

IN THE COURT OF
ADDITIONAL DISTRICT & SESSIONS JUDGE
AT PANIPAT, PANIPAT
PRESIDED OVER BY YOGESH CHAUDHRY
(UID NO. HR-0212)

HRPP010085412021



NDPS Case No. : RBT-309/2025
CIS No. : 106 of 2021
Date of Institution : 05.10.2021/29.04.2025
Date of Decision : 21.07.2026

S T A T E

Versus

1. Kanta wife of Kala, aged 37 years
2. Kala son of Dalip Singh, aged 42 years
3. Premo wife of Malook, aged 50 years
4. Gurmej son of Malook, aged 29 years
5. Gurdass son of Nanak Singh, aged 28 years,

All residents of Village Rakshera, Samalkha District Panipat

Yogesh Chaudhry
ASJ-cum-FTC (NDPS)
Panipat, 21.07.2026

State Versus Kanta & ors.

2

6. Malkeet @ Billu son of Gurmej, aged 34 years, resident of Basada, Samalkha, Panipat.
7. Rajkaur wife of Amarjeet, aged 32 years, resident of Jhagola, Chankya Puri, New Delhi.
8. Gurmeet son of Charansingh, aged 26 years, resident of Garhi Nawab, Bapoli, Panipat.
9. Nishan Singh son of Balvinder, aged 25 years, resident of Village Nalipar, Kunjpura, Karnal.

..... Accused

FIR No.326 dated 07.08.2021

Under Section : 20 of the Narcotic Drugs and

Psychotropic Substances Act, 1985

Police Station : Industrial Sector 29, Panipat

Argued by: Shri Kuldeep Dhull, Public Prosecutor for State.

Accused Kala, Kanta, Premo, Malkeet @ Billu, Gurmej, Gurdass, Nishan Singh and Gurmeet on bail represented by Sh. A.K. Arora, Advocate

Accused Rajkaur in custody represented by Sh. Ramesh Khanchi, Legal Aid Counsel.

JUDGMENT

1. Introduction (Synopsis):

The present Prosecution case arises out of FIR No.326 dated August 07, 2021 registered at Police Station Industrial Sector-29, Panipat, wherein the accused Kala, Kanta, Premo, Malkeet @ Billu, Gurmej, Gurdass, Nishan Singh, Gurmeet and Rajkaur above named were sent for trial for the offences punishable under Sections 20 & 29 of The Narcotic Drugs & Psychotropic Substances Act, 1985 (for short the '**NDPS Act**').

1.1 The prosecution case is founded upon prior secret information allegedly received by PW10 SI Subhash Chander 995/PPT regarding possession of narcotic substance by accused Premo, Malkeet @ Billu, Gurmej, Gurdass, Nishan Singh, Gurmeet and Rajkaur. Acting upon the said credible information, the investigating agency claims to have complied with the mandatory provisions requirement under Section 42 of the NDPS Act.

1.2 During subsequent investigation, accused Kanta, Premo, Rajkaur, Gurmej, Nishan Singh, Gurdass, Gurmeet and Malkeet were arrested along-with Eight bags. The bags were searched in the presence of a Gazetted officer. Total 106 Kg Ganja was got recovered from the bags carried by them.

1.3 During subsequent investigation, all the accused have allegedly disclosed that the recovered contraband had been purchased by them from co-accused Kala for sale. On the basis of the said disclosure statements, accused

Kala was also arrested and was sent up for trial for the offence punishable under Section 29 of the NDPS Act.

1.4 The prosecution has relied upon oral evidence of official witnesses, documentary evidence regarding compliance of statutory provisions, judicial inventory proceedings under Section 52A of the NDPS Act and the report of the Forensic Science Laboratory.

1.5 The defence has challenged the prosecution case primarily on the following grounds:-

- (a) Non-compliance of Section 42 of the NDPS Act;
- (b) Non-compliance of Section 50 of the NDPS Act;
- (c) Absence of independent witnesses;
- (d) Alleged defects in sealing and chain of custody;
- (e) Delay in forwarding samples to the Forensic Science Laboratory;
- (f) inadmissibility of disclosure statements;
- (g) Absence of legally admissible evidence establishing criminal conspiracy.

1.6 The present judgment, therefore, examines whether the prosecution has succeeded in proving the foundational facts beyond reasonable doubt so as to attract the statutory presumptions under Sections 35 and 54 of the NDPS Act and whether the evidence on record is sufficient to sustain conviction of accused persons.

2. Factual Matrix:

The prosecution case, shorn of unnecessary details, is as follows.

2.1 On August 07, 2021, SI Subhash Chander 995/PPT was present on crime detection and patrol duty along with other police officials in Government vehicle.

2.2 SI Subhash Chander 995/PPT got secret information that accused persons namely Kanta, Premo, Rajkaur, Gurmej, Nishan Singh, Gurdass, Gurmeet and Malkeet were standing at Bus Stand Village Siwah, Panipat possessing a substantial quantity of 'Ganja' for the purpose of sale.

2.3. Considering the information to be credible, he reduced the information into writing and transmitted the same through Constable Vinod for onward communication to Superior Officer in compliance with Section 42 NDPS Act.

2.4 SI Subhash Chander constituted the raiding team including two female police officials. Thereafter, raiding team went to Bus Stand Village Siwah, Panipat and found three females and five males standing there having one bag each in their hands. All of them were apprehended with the help of police officials. On interrogation, accused persons disclosed their names as **Kanta, Premo, Rajkaur, Gurmej, Nishan Singh, Gurdass, Gurmeet and Malkeet @ Billu.**

2.5 Having suspicion to carry prohibited narcotic substance, separate

notices under Section 50 of NDPS Act were served upon the accused persons and they were also apprised of their right to get their search be conducted in the presence of Magistrate or Gazetted officer to which the accused persons gave their separate replies to be searched in presence of Gazetted officer. Investigating officer telephonically called Anil Kumar, SDO and requested him to reach the place of recovery.

2.6 After arrival of Gazetted officer, the Investigating officer first offered himself for search through another police official so as to eliminate any allegations of planting of contraband. Thereafter, the bags were searched under the directions of the Gazetted officer.

2.7 The search of bags recovered from the accused persons allegedly resulted in recovery of brown coloured leaf type substance identified as 'Ganja'. The recovered 'Ganja' was sealed into eight separate parcels/plastic sacks by Investigating officer. Gazetted officer affixed his seal bearing impression 'SC/1' on each parcel.

Sr. no.	Name of the accused	Recovery from the bags	No. of Packets recovered	Weight of each Packet	Total weight of recovered contraband	Converted Sealed parcels
1.	Kanta	Bag-B1	6	2 Kg	12Kg	SP1
2.	Rajkaur	Bag-B2	6	2Kg	12Kg	SP2
3.	Premo	Bag-B3	6	2Kg	12Kg	SP3
4.	Gurdass	Bag-B4	7	2Kg	14Kg	SP4

State Versus Kanta & ors.

7

5.	Nishan Singh	Bag-B5	7	2Kg	14Kg	SP5
6.	Gurmeet	Bag-B6	7	2Kg	14Kg	SP6
7.	Malkeet	Bag-B7	7	2Kg	14 Kg	SP7
8.	Gurmej	Bag-B8	7	2Kg	14Kg	SP8

2.8 The parcels of contraband were taken into police custody vide separate recovery memos. Formal FIR was registered. Subsequently, investigation was entrusted to SI Subhash Chander 910/PPT. Rough site plan of place of occurrence was prepared.

2.9 The case property was produced before Station House Officer, who verified the investigation and complied with Section 55 NDPS Act. He directed to deposit the case property in Malkhana.

2.10 On the following day, the case property was produced before Learned Area Magistrate for certifying the correctness of inventory. Learned Magistrate drew representative samples and allowed the application filed under section 52A of NDPS Act.

2.11 The representative samples were thereafter forwarded to the Forensic Science Laboratory, Madhuban, where the recovered substance was scientifically examined and confirmed to be 'Ganja'.

2.12 On the basis of the said disclosure statements, accused Kala was arrested on December 14, 2021 and was arrayed as co-accused for the offence

punishable under Section 29 of the NDPS Act. Upon completion of investigation, report under Section 173 Cr.P.C. was submitted before the court.

3. Supply of documents:

Copies of the police report and all relied-upon documents, submitted under Section 173 Cr.p.c. were supplied to the accused persons free of costs in compliance with Section 207 Cr.p.c.

4. Charges:

Upon consideration of the material placed on record, a prima-facie case punishable under NDPS Act was made out against the accused persons.

4.1 Accordingly, all accused persons were charged for the offences punishable under Sections 20 & 29 of the NDPS Act, to which they both pleaded not guilty and claimed trial.

5. Issues for determination:

The following questions arise for determination:-

1. Whether on August 07, 2021, accused persons namely **Kanta, Premo, Malkeet @ Billu, Gurmej, Gurdass, Nishan Singh, Gurmeet and Rajkaur** were found in conscious and exclusive possession of total 106 Kg 'Ganja' to which they failed to produce any permit or licence for keeping the same?
2. Whether the prosecution has established compliance with the mandatory procedural safeguards contained in Sections 42, 50 and 52A NDPS Act?

