to have committed any offence punishable under this Act: Provided that if such officer has reason to believe that a search warrant or authorisation cannot be obtained without affording opportunity for the concealment of evidence or facility for the escape of an offender, he may enter and search such building, conveyance or enclosed place at any time between sunset and sunrise after recording the grounds of his belief.

(2) Where an officer takes down any information in writing under sub-section (1) or records grounds for his belief under the proviso thereto, he shall within seventy-two hours send a copy thereof to his immediate official superior.]

32. Now, the question that arises for consideration is as to at what stage and by what time the authorized officer should comply with the requirements of Section 42 of the Act and report the matter to his superior officer?

33. As per section 42, it can be divided into two different parts. First is the power of entry, search seizure and arrest without warrant or authorization as contemplated under sub-section (1) of the said section.

Second is reporting of the information reduced to writing to a higher officer in consonance with sub-section (2) of that section. Section 42(2) had been a matter of judicial interpretation, as well as of legislative concern in the past. Sub-section (2) was amended by the Parliament vide Act 9 of 2001 with effect from 2nd October, 2001. After amendment of this sub-section, the words 'forthwith' stood amended by the words 'within 72 hours'. In other words, whatever ambiguity or leverage was provided for under the unamended provision, was clarified and resultantly, absolute certainty was brought in by binding the officer concerned to send the report to the superior officers within 72 hours from the time of receipt of information. The amendment is suggestive of the legislative intent that information must reach the superior officer not only expeditiously or forthwith but definitely within the time contemplated under the amended of Section 42(2) of NDPS Act.

34. **In Karnail Singh Vs State of Haryana** the Hon'ble Apex Court has held as follows:

“In conclusion, what is to be noticed is Abdul Rashid did not require literal compliance with the requirements of sections 42 (1) and 42 (2) nor did Sajan Abraham hold that the requirements of Section 42 (1) and 42 (2) need not be fulfilled at all. The effect of the two decisions was as follows:

(a) The officer on receiving the information (of the nature referred to in Sub-section (1) of Section 42 from any person had to record it in writing in the concerned Register and forthwith send a copy to his immediate official superior, before proceeding to take action in terms of clauses (1) to (d) of section 42 (1).

(b) But if the information was received when the officer was not in the police station, but while he was on the move either on patrol duty or otherwise, either by mobile phone, or other means, and the information calls for immediate action and any delay would have resulted in the goods or evidence being removed or destroyed, it would not be feasible or practical to take down in writing the information given to him, in such a situation, he could take action as per clauses (a) to (d) of section 42 (1) and thereafter, as soon as it is practical, record the information in writing and forthwith inform the same to the official superior.

(c) In other words, the compliance with the requirements of Sections 42 (1) and 42 (2) in regard to writing down the information received and sending a copy thereof to the superior officer, should normally precede the entry, search and seizure by the officer. But in special circumstances involving emergent situations, the recording of the information in writing and sending a copy thereof to the official superior may get postponed by a reasonable period, that is after the search,

entry and seizure. The question is one of the urgency and expediency.

(d) While total non-compliance of requirements of sub-sections (1) and (2) of section 42 is impermissible, delayed compliance with satisfactory explanation about the delay will be acceptable compliance of section 42. To illustrate, if any delay may result in the accused escaping or the goods or evidence being destroyed or removed, not recording in writing the information received, before initiating action, or non-sending a copy of such information to the official superior forthwith, may not be treated as violation of section 42. But if the information was received when the police officer was in the police station with sufficient time to take action, and if the police officer fails to record in writing the information received, or fails to send a copy thereof, to the official superior, then it will be a suspicious circumstance being a clear violation of section 42 of the Act. Similarly, where the police officer does not record the information at all, and does not inform the official superior at all, then also it will be a clear violation of section 42 of the Act. Whether there is adequate or substantial compliance with section 42 or not is a question of fact to be decided in each case. The above position got strengthened with the amendment to section 42 by Act 9 of 2001.”