3. Whether the chain of custody and integrity of the seized contraband remained intact till examination by the Forensic Science Laboratory?
4. Whether non-association of independent witnesses creates a reasonable doubt in the prosecution case?
5. Whether the prosecution has successfully established the foundational facts necessary for drawing statutory presumptions under Sections 35 and 54 of the NDPS Act?
6. Whether under conspiracy, accused persons Kanta, Premo, Malkeet @ Billu, Gurmej, Gurdass, Nishan Singh, Gurmeet and Rajkaur purchased the afore-mentioned 'Ganja' from accused Kala for selling purpose?
7. Whether the prosecution has proved beyond reasonable doubt that accused **Kala** entered into criminal conspiracy punishable under Section 29 of the NDPS Act?
8. Whether the prosecution has proved the guilt of all the accused persons beyond reasonable doubt?

6. **Prosecution Evidence:**

In order to substantiate the charges against the accused persons, the prosecution has examined the following official witnesses associated with the receipt of secret information, recovery proceedings, sampling, sealing, deposit of case property, production of accused persons and transmission of samples to FSL, Madhuban :-

<u>Prosecution witness number</u>	<u>Name of the witness</u>	<u>Description</u>
PW1	Anil Kumar, SDO	Gazetted officer

State Versus Kanta & ors.

10

PW2	ASI Dilbagh	Proved scaled site plan
PW3	ESI Bijender	Malkahan Mohrer
PW4	Shri Nar Singh, Reader	Identified the signature of Learned Magistrate
PW5	Inspector Ankit Kumar	Proved final report
PW6	Lady Constable Jyoti	Attesting witness
PW7	Dr. Bharat Bhushan, Senior Scientific officer	Proved FSL report
PW8	HC Surender	Attesting witness
PW9	Inspector Satpal	Proved notice under Section 42 NDPS Act, Formal FIR and Endorsement
PW10	SI Subhash Chander 995/PPT	First Investigating officer
PW11	Inspector Sunil Kumar	Proved report under Sections 55&57 NDPS Act
PW12	ASI Rakesh	Third Investigating officer
PW13	SI Subhash Chander 910/PPT	Second Investigating officer
PW14	Constable Vinod Kumar	Proved notice under Section 42 as well as Rapat

7. **Documents Proved:**

The prosecution has also proved on record the following documents in its evidence:-

State Versus Kanta & ors.

11

<u>Exhibit no.</u>	<u>Description of Exhibits</u>	<u>Proved by/ Attested by</u>
Ex.P1	Notice under Section 50 NDPS Act served upon accused Gurmej	PW1, PW8, PW10
Ex.P1/PW8	Arrest memo of accused Malkeet Singh	PW8, PW13
Ex.P2/PW8	Arrest memo of accused Gurmej	PW8, PW13
Ex.P3/PW8	Arrest memo of accused Gurdass	PW8, PW13
Ex.P4/PW8	Arrest memo of accused Nishan Singh	PW8, PW13
Ex.P5/PW8	Arrest memo of accused Gurmeet	PW8, PW13
Ex.P6/PW8	Disclosure statement of accused Gurmej	PW8, PW13
Ex.P7/PW8	Disclosure statement of accused Malkeet Singh	PW8, PW13
Ex.P8/PW8	Disclosure statement of accused Gurmeet	PW8, PW13
Ex.P9/PW8	Disclosure statement of accused Gurdass	PW8, PW13
Ex.P10/PW8	Disclosure statement of accused Nishan Singh	PW8, PW13
Ex.P11/PW8	Disclosure statement of accused Gurmej	PW8, PW13
Ex.P12/PW8	Disclosure statement of accused Malkeet Singh	PW8, PW13
Ex.P2	Reply	PW1, PW8, PW10
Ex.P3	Notice under Section 50 NDPS Act served upon accused Gurdass	PW1, PW8, PW10
Ex.P4	Reply	PW1, PW8, PW10
Ex.P5	Notice under Section 50 NDPS Act served upon accused Malkeet Singh	PW1, PW8, PW10

State Versus Kanta & ors.

12

Ex.P6	Reply	PW1, PW8, PW10
Ex.P7	Notice under Section served 50 NDPS Act upon accused Premo	PW1, PW6, PW8, PW10
Ex.P8	Reply	PW1, PW6, PW8, PW10
Ex.P9	Notice under Section 50 NDPS Act served upon accused Rajkaur	PW1, PW6, PW8, PW10
Ex.PW9/1	Rapat no.21 dated 07.08.2021	PW9, PW14
Ex.PW9/2	Formal FIR	PW9
Ex.PW9/3	Endorsement	PW9
Ex.P10	Reply	PW1, PW6, PW8, PW10
Ex.PW10/1	Notice under Section 42 NDPS	PW10, PW14
Ex.PW10/A (Inadvertently repeated as Ex.PW10/1)	Tehrir	PW10
Ex.PW10/2	Rough site plan	PW10
Ex.P11	Notice under Section 50 NDPS Act served upon accused Nishan Singh	PW1, PW8, PW10
Ex.PW11/1	Report/Notice under Section 55 NDPS Act	PW13
Ex.PW11/2	Endorsement on report under Section 55 NDPS Act	PW11, PW13
Ex.PW11/3	Report under Section 57 NDPS Act	PW11
Ex.P12	Reply	PW1, PW8, PW10
Ex.PW12/1	Arrest memo of accused Kala	PW12

State Versus Kanta & ors.

13

Ex.PW12/2	Disclosure statement of accused Kala dated 14.12.2021	PW12
Ex.PW12/3	Disclosure statement of accused Kala dated 16.12.2021	PW12
Ex.P13	Notice under Section 50 NDPS Act served upon accused Gurmeet	PW1, PW8, PW10
Ex.PW13/1	Application under Section 52A NDPS Act	PW13
Ex.PW13/2	Description of inventory	PW13
Ex.PW13/3 to Ex.PW13/20	Photographs	PW13
Ex.P14	Reply	PW1, PW8, PW10
Ex.P15	Notice under Section 50 NDPS Act served upon accused Kanta	PW1, PW6, PW8, PW10
Ex.P16	Reply	PW1, PW6, PW8, PW10
Ex.P17	Personal search memo of Investigating officer	PW1, PW8
Ex.P18	Identification memo	PW1, PW6
Ex.P19	Recovery memo of contraband recovered from accused Kanta	PW1, PW6, PW8, PW10
Ex.P20	Recovery memo of contraband recovered from accused Rajkaur	PW1, PW6, PW8, PW10
Ex.P21	Recovery memo of contraband recovered from accused Premo	PW1, PW6, PW8, PW10
Ex.P22	Recovery memo of contraband recovered from accused Gurdass	PW1, PW8, PW10
Ex.P23	Recovery memo of contraband recovered from accused Nishan Singh	PW1, PW8, PW10
Ex.P24	Recovery memo of contraband recovered from accused Gurmeet	PW1, PW8, PW10
Ex.P25	Recovery memo of contraband recovered from accused Malkeet Singh	PW1, PW8, PW10

State Versus Kanta & ors.

14

Ex.P26	Recovery memo of contraband recovered from accused Gurmej	PW1, PW8, PW10
Ex.P27	Scaled site plan	PW2, PW13
Ex.P28	Inventory order	PW4
Ex.P29	Arrest memo of accused Kanta	PW6, PW8, PW13
Ex.P30	Arrest memo of accused Rajkaur	PW6, PW8, PW13
Ex.P31	Arrest memo of accused Premo	PW6, PW8, PW13
Ex.P32	Disclosure statement of accused Kanta	PW6, PW8, PW13
Ex.P33	Disclosure statement of accused Rajkaur	PW6, PW8, PW13
Ex.P34	Disclosure statement of accused Premo	PW6, PW8, PW13
Ex.MO/1 to Ex.MO/16	Sample parcels	PW13
Ex.MO/17to Ex.MO/24	Sample seals	PW13
Ex.PX	FSL report	PW7

8. Learned Public Prosecutor for the State has given up Constable Preeti, PSI Mahipal, Constable Rajesh and closed the evidence of prosecution vide his statement dated July 09, 2026, the list of witnesses having been exhausted.

9. Defence of the accused:

After closure of prosecution evidence, the statements of accused persons were recorded under Section 313 of Cr.p.c., wherein all incriminating

circumstances appearing in evidence were put to them.

9.1 The accused persons denied the prosecution allegations in toto and pleaded false implication. They also pleaded non-compliance with the mandatory provisions of law. They pleaded their innocence, and chose to lead evidence in defence.

10. Defence Evidence:

No evidence of any kind has been led by the accused persons and they closed the same on July 17, 2026.

11. Arguments:

I have heard Learned Public Prosecutor for State and Learned defence counsels for accused persons and I have also gone through the entire case file very carefully.

12. Submissions of Prosecution:

Learned Public Prosecutor has contended that on August 07, 2021, SI Subhash Chander 995/PPT received credible secret information regarding possession of narcotic substance by all accused persons (**Except accused Kala**) at Bus Stand Siwah, Panipat. Acting upon the said information, SI Subhash prepared a notice (Ex.PW10/1) under Section 42 NDPS Act and sent the same through Constable Vinod for information to Higher officers. Learned Public Prosecutor has contended that the said accused persons were apprehended. Separate notices under Section 50 of NDPS Act were served upon them and

they were apprised of their legal right to be searched in the presence of Magistrate or Gazetted officer. As per their replies, the search of their bags was conducted in the presence of Gazetted officer and total 106 Kg 'Ganja' was recovered from the bags carried by them.

12.1 It is contended that, the case property was converted into Eight parcels/plastic sacks by the Investigating officer and he sealed all of them with the seal of Gazetted officer bearing impression 'SC/1' & the said parcels were taken into police custody. Investigating officer sent the tehrir (Ex.PW10/A) to the police station through Constable Rajesh for registration of the case, and the investigation of the case was handed over to SI Subhash Chander 910/PPT.

12.2 It is further submitted that the afore-said case property was produced before Learned Area Magistrate, Panipat and he certified the inventory, drew two samples of 100g each out of each Eight parcels/plastic sacks and passed an inventory order (Ex.P28). It is argued that all the samples were identified as 'Ganja' by FSL vide its report (Ex.PX).

12.3 It is mentioned that the prosecution has fully proved that the accused persons have conspired to commit the crime. Accused Kala handed over the recovery 'Ganja' to the remaining co-accused persons for selling purpose.

12.4 It is contended that all the witnesses of the prosecution have fully corroborated the case of the prosecution and mandatory provisions of NDPS

Act have been complied with. Therefore, the accused persons are liable to be convicted for commission of offences punishable under Sections 20 & 29 of NDPS Act.

13. Submissions of Defence:

Learned defence counsels have argued that the accused persons have falsely been implicated in this case. It is argued that non-compliance of Sections 42 & 50 NDPS Act was carried out by Investigating officer and there are material contradictions in the testimonies of witnesses. They further contended that the police has failed to join any independent witness and there is unexplained delay in sending the sample to FSL, Madhuban. No incriminating evidence has come on record against the accused Kala. With these submissions, Learned defence counsels submitted that the benefit of doubt may kindly be given to the accused persons, and they may kindly be acquitted from the charges framed against them.

14. Scope of adjudication:

Having carefully examined the oral, documentary and scientific evidence adduced by the prosecution, this Court proceeds to appreciate the same in the light of the settled principles governing criminal jurisprudence and the special statutory scheme embodied in the NDPS Act.

14.1 It is well-settled that an accused is presumed innocent until the prosecutions establishes the foundational facts beyond reasonable doubt.

Although, Sections 35 & 54 NDPS Act introduce statutory presumptions, such presumptions arise only after the prosecution successfully proves the legality of search, seizure, conscious possession, identity of contraband and preservation of its sanctity.

14.2 The Court is conscious that offences under the NDPS Act carry stringent punishment and therefore procedural safeguards deserve strict scrutiny. At the same time, once statutory safeguards are substantially complied with and foundational facts are established beyond reasonable doubt, the Court cannot discard otherwise reliable prosecution evidence on fanciful or hyper-technical grounds. Hence, this Court proceeds to determine the **Issues** framed above in the following sequence:

- A. Recovery and conscious possession of contraband.
- B. Application of Section 42 NDPS Act to the present recovery
- C. Application of Section 50 NDPS Act to the present recovery
- D. Compliance with Section 52A NDPS Act & Chain of custody
- E. Effect of non-association of independent witnesses
- F. Statutory presumption under Sections 35 & 54 NDPS Act
- G. Evaluation of defence evidence and final findings

ISSUES No.1 to 5

15. **A: Recovery and conscious possession of contraband:**

The first and foremost question that arises for consideration is

whether the prosecution has succeeded in establishing that all the accused persons (Except accused Kala) were found in conscious and exclusive possession of Total 106 Kg contraband i.e. 'Ganja' allegedly recovered from their bags (mentioned above as B1 to B8) carried by them in their possession.

16. For that matter, the testimonies of PW10 SI Subhash Chander 995/PPT (First Investigating officer), PW6 Constable Jyoti & PW8 HC Surender (Attesting/Associate witnesses) and PW1 Anil Kumar, SDO (Gazetted officer) remained consistent on all material particulars; minor discrepancies are natural and do not strike at the core of prosecution.

Credibility of PW10:

16.1 **PW10 SI Subhash Chander 995/PPT** has been the principal recovery witness. On August 07, 2021, while on patrol duty, he received credible secret information that the persons standing at Bus Stand Siwah, Panipat have been carrying huge quantity of Narcotic contraband for the purpose of selling. Acting upon, such credible information, he prepared a notice (Ex.PW10/1) under Section 42 NDPS and sent the same through Constable Vinod for information to Higher officers.

16.2 In the meanwhile, he along-with the raiding team members including two female Constables reached at disclosed place. They apprehended all the accused persons (Except accused Kala) carrying bags (B1 to B8) in their respective possession.

16.3 On suspicion, separate distinct notices (Ex.P1, P3, P5, P7, P9, P11, P13 & P15) under Section 50 of NDPS Act were separately served upon aforementioned accused persons and they were also apprised of their legal right to be searched before a Magistrate or Gazetted officer, whereupon, vide their separate replies (Ex.P2, P4, P6, P8, P10, P12, P14 & P16), the accused persons opted to be searched in presence of Gazetted officer. Thereupon, he informed Anil Kumar, SDO and also apprised him of the facts.

16.4 Upon the arrival of Anil Kumar, SDO, the accused persons along-with their respective bags (B1 to B8) were produced before him. For more transparency, Gazetted officer directed Constable Surender to conduct his (PW10) personal search, however, no incriminating article was found in his possession during the personal search conducted vide memo (Ex.P17). Thereafter, on the directions of Gazetted officer, he conducted the search of bags (B1 to B8) carried by the accused persons.

16.5 During the search of the **Bag-B1** possessed by accused **Kanta**, 6 packets of 2 Kg each containing brown coloured leaf type substance were recovered. The recovered packets were opened and the substance therein was identified as 'Ganja' vide memo (Ex.P18). He converted the recovered contraband into parcel (**SP1**) by putting the contraband in one plastic sack. Gazetted officer affixed his seal bearing impression 'SC/1' on the said plastic sack. The same was weighed to be 12 Kg and taken into police custody vide

memo (Ex.P19).

16.6 Likewise, during the search of the **Bag-B2** possessed by accused **Rajkaur**; 6 packets of 2 Kg each containing brown coloured leaf type substance were recovered. The recovered packets were opened and the substance therein was identified as 'Ganja' vide memo (Ex.P18). He converted the recovered contraband into parcel (**SP2**) by putting the contraband in one plastic sack. Gazetted officer affixed his seal bearing impression 'SC/1' on the said plastic sack. The same was weighed to be 12 Kg and taken into police custody vide memo (Ex.P20).

16.7 Similarly, during the search of the **Bag-B3** possessed by accused **Premo**; 6 packets of 2 Kg each containing brown coloured leaf type substance were recovered. The recovered packets were opened and the substance therein was identified as 'Ganja' vide memo (Ex.P18). He converted the recovered contraband into parcel (**SP3**) by putting the contraband in one plastic sack. Gazetted officer affixed his seal bearing impression 'SC/1' on the said plastic sack. The same was weighed to be 12 Kg and taken into police custody vide memo (Ex.P21).

16.8 Further, during the search of the **Bag-B4** possessed by accused **Gurdass**; 7 packets of 2 Kg each containing brown coloured leaf type substance were recovered. The recovered packets were opened and the substance therein was identified as 'Ganja' vide memo (Ex.P18). He converted the recovered

contraband into parcel **(SP4)** by putting the contraband in one plastic sack. Gazetted officer affixed his seal bearing impression 'SC/1' on the said plastic sack. The same was weighed to be 14 Kg and taken into police custody vide memo (Ex.P22).

16.9 Besides, during the search of the **Bag-B5** possessed by accused **Nishan Singh**; 7 packets of 2 Kg each containing brown coloured leaf type substance were recovered. The recovered packets were opened and the substance therein was identified as 'Ganja' vide memo (Ex.P18). He converted the recovered contraband into parcel **(SP5)** by putting the contraband in one plastic sack. Gazetted officer affixed his seal bearing impression 'SC/1' on the said plastic sack. The same was weighed to be 14 Kg and taken into police custody vide memo (Ex.P23).

16.10 Alike, during the search of the **Bag-B6** possessed by accused **Gurmeet**; 7 packets of 2 Kg each containing brown coloured leaf type substance were recovered. The recovered packets were opened and the substance therein was identified as 'Ganja' vide memo (Ex.P18). He converted the recovered contraband into parcel **(SP6)** by putting the contraband in one plastic sack. Gazetted officer affixed his seal bearing impression 'SC/1' on the said plastic sack. The same was weighed to be 14 Kg and taken into police custody vide memo (Ex.P24).

16.11 Also, during the search of the **Bag-B7** possessed by accused

Malkeet; 7 packets of 2 Kg each containing brown coloured leaf type substance were recovered. The recovered packets were opened and the substance therein was identified as 'Ganja' vide memo (Ex.P18). He converted the recovered contraband into parcel (**SP7**) by putting the contraband in one plastic sack. Gazetted officer affixed his seal bearing impression 'SC/1' on the said plastic sack. The same was weighed to be 14 Kg and taken into police custody vide memo (Ex.P25).