35. In the present case, PW-3 is the raiding officer and in his testimony he has deposed about receiving credible information and reducing the same into writing and subsequently after informing his superiors he

proceeded to the raid along with the raiding team and apprehended accused No.1 and 2 and seized ganja from them, drew panchanama as per Ex.P.3 and thereafter returned to the police station and lodged the complaint against accused No.1 and 2 and also submitted a special report to his superiors as per Ex.P.57. Therefore, this evidence of PW.3 discloses that as per Section 42(1) and (2) of the Act he has reduced the information into writing in Station House Diary as per Ex.P.113 and sent a copy thereof to his superior intimating about the raid as per Ex.P.46. His testimony also discloses that immediately after the raid, he returned back to the police station along with accused No.1 and 2 and lodged the complaint as per Ex.P.56 and thereafter submitted a report to his superiors in compliance of Section 42(2) of the Act. Therefore, in so far as accused No.1 and 2 is concerned, the mandatory compliance as per Section 42(1) and (2) of the Act is positive.

36. However, in so far as accused No.3 is concerned, though PW.13 has reduced the credible information into writing as per Ex.P.114, but the said information is

shrouded with suspicious circumstances for the reason that the very information reduced into writing discloses that on the basis of voluntary statement of accused No.1, during the course of investigation, he received the credible information. Therefore, it has to be implied that the information which is reduced into writing in SHD as per Ex.P.114 cannot be considered as an information reduced into writing soon after the information. The records would also disclose that the voluntary statement of the accused is recorded on 15.02.2020. Further, after apprehending accused No.3 and the alleged seizure of ganja from the possession of accused No.3, the raiding officer/PW.13 has failed to inform his superiors. In the said scenario, I am of the opinion that mandatory compliance as per Section 42(1) and (2) of the Act as against accused No.3 has to be termed as negative.

37. Now the next question that arises for my consideration is whether the prosecution has made compliance of procedures more so as per Standing Order No.1/88 in respect of seized contraband from accused persons ?.

Therefore, it is necessary to refer to the clauses 1.4, 1.5, 1.6, 1.8 and 1.13 of the Standing Order No.1/88 issued under Section 52-A of the NDPS Act and it states as follows:

"1.4. If the drugs seized are found in packages/containers the same should be serially numbered for purposes of identification. In case the drugs are found in loose form the same should be arranged to be packed in unit containers of uniform size and serial number should be assigned to each package/container. Besides the serial number, the gross and net weight, particular of the drug and date of seizure should invariably be indicated on the packages. In case sufficient space is not available for recording the above information on the package, a Card Board label, should be affixed with a seal of the seizing officer and on this Card Board label, the above details should be recorded.

1.5 Place and time of drawal of sample: Samples from the Narcotic Drugs and Psychotropic Substances seized must be drawn on the spot of recovery, in duplicate, in the presence of search (Panch) witnesses and the person from whose possession the drug has been recovered, and mention to this effect should invariably be made in the panchnama drawn on the spot.

1.6.Quantity of different drugs required in the sample: The quantity to be drawn in each sample for chemical test should be 5 grams in respect of all narcotic drugs and psychotropic substances except in the cases of Opium, Ganja and Charas/Hashish where a quantity of 24 grams in each case is required for chemical test. The same quantities should be taken for the duplicate sample also. The

seized drugs in the packages/containers should be well mixed to make it homogeneous and representative before the sample in duplicate is drawn.

1.8. Numbering of packages/containers- Subject to the detailed procedure of identification of packages/containers, as indicated in Para 1.4 each package/container should be securely sealed and in identification slip pasted/attached on each one of them at such place and in such manner as will avoid easy obliteration of the marks and numbers on the slip. When more than one sample is drawn, each sample should also be serially numbered and marked as S-1, S-2, S-3 and so on, both original and duplicate sample. It should carry the serial number of the packages and marked as P-1, 2, 3, 4 and so on.

1.13. Mode and Time limit for dispatch of sample to Laboratory: The samples should be sent either by insured post or through special messenger duly authorized for the purpose. Despatch of samples by registered post or ordinary mail should not be resorted to. Samples must be dispatched to the Laboratory within 72 hours of seizure to avoid any legal objection."

38. Before appreciation of evidence, it is also necessary to refer to the settled law established by the Hon'ble Apex Court regarding non-compliance with Standing Instruction 1/88 issued under the Act. The Hon'ble Apex Court in case of **Noor Aga Vs. State of Punjab** reported in (2008) 16 SCC 417 has held as follows:

"89. Guidelines issued should not only be substantially complied with, but also in a case involving penal proceedings, vis-à-vis a departmental proceeding, rigours of such guidelines may be insisted upon. Another important factor which must be borne in mind is as to whether such directions have been issued in terms of the provisions of the statute or not. When directions are issued by an authority having the legal sanction granted therefore, it becomes obligatory on the part of the subordinate authorities to comply therewith.