16.12 As well, during the search of the **Bag-B8** possessed by accused **Gurmej;** 7 packets of 2 Kg each containing brown coloured leaf type substance were recovered. The recovered packets were opened and the substance therein was identified as 'Ganja' vide memo (Ex.P18). He converted the recovered contraband into parcel (**SP8**) by putting the contraband in one plastic sack. Gazetted officer affixed his seal bearing impression 'SC/1' on the said plastic sack. The same was weighed to be 14 Kg and taken into police custody vide memo (Ex.P26).

16.13 He sent the tehrir (Ex.PW10/A) to the police Station through Constable Rajesh for registration of FIR. Second Investigating officer SI Subhash Chander 910/PPT Singh reached at the spot. He correctly identified all the accused persons (physically) present in the Court and identified the accused Rajkaur produced in the Court through video-conference.

Corroboration by Gazetted officer:

17. **PW1 Anil Kumar, SDO, (Gazetted officer)** has corroborated the prosecution's case and deposed that after receiving an information from SI Subhash Chander 995/PPT, he reached at the spot and verified the facts. At the outset, he first of all verified the notices served upon the accused persons under Section 50 NDPS Act and their replies. On his direction, Constable Surender conducted the personal search vide memo (Ex.P17) of Investigating officer SI Subhash Chander, but, nothing was recovered from his possession.

17.1 On his direction, Investigating officer conducted the search of accused persons as well as their bags. During the search of their respective bags (B1 to B8) brown coloured leaf type substance identified as 'Ganja' vide memo (Ex.P18) was recovered. The recovered substance was weighed and the total weight of the recovered contraband was found to be 106 Kg. The recovered contraband were converted into respective parcels (SP1 to SP8) and he sealed the parcels with his seal bearing impression 'SC/1' and the same were taken into police custody vide separate recovery memos (Ex.P19 to Ex.P26). He correctly identified the accused persons present in the Court.

Corroboration by PW6:

18. **PW6 Constable Jyoti (Attesting/Associate witness)** corroborated the prosecution case on material particulars and proved notices under Section 50 NDPS Act (Ex.P7, P9 & P15) served upon accused Kanta, Rajkaur & Premo and

its replies (Ex.P8, P10 & P16). She also proved identification memos (Ex.P18) and recovery memos (Ex.P19 to Ex.P21).

Corroboration by PW8:

19. PW8 HC Surender (Attesting/Associate witness) corroborated the prosecution case on material particulars and proved notices under Section 50 NDPS Act (Ex.P1, P3, P5, P7, P9, P11, P13 & P15) served upon accused persons and its replies (Ex.P2, P4, P6, P8, P10, P12, P14 & P16). He also proved personal search memo (Ex.P17), identification memo (Ex.P18) and recovery memos (Ex.P19 to Ex.P26). He correctly identified all the accused persons (physically) present in the Court and also identified the accused Rajkaur produced in the Court through video-conference.

19.1 This Court is of the view that the prosecution has proved that on August 07, 2021, all the accused persons (Except accused Kala) were apprehended along-with total 106 Kg 'Ganja' duly recovered from the bags (B1 to B8) possessed by them.

Hence, Point-A is answered in **AFFIRMATIVE**.

B. Applicability of Section 42 NDPS Act:

20. Section 42 of the NDPS Act — a provision that requires police officers who receive secret/prior information about a narcotics offence to record that information and send a report to their superior officer before conducting a search, seizure, or arrest.

Evidence relied upon by the prosecution:

20.1 **PW8 HC Surender** was associated with the investigation alongside the First Investigating officer. His testimony establishes the starting point of compliance i.e. after receiving credible secret information, Investigating officer PW10 SI Subhash Chander 995/PPT prepared a notice under Section 42 NDPS Act and sent the same to Police Station Sector-29, Panipat for information to Higher Officers. PW10 SI Subhash Chander 995/PPT deposed that after receiving secret information, he prepared a notice (Ex.PW10/1) and same was sent to Police Station through PW14 Constable Vinod for information to Higher Officers and he proceeded to the spot for apprehension of the accused persons immediately without affording an opportunity or facility for escape of accused persons. **PW14 Constable Vinod** deposed that after receiving secret information, Investigating officer prepared a notice (Ex.PW10/1) and handed over the same to him for registration of Rapat in Daily Diary Register. He got entered Rapat no.21 (Ex.PW9/1) and went back to the spot and handed over the same to SI Subhash Chander 995/PPT. **PW9 Inspector Satpal** deposed that on receipt of notice under Section 42 NDPS Act through Constable Vinod, he entered rapat no.21 (EX.PW9/1) and returned back notice under Section 42 NDPS Act and rapat to Constable Vinod.

20.2 Hence, based on the mutually corroborating testimonies of PW8, PW9, PW10 & PW14, which together trace the information from receipt, to

transmission, to formal registration in the daily diary, this Court holds that the chain of compliance is fully established on record. Hence, the prosecution is therefore found to have fully complied with the mandatory requirements of Section 42 of the NDPS Act.

20.3 Even assuming that compliance with Section 42 were found wanting, the recovery would independently survive scrutiny because (a) it occurs at a public place i.e. Bus Stand Siwah, Panipat, attracting Section 43 of NDPS Act and (b) the search and seizure proceedings were conducting in presence of Anil Kumar, SDO (Gazetted officer), attracting the relaxation under Section 41(2) NDPS Act.

Consequently, **Point-B** stands answered in **AFFIRMATIVE**. .

C. Application of Section 50 NDPS Act to the present recovery:

21. Now, this Court would address as to whether mandatory compliance which Section 50 NDPS Act was required for search of the accused. The law provides the accused with the legal right to be searched in the presence of a Gazetted officer or a Magistrate.

21.1 This Court clarified the scope of Section 50 based on established legal precedents. In the present case, the recovery of narcotic contraband was effected from a bags (B1 to B8) carried by the accused persons. Section 50 NDPS Act comes into operation in case, if the prohibited narcotic contraband was recovered from the personal search of accused, but it is not the case of the

defence that the recovery of prohibited narcotic contraband was effected from the personal search of the accused, rather, it is an admitted case that the prohibited narcotic contraband i.e. 'Ganja' was duly recovered from the bags (B1 to P8) carried by the accused persons. Hence, Section 50 NDPS Act is not applicable to the present case.

21.2 In this regard, views of this Court find support from the judgments passed by Hon'ble Supreme Court of India in cases titled as State of Himachal Pradesh Vs. Pawan Kumar, HLJ 2004 [SC] 1247, State of Haryana Vs. Ranbir @ Rana, AIR 2006 (S.C.) 1796 wherein it has been observed as under:-

“Section 50 would be applicable only in a case of personal search of the accused and not when it is made in respect of some baggage like a bag, article, vehicle or container, etc. which the accused at the relevant time was carrying.”

21.3 Reiterating the law already laid down by Hon'ble Apex court of India, it has again been observed in case titled as Ranjan Kumar Chada Vs. State of HP Criminal Appeal no. 2239-2240 of 2011 (Supreme Court), as under:-

“As far as [Section 50](#) of the Act is concerned the same is not at all applicable to the facts of the present case. The recovery of the contraband substance was not made as a result of the personal search of the accused but on account of the search from his bag. In such eventuality the police is not required to comply with [Section 50](#) of the Act. In this behalf reference may be made to the decision

of the Apex Court in State of Himachal Pradesh Versus Pawan Kumar Latest HLJ 2004 [SC] 1247.”

21.4 The Hon’ble Apex Court of India has also held in Ranjan Kumar’s case (supra) that:

“122. It has been observed in Baldev Singh (supra) that drug abuse is a social malady. While drug addiction eats into the vitals of the society, drug trafficking not only eats into the vitals of the economy of a country, but illicit money generated by drug trafficking is often used for illicit activities including encouragement of terrorism. It has acquired the dimensions of an epidemic, affects the economic policies of the State, corrupts the system and is detrimental to the future of a country. Reference in the said decision has also been made to some United Nation Conventions which the Government of India has ratified. It is, therefore, absolutely imperative that those who indulge in this kind of nefarious activities should not go scot-free on technical pleas which come handy to their advantage in a fraction of second by slight movement of the baggage, being placed to any part of their body, which baggage may contain the incriminating article.

123. xxxxxx

124. xxxxxx

125. For all the foregoing reasons, we are of the view that the High Court was justified in holding the appellant guilty of the offence under the NDPS Act and at the same time, the High Court was also correct in saying that Section 50 of the NDPS Act was not required to be complied with as the recovery was from the bag.”

21.5 Despite the legal technicality that Section 50 NDPS Act might not be strictly applicable to the case, this Court noted that the prosecution successfully demonstrated procedural diligence:

- Recovery of contraband: A prohibited narcotic substance identified as 'Ganja' (Ex.P18), weighing a total of 106 Kg was recovered from the bags (B1 to B8) carried by accused persons.
- Search process: Separate notice (Ex.P1, P3, P5, P7, P9, P11, P13 & P15) under Section 50 NDPS Act were served to accused persons, apprising them of their legal right to a supervised search. The accused persons provided replies (Ex.P2, P4, P6, P8, P10, P12, P14 & P16) requesting that the search be conducted by a Gazetted officer. Consequently, the search was carried out in the presence of Anil Kumar, SDO (Gazetted officer).
- Conscious possession: Each accused person was holding a distinct, single bag (B1 to B8) in their hands at a public place. The contents of each bag were independently verified, weight and matched to specific individuals. There was no intermingling of contents prior to the search; each person maintain physical custody intermediate physical control and absolute dominion over their respective package.
- The contraband was recovered from the bags carried by accused persons, which proves the knowledge and control of the accused persons qua the 'Ganja' carried by them. Such possession is immediate, direct, exclusive and conscious.
- No explanation was offered by the accused persons under Section 313 Cr.p.c. regarding the possession of 'Ganja'.
- Compliance: The search of the accused persons were carried out in

the presence of Gazetted officer.

- Mere abundant caution by the Investigating officer in extended a statutory safeguard (under Section 50 NDPS Act) not otherwise required; itself cannot invalidate an otherwise lawful recovery.

21.6 Even assuming, for the sake of argument, that Section 50 NDPS Act was attracted, the prosecution has gone beyond the statutory requirement by actually serving legal notice and conducting the search before a Gazetted officer. Thereafter, the defence cannot derive any prejudice.

21.7 The defence has pointed out certain contradictions in the testimony of PW1, PW6 & PW10 with regard to the offer of search of the bags given by Investigating Officer. However, this Court does not find any merits in the contention put forth on behalf of the accused persons.

21.8 At the outset, it is pertinent to mention here that it is an undisputed case of the prosecution that recovery of total 106 Kg 'Ganja' was effected from the bags (B1 to B8) carried by the accused persons. Separate-distinct notices under section 50 NDPS Act were served upon each of the accused persons and they have given their separate replies that they wanted to be searched in the presence of Gazetted officer. Admittedly, the search proceedings have been commenced in the presence of Gazetted officer.

21.9 Though, there are some contradictions in the testimonies of PW1, PW6 & PW10 with regard to the offer of search, but that do not cast any doubt in the story of the prosecution. Whence, the contents of the notices have been

read carefully, the same reveal that the accused persons were apprised of their legal right to be searched either by a Magistrate or Gazetted officer and all the accused persons preferred vide their separate replies to be searched in the presence of Gazetted officer, and the search proceedings have commenced only and only in the presence of Gazetted officer.

21.10 Even otherwise, the Hon'ble Supreme Court of India in similarly situated circumstances in case titled as Dayalu Kashyap Vs. State of Chhattisgarh, 2022 Live Law (SC) 100, have made the following observations:

“Learned counsel submits that the option given to the appellant to take a third choice other than what is prescribed as the two choices under sub-Section (1) of Section contrary to 50 of the Act is something which goes contrary to the mandate of the law and in a way affects the protection provided by the said Section to the accused. To support his contention, he has relied upon the judgment of State of Rajasthan v. Parmanand & Anr. – (2014) 5 SCC 345, more specifically, para 19. The judgment in turn, relied upon a Constitution Bench judgment of this Court in State of Punjab v. Baldev Singh – 1999 (6) SCC 172 to conclude that if a search is made by an empowered Officer on prior information without informing the person of his right that he has to be taken before a Gazetted officer or a Magistrate for search and in case he so opts, failure to take his search accordingly would render the recovery of the illicit article suspicious and vitiate the conviction and sentence of the accused where the conviction has been recorded only the on basis of possession illicit articles recovered from his person. The third option stated to be given to the accused to get himself searched from the Officer concerned not being part of the statute, the same could not have been offered to the appellant and thus, the recovery from him is vitiated.

In the conspectus of the facts of the case, we find the recovery was in a polythene bag which was being carried on a Kanwad. The recovery was not in person. Learned counsel seeks to expand the scope of the observations made by seeking to contend that if the personal search is vitiated by violation of Section 50 of the NDPS Act, the recovery made otherwise also would stand vitiated and thus, cannot be relied upon. We cannot give such an extended view as is sought to be contended by Learned counsel for the appellant.

The aforesaid being the only aspect for consideration, we are not inclined to grant relief to the appellant and appeal is accordingly dismissed leaving parties to bear their own costs.”

21.11 Hence, this Court holds that merely the fact that there are some overlapping or contradictions in the testimonies of PW1, PW6 & PW10 with regard to the option of search given to the accused persons, *ipso-facto* would not render that case of the prosecution doubtful, as this Court had already observed that the recovery of narcotic contraband was also not effected from the personal search of the accused persons, rather from the bags (B1 to B8) carried by accused persons, therefore, provisions of Section 50 NDPS Act are not applicable to the instant case. Hence, the contradiction as pointed out by Learned defence counsel do not help the accused persons in any manner.

Consequently, **Point-C** stands answered in **AFFIRMATIVE**.

Corroboration of FSL Report:

22. The prosecution has proved the Forensic Science laboratory (FSL) report (Ex.PX) by examining PW7 Bharat Bhushan, Senior Scientific officer

(NDPS), Forensic Science Laboratory, Madhuban Karnal. The said report confirmed the recovered substance as 'Ganja', falling under NDPS Act. Scientific evidence is neutral evidence. It rules out exaggeration, rather it independently corroborates ocular evidence. It is worth to mention here that the accused persons have failed to rebut the authenticity of the same by leading any evidence.

22.1 Reference at this stage can be made to the Table {Sub-clause vii(a) and xxiii(a) of section 2 of the Act} attached with Act, at Sr. no. 55, read with Section 2(viia) NDPS Act.

22.2 Under the NDPS Act structure, Section 20(b)(ii)(A) covers small quantities, Section 20(b)(ii)(B) covers quantities greater than small, but less than commercial (i.e., intermediate quantities), and Section 20(b)(ii)(C) covers commercial quantities. In the instant case, the individual recoveries per bag ranged from 12 kg to 14 kg (which are strictly between the small quantity threshold and the 20 kg commercial threshold), Section 20(b)(ii)(B) is technically applicable for individual '**Intermediate possession**'.

22.3 This Court holds that since the charge and trial evaluated individual bag possession (B1 to B8) yielding intermediate quantities per person, which attracts to Section 20(b)(ii)(B) NDPS Act as the recovered quantities ranging from 12 Kg to 14 Kg respectively per accused shall fall under the category of '**Intermediate Quantity**'.

Corroboration by 2nd Investigating officer:

23. The initial apprehension of the accused persons was conducted by PW10 SI Subhash Chander 995/PPT, but, the subsequent investigation was over taken by second Investigating officer PW13 SI Subhash Chander 910/PPT (A different officer of the same name, distinguished throughout by belt number).

23.1 On August 07, 2021, PW13 SI Subhash Chander 910/PPT took custody of the accused persons and seized property at the crime scene. The arrest of the accused persons were formalized vide memos (Ex.P1/PW8 to Ex.P5/PW8 and Ex.P29 to Ex.P31). During interrogation, accused persons suffered disclosure statements (Ex.P7/PW8 to Ex.P10/PW8, Ex.P32 to Ex.P34). He produced accused persons, case property and witnesses before SHO/Inspector Sunil Kumar. He correctly identified all the accused persons (physically) present in the Court and identified the accused Rajkaur and Kala produced in the Court through video-conference.

Corroboration by SHO & Attesting witnesses:

24. **PW11 Inspector/SHO Sunil Kumar** verified the facts and affixed his seal bearing impression 'SK' on the case property and prepared his respective reports (Ex.PW11/2&Ex.PW11/3) under Sections 55&57 NDPS Act. The said SHO also directed to deposit the case property with Malkhana Mohrer and mandated the production of accused persons before the Area Magistrate for inventory certification.

24.1 **PW6 Constable Jyoti (Attesting/Associate witness)** was subjected to lengthy cross-examination, but nothing material could be elicited to impeach her credibility. She proved arrest memos (Ex.P29 to Ex.P31) and disclosure statements (Ex.P32 to Ex.P34) of accused persons namely Kanta, Rajkaur & Premo.

24.2 **PW8 HC Surender (Attesting/Associate witness)** was subjected to lengthy cross-examination, but nothing material could be elicited to impeach his credibility. He proved arrest memos (Ex.P1/PW8 to Ex.P5/PW8 & Ex.P29 to Ex.P31) and disclosure statements (Ex.P9/PW8 to Ex.P10/PW8 and Ex.P32 to Ex.P34) of accused persons.

Corroboration by Other Evidence:

25. This Court further noted that the prosecution successfully proved the case property was duly deposited with Malkhana Mohrer. **PW3 ESI Bijender**, testified that on August 07, 2021, Investigating officer deposited the case property i.e. currency notes worth ₹2200/- (cash), Eight sealed parcels/plastic sacks of contraband (total weight 106 Kg 'Ganja'), one parcel of empty bags, 53 wrappers, which were sealed with the seal bearing impression 'SK' & 'SC/1'. He also deposed that on the next day i.e. August 08, 2021, Investigating officer withdrew the sealed parcels of 'Ganja' and the sample seal to present them before the Learned Area Magistrate, Panipat for inventory certification.