90. Recently, this Court in *State of Kerala v. Kurian Abraham (P) Ltd.* [(2008) 3 SCC 582] , following the earlier decision of this Court in *Union of India v. Azadi Bachao Andolan* [(2004) 10 SCC 1] held that statutory instructions are mandatory in nature.

91. The logical corollary of these discussions is that the guidelines such as those present in the Standing Order cannot be blatantly flouted and substantial compliance therewith must be insisted upon for so that sanctity of physical evidence in such cases remains intact. Clearly, there has been no substantial compliance with these guidelines by the investigating authority which leads to drawing of an adverse inference against them to the effect that had such evidence been produced, the same would have gone against the prosecution."

In the aforesaid judgment, the Hon'ble Apex Court has categorically held that compliance with guidelines issued under a legal authority is obligatory and non-compliance can lead to adverse inferences against the

prosecution. Therefore, taking into consideration, let me now appreciate the evidence available on record.

39. In the present case, though the raiding officer has drawn sample at the place of recovery, but the sample is not drawn in duplicate, which is clear violation of Standing Order 1/88. Further, as per Section 52-A of the Act, the sample has to be drawn from the seized ganja in the presence of Magistrate. But in the present case, except for drawing sample at the spot of recovery, no sample is drawn in the presence of Magistrate at the time of inventory. It is also relevant to note that Section 52-A of the Act stipulates whenever any narcotic drugs is seized and forwarded to the officer in-charge of the nearest police station, he shall prepare an inventory of such narcotic drugs containing details relating to their description, quality, quantity, mode of packing, marks, numbers or such other identifying particulars of the narcotic drugs and make an application to the Magistrate for the purpose of certifying the correctness of the inventory and drawing of samples of such drugs or substances in the presence of Magistrate and certifying the correctness of any list of samples so

drawn. Therefore the provision of law as stipulated under Section 52-A of the Act is very clear that without any undue delay, the contraband article has to be produced before the Magistrate after preparing the inventory and would obtain certificate from the Magistrate certifying the correctness of the samples drawn. But in the present case, there is total non-compliance of Section 52-A of the Act by the investigation officer.

40. It is also relevant to note that, as per the very prosecution case, the alleged ganja recovered from the possession of accused No.1 to 3 on 02.09.2020 and 15.09.2020 respectively and the same was produced before the Magistrate for inventory on 20.10.2020 i.e. nearly after more than one month. The prosecution has also not produced Malkhana Register or the chain of custody to disclose about the fact as to where the seized ganja was kept in the police station after the alleged recovery of contraband from the possession of accused No.1 to 3. Therefore such inordinate delay on the part of the investigation officer strengthens the apprehension of tampering of the seized contraband and creates doubt about the veracity of the prosecution version.

41. It is also relevant to note that the prosecution has not produced the Malkhana Register as a material exhibit nor the incharge of Malkhana has been examined to explain the circumstances as to where the seized ganja was kept in the Malkhana till it was produced before the Magistrate for the purpose of inventory. Therefore, in view of the aforesaid facts and circumstances of the case, I am of the considered opinion that non-compliance of procedures as stipulated under Standing Order 1/88 and Section 52-A of the Act casts serious doubt on the prosecution case.

42. Now the next point arises is whether the contraband article recovered from accused No.1 to 3 is established as ganja?.

43. In the present case, the chemical examiner report marked as Ex.P.79 and 80 states as follows:

“Physical Examination: *The Ganja sample sent for examination contains leaves, flowers, fruit tops, the colour of Ganja rusty-green in colour. The characteristic odor of Ganja observed.*

Microscopic Examination: *Characteristic hairs of Ganja observed.*

Chemical Test: Positive

Date of Examination: 10.09.2020/15.10.2020.

Result: The sample sent for analysis are having morphological features, microscopic examination and chemical test conform to the characteristics of Ganja”.