25.1 At this stage, it is pointed out by defence that the prosecution has failed to produce Malkahan Register no.19 & 21, and CIA departure register, which may lead to cast doubt in prosecution's version. However, this Court is not in agreement with the afore-mentioned submissions. During the course of trial, especially during the examination of PW3 ESI Bijender, no such questions were put to this witness to suggest any tampering in the Malkahan register no. 19 & 21. The defence has never asked for the production of afore-said registers. Hence, at the belated stage, the defence cannot be allowed to take the benefit of non production of such registers as the defence has failed to rebut the recovery of total 106 Kg 'Ganja' effected from the accused persons. Immediate production of accused persons along-with case property before Learned Area Magistrate further rules out the possibility of any false implication.

26. The prosecution has also proved that on August 08, 2021, PW13 SI Subhash Chander 910/PPT produced the accused persons along-with contraband before the Learned Area Magistrate, Panipat and moved an application under Section 52A NDPS Act (Ex.PW13/1) and description of inventory (Ex.PW13/2). Two samples of 100g each were drawn out of each parcels/plastic sacks (SP1 to SP8) under the supervision of Learned Magistrate. It is clarified that total 16 samples were drawn and the same along-with residue case property were sealed by Learned Magistrate with his seal 'KS'. He also proved photographs (Ex.PW13/3 to Ex.PW13/20) clicked in the Court. He got prepared the scaled

site plan (Ex.P27) from PW2 ASI Dilbagh. He correctly identified all the accused persons (physically) present in the Court and also identified the accused Rajkaur & Kala produced in the Court through video-conference.

26.1 **PW4 Nar Singh, Reader**, (the then Ahlmad in the Court of Sh. Kapil, the then Learned JMIC, Panipat) has identified the handwriting and signatures of Sh. Kapil, the then Learned JMIC, Panipat, on inventory order (Ex.P28) as he has worked under his supervision.

26.2 Judicial sampling eliminates apprehension of tampering because the representative samples were drawn under the direct supervision of Learned Magistrate. It is also pertinent to mention here that during the course of trial, accused persons have neither doubted nor rebutted the authenticity of inventory order (Ex.P28).

26.3 The Hon'ble Supreme Court of India in case titled as **Bharat Aambale Vs. The State of Chhattisgarh Criminal Appeal no. 250 OF 2025 (Arising out of SLP (CRL.) NO. 14420 of 2024)** has held that any inventory, photographs or samples of seized substance prepared in substantial compliance of the procedure prescribed under Section 52A of the NDPS Act and the Rules/Standing Order(s) thereunder would have to be mandatorily treated as primary evidence as per Section 52A sub-section (4) of the NDPS Act, irrespective of whether the substance in original is actually produced before the court or not.

26.4 Hence, under the precedent of Bharat Aambale’s case (supra) the Inventory order, Application under Section 52A NDPS Act, Description of inventory and photographs proved on record are the primary evidence, and the same shall be read against the accused persons.

D. Compliance with Section 52A NDPS Act & Chain of custody:

27. The defense strenuously contended that procedural irregularities under Section 52A of the NDPS Act compromised the prosecution's case. However, this Court finds this contention legally untenable for the following reasons:

- **Judicial Integrity of Sampling:** The case property was produced before the Learned Area Magistrate on August 08, 2021. Representative samples were drawn under direct judicial supervision and sealed with the court's unique seal 'KS'.
- **Primary Evidence:** Following the baseline established by the Hon'ble Supreme Court of India in Bharat Aambale’s case (supra) inventory certifications drawn under Section 52A(4) command the status of primary evidence.
- **Unbroken Chain of Custody:** The trajectory of the contraband from seizure to scientific analysis is verified by clean administrative handoffs:

Phase	Custody/Action	Authority Seal
Spot Seizure	Seized by PW10 SI Subhash Chander 995/PPT	Recovery memos
Attestation	By PW1 Anil Kumar SDO	‘SC/1’
SHO verification	Verified by PW11 SHO Sunil	‘SK’
Judicial Sampling	Representative inventory by	‘KS’

	Learned Magistrate	
FSL	Verified intact at Madhuban by PW7	Matches 'KS'

27.1 Even otherwise, mere non-compliance of the procedure under Section 52A of NDPS Act or the Standing Order(s)/Rules thereunder will not be fatal to the trial unless it creates material discrepancies in the physical evidence rendering the prosecution's case doubtful. However, in this case there is no such material discrepancy in physical evidence rendered by the prosecution. The accused persons have nowhere pleaded any bias or led any evidence to raise suspicion regarding recovery or chain of custody. Reference in this regard, may be made to the judgment passed by Hon'ble Apex Court of India in case titled as **Bharat Aambale's case (supra)** wherein the Hon'ble Apex court has held that substantial compliance of Section 52A NDPS Act is sufficient. Inventory and samples prepared in the presence of Magistrate constitute primary evidence, and mere procedural irregularity under section 52A NDPS Act is not fatal unless it causes any partiality or creates doubt regarding recovery or chain of custody.

28. This Court finds no discrepancy, as the chain of custody remained fully established and the evidence remain un-rebutted. This Court hold:

- On August 07, 2021, PW10 SI Subhash Chander 995/PPT apprehended the accused persons (Except accused Kala) along-with the total contraband weighing 106 Kg 'Ganja', which was converted into parcels/plastic sacks (SP1 to SP8), which were sealed by

Gazetted officer with the seal bearing impression 'SC/1'.

- Inspector/SHO Sunil also affixed his seal bearing impression 'SK'. The contraband was duly deposited with Malkhana Mohrer.
- On August 08, 2021, the accused persons along-with contraband were produced before Learned Area Magistrate who passed inventory order (Ex.P28), finding the seal having impression 'SC/1' & 'SK' intact.
- Two samples of 100g each were drawn out of each parcels/plastic sacks (SP1 to SP8) under the supervision of Learned Magistrate. Hence, total 16 samples were drawn and the same along-with residue case property were sealed by Learned Magistrate with his seal 'KS'.
- The FSL report (Ex.PX) also confirmed that the seals on the received sample were intact and tallied with the specimen seal bearing impression 'KS' as per authority letter.

28.1 The samples were drawn judicially, which substantially satisfies statutory requirement. No prejudice has been demonstrated. The chain of custody as well as integrity of the sample remained fully established.

29. The defence argued that there has been a 21 days delay in sending the sample to FSL, Madhuban (sent on August 31, 2021) should invalidate the FSL report. However, this court holds that while samples should ideally be deposited with chemical examiner within 72 hours, a delay is not fatal if the seals remained intact and the chain of custody was fully proved.

29.1 In the instant case, the recovery of narcotic contraband i.e. 106 Kg

‘Ganja’ from the accused persons on August 07, 2021 was established by cogent and reliable evidence. The chain of custody and integrity of the sample remain intact.

29.2 Furthermore, this Court observes that the defense has failed to elicit a single shred of evidence during the cross-examination of the official witnesses to demonstrate that the sample parcels were structural targets of tampering, exposure, or contamination during the 21 days transit interim.

29.3 The Forensic Science Laboratory Report (Ex.PX), proved by the expert testimony of PW7, categorically documents that the sample parcels arrived at FSL Madhuban with their physical seals perfectly intact, unhampered, and precisely matching the judicial specimen impression 'KS' provided via the authority letter.

29.4 When the scientific expert explicitly confirms that the protective seals are pristine, the timeline of transmission ceases to be a systemic vulnerability. The delay shifts from being a fatal procedural defect to a mere administrative delay, which does not prejudice the accused in any manner. As long as the integrity of the sample and the sanctity of the substance are scientifically proven to be unbroken, the evidentiary value of the FSL report remains absolute. The authenticity of FSL report has nowhere been disputed by the accused persons during the course of trial.

29.5 Moreover, it is also not the case of the defence that any prejudice

has been caused to the accused persons. On this account, this Court find supports and strength from the judgment passed by Hon'ble Supreme Court of India in case titled as Hardip Singh versus State of Punjab, (2008) 8 SCC 557, wherein it has been ruled that a 40 day gap did not invalidate a conviction because the samples were proven to be intact.

29.6 The subsequent judgment of Hon'ble Supreme Court of India passed in case titled as Jarnail Singh Vs. State of Punjab Criminal appeal no. 1960 of 2009, d.o.d 11.02.2011 further supported the principle that delay alone is of no consequence if the integrity of the recovered contraband is maintained. The chain of custody is fully established.

Hence Point-D is answered in the **AFFIRMATIVE**.

E. Effect of non-association of independent witnesses

30. It is the argument of defence that the present case is not supported by any independent witness, therefore, it cast doubt in the story of the prosecution.

30.1 However, this argument of defence is devoid of any merits that the lack of independent witnesses cast doubt on the case. The official testimonies are reliable and they provide sufficient details of occurrence. This Court finds that the public is often reluctant to join as witness, therefore, no benefit can be extended to the accused solely on this ground.

30.2 In Digvijay vs. State of Himachal Pradesh Cr. Appeal No. 204 of

2024, D.o.d 12.08.2025, wherein the Hon'ble High Court has held as under:

The Hon'ble Himachal Pradesh High Court exhaustively reviewed the law regarding non-association of independent witnesses in NDPS matters referring to the various judgments passed by Hon'ble Supreme Court of India and held that such non-association is not fatal per-se. The Court reiterated that where recovery arises during patrolling or chance apprehension, police officials are under no legal obligation to procure independent witnesses in anticipation of recovery.

30.3 On the issue of non-association of independent witness, the Hon'ble Supreme Court in Kashmira Singh Versus State of Punjab 1999 (1) SCC 130 held that police officials on patrol are under no obligation to carry independent witnesses in anticipation of recovery, and absence of public witnesses by itself does not vitiate prosecution.

30.4 This principle was re-affirmed by the Hon'ble Supreme Court of India in Raveen Kumar vs. State of H.P., (2021) 12 SCC 557 and Rizwan Khan vs. State of Chhattisgarh, (2020) 9 SCC 627, holding that testimony of official witnesses can safely form the basis of conviction if found trustworthy and reliable. It is held that testimony of official witnesses carries the same evidentiary value as any other witness, though Courts must scrutinize such evidence with care and caution.

30.5 This position was reiterated in Kallu Khan vs. State of Rajasthan,

(2021) 19 SCC 197 and Surinder Kumar vs. State of Punjab, (2020) 2 SCC 563

and it was held that mere absence of independent witnesses cannot lead to an inference of false implication, once the testimony of police officials is found cogent, reliable and trustworthy.

30.6 Thus, the settled legal position is that quality of evidence prevails over quantity of witnesses, and where official witnesses inspire confidence and with stand cross-examination, conviction can safely rest upon their sole testimony notwithstanding non-association of public witnesses. This Court emphasized that official acts of the police are presumed to be regularly performed and should not be met with “initial distrust”. Official witnesses are not inherently unreliable. In the instant case, nothing material could be elicited from cross-examination of prosecution witnesses. No suggestion of prior enmity, motive for false implication, or planted recovery was put to prosecution witnesses. The credibility of the witnesses remained intact. Though, independent witnesses are desirable, there exists no rule of law that testimony of official witnesses require independent corroboration. This Court holds that testimony of police witnesses is not an inferior category of evidence. The accused persons have failed to show any prejudice cause to them. On scrutinizing all evidence, this Court finds no material discrepancies in the prosecution’s version that would suggest the innocence of accused persons. Hence, no benefit can be extended to the accused persons solely on this

ground.

Hence, **Point-E** is answered in the **AFFIRMATIVE**.

F. Statutory presumption under Sections 35 & 54 NDPS Act:

31. Reference to Section 35 and Section 54 of NDPS Act would also be relevant at this stage.

31.1 Section 35 of NDPS Act reads as under:-

“Presumption of culpable mental state.-(1) In any prosecution for an offence under this Act which requires a culpable mental state of the accused, the Court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution”.

Explanation.- In this section "culpable mental state" includes intention, motive, knowledge of a fact and belief in, or reason to believe, a fact.

(2) For the purpose of this section, a fact is said to be proved only when the Court believes it to exist beyond a reasonable doubt and not merely when its existence is established by a preponderance of probability."

31.2 Section 54 of NDPS Act reads as under:-

"Presumption from possession of illicit articles- In trials under this Act, it may be presumed, unless and until the contrary is proved, that the accused has committed an offence under this Act in respect of-

(a) any narcotic drug or psychotropic substance or controlled substance;

(b) any Ganja poppy, cannabis plant or coca plant growing on any land which he has cultivated;

(c) any apparatus specially designed or any group of utensils

pecially adopted for the manufacture of any narcotic drug or psychotropic substance or controlled substance; or

(d) any materials which have undergone any process towards the manufacture of a narcotic drug or psychotropic substance or controlled substance, or any residue left of the materials from which any narcotic drug or psychotropic substance or controlled substance has been manufactured, for the possession of which he fails to account satisfactorily."

31.3 In view of the statutory presumptions under Sections 35 and 54 NDPS Act, once possession of contraband is proved, the burden shifts upon the accused to establish absence of conscious possession. Reliance on this aspect can be placed upon case titled as Baldev Singh Vs. State of Haryana (SC) 2015 (4) R.C.R. (Criminal) 1014, wherein it has been held by Hon'ble Apex Court of India that

"Once the possession of the contraband by the accused has been established, it is for the accused to discharge the onus of proof that he was not in conscious possession".

31.4 Similar view has been reiterated in Madan Lal and Anr. Vs. State of Himachal Pradesh, 2003 (4) RCR (Criminal) 100, wherein, the Hon'ble Supreme Court of India has laid down as under:-

"Once possession is established the person who claims that it was not a conscious possession has to establish it, because how he came to be in possession is within his special knowledge. Section 35 of the Act gives a recognition of this position because of presumption available in law. Similar is the position in terms of Section 54 where also presumption is available to be drawn from possession of illicit articles."

32. The prosecution case is further strengthened by prompt registration of FIR, duly proved by PW9 Inspector Satpal, which lends assurance to prosecution case. It is also relevant to mention here that when all the circumstances appearing against the accused persons were put to them under Section 313 Cr.p.c., the accused persons have failed to explain the circumstances appearing against them. They merely denied the allegations, but failed to lead any cogent rebuttal evidence or produce any lawful authority for possession of recovered contraband. Bare denial of the same itself cannot be considered as sufficient proof to rebut the convincing evidence of the prosecution.

32.1 This Court emphasized that because physical custody and immediate control of the accused persons over the contraband were established by ocular testimony, the burden shifted entirely to the defense. By offering a blank denial under Section 313 Cr.p.c. without providing any alternative lawful explanation (such as holding the bags transiently or unknowingly for a third party), the legal inference of a guilty "culpable mental state" solidifies completely.

32.2 This Court also noted that there is no evidence of "enmity or motive" by the police to falsely implicate the accused. Under Section 35 NDPS Act, once contraband is found in an accused's possession, the Court presumes a culpable mental state unless the accused proves otherwise.

32.3 Hence, from the cumulative appreciation of evidence, possession of contraband i.e. 'Ganja' with the accused persons is fully established on record and presumption of culpable state of mind is drawn against the accused persons under Sections 35 & 54 of NDPS Act.

Hence, Point-F is answered in **AFFIRMATIVE**.

G. Evaluation of defence evidence and final findings:

33. The defence sought acquittal of the accused persons based on the contradictions in the testimonies of witnesses regarding the timing of arrival at the scene, time of sending and receiving tehrir and the specific location where the contraband was found etc.

33.1 However, this Court finds that minor contradictions and omissions are natural due to the passage of the time and errors in human memory; they do not automatically impair witness credibility. Such minor discrepancies are natural indicators of truthful testimony and do not corrodes the substratum of prosecution case unless they go to the route of recovery. In addition to it, there are always natural differences in the faculties of different individuals, in the matter of observation, perception and memorization of details.

33.2 In the present case, the recovery pertains to the year 2021, whereas witnesses have deposed in the year from 2024 to 2026; therefore, chances are more of creeping in or some variations, in their statements after passage of a long time. The contradictions and discrepancies pointed out are not so material, and do not create any reasonable doubt regarding the recovery or arrest. Rather,

they lead to suggest the Court that the witnesses are not tutored. A reference may be made to AIR, 1988, S. C., 696, Appabhai and another Vs. State of Gujarat, wherein, it has been held by a Division Bench of Hon'ble Apex Court, that:-

“The Court while appreciating the evidence produced before it, must not attach undue importance to minor discrepancies. It has been further held that discrepancies in the statement of the witnesses, which do not shake the very basis of the prosecution case, may be discarded by the Court and errors due to loss of memory, may be given due allowance. Conviction has to be rested on unimpeachable evidence of the prosecution and it should not be affected by mere technicalities of procedure unless prejudice is caused to the accused.”

33.3 Further, in the case of Bhola @ Paras Ram Vs. State of U.P. 2009(2) RCR (Criminal) 166 (SC), it has been held by the Hon'ble Apex Court that undue importance should not be attached to omissions, contradictions and discrepancies which do not go to the root of the matter and shake the basic version of the prosecution witness and a witness cannot be accepted to possess a photographic memory and to recall the details of an incident verbatim. In the present case, over all reading of the evidence led by the prosecution reflects that all the witnesses have deposed in a consistent manner.

33.4 Viewed cumulatively, the oral, documentary and scientific evidence which forms a complete and unbroken chain pointing only toward guilt of the accused persons and excludes every reasonable hypothesis of innocence of accused

persons. The prosecution has established its case through cogent, consistent and credible evidence, and the procedural safeguards under NDPS Act have been complied with. The defence has failed to create any reasonable doubt, either through cross-examination or through its own evidence.

34. The defence has further raised a specific legal argument on the point of what may be termed as the 'Homogeneous Point'. It was argued by defence that PW10 SI Subhash Chander, 995/PPT, the Investigating Officer, himself admitted in his deposition that 53 packets of Ganja out of the Eight bags (B1 to B8) carried by the accused persons were recovered. However, the Investigating officer illegally and improperly mixed above-said packets into a Eight sealed parcels/plastic sacks (SP1 to SP8) before sending the same for FSL examination.

34.1 The defence contended that it was highly probable that one of the packet was a purely lawful substance such as chopped grass, and that by mixing the same with the other packets, the entire contraband was artificially contaminated, rendering the FSL report legally useless and unreliable. On this basis, it was argued that the accused persons are entitled to the benefit of doubt and consequently to an acquittal.

34.2 For complete adjudication qua the contention raised by the defence, this Court has carefully perused the testimony of PW1, PW8, and PW10 as well as the documentary evidence placed on record. The testimony of

these witnesses is consistent, cogent, and reliable, and the chain of custody also in the present case is found to be complete and unbroken (as discussed above).