If the aforesaid chemical examination report is taken into consideration, it does not disclose the presence of tetrahydrocannabinol in any manner. The sample as a whole is classified as Ganja without any classification of percentage of Tetrahydrocannabinol. In case of Bhang, Tetrahydrocannabinol in the sample stuff would be 15%, in case of Ganja, it would be 25% and in case of Charas, it would be between 25-40%. The presence of Tetrahydrocannabinol on percentage pattern in the sample stuff would show whether it is actually Bhang, Ganja or Charas. In the absence of such percentage of Tetrahydrocannabinol given in the Chemical Examiner Report, no other evidence would make the recovered contraband to be a Bhang, Ganja or Charas. The Chemical Examiner Report is totally silent with regard to adoption of working procedure while determining the contraband to be Ganja. In the absence of showing presence of Tetrahydrocannabinol, Cannabinol and Cannabidiol being part of manufacturing process, no offence under NDPS Act is made out against the accused persons.

44. In the **State of Himachal Pradesh Vs Roshal**

Lal, 2010 SCC (Online) HP 2554 it has held as follows:

“29. As noticed here in above, the only tests, which were conducted by the Experts, were to find out tetrahydeocannabinol or cystolithic hair. They found tetrahydeocannabinol but did not indicate in their reports the percentage thereof. While in the witness-box also, the Experts did not say what was the percentage of tetrahydeocannabinol in the samples. Specific category of a cannabis product, like Charas, ganja or mixture, as defined in Section 2(iii) of the Act, or anything else, like bhang, etc., can also be determined, with reference to the percentage of in the stuff. As noticed here in above, percentage of tetrahydeocannabinol varies from one product to other product of cannabis.

30. According to Parikh’s Textbook of medical jurisprudence, forensic Medicine and Toxicology, in the case of bhang it is 15 percent, in the case of ganja it is about 25 percent and in the case of Charas it is between 25 and 40 percent. When the percentage of tetrahydeocannabinol in the sample stuff is not indicated in the report nor had any test been conducted to ascertain whether the stuff was Charas, that is to say resin, or some other preparation of cannabis, it cannot be said that the stuff was in fact Charas. As regards cystolithic hair, these being the fibre of cannabis plant, are bound to be present in all the products of cannabis. It is quite likely that the samples were only of bhang, i.e., the dried leaves of cannabis plant, which is also supposed to contain 15 percent concentration of

tetrahydeocannabinol. Possession of only the leaves or the seeds of cannabis plant is not offence, because it is only the Charas, ganja or mixture, as defined in Section 2 (iii) of the Act, which is an offence under Section 20 of the Act. Leaves and seeds of cannabis plant are not included either in the definition of Charas or ganja and are rather specifically excluded from the definition of ganja, unless accompany the flowering and fruiting tops of the plant.”

Hence, the very FSL report/Ex.P.79 and 80 is silent about the presence of Tetrahydrocannabinol. Therefore, in the facts and circumstances of the case, it has to be held that the prosecution has failed to prove beyond reasonable doubt about the fact of recovery of Ganja from accused No.1 to 3 at the place of incident.

45. Now with respect to accused No.4 is concerned, the evidence on record only disclose to the fact that, on the basis of voluntary statement of accused No.3, accused No.4 who was in judicial custody in another crime was taken into police custody and thereafter panchanama was drawn by showing the place wherein accused No.4 had sold the contraband article to accused No.3. Except this, there is no other evidence on record which discloses about the active involvement of accused No.4 in the present crime for

having supplied ganja to accused No.3. It is also relevant to note that the panch witnesses have also not supported the case of prosecution about accused No.4 having shown the place where he had sold ganja to accused No.3.

46. Thus on overall appreciation of evidence on record, it discloses that the case of prosecution suffers from severe infirmities as mandatory provision under Section 42(1) and (2) of the Act is not complied in so far as accused No.3 is concerned and compliance of procedure prescribed under Standing Order 1/88 and Section 52-A of the Act is not complied, which creates a serious doubt about the veracity of the prosecution case and probability of false implication cannot be ruled out. Further, there is inordinate delay in producing the contraband before the Magistrate for the purpose of inventory, which also creates a serious doubt about the contraband articles being not preserved properly in Malkhana. Further more, the FSL report only states about characteristics hairs of Ganja observed, but it is totally silent about the presence of Tetrahydrocannabinol in the sample which was sent for examination. At this juncture, it is relevant to note that no

sample was drawn before the Magistrate at the time of inventory. Therefore, no sample is collected from the seized ganja in the presence of Magistrate.