34.3 The defence has also failed to cross-examine the Investigating officer as well as FSL expert on that specific aspect especially when they have consistently deposed regarding a specific material fact—such as the uniform nature of the brown leaf-type substance identified at the spot (Ex. P18), the testimony is deemed accepted in law.

34.4 FSL report (Ex. PX) is an independent scientific document carrying a statutory presumption of official regularity under Section 114 of the Indian Evidence Act, 1872. If the defense wished to argue that the contents were heterogeneous or adulterated with a "lawful substance," the burden was on them to put specific suggestions to the scientific expert (PW7 Dr. Bharat Bhushan) or request a re-test/second opinion during trial. Raising a speculative hypothesis at the final stage of arguments, devoid of foundational cross-examination, is explicitly ruled out as an afterthought.

34.5 Henceforth, this Court does not find any substance in the afore-said arguments for the following reasons:

- First, the recovered packets were separately identified as 'Ganja' at the spot itself, as reflected in the Identification Memo (Ex.P18). This identification was made in the presence of the Gazetted officer and constitutes contemporaneous documentary evidence of the highest reliability. The nature of contraband as 'Ganja' was thus established at the very inception, before any alleged mixing took

place.

- Second, the FSL report Ex.PX has confirmed the recovered substance to be 'Ganja'. Importantly, the FSL report does not mention the detection of any other substance. The defence's contention that one of the packet may have been chopped grass is thus directly contradicted by the FSL report. The FSL is an independent scientific body and there is a presumption of regularity in its functioning.
- Third, and most significantly, no suggestion whatsoever was put by Learned defence counsel to PW1, PW8, or PW10 during cross-examination to the effect that the recovery was false, planted, or that either of the packets was containing a lawful substance. It is settled proposition of law that if no such suggestion is put to a witness during cross-examination, the uncontroverted testimony of such witness must be acted upon by the Court. The defence cannot be permitted to raise a plea at the stage of arguments which was never tested by way of cross-examination.

34.6 Accordingly, the accused persons are not entitled to any benefit of doubt on the basis of the Homogeneous Point argument. Hence, the same is accordingly **REJECTED**.

Hence, Point-G is answered in **AFFIRMATIVE**.

As a sequel to above-discussion, ISSUES No. 1 to 5 are answered

Against the accused persons.

ISSUE NO.6

35. As far as the case of the prosecution that accused persons that they

in conspiracy with accused Kala purchased the afore-mentioned 'Ganja' for selling purpose is concerned, in this regard, this Court observes that the prosecution has failed to lead any substantial evidence to connect the accused persons in conspiracy with accused Kala. No CDR or financial trail have been produced by the prosecution to connect the accused persons with accused Kala. This Court finds and holds that no incriminating articles were recovered following disclosure statements (Ex.P6/PW8 to Ex.P12/PW8 & Ex.P32 to Ex.P34) of accused persons. It is relevant to mention here that the disclosure statement (Ex.PW12/2) of co-accused Kala and the disclosure statements of other co-accused persons (Ex.P6/PW8 to Ex.P12/PW8 & Ex.P32 to Ex.P34) are per-se not admissible in evidence. The confession made by the accused persons while in police custody is strictly hit by Section 25 Indian Evidence Act. Since, no discovery of a distinct fact occurred under Section 27 of the Evidence Act following the disclosure statements, the statements remains completely inadmissible. Reliance has been laid on the case titled as Ajay Kumar Gupta vs. Union of India Criminal Appeal no. 878 of 2019 d.o.d August 22, 2024, wherein the Hon'ble Supreme Court of India has held as under:-

“9. We may note that the Trial Court and High Court have relied upon the appellant's statement under Section 67 of the NDPS Act. In paragraph 158 of the decision of this Court in the case of Tofan Singh, this Court held thus:

“158. We answer the reference by stating:

158.1. That the officers who are invested with powers under Section 53 of the NDPS Act are “police officers” within the meaning of Section 25 of the Evidence Act, as a result of which

any confessional statement made to them would be barred under the provisions of Section 25 of the Evidence Act, and cannot be taken into account in order to convict an accused under the NDPS Act.

158.2. That a statement recorded under Section 67 of the NDPS Act cannot be used as a confessional statement in the trial of an offence under the NDPS Act. Therefore, the appellant's statement recorded under Section 67 of the NDPS Act is not admissible in evidence and cannot be read in evidence.”

35.1 This Court holds that the prosecution has proved the possession of the contraband, but failed to prove agreement with co-accused Kala. Suspicion, however, grave, cannot substitute legal proof. Therefore, the accused persons cannot be held guilty for the offence charged with and they are entitled to benefit of doubt.

Hence, Issue no.6 answered accordingly in **NEGATIVE**.

ISSUE NO.7:

36. As far as the case of the prosecution against accused **Kala** is concerned, he has been charged under Section 29 NDPS Act based on the disclosure statements of co-accused persons. The prosecution has relied upon the testimony of PW12 ASI Rakesh and also relied upon the arrest memo (Ex.PW12/1) and disclosure statement (Ex.PW12/2) of accused Kala.

36.1 This Court has scrutinized all the evidence led by the prosecution qua the accused Kala. This Court finds and holds that no incriminating articles were recovered following disclosure statement of accused Kala. Except the disclosure statements (Ex.P6/PW8 to Ex.P12/PW8 & Ex.P32 to Ex.P34) of other

accused persons, no incriminating evidence has come on record to prove the involvement of accused Kala. It is relevant to mention here that the disclosure statements (Ex.P6/PW8 to Ex.P12/PW8 & Ex.P32 to Ex.P34) of co-accused persons and his own disclosure statements (Ex.PW12/2&PW12/3) are per-se not admissible in evidence. Reliance has been laid on the case titled as Ajay Kumar Gupta's case (supra) wherein the Hon'ble Apex court held that a statement recorded under Section 67 of the NDPS Act cannot be used as a confessional statement in the trial of an offence under the NDPS Act. Hence, the said statement is neither admissible in evidence nor be read in evidence.

36.2 The confession made by the accused while in police custody is strictly hit by Section 25 Indian Evidence Act. Since, no discovery of a distinct fact occurred under Section 27 of the Evidence Act following the disclosure statements, the statements remains completely inadmissible.

36.3 Lack of call detail records (CDR) between co-accused persons and Kala or any financial trail transaction, which could have otherwise substantiated the charge of conspiracy remained missing on the case file. No positive fact, other than the disclosure statements have been brought on record which could suggest the conspiracy between the accused persons.

36.4 Therefore, this Court holds that disclosure statement alone, without independent corroboration or recovery, are insufficient for conviction of accused Kala. Therefore, he cannot be held guilty for the offence charged with

and he is entitled to benefit of doubt.

Hence, Issue no.7 answered accordingly **Against Prosecution.**

ISSUE NO.8

37. DECISION:-

I) This Court has independently scrutinized the evidence with greater caution because the offences under NDPS Act entail severe punishment.

II) For the reasons recorded above, this court holds that the prosecution evidence inspires confidence because the ocular account, documentary evidence, contemporaneous record, scientific evidence and judicial sampling under Section 52A form one continuous and unbroken chain of custody. The defence has failed to demonstrate any circumstance creating a reasonable doubt and there is no rebuttal under Sections 35 and 54 NDPS Act.

III) The prosecution has therefore discharged its burden beyond reasonable doubt and this Court concludes that:

- On August 07, 2021, accused **Kanta, Premo, Malkeet @ Billu, Gurmej, Gurdass, Nishan Singh, Gurmeet and Rajkaur** were lawfully apprehended.
- They were found in conscious and exclusive possession of total 106 Kg 'Ganja', duly recovered from their bags (B1 to B8)

carried by them.

- They have failed to produce any permit or licence for keeping the same.
- Accordingly, the prosecution has succeeded in proving the charge under Section 20(b)(ii)(B) NDPS Act beyond all reasonable doubt. The evidence forms a complete and consistent chain leaving no reasonable hypothesis consistent with innocence. Accordingly, accused persons deserve conviction under Section 20(b)(ii)(B) NDPS Act.
- Conversely, the prosecution has failed to establish the essential ingredients of criminal conspiracy under Section 29 NDPS Act, hence, they are acquitted of the charge under Section 29 NDPS Act.

IV) **Accused Kala:**

The prosecution has failed to prove the guilt of accused Kala beyond reasonable doubt. The prosecution has failed to establish the essential ingredients of criminal conspiracy under Section 29 NDPS Act, hence, he is also acquitted of the charge under Section 29 NDPS Act.

V) Hence, Issue no.8 is answered accordingly.

VI) Let, the accused Kanta, Premo, Malkeet @ Billu, Gurmej, Gurdass,

Nishan Singh, Gurmeet and Rajkaur be taken into custody and be heard on question of sentence after some time.

Pronounced in open Court.

Dated:21.07.2026

Neeru, Stenographer Gr.II

Yogesh Chaudhry

Addl. Sessions Judge, (FTC)

Panipat, (UID No.HR-0212)

Note: This judgment contains **fifty-nine** pages and each and every page has been checked and signed by me.

Yogesh Chaudhry

Addl. Sessions Judge, Panipat

(UID No.HR-0212)