47. In the said scenario and in the light of the principles already settled, I am of the opinion that the prosecution has failed to prove the case against the accused persons beyond reasonable doubt and the accused persons are entitled for benefit of doubt. Accordingly the point No.1 under discussion is answered in the “negative”.

48. **Point No.2:** Having regard to the above reasons and discussions, I proceed to pass the following:

ORDER

The accused Nos.1 to 4 by name Maruti s/o. Kallappa Haranashikari, Chandrappa s/o Siddappa Haranashikari, Abdulrazak s/o Mohammadsab Kasbag and Chandrakant @ Pappu s/o. Harishchandra Chavan are found not guilty of the offence charged under Section 20(b)(ii)(B) of Narcotic Drugs and Psychotropic Substances Act, 1985 and they are acquitted under Section 235(1) of Code of Criminal Procedure, 1973 for the said offence.

The bail bond of the accused No.1 to 4 and that of their sureties shall continue for a period of 6 months in terms of S.437(A) of Code of Criminal Procedure, 1973.

M.O.1 to 3 and MO.8 sample ganja shall be sent to Drug Disposal Committee to dispose the same in accordance with the procedure, MO.4 and 5 shall be destroyed being worthless and MO.6, 7, 9 and 10 shall be confiscated to the State after completion of the appeal period.

(Dictated to the Stenographer Grade-I, transcribed and typed by him, script revised, signed and then pronounced by me in the open court on this the 23rd day of July, 2026)

(N.V. Vijay)
Prl. Dist. & Sessions Judge, Dharwad.

ANNEXURE

List of the witnesses examined for the prosecution:

- P.W.1 : Lohit Sankanagouda
- P.W.2 : Manjur Mishrikoti
- P.W.3 : Sundaresh Holeyannavar
- P.W.4 : Riyazahammad Hubballi.
- P.W.5 : Mohammadali Dukandar.

P.W.6 : Siddappa Pujar.
P.W.7 : Nagappa Beerannavar
P.W.8 : Chandrakant Kiresur.
P.W.9 : Ramesh Amminabhavi
P.W.10 : Ranganath Kamatar
P.W.11 : Manjunath Doddamani
P.W.12 : H. Koresh, Asst. Chemical Examiner
PW.13 : Ashok B.S., PSI

List of documents marked for the prosecution:

Ex.P.1: Police notice
Ex.P.1(a): Signature of PW.1
Ex.P.1(b): Signature of PW.3
Ex.P.2: Police Notice
Ex.P.2(a): Signature of CW.3
Ex.P.3: Panchanama
Ex.P.3(a) to 3(e): Signature of PW.1
Ex.P.3(f) to 3(j): Signature of CW.2
Ex.P.3(k): Signature of PW.3
Ex.P.3(l): Signature of A-1
Ex.P.3(m): Signature of A-2
Ex.P.3(n): Signature of PW.4
Ex.P.3(o): Signature of PW.6
Ex.P.3(p): Signature of PW.7
Ex.P.4 to 37: Photos
Ex.P.17(a), 18(a): Photo of A-2

Ex.P.38 to 41:	Photos taken during vehicle seizure panchanama
Ex.P.42:	3 CDs
Ex.P.43:	Seizure panchanama
Ex.P.43(a):	Signature of PW.2
Ex.P.43(b):	Signature of PW.7
Ex.P.43(c):	Signature of PW.13
Ex.P.44, 45:	Photos
Ex.P.46:	Letter issued to A.C.P., Hubli dtd.2.9.2020
Ex.P.46(a):	Signature of PW.3
Ex.P.46(b):	Received endorsement
Ex.P.47:	Permission issued by ACP
Ex.P.48:	Requisition to Tahasildar, Hubli
Ex.P.48(a):	Signature of PW.3
Ex.P.48(b):	Signature of Tahasildar
Ex.P.49:	Letter issued by Tahasildar
Ex.P.50:	Requisition to Commissioner, HDMC, Hubli
Ex.P.50(a):	Signature of PW.3
Ex.P.50(b):	Received Signature
Ex.P.51:	Police Notice to CW.8
Ex.P.51(a):	Signature of PW.3
Ex.P.51(b):	Consent portion
Ex.P.52:	Letter issued to Weights and Measurements Dept.

Ex.P.52(a):	Signature of PW.3
Ex.P.52(b):	Received endorsement
Ex.P.53:	Police Notice
Ex.P.53(a):	Signature of PW.3
Ex.P.53(b):	Consent of CW.9
Ex.P.54:	Intimation Letter to A-1
Ex.P.54(a):	Signature of PW.3
Ex.P.54(b):	Consent of A-1
Ex.P.55:	Letter for having received the seal
Ex.P.55(a):	Signature of PW.3
Ex.P.56:	Complaint
Ex.P.56(a):	Signature of PW.3
Ex.P.56(b):	Signature of PW.13
Ex.P.57:	Special report (received through e-mail)
Ex.P.58:	Police notice
Ex.P.58(a):	Signature of PW.5
Ex.P.58(b):	Signature of PW.13
Ex.P.59:	Seizure panchanama
Ex.P.59(a):	Signature of PW.5
Ex.P.59(b):	Signature of PW.7
Ex.P.59(c):	Signature of PW.8
Ex.P.60 to 73:	Photos
Ex.P.74:	Further statement of PW.5
Ex.P.75:	Panchanama
Ex.P.75(a):	Signature of PW.10

Ex.P.75(b):	Signature of PW.13
Ex.P.76:	Photo
Ex.P.77:	Photo
Ex.P.78:	Letter issued by HESCOM
Ex.P.78(a):	Signature of PW.11
Ex.P.78(b):	Signature of PW.13
Ex.P.79:	RFSL Report
Ex.P.79(a):	Signature of PW.17
Ex.P.79(b):	Signature of PW.13
Ex.P.80:	RFSL Report
Ex.P.81:	FIR
Ex.P.82:	Certificate U/s.65(B) of Indian Evidence Act
Ex.P.82(a):	Signature of PW.13
Ex.P.83:	Form No. 'F'
Ex.P.83(a):	Signature of PW.13
Ex.P.84:	Request letter to RFSL
Ex.P.85:	Report
Ex.P.85(a):	Signature of PW.13
Ex.P.86:	Portion of statement of accused
Ex.P.86(a):	Signature of PW.13
Ex.P.87:	Reminder
Ex.P.87(a):	Signature of PW.13
Ex.P.88:	Notice
Ex.P.88(a):	Signature of PW.13

Ex.P.89:	Notice
Ex.P.89(a):	Signature of PW.13
Ex.P.90:	Reminder letter
Ex.P.90(a):	Signature of PW.13
Ex.P.91:	Letter to Dy.S.P. for permission to raid
Ex.P.91(a):	Signature of PW.13
Ex.P.92:	Permission for raid
Ex.P.93:	Certificate U/s.65(B) of Indian Evidence Act
Ex.P.93(a):	Signature of PW.13
Ex.P.94:	Report
Ex.P.94(a):	Signature of PW.13
Ex.P.95:	Certified copy of Order sheet in Misc.No.80/2020
Ex.P.96:	Certificate by Magistrate U/s.52(A)3
Ex.P.96(a):	Signature of PW.13
Ex.P.97 to 112:	Photo at the time of inventory
Ex.P.113:	Station House Diary
Ex.P.113(a):	Signature of PW.13
Ex.P.114:	Station House Diary
Ex.P.114(a):	Signature of PW.13
Ex.P.115:	Sketch
Ex.P.116:	Letter to Axis bank
Ex.P.116(a):	Signature of PW.13
Ex.P.117:	Account statement of Chandrakant
Ex.P.118:	Account statement of Balbheem

Ex.P.119: Letter from Axis bank

Ex.P.120: Letter from Axis bank

List of witnesses examined and documents got exhibited on behalf of the accused:

NIL

List of Material objects:

M.O.1: Sample packet

M.O.2: Sample packet

M.O.3: Sample packet

M.O.4: Black colour bag

M.O.5: Yellow colour carrybag

M.O.6: Rs.1000/- cash [200x3=600, 100x3=300 and 50x2=100)

M.O.7: Redmi company mobile

M.O.8: Sample ganja

M.O.9: Samsung mobile

M.O.10: Rs.1,500/- cash (500 x 3)

Prl. Dist. & Sessions Judge, Dharwad.